8 Regulating land use in the built environment

Key points

- A future urban planning system should be open to change and growth, ensure sufficient development capacity to meet demand, and enable residents to get to jobs and other activities, and enable travel between businesses and their suppliers, customers and staff.
- New Zealand's current system has a number of weaknesses, including undue regulatory burdens, poor use of discretion, and a failure to provide enough development capacity.
- The system's weaknesses can be attributed to:
  - a bias towards the status quo and risk aversion;
  - blindness to price signals;
  - slow and cumbersome processes for changing land use controls;
  - a limited suite of alternative tools; and
  - insufficiently strong checks on regulatory decision making.
- A future planning system should:
  - 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; and
  - allow for "event-based" rezoning, where land use controls are set in anticipation of predetermined triggers and activated once those triggers are reached.
- Local Independent Hearings Panels (IHPs) should be established to consider and review new plans, plan variations and private plan changes across the country. An IHP should:
  - be appointed by an independent statutory agency;
  - reflect the mix of skills, local knowledge and tikanga Māori required in each case; and
  - have the final decision on merits on plans, plan variations and private plan changes, with appeals only on points of law to the Environment Court.
- Future land-use planning legislation should:
  - give councils greater flexibility than at present to select the most appropriate and effective engagement tools for the issue at hand; and
  - place a focus on councils engaging with a full range of people affected by plan proposals.
- In a future planning system, councils should make greater use of targeted infrastructure investments to help offset any amenity loss in areas facing significant change from development.

Local governments have a number of levers to influence the development of cities, including policy, fiscal and financial measures, advocacy, provision of service (such as infrastructure) and regulation. This chapter discusses the use of land use regulation as an urban planning tool. It:

- considers the goals for urban planning discussed earlier in this report, and the implications these goals have for land use regulation;
- assesses the performance of current land use regulatory practice against these goals; and
- discusses options for a future urban planning system, in particular to:
  - ensure adequate supplies of development capacity;
  - reduce regulatory burdens and unnecessary prescription;
  - reduce uncertainty around the role of urban design in planning decisions;
  - provide for more immediate and more systematic checks on planning regulation; and
  - encourage more flexible and more representative consultation.

Although at a city level, land use regulation often needs to align with infrastructure provision, this chapter focuses primarily on regulation as a policy tool. Chapters 10 and 11 discuss issues related to infrastructure provision, funding and finance. Chapter 13 discusses the statutory framework, institutions and governance arrangements in a future planning system.

8.1 What characteristics should an urban planning system have?

Earlier chapters discussed urban trends in New Zealand, the nature of cities, the opportunities they create and the challenges they face. Chapter 3 discussed the rationale for planning that arises from the economic problems that planning is trying to solve – dealing with spillovers from land use on other people and the environment; and providing local public goods and infrastructure. Chapter 6 described how development capacity has failed to keep pace with demand in New Zealand's fastest growth cities. These chapters together establish that a future planning system should:

- be open to change and growth;
- provide sufficient development capacity to meet demand from households and businesses;
- enable residents to get to jobs and other activities; and
- enable travel between businesses and their suppliers, customers and staff.

These characteristics need to be achieved while safeguarding the natural environment and recognising and actively protecting Māori Treaty interests in the built and natural environments (Chapter 13).

Openness to change and growth

Chapter 2 discussed the importance of urban agglomeration for wellbeing, and the role that urban planning can play in managing the costs of agglomeration (eg, congestion, pollution), while protecting the beneficial elements. It highlighted the unpredictable nature of city development that results from millions of choices by individuals and firms with different preferences. It also highlighted the importance of planning practices that facilitate, or at least do not unduly hinder, people and firms making location choices based on their own judgements about the advantages and disadvantages. Overly restrictive or rigid rules can limit competition in geographic or product markets, reducing the incentives for innovation, service-quality improvements and more efficient allocations of resource. This results in less downward pressure on prices.

Sufficient development capacity to meet demand

Land use regulation affects the supply and price of land. Ensuring that a sufficient supply of development capacity is available to meet demand matters for individual wellbeing. High land (and therefore housing) prices within cities may discourage people from moving to and within urban areas where they may be more productive, or may force them to live further away from the city and employment centres than they would prefer. Both outcomes can reduce a person's employment opportunities, and a firm's access to suitably

skilled labour.[71] High house prices increase the risk of poor social and economic outcomes for groups already disadvantaged (Chapter 6). High commercial and industrial land prices can restrict the ability of productive firms to expand, or locate closer to suppliers, employees, customers and markets.

Mobility of residents to jobs and other activities

Chapters 2 and 4 discussed how spatial inequalities can be created within cities, as suburbs emerge with poor transport connections to other parts of the city and employment centres. This may mean that some segments of the community have less access to employment opportunities. Although answers to this problem lie mainly with planning and providing infrastructure and services such as roading and public transport, land use regulation can contribute by minimising barriers to development in established suburbs and areas close to existing transport networks.

Characteristics of efficient and effective land use regulation

Taken together, the three objectives or features just discussed imply that land use regulation should (simultaneously):

- avoid prescriptive requirements, except where these are necessary to manage significant negative externalities; yet
- avoid rules or policies that create high levels of uncertainty or unpredictability, as this can increase the risk and cost of development;
- be coordinated with the provision and funding of infrastructure;
- provide an efficient and fair means to resolve differences of interests in land use, and recognise the interests of all segments of a local community;
- place a high priority on providing and maintaining adequate supplies of development capacity for all potential uses, and delivering capacity of the type, location and quality demanded; and
- be able to respond to new circumstances without undue delay.

There is a tension between avoiding undue prescription and providing certainty in rule making. In practice this is a matter of judgement about when and to what extent discretionary decisions by planners will better achieve the key objectives of the planning system. Statutory objectives and principles, together with national guidance will help shape these judgements. Systematic independent review of Plans and Plan provisions will reinforce the guidance and shape practice over time (section 8.6).

A clear focus on key outcomes

An efficient and effective urban planning system requires a clear focus on key outcomes in the natural and built environments for which it has the major responsibility. The current definitions, purposes and roles given to councils under the Local Government Act 2002 (LGA) and the Resource Management Act 1991 (RMA) serve neither environment very well (Chapter 5). In the built environment, they give little guidance to councils about the importance of accommodating growth and change and supporting resident mobility, and insufficient defences against proposed rules or plan changes that unduly restrict development capacity or divert councils towards other objectives. Indeed many councils, planners and other parties, continue to pursue an unrealistically wide range of goals, through land-use planning processes (Chapter 5) Future planning legislation should clearly make specific provision for responding to growth pressures, providing flexibility in land use, and enabling mobility.

The government has already sought to provide more clarity about the role of councils in urban planning, including through amendments to the LGA in 2010 and 2012 and proposed amendments to the RMA, which would make the provision of sufficient residential and business development capacity a function of councils, and most recently through the National Policy Statement on Urban Development Capacity (NPS–UDC) (section 8.3). The key elements of these recent actions – clearer roles for councils and clear responsibilities to

[71] Bertaud (2014) argues that the "absolute limit" of the "spatial extent of a labor market" is an hour's commute (one way) (p. 9).

provide enough development capacity – should be carried over into any future system. However, they do not resolve problems with the definition of "environment" in the RMA, nor do they give much priority to the mobility and accessibility of residents and goods. Resolving these two issues will be important for the performance of any future planning system. Future statutory provisions for regulation of the built and natural environment are discussed in Chapter 13.

On the issue of growth and change, governments can make specific provision for the mobility and accessibility of cities through the Government Policy Statement (GPS) on Land Transport. The current GPS has a number of objectives related to access, such as:

- "[a] land transport system that addresses current and future demand for access to economic and social opportunities"; and
- "[a] land transport system that provides appropriate transport choices" (New Zealand Government, 2015, pp. 17 and 20).

The current GPS also notes that "the number of jobs that can be reached per hour of travel needs to increase over time if our growing cities are to become more productive and remain attractive places to live" (New Zealand Government, 2015, p. 17). However, the objectives in the current GPS have no particular weight in decisions about land use and infrastructure under the RMA or LGA. This means that the New Zealand Transport Agency (NZTA) has to rely on negotiations with councils, involvement in Plan preparation processes and appeals to align land-use decisions with its transport objectives. Placing a clear priority on mobility and accessibility in planning legislation would assist in aligning the incentives of central and local government, and in improving central government monitoring of the system's performance.

The Commission proposes that spatial plans or Regional Spatial Strategies (RSSs) be a formal part of the planning system (Chapters 10 and 13). This, strengthened by clearer legislative priorities for mobility and accessibility, will provide better opportunities for NZTA to participate in decisions about laying out and protecting future transport corridors; and to coordinate its investment plans with land-use planning in a region.

Retail New Zealand (DR74), Azeem Khan (DR116), Foodstuffs New Zealand (DR108), Habitat for Humanity Christchurch (DR114), the New Zealand Council for Infrastructure Development (DR103) and Wellington City Council (DR68) support a focus in urban planning on responding to growth pressures. A few submitters were concerned that too great a focus on responding to growth pressures risked undermining other important objectives for planning (Greater Christchurch Urban Development Strategy, DR83; Sir Geoffrey Palmer and Dr. Roger Blakeley, DR122; Whanganui District Council, DR95). Chapter 13 discusses the mix of objectives that urban planning should address.

Making specific provision for growth, flexibility and mobility in planning legislation would not mean removing other objectives, such as amenity, protection of historical heritage and outstanding natural landscapes. These make important contributions to the character and "liveability" of cities. However, it would mean that such objectives would be subordinate to the three main priorities and could not be used to frustrate their achievement (Chapter 3). In addition, as noted above, urban planning would still need to safeguard the natural environment (Chapter 9) and recognise and actively protect Māori Treaty interests (Chapter 7).

R8.1 A future urban planning system should make specific provision for responding to growth pressures, providing land-use flexibility, and supporting the ability of residents to easily move through their city.

Sections 8.3 and Chapters 12 and 13 set out specific proposals to ensure that urban planning responds to growth pressures.

8.2 The current system – the Commission's diagnosis

The New Zealand planning system has been subject to numerous analyses, including by the Commission (NZPC, 2012a, 2013, 2015a). This section introduces and expands on some key findings from these reports and discusses in more detail some underlying causes of weaknesses in the system.

The New Zealand planning system has particular weaknesses discussed in more detail in later sections. The system:

- fails to supply sufficient development capacity (section 8.3);
- imposes undue regulatory burdens and unnecessary prescription (section 8.4);
- creates undesirable uncertainty around the role of urban design in planning decisions (section 8.5); and
- lacks timely and systematic checks on decision making (section 8.6).

This section discusses some underlying explanations for these weaknesses.

Lack of clear limits

Chapter 5 identifies confusion about the purposes of the RMA, and lack of clarity about what "sustainable management" means. A very broad definition of the environment and the lack of clearly differentiated principles for regulation of different aspects of the environment add to the confusion. The scope of planning across different statutes is also unclear. As a result, and as discussed later in this chapter, the proper boundaries of land use regulation have been unclear, leading to excessive prescription, inappropriate use of discretion and scope creep. Clear principles to guide planning in the built and natural environments, and more systematic and timely checks on planning decisions, will help address this problem (Chapter 13).

Aversion to risk, and a bias towards the status quo

The way the current planning system operates has an inherent status quo bias and conservatism. This is a result of the political economy of planning, and how the RMA has been interpreted.

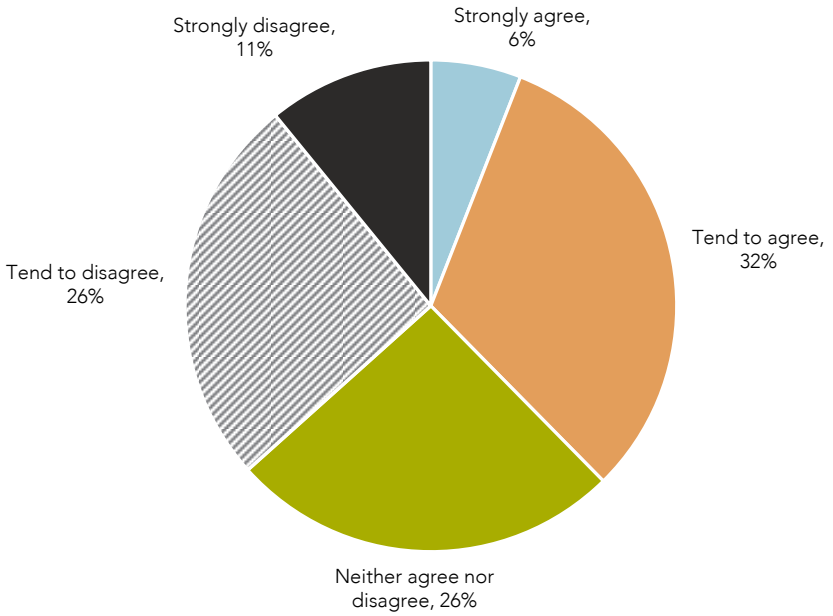
Planning and controls over the use of land are inherently contested territory, as they inevitably clash with individual objectives and private property rights, as Chapter 3 discussed. Land and property owners potentially affected by new development can have strong incentives to block or oppose it, either through lobbying for restrictive land use rules or by appealing local authority decisions that favour development. The Commission has previously discussed the nature of these incentives, which include:

- the high proportion of a person's wealth that is stored in housing and the corresponding resistance to changes that might put this wealth at risk;
- risk aversion and the endowment effect;[72]
- affinity for the existing amenities of a landowner's neighbourhood; and
- a desire not to bear the additional rate costs required to pay for new infrastructure (NZPC, 2015a).

Some 38% of respondents to the Commission's survey of local authorities tended to agree or strongly agreed that "local interest groups drive planning decisions"(Figure 8.1). Yet 37% thought otherwise. Different responses by councils may reflect real differences in the ways that interest groups in different districts present their views; or different council practices in taking those views into account.

[72] The endowment effect refers to the tendency of people to value what they already have simply because they already have it, and favour what they have over what they might gain, despite the gains from alternatives being demonstrably higher (Kahneman et al., 1990).

Figure 8.1 Survey responses to the statement "local interest groups drive planning decisions"



Source: Colmar Brunton, 2016.

Notes:

1. Because of rounding, totals may not sum to 100%.

A number of commentators and submitters have cited appeal and wide participation rights as barriers to development, and as disincentives for councils to set more enabling rules and policies (Urban Technical Advisory Group, 2010; Local Government New Zealand (LGNZ), 2011; Rhys Phillips, sub. 1; Selwyn District Council, sub. 33; David Hattam, sub. 41; Auckland Council, *Using land for housing*, sub. 71). Dodge (2016) cites Plan Change 56 in Wellington, which imposed restrictive controls on infill development in response to a "public backlash", despite the fact that most respondents to an earlier, representative survey of residents were comfortable with the more liberal District Plan rules. Much of the impetus for Plan Change 56 appears to have come from residents' associations, one of which sought to have all new development in their suburb halted (pp. 30–31).

Conversely, the planning system suffers from a "democratic deficit", with insufficient attention to the interests of new and prospective residents, workers, and businesses, those with fewer means to have their voices heard and those who are not property owners. A change in the status quo is likely in the interests of these groups, particularly planning changes that make housing more affordable; and that provide infrastructure that makes jobs more accessible (Chapter 5; NZPC, 2015a).

According to a number of submitters and commentators, a second contributor to risk aversion and bias towards the status quo is how the "effects-based" focus of the RMA has been interpreted and operationalised. Despite the fact that the RMA's definition of "effects" explicitly includes both "positive or adverse effects" (section 3) and section 5 talks about enabling people and communities "to provide for their social, economic, and cultural well-being", many believe the implementation of the RMA has been biased against the positive effects that may result from development. Catherine Scheffer said:

> An effects-based approach in my view is problematic in three key ways:
>
> - An effects-based approach inevitably privileges existing amenity over future amenity, and frequently overlooks positive effects (despite their inclusion in the RMA section 3 definition of 'effect');
> - Cumulative effects, generally speaking, are poorly dealt with in practice (despite their inclusion in the section 3 definition of effect); and
> - Some effects lend themselves better to measurement and mitigation than others.
>
> The fact that the RMA section 3 definition of 'effect' includes both positive effects and cumulative effects in my observation has not prevented practice which deals poorly with both. (sub. 39, p. 3)

David Mead of Hill Young Cooper commented that, at the moment,

> urban planning is cast as a form of competition where short run localised costs often outweigh long term benefits: the negative costs of a housing development that may change an areas amenity is identified, but the loss to housing supply from the development not proceeding is not counted. (sub. 6, p. 9)

David Totman of Waikato District Council similarly observed that planning "by its very nature is forward-looking, while under the RMA it is primarily oriented to regulating environmental effects/impacts and therefore tends to be backward-looking" (sub. 2, p. 1). Urban designer Barry Rae argued that the RMA's focus on avoiding, remedying and mitigating adverse effects "is understandable in respect of the natural environment, but is totally at odds with the reality of the built environment":

> Unfortunately, the RMA imposes the same assessment process to the built environment as it does to the natural environment. Unlike the natural environment (already created), the built environment is under constant change by planning, design and development processes. The built environment, because of social, economic, technological and political change, continually requires substantial restructuring and redevelopment. (2009, p. 17)

The Urban Technical Advisory Group (2010) concurred with Rae, commenting:

> The RMA currently has a non-urban focus and places a low emphasis on urban priorities. It is environmental protection legislation, but is applied to towns and cities where change and development are both inherent characteristics and in most cases required, if these places are to thrive. While the RMA processes explicitly describe how change is managed, on balance due to its intention to avoid adverse effects, the RMA tends to discourage the change that is often desirable and necessary. (p. 68)

Retail New Zealand agreed with the finding that the planning system suffers from risk aversion and bias towards the status quo (sub. DR74).

A number of submitters (The New Zealand Association of Impact Assessment, sub. DR105; Sir Geoffrey Palmer and Dr. Roger Blakeley, sub. DR122; and Federated Farmers, sub. DR96) questioned whether a focus on avoiding adverse effects worked against change in the urban environment. Yet there is other evidence that the broad definition of "the environment" in the RMA, combined with an effects-based approach, encourages planners to maintain the status quo. For example, arguments are advanced for controls and restrictions on out-of-centre commercial development. Centres, existing commercial distributions, and the amenity they provide are effectively considered to be resources that must be protected against adverse effects such as competition from other developments. Some court decisions have given these arguments credence, as an appendix to the section 32 report prepared for the Proposed Auckland Unitary Plan (PAUP) comments:

> Potential effects of commercial distribution are sometimes referred to as retail distributional effects and they have now been recognised by the Environment Court in a number of cases. Such effects occur where a new business (or cluster of businesses) affects key businesses in an existing centre to such a degree that the centre's viability is eroded, causing a decline in its function and amenity, and disenabling the people and communities who rely upon those existing (declining) centres for their social and economic well-being. (Auckland Council, 2013, p. 139)

In *Westfield NZ Ltd & other v Upper Hutt City Council*, the Environment Court agreed with the view that centres are "community assets":

> [61] The RMA (s.74(3)) is explicit that a council when preparing a plan must not have regard to trade competition. However references in the Act relating to trade competition are subservient to the overall thrust of the Act as set out in Part II and particularly in s.5 where community values are addressed. Thus if trade competition should reach a stage where a community asset represented by its CBD is weakened to an unacceptable degree, then a Council can intervene….Put another way, unbridled retail development at a scale and in a location driven by the whim of developers could destroy the sustainable management concept of the Act as it relates to promotion and preservation of a community.

In *Northshore Mainstreet Inc. v Discount Brands Ltd*, the High Court commented:

> [61] The key point of distinction between the adverse effects of trade competition on trade competitors and adverse effects which may properly be considered under the RMA, is that trade competition effects focus especially on the impacts on individual trade competitors. In contrast, where a proposal is likely to

> have more general effects on the wider community, then the RMA permits consideration of those effects.
>
> [62] In regard to shopping centres, I would not, with respect, subscribe to the view that the adverse effects of some other competing retail development must be such as to be ruinous before they could be considered. But they must, at the least, seriously threaten the viability of the centre as a whole with on-going consequential effects for the community served by that centre.
>
> [63] A community frequently invests substantial sums directly or indirectly in relation to shopping centres. For example, in the present case, the evidence shows that the Council itself owns much of the land associated with the Northcote shopping centre and a range of community facilities (in addition to retail shopping) has been established there. They are the kinds of facilities that provide amenity to the community in the form of a convenient location for shopping and other community activities. Indirectly, substantial sums may be spent on roading and other infrastructure to support existing centres. It follows that it is entirely permissible for a consent authority to take into account significant adverse social and economic effects on such facilities which could flow from the grant of consent to an application to establish a new retailing centre.

Section 8.4 further discusses policies that restrict commercial and retail development to existing centres.

F8.1 The planning system suffers from risk aversion and bias towards the status quo, reflecting:

- the incentives on property owners to oppose changes they perceive may put the value of their assets or character of their neighbourhood at risk, and the avenues open to them to pursue their interests;
- inadequate representation of the interests of new and prospective residents and businesses in planning decisions;
- the pressure placed on councils not to set rules and policies that enable development; and
- an overemphasis in the implementation of the Resource Management Act on managing or avoiding adverse effects on existing elements in the built environment, and insufficient attention to the positive effects of development, which does not sit well with the dynamic nature of urban environments.

Managing adverse effects in the built and natural environments is consistent with the rationale for planning identified in Chapter 3. Yet it is important that an effects-based approach is balanced by a clear focus on key outcomes that identifies which effects are most important (Chapter 13).

A dearth of, or unwillingness to use, other policy tools

As noted in Chapter 5, the architects of the RMA expected that "[r]egulatory rules [would only be] used where these were best applied, rather than just because they were an easy means to claim problems would be solved" (Gow, 2014). Simon Upton considered that the new law would only apply "tightly targeted controls that have minimum side effects" (1991, p. 3020). The corollary of this was a view that other, less coercive mechanisms such as economic tools (eg, prices, taxes or subsidies) would be used to discourage problematic behaviour or promote desired outcomes. However, alternative tools in the urban planning system have not been used much because of political barriers; and the absence of some tools may have contributed to an overuse of rules.

In their submission to a previous inquiry and engagement meetings for this inquiry, members of the Environment Court highlighted examples of highly prescriptive land use rules linked to transportation and concluded that:

> the bigger cities use district plans as their primary method of dealing with traffic congestion. This often seems to us to be inefficient, but as the councils lack pricing controls and other economic instruments, they have little choice. (*Using land for housing* sub. DR92, p. 4)

David Mead of Hill Young Cooper made a similar point:

> Absent full road pricing, planning becomes the next best alternative to a pricing mechanism to deal with the inefficient allocation of resources that arise from poorly conceived transport networks. In other words, either the government needs to get on and fix transport funding and pricing, or it needs to accept that the planning system is going to tackle the resulting inefficiencies. (sub. 6, p. 1)

Under current legislation, tolls and congestion charges cannot be placed on existing roads, and tolling schemes on new roads can only be introduced under Order in Council. It is likely that, in the absence of pricing tools for roads, local authorities are resorting to rules as a "second best" approach. The Commission has previously recommended lifting the restrictions on tolling and congestion charges (NZPC, 2015a).

To some extent, the reliance on rules may reflect the fact that they are easier to introduce than other policy tools. Gow (2014) comments:

> A big problem with plans is that rules are not by any means necessarily the first or best means of achieving outcomes. But they are relatively easy to produce, and politicians like them because they appear to be costless. By contrast, economic instruments (like subsidies and incentives, or charges for resource use) present a very different picture to politicians and voters. (p. 8)

Councils do not appear to make the most use of some of their existing financial tools, such as targeted rates (NZPC, 2015a).

Even so, it is clear that some councils' reluctance to accommodate growth and change stems in part from the difficulties they face in recovering the costs of new development. Part of this is due to the relatively limited suite of tools available to them. Central government has not provided much leadership in this space, despite the Minister for the Environment having a clear function under the RMA of considering and investigating

> the use of economic instruments (including charges, levies, other fiscal measures, and incentives) to achieve the purpose of this Act. (s 24(h), RMA)

Chapters 9, 11 and 12 each discuss and make recommendations for the greater use of economic instruments in planning.

F8.2

Councils overuse land-use rules in part because:

- they lack some alternative tools (such as road congestion charges); and
- political barriers hinder the full use of existing alternative tools.

The next sections discuss in more detail selected weaknesses in the current New Zealand planning system, and how a future planning system can address such weaknesses.

8.3 Ensuring adequate supplies of development capacity

This section:

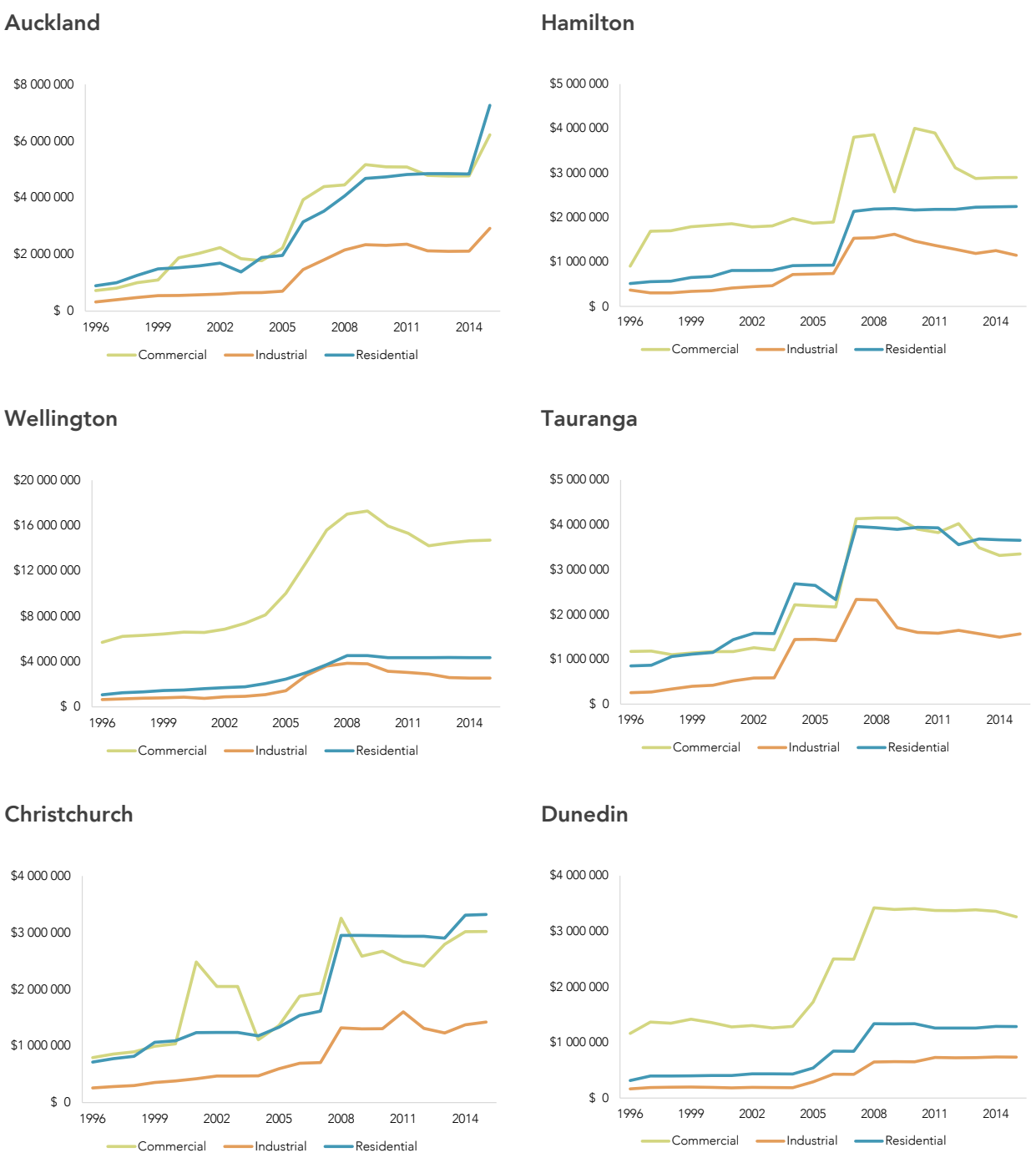
- describes how the planning system has struggled to provide adequate development capacity;
- discusses policies to increase the supply, particularly the better use of price information; and
- proposes the use of a price mechanism to trigger land release.

Chapter 6 found that the planning system as a whole had failed to deliver adequate supplies of residential development capacity, contributing to rising land and house prices (especially in fast-growing urban areas). Further investigation suggests that the planning system has struggled to ensure adequate supplies in other

areas. A common theme in many planning documents is the need to "protect" industrial land supply against use for other activities (eg, conversion for residential or retail uses) (Auckland Council, 2012; Wellington City Council, 2015). This goal often underlies the very detailed business-specific zoning rules outlined in section 8.4.

Judging by the price trends for urban land in recent years, councils would have better focused on providing more residential and commercial land. While industrial land prices in major New Zealand cities have increased over the past 20 years, rises in the price of commercial land have dwarfed the scale of that increase (Figure 8.2). Given these large price differentials, it is hardly surprising that industrial-zoned land in many cities has been used for commercial and residential purposes. For instance, in the Commission's *Housing affordability* inquiry, Fletchers expressed a view that large areas in South Auckland should be rezoned for residential purposes (NZPC, 2012).

Figure 8.2 Nominal per-hectare prices of land in major New Zealand cities, by type, 1996–2014



Source: Productivity Commission analysis of Quotable Value data.

Notes:

1. Land price data for Wellington only includes land within Wellington City area (therefore excludes Porirua City, Upper Hutt and Hutt City). This may explain the notably high values of commercial land in Wellington. The value of commercial land in Wellington's inner city is significantly greater than in the rest of the Wellington region.

F8.3 The planning system has struggled to provide adequate supplies of development capacity for residential and non-residential uses. A number of councils have tried to protect industrial-zoned land supplies, while the prices of residential and commercial land have increased at much faster rates.

Slow processes for changing land use controls

Slow processes for changing land use controls are one barrier to the timely supply of adequate development capacity. Councils face procedural barriers in responding to changing circumstances and preferences through the planning system. The current processes for changing land use controls through the RMA (except where they are required to align a Plan with a National Policy Statement (NPS) or National Environmental Standard (NES) require public consultation, and can take considerable time to complete. According to 2014/15 Ministry for the Environment (MfE) data, the average time taken to complete a private plan change was approximately three years, and more than four years for a council-led plan change (MfE, 2016g).

Under Schedule 1 of the RMA, where a change to an existing Plan is proposed, the council must seek public submissions and further submissions before reaching a decision. Submitters or applicants (for private Plan changes) can also appeal a Council decision, adding to the delay before the new controls can be brought into effect. Roughly a third of the average time taken to complete a private or council Plan change was due to action in the courts.

F8.4 Councils face procedural barriers in responding to changing circumstances and preferences through the planning system. The current processes for changing land-use controls through the Resource Management Act can take considerable time to complete.

In section 8.6, the Commission proposes more immediate, systematic and independent review of Plans and Policy Statements, with appeals available only on points of law. This on average will likely reduce the time for changes in land use controls to become effective.

Sir Geoffrey Palmer and Dr. Roger Blakeley submitted that "councils now have provisions for sped-up processes for changing land use controls, eg for Special Housing Areas" (sub. DR122, p. 5). Chapter 12 proposes that Urban Development Authorities can access streamlined planning processes in designated developments, similar to those currently provided for under the Housing Accords and Special Housing Areas Act 2013.

Previous blindness to price signals

Until the gazetting of a new NPS–UDC in November 2016, the planning system paid little attention to important price information, such as changes in land prices (NZPC, 2015a). Councils were not required to use such information in their decision-making or monitoring processes, despite the fact that land prices have a strong influence on housing affordability, particularly when rising prices are combined with restrictive land use rules. Importantly, price signals provide an indication of whether councils are successfully making enough land and development capacity available within their areas.

Instead, councils tended to rely on population projections, which are infrequent and often inaccurate. Councils often released development capacity according to a predetermined schedule. While this process offered relative certainty to infrastructure providers, developers and landowners, it was inflexible in the face of changing demand. This inflexibility broke the link between the demand for development capacity, and the supply response. As a result the planning system was slow to respond to growth pressures, tended to undersupply development capacity, lacked an important check on its activities, and could target the wrong

issues (such as the focus in many New Zealand cities on protecting industrial land supply, despite much higher demand for residential and commercial land) (NZPC, 2015a). Retail New Zealand (sub. DR74) agreed that planners do not often consider the effects of constrained land availability on prices.

F8.5 The current planning system has too often been blind to price signals, leading to poor responsiveness, and undersupply of development capacity, and misdirected effort.

Price information as a major driver of planning decisions

A responsive urban planning system needs to be able to adjust land use controls in response to changing circumstances without undue delay. The ability to change rules promptly matters because even the best Plans will fail to anticipate all developments, and land use controls that are at odds with new preferences create inefficiencies and opportunities for profiteering. Prices are a good indicator of changing demand for land for different types of uses. A future planning system should make land and house price information a central tool of council monitoring and plan development processes.

In its *Land for housing* report, the Commission discussed ways to use price information in urban planning processes, including as:

- a tool for measuring and monitoring the adequacy of the supply of development capacity;
- a mechanism for assessing the relative supplies of different types of capacity (eg, residential, commercial and industrial); and
- a mechanism to drive the release of development capacity (NZPC, 2015a).

Price information is dynamic, reflecting changes in individual and business preferences and the relative state of demand and supply. Price information is also much more up-to-date than population forecasts (which are commonly used in planning processes). When combined with mechanisms that provide a credible commitment to release land where the market is out of balance, price-based planning can also help break the expectations of future capital gains that make land banking a rational strategy.

Many submitters supported the use of prices as a policy and monitoring tool in planning (Foodstuffs New Zealand, sub. DR108; Retail New Zealand, sub. DR74; Habitat for Humanity Christchurch, sub. DR114; and Sir Geoffrey Palmer and Dr. Roger Blakeley, sub. DR122), with some arguing that they are already used for these purposes (Palmerston North City Council, sub. DR83). Other submitters were concerned about a risk of privileging price information over other factors (Greater Christchurch Urban Development Strategy, sub. DR83; Horticulture New Zealand, sub. DR73; Urban Design Forum, sub DR101; Wellington City Council, sub. DR68; Whanganui District Council, sub. DR95).

Planz Consultants Ltd. (sub. DR60), the Urban Design Forum (sub. DR101) and Auckland Council (sub. DR86) questioned the practicality of using price information to guide land-use changes. The NPS-UDC, discussed in the next section, will soon begin to provide regular information on land prices. This information will provide a firmer basis than at present for designing a policy to use price information to drive the release of land.

R8.2 Information about land prices should be a central policy and monitoring tool in any future planning system, and should drive decisions on the release, servicing and rezoning of development capacity.

The National Policy Statement on Urban Development Capacity 2016

The NPS–UDC aims to ensure that local authorities provide enough development capacity to meet demand over time for residential and business uses (New Zealand Government, 2016). Its provisions, mandatory under the RMA, are differentiated according to whether local authorities have high-growth or medium-

growth urban areas within their district or region, or otherwise. Currently, high-growth and medium-growth urban areas are those areas with more than 30 000 residents and with expected growth over the period 2013 to 2023 of more than 10% (for high-growth areas) , or between 5% and 10% (for medium-growth areas).[73] The most stringent requirements apply to local authorities with high-growth urban areas. The NPS–UDC requires such local authorities to (among other things):

- ensure that, at any time, sufficient capacity to develop land for housing and businesses is available;
- be satisfied that the infrastructure required to support urban development is available;
- carry out, at least every three years, an assessment of the capacity for developing housing and businesses;
- monitor, among other things, prices and rents for housing, residential land and business land by location and type; and changes in these prices and rents over time;
- use information on price differentials between zones to understand how well the market is functioning;
- factor in additional margins of at least 20% in the short term and medium term and 15% in the long term, above projected demand for development capacity;
- provide further development capacity and enable development within 12 months if evidence gathered shows that development capacity is not sufficient;
- set minimum targets for sufficient, feasible development capacity for housing (targets can be re-set without going through a full consultation process as provided for in Schedule 1 of the RMA); and
- produce a development strategy that demonstrates, by identifying the broad location, timing and sequencing of development, that development capacity will be sufficient in the medium term and long term.

The NPS–UDC strongly encourages local authorities with high-growth urban areas to work together and with infrastructure providers to give effect to the NPS. The Minister for the Environment will review the implementation and effectiveness of the NPS by the end of 2021 (New Zealand Government, 2016).

Price-driven land release

The Commission acknowledges that the NPS–UDC is a useful development in requiring councils to monitor and have regard to land and rental prices in their planning decisions. Yet a credible commitment to a trigger mechanism that requires the release of development capacity in response to price differentials would have a more salutary effect on the provision of development capacity and, therefore, on affordable land prices. In its *Using land for housing* report, the Commission argued that the planning system needed a mechanism to bring the market for development capacity back into equilibrium, and recommended "event-driven" land releases. This means that new development capacity would be made available in response to significant disparities between the price of developable and non-developable land (NZPC, 2015a).

The main features of the Commission's proposal are that:

- central government, representing the national interest, would use land price information to set a trigger in terms of price differentials between developable and non-developable land; and
- if the price trigger were reached, local authorities would be required to release further development capacity (appropriately zoned land and provision for supporting infrastructure).

It is likely that price triggers will need to be specific to particular urban areas, as the relative price of developable and non-developable land will be shaped in part by varying local factors, such as the cost of converting non-developable land into developable land.

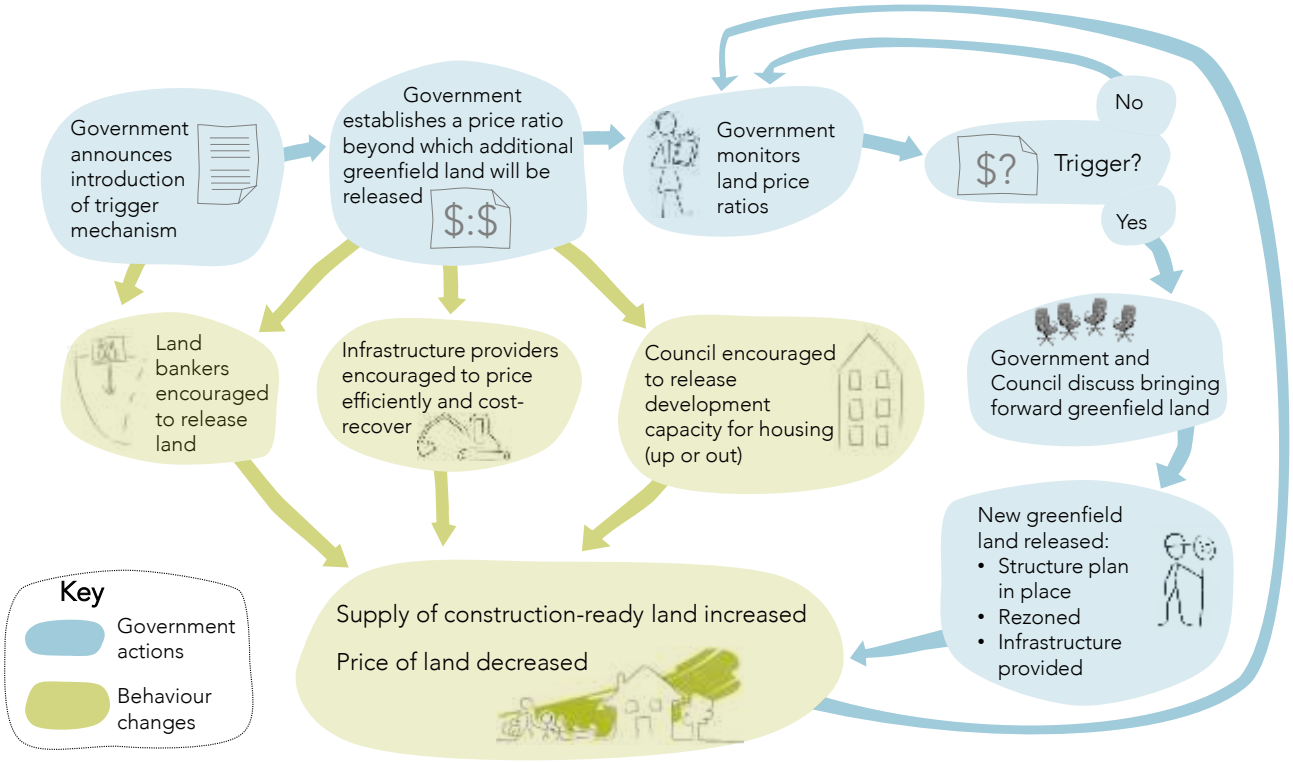
[73] The Minister for the Environment will review these definitions by 31 December 2018.

In practice, a credible commitment to a price trigger would mean early discussion between central government and the council in question about what areas are best suited to accelerated release. But, to put in place a credible commitment, a future planning system should provide a process to:

- bring forward the release of additional greenfield land where relative prices exceed the threshold; and
- ensure that the greenfield land brought forward is serviced with the necessary bulk infrastructure.

The challenge here for a planning system will be to provide councils with the means to meet their usual responsibilities for supplying bulk infrastructure. This issue is explored in Chapter 11.

Figure 8.3 How a price-driven trigger to release greenfield land would work



R8.3

In a future planning system, central government should establish thresholds (specific to particular urban areas) for the price difference beyond developable and non-developable land. A future planning system should provide a process involving the relevant council to bring forward the release of additional greenfield land where relative land prices exceed the threshold set.

Some submitters were concerned that using prices to trigger a change in land use would by-pass the usual processes of plan formation (Allison Tindale, sub. DR110; Wellington City Council, DR68; Whanganui District Council, sub. DR95). On the contrary, the Commission proposes that such changes be provided for as part of spatial planning in the form of a statutory RSS (Chapters 10 and 13). The RSS would identify land for future development and infrastructure corridors to service such land (taking account of areas of high conservation value; sites of significance to mana whenua; and designated public open spaces). While triggers would be binding, there would be ample opportunity to plan in an orderly way for their occurrence. Sir Geoffrey Palmer and Dr. Roger Blakeley submitted that councils are now actively addressing having integrated, forward-land supply and infrastructure provisions in place (sub. DR122).

Councils would continue to bear their usual responsibility for infrastructure provision, to avoid the moral hazard of passing that responsibility to central government. Regular monitoring of price differentials will give

councils and other parties ample advance warning of the need to plan for additional infrastructure provision (Figure 8.1).

Auckland Council (sub. DR86) and Horticulture New Zealand (DR68) were concerned that requiring local authorities to supply infrastructure in such circumstances would be impractical; while Water New Zealand (sub. DR67) pointed to legal and governance issues that would need to be resolved if central government had the power to direct Council Controlled Organisations. The Commission acknowledges that these are significant and difficult issues to resolve. Chapter 11 discusses options for councils to fund infrastructure to support development.

R8.4 A future planning system should provide a process for ensuring that greenfield land brought forward for development as a result of the price threshold being exceeded is serviced with necessary bulk infrastructure, to allow land to be developed. Local authorities should continue to bear their usual responsibilities for supplying bulk infrastructure.

A price-trigger mechanism for the release of developable land will complement and reinforce the Commission's proposals for competitive urban land markets described in Chapter 12. Both approaches will encourage land bankers to release land at affordable prices. In practice, a credible price trigger and competitive urban land markets together should make land prices affordable and ensure sufficient infrastructure serves development on the city fringes, without central government intervention.

In its draft report, the Commission recommended that central government should have power to override local plans in a limited (but unspecified) set of circumstances. Submitters widely opposed this recommendation, in part because they were unclear about the circumstances in which central government would use such a power (subs. DR110, DR86, DR83, DR73, DR91, DR122, DR67, DR68 and DR95). On reflection, the Commission wishes to reiterate that any central government power to intervene in local plans should be restricted to those matters with a clear and substantial national interest. In the current context this would relate to the supply of development capacity sufficient to meet demand, so as to avoid the harmful social, labour market and macroeconomic effects of high land prices (as discussed in Chapters 2 and 6).

8.4 Reducing regulatory burdens and unnecessary prescription

This section:

- provides evidence of undue regulatory burdens and excessive prescription in the planning system;
- proposes the use of a national template to reduce unnecessary and unhelpful variation across plans; and
- points forward to other measures to reduce regulatory burdens and prescription.

Undue regulatory burdens

A number of reports have identified unnecessary, excessive and poorly targeted land use regulations in the planning system.

- In its *Using Land for Housing* report, the Commission pointed to the net economic costs of minimum apartment size, apartment balcony and minimum parking rules, including unnecessarily increasing the costs of new dwellings (NZPC, 2015a). The same report also highlighted rules that could have net benefits, but which had been poorly designed in many cities. These included building height limits, density controls and overly broad heritage or "special character" protections.
- The Principles Technical Advisory Group (2012) observed that their "own experience leads us to the view that there is certainly a degree of unnecessary over-regulation in RMA [Resource Management Act] plans", citing examples such as:

  - "[v]isual streetscape rules which apply to rear lots not visible from the street", "[r]equiring proponents of commercial/industrial development to assess the likely number of employees/hectare in the year 2031";
  - "[h]eritage zone provisions which apply to a 14 year old Lockwood"; and
  - "permitted activity standards that negate practical implementation – e.g. earthworks volume thresholds set so low that no development can proceed without a consent". (p. 52)
- The Urban Technical Advisory Group (2010) pointed to, among other things,
  - "the use by councils of full discretionary activity status when for a number of activities restricted discretionary status could be more widely applied… The added uncertainty of a full discretionary consent and possible appeal adds to risk and therefore costs";
  - "the use of unnecessarily restrictive district plan rules: it is common for local authorities to draft rules so widely that they catch many properties other than those to which the council intended them to apply"; and
  - "Minimum parking requirements in district plans, [which]… result in considerably increased costs especially for medium and high density developments". (pp. 23–24)
- The Registered Master Builders Association (2015) discussed overregulation of development "without regard for affordability implications" (p. 7).

Some land use regulations barely seem to have any connection to a negative externality at all, such as the requirements in a number of operative or proposed district plans for developments in commercial or business zones to have specified floor-to-ceiling heights.

- The Palmerston North District Plan (Palmerston North City Council, 2010) requires that the ground floors of buildings on "pedestrian streets" must be "not less than 1.3 times the floor to floor height of upper floors". This rule is justified on the grounds that "[g]reater first storey height helps accommodate a range of different future uses at ground floor level including food and beverage related retail. It also promotes active edges and facilitates change" (Chapter 11, p. 25).
- The proposed Christchurch Replacement District Plan, as notified, included a rule that required a 3.5-metre minimum floor-to-ceiling height to apply in the Commercial Core zone. In its closing submission to the Independent Hearings Panel (IHP), the Christchurch City Council argued that the rule aimed to ensure "flexibility and adaptability of the building to accommodate future uses" and that "buildings do not appear compressed or 'squat' which sends a message of low quality and lack of generosity" (2015a, p. 32). The Council also argued that the rule was "consistent with good practice and will promote certainty for users of the plan" (p. 33).
- The proposed Thames-Coromandel District Plan sets a 3.5-metre minimum floor-to-ceiling standard for the ground floor developments in its Pedestrian Core zones (2012, p. 405).
- The PAUP, as notified, included a number of floor-to-ceiling obligations, depending on the floor, zone and type of building. The stated purposes of these rules are that "buildings are adaptable to a wide variety of uses over time, [and] provide adequate sunlight and daylight access to buildings" (Auckland Council, 2013, Chapter 1, section 3, p. 27).

None of the underlying council analyses appear to have seriously considered the alternative arguments that owners of buildings will have incentives (ie, assurance of ongoing rental income) to design properties that will meet a range of needs, or assessed the relative costs and benefits of the regulation in any detail. The IHP for the Christchurch Replacement District Plan deleted their proposed height-to-ceiling rules because "developers generally build developments with an adequate floor to ceiling height" and there was "insufficient justification for imposing a minimum floor-to-ceiling height rule" (Christchurch City Council, 2015a, p. 60).[74]

[74] Decision 11.

F8.6 The planning system shows considerable evidence of unnecessary, excessive (and poorly targeted) land use regulations.

Too many plans and too much unnecessary variation across plans

In the current system, the relevant local authorities within a region prepare many plans independently of each other. Though guided by broad provisions in the RMA and related jurisprudence, local authorities have been left to develop their own methods in forming and laying out plans, and presenting them to the public and to subsequent users. Users find it difficult to identify and make sense of the parts of plans relevant to their property or proposed development. Finding a way through one plan does not necessarily help with finding a way through another plan.

Sir Geoffrey Palmer and Dr. Roger Blakely submitted:

> There are regional plans and there are territorial district plans. Making plans under the RMA was a challenge for many local authorities in the early years. Many local authorities re-invented the wheel at considerable expense, and with little attention to shared ways to deal with common problems… There are simply too many plans across a region. They are too diverse and they are too complicated. This has involved local authorities in considerable duplication of effort and there has been a proliferation of planning documents. The result has been ineffective and inefficient planning and poor resource management outcomes. (sub. DR122., pp. 3–4)

The submitters recommend the use of national templates, as proposed in the Resource Management Legislation Amendment Bill introduced into Parliament in 2015 (New Zealand Parliament, 2015).

> That is a change that we support, provided it does not undermine the devolved decision-making and community-enabling principles of the RMA (we have concerns about the Minister's regulation-making powers to override councils' decisions on residential land use rules). (sub. DR122, p. 4)

Associate Professor Ken Palmer also recommends the use of templates (K. Palmer, 2017). These templates could be used to reduce unnecessary variation across plans and in the way that they are presented. Standardised land use rules would create broader benefits (eg, around the installation and maintenance of utilities, such as gas, water, electricity and telecommunications infrastructure). Where the government wanted to promote common regulatory approaches, they would need to consult with local authorities about the form of any new rules and to undertake a regulatory impact analysis (similar to the current requirements for preparing an NPS or NES).

F8.7 The planning system has too many plans within regions, with too much unnecessary variation across plans in content, layout and presentation.

R8.5 In a future planning system, the government should use a national planning template to reduce unnecessary variation across plans in content, layout and presentation.

Sir Geoffrey Palmer and Dr. Roger Blakeley also recommend each region should have only one district plan, and that it should be developed after a regional spatial plan is adopted (sub. DR122, p. 4). Consistent with this, the Commission proposes an integrated approach to developing RSSs and the District Plans of constituent territorial authorities (Chapter 13). Use of a national template to reduce unnecessary variation across plans will make an integrated approach easier.

Too much prescription

Zones and other forms of land use regulation that prohibit or restrict certain types of activities on specific sites necessarily limit the ability of people and firms to make their own location choices. Such restrictions can be justified where they control significant externalities, such as noise and other forms of pollution. However, regulatory approaches that a number of New Zealand urban councils currently use appear deliberately designed to inhibit flexibility without such justifications. Two common examples are "centres policies" that

aim to direct activity to specific areas and zone restrictions that specify which types of businesses can locate in a zone.

Centres policies aim to direct activity to specific areas

Centres policies aim to direct retail and commercial activity towards specific areas, typically those where such activity currently takes place. Such policies often also seek to maintain a "hierarchy" of centres, with the Central Business District (CBD) at the top. Wellington City Council is one council that uses the centres hierarchy (Figure 8.4). Centres policies generally involve more restrictive activity classifications on commercial development outside designated centres, and controls on the type of activities that can occur within the centres.

Figure 8.4 Wellington City Council centres hierarchy

Source: Adapted from Wellington City Council (2015).

A range of goals or objectives are cited for centres policies, including:

- reducing traffic, congestion and associated environmental problems (especially by encouraging the use of public transport);
- concentrating employment;
- maximising the use of existing public infrastructure and easing pressure on council infrastructure budgets;
- ensuring accessibility to services;
- supporting compact urban forms and easing pressure on peri-urban agricultural land; and
- contributing to a sense of community identity.

A number of submitters cited these objectives in favouring centres policies (Allison Tindale, sub. 8; Brenna Waghorn, sub. 9; David Hattam, sub. 41).

The Commission has also heard of New Zealand cases where council planners have aimed to restrict commercial development to designated centres on the grounds that this would reap productivity benefits for the local economy through agglomeration benefits (Chapter 2 discusses evidence for agglomeration economies). It appears however that such a justification for centres policies:

- fails to understand that agglomeration economies result from the choices of residents and businesses about which locations are likely to best suit their particular skills and enterprise; and
- fails to take into account the very real costs of forcing businesses to locate in more expensive areas than they might prefer; and/or in areas that have less favourable transport links with their employees, customers and suppliers.

In particular, it is only businesses that are likely to benefit from locating near other businesses in the centre or from concentrations of customers that will be willing to bear the higher costs of locating in the central city. Forcing all businesses to do so is likely to render some unviable at the margins.

Centres policies are common in Australian, British and New Zealand planning systems. Two-thirds of the respondents to the Commission's survey of local authorities said they had policies in place that restrict the development of large-format retail or other commercial activity outside centres. Local and international experience with centres policies suggests that they often fail to achieve their objectives and can have negative economic impacts (Box 8.1).

Box 8.1 **International and local experiences with centres policies**

Impacts on employment patterns

Day et al. (2015) analysed employment growth in Melbourne between 2001 and 2011 and found "with remarkable consistency, across a range of approaches, that AC [activity centres] policies are not significantly associated with higher jobs densities in the AC influence areas", with the exception of one group of centres (p. 11). Pfister et al. (2000) assessed employment patterns in Sydney between 1981 and 1996 and concluded:

> There may be an entrenched employment pattern that is more emphatically dispersed than polycentric, despite all the rhetoric of edge cities and public policies designed to encourage more nodal order and less dispersion in metropolitan employment patterns. On the one hand, the findings may well point to the hegemony of the market in directing metropolitan employment patterns to 'optimal' spatial solutions. On the other, and in the Australian context, they do lend weight to concerns about…the resistance of the market to planning interventions. (p. 440)

Co-location of business and residential uses

Goodman et al.'s (2010) analysis of housing supply in Melbourne between 1990 and 2008 found that "planning policies which sought to increase the proportion of new housing built close to designated activity centres and public transport nodes, specifically train stations, appear to have had very little influence" (p. 74). They attributed this lack of influence to vague language in policy and regulatory instruments, which was "not specific enough to require compliance" (p. 75), but also to underlying economic and market forces:

> Change is occurring in that, for example, the size of inner urban apartments is falling and the size of predominantly detached urban corridor dwellings is increasing. However, much change seems not to be strongly driven by government planning policy…Developers minimised the impact of government policy on development decisions. One stated that [planning policy] *Melbourne 2030* had no impact on development decisions. Some developers stated that they based their planning on strategic market research into demographic trends, consumer preferences, and market opportunities, and that they understood and catered to market preferences. (p. 74)

In Auckland, a 2007 evaluation of the Regional Growth Strategy noted that capacity for residential and business development was available within designated centres, but was not being taken up. The evaluation also noted that intensive housing was emerging outside intended centres, in business zones (which had larger sites, fewer rules and less community resistance) or in areas of high amenity (Regional Growth Forum, 2007, p. 53).

Protection of existing retail centres

A review of the English Planning Policy Guidance 6 (PPG6), which required local authorities to "sustain and enhance the viability of town centres" found that, although the supply of new regional shopping centres and out-of-centre stores had been restricted, traditional town centres "continued to lose market share" and there had been little success in "redirecting activity back into town centres, especially smaller centres" (C B Hillier Parker / Cardiff University, 2004, p. 91). The Australian Productivity Commission cited UK evidence that, in some cases, policies to protect town centres had the perverse effect of harming the smaller, independent stores they were aiming to protect (APC, 2011a, p. 248).

Reduced productivity and competition

Cheshire, Hilber and Kaplanis (2011) compared English, Welsh, Scottish and Northern Irish planning policies, and estimated "an aggregate loss of TFP [total factor productivity] of more than 20 percent on average since the late 1980s as a result of planning policies and their applications by LPAs [local planning authorities]" (2011, p. 28). Noting widespread evidence that TFP rises with store sizes, Cheshire et al. concluded that there were good reasons to think that "planning policies – in particular town centre first policies – directly cause a significant reduction in total factor productivity in retailing – at least in the case of the large supermarket sector" (p. 27).

Haskel and Sadun (2012) used micro-data to explore UK retailing productivity growth between 1997 and 2003. This period immediately followed the regulatory changes that made it harder to build large out-of-town stores. They observed a shift in British retailing (especially supermarkets) towards smaller stores, which was "remarkably different from what happened in countries with different planning policies, where retail chains have chosen large store formats to drive their expansion" (p. 426). Haskel and Sadun concluded that the fall in shop sizes was

> associated with lowered TFP growth by about 0.4% pa, about 40% of the post-1995 slowdown in UK retail TFP growth. Given that the slowdown in retailing alone is about one-third of the entire slowdown in UK market sector TFP growth, this is about 13% of that entire market sector slowdown. It is also around £88,000 per small chain store created. (p. 445)

Inquiries into groceries sectors have identified centres policies as constraints on competition. The Australian Competition and Consumer Commission concluded that access to suitable and large sites was a major barrier to entry by independent supermarkets and that

> zoning and planning regimes, including centres policies, act as an artificial barrier to new supermarkets establishing in areas, thereby potentially impacting on competition between supermarkets to supply consumers. In particular, such policies, by limiting opportunities for new developments, contribute to increasing the level of concentration in the retail grocery sector. (2008, p. 195)

The United Kingdom Competition Commission concluded that the planning system constrained the entry of new larger grocery stores and contributed to a shortage of land for such stores. They highlighted in particular the planning rules that restricted out-of-centre developments across the United Kingdom as acting "as a barrier to entry or expansion in a significant number of local markets" (2008, p. 175).

F8.8 Many local authorities in New Zealand discourage or prevent the development of commercial activity outside designated centres. Local and international experience with such policies suggests that they often fail to achieve their objectives and can act as barriers to competition and productivity growth.

A common theme in current and proposed district plans with centres policies is reducing competitive pressure on existing commercial areas, particularly from malls and larger format retail ("box stores"):

> The Central City forms the Regional Centre of Hamilton and is the dominant commercial, civic and social centre for the City and region and the focal point for the majority of the City's workforce. However the previous planning framework has enabled an unplanned dispersal of retail and office development which has contributed to the underperformance of some elements of the Central City with consequential effects on its function, amenity and vitality. It is important that future development in other parts of Hamilton does not adversely impact the important role of the Central City as the primary centre for the Waikato region. (Hamilton City Council, 2014, Volume 1, Chapter 2, p. 6)

> A potential threat to the viability and vitality of Centres is the increasing pressure for larger scale supermarkets, large scale retailing and other shopping destinations to locate in areas outside the City's traditional town centres. This is of particular concern given that Wellington's Centres represent a considerable investment, not only because of the infrastructure within them, but also because of the commercial and community services and facilities, and the street and landscape improvements they may contain. In the context of sustainable management these existing commercial centres are a valuable physical resource, and provide places that are highly accessible by multiple transport modes. For these reasons, Council seeks to ensure the viability and vitality of established Centres is not undermined by inappropriately located out-of-centre retail activities. (Wellington City Council, 2015, Volume 1, Chapter 6, p. 1)

> …the inappropriate development of additional Key Activity Centres may undermine the community's investment in existing centres and weaken the range and viability of the services they provide. (Environment Canterbury, 2013, Chapter 12A, p. 7)

Indeed, some district plans appear to see the reduction in competition as a beneficial outcome from the planning system. The Palmerston North District Plan, for example, attributes the "success of the inner business area" to, among other things,

> the absence of strong competition from competing suburban centres, this being a consequence of previous commercial containment policies which recognised the adverse impacts associated with permitting extensive peripheral retail development to occur. (2010, Chapter 11, p. 6)

The Palmerston North City Council reiterated its adherence to this approach in its submission (sub. DR62).

In one high-profile case,[75] Hamilton City Council tried to hinder the development of a mall by Waikato-Tainui to protect the city's CBD. It did so by varying its District Plan without first advising Tainui. The High Court overturned the Council's decision following a judicial review.

F8.9 In trying to protect existing city and town centres, some New Zealand urban local authorities have sought to shield retail and commercial enterprises in the centres from potential competitors in other locations.

Such restrictions could be justified if they delivered clear and significant benefits, but such benefits are not obvious. As outlined in Box 8.1, there are serious questions about the efficacy of centres policies. Also, many of the other arguments cited for such policies are largely about the amenity of "vital" or "vibrant" centres. Although efficiencies in the use of public infrastructure *may* result from centres policies, these are not guaranteed. As the Australian Productivity Commission noted,

> while restrictive centres policies may be used to encourage more focused infrastructure investment, this will not necessarily translate into infrastructure being fully utilised at a government's preferred development locations. (APC, 2011a, p. 285)

Phil McDermott observed (of the University of Waikato's defence (sub. DR079) of the Hamilton City Council centres policy):

[75] *Waikato Tainui Te Kauhanganui Inc. v Hamilton City Council* HC HAM CIV2009-419-1712, 3 June 2010.

> [A]n alternative interpretation [is]: that the District Plan has been shaped by the uncritical adoption of policies to sustain the existing retail hierarchy in part in the belief that this will bring about a return to the retail dominance of the high street in the face of decentralising tendencies: This: (a) does not recognise recent, current, and potential future changes in the distribution of goods and services and the nature of consumption; (b) fails to consider the changing nature of inner city activities and economies and the structural foundations of these changes; (c) reinforces the current distribution of wealth, effectively protecting established capital while suppressing new investment and innovation; and (d) promotes longer-distance trips for household spending and services than would be the case if a more decentralised pattern of commercial investment (to match residential development) were more freely allowed. (McDermott, 2017, p. 14)

Although some argue centres policies better serve people on low incomes (eg, David Hattam, sub. 41), contrary evidence shows that the growth of some large-format retail chains in the United States benefited poorer people, in particular through their lower prices (Basker, 2007).

The main argument advanced for centres policies that has some merit is that more dispersed commercial patterns may lead to greater car use, and associated pollution and congestion. However, it does not follow from this that tight regulatory restrictions on the location of retail and other commercial activity is the best solution. Other options, such as congestion pricing and emissions taxes or regulation, would more directly target the sources of concern (ie, congestion and pollution) (Chapter 9). Similarly, if the primary objective is maintaining and developing areas that are attractive to retailers and their customers, then other actions would be better. Such actions would include:

- targeted investments in the public realm and infrastructure;
- a sufficient supply of development capacity; and
- flexible land use controls within areas with a high degree of commercial activity (which permit a wide range of uses, and so allow the area to adjust to changing preferences).

Business-specific zone restrictions

A related regulatory practice that limits the ability of cities to evolve in response to changing preferences and individual choices is a business-specific zone restriction. Examples of such detailed restrictions are noted in Box 8.2.

Box 8.2 **Examples of restrictions on business operation in district plans**

The Hutt City District Plan limits retail outlets near the Seaview marina to "the sale of food and beverages for the consumption on site and to equipment directly associated with marina related activities". Shops in the area must also not exceed "100m² in gross floor area" or 8 metres in height (2011, Chapter 7B, pp. 6–7). Similar controls exist in the PAUP for the Marina zone and Minor Port zone.

The Wellington City District Plan limits the establishment of retail activities in its Business 2 zone to "trade supply retail, wholesalers, building improvement centres, service retail, ancillary retail, and yard-based retail activities", to "maintain industrial land availability and the viability and vitality of Centres" (2015, Chapter 33, p. 9).

Under the operative Christchurch City District Plan, any "retail activity undertaken from a site [in the Business 3 Zone] shall only consist of one or more of the following:

> (i) the display and sale of goods produced, processed or stored on the site, and ancillary products, up to 20% of the net floor area on the site used to produce, process or store those goods, or 350m² retail floorspace, whichever is the lesser;
>
> (ii) yard-based suppliers;
>
> (iii) trade suppliers;
>
> (iv) second hand goods outlets;

(v) food and beverage outlets; and

(vi) service stations. (2014, Volume 5, Part 3, 5.3.1)

The Proposed Hamilton City Plan (2014) controls the size of retail shops, banks, yard-based retail, restaurants, cafés and licensed premises and other forms of commercial activity in the city's business zones. Varying degrees of restrictiveness apply, depending on the business zone these activities are located in. For example, restaurants, cafés and licensed premises with a gross floor area of more than 200 square metres are a non-complying activity in the Large Format Retail Area business zone. Commercial places of assembly without cinemas or bowling areas are a permitted activity in the Major Event Facility business zone, but places of assembly *with* such additions are non-complying.

The Palmerston North City Council District Plan limits the number of "prepared food and beverage outlets" in the Fringe Business Zone (which is intended to accommodate demand for large-format retail) to one outlet on each site The Plan also requires that the outlet not take up more than 10% of the merchandising area of approved retail activity. Office activities in the zone are similarly limited to "10% of the Gross Floor Area of the building" and must be "ancillary to the principal activity on site" (2010b, Chapter 11, p. 120).

Under the Proposed Invercargill City District Plan, a range of activities (eg, light industry, healthcare, professional and personal services, essential services) are permitted in the Business 4 (neighbourhood shop) zone, but only if their floor area is less than 300 square metres and they are "open to the public only within the hours of 6.30 am to 10.00 pm" (2013, Section 3, p. 51).

Retail New Zealand also noted the presence of rules "[r]estricting floor space and the number of businesses in certain areas or zones" (sub. 29, p. 3). Some 47% of respondents to a survey of councils about their planning practice reported that they used controls on the total floorspace of businesses in their Plans, and 74% reported that they used controls on the types of businesses that could locate in commercial or industrial zones.

Detailed controls on the type and size of business may partly reflect the large number of differentiated business zones in some operative or proposed District Plans (Table 8.1).

Table 8.1 Commercial and industrial zones in selected operative and proposed District Plans

District Plan	Commercial and industrial zones	
Proposed Auckland Unitary Plan (as notified)	• Metro Centre Zone • Town Centre Zone • Local Centre Zone • Neighbourhood Centre Zone • Mixed Use Zone	• General Business Zone • Business Park Zone • Heavy Industry Zone • Light Industry Zone • Special Purpose – Airport Zone
Proposed Hamilton District Plan	• Commercial Fringe • Major Event Facilities • Sub-regional Centre • Large Format Retail • Suburban Centre • Neighbourhood Centre • Central City Zone	• Knowledge Zone • Industrial Zone • Ruakura Logistics Zone • Ruakura Industrial Park Zone • Te Rapa North Industrial Zone • Rototuna Town Centre Zone
Operative Tauranga City Plan	• City Centre Zone • Commercial Zone • Tauriko Commercial Zone	• Industry Zone • Port Industry Zone • Tauriko Industry Zone

District Plan	Commercial and industrial zones	
	• Wairakei Town Centre Zone • Wairakei Neighbourhood Centre Zone	• Papamoa East Employment Zone
Operative Palmerston North City District Plan	• Inner Business Zone • Outer Business Zone • Local Business Zone	• Fringe Business Zone • Industrial Zone • North East Industrial Zone
Operative Christchurch City District Plan	• Central City Business • Central City Mixed Use • Central City (South Frame) Mixed Use • Business 1 (Local Centre) • Business 2 (District Centre) • Business 2P (District Centre – Parking) • Business RP (Retail Park) • Business 3 (Inner City Industrial)	• Business 3B (Inner City Industrial Buffer) • Business 4 (Suburban Industrial) • Business 4P (Suburban Industrial – Produce Park) • Business 4T (Suburban Industrial – Technology Park) • Business 5 (General Industrial) • Business 6 (Rural Industrial) • Business 7 (Wilmers Road) • Business 8 (Islington Park)
Proposed Invercargill City District Plan	• Business 1 (Central Business District) • Business 2 (Suburban Shopping and Business) • Business 3 (Specialist Commercial) • Business 4 (Neighbourhood Shop) • Business 5 (Rural Service)	• Industrial 1 (Light) • Industrial 1A (Marine) • Industrial 2 (Urban) • Industrial 3 (Large) • Industrial 4 (Awarua)

Source: Auckland Council, 2013; Hamilton City Council, 2014; Tauranga City Council, 2013; Palmerston North City Council, 2010b; Christchurch City Council, 2014; Invercargill City Council, 2013.

Note: This table arguably underplays the complexity of zones, as individual zones in some cities may also be affected by overlays, which apply additional layers of rules on top of zones.

Narrowly defined zones reduce the responsiveness of the planning system, increase overall complexity, and increase the demand for plan changes and appeals (NZPC, 2015a). Detailed and localised controls on the types and sizes of businesses that operate within a particular zone are unlikely to be the best approach, not least because such rules can take a long time to change and inevitably lag developments on the ground.

F8.10 A number of councils apply very detailed controls on the types and sizes of businesses that can operate in particular zones. These controls are unlikely to be efficient, not least because such rules can take a long time to change and inevitably lag developments on the ground.

Reducing regulatory burdens and unnecessary prescription

The Commission proposes that an IHP review all Plans and significant Plan changes (section 8.6). Decision making would be guided by clear purposes for planning in the built environment (Chapter 13) and by statutory principles, similar to those provided for in Clause 8 of the Resource Legislation Amendment Bill currently before Parliament. These principles would create a presumption that development controls and design standards in rules will be used only to the extent necessary to achieve the purposes of legislation governing the planning system, and that planning processes are timely, efficient, consistent, cost-effective and proportionate to the functions and powers being exercised (Chapter 13). The combination of clear

statutory guidance and independent review should, over time, lead to a reduction in regulatory burden and unnecessary prescription.

8.5 Reducing uncertainty around the role of urban design in planning decisions

The Commission heard from both engagement meetings and submitters that some current regulatory practices lack certainty and predictability. The feedback was that this was due in large part to the discretion that councils exercise and the advice or requirements from councils or their delegates that fail to reflect the realities of development or the commercial world.

Urban design is one area where councils often reserve their discretion, and where complaints of uncertainty and excessive requirements frequently occur. Urban design has been defined in different ways, with varying degrees of specificity. Definitions typically emphasise the impact of the form and placement of buildings, spaces and structures on people, and the importance of considering "place" and context when making land-use decisions (Box 8.3). Thinking based on the "New Urbanism" planning paradigm has been influential in New Zealand (Chapter 13).

Box 8.3 **What is urban design?**

The Department for Environment, Transport and Regions and the Commission for Architecture and the Built Environment (2000) offered the following definition:

> Urban design is the art of making places for people. It includes the way places work and matters such as community safety, as well as how they look. It concerns the connections between people and places, movement and urban form, nature and the built fabric, and the processes for ensuring successful villages, towns and cities.
>
> Urban design is a key to creating sustainable developments and the conditions for a flourishing economic life, for the prudent use of natural resources and for social progress. Good design can help create lively places with distinctive character; streets and public spaces that are safe, accessible, pleasant to use and human in scale; and places that inspire because of the imagination and sensitivity of their designers. (p. 8)

In New Zealand, the Ministry for the Environment (MfE, 2005a) defined urban design as being

> concerned with the design of the buildings, places, spaces and networks that make up our towns and cities, and the ways people use them. It ranges in scale from a metropolitan region, city or town down to a street, public space or even a single building. Urban design is concerned not just with appearances and built form but with the environmental, economic, social and cultural consequences of design. It is an approach that draws together many different sectors and professions, and it includes both the process of decision-making as well as the outcomes of design. (p. 7)

Many District Plans make "urban design assessment" a condition of a resource consent, especially for larger developments, and a number of councils have established urban design panels to review proposals and provide advice.[76] This advice may cover the external appearance of the building, its bulk and location and other factors.

Determining "good design" is an inherently difficult process and open to interpretation. Yet some have argued that it is possible to conduct "objective design assessment" (Duncan Rothwell, sub. 38, p. 2). Likewise, the 2010 Urban Technical Advisory Group proposed that

> [d]esign quality can be objectively assessed. While opponents of design review often claim that the process is subjective, this claim is countered by the fact that professional educators in design are able to

[76] Some 23% of council respondents to a Commission survey reported they used urban design panels.

> teach, recognise and assess design skill, and competition and awards jurors are able to objectively assess professional design quality. (2010, p. 74)

Even so, some degree of discretion and variability is to be expected, and may be desirable. However, evidence presented to the Commission during this and earlier inquiries suggests that urban design requirements or assessments in some cities lack perspective, consistency, or a sense of their cost or economic implications. This is seen in examples of urban design advice – and in some cases, resource consent conditions – given to some South Island supermarkets (Box 8.4).

Box 8.4 **Urban design advice given to South Island supermarkets**

Queenstown PAK'n SAVE, Hawthorne Drive, Frankton Flats

In the resource consenting stage of the Queenstown PAK'n SAVE, Foodstuffs South Island Limited was encouraged by Queenstown Lakes District Council to seek comment and advice from the local urban design review panel which made various comments on the design and location of the building within the site.

The panel suggested various options including:

- lowering the entire PAK'n SAVE building below floor level;
- redesigning the exterior of the PAK'n SAVE to be viewed as a fruit processing shed; and
- placing a "dummy" retail shop on the corner of the PAK'n SAVE car park, to provide visual relief within the car park.

Ferry Road New World, Woolston, Christchurch

Urban Designers within Christchurch City Council provided specialist input in the processing of the resource consent. Recommendations included "sleeving" the New World supermarket with competing retailers, locating the New World to the street frontage to activate the store and provide a high street visual feel while locating all parking to the rear of the site. The location of car parking to the rear would have significant security, operational and CPTED [Crime Prevention Through Environmental Design] issues as well as being impractical.

Wainoni PAK'n SAVE, Aranui, Christchurch

Resource consent was necessary to rebuild a replacement [for the] significantly earthquake damaged PAK'n SAVE within the existing site while allowing the existing PAK'n SAVE to continue trading. The location of the replacement store was limited to the front of the site, and involved a complicated 3 year building process.

Urban designers and the processing consent planner within Christchurch City Council sought to have the application declined on the basis that a Council-owned open-space area adjacent to the PAK'n SAVE would have less visual exposure.

Kaikoura New World – Beach Road, Kaikoura

It was recommended by various council staff while processing the resource consent that the New World (which is only some 8.5 metres tall) be required to have a finished floor level lower than the State Highway and adjoining commercial properties.

The resource consent required the New World to be located at a lower ground level. A subsequent neighbouring shopping centre was not required to locate their buildings below road level and there is now a very noticeable physical difference in level between the two developments, and also between the New World and other adjoining land. Council officers further sought a mural be painted on the rear of the building so if anyone was fishing in the sea they would view an ocean themed mural rather than the recessive colour scheme of the New World.

Source: Retail New Zealand, pers. comm.

The somewhat arbitrary nature of the advice provided to supermarkets may reflect the imprecise, open-ended language used in assessment criteria or urban design guides. Rhys Phillips described urban design guides as "vaguely worded" and added:

> Through these Urban Design Guides, Councils are going beyond simply controlling the effects of the development upon the external environment and have started to control aspects of developments which have no impact beyond the site. (sub. 1, p. 1)

Retail New Zealand commented in their submission that very broad assessment criteria can make it hard for retailers and developers to consult meaningfully with affected communities. The criteria also introduce risks:

> Unclear and subjective planning criteria create serious issues for businesses wishing to work within the rules but with little guidance about how those rules might be interpreted. It creates issues for authorities that might find it difficult to maintain a level of consistency within its own decision-making. It also creates issues for public participation – it is very difficult to meaningfully consult on concepts that are so broad that they are meaningless. This is further complicated by the high level of discretion local authorities retain which means that planning decisions can become highly politicised, further adding to the uncertainty and unpredictability. (sub. 29, p. 3)

Property Council New Zealand submitted:

> Arguably, within an urban environment, the idea of amenity has hijacked the RMA. It is common for councils to place onerous and often complex financial and regulatory visual amenity conditions on development consents. Councils have no understanding of the true financial cost of these and the impact on development viability for a project. (sub. DR118, p. 9)

Supporters of urban design also seem to prefer the use of discretion and negotiation.

> So what might we look for in an ideal urban planning system? Some key phrases submitted by members are:
>
> > "Proposals need to demonstrate how the development is the right outcome for the site, rather than how it fits within rules."
> >
> > "Rule-based planning is inefficient and negative: it is based on what is to be avoided, as opposed to what is good in the context; effects (usually bad) rather than outcomes (may be positive)". (Urban Design Forum, sub. 37, p. 4)
>
> Generally, less rules and a more principles and policy based approach is advocated for, particularly when it comes to design matters. (Duncan Rothwell, sub. 38, p. 3)

Some central government guidance has compounded uncertainty about urban design by encouraging local authorities to take an expansive view of its scope. In its *Value of Urban Design* report, MfE (2005b) offers a definition of "public realm" that does not clearly distinguish between public and private property:

> The public realm comprises all parts of the physical environment that the public can experience or have access to. This is primarily the system of public space, but also includes the facades of private buildings that frame public space, and associated landscape and design treatments. (p. 48)

Under this definition, the public realm includes any part of a city that the public can see. One inference is that councils can and should regulate the appearance of private buildings as these are "in the public realm". Associate Professor Caroline Miller said in her submission:

> [P]lanning and planners are obliged to take account of the advice provided by the ministry in charge of that legislation. In the case of planning that ministry is the Ministry for the Environment (MFE). Thus, as this report identified, MFE produced the Urban Design Protocol and appointed champions to advocate its use in planning which helped to unleash the present day enthusiasm for urban design beyond the public realm. (sub. 50, p. 1)

F8.11 Council requirements on some developments to undergo urban design assessments sometimes lead to poor exercises of regulatory discretion. Urban design criteria can lack clarity and precision, and design advice to resource consent applicants can lack perspective, consistency, or a sense of their cost or economic implications. Judgements and practice on urban design vary considerably across councils.

Yet Ngā Aho and Papa Pounamu provide another important perspective on urban design:

> We disagree with the Commission's finding that implies a minimal value of urban design guidelines. A number of Māori communities are developing or have developed urban design guidelines by iwi/hapū independently or in collaboration with local or central government agencies. These initiatives reflect the developing capacity of Māori communities and practitioners to engage more effectively in urban planning and design, as well as the growing commitment from local and central government to work collaboratively with Māori. Kaupapa Māori urban design guidelines are intended to facilitate meaningful and authentic expressions of the relationship that Mana Whenua have with their ancestral lands, waters, wāhi tapu, wāhi taonga, mahinga kai, papa-kāinga and other taonga within urban environments. (2016b, pp. 39-40)

Kaupapa Māori urban design is a central part of Māori aspirations to "create great urban spaces and places for Māori to be Māori" (Chapter 7). The Te Aranga Cultural Landscape principles are one approach to promoting such design. The Auckland Design Office incorporates these principles into its online Design Manual (Auckland Design Manual, 2016).

The Canterbury District Health Board pointed to the health benefits of neighbourhood aesthetic quality (sub. DR59). These include "promoting healthy lifestyle behaviours, particularly physical activity" (p. 8).

Better use of regulatory discretion and urban design requirements

Urban design has significant "public good" elements (Chapter 3). It is legitimate for councils to provide for these in their plans and consenting decisions. The Christchurch IHP noted:

> [G]ood urban design is an essential ingredient not only in the recovery but also providing for the long-term future of Christchurch …[and this warrants] the capacity to decline consent where a development is so deficient that it would significantly derogate from the quality of its residential environment. (cited by Allison Tindale, sub. DR110, p. 3)

Other submitters likewise recognised the amenity value of urban design (Foodstuffs New Zealand, sub. DR108; The New Zealand Initiative, sub. DR75; Wellington City Council, sub. DR68; New Zealand Institute of Surveyors, sub. DR121).

The difficulty is finding the appropriate scope for regulatory discretion relating to urban design and balancing perceived benefits against any additional costs in meeting the urban design requirements of councils. Practice and judgement appear to vary considerably across different local authorities.

The Property Council New Zealand submitted:

> Councils should seek to work proactively with developers during the consenting process to achieve positive, functional and cost-neutral design outcomes for the developments … this is a more desired approach than through a regulatory framework. (sub. DR118, p. 10)

The Property Council commended the approach taken by the Auckland Council through its Urban Design Office. More broadly, it argued:

> Visual amenity is subjective, it means different things to individuals and communities, and therefore if councils are to invest in it, consultation is required. Using the long-term plan and annual plan development and consultation process [under the LGA] would provide an assessment as to how communities assess visual amenity alongside other more critical council investments and services. (p. 10)

F8.12 Urban design assessments can be a valuable tool for enhancing the amenity of public spaces if they:

- involve developers and designers in a collaborative process to find the best solution;
- are proportionate in scope to the public amenity being considered;
- take proper account of costs and benefits of alternative design proposals; and
- produce realistic and practical outcomes.

Promoting better use of discretion in taking into account the amenity of urban design could be approached by limiting provisions in plans for discretionary decision making in this respect.

Yet Sir Geoffrey Palmer and Dr. Roger Blakeley argued:

> [T]he benefits of urban design assessment are that they allow councils to reduce their use of blunt instrument controls such as height and density … There is still a requirement in urban design assessments to take account of cost and economic implications. (sub. DR122, p. 4)

To avoid possible adverse consequences, councils will need to manage carefully the trade-off in Plans between prescriptive controls and provision for discretionary decisions.

Together, the following features would provide better guidance to councils and encourage better practice in the use of discretion in plans:

- a clear statutory purpose for planning for the built environment (Chapter 13);
- statutory principles that require Plan provisions to be proportionate to the issues addressed and relevant to the purposes of the Act; and
- independent and systematic review of Plans and Plan changes (section 8.6).

Another approach would be to apply more discipline to the exercise of discretion in granting consents. In its draft report, the Commission asked whether allowing or requiring the Environment Court to award a higher proportion of costs for successful appeals against unreasonable resource consent conditions would be sufficient to encourage better use of discretion by councils. While some submitters (Foodstuffs New Zealand, sub. DR108; Property Council New Zealand, sub. DR118) thought this proposal had merit, many others saw difficulties in implementation and the incentives it would create to delay processes (Horticulture New Zealand, sub. DR73; Greater Christchurch Urban Development Strategy, sub. DR83; Greater Wellington Regional Council (GWRC), sub. DR80; LGNZ, sub. DR113; New Zealand Initiative, sub. DR75; Upper Hutt City Council, sub. DR120; Waipa District Council, sub. DR56; Water New Zealand, sub. DR67; Wellington City Council, sub. DR68; Whanganui District Council, sub. DR95).

The Commission has not pursued this idea further. It considers however that statutory principles favouring the proportionate and relevant use of discretionary powers in consents (Chapter 13), combined with the Environment Court jurisdiction over appeals on council consent decisions (section 8.6) would improve practice.

The Commission also asked in its draft report whether councils should be required to pay for some, or all, costs associated with their visual amenity objectives. While some submitters agreed with this proposition (Foodstuffs New Zealand, sub. DR108; Habitat for Humanity Christchurch, sub. DR114; Retail New Zealand, sub. DR74), many disagreed, mostly on the grounds that it would be impractical to evaluate costs and benefits, and would reduce incentives for developers to contribute with other developers and public agencies to good neighbourhood design from which they collectively benefit (Allison Tindale, sub. DR110; Canterbury District Health Board, sub. DR59; Greater Christchurch Urban Development Strategy, sub. DR83; Wellington City Council, sub. DR68; Whanganui District Council, sub. DR95; The Architecture Centre,

sub. DR123). The Commission agrees that such a policy would be difficult to implement and could create perverse incentives.

Removing the non-complying activity category for consents

The RMA (s 77A) sets out classes of activity which may be applied in plans to particular zones or performance standards:

- a permitted activity; or
- a controlled activity; or
- a restricted discretionary activity; or
- a discretionary activity; or
- a non-complying activity; or
- a prohibited activity.[77]

K. Palmer notes that an application for a "non-complying activity" may be viewed by council planners and the council as an attempt to undermine the plan, and so face greater hurdles than if the application was for a discretionary activity. As a result "[i]nnovative design and development, especially in the built environment, may be frustrated and deterred by the non-complying activity culture of a local authority" (2017, p. 57). Palmer proposes that the category should be abolished; and that instead council planners should have

> a discretion to disallow an application for a discretionary activity, where the consent authority determined on strong reasonable grounds that the development due to magnitude or precedent effect, should only proceed under a plan change…This would allow for greater flexibility and assessment on the merits, especially in the development of the built environment. (2017, p. 57)

New land use and resource management planning legislation should review and simplify as practicable the categories of consents.

8.6 Independent Hearings Panels to review Plans

This section discusses the current lack of systematic and timely checks on Plans and Plan changes, and recommends that IHPs, established locally as required, provide such checks.

Insufficiently strong checks on regulatory decision making

As discussed in Chapter 5, the quality of local authority regulatory analysis has been a source of controversy and complaint since the early years of the RMA. Commentators, including the Commission, have criticised the lack of proper cost–benefit analysis, inadequate consideration of options, poor implementation analysis, and the often concerning distributional impacts of regulatory decisions (Dormer, 1994; McShane, 1996; NZPC, 2013; NZPC, 2015a). Several submissions to this and earlier Commission inquiries have also raised concerns about the efficiency, fairness and proportionality of land use rules (section 8.4 and section 8.5). Continuing concerns, despite repeated amendments to legislation to improve performance, suggest that deeper, structural drivers of behaviour exist.

One cause of poor performance is gaps in workforce capability, as discussed in Chapter 14. Another substantial driver is the insufficiently strong quality checks on council regulations on land use. This is noticeable in a number of areas, including the lack (until recently) of NPSs or standards on urban matters, and the lack of any consequences for poor regulatory analysis. Although the Government has moved to fill the gap in NPSs, this is unlikely on its own to raise the quality of regulatory analysis or decision making.

---

[77] A consent authority has the power to impose conditions on consents for *controlled activities* on matters over which control is reserved by a Plan, Proposed Plan or national instrument. It has the power to decline a consent or impose conditions on a consent for *restricted discretionary* activities only on matters over which discretion is restricted by a Plan, Proposed Plan or national instrument. It may decline a consent or grant a consent with or without conditions for a *discretionary activity*. And it may grant a consent with or without conditions for a *non-complying activity* only if the adverse effects on the environment will be minor, and it would not be contrary to the objectives and policies of a relevant Plan and/or proposed Plan (RMA ss. 87A, 104D).

New Zealand is unusual in providing appeals on the merits of Plans

The main check on the regulatory decisions of local authorities in the current system, apart from community scrutiny of draft plans, is the Environment Court which hears appeals on the merits of plans and of consent decisions. The Commission has previously noted the important role that the Court plays as a quality check and as a mechanism for resolving disputes (NZPC, 2013, 2015a). Some inquiry participants also made these points. For instance, the Palmerston North City Council commented that the Environment Court "holds people to account should they seek to abuse the urban planning system" (sub. 24, p. 3).

Appeal rights in New Zealand have expanded over successive iterations of the planning system (NZPC, 2015a) and are now broad compared with similar appeal rights in other comparable jurisdictions. The ability in New Zealand to appeal decisions on Plans in the courts is particularly unusual.

- No Australian state or territory provides for any right of appeal to a court or tribunal on the merits of a plan policy or rule.
- England and Wales have no provision for merit appeals on council plans.
- Neither Alberta nor British Columbia permits merit appeals on plans. Council decisions on submissions to plans in Ontario may be appealed to the Ontario Municipal Board. However, the Board is an expert review panel, not a court. Unlike in New Zealand, no relevant submitter can appeal the Board's decisions to higher courts (K Palmer, 2013).

F8.13 Appeal rights in New Zealand are broader than in other comparable jurisdictions. The ability to appeal provisions of Plans is particularly unusual.

Disadvantages and benefits of the Environment Court considering the merits of Plans

The role of the courts in considering the merits of plans is controversial. Local authorities have criticised the role of the courts in deciding on plans, arguing that this oversteps constitutional boundaries by allowing unelected judges to set policy (LGNZ, 2011).

Councils, and many others, have also argued that the *de novo* appeals standard discourages submitters from providing a "full brief of evidence" and leads some to "keep their powder dry" for the later appeals (NZPC, 2013; Peter Skelton, pers. comm. 19 September 2016). Shepherd commented that, like submitters, Councils themselves are more careful about the evidence when plans are appealed to the Environment Court.

> [T]he evidential base for Plan reviews and changes, and the reasons for the changes (including section 32 reports) are often compiled in a much more comprehensive manner in response to an appeal to the Environment Court than as part of the notified proposed Plan change. This results in the first merit assessment being less well informed than the second. (2016, p. 10)

Councils have highlighted the costs and delays caused by appeals, pointing to long timeframes involved in getting plans approved, which in their view "makes it harder to promote large-scale and ambitious projects, and makes our system slow to respond to emerging trends, new evidence, unintended consequences or new opportunities" (LGNZ, 2015a, p. 27). LGNZ (2015a) states that on average "it has taken 6.3 years after a district plan has been notified for it to become operative, 6.1 years for a regional plan, 4.4 years for a regional policy statement and 2 years for a plan change" (p. 27). Local government has sought to have appeal avenues in the planning system restricted, in part to speed up processes.

A further disadvantage of merit hearings in the Environment Court is "the acute drop-off in participant rates the further along the formal process a matter progresses" (D. Hill, pers. comm., 26 October 2016). Typically, only well-resourced participants proceed to Environment Court hearings on Plans.

Yet other commentators argue that the courts play an essential corrective role in the planning system. Nolan et al. (2012a) commented that the

> reality, which many participants in the RMA process would attest to, is that councils often make unsatisfactory decisions on many aspects of their policy statements and plans. This can be on major aspects, but in many occasions it is in areas of detail that can have significant impacts on business…the fact that councils know that their decisions can be appealed to the Environment Court means that they take a much more responsible approach to their decisions. (pp. 5–6)

Likewise Ngā Aho and Papa Pounamu commented:

> [A]ppeal rights have been extremely important to advancing Māori values, rights, and interests. Because of the issues of limited capacity and multiple processes experienced by Māori communities, coupled with the fact that councils do not engage sufficiently early with Mana Whenua, a number of iwi and hapū have had to use appeal rights to participate in planning processes. (2016b, p. 36)

Judicial oversight also promotes procedural fairness. Nolan et al. observed that local authorities "are more likely to accept submissions under the RMA process where there is a right of appeal than submissions where there is no right of appeal (for example, submissions on LTCCPs [Long-Term Council Community Plans (now called Long-Term Plans)] under the Local Government Act 2002)" (2012b, p. 7).

Members of the Environment Court have challenged claims that appeals still typically take many years to complete, noting the internal process improvements and a greater use of mediation and alternative dispute resolution have led to faster decisions:

> Gone are the days when a council would be granted a year or two by the Court to endeavour to negotiate solutions, often with no outcome to show for it, and only then find that much mediation and/or hearing work remained necessary to resolve cases. In recent sets of such appeals, mediation has been undertaken commencing as soon as all parties have been identified under s274, and brought to a conclusion about 10 or 11 months after the cases have been filed, with a high degree of success. Councils have been enabled to make large parts of the proposed instruments operative in short order if they wish, leaving the Court to move quickly to resolve remaining issues through hearings, facilitated conferences of experts, and pre-hearing and settlement conferences. (Environment Court, 2016, p. 19)

The Commission has previously found that participants in RMA processes were usually not incentivised to hold information back and that the Court-led mediation processes were working well (NZPC, 2013).

However, the Commission has also concluded that the current institutional arrangements do not provide the level of scrutiny over land use rules that they could. This is not a criticism of the Environment Court. The Environment Court only has the opportunity to review those rules that have been appealed. As a result, only a limited proportion of a District Plan's rules are subject to thorough review, and the feedback loops back to councils can be long. On the one hand this could be considered efficient: only those rules that are sufficiently costly are reviewed, saving time and resources. On the other hand, appeal avenues are generally more open to those with resources, and resulting selection of rules appealed may not be those where the public interest is highest. In addition, benefits are likely to come from considering the merits of a plan as a coherent whole, rather than simply the bits appealed. The effect of different rules is likely to interact; and remedying a particular provision appealed may not be the best solution to issues raised by appellants.

The IHPs established for the PAUP and Christchurch Replacement District Plan have provided an alternative, reviewing entire plans and drawing in expertise from across the community (Chapter 5). However, the IHPs are bespoke arrangements, with a limited lifespan. They also do not cover any subsequent private Plan changes, which will be considered through the usual RMA processes and so will not experience the same level of expert scrutiny.

F8.14 Current institutional arrangements do not provide enough scrutiny over land-use regulation. While the Environment Court plays an important role as a check on local authority regulation, it only has the opportunity to review appealed rules or appealed provisions. As a result, only a limited proportion of a District Plan's rules are subject to thorough scrutiny.

The Commission proposes clearer purposes, objectives and principles to guide regulation in the built environment (Chapter 13). Yet, on their own, these measures are unlikely to be enough. More thorough and upfront decision–review mechanisms will reinforce statutory guidance on the provision of development capacity, the reduction in unnecessary prescription that burdens development, and better use of discretion (section 8.4 and section 8.5). More immediate and more systematic review would also reduce or eliminate the need for later merit appeals and so provide greater certainty for both councils and residents about the stability of land use rules.

The Commission's draft report proposal for an Independent Hearings Panel

In its draft report the Commission recommended that any future planning system establish a permanent IHP to consider and review new Plans, Plan variations and private Plan changes across the country. The panel would be set up and operate in a similar way to the special purpose IHPs set up to review the PAUP and the Christchurch Replacement District Plan (Chapter 5).

The Commission considered that a central panel would be more likely to achieve the scale and expertise required to properly review new rules and controls than individual councils, and to apply a consistent approach to similar issues across the country. Yet, to assure confidence from councils and the public in its impartiality, the panel would have formal independence from central government and the person leading it would need to have extensive expertise and mana (such as a former or current judge, as was the case with the Auckland and Christchurch IHPs).

The Commission asked two questions.

- Should councils have the ability to decline a panel's recommendations (as was the case for the Auckland IHP, but not the Christchurch IHP)?
- Should councils be able to choose whether and which Plans would go to the panel for review?

Participants' responses to the Commission's proposals for an IHP

The Commission's IHP proposals attracted a large number of submissions. Many submitters supported an independent hearings process of some sort (eg, Federated Farmers, sub. DR96; Vector, sub. DR98; Trustpower, sub. DR61; Sir Geoffrey Palmer and Dr. Roger Blakeley, sub. DR122; Azeem Khan, sub. DR116; Environment Canterbury, sub. DR72; Foodstuffs New Zealand, sub. DR108; Horticulture New Zealand, sub. DR73; the Architecture Centre, sub. DR123).

A few submitters preferred their own independent hearings processes (Auckland Council, sub. DR86; GWRC, sub. DR80) or the current provisions that allowed appeals on merits (Ngāti Whātua Ōrākei, sub. DR76, Royal Forest and Bird Society of New Zealand, sub. DR91, the Environmental Defence Society, sub. DR57; the New Zealand Initiative, sub. DR.75; Water New Zealand, sub. DR67). Some participants were uncomfortable with an IHP appointed by central government (as in the case of the Auckland and Christchurch IHPs) and queried whether such a panel would be truly independent (Christchurch City Council, sub. DR90). Others thought that decisions on the place of IHPs in a future system should await further evaluation of the Auckland and Christchurch experience (Auckland Council, sub. DR86; Water New Zealand, sub. DR67; Whanganui District Council, sub. DR95).

Many participants argued that a single permanent national panel would be unworkable (given the large number of Plans and Plan changes being considered at any one time) or undesirable (given the need for local knowledge to ensure appropriate decisions); or unaffordable for smaller districts (GWRC, sub. DR80; Society of Local Government Managers (SOLGM), sub. DR107; Auckland Council, sub. DR86; Bay of Plenty Regional Council, sub. DR111; LGNZ, sub. DR113; West Coast Regional Council and Grey District Council, sub. DR78; Whanganui District Council, sub. DR95; Trustpower, sub. DR61; Water New Zealand, sub. DR67).

Rangitikei District Council argued that it would be desirable to match the type of IHP process to the scale of the Plan or Plan change (sub. DR71). Other submitters proposed thresholds (eg, in terms of the scale of the Plan, or the size and rate of growth of a district) above which an IHP process would be used (Greater Christchurch Urban Development Strategy, sub. DR83; Horticulture New Zealand, sub. DR73; Allison Tindale, sub. DR110; GWRC, sub. DR80; Property Council New Zealand, sub. DR118).

Many councils argued that they should be able to choose whether to use an IHP to review draft Plans and Plan changes (Bay of Plenty Regional Council, sub. DR111; Environment Canterbury, sub. DR72; LGNZ, sub. DR113; Upper Hutt City Council, sub. DR120; Waipa District Council, sub. DR56; West Coast Regional Council and Grey District Council, sub. DR78; Whanganui District Council, sub. DR95; Rangitikei District Council, sub. DR71; Wellington City Council, sub. DR68). Other submitters thought that all Plans should go through the IHP process (Retail New Zealand, sub. DR74; Water New Zealand, sub. DR67); while Trustpower recommended that the idea be explored further (sub. DR61).

Some submitters thought that councils should be able to reject IHP recommendations (subject to appeal on merits on those matters rejected) (Christchurch City Council, sub. DR90; Horticulture New Zealand, sub. DR73; Rangitikei District Council, sub. DR71). Yet others thought that appeals should be possible only on points of law (Retail New Zealand, sub. DR73; GWRC, sub. DR80; Environment Canterbury, sub. DR72; SOLGM, sub. DR107). GWRC advised that it uses independent hearings commissioners and accepts their decisions as a matter of course, on the basis that they have heard all the evidence (sub. DR80).

Other submitters stressed the importance of IHPs operating on reasonable timeframes that allowed adequate consideration of the issues (Allison Tindale, sub. DR110; Resource Management Law Association, sub. DR115; Berry Simons Environmental Law, sub. DR119); and to use processes accessible to ordinary people and not overly formal (Canterbury District Health Board, sub. DR59; Christchurch City Council, sub. DR90).

Environment Canterbury proposed an alternative IHP model (sub. DR72). It would be available to a local authority where a proposed plan or plan change was particularly contentious or complex or where substantial appeals to the Environment Court would be likely if the standard process was adopted. Briefly, the process would involve a hearings panel made up of a majority of independent hearing commissioners, with the Environment Court appointing a majority of them. The Environment Court appointees would be an Environment Court Judge and Environment Court Commissioners. Local authorities would appoint the balance of the panel, whether elected councillors or independent commissioners. The decisions of the panel would be subject to appeals to the High Court only on questions of law. The proposal would result in faster plan making and avoid the possibility of two merits hearings on proposed plans or plan changes (under the standard process).

> By limiting appeal rights to those related to points of law, the policy directions developed by the council and wider community are less likely to be diffused and compromised through an ad hoc appeal process driven by well funded interest groups. (pp. 17–18)

To assist it in thinking through the issues raised in submissions and by other participants, the Commission sought further advice on effective and workable IHP arrangements (Shepherd, 2016) and met with Professor Peter Skelton to discuss the Environment Canterbury proposal.

A revised proposal for Independent Hearings Panels

The Commission considers that a single-stage merits review of all Plans and of significant Plan changes carried out by a competent and independent panel should be a central part of a future planning system. The advantages in terms of improving the quality and speed of plan making are clear. To fulfil its proposed role, an IHP undertaking a single-stage merit assessment of Plans and Policy Statements (or changes to them) should:

- be independent of the promoter (of the Plan or Plan change) and participants in hearings;
- be competent;
- have a range of powers to resolve disputes; and
- produce a version of the notified Plan or Plan change that could be appealed only on points of law, and which the relevant local authorities would be required to make operative.

The design of IHPs and their processes should aim to minimise the sum of decision and error costs and be sustainable over time (Chapter 1). This means that the costs of alternative ways of making decisions

(eg, running a hearings process, the cost of delays and the time and other costs of the parties involved) should be weighed against the risks and costs of making mistakes in decisions (eg, regulating land-use activities that do not create significant externalities; and failing to regulate activities that create major spillovers). Being able to adapt to changing goals and values over time and securing the confidence and trust of participants contributes to sustainability. So a future planning system, by putting sufficient resources and institutional protections to undertake a credible single-stage merits review of Plans, should aim to both improve the quality of Plans (measured against statutory objectives) and be durable over time.

The independence of IHPs is a key aspect of their role

Many submitters argued that councils should be able to choose whether to submit plans to an IHP process; and/or be able to reject changes recommended by an IHP. Environment Canterbury proposed that councils have a role in appointing panels (see above).

The Commission carefully considered these views, but, in the end, concluded that IHPs should be fully independent of the Council or private individual promoting a Plan or Plan change. A durable and effective approach to plan making needs to be capable of taking into account (in an impartial manner) the various interests and competing viewpoints inherent in plan making. These competing interests include (but are not limited to):

- the national public interest (eg, as expressed by central government);
- local public interest (eg, as expressed by local government);
- environmental, heritage, cultural and recreational interests (as expressed by a range of groups or individuals);
- interests shared by groups in a particular locality (eg, as expressed by a local business association or a consortium of landowners); and
- private interests (eg, as expressed by a landowner or tenant).

A single-stage merit assessment of Plans needs to be designed in such a way as to be capable of resolving these tensions in a manner that is, and is seen to be, fair and reasonable in the circumstances, and lawful. To be durable, the process needs to be credible over extended periods of time to all interested parties, including those whose voices are not usually heard. It is important to note, in this respect, that local government represents only one interest (albeit a very wide and important one) that plan making affects .

Councils therefore should not be directly involved in appointing IHP members. After all, an IHP will replace the Environment Court in considering the merits of Plans and. So it needs to enjoy similar independence. On a related point, K. Palmer argued that that a lack of independence is a problem with current council practices which use council planning committees as

> hearing bodies and decision-makers in respect of submissions made by property owners and other members of the public in respect of proposed policy, plans, changes and reviews … A central principle of fairness and natural justice is that the local authority or body who prepares and proposes a plan should not also be the hearing panel in respect of submissions which may challenge those policies and rules. (2017, p. 153)

It follows also that central government should not be directly involved in appointing IHP members.

Formal independence of IHPs would also align with the Commission's earlier advice on regulatory institutions. That advice found that independence from political control is appropriate where:

- a substantial degree of technical expertise, or expert judgement of complex analysis is required;
- public confidence in impartiality is important;
- a consistent approach is desired; and
- the oversight of government power is involved (NZPC, 2014b).

Nor should councils be able to choose whether or not to use an IHP process. This would give councils some control over what goes to independent review. Their choices are likely to reflect their own interests rather than the value to all interested parties of having an impartial and independent review.

For similar reasons, the Commission considers that an IHP should be able to determine on the merits any changes to Plans required by the evidence they have heard, and by reference to statutory objectives and principles. This would be equivalent to the current powers of the Environment Court to determine appeals on the merits.

Giving councils a further opportunity to accept or reject IHP proposals would place them in a privileged position over the other interests participating in a hearing. It would also be inappropriate for councils to override the IHP proposals, given that they will not have heard all the evidence (Environment Canterbury, sub. DR72; GWRC, sub. DR80; Shepherd, 2016). Further, if councils were able to reject an IHP recommendation, the consequential need for appeals on merits to the Environment Court would undermine some of the benefits of a single-stage merit assessment.

Without the opportunity to determine the final form of Plans, Councils instead will be encouraged to provide a sound evidential base for their proposed plan (reflecting the perspectives of a democratically elected body), and to participate constructively in the hearings process. Similarly, others with an interest in the Plan will have incentives to marshal evidence, anticipating a lower overall cost of participation (compared to current arrangements), on the understanding that there will be only one merit assessment.

Even if they do not have the final say, Councils will exercise strong influence over the outcome of the IHP process by:

- setting the nature and scope of changes in the notified Plan, obtaining input from stakeholders before notification, and ensuring the evidential base and reasons supporting the notified Plan (or Plan change) are sound:
- participating in the hearings process, including responding to issues and new information as they arise; and
- having the ability to launch a Plan change if they are dissatisfied with the outcome.

An independent statutory agency should appoint IHP members

IHP panel members should not be appointed by councils, or directly by central government. Instead, an independent statutory agency (ISA) should appoint IHPs from a pool of qualified people (Chapter 13). The ISA should appoint panel members with the range of knowledge and expertise required in each case.

IHP members need to have a mix of expertise or access to expertise, including:

- legal, planning, and economic expertise;
- technical scientific and engineering expertise as required by the circumstances; and
- understanding of local circumstances.

The panel should have knowledge of local tikanga Māori and mana whenua views, interests and worldviews, given that mana whenua interests are intimately connected to land use and resource management planning (Chapter 7).

The need for legal knowledge would not necessarily mean a sitting Judge, retired Judge or senior legal counsel would chair a panel. A panel would, for instance, have the power to engage legal counsel as required. The availability of appeals on points of law would discipline an IHP to follow fair and appropriate procedures. The ISA should pay particular attention to recruiting, training and developing a pool of strong and competent people able to chair a panel.

Members of the IHP would need to be suitably qualified. The ISA would be responsible for developing and certifying IHP members and building a pool of suitable candidates for IHPs. It would also be responsible for developing and promoting good practice and processes across IHPs (Chapter 13).

The ISA should match each IHP review process to the scope and significance of the Plan or Plan change. In some uncontested cases of Plan changes, for instance, this might mean no more than a review of the proposals on paper, without formal hearings; in other cases it might mean a relatively speedy review by a small panel. Central government should set a threshold for deciding whether proposed changes to a Plan are significant. Significant changes would require formal review by an IHP. The threshold could, for instance, be set in terms of some measure of the scale of the Plan change in terms of area covered, or its likely impacts on development opportunities or affected parties, or the resources required to prepare and advance the change.

The role of an IHP in plan making

An IHP would be appointed to review a notified Plan or Plan change and the evidence and reasons underlying it. An IHP would be guided by statutory objectives and principles for plan making (Chapter 13) and consider evidence on contested matters. In particular, an IHP would call for and consider submissions on the Plan or Plan change and be able to:

- employ alternative dispute resolution techniques such as mediation;
- call for further submissions on particular issues (but, weighing costs against benefits, the call for cross submissions on the original submissions would not be automatic);
- obtain their own reports, research and expert advice;
- request for evidence from the council proposing the Plan or Plan change;
- conduct "expert caucusing" to resolve differences in expert evidence; and
- issue procedural minutes and guidance to submitters on the Panel's initial view on matters to inform further proceedings.

IHPs, guided by the ISA, would determine their own hearings processes. Processes would need to be fair and lawful, while also being accessible to submitters with no legal representation.

IHPs would have a particular advantage in being able to obtain and hear evidence from their own selected independent experts. This would be analogous to the Environment Court sometimes using an *amicus curiae* or "friend of the court" in helping it come to decisions (Kós, 2016; Gardner-Hopkins, Scragg & Cameron, 2016). Such evidence would be heard by relevant participants in the IHP process and would likely contribute to resolving at least some contested issues. Both the Auckland and Christchurch IHPs used experts in this way.

The Commission heard from groups such as Ngāi Tahu in Christchurch who considered that the IHP process offered them a better and fairer opportunity to be heard than the usual RMA Schedule 1 processes. Likewise, the IHP (reviewing the PAUP) heard extensively from a range of groups who are usually underrepresented in making submissions on Plans (as described in Chapter 5). IHPs, guided by the ISA, will need to consider the best means to hear from a full range of interested parties in reviewing Plans.

Out-of-scope proposals

Another issue relates to so-called "out-of-scope" proposals. Broadly speaking, these are proposals for Plan provisions that emerge in the course of hearings and which were not provided for in the original Plan or Plan change, and so were not the subject of submissions. Under the provisions for the Auckland PAUP, the IHP was required to identify such proposals. Any recommendations it made on those proposals that were accepted by the Auckland Council could be appealed on the merits. Under the Christchurch Replacement District Plan provisions, the IHP was required to identify such proposals and, if considered desirable, direct the Christchurch City Council to prepare a Plan change and invite submissions on the change. The IHPs decisions on such proposals were not subject to further merits appeal (K. Palmer, 2017). The Commission

considers that the Christchurch provisions will better secure the advantages of a single-stage merits review of Plans (Figure 8.5).

The role of the Environment Court and appeals on points of law

IHP determinations should be subject to appeals only on points of law or to judicial review (as was the case for the IHP reviewing the Replacement Christchurch District Plan).

Although some functions currently carried out by the Environment Court would be taken over by the IHP, the Court would continue to play an important role. It would continue to hear appeals where affected parties or applicants wished to challenge resource consent decisions or conditions, hear applications for declarations and enforcement orders, and decide matters of national importance when they are "called in". The Environment Court would also continue to have roles and functions under other statutes.[78]

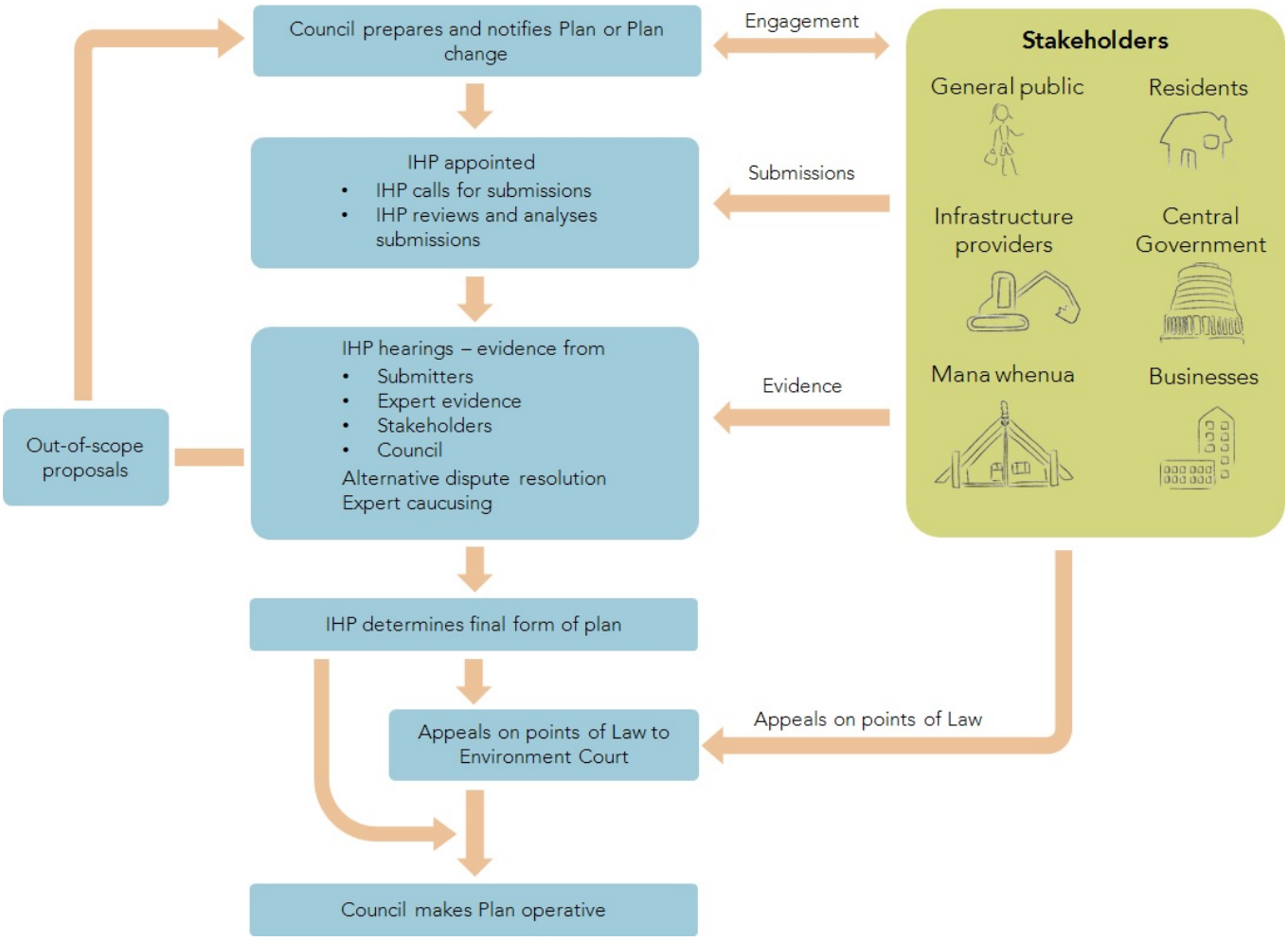
The Resource Management Law Association proposed that appeals on points of law from IHP determinations should be to the Environment Court (allowing for the fact that applications for judicial review of proceedings will always be available to the High Court) (sub. DR115). The Environment Court already exercises a declaratory jurisdiction that typically involves points of law. Associate Professor Kenneth Palmer advised the Commission that appeals on points of law could confidently be given to the Environment Court:

> The Environment Court Judges have the ability to assess whether an appeal is within the scope and bounds of a question of law, and could be expected and relied on to distinguish between appeals which are endeavouring to raise matters that have no basis as a question of law. (2017, p. 149)

The Commission proposes that appeals on points of law from IHP determinations be to the Environment Court. Figure 8.5 sets out the full process for an IHP review of a Plan.

[78] The Court has jurisdiction to determine matters under other statutes, including objections to the compulsory taking of land under the Public Works Act 1981, appeals about archaeological sites under the Historic Places Act 1993, appeals about felling native beech forests under the Forests Act 1949, objections to "road stopping" proposals under the Local Government Act 1974, and objections about access to limited access roads under the Transit New Zealand Act 1989. Road stopping is the term given to removing the legal road status to that of a freehold title.

Figure 8.5 Process for an IHP review of a Plan or Plan change



IHPs should review a coherent package of Plans and Policy Statements in a region

The Commission recommends that the RSS, the proposed Regional Policy Statement on the Natural Environment (Chapter 9), and district Plans, be reviewed together as a package (Chapter 13). This will reduce the number of review processes and justify the substantial resources required by a full IHP review of the scale of those used in the Auckland and Christchurch IHP processes.

Funding Independent Hearings Panels

Some submitters raised the issue of allocating the costs of IHPs in a future planning system (GWRC, sub. DR80; Rangitikei District Council, sub. DR71; LGNZ, sub. DR113; Shepherd, 2016). IHP operations are designed to secure a mix of local and national benefits, so it is reasonable that local and national government should share the cost (Shepherd, 2016). The central government is likely to take responsibility for the costs of establishing the ISA, and for the direct operating costs associated with ISA personnel and processes. A saving from the Environment Court no longer dealing with appeals on merits from Plan and Plan change provisions will offset these costs. Submitters and councils appearing before IHPs will continue to pay their own costs. As councils will no longer pay the costs of their own hearings on Plans, they could reasonably contribute to the operation of IHPs.

R8.6

In a future planning system, local Independent Hearings Panels (IHPs) should be established (when required) to consider and review new Plans, significant Plan variations and private Plan changes across the country, with the features listed below.

- An independent statutory agency should be responsible for appointing IHP members, developing a pool of qualified members across the country, and supporting the operation of local IHPs through guidance on processes and through administrative services.
- IHP members should reflect a range of skills and knowledge (including technical and legal expertise, familiarity with local circumstances, and with tikanga Māori).
- The number and composition of panel members and the hearings processes should reflect the scale and significance of the Plan, Plan variations and Plan changes being reviewed in each case.
- An IHP should be empowered to review together one or more Plans and other statutory land-use planning instruments applying to a region.
- An IHP should make final decisions on merits for Plans, Plan variations and private Plan changes, with appeal rights limited to points of law.
- Appeals on points of law should be to the Environment Court.
- Councils and central government should share the costs of operating the IHP.

Consent hearings and appeals

IHPs could potentially consider significant resource consent applications, on the initiative of the applicant (Shepherd, 2016). Yet the Commission considers that appeals on merits to the Environment Court should continue to be available to applicants for consents, because their property rights are directly affected. Applicants already have the option of having the Environment Court hear their applications heard directly (RMA s. 87D), so providing an IHP option would offer little advantage. However, some consent applications also involve concurrent plan changes (Shepherd, 2016). It could be procedurally efficient to have both heard before an IHP.

Currently, consent applications involving matters of national significance can be "called in" by the Minister and heard by a Board of Inquiry specially convened by the Environmental Protection Authority (Box 5.3). The functions of a Board of Inquiry are very similar to those of an IHP, so it may be efficient to replace Boards of Inquiry with an IHP in a future planning system.

Notification when Plan changes are limited to a particular site

In its draft report, the Commission recommended that councils should be allowed to notify only affected parties of Plan changes to a particular site, and that appeal rights on plans should be limited to people or organisations directly affected by proposed plan provisions or rules. Submissions widely opposed these proposals on a variety of grounds (Allison Tindale, sub. DR110; Environment Canterbury, sub. DR72; GWRC, sub. DR80; Horticulture New Zealand, sub. DR73; Palmerston North City Council; sub. DR93; Planz Consultants Ltd., sub. DR60; Royal Forest and Bird Society of New Zealand, sub. DR91; the Architectural Centre, sub. DR112; Whanganui District Council, sub. DR95; New Zealand Airports Association, sub. DR83; Trustpower, sub. DR61).

Submitters pointed in particular to:

- the difficulty of determining who was affected by a Plan provision or Plan change (for instance, in cases where reverse sensitivity might operate); and
- the likely shift from a contest about Plan provisions to a contest about who has standing to be heard.

The Commission proposes that IHP determinations are subject to appeal only on points of law, in return for an independent, expert and fair review of Plans and Plan changes. It considers that, with this provision in place, further limiting Plan notification and appeal rights (as proposed in its draft report) is not needed.

F8.15

Limiting notification of plan changes affecting a particular site to those directly affected, and limiting appeal rights to people directly affected by proposed plan provisions or rules, is likely to be difficult to implement in practice because:

- councils will find it hard to determine with any certainty all those who are "directly affected"; and
- litigation will shift from substantive issues to questions of whether appellants have standing.

A timely and systematic single-stage merit review of plans and plan changes by an Independent Hearings Panel is a better way to avoid the costs and delays involved in hearing appeals to the Environment Court on plans and plan changes.

8.7 More flexible and more effective consultation and engagement

This section discusses:

- the current limitations of consultation processes under the RMA in engaging a full range of interests in planning processes; and
- proposes that a future planning system provides for a more flexible and less prescriptive approach to engagement, with a focus on ensuring that the interests of all potentially affected parties are considered.

Participation in plan making

The introduction of "open public participation with no limits on standing" in 1991 was "new to town and country planning and was strongly demanded by community and public groups" (Gow, 2014, p. 10). The move to open up standing was driven partly by the need to standardise participation rights between the different conservation statutes being replaced by the RMA, and partly by a view that broader participation in plan making – which can involve trading off competing goals and values – would lead to better decisions.

Provision for broader participation was accompanied by obligations on councils to follow specific consultation processes when making or reviewing RMA Plans. Although the presumption was that these provisions would lead to better decisions, this is questionable.

Respondents to the Commission's survey of local authorities had mixed views on whether public participation and consultation were barriers to the successful implementation of urban planning:

- 81% of respondents considered that "lack of public understanding of planning processes" was somewhat of a barrier or a significant barrier;
- 73% of respondents identified "resource intensive and time consuming statutory consultation requirements" as barriers; and
- 60% of respondents believed that "too many opportunities to appeal decisions" were barriers; but
- only 47% considered that wide standing ("too many people have the opportunity to participate in decisions") was a barrier (Colmar Brunton, 2016).

There is a need to rethink the consultation obligations on councils. Current requirements (as laid out in Schedule 1 of the RMA) are both too prescriptive and too narrow. In particular:

- regardless of the size or complexity of the issue under consideration, councils are required to seek and respond to two sets of submissions;
- the regulations require submissions to be made in a prescribed, written form; and
- the requirements place no onus on councils to ensure that the interests of all potentially affected parties are considered.

One result of these requirements is that participation on proposed Plans is often skewed in favour of individuals and groups with more resources (see Chapter 5; NZPC, 2015a). Those who do not have the time, inclination or capability to make written submissions are underrepresented. In particular, women, young people, and Māori, Pacific and Asian people are significantly underrepresented as submitters on Plans.

F8.16 Consultation requirements under the Resource Management Act are both too prescriptive and too narrow. They require councils to seek two sets of submissions no matter the size and complexity of the issue under consideration, and require submissions to be made in a prescribed, written form. Yet the requirements place no onus on councils to ensure that the interests of all potentially affected parties are considered. Typically, significant population groups, such as women; young people; and Māori, Pacific and Asian peoples are underrepresented in planning processes.

The public has a necessary role in contributing to plan making. Plans involve trade-offs between competing values and goals, and such political decisions are appropriately subject to public scrutiny. Yet a future urban planning system would operate more effectively and efficiently if consultation and engagement requirements:

- focused more on gauging a full range of views and interests than on process, to produce a well-informed proposed Plan; and
- used a variety of methods, in addition to inviting submissions, to engage parts of the community, such as mātāwaka, whose views are not being heard well in current arrangements.

Recognition and active protection of Māori Treaty rights in land-use planning and resource management requires local authorities' special attention to engagement and consultation with mana whenua (Chapter 7). At the same time, mātāwaka are, relative to mana whenua, a numerically large group in Auckland, and New Zealand's other major cities have sizeable numbers of mātāwaka as residents (Chapter 7). Councils need to give special attention to how they engage with and gauge the interests of this group, who typically do not participate to any great extent in the standard RMA consultation processes.

Effective consultation and engagement

In its *Regulatory institutions and practices* inquiry the Commission identified good practice in consultation and engagement (NZPC, 2014b). It noted that engagement can help to reassure the community that good regulatory process is being followed and that the decisions of regulators are robust, well-informed and well-reasoned.

The choice of engagement mechanism should be influenced by the goal of the interaction, and by the relative efficiency of alternative engagement mechanisms. Goals can range from *informing* stakeholders of their regulatory obligations, to *involving* them in regulatory decisions, to *empowering* them to make decisions. An arrangement between mana whenua and local authorities for the co-governance of environmental sites and features is an example of empowerment. More generally, plan making processes typically aim to involve participants in decision making.

In general, the greater the level of public participation the more critical it becomes to ensure a common understanding of the goals of the engagement process (eg, to reach a fair decision on Plan proposals that balances a range of competing interests based on evidence, and guided by statutory objectives and

principles). Failure to establish a common understanding can result in unrealistic expectations around the extent to which participants can affect regulatory decisions.

When developing engagement strategies, regulators need to examine the fairness and proficiency of alternative mechanisms. In practice, the way a mechanism is implemented and the capability of the regulator influence both fairness and proficiency. Fairness requires, for instance, that parties should be given adequate notice and opportunity to be heard; and that the decision makers should be disinterested and unbiased.

The proficiency of a mechanism is situation specific. A mechanism needs to match the characteristics of the group being consulted. Inviting submissions on a Plan, for instance, works for some groups, but does not work for others. A key element of proficiency is whether the mechanism will collect and transfer the required information with minimum distortion or reduction in accuracy.

As noted above, it is appropriate for regulators to have more discretion around how they consult and engage if they are guided by clear principles and are accountable for their decisions to an independent body.

Collaborative decision-making processes

A collaborative decision-making process involves a regulator and regulated parties and relevant stakeholders negotiating aspects of regulatory compliance. If an agreement is reached, the regulator approves the outcomes of the process, avoiding the need to go through the full regulatory procedure. The outcome may better reflect stakeholder preferences while achieving the desired regulator outcome in an efficient, flexible, mutually beneficial and durable manner.

The Commission, in its *Regulatory institutions and practices inquiry*, identified five factors central to the success of any collaborative process. These factors are:

- a shared understanding of the boundaries of influence of the collaborating group;
- commitment to implementing the outcomes of the collaborative process;
- understanding the information needs of all parties and reducing information imbalance;
- selecting participants that represent the wider interests of the community; and
- establishing clear and transparent processes (NZPC, 2014b).

The Land and Water Forum (LWF) used a collaborative process in its work beginning in 2009 on freshwater and land management and recommended its use in regional environmental planning. Both the GWRC and Environment Canterbury employ collaborative processes in their regulatory roles (Box 8.5).

Box 8.5 **Collaborative decision-making processes in resource management**

Land and Water Forum. The LWF used stakeholder-led collaborative processes to consider reform of New Zealand's freshwater management system. It comprised representatives from a range of industry groups, electricity generators, environmental and recreational non-governmental organisations, iwi, scientists, and other organisation with a stake in freshwater management and land management. Central and local government attended as observers. LWF recommended implementing collaborative processes for setting freshwater objectives and limits at a regional level through RPSs and related plans made under the RMA. It also recommended changes to how national instruments are developed (NZPC, 2014b).

Greater Wellington Regional Council GWRC has adopted collaborative processes for implementing the NPS on freshwater management. In particular, it has worked with local communities to establish Whaitua Committees. The Committees "will develop Whaitua Implementation Plans [for management of natural resources in their catchment areas] in an open, communicative and collaborative manner – inclusive of community, partners and stakeholders" (GWRC, 2016, p. 3). GWRC has established Te Upoko Taiao (Natural Resource Management Committee) to oversee the development of the Proposed

Natural Resources Plan. The Committee is comprised of equal numbers of elected councillors and members appointed by mana whenua in the region (Chapter 7).

Environment Canterbury has adopted a collaborative process with local communities to develop regional water plans, as part of the Canterbury Water Strategy.

> Zone committees lead the collaborative process by identifying and explaining local issues and aspirations for water management. …Early engagement with the community is vital for successful collaboration. Our scientists and planners work together with local people from the beginning of the process to understand communities' concerns…Time invested in engagement pays off with fewer contentious issues arising later in the process…Teams of planners, scientists, community facilitators and rūnanga work together with zone committees on the collaborative planning process. Staff work together in cross-disciplinary teams to convert the outputs of this collaboration into plans. These teams guide communities through the development of regional Resource Management Act water plans and formulate solutions together. (Environment Canterbury, 2017)

Arising out of the work of the LWF, the government (through the Resource Legislation Amendment Bill 2015) has proposed that Schedule 1 of the RMA is amended to provide for collaborative processes. Yet prescribing the details of a collaborative approach may not be the best way forward. The GWRC submitted:

> Faced with the costs and uncertainty of existing processes, but the desire to involve our communities in resource management planning, local government is turning to the use of collaborative tools for engagement with the community. One anticipated outcome of these types of processes is that there would be a reduction in the grounds for appeal which GWRC would support. However, a proposed collaborative process in the recent Resource Legislation Amendment Bill created such an onerous process that we would be unlikely to use it even to gain the reduced appeal rights. Therefore, it is unlikely to produce any meaningful improvements to the process. (sub. DR80. pp. 4–5)

The Commission favours greater flexibility in consultation and engagement processes rather than more, yet prescriptive, statutory options.

Innovative engagement processes

Planners have a range of engagement tools at their disposal, but statutory constraints and conservatism in practice typically limit them to a few. Wellington City Council submitted:

> The current engagement requirements under Schedule 1 of the RMA are out of step with emerging consultation trends and the ways that people want to engage in government processes. As a result councils are failing to maximise the opportunity to engage with the very communities affected by urban change. Whilst councils can and still do undertake non-statutory consultation exercises outside of the existing legislative requirements, they may choose not to given the prohibitive costs and time involved and the fact that a formalised process is still required once a plan change is notified for example. (sub. DR68, p. 10)

A stocktake by Rowe and Frewer (2005) found more than 100 different public engagement mechanisms used in the United Kingdom and the United States alone. Examples that seem feasible for councils to add to standard submissions processes include (among many):

- surveys (whether telephone or online);
- citizen juries;
- focus groups;
- citizens;
- neighbourhood forums;
- workshops; and

- canvassing social media.

The aim should be to draw in a wider range of views that are normally heard in plan making, while running a fair and proficient process that gives adequate opportunity for those with particular interests impacted by plan proposals to be heard. Review of Plans by IHPs will provide an invaluable check and a guide on the fairness and proficiency of engagement.

Consultation and engagement requirements in a future planning system

Submitters generally favoured greater flexibility in the consultation and engagement methods and process required by statute (Allison Tindale, sub. 110; Auckland Council, sub. DR86; Environment Canterbury, sub. DR82; Foodstuffs New Zealand, sub. DR108; GWRC, sub. DR80; Horticulture New Zealand, sub. DR73; Planz Consultants Ltd., sub. DR60; Rangitikei District Council, sub. DR71; Whanganui District Council, sub. DR95; Canterbury District Health Board, sub. DR59). Many councils favoured the processes available under the LGA, while recognising the need for particular attention to the interests of residents directly impacted by provisions in proposed Plans or Plan changes. Horticulture New Zealand and Water New Zealand thought that guidance should be provided on what consultation tools to use in which circumstances (subs. DR73 and DR67). Wellington City Council argued that it was important that clear statutory principles guide good engagement and that these principles should be consistent across different planning statutes (sub. DR68).

The Commission considers that greater flexibility is possible when clear statutory principles guide processes (Chapter 13), and proposed Plans are subject to timely and systematic review by an IHP that can call its own evidence (section 8.6). Clear principles and timely review provide more room for councils to use a variety of processes that offer parties a fair opportunity to be heard, without the council having to conform to a highly prescribed statutory process. As noted in Chapter 13, greater flexibility will also have the advantage of making it easier to have common consultation and engagement processes across land use and resource management planning, land transport management planning, and local government infrastructure planning.

Consultation requirements under a future planning system should:

- give councils flexibility to select the most appropriate consultation tool for the issue at hand;
- encourage and enable participation by people affected, or likely to be affected by a decision; and
- encourage the use of tools that ensure the full spectrum of interests is understood in council decision-making processes (eg, statistically robust and representative surveys, to complement submissions), and that allow the public to understand the trade-offs involved in decisions.

R8.7

Consultation and engagement requirements in a future planning system should:

- give councils flexibility to select the most appropriate tool for the issue at hand;
- encourage and enable participation by people affected, or likely to be affected, by a decision; and
- encourage the use of tools that ensure the full spectrum of interests is understood in council decision-making processes, and that allow the public to understand the trade-offs involved in decisions.

Consultation strategies for communities facing change

A planning system that is going to genuinely enable growth and responsiveness must offer some benefits or rewards to those affected. Although more liberal planning rules (such as those that permit more intensive or higher development) tend to raise the value of underlying land, this sometimes seems not to be enough to offset the concerns of existing residents and property owners about disruption, the potential loss of amenity

and uncertainty about the future. Particularly at the neighbourhood level, councils should be able to work collaboratively with residents to improve understanding of proposed changes and reach agreement on ways to mitigate loss of amenity with tailored infrastructure and services investments.

While other features of the future planning system will help weight the system in favour of more enabling rules and policies, local authorities may still need to offer additional services or infrastructure to give existing residents, in areas facing considerable change, confidence about ongoing amenity. More intensive development can also put pressure on existing community facilities. Investing early could help ensure that community services and facilities are fit for the future.

Such approaches are possible under the current New Zealand planning system, but require careful coordination of different planning tools (ie, RMA regulatory plans with infrastructure spending in LGA Long-Term Plans and Annual Plans) and sometimes duplicative consultative processes. The Commission's proposals for a future planning system should make this easier by:

- providing for more flexible consultation requirements in land use and resource management legislation;
- providing better cross-referencing across different planning statutes (Chapter 13); and
- establishing the RSS as the platform for aligning infrastructure provision with land-use planning.

Yet in many situations it will be important to carry discussions about provision of offsetting infrastructure to facilitate development down to neighbourhoods. Such an approach is used in Brisbane, where the City Council works with communities significantly affected by zoning changes to explain the implications of the changes and identify improvements or additions to local public assets or services that would ameliorate problems (eg, road improvements to reduce congestion, and expanded green space). In Brisbane, once the City Council approves them, the improvements are formally incorporated into the City Plan.

District Councils could facilitate this type of process by putting aside funding each year to support increased infrastructure and service needs associated with plan changes. In some areas, resources for extra infrastructure to offset amenity losses from development could be realised by auctioning rights to develop beyond the standard thresholds for a zone (Chapter 12).

Submitters generally supported the concept of councils providing targeted infrastructure to offset the loss of amenity in communities facing significant changes as a result of development (Greater Christchurch Urban Development Strategy, sub. DR83; Horticulture New Zealand, sub. DR73; Retail New Zealand, sub. DR74; Sir Geoffrey Palmer and Dr. Roger Blakeley, sub. DR122; Wellington City Council, sub. DR68; Whanganui District Council, sub. DR95).

R8.8 In a future planning system, councils should engage with communities in areas facing significant land-use changes, to agree ways to offset any amenity losses. This could include providing targeted infrastructure or services investment (eg, the expansion of green spaces or upgrades to existing community facilities) for areas facing significant change.

Notification of resource consent applications

In its draft report the Commission recommended that a future planning system should focus the notification requirements for applications for resource consents (and any associated appeal rights) on those directly affected, or highly likely to be directly affected by, a proposed development. This would place the focus on managing negative externalities rather than extraneous issues, provide more certainty for developers and give them more confidence to proceed with developments. Even so, only a small proportion of resource consent applications for land use are publicly notified (1% in 2014/15, according to the MfE's National Monitoring System).

Participation rights in consent decisions have narrowed over time, but remain wide. Despite the introduction of "limited notification" in 2009, councils must still publicly notify a resource consent application where "the

activity will have or is likely to have adverse effects on the environment that are more than minor" (s 95A, RMA). As already discussed, the definition of "environment" in the RMA is open-ended (Chapter 5). And as the Quality Planning website observes, what counts as "more than minor" requires "exercising discretion as to the degree of seriousness involved" and can involve a large number of factors.

Many submitters opposed the proposal to further limit consent application notification requirements, for similar reasons to opposing limited notification of some plan changes discussed in section 8.6 (Trustpower, sub. DR61; New Zealand Airports Association, sub. DR83; Fulton Hogan, sub. DR100; Progressive Enterprises Ltd., sub. DR55; Goodman New Zealand Ltd., sub. DR103; the Architecture Centre, sub. DR112; Whanganui District Council, sub. DR95; Environment Canterbury, sub. DR72; Sir Geoffrey Palmer and Dr. Roger Blakeley, sub. DR122; the Resource Management Law Association, sub. DR115; Royal Forest and Bird Society of New Zealand, sub. DR91; Water New Zealand, sub. DR67; Allison Tindale, sub. DR110; Otago Regional Council, sub. DR93). Submitters argued that it is difficult in practice to determine who is directly affected (for instance in situations involving reverse sensitivity), and this leads to proceedings focused on questions of standing.

A few submitters supported further limits on consent notifications (sometimes subject to particular provisos) (Azeem Khan, sub. DR116; Foodstuffs New Zealand, sub. DR108; Property Council New Zealand, sub. DR118; Greater Christchurch Urban Development Strategy, sub. DR83; Auckland Council, sub. DR86).

On balance, the Commission considers that any benefits from further limiting consent application notifications could be outweighed by the disadvantages identified by submitters.

F8.17

Compared to current statutory provisions, further restricting notification of consent applications is likely to

- increase the difficulty for councils of identifying who is directly affected; and
- increase the focus on whether or not a potential appellant has standing and therefore should have been notified.

8.8 Conclusion

Providing proportionate, well-targeted and efficient land use regulation for the built environment has been a longstanding challenge. Complaints emerged about the poor quality of regulatory analysis shortly after the RMA was introduced, and has been highlighted in successive reviews. The poor quality stems from a number of factors, including:

- planning legislation (that provides insufficient focus on urban issues, but leaves wide scope for local authorities to pursue other objectives),
- risk aversion and a bias towards the status quo;
- unduly slow processes for changing land use rules;
- too few alternative tools;
- a blindness to prices; and
- insufficient checks.

The changes proposed in this chapter will help resolve these problems. However, changing the performance of the planning system is not simply a matter of introducing new laws. Indeed, perhaps the key lesson learned since the RMA was introduced is that successful planning reform also requires changes to underlying incentives, institutions and cultures. Chapter 13 and Chapter 14, in particular, further consider these aspects of a future planning system.