SUBMISSION

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Using land for housing

Local Government New Zealand's submission to the Productivity Commission

8 August 2015

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

This final submission was endorsed under delegated authority by Lawrence Yule, President, Local Government New Zealand.

Introduction

Thank you for this opportunity to submit on the Productivity Commission's Draft Report Using Land for Housing. The Commission has provided us with an extremely informative and well research paper and a substantive discussion on the issue of land availability. We support the attention being given to the issue of housing affordability and are willing to explore proposed solutions with the Productivity Commission to unlock the supply constraints to make land available for housing.

LGNZ has focused attention on the matters that we see as priorities.

LGNZ considers the most significant issue with respect to the urban planning system (and more widely) is that **New Zealand needs a resource management system that is agile, and reduces churn, cost and time**. The single change that councils have identified that will enable decisions to be made more quickly in RMA plans (including new land zoned/intensified for housing) is the removal of the ability to appeal council decisions to the Environment Court.

Plan agility

The ability to quickly provide certainty in plans is essential for business, for communities and for all stakeholders. The process should take months, not the years it currently does. In the case of the Resource Management Act, plans and plan changes can take up to seven years and sometimes longer to be approved. Plans may become operative in part, pending appeals to the Environment Court (and beyond). Local Government Act processes on the other hand can deliver long term plans, annual plans and bylaws covering a wide range of local authority regulatory and service delivery functions in a matter of months.

Plans are irrelevant if they are not timely. Our planning processes can't keep up with the reality of changes in the environment in which they are being placed. If we can't get plans and plan changes through the system to meet a fast changing world then these plan making processes themselves become counterproductive and part of the problem, producing adverse outcomes. Plan agility (or the lack of it) is a very serious problem and needs to be addressed. We suggest the process should be brought within the timeframes of almost every other decision-making process of central and local government.

The process of plan-making involves the affected community, where private or public access or use rights to resources are made. Collaborative processes, the evaluation requirements under section 32, and the testing at hearing of the issues and plan proposals using accredited commissioners, all support the proposition that as council policy-making capabilities are maturing there is a case to remove the Environment Court's de novo hearing and that the final decision should be made by the council.

We consider that removing the Environment Court from de novo or merits-based hearings in the plan-making process is the most important change needed. The opportunity for a judicial review that the local authority went beyond its legal powers when making a decision, arguably provides adequate safeguards for the public.

The removal of this power would save significant costs for plan-making but more importantly will enable plans to be made operative more quickly. This also supports the principle of local democratic accountability. Currently, there are difficulties with the Court's resolution of disputes over intangible value judgements, particularly in the domain of public resource values, but also in dealing with trade-offs over aesthetic effects of exercising property rights, such as disputes over amenity value and landscape. The concern has been that plan quality and justification may be compromised by or with local council decision-making, but it is time to allow full substantive decisions to rest with communities through their councils.

Removing plan-related merit appeal rights to the Environment Court would need consideration of:

1. The role of the further submission process – to address how parties affected by submitter requests can become involved if they have not submitted;
2. Function of mediation, especially before decisions are made on any proposal;
3. Use of expert witnesses, as these are often not engaged until Environment Court proceedings; and
4. Accreditation and experience of hearing panels.

Associated with this is whether a "quid pro quo" will be prescribing the use of independent commissioners.

Building an urban policy capacity

Underpinning this report is an appreciation of cities, how they should work and what they need to prosper. It is widely acknowledged that cities are hubs of innovation and growth and new research is telling us that these benefits also flow from small and middle sized cities, not just large ones.

The report touches on a wide range of urban concerns such as how and where cities expand; how services should be paid for; how decisions should be made and what cities should do. Yet there are bigger questions that are not directly addressed by the report. The two that LGNZ believes need to be addressed are:

- the capability and capacity of central government agencies to advise on and develop policies supportive of our urban environments
- the adequacy of the roles, powers and policy levers available to our city governments to be able to do their job.

In both cases we are falling behind international practice. Central government has no stand-alone urban policy unit or a Minister responsible for urban affairs. This shows, as Government policies towards cities and urban areas are not well joined up and can be directly detrimental. For example, the local government reorganisation provisions adopted in 2014 fail to recognise the unique governance and representational issues involved in the operation of successful cities, and as a result urban concerns risk being lost in much larger geographical context. Cities involve a complex mix of systems, from physical infrastructure to governance networks.

Reorganisation proposals that fail to recognise the special challenges involved in governing cities may result in our cities underperforming – economically, culturally and socially.

City governance is also a problem. Compared to cities in virtually every OECD country NZ city governments have very few levers in which to over see and manage the affairs of their cities. This undermines the economic performance of our cities as central government lacks the incentives placed on elected members to ensure services maximise city outcomes. It is also too easy for decision-makers to avoid responsibility for the quality of urban decisions as citizens are unable to know who should be held to account. (LGNZ's recent survey of local government perception found nearly 40% of respondents did no know that councils provided local and regional roads.)

If we wish to create a situation where city or district governments are to be held accountable for the performance of the towns or cities, then we need to ensure they have the policy levers and operational tools to be able to do their job. An example that might be looked at more closely is the Manchester City Region which has recently been granted additional powers. It would be helpful of the Local Government Commission had the authority to set up city region type models appropriate for scale.

General comments

The Report poses additional questions for which more information is sought and makes a range of findings. A number of these we would like to comment on.

Land or capital value

The debate on the relative merits of land or capital value is a long standing debate and academics continue to be divided in their view of the merits of each. As the report notes there has been a strong trend away from land to capital value (although is it now common to find systems that a mix of both, made possible by new technologies) and the Government's decisions to force Auckland Council to use capital value, presumably based on an assessment of the evidence, suggests that the Report's recommendations may be simplistic.

We are aware that the topic of land value and its merits may be a matter of consideration in the forthcoming review of the Ture Whenua Act where the fundamental premise, that levying a land tax would encourage owners to find a higher value for that land, has proven false in regard to the last 150 years of rating Maori land. Clearly there are other factors that influence investment in regard to Maori land, such as multiple ownership and availability of credit, but rates based land valuation has proved to be quite problematic.

Governing water

The Report makes a number of comments about the governance of the three waters, the existence or otherwise of incentives on the current institutional arrangements to respond to new housing demands, the potential value of CCOs and questions whether or not councils have made adequate provision for renewals in their ten year budgets.

The argument that the three waters are a relatively poorly performing infrastructure class represents a view taken by the Infrastructure Unit and was heavily influenced by two factors, the first was the lack of easily accessible information on the state of the physical network and the second reflected the relatively small number of councils (although virtually half the population) that applied user charges. In relation to the first LGNZ 3 Waters' study showed conclusively that the state of the 3 Waters infrastructure was, in general, in pretty good shape with challenges in those parts of the country that we would expect to find them – low socio

economic communities and districts with multiple small networks. On the second question, whether water should be paid for by direct pricing or through a rate is matter for each district to determine, taking into account the specific conditions of their areas and their community's willingness to change the way these services are paid for.

The same applies to the choice of governance structure. The OECD view that there are relatively small economies of scale to be achieved in the waters appears to be backed up by much of the academic work on water networks. Clearly where there are economies of scale to be found, such as in Wellington where councils operate a single network, new governance options should be examined. Elsewhere there is a risk of significant diseconomies of scope. Looking only at the cost of water services may distract form the overall cost to the community of adopting new governance arrangements. Again, these are discussions which are very local in their nature and generalisations should be avoided. Two other points:

- we challenge the view that councils are not providing for future renewals of their underground infrastructure. The OAG report itself, on which this view is based, recommended further analysis. A ten year horizon is far too short on which to base such conclusions and the data needs to be disaggregated to separate out Auckland, given that the city is almost 40% of the sample size.
- if the concern is that water institutions should respond to cater for future housing growth (putting aside how this is paid for) then such a requirement could easily be included in the LGA 2002 and made to apply to both councils and their CCOs. It does not require institutional change.

Considering democracy

In LGNZ's view the discussion on the political economy of local planning risks being too simplistic to be helpful. We accept that the majority of voters will be older and own or have lived in their properties for a length of time, sufficient to develop a sense of belonging. They may also be people who have chosen to live in a locality because of its amenities and other features. In LGNZ's view the report overstates the view that residents' views on municipal expansion are influenced by a desire to increase their property values (by creating scarcity). We suspect that many of these property owners also have a strong desire to ensure property prices are not prohibitive to their children.

We also accept that Nimbyism can be perceived negatively by decision-makers, whether governments at the local or central level. However one of the redeemable features of liberal democracy is that an agency's view of the collective interest (whether national or local) does not automatically over-ride the right of individuals or groups of individuals to pursue their own vision of the good life, however annoying that might be to the agency concerned. People act for multiple reasons including altruistic reasons in relation to current and future inhabitants (such as protecting heritage or open space) and their own quality of life. The same applies to elected members, very few of whom would be primarily motivated by a desire to be re-elected. In fact our most successful politicians are often those who made unpopular decisions but convinced their communities of the validity of those decisions.

Our political institutions exist to provide a forum for balancing multiple objectives and the needs and preferences of very diverse communities. (As administrations increase in size the difficultly of addressing this diversity multiplies considerably). The Report highlights the issue of how the needs and aspirations of non-voters and new residents, who are poorly represented, are given weight in council decision-making processes. These are not new questions and are fundamental to democracy as a political system, but a number of efforts have been made to address them in the design of our local government system, for example:

- Before elected members can act they must be sworn in and the oath that councillors and mayors swear binds them to govern in the interests of the city, district or region as a whole. The distinction between their representative role and their governance role is one that we highlight in all our training with elected members.
- The ability to represent the views of different sectors is also affected by the different decision-making process that councils use. While it is true that older more settled people and their organisations will dominate the formal consultation processes we are seeing councils make considerable use of new media when consulting on policies and we would expect most councils to also undertake surveys to ensure that feedback on policies reflects the views of all their communities, not just the regular submitters. The LGA 2002 also places a duty on councils to proactively seek the views of marginalised and under-represented sections of their communities.

Other factors that are relevant to this discussion are the number of councillors on a councils and the degree to which they are representative of their cities or towns, given that the smaller the number the less representative they will be. In some respects large cities might be better serviced by different types of governance structures, such as the model of Greater London which has a legislature and executive.

We acknowledge that the Commission's brief is to focus on a single objective, how to free up land for housing. Public authorities, like councils, in contrast, are required to balance multiple objectives and if governments wish councils to prioritise particular objectives, regardless of local citizens' views, then this needs to occur in a clear and transparent fashion. As democratic organisations they must respect the views of the citizens and organisations that make up their towns and cities.

LGNZ fully supports measures that will remove obstacles and provide councils with the tools to address housing needs in a more responsive manner. However we are also aware that councils have a broader mandate than housing and values like heritage, amenity and quality of life are also considerations that our sector is expected to meet.

Response to recommendations

R3.1 Urban local authorities that wish to set design infill/intensification targets should ensure that their District Plans provide sufficient commercially viable development capacity.

LGNZ agrees with this recommendation.

R3.2 The Ministry for the Environment should explore the potential to develop an Urban Feasibility Model that New Zealand local authorities can use.

Developing a range of tools that can be accessed by local authorities is supported. It is essential that councils are involved in developing this as it will need to suit a range of circumstances. However, the Government itself has limited policy capability and capacity with regard to urban issues and the operation of cities. Elsewhere in this submission we note the importance of strengthening its urban policy capacity.

R3.3 High-growth territorial authorities should review their zoning rules for rural land, to ensure they provide the right balance of promoting efficient use of land for housing and minimising reverse sensitivity risks.

If local authorities are to rezone rural land to urban in a timely way, they need tools to facilitate this. The RMA as it stands does not enable timely decisions to be made to take account of changing circumstances. We understand that New Zealand is out of step with other, similar jurisdictions with respect to the processes required by the RMA. We suggest this is a line of enquiry that should be pursued.

R3.4 Large land price differentials between different types of zones, such as those observed in Auckland, should be a trigger for local authorities to review the adequacy of their land supplies and zoning decisions.

LGNZ understands that this is a matter that local authorities would take into account as they consider the adequacy of their land supplies and zoning decisions as part of good practice.

R3.5 A new legislative avenue should be designed to focus spatial plans on activities that:

- **are of high importance to the functioning of cities and the provision of development capacity for housing (eg, land supply, infrastructure provision, transport services);**
- **relate closely to the use of land or space and the management of negative externalities; and**
- **are most efficiently dealt with at a local level and through local authorities.**

Many local authorities are already making good use of Spatial Plans as a way to integrate growth strategies with neighbours and across a region and to line up/signal the provision of infrastructure with new areas for housing.

The issue with Spatial Plans and the legislative framework is that the RMA does not accord sufficient status to a Spatial Plan. Sections 66 and 74 of the RMA require local authorities to have regard to management plans and strategies prepared under other Acts. Consideration should be given to strengthening this.

LGNZ sees little value in a requirement on councils to develop a spatial plan when there are few if any levers to ensure such plans are given effect in statutory planning documents. Attention is better focused on getting the statutory links right and allow councils to develop their own approaches for steering future growth.

R3.6 The new planning avenue should be voluntary to allow local authorities to choose the statutory planning mechanisms that best suit their circumstances.

LGNZ agrees with providing tools that are voluntary. The experience is that in a country like New Zealand, given its very diverse nature, prescription may not deliver the intended outcomes.

R3.7 Future plans prepared under the new legislative avenue should be developed in partnership with the full set of central government actors whose services matter for the functioning of cities. Given the fiscal implications of greater central government involvement in spatial planning, both Cabinet and the relevant local authority should approve such plans.

The issue of getting central government involved in planning/spatial planning was well canvased in the 2010 Discussion Document – Building Competitive Cities[1]. Local authorities described the problems that they experienced when seeking the involvement of central government agencies in their processes. Greater consideration is needed as to whether/how central government could be involved in this planning process and then in approving such a plan.

Government, as a whole or through its agencies, should participate in the planning process as submitters and/or collaborators in the overall process. Approval however is another issue. Cabinet approval would be unacceptable on a number of grounds. For example:

- Lack of transparency: Cabinet processes are undertaken in secrecy and public confidence will be undermined if citizens are not able to be part of that process.
- Delays: it is likely to take substantial time for Cabinet to provide approval given the number of departments that will need to be consulted.
- Sub-optimal outcomes: Communities through their representatives are best placed to make these decisions as they face the costs of their decisions.

R3.8 The new legislative planning avenue should include processes to encourage robust regulatory analysis and development, as section 32 of the Resource Management Act is designed to do.

If a new planning pathway is to be developed, robust regulatory analysis is supported.

R4.1 High-growth local authorities should express their land supply targets in terms of zoned and serviced land and report publicly on their performance.

LGNZ supports this, in the interests of transparency, although councils may not be able to accesses information on the number of construction-ready serviced sections held by developers.

R4.2 Local authorities should monitor and report on dwelling completions and net changes in the dwelling stock, relative to expected and actual population and household growth.

LGNZ supports this, in the interests of transparency.

R4.3 The Ministry of Business, Innovation and Employment, Statistics New Zealand and territorial local authorities should work together to improve the quality of official statistics available from the building consent form as a priority.

LGNZ supports this.

[1] http://www.mfe.govt.nz/publications/rma/building-competitive-cities-discussion-document

R4.4 The Ministry of Business, Innovation and Employment, in conjunction with relevant local authorities, should inventory public land holdings in all high-growth cities to identify sites that could be used for housing.

LGNZ supports this.

R4.5 Local authorities should set policies for the publishing of and consulting on draft plan reviews or plan changes of interest to the wider community ahead of notification, unless compelling reasons exist for not doing so.

LGNZ supports this

R4.6 The Ministry of Business, Innovation and Employment and the Ministry for the Environment should, once the work of the Auckland and Christchurch Independent Hearings Panels (IHPs) is complete, evaluate the IHP processes, with a view to deciding whether IHPs should become a permanent feature of the planning system.

LGNZ supports this. There will be valuable "learnings" from the IHPs. If the next set of reforms to the RMA is to offer alternative planning pathways, then understanding how the IHPs have worked is essential in order to evaluate the advantages of wider application. Related to this, we consider there are other matters needing consideration:

- Whether appeal rights should be removed for all plan changes.
- Where recourse to the Environment Court is removed should the use of independent commissioners be prescribed - in part? In full?
- Whether councils should continue to have the choice about the make-up of the panel and the ability to include elected members.
- If the use of independent commissioners is prescribed should councils choose the commissioners; should it be joint with Government; should Government choose the commissioners?
- Whether appeal rights should be removed for specific plan changes only (possibly with the agreement of Government) or only where a collaborative process has been used or a bespoke process (approved by Government).

R5.1 Urban territorial authorities should remove District Plan balcony / private open space requirements for apartments.

LGNZ considers that local authorities need to fully understand the additional costs associated with requiring/providing a balcony or open space on apartments before deciding whether they should be required. Local authorities should retain the ability to make the decision.

R5.2 Once the Ministry of Business, Innovation and Employment has completed planned work on updating Building Code rules and guidance related to air quality, lighting, acoustics and access in multi-unit dwellings, local authorities should review minimum apartment size rules in their District Plans, with a view to removing them.

LGNZ agrees that these matters should be subject to a national regulation and the Building Code would be the appropriate mechanism.

R5.3 Urban territorial authorities should remove District Plan minimum parking requirements, and make more use of traffic demand management techniques.

LGNZ agrees this is worthy of further consideration.

R5.4 Local authorities should undertake robust cost-benefit analyses before considering the introduction of building height limits, and should lift current limits where it cannot be demonstrated that the benefits outweigh the costs.

LGNZ agrees with this recommendation.

R5.5 Local authorities should review District Plan controls on the design and construction of buildings or dwellings that exceed standards set under the Building Act, with a view to removing them.

LGNZ sees merit in this recommendation but it needs to be qualified to make it clear what falls within the scope of "design and construction". Given that the RMA focuses on "effect" there may be a number of situation where building that are code compliant under the Building Act result in unacceptable environmental outcome sin specific locations.

R5.6 The Government should introduce amendments to the RMA to clarify the role and importance of housing and urban environments.

LGNZ agrees with this recommendation.

R5.7 In reviewing their District Plans, local authorities should move more residential land-use activities into "permitted" or "restricted discretionary" status.

LGNZ agrees with this recommendation. "Front-loading" of plans should be encouraged generally, to provide greater certainty to all parties.

R6.1 When councils refer to the supply of land for housing, they should be clear about the readiness of land for building (eg, un-zoned but planned-for future zoning; zoned; zoned and serviced; zoned, serviced and consented).

LGNZ agrees with this recommendation. Common terminology should be encouraged across councils so that apples can be compared with apples.

R6.2 Councils should identify areas where there is existing infrastructure capacity and ensure that planning rules do not prevent intensification from occurring in these areas.

This is worthy of merit and is worth exploring in areas where there aren't other reasons to constrain infill. It is unclear what the mechanism being suggested is, beyond greater recognition in the RMA of the importance of housing and urban environments.

R6.3 Councils should prioritise the development of up-to-date asset management information systems. This should be supported by recruiting and developing staff with the skills and expertise needed to make effective use of these systems, and ensuring that the information from asset management systems is integrated into decision-making processes.

LGNZ supports this recommendation as good practice.

R6.4 Councils should pursue opportunities to make more efficient use of existing infrastructure assets including through greater use of user charges where this can reduce demands on infrastructure.

Councils are already doing this.

R6.5 Government should adopt the Local Government Infrastructure Advisory Group's recommendation to amend the Land Transport Management Act to allow pricing on existing roads where there is a business case that enables effective network optimisation.

LGNZ supports this recommendation.

R6.6 Councils' asset management systems should feed into decision making about optimal infrastructure standards. The data used to inform standard-setting should be shared openly with the development community.

LGNZ is not clear on what this recommendation means – are optimal infrastructure standards national standards or an optimum level for the community? In principle, this recommendation seems reasonable.

R6.7 If councils determine that a good case to change infrastructure standards exists, then developments that already have consent should be exempt from the change. Alternatively, developers should be compensated for any additional costs incurred as a result of the change.

The details of the implications of this recommendation need to be worked through with councils.

R7.1 Evaluation of the financial prudence and reporting regulations should monitor how the regulations affect councils' ability to provide infrastructure to support growth and review whether 15% is the most appropriate debt-servicing ratio for high-growth councils.

Debt is a desirable way of paying for long life assets which have inter-generational benefits. Although the financial prudence regulations are not mandatory they do incentivise behaviour, not only because exceeding the benchmarks may provide grounds for some form of ministerial intervention but also because of negative publicity associated with a breach. The 15% benchmark for growth councils is conservative. We note that the Local Government Funding Agency accepts a debt servicing ratio of 25% of revenue as prudent, for their purposes. We believe a higher benchmark, such as 20% of annual revenue, is prudent for growth councils (particularly since income from development and financial contributions is not considered as revenue).

R7.2 Councils should include information in their development contributions policy about the relationship between dwelling floor area and the cost of providing infrastructure services. If smaller dwellings impose lower costs on the infrastructure network, this should be reflected in lower charges.

We support this recommendation only to the degree that "floor area" is a relevant consideration when setting development contributions. The details of the implications of this recommendation need to be worked through with councils on the ground.

R7.3 The Local Government Act should be amended to make clear that developers may formally request that councils construct growth-enabling infrastructure, to be repaid through targeted rates on the properties that benefit from the infrastructure connections, and obliging Councils to consider such requests.

LGNZ supports such a mechanism so it is clear that a request can be made and that councils are obliged to consider it (the decision-making ability resting with the council). The reason councils have not made use of this option is the significant temporal gap between the construction of infrastructure and sale of properties in new developments. This can result in an ongoing subsidy from existing residents.

R8.1 Auckland Transport and Watercare should amend their SOIs so that they are aligned with the Auckland Plan and its target for new dwellings. The SOIs should include performance measures relating to the efficient rollout of new infrastructure to support an increased supply of new dwellings.

LGNZ supports this recommendation in principle and would like more clarity on the nature of any mechanisms proposed. Already the LGA (Auckland Councils) Act 2009 requires substantive CCOs to take into account or give effect to the spatial plan. There needs to be better alignment generally between CCOs and the governing body.

R8.2 Auckland Transport and Watercare should include performance measures in their SOIs that encourage greater coordination between CCOs and with Auckland Council, building on Auckland Council's current review of CCOs.

LGNZ supports this recommendation in principle, subject to Auckland Council's support.

R8.3 Watercare should change their approach to calculating infrastructure growth charges to better reflect the underlying economic costs of supply in different locations and for different types of dwelling.

More analysis is required before we can accept this recommendation. It is likely that charges that reflect the economic costs of supply in specific locations will be substantially higher and may be a major disincentive to new housing development.

R8.4 The requirement to consider development agreements that applies to councils should also apply to CCOs.

LGNZ supports this recommendation; however, we would note that we are not aware of any legal advice suggesting that CCOs are somehow exempt from that requirement.

R9.1 The Treasury, in consultation with the Department of Internal Affairs, should investigate removing the rating exemption on land owned by the core Crown, including on land used for health and education purposes.

LGNZ supports this recommendation. This is one of the key recommendations of LGNZ's recent funding review.

R10.1 The Treasury should investigate the possibility of providing an exemption from the foreign investment screening regime for developers purchasing land, providing the land is developed into housing and resold within an acceptable timeframe.

LGNZ has no comment on this.

R10.2 There is a place for a UDA to lead and coordinate residential development at scale in both greenfield and brownfield settings, working in partnership with private sector developers. Legislation would be required to establish and give powers (such as compulsory acquisition) to one or more UDCs in New Zealand.

LGNZ supports this being pursued as a concept – to give local authorities more tools to address land supply issues. A range of issues from the Bill of Rights to accountability, need to be considered.