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Better Urban Planning Inquiry
New Zealand Productivity Commission
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By email: info@productivity.govt.nz

Re: Submission on the Productivity Commission's Draft Report on Better Urban Planning

1. Introduction

I thank the Productivity Commission (the Commission) for giving me the opportunity to submit on this inquiry, which is of national significance. The outcomes from this inquiry have the potential to affect, for better or worse, future generations of New Zealand.

I am making this submission as a private citizen and am not representing the interests of any particular organisation.

2. Some findings and comments of the Commission

In its draft report on Better Urban Planning, the Commission has stated the following:

"The purpose of this inquiry is to review New Zealand's urban planning system and to identify, from first principles, the most appropriate system for allocating land use through this system to support desirable social, economic, environmental and cultural outcomes."

The Commission has also stated the following:

"In recent years a number of local authorities have recognised these benefits and adopted spatial plans that lay out their long-term vision for urban development and help to align land-use planning and the provision of infrastructure."

The Commission has further stated the following:

"The current planning system suffers from poor integration and cohesion (NZPC, 2012a; NZPC, 2015a). The various requirements of the three planning Acts create a complex web of plans, with interactions at a number of points. This complexity makes it difficult to effectively and efficiently coordinate decisions around land use, transport services and infrastructure provision. For example, to make a particular area of land ready for development – setting planning controls, installing trunk infrastructure, providing sufficient capacity on the roading network – local authorities may take decisions through at least three distinct processes, each with different timeframes and implementation speeds."

And, the Commission has made the following finding:

"The differing purposes of the three planning Acts create internal tensions, duplication, complexity and costs."

3. The problem is in the planning system's processes and administration

The Commission's statements make it quite clear that the issues faced by the current planning system are process-related as opposed to being structural failures which can only be resolved by an overhaul. Poor integration and cohesion are largely process issues which can be resolved by using (better) strategies and plans such as spatial plans (which the Commission has made a recommendation in regards to).

I note that the one critical question, Q13.1, is explicitly about the resource management system – it asks about reforms to the resource management law, as opposed to the wider (urban) planning system. The need to make changes to the resource management system to make it more responsive to the urban environment's needs does not make the case for an overhaul of the planning system. For example, the two options put forward by the Commission would do nothing, in themselves, in terms of infrastructure funding or provision; in Auckland, the issue of infrastructure provision is better served by the Future Urban Land Supply Strategy – whilst not the best of strategies, it does provide signals as to how infrastructure will be provided to achieve outcomes. Q13.1 is discussed further in section 9.

I am of the view that the Commission's draft report concentrates largely on the:

- wider resource management system, which is part of the planning system; and
- the challenges involved in regards to infrastructure funding and provision.

I am also of the view that bulk of the recommendations put forward by the Commission:

- relate to the resource management system;
- can be implemented in the short-term; and
- are process-related, as opposed to fixing any identified structural issue.

I submit that the Commission's commentary on issues relating to the resource management system are very relevant, on the mark and very highly appreciated. The recommendations that relate to the resource management system complement the proposals contained in the Resource Legislation Amendment Bill 2015 and will help make the wider planning system operate much better, if implemented within the short term. Some of the particularly good recommendations are:

- R7.1 – relating to prioritising response to growth pressures, providing land use flexibility, and supporting the ability of residents to easily move through their city. The recommendation could positively affect the form of the National Policy Statement on Urban Development Capacity (NPS-UDC).
- R7.3 – relating to allowing for more responsive rezoning, in which land use controls can be set in anticipation of predetermined and objective triggers and activated once those triggers are reached. This is one of the intended outcomes of the NPS-UDC.
- R7.4 – relating to focusing urban notification requirements (and any associated appeal rights) on those directly affected, or highly likely to be directly affected, by a proposed development. This would better align the planning system with the fundamental purpose of managing negative externalities.
- R7.5 – relating to limiting appeal rights on plans to people or organisations directly affected by proposed plan provisions or rules.
- R7.6 – relating to consultation requirements allowing councils to notify only affected parties of plan changes that are specific to a particular site.

- R7.7 – relating to the establishment of a permanent independent hearings panel to consider and review new plans, plan variations and private plan changes across New Zealand.
- R7.9 – relates to current initiatives of Central Government, including those around feasible development capacity pursuant to the NPS-UDC.
- R9.1 – relating to spatial plans being made a standard and mandatory part of the planning hierarchy.
- R12.1 – relating to placing greater emphasis on rigorous analysis of policy options and planning proposals. This will require councils to build their technical capability in areas such as environmental science and economics. The NPS-UDC seeks to achieve this by connecting planning decisions with economics.

The Commission’s recommendation in regards to spatial plans is a particularly good one. In addition to being able to better integrate the Resource Management Act 1991 (RMA), the Local Government Act 2002 (LGA) and the Land Transport Management Act 2003 (LTMA), (regional) spatial plans would influence the National Infrastructure Plan as well as the National Budget. Spatial plans could: absorb much of the requirements in the NPS-UDC and future urban land supply strategies; and even replace regional policy statements.

It would appear Central Government is envisaging the Commission’s final report to include recommendations that could be adopted in the immediate term to make the planning system work better; this could be a primary reason why Central Government has extended the reporting back time for the Local Government and Environment Committee on the Resource Legislation Amendment Bill 2015 and the Local Government Act 2002 Amendment Bill (No 2).

4. Evidence of better processes to make the current planning system work better

Auckland Council’s former Housing Project Office (HPO) is a good example of how changing the approach/procedures/processes can result in superior outcomes, reduce the tensions, duplication, complexity and costs without overhauling the planning system. Auckland Council opened the HPO in October 2013 in response to the Housing Accords and Special Housing Areas Act 2013 (HASHAA). The HPO was a one-stop-shop that provided an end-to-end service for applicants and with consenting (including qualifying development consents), master-planning, urban design, policy and infrastructure capability in one place.

This co-location of representatives with specialist technical knowledge helped create a positive culture, and an efficient, unified approach. The co-location of representatives also avoided the need to retrain staff (a salient point given a planning system that is significantly different to the current system could require the industry to retrain and acquire new knowledge).

5. Infrastructure is a means to an end, not an end in itself

The recommendations and findings in relation to infrastructure funding are not structural issues; rather, they are process-related and on-going issues. Infrastructure funding and provision are longstanding issues that are faced by almost all cities and countries.

The Auckland Unitary Plan Independent Hearings Panel (AUPIHP) rightly implied that infrastructure funding and provision are process-related issues, that is, they are a means to an end, not an end in themselves. In its recommendations on the Proposed Auckland Unitary Plan, the AUIHP made the following remark:

“Given the extent to which the costs of providing infrastructure can be recovered by a range of funding methods, the Panel is not persuaded that the funding of infrastructure should be allowed to determine land use planning in Auckland. There may however be situations where the high costs of servicing an area are an impediment to development and through appropriate pricing of infrastructure those costs can be made clear to developers and land owners.”

The NPS-UDC also recognises that infrastructure provision is necessary (as a means) to provide feasible development capacity.

6. Infrastructure pricing

The Commission has recommended that “a future planning system should allow councils to apply prices for the use of existing local roads where this would enable more efficient use of the road network” (R10.1). The Government has indicated that where existing motorways which have already been paid for are tolled, it will result in an equivalent decrease in fuel taxes and/or licensing fees. As Hon Simon Bridges and the Commission (in this recommendation) have stated, such measures will be about making more efficient use of the road network, as opposed to being using as a revenue generating mechanism. I submit that the Commission make this point clear in its final report so that councils are not given any false impressions.

The Commission has also recommended that “a future planning system should enable councils to levy targeted rates on the basis of changes in land value, where this occurs as the result of public action ([for example], installation of new infrastructure, upzoning)” (R10.3). This recommendation could open the Commission up to significant criticism. Firstly, a targeted rate is used to fund a specific council activity or group of activities – it must not be used as an easy revenue generating mechanism. Secondly, if upzoning would result in increased rates, ratepayers are likely to actively campaign against up-zoning in order to keep their rates bill low – if such a recommendation is implemented, it would only fuel further ‘not in my backyard’ type behaviour. I feel this is a poor recommendation from the Commission.

7. Growth does pay for growth

I submit that I am disappointed by the tone of, and the choice of words in, the Commission’s following question (Q10.1):

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

The manner in which the question has been framed implies that the Commission has already agreed that growth does not pay for growth and is trying to lead answers in a specific direction. The Commission appears to have taken some councils’ “belief” as a fact, without testing it. Specifically, the Commission appears to have agreed with feedback from some councils “that they hold back from investing in infrastructure, or at least take a cautious approach to investing, because they believe that ‘growth does not pay for itself’ and are concerned about imposing additional cost burdens on existing residents ([for example], through higher general rates bills)”.

All growth related capital expenditure is principally recovered through development contributions (DCs). The LGA states that the purpose of DCs is to enable councils to recover from those persons undertaking development a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary

to service growth over the long term. In terms of whole-of-life costs of public works, capital expenditure falls under capital and acquisition costs (figure 10.1 on page 247 of the Commission's draft report on Better Urban Planning).

It is important for the Commission to take note of the term 'recover' being used, that is, recovery of capital expenditure incurred, as opposed to profiting from infrastructure provision.

This is a primary reason why Watercare is prohibited by legislation from paying a dividend, a practise that the LGA Amendment Bill (No 2) proposes to extend to any new water services council-controlled organisation that is created in future.

Some councils decide to recover costs in different ways due to wider *benefits* to the society (which may: not be easily quantifiable; and take time to manifest, such as increases in development, employment, and liveability; wealth creation; and increase in the city's/district's gross domestic product). For instance, the Waipa District Council has decided not to capitalise interest charges (that is, DC charges do not include interest charges) but to recover them from rates "for reasons of administrative simplicity and to encourage development".

Further to issues around infrastructure provision, costs relating to the maintenance and replacement of assets are rates-funded. And, for community infrastructure where DCs can no longer be charged, the expectation is that costs would be recovered from (targeted) rates. As stated above, councils may recover costs in different ways so as to reduce rates pressure – for example, by using dividends earned from shares in a for-profit company instead.

The Commission has found that the cost of growth-related infrastructure is generally not fully recovered over a 10-year planning period for seven of the nine councils in high-growth areas (that is, Auckland, Hamilton City, Tauranga City, Selwyn District, Queenstown Lakes District, Waimakariri District, and Western Bay of Plenty District Councils, besides the Waikato District and Waipa District Councils) but that five of these councils face some net benefit of growth over 25 years. I would like to inform the Commission that most councils recover costs over 20-30 years; it is therefore futile to measure benefits over a 10-year period.

The reason for recovering costs over 20-30 years is because councils recover costs over the capacity life of an asset, as opposed to its useful life. This means that whilst an asset would have been paid for in 25 years' time, the community continues to benefit from it for a further 75 or so years, before it is due for renewal/replacement.

I am disappointed the Commission has relied on results obtained from the net present value (NPV) model. The NPV model is used to calculate the profitability of investments by using a discount rate. The NPV model and the calculation of the discount rate is not well understood by most – the discount rate does not just include estimates of the future inflation rates but includes other factors such as any hedging-related and/or opportunity costs.

It appears that a discount rate of 7% was used in the NPV calculations (which have influenced the Commission's decision to side with the belief that growth does not pay for growth). I submit that the discount rate must not be more than 5% and suggest that the Commission pay attention to the calculation

methodology adopted by the Independent Pricing and Regulatory Tribunal of New South Wales (IPART) to calculate an objective, fair and reliable discount rate. Since bulk of the councils do most of their borrowing through the Local Government Funding Agency (LGFA), the discount rate ought to be calculated using the average issuance yield on LGFA Bonds. Using February 2012 as the starting point (the first issue) and up to the last float as the calculation period, the average issuance yield on LGFA Bonds should equate to under 5%. Add to that a standard allowance for debt-raising costs of 0.125% and the discount rate is likely to remain under 5%. The Commission must ensure its final report does not rely on results obtained from an NPV model using a discount rate of 7%. Relying on a 'belief' and supporting it using a discount rate that is not objective, fair or reliable could lead to the integrity of the Commission's final report on Better Urban Planning being questioned.

Another benefit of growth which the Commission has not taken note of is, where DCs are collected for a future capital project, the DCs collected in advance (which most councils tend to classify as a revenue stream) are used to earn interest, which assists councils in keeping rates increases down.

In summary of the above, consider a council that has projected future population growth in a brownfield/infill area (catchment) where it also needs to renew a wastewater pipe. When undertaking asset renewal, the council will likely increase the wastewater pipe's size to provide for the projected growth. Instead of then levying DCs at just the margin (on the extra capacity created), some councils also choose to charge DCs for a portion of the fixed costs as well, that is, not just charging for the extra diameter of the pipe – in the case of the example – but also for costs like digger operations, removal of the old pipe, installation, remedial works, et cetera. At a simple level, anticipated growth has:

- 1) helped lower the cost of the asset replacement for the existing population; and
- 2) increased the rating base which will mean a wider spread of the depreciation costs to replace the newly installed wastewater pipe when it reaches the end of its useful life.

The correct position would be that councils who believe growth does not pay for itself undertake very poor growth projections, do not engage proper quantity surveying services and are generally not undertaking proper advanced planning. Poor (administrative) processes and innovative ideas do not by any means make the case for overhauling the current planning system.

8. Central Government criticised for trying to fix processes

The Commission's finding number F8.6 (under Chapter 8 – Urban planning and the natural environment) states, the recent steps to strengthen Central Government oversight of the RMA have focused predominately on process indicators (such as the time taken to process consents) rather than the environmental outcomes of planning decisions.

As noted above, many of the recommendations put forward by the Commission:

- relate to the resource management system;
- can be implemented in the short-term; and
- are process-related, as opposed to fixing any identified structural issue.

Also, overhauling the planning system without first attempting to improve processes would be irresponsible. After all, it is operational and technical policy matters that inform strategic policy matters.

The lesson learnt is that while the urban planning system may be complex, what matters most is how the process is managed to make the front-end process seamless (for instance, the time taken to process consents). Consider the case of a developer seeking to borrow a couple of million dollars from a bank to fund a land subdivision project. The applicant (developer) is assigned a relationship manager who takes the applicant throughout the process. Whilst the application process would involve several back-office operations like credit checks, calculations of ability to repay, viability of the project, insurance arrangements, valuation, et cetera, the applicant has just one point of contact at the bank making the experience much more manageable for everyone.

I note Auckland Council is trying to do something similar with its Consenting Made Easy programme to make resource and building consenting easier. The programme recognises that there is a whole array of complexities involved but which are part of back-office operations, and which can be better administered to achieve superior outcomes.

9. Some things to explore further in terms of infrastructure funding

Whilst we talk about public-private-partnerships (PPPs) a lot, much of it never translates into actual PPP arrangements. One sighted reason is that New Zealand is too small for international conglomerates to be able to make decent profits from infrastructure provided via PPP arrangement. This is primarily because infrastructure tends to be delivered in silos and in isolation from other similar projects.

For example, consider the:

- Auckland CBD to North Shore railway line;
- electrification of the railway line between Pakuranga and Pukekohe; and
- provision of a rail network in Christchurch.

These projects, in isolation, have not attracted much interest as far as PPP arrangements are concerned. However, group these three projects together and the 'mega' project can become a viable venture for an international conglomerate.

It is nonsensical to expect developers to provide large, expensive infrastructure upfront and recover the costs of doing so over the long term; developers simply do not have the ability to do so. The fact they borrow from banks as opposed to floating bonds makes the power of their balance sheets quite clear.

There is opportunity, however, to make the provision of smaller, catchment-specific infrastructure more palatable to developers so as to achieve a win-win situation for all, particularly in greenfield areas. One approach to doing so could involve rewarding the provision of, say, a stormwater pond, with greater density or smaller section sizes. Such an approach could come in particularly handy where developers want to turn the sod in a greenfield area (which may have been identified as a future urban area) that the council is not keen to provide infrastructure in for the next couple of years. Such an arrangement would enable councils to be more willing to consider out-of-sequence developments.

One last item I want to discuss in regards to infrastructure funding is that of financial derivatives/hedging, which tend to be included in DC charges. (The practice of capitalising financial derivatives/hedging costs is debatable.) These costs, however they are treated (whether as a capital or operating expenditure item), can be lowered if Central Government can assist councils in pooling the various portfolios and treating them as a single portfolio (similar to councils getting together to borrow via the LGFA as opposed to

borrowing individually). This is something that needs to be explored further at the earliest because it involves a smarter way of doing business and making significant savings by doing so.

10. Conclusion

I submit that the fact the Commission's draft report has largely concentrated on the resource management system and infrastructure provision-related issues is sufficient to demonstrate that there are no significant structural issues which make the case for a significant overhaul of the current planning system.

As mentioned in discussions under section 3., Q13.1 talks explicitly about land use legislation. The question asks about the strengths and weaknesses of:

- maintaining a single resource management law but with clearly-separated built and natural environment sections; and
- establishing two laws, which regulate the built and natural environment separately.

I favour the first approach. The built and natural environment are not mutually exclusive so separating legislation could easily result in unintended consequences. In terms of the my favoured approach, the RMA could be amended further (amending the purpose of the RMA, et cetera).

A third option, and as Central Government did in 2013, could be to make the HASHAA more of a permanent system, as opposed to a temporary one (that has recently been extended by Central Government). The HASHAA was enacted to enhance housing affordability by facilitating an increase in land and housing supply in certain districts and regions. In order to achieve its purpose, the HASHAA bypassed some normal RMA processes, and streamlined plan changes and resource consenting in areas with high housing demand. These procedural changes resulted in the consenting processes being much faster for special housing areas. If the proposals under the Resource Legislation Amendment Bill 2015 get through, then the more permanent equivalent of HASHAA would not have to be as extensive.

The issues faced by the resource management and the planning systems have, for far too long, been politicised. It is important we all work smarter to fix the process-related issues so as to make the planning system operate better instead of moving into a direction that involves reinventing the wheel. It is worth sharing a highly relatable quote from the distinguished American economist and political commentator, Thomas Sowell, who said:

“The first lesson of economics is scarcity: there is never enough of anything to fully satisfy all those who want it. The first lesson of politics is to disregard the first lesson of economics.”

Again, I thank the Commission for giving me the opportunity to submit on its draft report on Better Urban Planning.

Yours sincerely
Azeem Khan