SUBMISSION

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Better urban planning

Local Government New Zealand's submission to the New Zealand Productivity Commission

5 October 2016

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LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

This final submission was endorsed under delegated authority by Malcolm Alexander, Chief Executive, Local Government New Zealand. In preparing this submission we have worked closely with our colleagues at the Society of Local Government Managers (SOLGM) and share the concerns raised by SOLGM in its submission.

We would welcome the opportunity to continue to work with the Productivity Commission as this body of work is progressed.

Introduction

Thank you for this opportunity to submit on the Productivity Commission's draft report Better Urban Planning.

LGNZ welcomes the Draft Report of the Productivity Commission on urban planning. It contains many good suggestions for improving the ways New Zealand cities are planned.

The Productivity Commission has done an effective job identifying problems. As the report says they are complex – solutions are equally complex. The draft report provides contains some useful proposals but the devil is always in the detail and the consequences of some of the change proposals have not been adequately identified.

Whatever framework we arrive at, it needs to allow for integrated decision-making across the natural and urban environments. The built environment in our rural areas should also not be left out. In our opinion, the critical matter that needs to be addressed is how to enable growth and development wherever it occurs, within environmental limits. We agree with the Environmental Defence Society, that we should not proceed from a narrowly focused report on cities to wholesale reform of the resource management system covering all of New Zealand: the system embraces resources other than urban ones. Mistakes could be made. Therefore, we consider that when considering the over-arching resource management framework, "urban" should not be isolated from the natural environment.

The draft report aligns well with the Blue Skies project LGNZ initiated late last year and launched at the 2016 LGNZ Conference. We asked what should a 'fit for purpose' resource management regime look like – and whether we need a more revolutionary approach to resource management.

We developed a "programme of action," designed to address a range of important issues with our resource management system that require urgent attention to address pressing issues with the system, such as the lack of integration across key planning statutes and an effective framework for evaluating system performance.

We think there are six matters in this category:

- A regional spatial planning process with statutory teeth;
- 'Special economic zones' to enable tailored solutions;
- Local 'national' direction developed through partnerships between central and local governments;
- A framework to evaluate the performance of the resource management system;
- Standard tools to assess benefits and costs; and
- Prioritise investment to establish environment states and trends.

The Commission has sought answers to some specific questions – our answers follow.

Questions

Regulating the built environment

7.1 Would it be worth moving to common consultation and decision-making processes and principles for decisions on land use rules, transport and infrastructure provision? How could such processes and principles be designed to reflect both:

- **the interest of the general public in participating in decisions about local authority expenditure and revenue; and**
- **the particular interest of property owners and other parties affected by changes to land use controls? Do the consultation and decision-making processes and principles in the Local Government Act adequately reflect these interests?**

While there is benefit to be realised from removing unnecessary duplication between these statutory frameworks, such as through common principles, the challenge is to make them more flexibly empowering so that alignment can be better negotiated at the local or regional level. Attempting to 'unify' or standardise them arbitrarily may be undesirable given the spatial scales operating under the statues can be very different.

We expect calls for expenditure and revenue to be increasingly localised in the future as a result of trends for greater citizen participation in budget setting and decision-making generally – a process that will inevitably accelerate with opportunities afforded by new technologies.

Within democratic regimes taxing powers are the domain of citizens rather than property owners.

The RMA is primarily concerned with delivering environmental outcomes and the regulatory framework to deliver on these. The RMA operates at scales ranging from national down to individual properties, and can operate on a larger scale than that which applies to the scale at which localised budget decisions are made. In other words different communities of interest are involved in which the relative value to be given to the rights of property owners compared to the rights of citizens (who may not be property owners) is a matter of whatever political values are in ascendancy at the time. Also the time scale and the judicial nature of the processes involved suggest that a separate stand-alone RMA approach is by far the best.

The LTMA , including regional transport strategies, already operates on a scale that is larger than the scale relevant to the preparation of local budgets and the scale at which some of the plans developed under the RMA operate – and necessarily so. Attention should be given to the linkages and ensuring that the 'have regard to" and "take account of" provisions are designed appropriately.

7.2 Should all Plan changes have to go before the permanent Independent Hearings Panel for review, or should councils have the ability to choose?

The timeliness and cost of putting RMA plans and policies in place has long been identified as a significant issue for local government. The ability to appeal a council's decision to the Environment Court adds to the cost and time in achieving

certainty of policy settings.

The Government has developed bespoke processes for Auckland Unitary Plan and for Canterbury, post earthquake. Both these circumstances required plans to be put in place in a more timely manner than the usual Schedule 1 process allows. They are essentially a first instance hearing with limited recourse to the Environment Court. Whether the resource effort in these bespoke processes has been any less than many Schedule 1 experiences is still an open question.

LGNZ considers that decisions on policy and plans is the prerogative of local government elected members, unless they choose to delegate to independent commissioners. Delegation occurs in situations where there is a need for independence or when capacity is stretched. Where a plan has been developed through extensive community participation, such as in a collaborative planning process, it may be undesirable to add an additional layer of independent view.

It is worth noting that all members of a hearings panel are required, under the RMA, to be accredited through the Making Good Decisions Programme. This applies to resource consents, plan reviews, plan changes and designations. This change was introduced in 2012 and was designed to introduce improved competency into the system and better assure quality decision-making.

LGNZ does not support the idea that all plan changes have to go before a permanent Independent Hearings Panel for review. Setting up a panel such as has occurred with development contributions is simply adding another layer into the process with no clear costs savings and dubious benefits as to the outcome of decisions. As discussed above, LGNZ considers that decisions on RMA plans and policy are core business for elected members. A model worth exploring is enabling councils to choose to use an Independent Hearings Panel and where they do, that appeal rights are limited (along the lines of the Auckland and Canterbury models).

Apart from matters of principle, there are logistical problems which apply to the concept of a permanent Independent Hearings Panel. How would a single Independent Hearings Panel service manage all the RMA policy and plan business across New Zealand and in a timely way? Some individual councils have multiple plan change processes underway at any one time. The Ministry for the Environment's National Monitoring System reveals that for the 2014/15 period 357 plan-making processes were started, underway or completed. This includes full reviews and changes to plans.

The cost of an Independent Hearings Panel is significantly greater than the cost of a panel constituted by elected members which raises the question of who will pay for this additional level of regulation. Even more difficult will be the task of ensuring that an Independent Hearings Panel brings a "local voice" to the decisions.

7.3 Would the features proposed for the built environment in a future planning system (eg, clearer legislative purposes, narrower appeal rights, greater oversight of land use regulation) be sufficient to discourage poor use of regulatory discretion?

The Productivity Commission proposals for the built environment in a future planning system include the following:

- clearly prioritise responding to growth pressures, providing flexibility and supporting accessibility;
- make land price information a central policy and monitoring tool, which would drive decisions on the release, servicing and rezoning of development capacity;
- allow for 'event-based' rezoning, where land use controls are set in anticipation of predetermined triggers and activated once those triggers are reached;
- focus urban notification requirements and appeal rights on those directly affected, or highly likely to be directly affected, by a proposed development or Plan change; and
- enable targeted infrastructure or service investments in areas facing significant change, to help offset any amenity losses.

LGNZ considers one of the challenges is to align responding to growth pressures with other national direction, particularly the requirement under the National Policy Statement for Freshwater Management to maintain and improve water quality across a catchment. Regional and unitary councils are currently giving effect (by 2025) to this NPSFM and while this is challenging, the rubber will hit the road when the work is done to implement these policy frameworks for instance by the primary sector and by territorial authorities investing in infrastructure upgrades. A very real and additional challenge is urban stormwater. Prioritising growth and not recognising other (sometimes conflicting) national policy directions creates problems for councils and potentially expensive litigation. This is a good example of how a strong national framework with bottom lines and prescribed timeframes, complemented by constrained local discretion, can make progress on nationally important issues and force difficult decisions where excessive local discretion has hitherto failed.

The National Policy Statement for Urban Development Capacity takes care of the second proposal concerning land price information.

LGNZ supports the concept of 'event-based' rezoning and these techniques, such as deferred or floating zones which apply under defined situations at some future date, are used by some Councils. We can accept the idea of focused notification requirements in relation to plan development and are interested in exploring the final proposal further.

7.4 Would allowing or requiring the Environment Court to award a higher proportion of costs for successful appeals against unreasonable resource consent conditions be sufficient to encourage better behaviour by councils? What would be the disadvantages of this approach?

LGNZ considers there are better ways to "encouraging better behaviour by councils" than public money being used for appeal costs. The cost of litigation itself is a deterrent enough, as is the reputational damage to as council of failing to defend consent conditions in court. If the Court had similar powers to award cost in favour of inadequately prepared or, in some cases, delinquent applications, then we could accept a levelling of the playing field.

Urban planning and the natural environment

8.1 What should be the process for developing a Government Policy Statement (GPS) on Environmental Sustainability? What challenges would developing a GPS present? How could these challenges be overcome?

If the GPS is a tool that will align the Government's national direction it may have some worth, given the Government's forward direction for national direction is ambitious and there is need for alignment of the different streams. Firstly, a public discussion to tease out the benefits of a GPS is encouraged and the process to develop it needs to allow for consultation on the detail of a GPS. How this might differ from a National Policy Statement and what is the relationship with National Environmental Standards and any section 360 Regulations the Government may promulgate is unclear. The RMA already has ample direction in Part 2 aimed at achieving overall net societal benefit on a sustainable basis, further guidance around balancing competing values in not required. As the Commission's own analysis suggests what has been lacking has the articulation of, and adherence to, clear national bottom lines in relation to environmental outcomes. Councils and their communities will always find ways to balance and seek overall benefit, however their short-term imperatives may override what is necessary in the long run, especially when there are costs involved. Therefore, ensuring that discretion is appropriately bounded within the choices that are truly sustainable over time, through clear NPS and NES, is a more obvious and ready solution. Adding more layers to the hierarchy of planning instruments has not been adequately addressed. If you are recommending more and different instruments they need to substitute for existing ones.

8.2 Would a greater emphasis on adaptive management assist in managing cumulative environmental effects in urban areas? What are the obstacles to using adaptive management? How could adaptive management

work in practice?

The concept of adaptive management is not new and happens in many aspects of RMA practice now. Obstacles are more likely to be in practice and less with respect to the law but incentives on parties do need deeper analysis as it is possible that more use could be made of the approach than occurs today. Where uncertainty of effects creates inordinate costs in consenting these might be better navigated through more flexible consents. However, given the scale of investment often made in establishing an activity it can be difficult altering consent or planning conditions as new knowledge is revealed where significant capital has been sunk or an activity has become established. Many stakeholders will not trust future action to be taken if unfavourable monitoring results are revealed and so they will seek greater certainty of outcomes at the outset and will oppose adaptive management approaches. To manage these concerns stronger legal guidance and support to councils in calling in and managing adaptively managed activities may help make this a more prevalent approach of choice.

Urban planning and infrastructure

9.1 Which components of the current planning system could spatial plans replace? Where would the greatest benefits lie in formalising spatial plans?

It can be argued that New Zealand's planning system as a whole is unwieldy and not well integrated. Although there are some connections between the RMA, Local Government Act 2002 (LGA) and Land Transport Management Act 2003 (LTMA), they have different purposes and different financial considerations apply. However, integration is more of a challenge because of the various players involved and the timing in which decisions under the individual processes may be made. The spotlight is currently on the need to align the strategic decision making as it relates to urban areas and their hinterlands, making the interrelationship between the RMA, LGA, and LTMA particularly important.

While particularly pressing for our growing urban centres, the need for lined-up decision-making goes beyond urban planning and is relevant for addressing many issues facing New Zealand. The agencies, central, regional and local who would be required to implement it would need to collaborate in the spatial planning process. A Spatial Plan should avoid subsequent consultation on matters already subject to the Plan and, critical to success, is that parties to the Plan are bound by it. This inevitably goes beyond an urban setting and encroaches into the rural hinterland which underscore an earlier observation that having separate urban focussed legislation won't work.

Furthermore iwi organisations are increasingly influential in resource management governance and decision - making and our resource management system must enable effective co-operation between central government, local authorities and iwi organisations if we are to achieve the outcomes our communities want.

It is those areas experiencing significant growth which would potentially benefit most from spatial plans. LGNZ sees no value in making spatial planning mandatory. The law more than adequately allows for them to be recognised.

The question to which components of the current planning system could spatial plans replace is a good one. A spatial plan is part of implementation/delivery. The presumption is that a spatial plan is ideally regional in scale, if you are suggesting it would replace a Regional Policy Statement. However, some spatial plans could cut across regional boundaries as much as they might cut across territorial boundaries. A regional policy statement addresses more than just the built environment. As an alternative, and given the Government is looking at such concepts as a National Plan Template, perhaps the RPS could be required to co-ordinate the release of land for development and how this would be serviced. Strangely this was a requirement in Schedule 1 of the Town and Country Planning Act 1977.

Infrastructure: funding & procurement

10.1 Is there other evidence that either supports or challenges the view that "growth does not pay for growth"?

LGNZ has no evidence relevant to this question. However, we note there are many externalities from growth, both positive and negative, that are unpriced. Some of these externalities sometimes require a response after the fact, sometimes decades later once cumulative effects have become evident and necessitate action. In principle all impacts of growth that create contingent liabilities should be encouraged to pay as they go and so the prime immediate beneficiaries of growth, often developers, don't sheet their costs home to councils and the broader community.

10.2 Would there be benefit in introducing a legislative expectation that councils should recover the capital and operating costs of new infrastructure from beneficiaries, except where this is impracticable?

No. The current situation which allows citizens through their representatives to determine these matters is the best way of ensuring optimum outcomes. There can be a range of reasons why a community will choose to subsidise the cost of infrastructure, such as to attract new residents to their district. As long as these decisions and their medium and long term costs and benefits are made transparent to ratepayers, then such local decisions are appropriate.

10.3 Would alternative funding systems for local authorities (such as local taxes) improve the ability to provide infrastructure to accommodate growth? Which funding systems are worth considering? Why?

Property taxes are regarded as having a limited correlation to ability to pay, especially so in regions with ageing populations and disproportionately high levels of retirees, and can only be increased by a council decision, a decision which is subject to close public and political (and ministerial) scrutiny. This is therefore an inflexible and sometimes poorly targeted method of raising revenue with high transactions costs. A taxing source which grows in tandem with the economy, such as a share of a consumption tax like GST, would give councils greater flexibility when looking at how services will be funded.

10.4 Would there be benefit in allowing councils to auction and sell a certain quantity of development rights above the standard controls set in a District Plan? How should such a system be designed?

LGNZ is open to considering the utility of market base mechanisms to achieve desired outcomes. whether this is useful in the present context will depend on matters such as: market demand; market transaction costs; and the rights and obligations attached to the traded right.

10.5 Should a requirement to consider public-private partnerships apply to all significant local government infrastructure projects, not just those seeking Crown funding?

No. Any such requirement would be an unnecessary administrative burden that would be extremely costly to some councils. Local authorities have been commissioning PPPs since the mid 1990s and councils already have sufficient incentives to investigate such options where the value can be justified. Very few councils undertake projects of sufficient scale to justify the cost of exploring the PPP option and given the nature of NZ's communities –small but widely spread, there are few opportunities of clustering projects. There may be more value in looking at capability training in the larger councils or the option of developing a business advisory service where the expertise can be pooled, such as with EquiP.

Urban planning and the Treaty of Waitangi

11.1 What policies and provisions in district plans are required to facilitate development of papakāinga?

There are some very good examples in District Plans of papakāinga zones. Western Bay of Plenty District Plan is one example.

11.3 Do councils commonly use cultural impact assessments to identify the potential impact of developments on sites and resources of significance to Māori? How do councils set the thresholds for requiring a cultural impact assessment? Who sets the fees for a cultural impact assessment and on what basis? What are the barriers to cultural impact assessments being completed in good time and how can those barriers best be addressed?

We anticipate you will receive some good information directly from councils on this matter.

11.4 What sort of guidance, if any, should central government provide to councils on implementing legislative requirements to recognise and protect Māori interests in planning? How should such guidance be provided?

The best mechanism is via the Quality Planning website as this contains a suite of guidance for local authorities. It is worth noting there is already a body of practice that has built up across councils – particularly in relation to the natural environment and the management of fresh water. From here, we should look at building on what already exists and identifying "best practice" across councils.

11.5 In what way, if any, and through what sort of instrument, should legislative provisions for Māori participation in land-use planning decisions be strengthened?

The RMA does require councils to consult specifically with iwi during the preparation of a proposed policy statement or plan. The Resource Legislation Amendment Bill proposes new provisions via an iwi participation arrangement, designed to provide an opportunity for local authorities and iwi authorities (to discuss, agree, and record ways in which tangata whenua, through iwi authorities, participate in the plan-making processes under Schedule 1 of the RMA. This requirement is triggered by a triennial general election held under Section 10 of the Local Electoral Act 2001.

LGNZ supported this provision as it reflects the current practice of the majority of councils.

13.1 What are the strengths and weaknesses of these two approaches to land use legislation? Specifically:

What are the strengths and weaknesses in keeping a single resource management law, with clearly-separated built and natural environment sections?

What are the strengths and weaknesses in establishing two laws, which regulate the built and natural environment separately.

LGNZ supports a legislative framework that ensures integrated decision-making across the natural and urban/rural built environments and one that is straightforward to administer and for stakeholders to navigate. Our resource management

system is multi-layered and includes national direction (National Policy Statements and National Environmental Standards), Regional Policy Statements and Regional Plans and District Plans. The legislative linkages between the various layers carry differing weights. LGNZ's view is that having two different primary statutes for the "built" and the "natural" environment would likely achieve little for the quality of the natural environment and risk that the typically shorter term interests of the built environment will trump longer-term interest of the natural environment. Should a binary legislative construct not end up driving sustainable development more certainly than a well-tooled RMA then New Zealand would run the risk of undoing 30 years of social and public policy progress.

The legislative framework pre-RMA was subject to much criticism and didn't work well as it required split, sequential decision-making – it is difficult to see how such a model would work any better now, given the complexity of some of the issues the resource management framework needs to manage.

Instead, LGNZ advocates for better use to be made of national instruments under the RMA and more environmental "bottom lines." We also see real merit in progressing the National Plan Template and consider that planning for the built environment, in particular, would potentially be made a great deal simpler. The Resource Legislation Amendment Bill is the enabling legislation and we would like to see thought given to how the template can be progressed, irrespective of the outcome of this Bill.

13.2 Which of these two options would better ensure effective monitoring and enforcement of environmental regulation?

- Move environmental regulatory responsibilities to a national organisation (such as the Environmental Protection Authority).
- Increase external audit and oversight of regional council performance.

All councils have an obligation to gather information, monitor and report on the state of their environment. Regional councils in particular are key stakeholders in monitoring and reporting on the natural environment. The report expresses disappointment in the performance of regional councils and yet the evidence on which such a statement is based is absent or at best partial. The Commission's report notes the ambiguity and unbounded discretion with which councils have had to operate and the lack of the requisite national direction on many issues. Failure to address difficult environmental challenges, which are inherently complex, often diffuse and frequently the result of choices taken long ago, are a stronger reflection of the lack of direction, support, resourcing and national leadership. Regional councils frequently deal with issues the community would rather not know about or fund a response to. It is recognised this is now hanging, with freshwater an obvious example, and therefore it is now essential that regional councils are supported in rising to the challenge with the tools and capabilities to deliver. In most cases this is now rapidly building and a wholesale disruption to this would risk setting back progress by many years.

For almost two decades regional councils have actively collaborated with MfE to develop and deliver national environmental indicators. This involves collaboration with the Ministry to deliver on standardised information requirements (content, standards, methods, timing). This relationship is formalised and the Ministry for the Environment and the regional councils operate integrated regional/national environmental data collection networks. The data is delivered via an accessible database(s) and reporting platform(s).

LGNZ and its Regional Sector in particular, are committed to continuing to progress the consistency of environmental monitoring and reporting.

With regard to enforcement, it is worthwhile understanding there is a continuum from the "softer" end where the council works with the "offender" to achieve a change in behaviour to the higher end which may result in prosecution. Some evidence to support the view that regional councils are failing here is welcomed so it can be fully considered and the actual problem(s) identified.

LGNZ does agree with the OAG's findings that decisions on enforcement need to be delegated and not subject to political decision. We continue to work with our members on this.

We can accept that the EPA is a model that operates in other countries which don't have the structure of regional government we have here in New Zealand. The draft report has not investigated how funding would shift from the ratepayer to the taxpayer, whether levels of service to local communities would be maintained so you would need much more analysis to explore this option.

There is already external audit and oversight of regional council performance through the Office of the Auditor General, Ministry for the Environment and the Parliamentary Commissioner for the Environment. Perhaps a consideration as to what more these organisations are able to bring to their review functions is needed.

Conclusion

The RMA may have reached the point where its purpose, structure and coherence require a refresh. Planning at both community and national scales is important to provide appropriate direction and opportunity for people and businesses to live work and play within an environmental setting. Because people perceive the world in which they might live work and play differently and may have different priorities and values, and because the market and personal responsibility cannot provide all the solutions, society needs to provide a means whereby desired outcomes can be discussed, where decisions can be enabled, and where, if necessary, conflict can be resolved. All decisions incur costs so there needs to be mechanisms to ensure a fair and equal distribution to those who benefit, either privately or publicly.

If planning processes are not to be delivered through the RMA, LGA, LTMA, then something else is needed. We are unconvinced that a compelling case has been made to discard the status quo but agree that changes to the current framework are definitely needed to remove the inefficient and undesirable features. There are many system changes and bespoke experiments in planning that are being implemented at present and we believe a stronger monitoring effort, anchored heavily to outcomes, is the principal priority to ensure that any fundamental future changes are based on sufficiently sound evidence and rigorous analysis to underpin a durable level of social and political support.