

## **Auckland Council Submission to the New Zealand Productivity Commission on its Better Urban Planning Draft Report September 2016**

### **Introduction**

1. Auckland Council (“council”) welcomes the opportunity to engage on the New Zealand Productivity Commission’s (the “commission”) draft report on Better Urban Planning. Council has worked with Auckland Transport, Pānuku Development Auckland and has consulted with Watercare Services Limited in the preparation of this submission.
2. This submission is divided into three sections:
  - a. Section one outlines Auckland’s key challenge as context for council’s response to the commission’s draft paper and gives council’s broad response to the commission’s draft paper across three themes:
    - i. Principles for a future planning framework
    - ii. Centralised planning powers
    - iii. Implications for Māori
  - b. Section two summarises council’s key positions in this submission. Council also identifies opportunities for future investigation by central government.
  - c. Section three discusses council’s rationale for those positions, referencing the commission’s recommendations, which we have grouped as:
    - i. Council values the wider contribution of urban planning
    - ii. The shape of the legislative framework
    - iii. Central government’s role
    - iv. Better addressing poor environmental outcomes
    - v. Public participation
    - vi. Integrating funding and planning
    - vii. Building capacity and scope for collaboration
3. The council’s submission focuses primarily on the Commission’s draft recommendations and several of the strategic questions within the Commission’s draft report. Given consultation period constraints, council makes no comment on specific findings within the Commission’s draft report and does not necessarily accept those findings. The same applies with any other recommendations or questions the council has not explicitly addressed in this submission.
4. Council notes that the circumstances in which the terms of reference for this inquiry were issued in November 2015 have evolved. Central government has worked across a number of fronts introducing reforms designed to address these concerns around Auckland housing affordability, knock-on price-rises across other regions and wider macroeconomic risks to New Zealand’s financial stability.
5. The council has concerns about the amount of reform underway and the integration, phasing and coherence of that programme. The recommendations in the draft report affect governance and institutional arrangements and could cause substantial disruption,

uncertainty and cost. Changes to the resource management system could also affect the nature of individuals' rights and interests in resources in ways that are not yet clear.

6. The council's response to the Commission's draft report is made in the context of all elements of the government's reform programme, which proposes fundamental change in some areas. Given this complexity, council makes broad points in section two and offers further detailed rationale in section three.

## **SECTION ONE: AUCKLAND'S KEY CHALLENGE**

7. Auckland is the fastest-growing region in the country. Last year Auckland grew by an additional 117 people every day and is projected to grow by 736,000 people over the next 30 years. That means up to 400,000 new dwellings and 277,000 additional jobs could be required to meet that population growth.
8. Auckland's current and future infrastructure requirements are enormous. To enable Auckland to maximise the benefits of growth, we need services, infrastructure and facilities that can cope with the added demand. This includes increased new transport, water, wastewater and storm-water infrastructure to ensure we can connect newly built homes, and new community facilities for Auckland's expanding suburbs.
9. Feasible development capacity has now been sufficiently enabled through the Unitary Plan. The challenge for Auckland is funding and delivering the infrastructure it needs. To get the most out of our spend, the council needs to plan the provision of transport, water, wastewater and storm-water and community infrastructure in a coordinated way.
10. As well as capital expenditure, infrastructure assets incur on-going operational costs and there needs to be provision made for asset maintenance and renewals. These costs are also significant. The council also needs a broad range of tools to enable it to tailor funding approaches and manage demand for services in order to maximise efficient use of our existing and new infrastructure.
11. The rate and scale of this growth presents both challenges and opportunities for Auckland and the rest of New Zealand. To meet these challenges and opportunities, Auckland needs a range of tools to plan for the future. Auckland council considers that the urban planning framework is a key tool in achieving broad outcomes for the social, cultural, economic and environmental objectives of people and the region.

### **Principles for a future planning framework**

12. The council reiterates the importance of the principles for a future urban planning system it submitted in response to the Commission's issues paper:
  - **Thinking of urban planning as a system:** an effective urban planning system must be able to provide certainty around place based outcomes. The system must also provide flexibility in the process and the tools that can be used to achieve those outcomes. It is essential that there is a solid and shared evidence base to inform policy and plan development and to support decision making. In addition, the

purpose of local government includes the requirement to perform regulatory functions in a cost effective manner. A planning process that is complex and takes a long time to work through may fail to meet that requirement with costs accruing for both the regulator and the user. However any revision to the planning system needs to keep in mind the lack of equality between participants representing different interests. Against that background it must be understood that short term gains can create long term problems and that taking a long term view needs to be a feature of any good planning system.

- **Focussing on planning for future funding challenges:** having a sufficient range of funding tools and mechanisms and the flexibility to use them in a way that allows tailoring to local circumstances is critical to enable Auckland's ability to manage growth. Land use/supply needs to be coordinated and integrated with infrastructure provision and funding which in turns needs to strike a balance between being future-focussed and responsive enough to be able to fix current problems.
- **Enabling informed decision making and public engagement:** It is important councils, ratepayers and taxpayers and all Aucklanders have sound information on which to base their decisions. Councils must engage with and listen to what our communities tell us is important early in the policy process based on clear evidence and our sound advice on possible outcomes, trade-offs and impacts.

The level of community engagement and debate as the Unitary Plan progressed demonstrates that it is important to Aucklanders that they continue to have a voice and be heard about the planning decisions that shape how they, and future generations, will work, live and play in Auckland.

### **Centralised powers for urban planning**

13. Broadly, the draft report makes recommendations for greater central government intervention or decision-making in lieu of local decision-making. The report also advocates increased local government oversight or the transfer of responsibilities to other Crown agencies. Council sees two clear issues with this approach.
14. First, council considers participation in and implementation planning framework must enable and underpin local democracy. Decision makers should be accountable to and understand the issues concerning local people.
15. Second, recommendations to increase central government powers may change the nature of the relationships between central government, local authorities and tangata whenua. Where such changes significantly reduce or alter the nature of the partnership between Crown and Māori such changes may raise Treaty issues.
16. The council suggests the consideration of such fundamental reform options should be underpinned by shared and agreed understandings of the performance of the current resource management system, agreed objectives for the future, and shared and robust evidence bases upon which to support analysis and decision-making.

## Implications for Māori

17. Thinking about land and urban planning as an integrated system that has cultural, social and environmental links as well as economic factors is consistent with Te Ao Māori. The commission's own evidence base noted:

*[The inquiry's starting point] appears to encompass economic and possibly environmental aspects of planning, but does not encompass social or cultural aspects of planning. Land is described predominantly as a fiscal asset, rather than a tāonga tuku iho. Concepts of holistic mauri ora are replaced with economic terminology where land is analysed as a resource valued primarily for producing economic gains...[this undermines] the integrity of mātauranga Māori as a conceptual underpinning to urban planning which aims to respect environmental, cultural and social outcomes”.*

*From Ngā Aho & Papa Pounamu: Better Urban Planning – Report from Māori Built Environment Practitioners Wānanga (2016)*

18. Some of the recommendations in the draft report reflect a siloed approach to urban planning, which seems at odds with a holistic Māori world view. Examples of this approach are a legislative model which separates the natural and built environment, and a land use focus for urban planning where the interrelationships with other relevant legislative processes seems to be separate. Indeed, the commission's recommendation to narrow the scope of spatial planning could likely see Māori engage in multiple legislative processes for a single issue from a Te Ao Māori perspective.
19. The role Māori would have as a Treaty partner in setting national direction at the central government level is not clear, and the draft report indicates there seem to be reduced opportunities for meaningful participation in the proposed national Independent Hearings Panel processes at the policy setting and consenting stages.
20. The draft report contains a chapter on the Treaty and Māori issues which poses questions, rather than recommendations, and which could limit interests of Māori in urban planning to papakāinga, streamlining the RMA with Te Ture Whenua, cultural impact assessments, what central government guidance should be provided to local government to recognise and protect Māori interests in planning, and the type of legislative provisions to be strengthened to provide for Māori participation in land-use planning.
21. These implications of the Commission's draft report for Maori are significant, considering that 85% of Māori reside in New Zealand urban areas.

## SECTION TWO: EXECUTIVE SUMMARY OF COUNCIL'S POSITIONS

- Land supply in Auckland has been better enabled under the Unitary Plan; the focus now needs to move to funding and delivering infrastructure and development.
- The council values the wider contribution urban planning can make to broader goals of community well-being, resilience and prosperity. The council does not support the commission's proposed narrowing of spatial planning to focus only on issues closely related to land use.
- The council supports spatial plans being given more legislative weight in relation to unitary or district plans (Recommendation 9.1)
- The council has concerns about the amount of central government reform underway and the lack of clarity surrounding integrated implementation of the planning framework the reform programme may produce.
- The council agrees with the commission that *"a future planning system should only apply rules where there is a clear net benefit [of doing so], and where the link to the [benefits or costs] are clear"*.
- The council disagrees with the commission that the planning system should only be used *"where alternative approaches are not feasible"* i.e. as a policy instrument of last resort.
- The cost of funding Auckland's infrastructure is a key challenge. The council needs a broad range of tools to enable it to tailor funding approaches and manage demand for services in order to maximise efficient provision and use of our existing and new infrastructure.
- The commission approaches land use from a siloed perspective that is fundamentally inconsistent with our experience of urban planning in practice and which is also inconsistent with Te Ao Māori.
- Some of the commission's recommendations have significant unexamined impacts for Māori as a Treaty partner, and may limit interests of Māori.
- The council considers separating planning from environmental protection law within an urban planning context could simply exacerbate existing legislative misalignments and lead to the further deterioration of the environment. The council considers Option A has some advantages over Option B subject to the land transport and infrastructure laws being closely aligned with the single resource management law. However, it has significant concerns about how either of the proposed urban planning legislative frameworks could be implemented in practice (Question 13.1).
- Broadly, the council does not support the introduction of a government policy statement on environmental sustainability. Within the commission's proposal to introduce a government policy statement on environmental sustainability, the council could support

the provision of additional central government guidance enabling the establishment of standardised methodologies and environmental reporting processes. However, the council has concerns about a number of other aspects of the proposed government policy statement including how “environmental lag times” could be taken into account, and how national priorities are reflected in a local context (Recommendation 8.1).

- The council does not support the proposed central government override powers in relation to:
  - local plan making in limited (unspecified) circumstances (Recommendation 7.1)
  - enabling central government to require common land use approaches to addressing specific issues (Recommendation 7.1)
  - enabling central government to instruct council infrastructure units to deliver infrastructure where a pre-set price trigger is reached between developable and undevelopable land (Recommendation 7.1).
- The council does not support the introduction of a permanent independent hearings panel (Recommendation 7.7). The council suggests the commission consider the use of the council-led commissioner model currently enabled under the Resource Management Act as an alternative model.
- The council does not support shifting regulatory responsibilities for environmental monitoring and compliance away from councils to an independent authority, such as the Environmental Protection Agency (Question 13.2).
- The council does not support increased external audit and oversight of councils’ environmental monitoring (with some type of trigger enabling central government intervention if a council’s performance was consistently poor over time). The council suggests that further analysis be undertaken to identify if there is a link between compliance efforts by councils and poor environmental outcomes (Question 13.2).
- The council supports further investigation into the potential for using adaptive environmental management tools. Widening the environmental management toolkit and providing the discretion to use the best tool for each given situation or enabling a combination of approaches to be used would allow a more flexible and responsive approach, and enable the approach to be tailored to address complex local environmental issues (Question 8.2).
- The council supports giving councils flexibility to select the most appropriate consultation tool for dealing with the issue at hand and better enabling the full spectrum of interests to be understood in council decision-making processes and improving transparency of decision-making. The council considers restricting other participation would undermine the exercise of local democracy (Recommendation 7.6).
- The council supports the commission’s findings and recommendations on financing and funding infrastructure. The council also endorses the potential use of alternative funding mechanisms, in particular targeted rates “to fund infrastructure investments where benefits are well defined” (Recommendation 10.2). The council supports being able to

access a broader range of funding tools, this could include the use of road pricing in the form of congestion management tools and the ability to use public private partnerships. The council also notes that the interim Auckland Transport Alignment Project (known as ATAP) has identified the potential to use variable road network pricing as a demand management tool to achieve better network performance. Wider use of all of these tools to support infrastructure investment and ensure growth pays for growth is an important part of our strategy.

- The council suggests an evaluation of the existing use of transferable development rights in Auckland. This may be useful to assess the merits and possible impacts of the commission's proposed approach to transferable development rights (Question 10.4). The use of this tool could have implications for the operation of the Unitary Plan.
- The council supports recommendations to build local and central government capability (Recommendation 9.2 centre of excellence, Recommendation 12.2 central government urban planning and local government sector capability building, Recommendation 12.1 environmental science, economics and engagement with Māori).
- The council can see some merit in developing a shared process to assess infrastructure investment programmes although questions the need for institutions or formal processes in all circumstances (Recommendation 9.3). The council lends this support subject to any learnings from the Auckland Transport Alignment Project becoming available. The council recommends that the ability for councils and central government to engage on key infrastructure also remains available outside of the proposed mechanism.

## Further opportunities for investigation

22. The council has also identified a number of other issues which may warrant further investigation by government and these are listed below.

### *Route protection*

23. The report contains some discussion on protecting corridors for trunk infrastructure prior to growth occurring but does not provide specific recommendations on how to achieve this and no discussion about existing limitations of the designation system.
24. The “Building Competitive Cities” report produced by the Ministry for Environment in 2010 proposed the idea of “concept designations” which would enable designations to be put “in concept” early in the process and allow the detailed work to be undertaken at a later stage. The aim of the concept designation was to enable the identification of future transport investment without having to go through the full notice of requirement processes currently required by the Resource Management Act in regards to designating future transport projects. These “concept designations” would require minimal detail and have lapse periods of 30 years, allowing rural activities to continue until the land is needed for transport purposes. Auckland Transport continues to support the idea of “concept designations” or other mechanisms/tools for the protection of routes for infrastructure investment to support future growth.
25. In addition to securing the route in planning terms, the acquisition of land under the Public Works Act can be slow, legalistic, and cumbersome. Innovative solutions which would benefit both the affected landowner and the public body should be explored.

### *Wider review of body of urban planning law*

26. The council acknowledges the commission’s finding that the differing purposes of the three planning Acts create internal tensions, duplication, complexity and costs (Finding 5.2).
27. Some of these misalignments have occurred as a result of differing purposes of legislation, different criteria for guiding decision-making, different processes and different consultation and engagement processes. The council agrees with the commission that these misalignments within the current legislative framework need to be addressed. Council also draws the commission’s attention to the recent paper Local Government New Zealand has commissioned from Simpson Grierson “*The statutory framework of New Zealand’s local government sector: is the key legislation working properly*” (August 2016) for further information.

## SECTION THREE: DISCUSSION

Section three provides a discussion on the substantive recommendations made in the commission's draft report. Recommendation numbers are referred to in the discussion. We have grouped the recommendations under our own headings:

- The council values the wider contribution urban planning can make
- The shape of the legislative framework
- Central government's role
- Better addressing poor environmental outcomes
- Public participation
- Integrating funding and planning
- Building capacity and scope for collaboration

### **The Council values the wider contribution urban planning can make**

28. The council recognises that good strategic land-use planning can improve social, economic, environmental and cultural well-being for Aucklanders now and in the future. In addition to the purposes of planning identified by the commission, the council recognises the importance of an outcomes-based approach to planning for land use with broad goals for raising community well-being, resilience and prosperity. This should occur within a framework of environmental sustainability which supports Aucklanders' vision to make Auckland "the world's most liveable city".
29. The wider benefits of urban planning are made all the more critical in the context of strong growth with its fast, dense residential and commercial expansion which, for Auckland, is expected to continue for decades to come. To future-proof Auckland's ability to accommodate and support growth, Auckland also needs to effectively manage or understand the impacts on the natural and physical environment. This will be a determining factor in Auckland's future success.
30. The commission proposes that spatial plans should be a standard and mandatory part of the planning hierarchy and that spatial plans should be tightly defined and focus on issues closely related to land use, in particular the provision of water and transport infrastructure and community facilities (e.g. green space, reserves, conservation areas, and libraries), protection of high value ecological sites and natural hazard management (Recommendation 9.1).
31. The commission made a similar recommendation in the Using Land for Housing inquiry which proposed to narrow the scope of spatial plans to include the 30 year infrastructure strategy, longer term transport planning and longer-term thinking about the growth of the city and land-use rules (Recommendations 3.5-3.8 Using Land for Housing).
32. The council reiterates its response to the commission's Using Land for Housing inquiry in relation to the commission's proposal on spatial plans. The council does not support the commission's recommendation for spatial plans to be tightly defined and focus on issues

closely related to land use (Recommendation 9.1). However, it does support spatial plans having more legislative weight in relation to unitary or district plans.

33. The Local Government (Auckland Council) Act 2009 requires the council to prepare a spatial plan that contributes to Auckland's social, economic, environmental and cultural well-being through a comprehensive and effective long term (20 – 30 year) strategy for Auckland's growth and development. The council consulted extensively with Aucklanders and stakeholders, including government, during the development of its spatial plan. The plan reflects Auckland community aspirations. The council has previously advocated for a more integrated planning framework and to give the Auckland Plan greater statutory weight in relation to the Unitary Plan.
34. The Auckland Plan is required to integrate broad outcomes across a 30 year timeframe which enables decision makers to understand impacts at both a temporal and spatial level. This leads to more informed decision making and risk management, as trade-off decisions are understood within the wider planning context.
35. The Auckland Plan provides a framework by which international, national, regional and local interests can be considered and balanced in a holistic manner and then integrated across a wide range of the council's operations and with other stakeholders.
36. Section 80 of the Local Government (Auckland Council) Act 2009 requires the council to involve central government amongst others throughout the preparation and development of the Auckland Plan. Working in partnership helps to ensure the implications of spatial planning on the financing of central government infrastructure are fully understood and provides an opportunity for discussion about alignment of national and regional interests.
37. The commission's proposed approach to narrow spatial planning to land use matters has specific capacity implications for Māori. This could result in a complex system where a single issue (from a Māori world view) may require participation across multiple legislative processes. This is likely to stretch the limited resources of Māori to effectively participate in resource management even further.
38. The council agrees with the commission that "a future planning system should only apply rules where there is a clear net benefit [of doing so], and where the link to the [benefits or costs] are clear".
39. The council is a strong advocate of cost-benefit analysis supported by a robust evidential base. Our research, information and monitoring unit includes dedicated land use, infrastructure, and environmental monitoring and evaluation functions, and social and economic research functions. The council has proactively built capability in natural sciences monitoring and evaluation, and economics.
40. The council disagrees with the commission that the planning system should only be used "where alternative approaches are not feasible" i.e. as a policy instrument of last resort. Government intervention can also be justified where:
  - there is a clear net benefit
  - the link to the benefit or costs are clear **and**

- intervention supports alternative policy or legislative approaches **or**
- Intervention fills gaps or deficiencies within those alternative approaches **and** the community supports such intervention.

### **The shape of the legislative framework – Question 13.1**

41. The commission proposes clearer distinctions between the built and natural environment are made. It concludes the natural environment needs more focus on setting standards that must be met, while the built environment requires assessments that recognise the benefits of urban development and allow change. It considers current statutes and practice blurs the two environments, providing inadequate security about environmental protection and insufficient certainty about the ability to develop within urban areas.
42. This need to introduce clearer distinctions between the natural and built environment leads the Commission to the question how to enable this legislatively. The Commission seeks guidance on the advantages and disadvantages of two proposed legislative models. The first model, Option A, involves having a single resource management law with a built environment section, and natural environment section, with the interrelationships between the two and also between the single law and land transport and infrastructure laws being clearly specified.
43. The alternative model, Option B, involves having one body of natural environment law and a separate body of “planning law” which includes built environment regulation, infrastructure and land transport planning. This model also has some way of clearly specifying the inter-relationships between its two key components.
44. The council appreciates the commission’s proposal is an attempt to better align the legislative framework in which urban planning occurs.
45. The council notes that Option A acknowledges the interconnectedness between the natural and built environment and the shaping effects each has on the other. This is important within any urban planning framework. The council supports the recognition of this interconnectedness.
46. However, both proposed legislative models assume that there are clear delineations between natural and built environment in the urban context. The reality is not so simple. Neither option makes it clear how “urban” issues are framed or are to be managed, particularly in relation to non-urban issues or in situations where “urban” and “non-urban” are literally in close proximity. For example, Auckland’s Unitary Plan enables the development of “satellite towns” which are located within primarily rural environments. Most of Auckland is rural. Auckland is bounded by 3100 kilometres of coastal land. The Unitary Plan enables significant rural to urban zoning changes. A strict separation between urban and natural could also be problematic for linear infrastructure providers whose assets extend across many environments.
47. While Option A recognises it is necessary to link both the natural and built environment sections with land transport and infrastructure laws it frames land transport and infrastructure provisions as sitting outside consideration of the natural and built

environment. Infrastructure is a key enabler and shaper of the built environment. Separating transport and infrastructure considerations from the natural and built environment may have the unintended effect of compounding or introducing new legislative misalignments.

48. Neither option explicitly addresses or introduces processes to better align planning with infrastructure funding and delivery or provides clarity on how this linking mechanism will provide better integration than the status quo. This is a significant omission.
49. For planning within an urban area, it is particularly important that the whole environment is considered (natural and built) in relation to what is being imposed on that environment (infrastructure and transport links) and that the enabling mechanisms (such as funding and integration tools) do not pose additional barriers to securing good outcomes. It is important that all of these components work together and are well aligned.
50. The council considers separating planning from environmental protection law within an urban planning context could simply exacerbate existing legislative misalignments and lead to further deterioration of the environment. In theory, while it may provide potential to enable simpler and faster consenting in urban areas legislative interpretation and implementation could be challenging.
51. The council considers Option A has some advantages over Option B subject to the land transport and infrastructure laws being closely aligned with the single resource management law. However, it is not clear how either of the proposed urban planning legislative frameworks could be implemented in practice.
52. The council recommends that central government undertakes a review of the whole body of law underpinning the urban planning framework (i.e. Local Government Act, Land Transport Management Act, Resource Management Act, Building Act and associated legislation) to identify any misalignments and how best to remedy those before deciding on the form of any new legislation.
53. Using this approach as a starting point would reduce unnecessary disruption, uncertainty and cost arising from more fundamental reform of the urban planning system. It could allow any reform to be much better targeted and to ensure new and existing or retained elements of the planning framework align well.

#### **Central government's role – recommendations 8.1 and 7.10**

54. The Commission makes several recommendations that would provide for greater central government direction or the expansion of central government powers in the urban planning framework:
  - a Government Policy Statement on environmental sustainability
  - powers to override local government plan making and implementation processes
  - a permanent Independent Hearings Panel to review local plans

- centralising the administration, or alternative oversight, of environmental monitoring

*Government Policy Statement – recommendation 8.1, finding 8.4*

55. The Commission's draft report recommends any future planning system should include a Government Policy Statement (GPS) on environmental sustainability (Recommendation 8.1). This is intended to fill the gaps in the current system, and replace the existing national policy statements and national environmental standards with a view to providing clearer, more consistent national direction. The proposed GPS is intended to provide stronger links between plans and overarching national priorities.
56. The Commission believes that there have been a number of unintended consequences (Finding 8.4) from the current system including regulatory creep as councils bring an ever-increasing scope of issues under the banner of "sustainable management" and a loss of focus in urban areas on maintaining the integrity of ecosystem services. It considers that prioritisation of environmental issues is unclear, and observes that New Zealand does not have an authoritative policy that sets out the country's long-term visions for environmental sustainability.
57. Auckland's Unitary Plan has been developed under the Resource Management Act framework, taking into account the Act's purpose in enabling "sustainable management of natural and physical resources" within the context of the Act's broad definition of "environment" including ecosystems, people and communities, natural and physical resources, and amenity values. In practice, this means these concepts are key drivers within the Unitary Plan. Considerable public and private resource was put into the Unitary Plan development. It has the potential to unlock land for development in Auckland on a large scale, but to do so in a way which enables some measure of certainty for developers, and infrastructure planning and delivery. This is particularly important given long infrastructure lead-in times and risk management for developers. Any change to those underpinning settings, if applied to Auckland, may risk undermining the Unitary Plan.
58. Broadly, the council does not support the introduction of a government policy statement on environmental sustainability. There may be other less disruptive ways to achieve the stated GPS goals. The council encourages the commission to investigate alternative ways for achieving these objectives.
59. The council could support the provision of additional central government guidance enabling the establishment of standardised methodologies and environmental reporting processes.
60. The council requests the commission consider how a GPS could be used to enable national, regional and local contexts to be reflected in environmental priority setting. The council would welcome further clarification on the nature of the proposed GPS and any transitional measures and how it relates to the Resource Management Act.
61. If implementation of a GPS as proposed were to proceed, Council expects any elements within the suite of national policy statements and national environmental standards which

are still “fit for purpose” and not fundamentally “broken” will be re-used where possible to try and reduce any uncertainty this proposal would create.

62. While council appreciates the commission is taking a very high-level approach to this recommendation it also notes the following:
- a mechanism is needed to enable emerging issues to be addressed outside of the proposed five year review period
  - it is also unclear how “environmental lag times” could be taken into account during priority setting (or review).

63. Further, the draft report focuses on engagement with Māori at a local government level but does not identify how Māori as a Treaty partner will be engaged at a central government level when national direction is being set.

*Intervention powers – recommendation 7.10*

64. Recommendation 7.10 bundles together central government power to override local plan making in a limited set of circumstances, to require common land use approaches to specific issues and to be able to instruct infrastructure units to deliver infrastructure where a pre-set price trigger is reached between developable and undevelopable land.
65. The commission proposes the introduction of these powers in addition to those already provided for under the Local Government Act and Resource Management Act. The commission notes central government’s current powers include the ability to provide national guidance through national policy statements and national environmental standards, to direct councils to review existing plans or prepare a new plan and the ability to appoint Crown review teams, observers, managers or commissioners to councils.
66. The commission’s rationale for the introduction of the newly proposed powers is to retain a trigger for central government intervention given the introduction of the proposed GPS. It is unclear in what circumstances the newly proposed override ability would apply or if the override discretion could be exercised in a far wider range of circumstances than available under national policy statements.
67. The council is concerned that this increases central government’s ability to direct specific changes to plan content. The commission notes “An override power would allow central government to respond quickly and in a more targeted manner to pressing situations ... Under the RMA, central government can only direct councils to prepare new plans or review existing plans, it has no ability to control content. While central government can influence the content of plans through National Environmental Standards, these take time to prepare and implement”. The commission notes that in order to exercise this power, the Minister would be required to table a statement in Parliament, explaining the intervention and its rationale and outlining how any resulting costs would fall between central and local government.
68. Broadly speaking, this recommendation proposes fundamental reform of the urban planning framework which will allow local views to be overridden if they are inconsistent

with national priorities, with very limited “checks and balances” in place, reducing the opportunity for local input and limiting the efficacy of local democracy.

69. Further, it is clear that council may be expected to bear some of the costs of any resulting changes. This is likely to have long-term plan budgeting implications and effectively require unplanned-for reprioritisation of budgets (if councils are not able to access additional funding mechanisms in these circumstances).
70. The council does not support increased central government powers to intervene in the local application of the planning framework. The proposed powers are not a “replacement” for powers enabled by the national policy statements and national environmental standards; they are a significant enlargement of central government’s existing powers.
71. The commission provides some examples of circumstances where local plans could be over-ridden to enable a common land use approach. For example, where standardising land use “has greater and broader benefits” in the installation and maintenance of utilities. The parameters for the exercise of this discretion are also unclear as are the budget and financial implications. It is also unclear what the implications are for private property rights and what, if any, compensation would be available for any possible infringement of pre-existing property rights.
72. Again, it is unclear how the use of the proposed ability to enable common land use approaches would impact on the implementation of the Unitary Plan.
73. The council does not support increased central government powers to enable common land use approaches without further safeguards also being proposed to ensure that a genuine balance, rather than a clear over-ride, between local and national interests occurs in these circumstances.

*Central government direction to infrastructure providers – recommendation 7.10*

74. The third major intervention proposed is the exercise of central government powers to direct council infrastructure units or providers to deliver infrastructure where a pre-set price trigger is reached between developable and undevelopable land.
75. Given long infrastructure lead in times, and the need to align infrastructure funding with planning and delivery, council suggests further assessment would be required of the use of a price trigger to allow central government to direct redeployment of planned infrastructure development, particularly given land price volatility in Auckland.
76. The commission’s recommendation only focusses on council infrastructure provision, excluding central government infrastructure e.g. schools and hospitals. Some transport infrastructure such as state highways are provided by the New Zealand Transport Agency while others such as new arterial roads are partially funded by them. Some of these New Zealand Transport Agency (NZTA) projects are implemented as national projects with different priorities to local needs. Any directive for Councils to provide for

infrastructure would need to be integrated with central government infrastructure planning.

77. Our council-controlled infrastructure providers have made it clear that it is not possible in some circumstances to change course as easily as the commission's draft report appears to suggest. It is important to note that all councils face some sort of infrastructure funding constraints, whether it is debt ceilings, inability of developers to fully fund infrastructure delivery or ratepayer resistance. This is acknowledged elsewhere in the draft report. Neither councils nor central government has the ability to fund everything for everyone all of the time. Given this, rather than this tool bringing on "the underpinning supply of infrastructure in a timely manner" it may simply result in reprioritisation of existing infrastructure spend (where and if that is possible), increased uncertainty in terms of delivery of completed infrastructure and stranded partially completed infrastructure assets.
78. We are unclear why on the one hand the commission would seek to improve plan-making certainty and clarity in its proposal by introducing mandatory spatial plans but on the other hand actively undermine certainty for infrastructure design, planning and delivery by proposing intervention at this stage of the process. Developers need certainty about where, how and when infrastructure will become available, and once that certainty has been provided, reduction or reprioritisation of those plans could significantly affect their ability to continue with developments, or continue to the scale and scope originally planned. The council wants to avoid its own assets being "stranded" by changes in direction and also wants to avoid the situation where private developments are "stranded".
79. Land use may also influence land prices; it is important to recognise that land use planning is not only about the provision of land for housing. Land is required for business and industry, activities such as tourism and recreation, and services such as health and education. A narrow focus on a residential pricing tool may mean that the other important elements of successful cities and economies may be forgotten. Having a range of pricing triggers would add significant complexity to how this tool might be used (and how frequently the trigger thresholds need to be reviewed and reset). Further, there are many factors that affect land prices and land price differentials in Auckland including strong inward migration, lack of economic activity in other regions, the cyclical nature of the development industry and international economic shocks.
80. All of the proposed new intervention powers could result in uncertainty across infrastructure planning, as planned infrastructure expenditure is reprioritised "on the fly". This is particularly significant given the long lead-in times required to design, fund and deliver some infrastructure. There would also be funding and budgeting implications for the council resulting from the exercise of these powers, particularly as the commission makes explicit the expectation that any expenditure or debt incurred by council controlled organisations would remain their responsibility.
81. The proposed new intervention powers also raise accountability issues for decision-makers as well as having the potential to result in sub-optimal outcomes given the networked nature of infrastructure.

82. The council does not support the introduction of the three proposed new intervention powers.

*Permanent Independent Hearings Panel – recommendation 7.7*

83. Recommendation 7.7 proposes the establishment of a permanent independent hearings panel (IHP) to consider and review new plans, plan variations and private plan changes. This recommendation is aimed at reducing local political “intervention”, alleged “bias” of local interests over national interests, to free up the Environment Court and to speed up plan-making.

84. The council stresses that the IHP model used in Auckland is yet to be fully evaluated. A partial process review has been undertaken. The council has already indicated it will be monitoring the outcomes of the Unitary Plan decisions very closely. A robust evaluation of this model would need to consider not only process aspects, but the overall outcomes it achieves and Aucklanders’ experiences in engaging with this process.

85. It has been suggested that the complexity of the process and legalistic approach has also excluded some from being able to engage effectively with it.

86. The council has identified a number of practical issues a proposal for a permanent IHP raises:

- an IHP is unlikely to be justifiable for every new plan, plan variation or private plan change across New Zealand. This could be a significant workload
- the scope, scale and costs of some of these processes could be prohibitive
- it is unclear how attendance by submitters would be enabled if this was to be a single national model
- local-issues specific knowledge on the panel, such as local infrastructure funding and delivery circumstances.

87. The council does not support the introduction of a full IHP model until the full evaluation of its processes is completed and outcomes are better understood. Given the IHP outcomes will take some time to become clear, it is not yet possible to assess whether the outcomes under the council-led or the IHP model are comparable, or one option results in better outcomes than the other. The council suggests if the commission still wants to recommend this proposal it considers whether the council-led commissioner model would be a better interim step.

88. The council-led model preserves the ability to ensure appropriate levels of local understanding and necessary skill-sets for the particular urban environment. The scope of the independent commissioners’ model is different from IHP. In Auckland, Commissioners can sit on hearings for a broad range of circumstances such as resource consents, Section 357 objections, bylaw dispensations, reserve management plans, plan changes, special consultative procedures and notices of requirement.

89. Auckland's commissioners have skills ranging from planning, resource management law, engineering (transport and infrastructure), landscape architecture ecology, biodiversity and environmental management, freshwater management, the Treaty of Waitangi and kaupapa Māori, community, coastal management, heritage and conservation management, urban design, air quality, rural planning and land management and waste management. This enables commissioners to be selected on a case by case basis taking into account the specific skillsets required to assess each matter before it.
90. The council is not clear how wide-spread the use of this model is but suggests it may be worth investigating how it is used nationally and how it could be better supported.

### **Better addressing poor environmental outcomes – question 13.2**

91. The Commission seeks feedback in Question 13.2 on the option of shifting regulatory responsibilities for environmental monitoring and compliance to an independent authority, such as the Environmental Protection Agency or making provision for more external audit and oversight of councils. The problem this proposal seeks to address is current poor environmental outcomes. It suggests that monitoring efforts are under-resourced and “enforcement decisions show evidence of some political interference”. The commission notes the transitional costs involved in the more radical of these proposals and the proviso that if the latter option was accepted it would need to be accompanied by the ability for central government to intervene if a council's performance was consistently poor over time.
92. The council agrees that in some areas environmental outcomes are poor and are declining. However, it does not appear that there has been a robust analysis of the key drivers for this decline, rather it has simply been attributed to councils' insufficient monitoring or decision-making.
93. In a simple sense, growth puts significant pressure on the environment. Nationwide, our response to growth is to attempt to speed up development, and this often occurs at the expense of the environment or in a way that does not support positive environmental outcomes. Rather than being able to seek win-win situations where growth and good environmental outcomes are enabled, the urban planning framework can drive win-lose situations. In some cases, this can lead to poor environmental outcomes.
94. Taken cumulatively, even when environmental losses appear relatively “small”, the overall impact can be significant, particularly if the choices to develop result in unforeseen environmental impacts. Further, environmental degradation can take some time to become evident and can require significant remediation to address.
95. Although there are benefits in standardising national reporting and compliance requirements, there are also disadvantages as it drives effort and resource being focussed on “what is measured” and valued at a national level irrespective of their significance at a local or regional level, rather than on matters which may be of greater significance or impact when considered in a regional context. This is an example of an unintended outcome of having a “one-size” fits all environmental monitoring framework with no ability to tailor to or take account of local circumstances. Monitoring at a national

scale will almost inevitably fail to recognise environmental complexities at regional or local scales.

96. The council does not support the complete regulatory transfer of environmental monitoring and compliance to an independent national body. The council considers this would simply embed the status quo in terms of environmental outcomes.
97. The council does not support increased external audit and oversight of councils' environmental monitoring (with some type of trigger enabling central government intervention if a council's performance was consistently poor over time). It is not clear that it is councils' involvement in the monitoring and compliance of enforcement outcomes that is causing declining environmental outcomes. While the council acknowledges that like all other council activities, monitoring and compliance efforts need to be sufficiently resourced and prioritised to be effective, even within a constrained funding environment council puts a significant amount of resource and expertise into managing environmental outcomes.
98. We suggest the commission recommends further central government investigation to better understand the primary contributors to New Zealand's declining environmental outcomes and policy options for addressing the key drivers behind our declining environmental outcomes.
99. As the council has noted, to future-proof Auckland's ability to accommodate and support growth, Auckland also needs to effectively manage the natural and physical environment. This will be a determining factor in Auckland's future success and it is critical that council and central government better understand why our environmental outcomes are declining and take steps to address this.
100. The Commission seeks guidance on whether greater emphasis on adaptive management would assist in managing cumulative environmental effects in urban areas (Question 8.2). The commission considers that "complex natural systems respond in unpredictable ways, but decision-making occurs in a dynamic socio-cultural, economic and political system that is complex and often uncertain". The objective of introducing more adaptive approaches to management of cumulative environmental effects is therefore to provide opportunities for incremental learning and faster adaptation of environmental management strategies. According to the commission, adaptive management "also allows balancing of the need for immediate action against the realisation that management can be improved in the future".
101. The council broadly supports the commission's reasoning in terms of managing environmental discharges and other pollution related cumulative effects. Effects-based regulation does not work especially well with the mitigation of transport effects as applicants are only required to mitigate the effects of their own development and/or provide sufficient capacity to service it. It can be challenging to attribute responsibility for cumulative effects. This is an ongoing challenge for Auckland Transport in providing for residential growth and neither the existing funding tools nor the Resource Management Act consenting process address it. A future planning framework will need to include

clear tools and expectations as to how such cumulative effects are to be accounted for and addressed.

102. The council supports further investigation into the potential for using adaptive management tools, noting that adaptive management assumes frequent, meaningful and effective monitoring. As acknowledged by the commission, adaptive management approaches will not be fit for purpose in every circumstance and there are some circumstances where a “predict and control” tool may be required. Widening the environmental management toolkit and providing the discretion to use the best tool for each given situation, or a combination of approaches to be used would enable a more flexible and responsive approach, and enable the approach to be tailored to address complex local environmental issues. An adaptive management approach may not be suitable, for example, where known and severe environmental outcomes need to be managed.
103. The council is unclear at this stage what impacts or consequential changes might need to be considered in relation to the financial planning and related public consultation processes if adaptive environmental management approaches were enabled and would seek to better understand this if the option was further pursued.

#### **Public participation – recommendations 7.4-7.6**

104. The Commission acknowledges the public should have the right to participate in plan making. It also notes that operation of the planning system would be improved if greater focus and limits were introduced into some participation and consultation processes.
105. The Commission proposes:
- Focusing urban notification requirements on those directly affected or highly likely to be directly affected, by a proposed development. (Recommendation 7.4).
  - Appeal rights for plans should be limited to people or organisations directly affected by proposed plan provisions or rules (Recommendation 7.5).
  - Consultation requirements should give councils flexibility to select the most appropriate tool for the issue at hand (Recommendation 7.6).
  - A future urban planning system that encourages the use of tools that ensure the full spectrums of interests is understood in council decision-making processes, and that allow the public to understand the trade-offs involved in decisions (Recommendation 7.6).
106. The council supports broad and early engagement with the community. Aucklanders engage with consultation processes where those issues being consulted on are most relevant for them. The council considers the ability to engage with the planning system as local democracy in action.
107. Auckland Council’s statutory role and the wider range of activities and services it provides means that the council is regularly consulting with the public across a range of issues. This may relate to wider regional issues, for example the Unitary Plan or

Auckland Plan development, or it may relate to local issues, for example consents and local board activities.

108. The council supports recommendations to give councils flexibility to select the most appropriate consultation tool for dealing with the issue at hand and better enabling the full spectrum of interests to be understood in council decision-making processes. The council considers engagement as a key tool for enabling transparent decision-making. The Local Government Act already allows for consultation and engagement other than through the Schedule 1 process to precede plan changes. The council has also made extensive use of pre-consultation opportunities to better understand its diverse communities and their interests and has also used mediation within the context of the Unitary Plan process to meet this goal.
109. As acknowledged in our submission to the Productivity Commission's Inquiry into Using Land for Housing issues paper, we consider the notification provisions of the RMA to be a key source of uncertainty, cost and delay for applicants in the resource consents process. The council therefore continues to support identifying clear guidelines or criteria regarding the level of notification for activities.
110. The council is open to discussion on the narrowing of notification and appeal rights where appropriate, subject to broad and early engagement as discussed. Any changes to notification appeal process should be created from a shared understanding of the issues. Council sees the potential for limited appeal rights to provide efficiencies where appropriate. For example, council could be interested in the application of limited appeal rights to the council-led commissioner process it already uses.
111. Finally, the council notes although the draft report appears to leave consultation and engagement with iwi unchanged, these recommendations would apply to consultation and engagement with iwi as well. Council considers that these and other changes recommended could represent significant change to the Treaty relationship between Crown and iwi that merit further scrutiny.

### **Integrating funding and planning – recommendations 10.1-10.3, 7.3**

112. Broadly, the council supports the Commission's findings and recommendations on financing and funding infrastructure and their integration with spatial planning (Recommendation 10.1, Recommendation 10.2, and Recommendation 10.3). In particular the council welcomes the commission's acknowledgement of the constraints on council borrowing.
113. A significant body of work on local government funding mechanisms is available, including the work undertaken by Local Government New Zealand. The council supports further investigation into widening local government's funding toolkit to enable all councils to better access fit-for-purpose tools and tailor their application to local circumstances as required.
114. The council also endorses the potential use of alternative funding mechanisms, in particular targeted rates "to fund infrastructure investments where benefits are well

defined” (R10.2). Auckland already funds infrastructure with development contributions and infrastructure growth charges and levies volumetric water and wastewater charges. The council supports being able to access a broader range of funding tools, this could include the use of road pricing in the form of congestion management tools and the ability to use public private partnerships. The council also notes that the interim Auckland Transport Alignment Project (known as ATAP) has identified the potential to use variable road network pricing as a demand management tool to achieve better network performance. Wider use of all of these tools to support infrastructure investment and ensure growth pays for growth is an important part of our strategy. Further benefits of some of these options include the ability to manage demand and to drive better performance of the transport network. However, the appropriate funding mechanism has to be chosen on a case by case basis, there is not a one size fits all solution.

115. Legislative changes are likely to be required to support effective implementation of targeted rates. In addition to the recommended change to enable targeted rates to be set on the basis of change in land value, provision should also be made for targeted rates to be:
- set outside the annual plan or long-term plan process – enabling timely interaction with developers/land owners, subject to appropriate consultation requirements
  - committed to by the council for a period beyond one year – to provide greater certainty for any potential third party financing arrangements
  - based on land values reflective of potential residential use set at the time the rate is struck – at present land value for rating purposes can only be based on what it can currently be used for not potential future use. For example, rural land can only be valued for residential use for rating purposes once infrastructure is in place. As a result a significant burden of a targeted rate would fall on properties that were already developed.
116. The council notes levying targeted rates on the basis of changes in land value (Recommendation 10.3) can be challenging; particularly in relation to identifying attributable uplift and in the scenario proposed by the Commission where reactionary zone changes are introduced (Recommendation 7.3).
117. Although it has not been specifically recommended in the commission’s draft report, council strongly recommends the commission also proposes further investigation into the charging of regional fuel taxes. These have the advantage of a particularly short lead-in time for introduction and implementation. It would also mean that those using roading infrastructure would be paying for it. As with the other tools suggested by the commission, the ability to use the widest variety of charging tools is preferred as opposed to an obligation to use any one in particular.
118. The council is unclear on how the proposed responsive rezoning (Recommendation 7.3) would work in practice and in conjunction with the other tools the commission proposes. We are unclear why on the one hand the commission would seek to improve plan-making certainty and clarity in its proposal by introducing mandatory spatial plans but on the other hand actively undermine any certainty for infrastructure design, planning and delivery by proposing responsive zoning.

119. The council seeks further clarity on how the commission expects these tools to work together, whether the proposed rezoning tool would also trigger industrial or commercial land change uses (and how any impacts on that type of land use would be managed.) Further guidance on the nature of the proposed pre-set trigger that would enable rezoning and details of any constraints on this would also be welcomed. One possibility which has not been articulated by the commission is a decline in land prices. In that situation, would planning provisions or zoning move in the opposite location to reduce development potential and consequential infrastructure obligations?
120. The council notes in response to the commission's question in relation to the benefits of allowing councils to auction transferable development rights (Question 10.4) that a limited form of transferable development rights have been enabled within the Unitary Plan within its rural provisions. We suggest an evaluation into their use in this context is considered to assess the merits and impacts of this approach. We note, if the commission's proposed recommendation proceeds, their more widespread introduction could raise issues for the application of the Unitary Plan and therefore their introduction should be carefully considered in the context of existing land use provisions. We also note the application of this tool could have significant implications for how we manage our growth in line with the Auckland Plan.

#### **Building capability and scope for collaboration – recommendations 9.2, 9.3, 12.1, 12.2**

121. A number of recommendations (Recommendation 9.2, 12.1 and 12.2) propose the introduction of specific tools to build both local and central government capability. These tools include the development of a Centre of Excellence resource (Recommendation 9.2), further focus on building economic and environmental science skill-sets (Recommendation 12.1) and central government capability building in relation to urban planning.
122. The council supports these recommendations as they are likely to better enable the development of a shared basis for understanding and collaboration between central and local government, a robust evidence base underpinning that collaboration and the sharing of "best practice" and innovative approaches to addressing issues within the urban planning framework.
123. The council can see some merit in developing a shared process to assess infrastructure investment programmes (Recommendation 9.3) although questions the need for institutions or formal processes in all circumstances. There may be useful learnings from the approach developed within the Auckland Transport Alignment Project.
124. The council encourages the Commission to acknowledge the need for local and central government to also be able to engage outside these formal processes to enable innovative responses to emerging issues to be collaboratively developed. The council notes the proposal should not be limited to an "assessment only" role but also be accompanied by the expectation for risk sharing, enabling co-funding and sharing of expertise. There are already opportunities for central and local government to collaborate

and these are becoming more effective as capabilities within each level of government are developed.

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