

1 About this inquiry

Key points

- The Government has asked the Productivity Commission to inquire into the system of urban planning in New Zealand.
 - The main purpose of the 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 inquiry looks beyond the current resource management and planning system to consider fundamentally different ways of delivering urban planning and development.
- Many parts of the urban planning regime have existed for a considerable time and have evolved in a piecemeal fashion. International best practice has moved on. The changes taking place in, and the diverse nature of, urbanisation also raise the question of whether planning today remains fit for purpose. A fundamental review of the urban planning system is due.
- Well-functioning cities and urban areas matter a great deal to the living standards and wellbeing of all New Zealanders. As such, the issue of good urban planning is at the core of the Commission’s mandate.
- Urban planning has a legitimate and important role in addressing distinct problems of urban development: negative spillover effects (externalities); the provision of local public goods; and coordination of investments in vital infrastructure.
- In examining different planning approaches and design attributes that should underpin a future planning system, the inquiry has assessed to what extent the following urban planning goals are likely to be achieved:
 - flexibility and responsiveness - ability to change land uses as required;
 - provision of sufficient development capacity to meet demand;
 - mobility of residents and goods to and through the city;
 - ability to fit land-use activities within well-defined environmental limits; and
 - recognition and active protection of Māori Treaty interests in the built and natural environments.
- Almost none of the many participants in the inquiry was happy with the current system and many had strong critical views on how the RMA had not worked out as intended, or is in need of a substantial overhaul. The proposals in this report for a future urban planning system collectively represent a significant change from the current arrangements.

Well-functioning cities and urban areas matter a great deal to the wellbeing of New Zealanders. When cities function well, they provide greater access to and choices of housing, better protection of our natural environment and cultural values, and the provision of quality infrastructure at the right time in the right place. Well-functioning cities also provide greater choices of employment and higher wages, a wider pool of labour for firms, and more opportunities for specialisation, innovation and easier transfer of ideas – the engine of economic prosperity. Successful cities are not only places where people work; they are also attractive urban areas where people consume goods and services, play, and are creative. Such cities have areas with atmosphere and amenity. Successful New Zealand cities should also acknowledge the special

relationship that Māori have with the land on which cities are built and provide “great spaces and places for Māori to be Māori” (Ngā Aho & Papa Pounamu, 2016a, p. 31).

But the growth of cities can also create costs, such as pressure on vital infrastructure, congested roads and long commutes, the unavailability of affordable housing, and degradation of the natural environment. This puts a premium on good city organisation and planning where the advantages of urban growth and city living can be enjoyed and the costs and negative impacts can be effectively managed.

1.1 What the Commission has been asked to do

The Government has asked the Productivity Commission to undertake an inquiry into the system of urban planning in New Zealand. The main purpose of the 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” (Terms of Reference, p. 1).

The inquiry looks beyond the current resource management and planning system to consider fundamentally different ways of delivering urban planning and development. The aim is not for the Commission to draft new laws, but to set out what a high-performing planning system would look like. The scope of the inquiry includes the types of interventions, the funding arrangements, and the governance frameworks that are currently delivered by:

- the Local Government Act 2002 (LGA);
- the Resource Management Act 1991 (RMA);
- the Land Transport Management Act 2003 (LTMA); and
- elements of the Building Act 2004, the Reserves Act 1977 and the Conservation Act 1987 that relate to land use.

The inquiry should also consider: ways to ensure that the regime is responsive to changing demands in the future; how national priorities can be considered alongside existing local priorities; and what different arrangements, if any, might need to be put in place for areas of the country seeing economic contraction rather than growth.

Box 1.1 Inquiry Terms of Reference

The inquiry should cover three aspects.

- Background, objectives, outcomes and learnings from the current urban planning system in New Zealand, focusing particularly on:
 - how environmental and urban development outcomes have changed over the last twenty years;
 - the behaviour, role and capability/capacity of councils, planners, central government, the judiciary and private actors under the regime; and
 - the tendency for increasing complexity and scope creep of institutions and regulatory frameworks.
- Examination of best practice internationally and in other cases where power is devolved to a local level in New Zealand.
- Alternative approaches to the urban planning system.

The Terms of Reference note that many parts of the urban planning regime have existed for considerable time and have evolved in a piecemeal fashion. International best practice has also moved on, and a fundamental review of the urban planning system is due.

The Commission has previously considered urban planning issues in its inquiries into housing affordability (2012a), local government regulatory performance (2013), and using land for housing (2015a) inquiries. More broadly, it has also inquired into what makes for high-performing regulatory institutions and practices (2014b). Another Commission inquiry related to the present mandate is the inquiry into international freight transport services, which provides insights into what makes high-performing transport infrastructure. A large body of knowledge and evidence has therefore been accumulated that has informed the findings and recommendations of this inquiry into better urban planning.

1.2 The current planning system

The planning system is complex. It is governed by three main statutes –the RMA, the LGA; and the LTMA. The RMA is primarily a regulatory statute, while the LGA and the LTMA govern budgeting, service and infrastructure provision and planning. Each statute creates its own set of institutions, policies, processes and rules.

The level of complexity is also increasing. For example, the RMA was 382 pages when introduced in 1991, was 790 pages in the 2011 revision, and 827 pages in a 2013 revision. A host of other statutes also impact on the planning system, including the Building Act 2004, the Public Works Act 1981, the Reserves Act 1977, the Property Law Act 2007, the Unit Titles Act 2010, and the Local Government (Rating) Act 2002.

The purposes of the three principal planning Acts suggest that the main outcomes sought from the planning system are the maintenance of or improvements in environmental quality, the supply of local infrastructure and services in a timely and cost-effective manner and to desired standards, and the safe and reasonably easy movement of goods and people.

Urban areas include both built and natural elements. Given the focus of this inquiry on urban planning, the Commission has looked particularly at those environmental outcomes most closely connected to cities, urban development and land use. These include air quality, and drinking and recreational water quality. Yet many parts of the natural environment are intimately connected with cities because cities are places where nature continues to exist – waterways, trees, plants, birds, insects and their biodiversity intermingle with offices, houses, roads and other infrastructure.

Many people have an interest in good urban planning, including residents, central and local governments, businesses, homeowners, developers, planners, iwi, community representatives and environmentalists. The aspirations of potential future residents are also important. Each participant in the planning system has their own objectives, incentives and behaviours. The incentives may be aligned, but often diverge and conflict. In its 2013 report *Towards better local regulation*, the Commission found that increasing diversity and greater community expectations present difficulties for local authorities in reconciling different community interests and making decisions (NZPC, 2013a).

1.3 The changing nature of urban areas

Societies are increasingly urbanised. At the same time, both urban areas and the expectations of residents are constantly changing. A number of important trends are driving these changes, including:

- increasing international influences through communications, trade and travel;
- greater diversity as a result of increased national and international household and personal mobility (and, with this, a greater range of community and individual values, behaviours and interests);
- increasing disparity among groups within urban communities, marked by increased cultural and material differentiation between different parts of the city;
- higher levels of education and capacity to engage in public affairs through a multiplicity of channels; and

- higher expectations of public services (such as education, health and recreation).

The changes taking place in, and diverse nature of, urbanisation raise questions over whether planning today remains fit-for-purpose. Urban planning still seeks to apply long-held principles of conformity and control despite phenomenal urban transformation occurring.

The “first principles” mandate of this inquiry led the Commission to investigate the nature of cities, and the factors that contribute to their success (Chapter 2). Most of the benefits from cities are created by the innumerable decisions that people and firms make about where best to locate, trade and meet. As urbanist Jane Jacobs observed, the “point of cities is multiplicity of choice.” Rising incomes and new technologies mean that these preferences shift over time. Land that was once best employed for manufacturing may now be ideally-placed for new retail, educational, hi-tech or residential uses. As a result of these wider social and technological developments, cities evolve in unexpected and unpredictable ways.

The challenge for this inquiry is articulating an urban planning framework that is not overly directive in regulating land use in New Zealand cities, and therefore is able to respond to a dynamic and unpredictable future and avoid suppressing the diversity, creativity and entrepreneurship that successful cities display. At the same time, such a framework needs to satisfactorily address distinct public policy problems relating to negative spillover effects (externalities), the provision of public goods, and coordinating investments in vital infrastructure (chapter 3).

1.4 Gathering evidence

The Commission’s draft findings and recommendations have been informed by a comprehensive engagement process. The inquiry received 124 submissions on its issues paper and draft report from a diverse range of sector participants; including from councils, business groups, developers, planning academics, urban planning consultancies, planning and local government advocacy groups, infrastructure providers, and environment advocates.

The Commission has held more than 89 engagement meetings with a wide variety of interested parties offering a range of perspectives on the performance of New Zealand’s urban planning system and how to improve it (appendix A), as well as presenting to a number of relevant conferences, and participating in a number of seminar and roundtable events.

The Commission met with leading urban planning thinkers to ensure that the inquiry is informed by the most up-to-date ideas. A study trip to Australia was undertaken (Brisbane, Sydney and Melbourne). Commissioners and inquiry team members met with State government planning and infrastructure agencies, councils, developers, academics, and leading planning consultancies.

The inquiry acknowledges the special relationship of Māori with the land on which cities are built. The Commission has actively engaged with a diverse set of Māori participants across the country, including benefiting from a Wānanga with Ngā Aho & Papa Pounamu (Māori urban designers and planners) along with follow-up workshops with this group. The Commission obtained a review of its draft report from Ngā Aho & Papa Pounamu. Further advice was also received from Professor Hirini Matunga (Lincoln University) in completing the final report.

The Commission contracted Colmar Brunton to survey councils on local-government perspectives on the urban planning system, key issues and areas in need of reform. This survey built on a similar survey by Colmar Brunton conducted for the Commission’s 2013 *Better local regulation* inquiry.

The Commission is grateful to the many experts who provided advice and input on a number of specific policy and institutional design issues. These include Professor Hirini Matunga (Lincoln University), Associate Professor Kenneth Palmer (University of Auckland), Stuart Shepherd (Sapere), Dr Phil McDermott, Associate Professor Caroline Miller (Massey University), Marcus Spiller and Chris Lill (SGS Economics and Planning Pty Ltd, Melbourne), Robin Oliver and Mike Shaw (OliverShaw), and David Campbell (ACIL-Allen consulting, Sydney).

Finally, the inquiry team reviewed a large volume of literature, including the literature on the economics of urbanisation, economic geography, organisational culture, urban planning and infrastructure, and the theory of complex adaptive systems.

Together, this evidence has provided a rich picture of New Zealand's urban planning system including its deficiencies and how these might be addressed.

1.5 The Commission's approach

Urban planning has a legitimate and important role. The three main rationales for urban planning are to:

- regulate negative external (spillover) effects of individuals' and businesses' land use on others and on the natural environment;
- make fair and efficient collective decisions about the provision of local public goods. The local, non-rival and non-excludable character of local public goods makes their supply by local government a logical option; and
- 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. The natural monopoly character of some local infrastructure services makes their supply by local authorities a compelling, but not inevitable, option.

For the purposes of this report, the term "urban planning" refers commonly to the planning institutions, regulations, principles, processes, formalities and tools that constitute the system for addressing these three distinct problems of urban development. These may include, for example, land use regulation, spatial planning, economic instruments, iwi management plans and infrastructure investment plans.

The nature of the institutional and regulatory design features of the urban planning system will, ultimately, determine its success in addressing these three distinct problems. Planning systems can vary in a number of important dimensions, including: 1) whether plans focus more on outcomes than on prescriptive, detailed rules; 2) whether land use regulations use directive, place-specific rules; or rules that simply prohibit types of effects on other property owners; 3) the distribution of responsibilities and powers between the central government and local communities; 4) the balance struck between local and national interests; and 5) the extent that plans are integrated (vertically and horizontally).

In examining different planning approaches and design attributes that should underpin a future planning system, the inquiry has assessed to what extent the following urban planning goals are likely to be achieved:

- flexibility and responsiveness - ability to change land uses as required;
- provision of sufficient development capacity to meet demand;
- mobility of residents and goods to and through the city;
- ability to fit land-use activities within well-defined environmental limits; and
- recognition and active protection of Māori Treaty interests in the built and natural environments.

The law and economics literature also provides helpful guidance as to how to assess the merits of different institutional and regulatory arrangements in achieving the above urban planning goals. Good arrangements minimise the sum of decision and error costs (Sunstein, 2008), and are sustainable over time – that is, able to adapt to changing goals and values over time.

Decision costs can include the time taken to collect and consider evidence, the expenses involved in obtaining expert advice (eg, lawyers) and running any decision-making body or process, and the costs resulting from delays in that process. For individuals, decision costs can also include the opportunity cost of time devoted to considering and weighing different options. Error costs are the social costs created when the decision-making process makes mistakes. Two examples are when the process makes "false positive"

mistakes (eg, regulating land-use activities that do not create significant externalities) and “false negatives” (failing to regulate activities that create major spillovers). Such errors can discourage beneficial activities or fail to adequately control harms (Baker, 2015).

1.6 Guide to this report

Chapter	Description
Chapter 2	<i>High-performing cities</i> – identifies the benefits that cities offer residents, firms, and the country. It describes why cities grow and the conditions needed for them to grow successfully. It discusses the contribution of local and national policies to successful city growth.
Chapter 3	<i>A rationale for planning</i> – explains what planning is all about – its nature, what problems it is trying to solve, its scope and the different forms it can take. It examines how land use regulation interacts with private property rights and the challenge of planning cities, given their unpredictable evolution and complex, adaptive nature.
Chapter 4	<i>Urban trends</i> – examines how the shape of New Zealand urban areas has changed over time, and how local policymakers have responded to population change. It places a particular emphasis on the trends observed in cities and how they differ across the country.
Chapter 5	<i>The urban planning system in New Zealand</i> – outlines the key features of New Zealand’s urban planning system, assesses at a high level the system’s performance against principles of good regulatory practice, and discusses some recent developments in the system’s evolution.
Chapter 6	<i>Outcomes of the current system</i> – reviews recent developments in key environmental and urban outcomes, and considers the contributions made by the planning system.
Chapter 7	<i>Urban planning and the Treaty of Waitangi</i> – reviews how the planning system and its legislative framework recognise and protect Māori interests in urban and environmental planning. It describes evolving engagement of Māori in urban and environmental planning, and considers how Māori interests can be protected in a future system.
Chapter 8	<i>Regulating land use in the built environment</i> – discusses the use of regulation as an urban planning tool. It assesses the performance of current land-use regulatory practice against key goals, and discusses options for a future urban planning system.
Chapter 9	<i>The natural environment</i> – outlines desirable features of a regulatory regime for managing the impact of the built environment on the natural environment. It finds that adaptive management has the potential to better deal with uncertain future impacts and cumulative effects, and that a mix of approaches, including the use of market-based instruments, could be used to achieve environmental goals more efficiently and effectively than traditional regulatory approaches.
Chapter 10	<i>Urban planning and infrastructure</i> – focuses on planning urban infrastructure, and how infrastructure is an essential complement to land, in meeting demand for development. It finds giving spatial planning more formal recognition would lead to better integration between land-use planning and infrastructure supply. It recommends governance changes in water services and ways for central and local government to collaborate on major infrastructure projects with national effects.
Chapter 11	<i>Infrastructure: funding, financing and procurement</i> – explores the potential for local governments to achieve net benefits for urban development through better pricing, funding, financing and procurement of infrastructure. It finds scope to improve urban outcomes through these means.
Chapter 12	<i>Other urban development models</i> – examines how urban land markets and infrastructure supply can be made more competitive and so relieve constraints on development capacity, explores the role of urban development authorities in enabling urban regeneration and residential development, and discusses auctioning of development rights
Chapter 13	<i>Statutory framework, institutions and governance</i> – Sets out the legislative framework for the natural and built environments, the proposed governance arrangements for effective monitoring and enforcement of environmental regulation, including a proposed hierarchy of plans, and identifies what is required for central government to effectively carrying out its stewardship role of the urban planning system.

Chapter	Description
Chapter 14	<i>Planning capability and culture</i> – provides an assessment of the key forces that are driving culture and capability in the New Zealand planning system, identifies capability gaps at both central and local government level, and describes the skills and capability needed to support a future urban planning system as proposed in this report.
Chapter 15	<i>A future planning system: key recommendations and benefits</i> – indicates the most important changes that should be made in order to achieve a first-rate future planning system and the key benefits that such a planning system would deliver for New Zealanders.