INQUIRY INTO HOUSING AFFORDABILITY

To : New Zealand Productivity Commission

From : Property Council New Zealand

SUBMISSION BY PROPERTY COUNCIL NEW ZEALAND INCORPORATED ON THE INQUIRY INTO HOUSING AFFORDABILITY

PROPERTY COUNCIL NEW ZEALAND (at the address for service given below) makes the following submission on housing affordability issues in New Zealand:

Background

1. Property Council is a not for profit organisation representing New Zealand's Commercial, Industrial, Retail, Property Funds and Multi Unit Residential Property Owners. The Property Council represents all forms of commercial property and property investment in New Zealand. Property Council's members collectively own and manage $20 billion of commercial property investment in New Zealand.

2. Property Council actively involves itself with central, local and other government associated bodies, promoting the views, goals and ideas of our members. Property Council, like other organisations that represent commercial and industrial ratepayers, has an interest in achieving public policy outcomes that:

    - enable the delivery of an appropriate level of investment in the services and infrastructure necessary to improve productivity-driven economic growth;

- minimise disincentives for commercial investment within any given city, district or region;

- ensure the equitable and proportionate allocation of cost, which reflects the distribution of benefits; and

- achieve a public policy environment that contributes to the long-term economic health of communities throughout New Zealand, as well as the economic prosperity of New Zealand as a whole.

3. Property Council's primary goal is the creation of well designed, functional, and economically sustainable built environments in New Zealand. As building owners, developers, consumers, taxpayers and ratepayers, Property Council's members want to live and work in a built environment, which is economically viable, sustainable, vibrant and a desirable place to be. A vibrant and prosperous built environment, which evolves through better urban design, will attract more economic activity and investment (domestic and foreign), which in turn improves financial returns.

4. Property Council's public policy interests fall into three primary areas of analysis: urban strategy and infrastructure; compliance and legislation; and investments. Property Council supports the implementation of statutory and regulatory frameworks that enhances (and does not inhibit) productivity-driven economic growth and prosperity. Property Council is also a proponent of urban sustainability outcomes, which are realised through the active governance and management of the urban environment.

Scope of the Inquiry

5. Property Council notes the context and scope of the terms of reference for the inquiry. The New Zealand Productivity Commission ("the Commission") has been

directed to undertake an inquiry that goes to the heart of the social cohesion and family stability: home ownership. Housing affordability is a potential barrier to home ownership. But affordability is a complex concept, which is affected by a myriad of policy and regulatory factors, including:

(i) the supply and market price of land;

(ii) the ability of households to service debt;

(iii) impact of increasing demand for residential properties by investors;

(iv) local authority planning and approval processes;

(v) charges and levies imposed at all stages of the housing supply chain;

(vi) building material and building labour costs as compared with those in other similar economies and countries;

(vii) access to finance to develop multi-unit residential dwellings;

(viii) impact of changing preferences for home ownership; and

(ix) range of financing products available for first home owners.

6. Property Council's primary focus is commercial property investment, development, ownership and management. Residential property investment and development falls outside Property Council's primary area of interest. Notwithstanding that point, there are a number of issues relevant to this inquiry, which is generic to the property industry.

7. Property Council's submission addresses two specific public policy concerns, which significantly impact on the cost of residential property development, and

consequently the affordability of housing:

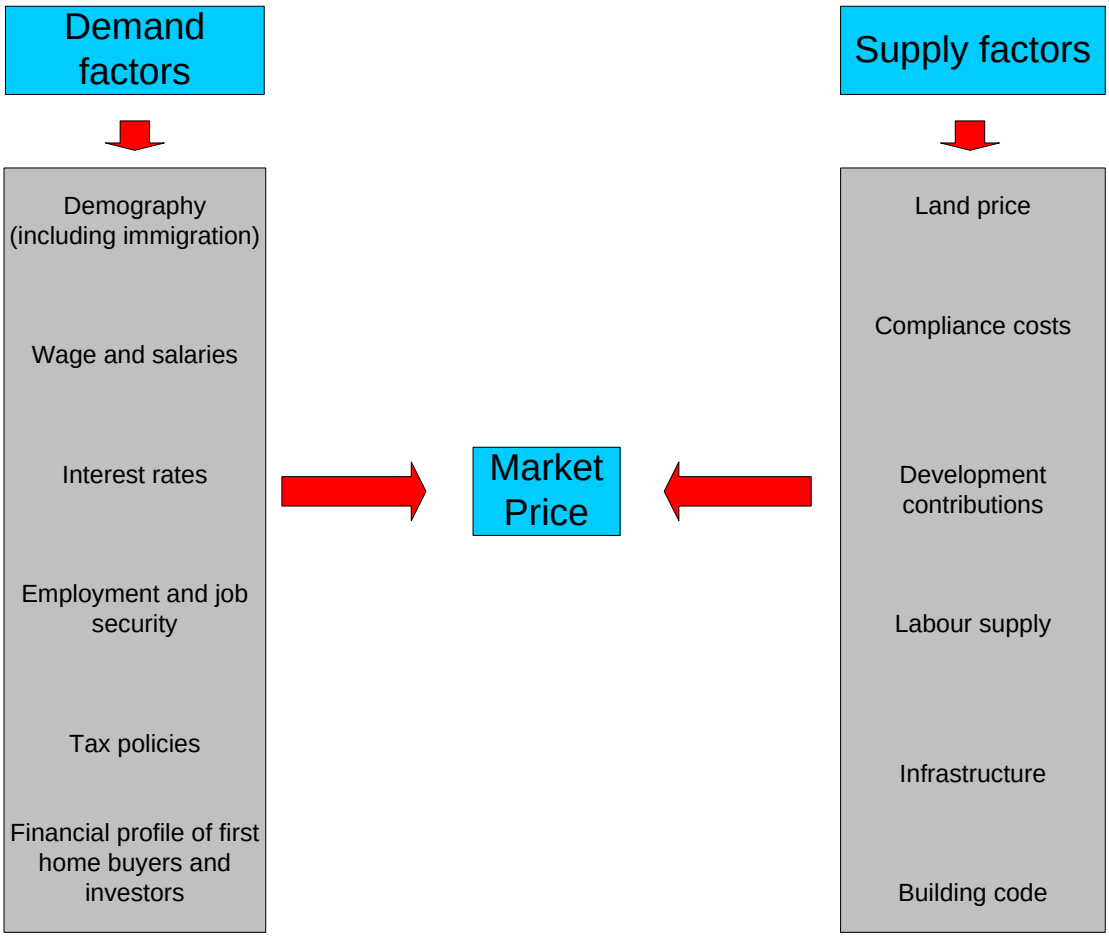
- the supply of land and basic infrastructure; and

- the efficiency of taxes, levies and charges imposed at all stages of the housing supply chain.

8. Although housing affordability is not a core policy issue for Property Council, the continuation of a skilled workforce is a fundamental to New Zealand's ability to achieve sustained productivity-driven economic growth. In a competitive global marketplace, New Zealand's ability to maintain comparative advantage over other economies is influenced by factors such as the availability of affordable housing, particularly within the built environment. A number of large Property Council members develop residential properties throughout New Zealand.

9. Property Council considers that the debate about housing affordability in New Zealand has been wrongly skewed primarily in favour of public analysis about demand. This analysis is weak because it reflects only one part of an equation. Within any given market, the price of any commodity is determined by both demand factors and supply factors. In the context of housing affordability, Property Council submission deals primarily with supply issues, which significantly impact on the price of all categories of property.

Diagram One: Factors influencing the price of property



10. While accepting that demand factors such as population trends significantly impact on the market price of residential property, the Property Council considers that the focus of this inquiry should lie with analysis of supply-side factors. Analysis of the regulatory issues that impact on supply-side factors reveals that interpretation and the application of statutes in particular (e.g. the Resource Management Act 1991 and the Local Government Act 2002) have a significant impact on the price of land, and the cost of development.

11. In its 2007 publication *Initiatives for Auckland*, Property Council made the following statement regarding affordability:

"A plan for housing affordability is already part of Auckland's Regional Growth Strategy.

"However, its main emphasis is on urban consolidation through planning rules such as the MUL. This would mean more low and high rise apartments, semi-detached houses, town houses and multi-units. Growth strategies such as urban consolidation also impacts on the price of houses because land supply is restricted which then drives up the prices of houses situated within the MUL.

"While Property Council does support higher density development and greater investment in town centres, these initiatives need to be complimented with a more comprehensive housing affordability policy based on market research.

"Research in Australia suggests that a policy of urban consolidation while reducing greenfield (new land for development) land supply is linked to the lack of affordable housing. State governments that have adjusted their urban growth boundary (or MUL) to remain flexible to the direction of the housing market have been more successful at keeping housing prices down.[1]

"Property Council believes that housing affordability should play a greater role in determining the direction of the Regional Growth Strategy. Limited consideration has been given to whether urban consolidation is the most beneficial strategy for Auckland. The issue of housing affordability requires further investigation by Councils as it has

[1] *David Poole, The UDIA State of the Land, p.15.*

significant ramifications for the region, particularly for young people and families who aspire to home-ownership."

12. Property Council argued for a balanced release of greenfield land concurrent to intensification because of a need to ensure affordable land was available. In a fast-changing and increasingly accessible global environment, Auckland (or any other New Zealand residential housing market) cannot expect to attract and retain skilled workers through lifestyle alone. A point of difference for New Zealand must also be affordability, which means, among other things, providing housing that is affordable.

The derived impact of land availability on land price

13. The availability of land in a number of regional economies in New Zealand influences the cost of residential property development. The availability of land greatly depends on the planning and zoning policies pursued by regional and territorial authorities.

14. Land containment is an increasingly prevalent policy being applied in a number of parts of New Zealand. The land containment philosophy put into effect via restrictions the development of land beyond a well defined urban boundary. Analysis of containment demonstrates that policies designed to limit land development also exist in other countries.

15. Containment of land at the periphery of an urban landscape is justified by the planning community for a variety of reasons –

    - uncontrolled urban sprawl is harmful to the environment and does not promote good land stewardship outcomes;

- reducing urban sprawl allows for better planning of public services and infrastructure, which meet the needs of existing and future users; and

- containing urban sprawl preserves farmland.

16. Land containment outcomes are achieved through different policy tools administered at different levels of government. In the case of the United States, containment can take place at a state government level, at a municipality level, or a combination of the two. In England and South Korea however, a national policy explicitly requires local government to pursue containment rather than simply enabling local containment outcomes.

17. The Auckland region has been constrained by virtue of containment policies enforced by the former Auckland Regional Council (ARC) and realised through enforced compliance with the Metropolitan Urban Limit (MUL). A MUL is not a voluntary planning constraint. Rather it is a statutory 'line in the sand', which contains and regulates land development.

18. The Local Government Auckland Amendment Act 2004 (LGAAA 2004) required Auckland's legacy territorial authorities to change the policy statement and plans prepared under the Resource Management Act 1991 (RMA 1991) to "... integrate the land transport and land use provisions and make those provisions consistent with the Auckland Regional Growth Strategy".

19. As the population of the Auckland region continues to expand, inevitably attention turns from protecting rural land to managing the negative consequences of population growth and intensification, including the cost of land development within the MUL. While intensification can play a role in limiting some urban problems, such as high infrastructure costs associated with

low density urban sprawl, the move to intensification also creates such perverse new urban phenomena as land banking[2], higher entry costs to residential and non-residential land development and ownership, and the potential for loss of amenity.

20. Property Council has previously argued extensively in favour of amendments to Auckland's MUL. Land cost is the first driver of both commercial and residential land price (in terms of supply). The cost of land containment will be passed on in terms of the end sale price new property owners.

21. However land containment is not only expressed in terms of land development at the periphery of a given area. Land containment can also be expressed in terms of restrictions on building height limits. Property Council also supports consideration being given to increasing flexibility for intensification and raising height levels; especially where the higher building reduces the building site coverage compared to low-rise site coverage proposals. This not only reduces the amount of land needed for any given development, it also increases the supply of residential dwellings needed within any given urban environment.

Development Contributions – "the first-home buyer's tax"

22. Section 199 of the Local Government Act 2002 codifies the basis for which development contributions may be required in relation to development if the effect of the development is to require new or additional assets or assets of increased capacity and, as a consequence, the territorial authority incurs capital expenditure to provide appropriate for –

    (a) reserves;

[2] Property Council defines 'Land banking' as restricting the sale of undeveloped land within the MUL for the purpose of driving up land price, thus providing the land owner to a higher capital gain at the point of divestment. Such behaviour reflects the land owner speculating against planning and zoning rules as opposed to demand and supply within a given market.

(b) network infrastructure; and

(c) community infrastructure.

23. The non-prescriptive nature of Local Government Act 2002 has failed to constrain the scope and application of development contributions as a non-tax funding mechanism. The majority of territorial authorities have consequently adopted a development contributions policy, which enables those authorities to recoup the costs of growth-related expenditures from property developments (the developers then pass on that cost to future residential and commercial property owners).

24. Many territorial authorities elevated development contributions to be an alternative to property rates as a revenue source, and have consequently realised significant shortfalls in revenue following the impact of the Global Financial Crisis ("the GFC") on the property sector (an outcome that Property Council predicted in annual plan submissions to territorial authorities three years prior to the onset of the GFC). This preference does not give adequate recognition to the benefits of capital expenditure which will accrue to existing ratepayers as an improvement to levels of service and through extending infrastructure life.

25. The application of development contributions policies by territorial authorities – regardless of whether or not those policies comply with the statutory requirement with the Local Government Act 2002 – means higher development costs, which are then passed on to the purchaser of the property. This point was identified by the Commission when identifying the variable impact of development contributions from one territorial authority to the next:

Comparing development contributions between territorial authorities	
(Former) Auckland City Council	Contributions increased from approximately $7,000 in 2006 to up to $40,000 per unit in July 2007, including higher contributions for central city apartments.
Porirua City Council	$5,228 for each new dwelling to offset recreation and civic development costs in 2006/07.
Tauranga City Council	Contributions range between $11,850 and $32,750 per subdivision lot.

26. The Local Government Act 2002 is clear: development contributions fund the growth portion of capital expenditure. Development contributions cannot be used to fund expenditure required to raise levels of services to existing users, to raise environmental standards, or to provide additions to meet the demand of past growth, also known as 'catch-up'. This argument gave rise to the recent judicial review of North Shore City Council's 2004 development contributions policy, in particular the economic efficiency model adopted pursuant to that policy.

27. Property Council notes the declaratory judgment issued by Justice Potter pursuant to that judicial review. In relation to the 2004 development contributions policy, the High Court concluded that North Shore City Council:

> *"… made an error of law in failing to ensure that its development contributions policy complies with the requirements of the Act to assess development contributions against a "development" (as defined*

as s197) that generates a demand for reserves, network infrastructure and community infrastructure."

"The [North Shore City] *Council has made an error of law in adopting a narrow concept of economic efficiency in the causative approach it has applied to the assessment of development contributions, and excluding appropriate consideration of the distribution of benefits and equitable and proportionate allocation."*

"It follows that the Council has made an error of law in failing appropriately to explain in its development contributions policy, as required by s106(2)(c) why in terms of s101(3) it has determined to use development contributions as a funding source."

28. In finding against North Shore City Council's 2004 development contributions policy, the High Court found that North Shore City Council was extracting cash and land from people who had no right of appeal and no right to vote. As Justice Potter correctly points out:

"[55] Development contributions imposed by local authorities to fund capital expenditure for infrastructure required to service new development, invariably will be passed on by the developers liable for them, to the purchasers of property in the development. The purchasers will become future ratepayers in the district of the relevant local authority, but in relation to any development contribution required, they have no say through the ballot box and the development who must meet the development contributions in the first place, has no right of appeal against the local authority's assessment."

29. Despite the emergence of jurisprudence set down by the High Court, territorial authorities have generally failed to adhere to fundamental rules about causal nexus and the need to limit the application of contributions to the marginal cost of growth. The lack of a consistent funding formula has resulted in significant variations from one territorial authority to the next.

30. Currently there is no statutory requirement for a merit-based appeals mechanism to allow developers to challenge the charging of a development contribution. The absence of a merit-based appeals process, there is no incentive for territorial authorities to ensure transparency in the application of a policy that has emerged as a key alternative to property rates.

Recommendation One: address land shortages

31. Shortages of land for urban residential development have been institutionalised by a repeated failure to make available land (both greenfields and raising building height limits) for development. The result has been an increase in the price of unserviced land. In the context of the Auckland region in particular, the impact can be traced back to a failure to extend the Metropolitan Urban Limit (MUL) and a failure to raise building height limits.

> ***Growth boundaries (both out and up) need to be relaxed to free up more land, thus removing artificial supply constraints that currently inflate the price of development and precipitate the practice of land-banking.***

Recommendation Two: fund infrastructure through debt as an alternative to development contributions

32. Purchasers of new homes are increasingly bearing the cost of funding community-wide urban infrastructure, which is being funded through development contributions. The shift in the funding of community infrastructure

to new home purchasers is both inequitable and denies young New Zealanders in particular access to home ownership. This point has been made repeatedly to territorial authorities throughout New Zealand, who in turn have responded by increasing the quantum of development contributions.

Subpart 5 of Part 8 (Development Contributions) of the Local Government Act 2002 should be repealed.

The New Zealand Government should develop a national policy on development contributions, which is informed by principles that provide for the equitable allocation of cost to reflect both causation as well as the benefits of growth received by existing and new communities. Such a policy should be set out and referenced to the Resource Management Act 1991.

Territorial authorities that wish to levy development and reserve contributions in accordance with the national policy on development contributions should be subject to annual audits to ensure compliance with that policy.

Concurrent to any statutory provision that enables a territorial authority to charge a development contribution, should be a statutory provision that gives the developer or property owner the right to pursue a merit-based appeal of a development contribution. That appeal should be heard by the Environment Court in the first instance.

Conclusion

33. The Property Council wishes to be heard on this submission.

DATED this 3rd day of August 2011.

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On behalf of Property Council New Zealand

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