3 October 2016

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Dear Steven

Environment Canterbury submission: Better Urban Planning draft report

Thank you for the opportunity to make a submission on the Commission's draft report of your inquiry: Better Urban Planning.

Environment Canterbury appreciates this chance to contribute to the development of new ideas and options for New Zealand's urban planning framework. Environment Canterbury is supportive of practical improvements to planning systems and processes that will enhance councils' ability to deliver and support good social, economic, cultural and environmental outcomes.

The attached submission focuses firstly on the broader issues and context for Environment Canterbury's work, then moves on to discuss particular ideas and recommendations advanced in the draft report.

Environment Canterbury looks forward to being involved in any further discussions following the submissions process.

For any enquiries, please contact:

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Yours sincerely

Hon Prof Peter Skelton CNZM, D.Nat.Res (Hon), LLB, FEIANZ
Commissioner, Environment Canterbury

Encl: *Environment Canterbury submission: Better Urban Planning draft report*

Environment Canterbury Regional Council
Kaunihera Taiao ki Waitaha

SUBMISSION to the NEW ZEALAND PRODUCTIVITY COMMISSION

BETTER URBAN PLANNING DRAFT REPORT

3 October 2016

1. Environment Canterbury thanks the Commission for the opportunity to comment on the draft report: *Better Urban Planning*.

2. The following submission is offered on the basis of Environment Canterbury's roles, functions and responsibilities under the Resource Management Act 1991 (RMA), Local Government Act 2002 (LGA), Land Transport Management Act 2003 (LTMA), Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, Environment Canterbury (Transitional Governance Arrangements) Act 2016, Canterbury Earthquake Recovery Act 2011, and Greater Christchurch Regeneration Act 2016.

Context

3. Environment Canterbury is the Regional Council for the largest geographical region in New Zealand. Canterbury has an estimated 586,500 residents (at 30 June 2015), or 13% of the national population, making it the second most populous region in New Zealand after the Auckland region. Our region includes communities, particularly in Waimakariri and Selwyn Districts, with urban growth rates among the highest in the country, as a consequence of the Canterbury earthquakes and subsequent relocations of residents and businesses.

4. Environment Canterbury is a partner in the Greater Christchurch Urban Development Strategy (UDS), a voluntary collaborative initiative with Christchurch City Council, Waimakariri and Selwyn District Councils, and Te Rūnanga o Ngāi Tahu.[1] The UDS establishes a 35-year growth management and implementation plan for Greater Christchurch, to provide for sustainable urban form and future development for the city and

[1] The NZ Transport Authority, Canterbury District Health Board and Department of Prime Minister and Cabinet have observer status to the partnership.

peripheral rural communities close to Christchurch. The Strategy has recently been updated to reflect local priorities as Greater Christchurch moves into a new phase of the post-quakes regeneration process. It takes an integrated and collaborative growth management approach to deal with land use, transport and infrastructure requirements while incorporating social, cultural, economic and environmental values. Environment Canterbury endorses the submission provided by the UDS Partnership on the Commission's draft report.

5. At the wider regional level, Environment Canterbury works in close collaboration with the ten territorial local authorities (TLAs) in the region, via the Canterbury Mayoral Forum, Chief Executives Forum, Policy Forum and Planning Managers' Group. The Canterbury Regional Economic Development Strategy (CREDS) was launched by the Mayoral Forum in August 2015 with the overarching objective to:

   Maximise the economic growth of Canterbury, and position this for when the earthquake rebuild peaks, by ensuring the region makes co-ordinated, optimal investment and development decisions that position it for long-term, sustainable growth.

6. Environment Canterbury also works in close partnership with mana whenua of our region through our Tuia Relationship Agreement with the ten Papatipu Rūnanga of Ngāi Tahu in Canterbury, and the tribal authority Te Rūnanga o Ngāi Tahu. Tuia is a practical affirmation of Environment Canterbury's responsibilities under the RMA, the LGA and other legislation including the Ngāi Tahu Claims Settlement Act 1998, with regard to the principles of the Treaty of Waitangi.

7. Our submission (7 March 2016) on the Commission's *Issues Paper* outlined the following key points as central to any consideration of ideas and options for future planning frameworks for New Zealand:
   - New Zealand's planning system is designed to deal with the impact of a person's activities or resource use on others, whether immediate or long term and strategic
   - An important principle underpinning improved planning and delivery of better outcomes for the community is to work through collaborative and long term strategic planning processes where existing relationships are continued and strengthened
   - Involvement of local government is critical in helping shape any future changes to planning frameworks
   - Regional narratives are complex and there are significant differences between regions, meaning that an approach that works in one place may not work in another due to their respective challenges and drivers of success.

Structure of Environment Canterbury's submission

- Context
- General comments
  - The intent and focus of the Commission's inquiry
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- Planning system processes and tools
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- Additional matters
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  - Planning for smaller urban centres
  - Private plan changes
  - Evidence-based decisions
  - Integration with other initiatives
- Conclusion
- Appendix: Planning Process Options

General comments

The intent and focus of the Commission's inquiry

8. Environment Canterbury acknowledges that the Commission's investigation of future options for New Zealand's urban planning system is a wide-ranging and potentially far-reaching initiative. The inquiry has major implications for the work of New Zealand local authorities and the systems and processes by which councils plan for and manage the sustainable use, development and protection of natural and physical resources for our communities for the future. We note that the Deputy Prime Minister Bill English's original media announcement

of the inquiry, in September 2015, signalled 'a broad, "blue sky" look at the planning system' that would 'take a first principles look at planning in a post-RMA world'.[2]

9. Environment Canterbury acknowledges the focus of many of the ideas advanced in the draft report, for systems and processes for urban planning that would support greater efficiency, consistency and certainty for urban development. We note the close similarity of these aims with the stated intent of recent proposed legislative changes via the Resource Legislation Amendment Bill (RLAB) and other Government initiatives such as the proposed National Policy Statement on Urban Development Capacity (NPS-UDC).

10. Environment Canterbury acknowledges the Commission's identification of three main functions of an urban planning system (pp 2, 36-45):
    - To regulate external (spillover) effects on others and on the natural environment from the use of land by people and businesses[3]
    - To make fair and efficient collective decisions about the provision of local public goods
    - To plan and implement investments in transport and water infrastructure, and coordinate these investments with land use and investments in other infrastructure controlled by other parties (p 36).

11. However Environment Canterbury **does not agree** with the assumption underpinning the Commission's draft report that there are substantively significant differences between planning for urban areas and communities, and planning for other kinds of places and communities. The same rationales and purposes, including the need to deal satisfactorily with externalities, are pertinent in both urban and non-urban planning. The fundamental principles of planning – such as the three functions (noted above) which are the basis of the draft report's assessments – apply with equal validity regardless of whether the context is a major metropolitan centre, a small country town, or a widely dispersed rural community.

12. Environment Canterbury **does not agree** with the related assumption through the draft report of an essential difference or necessary separation between urban and environmental planning, such that these dimensions could be managed through disparate regulatory frameworks and processes. Urban centres and their residents require the same environmental services and essential resources as any other New Zealand community. The sustainability and liveability of urban centres are inevitably affected by wider environmental dynamics, quality and processes – notably in relation to water management. Therefore the built environment and urban centres cannot be artificially divided off from resource management planning.

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[2] https://www.hivenews.co.nz/articles/1046-hive-news-wednesday-english-eyes-productivity-commission-review-of-all-planning-laws

[3] We note that a range of activities other than simple land use *per se* may also create externalities or adverse effects on neighbouring parties, communities or the wider environment – for example, discharges of contaminants to urban water bodies.

13. Environment Canterbury notes the draft report's predominant focus on land use, the provision of infrastructure, and the availability of land and other development capacity, as a consequence of the Terms of Reference for the Commission's inquiry (p iii). Nevertheless we note that there are other resource management priorities that are equally crucial to the effectiveness of any urban planning system's support of 'desirable social, economic, environmental and cultural outcomes'. These include the basic necessities of water and air quality, managing the risks of natural and other hazards, ensuring adequate open green space and recreational opportunities, and ensuring appropriate management of sites and resources of cultural and traditional importance to tangata whenua.

14. Some of these other dimensions of planning are discussed in Chapter 6 of the draft report, which bases its conclusions (p 157) on a presumption of the limited ability of local government to change outcomes through a planning system. However the achievements of many council initiatives both within Canterbury and elsewhere in New Zealand are evidence that planning mechanisms under the existing systems can actually make significant differences. Just two notable examples in our region are:
    - major improvements in Canterbury's air quality, with regulation and proactive work with communities and industry delivering significant reductions in concentrations of airborne contaminants
    - the ongoing work of the Canterbury Water Management Strategy (CWMS).[4] Goals and priorities determined by community-based Zone Committees are progressively being translated into notified RMA plans to set environmental flows, water quality limits and a wide range of other objectives. The 2015 *CWMS Targets Progress Report* records good progress including matters affecting Greater Christchurch and other urban communities in the region.[5]

The legislation

15. Environment Canterbury **does not agree** with some key aspects of the Commission's interpretation of the three statutes that are the focus of this inquiry – the RMA, LGA and LTMA. In particular we note with concern statements (pp 3, 92, 124, 125) that the main outcome sought under the LGA is: 'the supply of local infrastructure and services in a timely and cost-effective manner and to desired standards'. This is indeed one of the purposes of this statute. However the first stated purpose of the LGA is: *'to provide for democratic and effective local government that recognises the diversity of New Zealand communities'* (s3). The first stated purpose of local government is established under s10(1)(a) as: *'to enable democratic local decision-making and action by, and on behalf of, communities'*. The provision of good-quality local infrastructure, public services and regulatory functions follow on from this principal requirement (s10(1)(b)).

[4] http://ecan.govt.nz/get-involved/canterburywater/Pages/default.aspx
[5] http://ecan.govt.nz/GET-INVOLVED/CANTERBURYWATER/TARGETS/Pages/targets-progress-report-2015.aspx

16. The draft report's assessment of planning systems and options has focused around only the second half of the *raison d'etre* for New Zealand councils. This is a serious flaw, and impacts adversely on the analysis and range of future options identified.

17. We also note the statement (p 119) that amendments to the LGA narrowed the purpose of local government. While amending legislation did change the scope of s10 LGA by amending paragraph (b) to remove the previous reference to the 'four well-beings', it left intact paragraph (a) providing for local decision-making and action. This allows local councils to act in any way and towards any goals that are sought or mandated by their communities. The rationale for local government is still framed around the needs and priorities of the local people, including the work of addressing the externalities that arise when different groups pursue and reflect different underlying values and aims.

18. Environment Canterbury **does not agree** with the description of the LGA as one of 'three main planning Acts' (p 89). This interpretation uses the term 'planning' in inconsistent ways, and is likely to create new confusions and implementation problems.

19. The RMA seeks to address the three functions of a planning system (noted above, paragraph 10), all fundamentally aspects of externality. The LTMA broadly relates to the same functions within the specific area of transport. However the LGA has different purposes altogether and provides for very different kinds of planning – the financial plans of local and regional councils, and the long term plans of communities. By conflating the objective-setting, policy-making and regulatory functions of the RMA with the financial and strategic plans required under the LGA, the impression is created that regional and district plans under the RMA are framed to be implemented in the same sense as a council's financial plan will be followed. However rather than a blueprint or prescription of the future, RMA plans are essentially statements of the permissions and obligations to which future activities will be subject. They are enabling by providing certainty as to necessary limits within an effects-based framework.

20. The role and functions of local government include but are not confined to addressing the impacts of externalities on resource use and long term sustainability. However beyond the expectation to pay rates on property, councils' financial planning does not directly affect private rights. There seems no obvious reason why councils' financial plans should be coordinated with the statements of private rights and obligations contained in RMA plans. Combining these essentially different regimes or kinds of planning would not only be a massive, hugely expensive and wickedly complex undertaking – it would not necessarily resolve the kinds of difficulties and inefficiencies the draft report is seeking to address.

21. Environment Canterbury notes the statements (p 99) relating to the intent of the RMA on its introduction. We acknowledge that the RMA brought together into one statute previously separate laws that all dealt with spillover or externality issues – principally the Town and Country Planning Act, the Water and Soil Conservation Act, the Soil Conservation and Rivers Control Act, Noise Control Act and the Clean Air Act. However we note that even

given the RMA's new focus on effects, the fundamental purpose is the same – to address externalities – regardless of challenges in practical implementation of the legislation over the years.

Intent and outcomes

22. Environment Canterbury is supportive in principle of the general intent behind the Commission's inquiry. We acknowledge the impetus for improvements to New Zealand's planning systems from the community, from business, primary production and economic development, and indeed within local government. We understand the pressure created by negative perceptions of the RMA and of councils' systems and processes, which are seen by many as cumbersome, unnecessarily constraining and ineffectual.

23. However as articulated in our submission to the Local Government and Environment Select Committee on the RLAB, Environment Canterbury has found that much of this dissatisfaction with the RMA and local government processes is misplaced and potentially misleading. We acknowledge that no system is perfect, that circumstances and expectations are continually changing, and there will always be opportunity for improvement. But we find that often the real issues and challenges in resource management and planning are not primarily about legislation, regulations or council processes.

24. We regularly confront a range of more fundamental questions – such as availability of water and land, management of externalities, incentivisation, and citizen involvement in decisions which will affect their homes, lives, investments and communities. As acknowledged in the Commission's draft report, difficulties and controversies are often based in the differences of views and values, and the different aspirations, of people and groups in our communities. Such differences exist and will always exist regardless of the statutory and regulatory provisions. They are not caused by RMA processes, although they may be exacerbated by them. Accordingly, they are not necessarily able to be effectively addressed by amending the legislation or by focussing on procedures and systems.

25. It is important to consider any proposed changes in light of the extent to which they would assist in dealing with the actual need or underlying problem – whether that is a resource allocation matter, a negotiation across the spectrum of values and opinions within a neighbourhood or community, or an ecological or geotechnical management challenge.

26. In our analysis of the Commission's draft report, as with our response to the RLAB, Environment Canterbury distinguishes between the intentions and principles behind the planning options discussed and the likely or potential downstream results. These include perverse outcomes, unintended outcomes, inefficiencies and unnecessary cost impositions, and basic lack of fit of a system or process to the actual requirements of councils, business and communities. For a number of the ideas and planning system options advanced in the

draft report, there is significant doubt as to whether the proposed new mechanisms, tools or processes would be reliable or effective means of achieving the desired improvements.

Other means of achieving improvements

27. Environment Canterbury does support a number of the particular changes proposed in the draft report, as detailed in our submission below. However we have considered the potential utility of different options for planning within the wider context of the initiatives under way in our region, and elsewhere with other New Zealand councils, under the existing statutory and regulatory frameworks.

28. Canterbury region is already working proactively via a range of practical mechanisms and strategic collaborations to achieve the kinds of quality planning outcomes envisaged in the draft report. This submission has already noted examples of these kinds of initiatives with the UDS (paragraph 4), the CREDS (paragraph 5), Tuia (paragraph 6) and the air quality programme and CWMS (paragraph 14) supporting sustainable development for both urban centres and rural communities. Regional-level and community-level actions and partnerships, utilising a mix of non-statutory and regulatory tools, are demonstrating very significant outcomes. Success depends not on any particular form of regulatory system but on community involvement, understanding of the issues and challenges, and buy-in to shared solutions over the longer term.

29. Environment Canterbury considers that it is highly desirable that these kinds of collaboration continue to be incentivised and supported. Any future planning systems must have the flexibility to integrate with and accommodate community-driven initiatives. The draft report could be usefully extended beyond its present narrow focus to discuss a range of alternative means of achieving the intended 'desirable social, economic, environmental and cultural outcomes'. Case studies could provide both practical real-world experience and appropriate recognition of local innovation, courage and commitment.

Planning system principles

Separation of planning and environmental protection

30. Environment Canterbury **does not support** any 'legislative separation of planning and environmental protection', or the goal of 'having clearer distinctions between the natural and built environments', as discussed in the draft report (pp 6, 10, 339).

31. Environment Canterbury **does not agree** with the underlying assumption behind the framing of this option that urban planning is fundamentally different from planning for management of the natural environment. As noted above (paragraphs 11 and 12), the same fundamental principles and purposes apply whether planning is being undertaken in an urban context or not. Urban communities depend like all others on wider environmental services and processes, and cannot be artificially separated off from resource management planning. Water is as significant an issue for urban planning as land use or land availability, and good

outcomes can best be achieved through the integrated planning of water catchments which usually extend far beyond the urban limits.

Centralisation or greater oversight of councils

32. Environment Canterbury **does not support** either of the options discussed in section 13.8 of the draft report (p 340). We note that a range of monitoring, audit and performance reporting mechanisms are already in place to evaluate councils' work and processes. We **do not agree** that the work of monitoring and enforcement of environmental regulation requires greater central government intervention, whether through an expanded role for the Environmental Protection Authority (EPA) or increased auditing and reporting of councils by the Ministry for the Environment (MFE) or the EPA.

33. Audit NZ has a direct role in reviewing and reporting on councils' Long Term Plans (LTPs) (prepared under the LGA) and the processes by which these are developed. Each three years a scrupulously thorough assessment is made and publicly reported as part of the process to finalise the LTP. The Auditor-General also conducts rigorous reviews of local authorities' performance across a range of functions including planning and financial management.[6]

34. Existing systems under the Environmental Reporting Act 2015 (ERA), and the National Monitoring System (NMS) established by MFE in 2014, already provide comprehensive frameworks for central government to gather and analyse information and develop reports on the quality of resource management – for State of the Environment (SOE) reporting under the ERA, and, via the NMS, for councils' processes and performance of their RMA functions. We **question** the assumption that any additional provisions or rigour are needed, particularly given that both of these systems have been established only very recently and have yet to deliver consistent, in-depth reports and advice for local government. Indeed while councils have been required to provide data to MFE under the NMS for two years now, no report back has yet been provided from MFE on the findings or analysis of this data, on councils' achievements or on priorities for future action. Furthermore as the draft report notes (p 205), it is unclear how information on councils' regulatory functions would link with the data collected through ERA processes.

Māori interests and the Treaty of Waitangi

35. Environment Canterbury **supports** the conclusions reached in Chapter 11 of the draft report regarding continued provision for and emphasis on the participation of iwi and hapū in planning and other local authority work. As noted above in paragraph 6, our Tuia Relationship Agreement with the ten Papatipu Rūnanga of Ngāi Tahu in Canterbury and the

[6] For example, the reviews of *Matters arising from the 2015-25 local authority long-term plans*, http://www.oag.govt.nz/2015/ltps, and of *Governance and accountability of council-controlled organisations*, http://www.oag.govt.nz/2015/cco-governance/docs/cco-governance.pdf/view?searchterm=council.

tribal authority, Te Rūnanga o Ngāi Tahu, is a fundamental commitment for the whole organisation, led by Dame Margaret Bazley and our Commissioners over the last six years.

36. We note the acknowledgement in the draft report (p 290) that each urban centre has its own unique 'combination of circumstances' including geographic and environmental dimensions, whakapapa and communities, history and traditions. We **support** the comment that this local distinctiveness requires local actors to determine appropriate, locally effective ways to manage relationships and incorporate tikanga Māori into planning practice.

37. We **support** the comments in the draft report (pp 272, 302) that capabilities are a key factor in developing and supporting effective relationships with iwi and hapū and local authorities. Building capacities within Environment Canterbury and supporting the Papatipu Rūnanga in Canterbury to develop practical skills and experience are core components of the Tuia programme. For example, Environment Canterbury assists entities set up to deliver cultural impacts advice to councils on resource consent applications.

Prioritisation of environmental matters

38. Environment Canterbury **does not support** the additional formal national-level prioritisation of environmental matters to be considered and given weight in planning decisions, as proposed in the draft report (pp 6, 203-4, 332).

39. We note that the RMA itself includes three levels of priority under Part II: matters of national importance (s6) which must be recognised and provided for; other matters (s7) which must be given particular regard; and the principles of the Treaty of Waitangi (s8) which must be taken into account. We acknowledge the extensive body of case law which has built up over the years to provide practical interpretation of these statutory provisions and how the matters covered in each section of Part II RMA are to be dealt with in councils' planning and other functions and responsibilities.

40. Furthermore the New Zealand Coastal Policy Statement 2010 and the various National Policy Statements (NPSs) and National Environmental Standards (NESs) are mechanisms to set direction and establish priorities for local authorities in fulfilment of RMA functions and responsibilities.

41. Beyond the hierarchy of matters established under Part II RMA and by the NZCPS and the various NPSs and NESs, determining priorities and setting appropriate goals and action programmes for environmental management and community development is fundamentally the business of local authorities and their communities. The principle of subsidiarity applies here – that decision-making is best undertaken at the level of governance closest to the effects of those decisions. Local government and communities have the specific knowledge necessary of local needs, conditions, history and aspirations. A broad high-level ranking system would offer little to assist in determining what is most urgent and most important at regional or local levels.

42. The practical work is done through the cycles of plan development under the RMA and LGA, with input from local residents, businesses, iwi and hapū, stakeholder groups and other organisations. As acknowledged in the draft report (eg. pp 216), local circumstances matter – each urban centre and community across New Zealand is different and distinctive, with their own needs, challenges, aims, assets and opportunities.

43. The distinction discussed above between the planning frameworks established for resource management and for councils' financial planning is also relevant here. Councils' financial plans will logically prioritise one area of expenditure over another, within the resources available and reflecting the community's preferences and values. But environmental planning, addressing a diverse range of the spillover effects of private actions on natural resources, cannot afford to ignore such impacts in one area because of an arbitrary prioritisation elsewhere.

44. Environment Canterbury **questions** the implicit assumptions behind the prioritisation proposal in the draft report – firstly that some environmental and resource management matters could be disregarded or traded off against others that are accorded greater value, and secondly that such trade-offs and write-offs are inevitable. In our experience, effective planning and long-term strategy depends on inclusion and integration at regional and local levels, rather than an arbitrary hierarchy of values imposed from elsewhere.

45. It is worth noting that the Canterbury Water Management Strategy (CWMS) is framed around ten target areas covering long-term environmental, social, economic and cultural values reflecting a sustainable development approach.[7] The target areas are:
    - Ecosystem health and biodiversity
    - Natural character of braided rivers
    - Kaitiakitanga
    - Drinking water
    - Recreational and amenity opportunities
    - Water-use efficiency
    - Irrigated land area
    - Energy security and efficiency
    - Regional and national economies
    - Environmental limits.

46. There are only two levels of significance for these priority areas within the CWMS framework. The first level includes environmental and cultural values, and drinking water and stock water – the crucial resources for life. The second level includes the remaining target areas. However the CWMS Zone Implementation Programmes pursue progress across all target areas simultaneously. No target area is disregarded or downgraded. And of course improvements in one area will often have spin-off benefits in other areas.

[7] http://ecan.govt.nz/get-involved/canterburywater/Pages/default.aspx

47. Environment Canterbury notes that the discussion of prioritisation is introduced as a 'persistent criticism of the RMA' yet the sole reference cited is the 2014 Salmon Lecture by the Parliamentary Commissioner for the Environment (PCE) to the Resource Management Law Association. We **question** the extrapolation of the PCE's comments – referring specifically in the quoted section (p 204) to Assessments of Environmental Effects required for applications for resource consent – to the much broader national-level framework of trade-offs and prioritisation envisaged in the draft report. We also note the PCE's caveat: that 'the most tangible and measurable "effects" can dominate decision-making, because quantification tends to signal both importance and certainty' (PCE, quoted p 204). The result of the kind of prioritisation process proposed in the draft report could be a hierarchy where a narrow range of quantifiable matters takes precedence over qualitative values where attribution of weightings may not be so straightforward.

48. Environment Canterbury endorses the five criteria used by the PCE to assess environmental issues (quoted in box 8.3, p 208): whether an environmental problem is irreversible; has cumulative effects; is large scale or pervasive; is accelerating; or can tip a system over a threshold into another state. However we **caution against** using these or any other criteria to rule out or diminish the significance of other factors in environmental and resource management decision making – whether those factors and the values at stake are ecological, economic, social, cultural, aesthetic, recreational, historical and traditional, or simply the priorities decided by the local community. The process, whether at a national or a local level, needs to be one of integration – within which all information and values are considered according to their significance – rather than a process of ranking, discounting and exclusion.

Use of market mechanisms and pricing information

49. Environment Canterbury **supports** the use of market information and data on pricing in planning processes and the development of plans (Recommendations 7.2, 8.4 and 10.1). This information is an important dimension of understanding the opportunities, challenges and constraints facing a community at a particular point in time. However we **caution against** over reliance on such information and value frameworks. Market information should be a part of decision making but it should not dominate.

50. Market information is not a panacea or a universal solution. It is seldom perfect or comprehensive, and is often changeable and highly subjective. Nor is it a justification for less robust planning processes or less thorough community involvement. Market mechanisms and information will be more useful in respect of some planning issues than others. The distinction noted above by the PCE is also relevant in relation to the use and integration of market information with other factors and values in decision making. Markets operate narrowly within quantitative frameworks, whereas planning frameworks deal also with a broad range of qualitative dimensions. Markets may be apposite to address issues of allocation quantity (such as who values most a given quantity of water). However they are

less effective tools to resolve issues of quality, such as which conditions will most readily address externalities that arise from water uses.

51. Furthermore markets may be limited. The markets for rights to take water are a case in point. Few markets for water are national – although some, such as the market for bottled water, are international. Most water catchments within which transfer and markets may be possible are confined to single catchments. The costs of establishing markets may easily outweigh any possible efficiency gains. While in theory market information may offer an appealing simplicity, in actual practice there is less consistency and less certainty.

Capabilities and understanding

52. Environment Canterbury **supports** the proposals in the draft report (Recommendations 12.1 and 12.2) to improve capabilities and understanding within both central and local government. Better appreciation of the challenges and realities, of opportunities, and of innovative new ways of doing things can only help the interactions between Ministries and councils. This will assist in the development of better policy and legislation, better guidance for implementation of policy and legislation, and better outcomes for communities and the environment.

53. We suggest a central issue to be resolved is improved clarity as to the role of central government. We note that central government agencies have always been able to submit on councils' plans. In the past this was regularly undertaken, but it has fallen off in recent years.

54. Environment Canterbury **cautions** that improving capabilities, knowledge and interactions will require sustained commitment and resourcing to build and maintain the necessary momentum to make a difference. As with any large bureaucratic systems, inertia is powerful and default assumptions are easy options. We suggest that the processes to improve capabilities and understanding need high profile support from the highest levels to gain traction. We note the effectiveness of Environment Canterbury's Tuia programme (refer paragraph 6 above) and the importance of the personal commitment of our Chair Dame Margaret Bazley and the other Commissioners in carrying through this paradigm shift for the organisation.

Planning system structures

Proposed permanent Independent Hearings Panel

55. Environment Canterbury notes the proposal (pp 188-9, Recommendation 7.7) for a permanent central Independent Hearings Panel (IHP) to be established to consider and review new plans, plan variations and private plan changes across the country. We acknowledge the consideration of the current Auckland and Christchurch IHPs.

56. Environment Canterbury **supports in principle** the concept of an alternative IHP structure and process to improve the efficiency of plan making and plan changes. However we recommend a slightly different alternative to the IHP model advanced in the draft report.

57. Environment Canterbury **recommends** a system of options within Schedule 1 RMA for a local authority to select the most appropriate process for the particular planning challenge it is dealing with at the time. The choice of path to follow would be the prerogative of the council concerned, but could be guided by criteria.

58. The four options would be as follows:

    A. The current Schedule 1 RMA process

    B. The collaborative planning process set out in the RLAB (clause 52 of the Bill and proposed new Part 4 of Schedule 1 RMA) but with the modification that the review panel be replaced with a hearing panel comprising members of the Environment Court and local authority members (as outlined in the fourth option below)

    C. The streamlined planning process set out in the RLAB (clause 52 of the Bill and proposed new Part 5 of Schedule 1 RMA)

    D. A new process as outlined in the attached Appendix to this submission. This process would be available where a planning matter was particularly contentious or complex, or where substantial appeals to the Environment Court would be likely if the normal Schedule 1 process were adopted. The process would use a 'hybrid' hearing panel comprising appointed members from the Environment Court and appointed members from the local authority. This would ensure appropriate knowledge of local issues and conditions, local communities and stakeholders, alongside the specialist expertise of the Environment Court appointees. The process would enable cross examination of expert witnesses, helping to ensure that evidence was tested in a robust manner.

59. Environment Canterbury considers that the 'hybrid' alternative option D could help resolve some of the current difficulties with plan making and plan changes processes. It would ensure appropriate use of the Environment Court's expertise, recognising the significant feedback on the 2009 Resource Management (Simplifying and Streamlining) Bill that the Court process often improved planning documents. At the same time it would ensure that the necessary local knowledge is provided for and respected in the plan or plan change. It would provide for robust testing of evidence while ensuring public accessibility and public participation in the planning process.

Proposed Government Policy Statement

60. Environment Canterbury **does not support** the proposal for a Government Policy Statement (GPS) on environmental sustainability (pp 207 – 209, Recommendation 8.1). We **question** the assumptions underpinning this proposal, that a GPS could establish environmental goals that were quantifiable and measurable for the entire country, and could replace existing NPSs and NESs. Environment Canterbury **does not agree** that a single high level GPS could readily replace the specific frameworks and standards established under the NZCPS, NPSs and NESs for particular environmental management matters.

61. The process for attempting to develop and finalise a single GPS would need to be comprehensive and collaborative, and would inevitably be drawn out and contentious as different groups, interests and sectors sought to advocate their values and aspirations – exactly the kind of lengthy, controversy-ridden process the draft report is ostensibly seeking to avoid. In our view the costs would be far beyond the actual utility of any outcome. As with the current Transport GPS, the kinds of statements that would achieve agreement from the diverse stakeholders and publics would be so high-level, generalised and anodyne as to be of very little practical assistance to councils dealing with local real-world issues.

62. Environment Canterbury also **questions** the assumptions underpinning this proposal, that a single central government process would be a more appropriate level to determine priorities and policies for regional and local government management than local authorities themselves. This proposal is in direct conflict with the principle of subsidiarity – that decisions should always be taken, and functions should always be discharged, as close as practical to those who are affected. International law and political theory supports the principle that local decisions are best made at local levels to reflect and meet the needs of local communities. Opportunities for central government to establish national standards and goals are already available via the processes for development of NPSs and NESs.

Spatial planning

63. Environment Canterbury **supports in principle** the idea of spatial plans (pp 232 – 6, Recommendation 9.1) as a standard part of the planning hierarchy. However we **question** the relatively narrow focus outlined in the second sentence of that Recommendation, requiring spatial plans to focus on issues closely related to land use. We consider that the scope and focus of such plans should be for the relevant local authority to determine as appropriate for the resource management challenges of each area and the aims, values and priorities of the local community.

64. Environment Canterbury **cautions** that spatial planning is only a relatively high level agreement as to priorities and directions. Councils and communities will still need to debate the detail and specific options when the time comes for actual development projects and resource consent applications. Spatial plans invariably involve two rounds of discussion and negotiation which may not necessarily offer overall efficiency gains.

65. We note that this council and many others in New Zealand are already working with spatial plans. At the highest level, the Canterbury Regional Policy Statement contains the elements of a spatial plan by setting an urban limit and areas for residential and commercial urban expansion. This was developed through the UDS partnership and the development of the UDS. At a more detailed level, many of our TLAs including Hurunui, Waimakariri, Christchurch, Selwyn and Timaru councils are using spatial planning to assist in the development of their District Plans.

Central government intervention

66. Environment Canterbury **does not support** the proposals that central government needs to develop additional processes to signal national interests in planning, and that central government should have additional powers to override local plans, impose common land use approaches to specific issues and direct councils or Council Controlled Organisations (CCOs) to increase supply (pp 192 – 4, Recommendations 7.9 and 7.10). We reiterate our comments above that adequate mechanisms are already available to central government whether through NPSs and NESs, or Ministerial intervention powers under the RMA (eg ss24A, 25A, 25B, 142, 149ZA). We also reiterate the subsidiarity principle and the importance of local knowledge and local decision making for meaningful, robust decisions that have wide community acceptance and support.

Planning system processes and tools

"Event-based" rezoning and plan changes

67. Environment Canterbury is **not opposed in principle** to the idea of more responsive plan systems where land use controls can be set in anticipation of predetermined triggers and activated once those triggers are reached (pp 183 – 4, Recommendation 7.3) This kind of mechanism can be provided under the current planning system.

68. We note however that logistically such mechanisms could be more difficult to introduce, with more complexity and potential controversy in the plan making or plan change process. More than one level of regulation and appropriate thresholds would need to be determined up front, and there would be challenges for councils with many interested parties advocating for their particular aspirations and advantage in some future situation. This kind of system would still require council infrastructure to be planned in advance. Further assessment may be necessary to quantify the increased costs involved in more complex processes in relation to the benefits or efficiencies of faster changes to plans in response to future conditions.

69. A further reason for caution with such mechanisms is that they would require decisions to be made about future regulation frameworks and thresholds on the basis of fewer facts available and greater uncertainty. It is not clear whether debates about contingent or even hypothetical future states add value or offer overall efficiencies.

Limiting notifications

70. Environment Canterbury **does not support** limiting notifications for plans and plan changes (p 188, Recommendation 7.6) or in respect of resource consents (pp 185-6, Recommendation 7.4). In our submission to the Select Committee on the RLAB, Environment Canterbury commented on similar proposals in that Bill that would significantly constrain citizens' participatory rights by limiting their knowledge about proposed activities which may affect them, their interests and investments, and their communities.

71. In considering such proposals, it is very important to distinguish between the stated intentions – to reduce time, costs and complexity in planning and consenting processes – and the likely outcomes. Such proposals would substantially impact upon public participation, yet as matters of procedure, they will fail to address the underlying issues – the concerns motivating members of communities to engage with the processes in the first place. Fundamental questions around such matters as externalities, incentives, community priorities and wellbeing, and citizens' rights to protect their interests and their quality of life will not cease to be important or to cause controversy merely because the process is changed to limit public participation. There is a considerable likelihood of perverse outcomes, inequities, inconsistencies and inefficiencies.

Limiting appeals

72. This council has for the last six years been operating under the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, and now under the Environment Canterbury (Transitional Governance Arrangements) Act 2016. This legislation provides that decisions on plans and policy statement may only be appealed to the High Court on a question of law, thus removing the right of appeal to the Environment Court under the usual RMA system.

73. This statutory framework has enabled Environment Canterbury to advance the CWMS and achieve better outcomes through working collaboratively with the Zone Committees in each catchment. The removal of the right of appeal to the Environment Court has enabled a more timely and efficient planning work programme, and as a result has provided more certainty to both this council and our communities. Because of these provisions under Environment Canterbury's temporary legislation, Environment Canterbury Commissioners deliberately chose not to participate in first round hearings on our plans and plan changes, but instead appointed independent hearing commissioners. Other councils may be encouraged to do the same.

74. Where errors have been made through the hearing process, limited appeals have been lodged with the High Court to address those deficiencies. However only one such appeal has actually gone to a hearing in six years.

75. During the period that this legislation has been in force, Environment Canterbury has notified:
    - The Canterbury Regional Policy Statement (made operative in 2013)
    - The Land and Water Regional Plan (largely made operative in 2015)
    - A number of sub-regional plans and plan changes, including three flow and allocation plans and a substantial change to the Waimakariri River Regional Plan (many of which are now operative)
    - The Canterbury Air Regional Plan (soon to be made operative).

76. Environment Canterbury **supports in principle** the removal of two stages of appeal rights on plans, policy statements or changes to them. By limiting appeal rights to those related to points of law, the policy directions developed by council and the wider community are less likely to be diffused and compromised through an ad hoc appeal process driven by well funded interest groups.

77. Environment Canterbury **does not support** the proposal to limit appeal rights on plans to people or organisations directly affected by proposed plan provisions or rules (pp 186 – 7, Recommendation 7.5). This would violate a fundamental principle of public participation, in that if people or organisations are able to make submissions, there cannot be any justification to exclude them from appeal rights.

78. Furthermore we note the potential for adverse effects which would negate the intended efficiencies of such a limitation. Interested parties would inevitably advocate strongly for their recognition as 'directly affected' and for the exclusion of others, generating a more adversarial and lengthy process and creating the risk of greater controversy and community dissatisfaction. Doing away with party status issues on proposed plans and policy statements was a cornerstone reform in the RMA and should be retained.

Community involvement

79. Environment Canterbury **supports** the encouragement of wide community involvement in planning (pp 187 – 8, Recommendation 7.6), and the principle in the first point of that recommendation that councils have the flexibility to select the most appropriate tool or method for community participation for the issue at hand. This is consistent with the approach established in the 2014 amendments to the LGA requiring local authorities to establish a Significance and Engagement Policy (SEP) to provide clear frameworks for their interactions and communications with their communities. Many councils have, like Environment Canterbury, established a 'spectrum' of engagement methods within their SEP to be utilised as appropriate.

80. Environment Canterbury **recommends** that the Commission's final report consider options for the rationalisation of parallel community consultation requirements under the RMA and LGA respectively. This would save time and costs, encourage improved clarity around matters being taken to the community for their feedback, and help to avoid 'consultation fatigue' for communities and particularly for iwi and hapū.

Charges and targeted rates for infrastructure

81. Environment Canterbury **supports** the ability of councils to use targeted rates to help fund investments in local infrastructure (pp 250 – 259, Recommendation 10.2). This council and many others are already using this mechanism. For example, Environment Canterbury uses such a mechanism in relation to flood control works.

82. However Environment Canterbury **cautions** against an over reliance on targeted rates to support infrastructure programmes. As with the use of market mechanisms and information discussed above at paragraphs 49 – 51, targeted rates are not a panacea and may not be the most optimal tool in some circumstances. It is important that the decision to impose targeted rates is retained as a choice at the discretion of the local authority concerned, in consultation with the affected communities.

83. One reason that targeted rates are not a panacea is that the communities directly affected by proposed infrastructure are often too small to afford to make meaningful contributions by way of targeted rates. While this is not an argument against combining targeted rates with other mechanisms, they are often not a realistic primary, much less sole, funding mechanism.

Protocols for interactions between central and local government

84. Environment Canterbury notes the proposal for the development of a set of principles or protocols to govern the development of national regulations that have implications for the local government sector (pp 217 – 18, Recommendation 8.3). If any such protocols are developed, it would need to be done in a collaborative process with full participation of the local government sector, Ministers and central government officials, and iwi and hapū. This would be a lengthy and complex process given multiple government agencies, councils and tangata whenua involvement.

85. Environment Canterbury questions the actual usefulness of such protocols. Their effectiveness would depend upon the commitment – from the top governance levels through the entire structures of each organisation – and the improvements in understanding signalled in Recommendations 12.1 and 12.2 discussed above at paragraphs 52 – 54. Clarity around the role(s) of central government and councils would depend on acceptance of the subsidiarity principle for regional or local level decision making and problem solving.

Centre of planning excellence

86. Environment Canterbury **supports** the proposal for a centre of excellence or resource to assist local authorities and encourage best practice in plan development (p 238, Recommendation 9.2). However we **recommend** that the development and establishment of any such centre is a partnership process involving central government, the local government sector, iwi and hapū, relevant professional organisations, and academic expertise. Central government needs to recognise and make better use of the experience, skills and knowledge within local authorities. The value of a collaboration to set up a centre of excellence would not only be in the actual contributions of participants but also in the recognition and buy-in of sector professionals to the resources and services the centre might provide.

Additional matters

Water management

87. Environment Canterbury is **concerned** at the approach taken in the draft report's discussion of management of freshwater bodies under the RMA (pp 152 – 3). We note the reliance on reports dating back to 2007, while there have been very significant changes and new systems since that time, most notably of course the introduction of and amendments to the NPS for Freshwater Management.

88. The ability of the planning system, as a set of tools and processes, to respond to real-world challenges with appropriate measures, is only one dimension of effective water management. The underlying issue is the need first of all to get community acceptance of the problems and buy-in to the solutions.

89. As Environment Canterbury and our partners and communities have found with the CWMS, this takes time and significant investments of resourcing and goodwill. The process we have followed since 2009 with our region, the lessons learned, the benefits both intended and completely serendipitous, and the satisfactions of venturing into new ways of working are now outlined on the CWMS webpages.[8]

90. The first round of limits and controls on diffuse pollution were notified in the Canterbury Land and Water Regional Plan in 2012 and made operative in 2015. We now have catchment specific refinements to those generic limits in place or currently in process across a substantial part of the region, and there is more to come.

91. While Environment Canterbury has had the benefit of the Canterbury-specific legislation (discussed above at paragraph 72), it would be a mistake to attribute the progress in our region's water management to the formal processes and statutes alone. The real priority

[8] http://ecan.govt.nz/get-involved/canterburywater/telling-our-story/Pages/Default.aspx -- the webpages include video and a photo story.

has been the importance of getting agreement from the community as to the need to take action, and to the basic approach that should be followed. In our region this has been achieved substantially within the current RMA legal framework.

92. Environment Canterbury **does not accept** the statement (p 152) that '[t]he influence of agricultural interests may have limited the range and stringency of tools that councils applied in managing pollution'. We point out that externalities such as pollution are community problems by definition, and require community involvement, understanding and agreement for appropriate solutions. The pressures from different groups, including commercial interests and property owners, noted at p 157 (conclusion to Chapter 6) are of course only examples of competing value judgements and interests, or trade-offs about externalities.

93. Environment Canterbury **does not agree** with the statement (p 153, Finding 6.10) that '[t]he absence of national standards and local or political resistance has limited the planning system's ability to manage pollution of fresh water or cumulative pollution'. As noted above, national standards are now in place via the NPS for Freshwater Management. There are challenges in getting agreement about matters on which people and groups have widely differing views, priorities and values. However the draft report seems to assume that these challenges can simply be shifted from the local to the national level – contrary to some of the principles of local distinctiveness articulated elsewhere in the report. Wherever the process is undertaken, the inescapable point is that managing freshwater is challenging simply because of the widely differing views and values held about it. These reflect the many different and often competing uses to which water is put, even within the same community. Shifting the debate to the national level would not change this. But the Canterbury experience suggests that progress can be made at regional level, even under the current RMA systems.

Planning for smaller urban centres

94. Environment Canterbury is **strongly concerned** that the draft report focuses primarily on issues with large metropolitan urban centres and offers nothing for smaller urban centres. There is a very brief mention on p 4 of unequal growth patterns and some communities' facing decline, but then a complete lack of recognition of these issues. This is a serious shortcoming, as the kinds of challenges for planning and other local government functions in smaller centres are often equally as urgent as the demands of intensive high-growth cities. In the Canterbury region our urban communities range from greater Christchurch, to medium-sized centres such as Timaru and Ashburton, smaller urban centres such as Kaikōura or Geraldine, and more remote rural centres such as Hanmer, Twizel or Akaroa. The needs of residents, businesses and councils in these areas are just as valid as the needs of central Auckland.

95. One simple solution might be to rename the report: *Better planning for large metropolitan cities*. Otherwise the Commission should give consideration to the needs of smaller urban communities and their councils, perhaps in a new additional chapter.

Private plan changes

96. Environment Canterbury draws the attention of the Commission to the importance of ensuring protection in any future urban planning system for the right of citizens or organisations to seek a private plan change (ss65(4) and 73(2) RMA). This is an intrinsic part of the planning system introduced by the RMA, demonstrating the principle that the aim is to manage spillover effects or externalities. This can sometimes be more effectively achieved via a plan change than in a more ad hoc manner through consent conditions. A private plan change option is a useful tool and has proven apposite to the resolution of resource disputes.

Evidence-based decisions

97. Environment Canterbury **supports** the principle that good planning outcomes are more likely to be achieved through robust evidence-based decision making processes (pp 319 – 21, Finding 12.7). We endorse the importance of this for 'public trust in councils and the planning system' (p 319).

98. However Environment Canterbury must note our concerns about the evidence base for many of the findings and recommendations in the draft report itself:
    - Much of the discussion in the draft report is supported by very limited references, in many cases to the Commission's own previous work. For example:
        - the comment on apparent drawbacks of defined zones at the top of p 169
        - the discussions of price signals at pp 175 – 6 and price information at pp 182 – 3
        - the discussion of conflicts in plan objectives at p 179 – this is based on only two examples, both of which relate to housing affordability, and both of which are taken from a previous Commission report. Furthermore both of the examples cited on p 179 were produced via IHP processes which are subsequently promoted as a future model (pp 188 – 9), and might well not reflect local priorities and values.
    - Interpretations of issues are often made from a narrow range of evidence or selective reference to some data to the exclusion of other information or arguments. For example:
        - the interpretation of the primary purpose of the LGA discussed above in paragraphs 15 - 21
        - the discussion of price signals and responsive planning systems at pp 182 – 4, where Recommendation 7.3 appears to be based upon a narrow range of information relating solely to land prices without any consideration of the various other factors or criteria (such as ecosystem conditions, standards for quality for water or air, proportions of green space etc) which might trigger the suggested planning system response
        - the pie chart at Figure 7.4, p 174 – the statistics show almost equal numbers disagreeing (37%) as agreeing (38%) but the text focuses only on the 'significant share' of agreement for the proposition, with the subsequent discussion predicated upon this.

- Some conclusions are advanced with little analysis or awareness of what is being achieved under the present planning and regulatory systems: for example, the discussions of freshwater management commented on in paragraphs 87 – 93 above.
- There is little evaluation of the costs or risks to councils, central government, iwi and hapū, communities, businesses and stakeholder groups of some of the proposed options: for example, the preparation of a GPS for environmental sustainability, the proposed limitations of notifications, or the proposed central government intervention powers which could necessitate expensive plan changes for councils.

99. If the Commission addressed these kinds of limitations in the draft report, this might provide greater confidence in its analysis, findings and recommendations, and encourage more productive dialogue with local government and others about potential future planning systems for New Zealand.

Integration with other initiatives

100. Environment Canterbury notes that many of the issues and options canvassed in the draft report are already being addressed – primarily through the proposed changes in the RLAB currently with the Select Committee, and through the Ministry for the Environment's proposals for a new NPS for Urban Development Capacity. We note the concurrent timelines for the respective processes, with the due date for the Commission's final report not necessarily allowing alignment with the outcomes of other agencies. Nevertheless we urge the Commission to include appropriate acknowledgement of these initiatives and the overlaps or contiguities with the topics covered in this inquiry.

Conclusion

101. Environment Canterbury thanks the Commission for the opportunity to make this submission on the draft report. We acknowledge that the thinking and options advanced in the draft report are aiming to look beyond New Zealand's status quo planning systems and take a fresh approach to support quality urban planning outcomes.

102. We consider that the questions and opportunities raised in the draft report are of such significance and import for New Zealand and the future sustainable management of our urban and non-urban environments that a much broader debate is required. There would be very significant risks in introducing change or new systems without sufficient attention to how they would actually be implemented, or whether they would achieve their stated aims, and without sector, stakeholder and community understanding and acceptance.

103. This dialogue process would need to include local government as well as central government, iwi and hapū, the professional planning and environmental management communities, expertise from the legal profession and the Courts, business and sector groups, academics and research organisations, and of course interested members and groups of communities. The issues will need competent presentation and adequate

discussion to reach recommendations which would be meaningful, workable, practical and effective.

104. Environment Canterbury looks forward to being involved in the ongoing discussions.

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APPENDIX: PLANNING PROCESS OPTIONS

Background

1. Currently under Schedule 1 of the RMA, a local authority, after notifying a plan, is required to call for submissions, prepare a summary of decisions requested, and then call for further submission on the plan. It is then required to hold a hearing, and to make decisions on the provisions in the proposed plan. Following notification of the local authority's decision, an appeal to the Environment Court may be lodged under clause 14 of Schedule 1 to the RMA.

2. Any appeal in the Environment Court is a de novo hearing. The only requirement under s290A RMA is that the Environment Court must have regard to the decision that is the subject of the appeal. Following the Environment Court appeal, and appeal to the High Court can be made, but on questions of law only. It is only after all appeals have been resolved that a plan can be approved and made operative under clauses 17 and 20 of Schedule 1 of the RMA.

3. The two stage process can take some years to complete from notification of a plan to the stage of making the plan operative. This has a number of consequences:
    a. It makes it difficult for planning (and the plans prepared by local authorities) to respond to emerging resource management issues in a timely manner.
    b. It also delays operative plans being put in place which in turn complicated the planning regime in the consenting context. This often requires both operative and proposed rules to be considered on any given consenting issue.
    c. It results in unnecessary duplication of effort between the Council level and Environment Court de novo hearings. In all too many circumstance it causes submitters to 'game' the system by not putting their full cases forward at the Council hearing, waiting to see what is accepted by the Council and then relying on the de novo hearing before the Environment Court to provide a remedy.

4. The delays associated with a two stage process (and the consequences of such delays) have contributed to the establishment of three bespoke pieces of legislation which amend the standard Schedule 1 process so that only one merits hearing exists. These three examples are:
    a. Environment Canterbury's planning processes under the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010.
    b. The bespoke process for the Auckland Unitary Plan under the Local Government (Auckland Transitional Provisions) Act 2010.
    c. The modified process for the Christchurch District Plan review under an Order in Council made under the Canterbury Earthquake Recovery Act 2011.

5. The Resource Legislation Amendment Bill (RLAB), currently with the Local Government and Environment Select Committee, includes two proposed options for new planning processes – a collaborative planning process and a streamlined process.

Proposed planning process options

6. Environment Canterbury recommends a suite of options within Schedule 1 RMA, for proposed policy statement, proposed plans and plan changes and variations to those document. A local authority would be able to select the most appropriate process for the particular planning challenge it is dealing with at the time. The choice of path to follow would be the prerogative of the council concerned, but could be guided by criteria.

7. The options would include the existing Schedule 1 process and the two proposals advanced in the RLAB, with a fourth new alternative process. This new alternative would involve only one merits hearing on proposed policy and planning documents. The hearing would be before a specialist hearing panel comprising both Environment Court appointees and local authority appointees. Appeals against the decisions of such panels would only be available to the High Court on points of law.

8. The proposed suite of options would not see the removal of the standard Schedule 1 process which would remain available for councils to use where appropriate, i.e. in cases where significant appeals to the Environment Court were not anticipated (for example, site specific plan changes).

9. The proposed new alternative option would complement the collaborative process proposed in the RMAB, whilst recognising that not all planning matters are appropriately dealt with through collaborative processes, but which nevertheless may be controversial and would benefit from not having to go through a protracted two stage hearing process under the standard Schedule 1 provisions. The new alternative would be available where a planning matter was particularly contentious or complex, or where substantial appeals to the Environment Court would be likely if the normal Schedule 1 process were adopted.

10. The four options would be as follows:
    A. The current Schedule 1 RMA process.
    B. The collaborative process set out in the RLAB (clause 52 of the Bill and proposed new Part 4 of Schedule 1 RMA) but with the modification that the review panel be replaced with a hearing panel comprising members of the Environment Court and local authority members (as outlined in option D below)
    C. The streamlined planning process set out in the RLAB (clause 52 of the Bill and proposed new Part 5 of Schedule 1 RMA)
    D. A new process using a 'hybrid' hearing panel comprising appointed members from the Environment Court and appointed members from the local authority.

11. Prior to notification the local authority would decide which option it would use to process the planning document so that submitters were on notice regarding the process and their rights of appeal. Notification of the proposed policy statement or plan would occur in the usual manner, although the particular process option being used would need to be notified in conjunction with the notification of the planning document.

12. The proposed new option D would involve the following elements:
    a. The local authority would call for submissions, prepare and notify the summary of decisions requested, and receive further submission in accordance with the standard Schedule 1 requirements.
    b. Prior to the hearing of submissions on the planning document, the hearing panel would need to be appointed. This would be a 'hybrid' panel comprising appointed members from the Environment Court and appointed members from the local authority. These could either be elected or independent. (The review panel in the proposed collaborative planning process in the RLAB could be replaced with a similar requirement.)
    c. In particular:
        i. If a local authority elected to follow the proposed new option D process, it would be required to appoint a hearing panel comprising a majority of independent hearing commissioners. However the majority of those commissioners would have to be appointed by the Environment Court, and comprise an Environment Court Judge and Environment Court Commissioners.
        ii. Local authorities would then make the balance of the appointments to the hearing panel in any given case. Local authorities should be given the choice whether to appoint elected members or independent commissioners, but guidance could be provided to ensure that such appointments meet the need to have appropriate local views represented on the hearing panel.
    d. The procedure at the hearing would be regulated in a more formal manner than a hearing before a council. For example, cross examination would be available, particularly in relation to expert evidence, but in a way to ensure that lay submitters are not excluded from effectively participating in the process.
    e. The appointed hearing panel's decision would be the final decision on the merits rather than only being a recommendation made to the local authority.
    f. There would be no right of appeal to the Environment Court from the hearing panel's decisions on the planning document in question. Appeals to the High Court would only be available on questions of law.

13. In order to facilitate the appointments from the Environment Court, and ensure that sufficient expertise was available, a special planning division of the Environment Court could be created. The costs associated with the Environment Court appointments would be met by the Crown, as occurs currently in appeals against planning documents. The local authority would meet the costs of the members it appoints to the hearing panel along with the other costs associated with making and processing the plan, such as notification costs.

Advantages of Option D

14. The benefits of the proposed new option D are that it would result in faster plan making with the consequential effects that:
    a. Plans are better able to respond to emerging issues
    b. Significant efficiency gains would be achieved by avoiding the need for two hearings
    c. Plan implementation would be simpler by reducing the time in which two plans (the operative and proposed plans) have to be complied with.

15. The 'hybrid' appointment process would ensure that the Environment Court's expertise is not lost to planning matters, while at the same time ensuring that the necessary expertise in terms of matters of local knowledge was provided for. By enabling cross examination of expert witnesses, it would help ensure that evidence was tested in a robust manner. It would also ensure the planning process remains accessible to the public, helping to ensure public participation – a fundamental underpinning of the RMA since its inception.