

3 October 2016

Better Urban Planning Inquiry
New Zealand Productivity Commission
P O Box 8036
The Terrace
WELLINGTON 6143

SUBMISSION: BETTER URBAN PLANNING – DRAFT REPORT

INTRODUCTION

1. Water New Zealand (“Water NZ”) appreciates the opportunity to provide a submission on the Better Urban Planning – Draft Report (“the Report”)¹ from the New Zealand Productivity Commission (“Commission”).
2. Water NZ is a national not-for-profit organisation which promotes the sustainable management and development of New Zealand’s three waters (freshwater, wastewater and storm water). Water New Zealand is the country’s largest water industry body, providing leadership and support in the water sector through advocacy, collaboration and professional development. Its 1,500 members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies, academia and scientists. It is this group that this submission refers to as “the water sector”.
3. Water NZ is primarily concerned with proposed changes that affect the water sector and our comments in this submission are therefore directed at changes affecting that sector. Water NZ provided comment on the Commission’s Issues Paper, Better Urban Planning in March 2016 where Water NZ identified three themes of relevance to the water sector: environmental management; delivery of water services and financing of water service.² These themes are also relevant to this submission and this submission builds on and expands those comments as they apply to the solutions proposed in the Commission’s Report.
4. Also due to time constraints, comments are limited to questions and recommendations and no comment is provided on the key findings made in the Report.

¹ New Zealand Productivity Commission. (2016). Better Urban Planning Draft Report. Available from www.productivity.govt.nz/inquiry-content/urban-planning.

² Water NZ, *Comment to the New Zealand Productivity Commission on the Issues Paper, Better Urban Planning*, at page 2.

Overall comments

5. While the Report is meant to be a blue skies approach to planning reform, it has been produced during a time of significant ongoing legislative reform in both the Resource Management and Local Government sectors, and therefore needs to be read in that context. Water NZ is concerned to ensure that any changes resulting from the Report are coherent and integrated with the other reform work and the costs and benefits of any such changes have been appropriately considered.
6. In terms of the Report itself, Water NZ considers that it is very process focussed, and that some of the suggestions in the Report (new panels, and more central government influence) raise legal, governance and funding issues that are not resolved. Water NZ suggests that increasing the use of incentives and taking a more proactive approach to current issues may be more beneficial than creating more bureaucratic and legal processes that may simply cost more and slow things down.
7. While mention is made of the tailored legislative regimes applying in Auckland and Christchurch, the Report does not address how these regimes would be affected by any proposed changes. Water NZ would be concerned if the Report resulted in changes which meant that much of the past few years work in those areas had to be reconsidered.
8. In terms of the legislation governing this sector more generally, the legislation is already overly and unnecessarily complex and Water NZ is concerned that some of the proposals in the Report would increase rather than reduce that complexity. Our specific comments in this regard are set out below.
9. Further while the Report recognises the importance of providing infrastructure to support growth, it does not specifically mention the importance of future proofing that infrastructure. In other words ensuring that any infrastructure installed has sufficient capacity to meet the needs for growth over the long-term not just to service the immediate development.
10. Water NZ also notes that the Report makes very little comment on the use of the council controlled organisation (“CCO”) model within the water sector and how this differs from council provision of water services – particularly in the area of funding. Water NZ considers that greater analysis of these issues would be useful.

Specific comments

11. Water NZ provides specific comment on the questions raised and recommendations made in the following chapters:
 - a. Chapter 7 – Regulating the built environment;
 - b. Chapter 8 – Urban planning and the natural environment;
 - c. Chapter 9 – Urban planning and infrastructure;
 - d. Chapter 10 – Infrastructure: funding and procurement; and

e. Chapter 13 – A future planning framework.

12. For each chapter, Water NZ responds to the questions and recommendations raised in the order that they appear in the Report. Where a question or recommendation is not mentioned response this is because Water NZ has no specific comment to make on that issue.

CHAPTER 7 REGULATING THE BUILT ENVIRONMENT

Q7.1 Would it be worth moving to common consultation and decision-making processes and principles for decisions on land use rules, transport and infrastructure provision? How could such processes and principles be designed to reflect both:

- the interest of the general public in participating in decisions about local authority expenditure and revenue; and
- the particular interest of property owners and other parties affected by changes to land use controls?

Do the consultation and decision-making processes and principles in the Local Government Act adequately reflect these interests?

13. Water NZ agrees that it would be beneficial moving to common consultation and decision making processes in respect of water infrastructure provision. At present there are separate processes applying to the provision of infrastructure under both the Resource Management Act 1991 (RMA) and the Local Government Act 2002 (LGA) with different rights attaching to involvement in those processes. This can result in unnecessary duplication and delay in getting infrastructure approved, funded and ultimately constructed.

14. Water NZ considers that the consultation and decision making processes and principles in the LGA would adequately reflect the interests of the general public. However, where any property owners or other parties are directly affected by the infrastructure, there should be a requirement to directly serve those parties with a copy of the infrastructure proposal to ensure they are aware of the proposal and how they can submit on it.

R7.4 A future planning system should focus urban notification requirements (and any associated appeal rights) on those directly affected, or highly likely to be directly affected, by a proposed development. This would better align the planning system with the fundamental purpose of managing negative externalities.

15. Water NZ agrees that notification should be focused on those directly affected. However, provision should also be made for relevant sector representative groups, such as Water NZ, to participate. Such groups play an important role in ensuring that potential impacts on the sector (including cumulative effects) and relevant broader issues (such as consistency with sector best practice and other similar development proposals are considered.

R7.5 Any appeal rights on Plans in a future system should be limited to people or organisations directly affected by proposed plan provisions or rules.

16. While Water NZ agrees that appeal rights should be more limited than they are at present, Water NZ considers that limiting appeal rights just to those directly affected is too narrow. Relevant representative organisations should also be able to participate if they have an interest greater than the general public (i.e. the current s 274 test in the RMA). As noted above in response to recommendation 7.4, this will assist in ensuring relevant broader issues are also considered.

R7.6 Consultation requirements under a future planning system should:

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

17. Water NZ agrees that consultation under a future planning system should generally include the matters listed but with the following clarifications/amendments:

- a. In terms of the first bullet point, Water NZ considers that it would be helpful if some specific direction or guidance was provided as to when it might be appropriate to use the various tools. This will assist Council to select the right tool for the job; provide greater consistency between similar decisions taken by different councils; and give comfort to people that they have been fairly consulted.
- b. In terms of the second bullet point, while notification should be focused on affected parties, any person or organisation with an interest greater than the general public should also be able to participate for the reasons given earlier in this submission (see response to recommendation 7.5).

R7.7 A permanent Independent Hearings Panel should be established to consider and review new Plans, Plan variations and private Plan changes across the country. As with the Auckland and Christchurch IHPs:

- **councils should retain the rights to accept or reject recommendations from the permanent Independent Hearings Panel; and**
- **once a council accepts a recommendation from the permanent Independent Hearings Panel, appeal rights should be limited to points of law.**

18. Water NZ is concerned that this recommendation is adopting a reactive approach and adding another new layer of bureaucracy which has (as yet) no proven benefits in terms of outcomes. This approach appears to be based on the Christchurch and Auckland Plan processes, both of which are not yet finally concluded and both of

which have not yet been fully evaluated. Water NZ considers that it is premature to adopt such an approach at this stage. Water NZ also considers that:

- a. taking a one size fits all model, risks underestimating the importance of local issues and conditions;
- b. it may be more appropriate (and more cost effective) to consider what can be done to minimise appeal risks from the outset – such as early consultation and the use of collaborative planning processes,
- c. an alternative may be to mandate the use of a council-led commissioner model currently available under the RMA; and
- d. if an IHP were to be established, there may be a need for more than one Panel or for the Panel to be able to sit in divisions given the number of plan changes potentially requiring hearing at any one time throughout the country.

Q7.2 Should all Plan changes have to go before the permanent Independent Hearings Panel for review, or should councils have the ability to choose?

19. If a permanent IHP is established, Water NZ considers that all proposed new plans or entire replacement plans should go before the Independent Hearing Panel (IHP).
20. In terms of plan changes, it may not be necessary (efficient or cost-effective) for small or discrete plan changes to be subject to independent review. However, the difficulty would be in determining the criteria for what is small and discrete. Water NZ considers that further thought should be given to what types of plan changes might be able to be separated off and that if councils are given the ability to choose that criteria is provided to guide that choice.

R7.9 Central government should develop processes to more clearly signal the national interest in planning, and have protocols to work through the implications of these national interests with local authorities. It should also monitor the overall performance of the planning system in meeting national goals (ie, flexibility, sufficient development capacity and accessibility).

21. Water NZ does not object to this recommendation. However, it is not clear exactly what is being proposed here and how it would differ to the current system. For example in terms of monitoring and reporting, there are already requirements in terms of producing state of environment reports and new obligations under the Environmental Reporting Act 2015. If something more is proposed, then further detail should be provided about exactly what is required and how that fits with current requirements.

R7.10 In a future planning system, central government should have the power to

- **override local plans in a limited set of circumstances,**
- **co-ordinate or require common land use approaches to specific issues, and**

- **direct council infrastructure units or CCOs to increase their supply, where the differential between the price of developable and undevelopable land exceeds a pre-determined threshold.**

22. It is difficult to respond to this recommendation in the abstract.

23. No indication is given of what circumstances may justify central government intervention, what matters the government must consider before taking such action (such as competing funding priorities at a local level), and why such intervention requires inclusion in the planning system now – instead of just as circumstances arise (as has been the case to date with specific legislation responding to Auckland and Canterbury circumstances).

24. There is no discussion of the legal and governance implications of central government being able to direct CCOs to increase their supply and what this means for the CCO board arrangements.

25. Further, including a power to direct an increase in the supply of infrastructure will not of itself necessarily ensure that the increase occurs. Funding and resourcing (in particular the availability of suitably qualified people) may constrain the supply notwithstanding that government direction – particularly given the competing funding priorities (e.g. water versus transport) that may occur at the local level. Accordingly, if the government wants to ensure that infrastructure is actually increased, it also needs to recognise and address these issues.

Q7.4 Would allowing or requiring the Environment Court to award a higher proportion of costs for successful appeals against unreasonable resource consent conditions be sufficient to encourage better behaviour by councils? What would be the disadvantages of this approach?

26. Water NZ considers the focus of this recommendation is on fixing things after the fact, rather than investing resources to ensure conditions are not unreasonable from the outset. As noted above, taking a more proactive approach, including early consultation and a collaborative approach to consent conditions is preferable.

27. In addition, Water NZ considers that there are a number of issues with this recommendation that do not appear to have been considered.

28. The first is that it would only apply if the matter was appealed – so if an applicant did not have the money to appeal they would not be able to benefit from this proposal. So penalties alone will not necessarily change behaviour.

29. Secondly, taking a case in the Environment Court is expensive and costs awarded are not a full reimbursement – costs are generally said to sit within the court's comfort zone of 25% to 30% of the costs incurred by a party in the appeal. This excludes costs from the council level hearing, and for councils, it also excludes costs for council officers participating in the appeal. Only external (witness and legal) costs are able to be sought.

30. Thirdly, this proposal may result in councils taking longer to process the consents so that they can fully test the robustness of consent conditions before issuing a consent. It may also result in increased costs associated with the processing of the consent if the council seeks peer reviews or increases its use of external consultants for the consent.
31. Fourthly, there would need to be some clear guidance as to when such costs could be claimed and that this should be linked to changes due to unreasonableness and not to changes as a result of other reasons. Often in the Court process conditions are reworded, replaced or merged with other conditions as part of a compromise position or to clarify or improve wording. So a change in the wording of a condition would not of itself necessarily mean that the condition was unreasonable. To provide clarity it may that the court should be asked to include in its decision a finding on the reasonableness or unreasonableness of any particular conditions to guide the costs award.
32. An alternative to this proposal (in addition to the proactive approach noted above) may be to leave the Environment Court costs at the discretion of the Court as at present, but require the council to refund a certain percentage of the council level hearing fees if a condition or conditions are successfully appealed. This would potentially enable greater costs to be recovered which could be factored into an applicant's decision as to the whether to bring an appeal.

CHAPTER 8 – URBAN PLANNING AND THE NATURAL ENVIRONMENT

Q8.1 What should be the process for developing a Government Policy Statement (GPS) on Environmental Sustainability? What challenges would developing a GPS present? How could these challenges be overcome?

33. Water NZ considers that this question puts the cart before the horse in terms of discussing process before it has been determined whether a GPS is appropriate. In particular, the Report does not clearly explain why a GPS is needed and whether it is the best solution to the problem - which is presumably providing clear national direction. Further, little consideration (if any) appears to have been given as to whether a GPS may create problems of its own.
34. If a GPS is determined to be appropriate, then Water NZ notes that here are a number of different options that the government could use to develop the GPS from the current national policy statement process, to a committee or board of inquiry, to a more collaborative process like that developed by the Land and Water Forum. Whatever option is chosen Water NZ considers it is important that there is consultation and opportunities for input from all relevant sectors and that there is a requirement for the Minister or decision-making body to consider this input and to ensure that there is a sufficient evidential basis to support the GPS.

R8.1 A future planning system should include a Government Policy Statement (GPS) on environmental sustainability. The GPS should:

- **set out a long-term vision and direction for environmental sustainability;**
- **establish quantifiable and measureable goals against which progress would be monitored and reported on; and**
- **establish principles to help decision makers prioritise environmental issues when faced with conflicting priorities or scarce resources.**

35. Water NZ agrees that the GPS could provide clear national direction any may resolve conflicts between the existing national policy statements (“NPSs”) / national environmental standards (“NESs”). However, Water NZ considers that having one combined GPS will increase its complexity and as mentioned in the Water NZ submission on Better Urban Planning in March 2016, risks “further importing land use planning philosophies to water use management – eroding the science-centric focus that should dominate water management”.³

36. If the GPS is proceeded with, Water NZ considers that it is important that the GPS not discard the policies and directions in the existing NPS/NESs but instead incorporate and build on those policies and directions whilst also resolving any issues (within and between) the existing NPSs/NESs.

37. Water NZ also considers that it would be useful for the GPS (or other national instrument) to provide a set of good practice type rules that all councils have to apply in relation to common issues such as flooding and stormwater management. This would save each council from having to reinvent the wheel in relation to such issues, and provide a more consistent and clearer response to those issues.

38. Water NZ also considers that it would be helpful to include provisions for reviewing the GPS after a certain time period has elapsed and/or if material new evidence becomes available which impacts the policies and directions in the GPS.

Q8.2 Would a greater emphasis on adaptive management assist in managing cumulative environmental effects in urban areas? What are the obstacles to using adaptive management? How could adaptive management work in practice?

39. Water NZ agrees that a greater emphasis on adaptive management may assist in managing cumulative effects. This is particularly the case, where as in Auckland, there have been numerous proposals for land use changes (including special housing areas) in a relatively short time frame, meaning there has not been enough time to develop accurate models to predict the effect of the changes.

40. In terms of obstacles to use, Water NZ considers that some of the obstacles may arise from a lack of understanding of what adaptive management is, and a lack of trust that once the consent has been granted, adaptive management conditions will

³ Water NZ, *Comment to the New Zealand Productivity Commission on the Issues Paper, Better Urban Planning*, at page 5.

be effective in ensuring effects are appropriately managed. To overcome this, there should be clear guidance about what adaptive management is, and what it is not, as well as when it is appropriate for it to be used. The process needs to incorporate a feedback loop from land development teams so that as changes occur over time these can be factored into decisions going forward. There also needs to be greater emphasis on enforcement to ensure conditions are being complied with.

R8.3 Central and local government should develop an agreed set of principles to govern the development of national regulations that have implications for the local government sector. This should be along the lines of the ‘Partners in Regulation’ protocol recommended in the Commission’s report Towards Better Local Regulation (2013).

41. Water NZ agrees that it is important that there are clear principles to guide the development of national regulations affecting the local government sector. These principles should include a requirement to consult and consider the outcomes of that consultation prior to enacting regulations.

CHAPTER 9 – URBAN PLANNING AND INFRASTRUCTURE

R9.1 Spatial plans should be a standard and mandatory part of the planning hierarchy in a future system. 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 (eg, green space, reserves, conservation areas, and libraries), protection of high value ecological sites, and natural hazard management.

42. Water NZ agrees that spatial plans should be a standard and mandatory part of the planning hierarchy. Such plans are very important as they provide certainty for councils in terms of the location and size of future infrastructure, which facilitates infrastructure planning. It will be important for clear guidance to be given in the legislation as to the weight to be given to spatial plans and how these fit with the other RMA planning documents. Providing the spatial plan with legislative weight and requiring councils to give effect to the spatial plan will also assist in ensuring that not only is infrastructure planned for but that it is actually implemented.
43. It is also very important that the ‘owner’ of the spatial plan is clearly identified and that a process is provided for the owner to be able to update the plans as things change and further work is undertaken.
44. The difficulties associated with requiring spatial plans, lie in the time they take to develop, the different capabilities of individual councils to prepare them and the level of detail that is required to be included. With respect to the latter, including a higher level of detail (such as size, layout and location of infrastructure) would provide greater certainty, but may require greater time and cost to determine. It may be that in areas where ownership is less fragmented greater certainty is possible whereas in other more fragmented areas less detail is available.
45. In terms of the matters that spatial plans should cover, Water NZ agrees that these should be focused on land use matters and the associated infrastructure required to

service that land use. While Water NZ agrees that such plans will need to consider high value ecological sites and natural hazard issues, in order to be able to determine where new land use development should be concentrated, ecological and natural hazard issues should not be the focus of such plans. Further protection of these areas should be left to other RMA planning documents.

46. Finally, Water NZ notes that the development of spatial plans will require more investment from councils and given they are directly linked to growth, it may be appropriate to enable recovery of costs of such plans through capital expenditure charges and development contributions.

Q9.1 Which components of the current planning system could spatial plans replace? Where would the greatest benefits lie in formalising spatial plans?

47. Water NZ considers that spatial plans could replace regional policy statements. Spatial plans could also enable infrastructure plan and regional land transport plans to be trimmed back so that high level goals and directions are stated in the spatial plan with the infrastructure and regional land transport plans being required to give effect to the spatial plan and together with the service delivery plans setting out the detail of how that will occur. It would be helpful for guidance to be provided as to the level of detail that the supporting plans such as infrastructure, regional land transport and even asset management plans should include. It may also be helpful to provide a template or structure outline for these plans. This will assist in ensuring co-ordination and alignment across plans.
48. There are a number of benefits in formalising spatial plans – providing direction and greater focus on key matters, reducing duplication, etc. However, perhaps the greatest benefit is to link land use development with infrastructure in one plan so that the infrastructure needed to support the land use development (and the likely timeframes in which it is required) can be identified and planned for in advance.

R9.3 A future planning system should include institutions or formal processes through which councils and central government can work together to assess major programmes of urban infrastructure investment with wider spill over benefits.

49. Water NZ agrees that councils and central government will need to work together on major infrastructure programmes. Water NZ considers that having a dedicated team within central government to work on these matters and having formal processes to guide the relationship of this team with local government bodies would be useful. It will also be important to clearly define the roles of councils and central government in the planning system and in any joint working bodies so that it is clear who is responsible for what.

CHAPTER 10 – INFRASTRUCTURE FUNDING AND PROCUREMENT

Q10.1 Is there other evidence that either supports or challenges the view that “growth does not pay for growth”?

Water NZ notes that the Report cites a number of sources to support the view that growth does not, or at least historically has not, paid for growth. Water NZ generally agrees with this premise, but notes that any discussion of meeting the costs of growth should also consider different ways of servicing growth. For example, considering whether non-infrastructure solutions could be an option.

R10.1 A future planning system should allow councils to:

- **set volumetric charges for both drinking water and wastewater;**

50. Water NZ supports allowing councils to set volumetric charging for both drinking water and wastewater if the councils consider that (after consulting with its water CCO) to be the most appropriate option. In other words, Water NZ does not consider that volumetric charging should be mandatory, but that councils should have the discretion to determine the best method of charging. It is however important that where a water CCO exists council be required to consult with that CCO prior to making a decision on charging.

R10.2 Councils should use targeted rates to help fund investments in local infrastructure, wherever the benefits generated can be well defined.

51. Water NZ supports providing councils with alternative infrastructure funding options as this will assist in addressing the funding shortfall which can often mean delays to the implementation of infrastructure.

52. While targeted rates are one such option, other options, such as user charges should also be available. The latter option is particularly relevant where a water CCO is in place, as it would enable the CCO to recover the costs directly rather than being channelled through council.

53. In terms of what option (or options) should be adopted, Water NZ considers that council be given discretion to adopt whichever of the funding options it considers to be the most appropriate in the circumstances. Clear criteria should be provided to guide the use of this discretion and there should be a requirement to consult with any relevant CCO prior to making a decision on which funding option to adopt.

54. Water NZ also notes that mandatory spatial plans will be of assistance in determining what the infrastructure needs of a growth area may be and accordingly may assist in defining the extent of the area that should be subject to a targeted rate.

R10.3 A future planning system should enable councils to levy targeted rates on the basis of changes in land value, where this occurs as the result of public action (eg, installation of new infrastructure, up zoning).

55. Water NZ considers it may be difficult to determine when increases in land value result solely from the installation of new infrastructure. Land value can be affected by many things including changes in planning rules, nearby developments etc. and where a number of changes occur at the same time it may be difficult, if not impossible, to determine the extent attributable to infrastructure.

56. If however, this recommendation was adopted, Water NZ considers care would need to be taken that properties are not required to pay twice – once through development contributions and secondly through a targeted rate.

Q10.2 Would there be benefit in introducing a legislative expectation that councils should recover the capital and operating costs of new infrastructure from beneficiaries, except where this is impracticable?

57. Water NZ considers that in principle both capital and operating costs of new infrastructure should be recoverable from beneficiaries where practicable. However, Water NZ notes that it may be difficult to determine who the beneficiaries (where the line should be drawn) and that that line may change over time. It may therefore be useful to provide some guidance as to how beneficiaries should be defined and when and in what circumstances the list of beneficiaries should be reviewed.

58. As noted above, Water NZ considers that the cost of developing spatial plans should be included as a capital cost of infrastructure and therefore be amenable to recovery from beneficiaries.

Q10.3 Would alternative funding systems for local authorities (such as local taxes) improve the ability to provide infrastructure to accommodate growth? Which funding systems are worth considering? Why?

59. As mentioned above, Water NZ considers that providing councils with alternative funding systems would assist in providing growth related infrastructure. In terms of water infrastructure, targeted rates are an existing mechanism that could be expanded to assist in paying for that infrastructure. In terms of other funding mechanisms, an impervious surface tax, may be worth considering. Such a tax would create a discrete revenue stream for the operation, maintenance and improvement of stormwater infrastructure. Such an approach would also allow councils to more closely link service levels to cost and community values and would fit within the asset management systems already in place.

Q10.5 Should a requirement to consider public-private partnerships apply to all significant local government infrastructure projects, not just those seeking Crown funding?

60. Water NZ agrees that there should be a requirement to consider public-private partnerships (PPPs) for significant local government infrastructure projects.

However, it may be appropriate to limit this requirement to sectors where PPPs are likely to be more relevant, such as transport. For the water sector, Water NZ considers PPPs are less likely to be relevant given the limited opportunities for private companies to make a return on investment and the size of the water investments required.

61. If PPPs are required to be considered, Water NZ considers that further guidance should be provided around what constitute significant projects in terms of either size, cost or both so that it is clear when this requirement applies. While it may also be useful to provide guidance around the matters councils should consider when assessing whether to use a PPP, local authorities should still retain full discretion as to whether or not PPPs should be used.

R10.4 A future urban planning system should give councils the capability to use a wide range of innovative infrastructure delivery models, including public-private partnerships. Councils, either alone or through joint agencies, will need to develop the capabilities to operate such models successfully. Future arrangements could build on current regional shared-services initiatives that increase project scale and develop project commissioning expertise.

62. Water NZ agrees with this recommendation. More broadly, Water NZ notes that the provision of infrastructure is also affected by the difficulties in securing land under the Public Works Act 1981. This relates to both land acquisitions and designations. Route and option selection can often be re-litigated in these processes and can lead to considerable costs and delays. Water NZ suggests that further consideration be given as to how these related processes can be better integrated into the RMA and LGA processes for water infrastructure.

CHAPTER 13 – A FUTURE PLANNING FRAMEWORK

Q13.1 What are the strengths and weaknesses of these two approaches to land use legislation? Specifically:

- **What are the strengths and weaknesses in keeping a single resource management law, with clearly-separated built and natural environment sections?**
- **What are the strengths and weaknesses in establishing two laws, which regulate the built and natural environment separately?**

63. In terms of the two options, Water NZ considers the first option may lead to a more complex piece of legislation but may be better at showing the clear inter-relationship between the built and natural environment sections. While the second option may provide a greater focus on the two areas there is the potential for a silo approach to be taken and for natural environment law to be a secondary consideration (if it is considered at all). However, as noted in the Report, the second approach may allow better integration of land use with infrastructure and land transport planning.

64. Neither option expressly addresses how to better align infrastructure planning and funding/delivery. Both approaches also assume that there is a clear delineation

between the built and natural environments in urban areas. However, that is not always the case.

65. Whichever option is chosen, there will need to be clear workable provisions which:

- a. recognise the need for alignment between infrastructure planning and funding/delivery; and
- b. recognise the potential for overlap and conflicts between the built and natural environments and provide a methodology for addressing these.

66. Water NZ considers that before any decisions are made, a comprehensive review of all relevant legislation be undertaken (LGA, RMA, Land Transport Management Act, Building Act etc.) to ensure that any new legislation remedies any misalignments and provides for a coherent and integrated approach to urban development.

Q13.2 Which of these two options would better ensure effective monitoring and enforcement of environmental regulation?

- **Move environmental regulatory responsibilities to a national organisation (such as the Environmental Protection Authority).**
- **Increase external audit and oversight of regional council performance.**

67. The first option is likely to lead to a more nationally consistent and efficient approach to monitoring and enforcement. It may also reduce litigation risk at the local level. However, there is already somewhat of a disconnect between planning and consenting teams within council and transferring monitoring and enforcement functions to another body has the potential to increase this disconnect. It could also be seen to be undermining local democracy in that it would take the discretion around enforcement decisions away from democratically elected bodies (councils) to a government appointed body (the EPA). To address this it would be helpful to provide some guidelines or protocols for how the EPA and the councils would liaise with each other in practice. It would also be helpful if the EPA had staff based in each region who liaised with the councils in that region on a regular basis so that they had an understanding of the relevant plans and local context.

68. The second option leaves responsibility for monitoring and enforcement with the councils but increases central government oversight. It is not clear whether greater oversight on its own will be sufficient to ensure effective monitoring and enforcement in the absence of any specific sanction or penalty. Water NZ is aware that penalties were imposed for lateness in terms of processing resource consents (in terms of requiring a certain amount of the fee to be refunded). If the second option is to be proceeded with it may be useful if further consideration is given to whether a sanction or penalty would assist in making this option more effective.

69. Whatever option is chosen, it is important that there is clarity around which organisation is responsible for what, at a national, regional and district level.

OTHER MATTERS

70. One matter which is not addressed in the Report, but which Water NZ suggests should be the subject of further consideration, is whether there should be restrictions on international persons or organisations purchasing water rights in New Zealand. At present, there are restrictions applying to the purchase of land by overseas investors and the prior approval of the Overseas Investment Commission is required for certain purchases (generally land over a certain size). As water becomes a more attractive and tradeable commodity globally, consideration should be given to how to protect New Zealand's interests in this valuable resource.

CONCLUSION

71. Water NZ thanks the Commission for the opportunity to provide comments on the Report and is happy to elaborate on any points should the Commission consider that to be useful.

John Pfahlert

Chief Executive