

**REPORT OF THE MINISTER FOR THE  
ENVIRONMENT'S URBAN  
TECHNICAL ADVISORY GROUP**

**JULY 2010**

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## Biographies on the Members of the Urban Technical Advisory Group

**Alan Dormer (Chair)** is an Auckland barrister specialising in resource management and planning law with a Masters in Public Policy. He is an experienced hearing commissioner and has sat, in that capacity, for eight local authorities.

Alan Dormer has been appointed to a number of government-led law reform advisory groups and was Chair of the Technical Advisory Group appointed in 2008 to provide advice on the Phase I Resource Management reforms. Alan is also a past president of the Resource Management Law Association and in 2009 was awarded the Association's "Outstanding Person" award; making him the only dual recipient of both this and the Planning Institutes prestigious "A O Glasse Award for Outstanding Services to Planning". Alan teaches the Making Good Decisions Programme delivered by the University of Auckland's Centre for Continuing Education and has served on the Environmental Legal Assistance Advisory Panel since 2004.

**Adrienne Young-Cooper** is a professional company director and strategic resource management consultant. She was a founding director of Hill Young Cooper Ltd, a specialist resource management and environmental consultancy. Adrienne Young-Cooper worked in local government in a senior management role at Rodney District Council from 1983 to the 1990s.

She is an expert resource management consultant for government and private clients, and has extensive governance experience on a number of high profile boards. As a resource management consultant, Mrs Young-Cooper has carried out a wide range of projects for central government, regional councils, district and city councils and private clients. Her current and past appointments include the Auckland Regional Transport Authority, the Auckland City Property Enterprise Board, Maritime New Zealand, Housing New Zealand Corporation, Hobsonville Land Company Limited, and Solid Energy New Zealand Limited.

**Arthur Grimes** is a research economist and consultant, with strong links to public policy. His research centres around infrastructure and housing economics, and macroeconomics (including currency union). Most of his research is conducted through Motu Economic and Public Policy Research Trust. He is also affiliated to University of Waikato as Adjunct Professor of Economics. His key public policy role is Chair of the Board of Directors of the Reserve Bank of New Zealand, and he is a member of the National Infrastructure Advisory Board. Dr Grimes chairs the Hugo Group, consults to private and public sector clients, and sits on the board of a number of community organisations.

**Graeme McIndoe** is a registered architect and qualified urban designer, gaining his masters degree in urban design while a Commonwealth Scholar at the Joint Centre for Urban Design in Oxford, England in 1986. He has 27 years' practice experience. He has professional experience in all aspects of urban design, completing a multiplicity of projects for both the private and public sectors. His design work includes conceptual and detailed design at both urban and architectural scales and is complemented by policy formulation, city-wide strategy and master planning. He has been involved as designer and principal urban design advisor in major plan change and resource consent processes for both private and public sector clients.

**Connal Townsend** is Chief Executive of the Property Council of New Zealand, which is the industry stakeholder organisation that represents New Zealand's commercial, industrial, retail, property funds and multi-unit residential property owners. Mr Townsend is expert in all forms of commercial property and property investment in New Zealand. He has worked with central, local and other government associated bodies on a wide range of development and resource management issues. Specifically he works proactively with central and local government to ensure that our cities are great places to live in, are business friendly and provide world class employment opportunities.

**Ernst Zollner** is Group Manager, Strategy and Performance with the NZ Transport Agency. He is an urban planner with extensive experience in urban design, infrastructure planning, urban economics and economic development. He has held a number of positions in New Zealand and South Africa that have given him direct involvement in policy development and management in local government. He has also taught infrastructure planning and urban economics at the University of Auckland. He has private sector consultancy experience in urban economics and planning with local government clients in New Zealand and South Africa. He brings transport, economic and design perspectives to planning and urban design.

## PRINCIPAL RECOMMENDATIONS

TAG-Urban's principal recommendations are:

### Greater voice for Central Government

**Principal Recommendation 1.** Amend the Local Government (Auckland Council) Amendment Act to require ministerial certification of spatial plans' compliance with Government Policy Statements.<sup>1</sup>  
(section 2.3, recommendation 1)

Explanation: While conferring wider powers on central government this would also involve it in greater commitment to working with local government to achieve optimal solutions. We see the necessary relationship as one of partnership rather than dominance.

**Principal Recommendation 2.** Amend the RMA in relation to projects called-in by the Minister, to give greater status to the reasons for ministerial call-in.  
(section 2.3, recommendation 2)

Explanation: The current status of 'have regard to' in sections 149P(1) and 146U(1) of the Act) carries little legal weight.

### Housing Affordability

**Principal Recommendation 3.** The RMA (s.6) be amended to include recognition of the importance of urban outcomes and that a National Policy Statement be prepared that includes direction on housing affordability in all considerations under the Resource Management Act.  
(section 3.3, recommendation 6)

Explanation: House and section prices are a product of many influences, including planning decisions and the regulatory regime of the RMA. In addition to construction costs, interest rates and the availability of credit are at least of equal or greater significance. Nevertheless, land supply and growth potential are factors in certain circumstances, and this should be recognised in planning.

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<sup>1</sup> For an example of how this could work refer Figure 2, *Proposed Spatial Plan Process*, page 41 of this report

**Principal Recommendation 4.**  
(section 3.3, recommendation 7)

**That government urgently and comprehensively identify a wide ranging group of regulatory issues that collectively can address the many contributors to affordability of housing for New Zealanders.**

Explanation:

The price of housing including stand-alone house and section prices are a product of many influences, including planning decisions and the regulatory regime of the RMA. In addition to construction costs, interest rates and the availability of credit are at least of equal or greater significance. Nevertheless, land supply and growth potential are factors in certain circumstances, and this should be recognised in planning. The cost of housing and development processes need to be examined in a wider context in the RMA to make a significant difference to the affordability of housing.

### **Spatial Plans**

**Principal Recommendation 5.**  
(section 4.3, recommendation 16)

**Simplify the statutory planning framework for Auckland, by providing a clear statement of objectives with a Government Policy Statement for Auckland, integrating the Regional Land Transport Strategy into the Spatial Plan, and replacing the Regional Plan and multiple District Plans with a single Unitary Plan<sup>2</sup>. Provide clear statutory linkages between the spatial plan and the unitary plan.**

Explanation:

This allows the Auckland Council to coordinate plans and policies for greater effectiveness, and will promote more efficient processes both initially and during application and ongoing review. It also eliminates overlapping processes and will help to deliver consistent policies across the region, while still ensuring responsiveness to local conditions.

**Principal Recommendation 6.**  
(section 4.3, recommendation 14)

**Amend the Local Government (Auckland Council) Amendment Act 2010 to require a Government Policy Statement setting out Crown (or national) objectives for Auckland to be prepared prior to the preparation of a spatial plan.**

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<sup>2</sup> Figures 1 and 2, 'Existing' and 'Simplified' statutory planning frameworks for Auckland (pages 36 and 41) describe the proposed simplification. Figure 3 (page 42) shows how the number of plans applying to Auckland can be reduced from the currently proposed 16 down to three.

**Principal Recommendation 7.**  
(section 4.3, recommendation 15) **To require Crown endorsement that the GPS objectives have been met in the spatial plan, prior to final adoption by the council.**

**Principal Recommendation 8.**  
(section 4.3, recommendation 17) **Amend the Local Government (Auckland Council) Amendment Act 2010 to establish a power of specified ministers to prepare a Government Policy Statement on Auckland.**

**Principal Recommendation 9.**  
(section 4.3, recommendation 18) **Amend LGCAA to require the spatial plan to be reviewed every 3 years, with defined responsibilities for government and the Auckland Council in the review process. Neither party can force a review in between the 3 year period.**

#### **Metropolitan Urban Limits (MUL)**

**Principal Recommendation 10.**  
(section 5.4, recommendation 23) **Through a National Policy Statement require regional and district policy anticipate and plan for urban growth over at least a 20 year period.**

Explanation:

MULs are in effect a form of zoning.

If poorly applied, they can contribute to rising land prices.

If properly applied and regularly reviewed, they can be useful, if a relatively blunt planning tool for co-ordinating urban development.

Planning for urban growth and encouraging housing affordability can be better promoted with a National Policy Statement for the Built Environment and a Government Policy Statement for Auckland.

#### **Financing and Funding Mechanisms**

**Principal Recommendation 11.**  
(section 6.3, recommendation 24) **Undertake a separate review to evaluate**

- **the effectiveness and applicability to New Zealand of financing and funding tools as applied in other jurisdictions, and**
- **the broader efficiency and effectiveness of existing tools in New Zealand**

Explanation:

We have not been able to identify a solution for this issue. Given its complexities and the need to test potential solutions, in-depth analysis is required to



determine who should fund, when funding is due and how that funding is collected. Analysis should include examining processes to ensure robustness, transparency and equity, such as providing a statutory right to appeals for all types of contribution.

**Principal Recommendation 12.** **Restore the appeal right to the Environment Court in respect of the quantum of development contributions. We were divided as to whether this reform should take place before or after the overall review which we have recommended.**  
(section 6.3, recommendation 25)

#### **Relationship between the RMA, LGA and LTMA**

**Principal Recommendation 13.** **That councils be relieved of many of their statutory obligations such as impose additional administrative/procedural burdens.**  
(section 7.3, recommendation 27)

Explanation: Whilst many of the consultative and plan requirements imposed upon local authorities represent good practice and would be undertaken anyway, their being formally imposed by statute exposes councils to considerable litigation risk and raises costs.

**Principal Recommendation 14.** **That as an immediate simple reform, consultation undertaken by councils in respect of any of their obligations under one of the three statutes be regarded as consultation for the purpose of the other two.**  
(section 7.3, recommendation 28)

Explanation: Given the similarity of the consultation requirements of the three Acts, consultation undertaken for one should be sufficient to meet obligations under the other two.

#### **Urban Planning and Design**

**Principal Recommendation 15.** **Explicitly recognise the built and urban environment within the RMA by addressing the quality of the design and planning under matters of *National Importance*, modifying the definition of *Environment* to specifically include the built environment, and extending the definition of *amenity values*.**  
(section 8.3, recommendation 30)

Explanation: The current RMA focus on the natural and biophysical environment largely bypasses the built environment, yet the RMA is the means of management of both

realms. Recognising the urban environment in the Act would provide a mandate for addressing issues relating to where the majority of people live and work, recognise the importance of economic, social and cultural well-being, and provide a link to an NPS on the Built Environment.

**Principal Recommendation 16. Introduce an NPS on the Built Environment.**  
(section 8.3, recommendation 29)

**Explanation:** This would cover relevant high level issues, including growth and housing affordability, and provides a greater voice for central government in influencing the quality of all statutory and local planning and design initiatives. By establishing central government expectations for planning and design, this ensures local policy consistently addresses important objectives. An NPS will help to realise the value of good planning and design, and to achieve process efficiencies across New Zealand.

**Approved Collaborative Approaches**

**Principal Recommendation 17. That further investigation be pursued on how the RMA might encourage the use of collaborative processes for urban built environment and urban design purposes, particularly where these can justify a speedier decision making process.**  
(section 9.3, recommendation 34)

**Explanation:** Collaborative approaches to planning are common around New Zealand for dealing with regional growth, and local spatial issues. While there are many successful examples of this occurring, greater success may be possible with greater statutory direction.

**Separation of Environmental and Planning Legislation**

**Principal Recommendation 18. Maintain the current approach of integrated management of environmental and planning matters.**  
(section 10.3, recommendation 36)

**Explanation:** Separation risks losing the benefits of integrated thinking, policy and decision-making, and by establishing further statutes is likely to complicate rather than simplify and streamline processes. Recommendation 12 enables greater recognition of the Built Environment when considering all environmental matters.

## 1. INTRODUCTION

### 1.1 Background

1. The Government remains concerned at the widely reported criticisms of costs and delays associated with process under the Resource Management Act and in respect to the planning of urban development and associated infrastructure. It is to be hoped that the Phase One reforms passed into law last year will have made an impact in relation to some of the sources of complaint; but it was only ever intended that that would be Phase One of a multi-stage process.

2. The Hon. Dr Nick Smith, Minister for the Environment, in his press release of 28 January 2010 stated:

“There are major question marks over the way the Resource Management Act is working in urban areas. I don’t think we have the incentives right for developers to do the best urban design in our largest cities. There are also questions about the policy of metropolitan urban limits, the effect they have on section prices and on the negative flow-on effects to the broader economy. Nor do we have a good track record of having the right structure in place at the right time for supporting urban development.

These are complex issues that require careful deliberation and expert input. That is why the Cabinet has appointed Urban and Infrastructure Technical Advisory Groups to work with the Ministry for the Environment to report on these issues this year.”

3. We also note that the National Infrastructure Plan of March 2010 set out the Government’s approach to infrastructure as follows:

- "a step change in the level of Government investment, with expenditure targeted at key infrastructure priorities;
- improving decision-making and management of the government’s infrastructure assets, and
- improving the regulatory environment to facilitate the private sector’s investment in infrastructure.”

### 1.2 UTAG Terms of Reference

4. UTAG has been appointed to provide independent advice to the Minister for the Environment for proposals for the reform of the urban planning and design mechanisms in the RMA and related legislation.

5. The review is to examine the merits of the tools currently available for implementing urban planning and design including:

- housing affordability/section pricing mechanisms
- urban design panels
- metropolitan urban limits
- financing and funding mechanisms for infrastructure
- spatial and structure plans

6. It is also to look at integrating and aligning planning statutes and planning mechanisms (specifically the RMA, Local Government Act and Land Transport Management Act).
7. In providing advice the TAG is to have regard to the primary objective of Phase II of the Resource Management reforms:
  - to achieve least cost delivery of good environmental outcomes, including:
    - providing greater central government direction on resource management
    - improving economic efficiency and implementation without compromising and devaluing environmental integrity
    - avoiding duplication of process under the RMA and other statutes.

### 1.3 Overview of the UTAG Approach

8. Drawing on our terms of reference, we approached the task in terms of eight separate topic heads. These were:
  - a. Central Government's voice
  - b. Housing affordability
  - c. Potential role of spatial plans
  - d. Metropolitan urban limits
  - e. The merits of the financing and funding mechanisms currently available for infrastructure
  - f. The relationship between the Resource Management Act, Local Government Act and Land Transport Management Act
  - g. Urban design issues
  - h. Approved collaborative approaches, and their potential as an incentive mechanism to achieve better urban design and training
  - i. The Australian practice of separating out environmental issues from planning and urban design

### 1.4 Common Themes

9. There are a number of themes common to many of these topics, and rather than repetitively address each at length in each discussion, readers of our report might be better served if we allude to these themes at this point.

#### 1.4.1 Urban Growth

10. New Zealand's population will continue to grow and a continuing declining in household occupancy rates is also likely to further increase demand for housing. It is unlikely that the trend towards urban rather than rural living that has continued for over 100 years and is common throughout the western world will be reversed. It is therefore inevitable that most of our major cities will continue to grow.
11. Many of the issues on which our advice has been sought relate directly to the question as to how that growth can best be accommodated. It is common place to hear the issue presented in terms of its being a "problem" or a "challenge". We do not see it in these terms. Even Auckland, our

fastest growing city, and on some measures one of the fastest growing in Australasia, is adding to its population only by less than 2% per annum.<sup>3</sup> In few other businesses would such modest growth rates be regarded as a “problem” or “challenge”.

12. Growth does however require us to make choices, such as how is that growth best accommodated and what qualities and amenities do we wish to protect while making provision for the inevitable changes?
13. Sound and timely growth also requires us to have effective mechanisms for funding it.
14. As to the “where and how”, we do not see there being any one solution which is valid in all times and in all places. We agree with the findings of the 2009 Urban Task Force that

“Successful cities grow to be functional urban environments in a variety of ways – there is no one ‘right’ way. Some continue to develop new suburbs on greenfields sites on the fringe of existing towns and cities; some cater for growth in high density urban developments; most do both.

The important thing is to provide consumers with a choice of living environments that work, and that reflect the way that New Zealanders want to live ...”<sup>4</sup>

15. Thus we do not see growth as presenting exclusive choices between urban consolidation/intensification on the one hand and urban expansion on the other. Both must occur if the housing preferences and demands of New Zealanders are to be satisfied, and economic growth through new business development is to be enhanced.
16. As growth inevitably has environmental impacts, both scenarios raise issues as to which of our existing qualities and amenities we wish to retain.
17. A commonly expressed concern is that peripheral urban growth will lead to a loss of rural land used for productive purposes and rural amenity. We note that if New Zealand’s population were to grow at 50,000 per annum and all those people were to be accommodated in housing on the fringe of existing towns and cities (at a comparatively low<sup>5</sup> population density of 1000 people per square kilometre), an additional 50km<sup>2</sup> of land would be required each year. Given New Zealand’s total land area of 267,700km<sup>2</sup>, even 20 years of population growth would further urbanise less than 0.4% of the country, albeit much of this is likely to be in Auckland.
18. Of course it remains important that urban development is managed within a well defined and agreed set of objectives for our major urban metropolitan areas, especially Auckland.

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<sup>3</sup> Statistics New Zealand’s “high” projection for Auckland Region population growth for 2001-2016 is 1.94% per annum and for 2001-2031 this rate falls to 1.77%.

<sup>4</sup> 2009 Urban Task Force Report page 8

<sup>5</sup> By way of example, the present density of the Auckland City (excluding the Gulf Islands) is 2000 people/km<sup>2</sup>. According to the website [www.citymayors.com](http://www.citymayors.com), Auckland lies 115<sup>th</sup> on the list of cities ranked by population density. Sydney is 113<sup>th</sup> with 2100, Melbourne 127<sup>th</sup>, Brisbane 167<sup>th</sup>, Vancouver 123<sup>rd</sup> and Portland (Oregon) 136<sup>th</sup>.

19. We do not consider there are any quick legislative fixes for growth related issues. While removing some constraints of the current planning framework (e.g. MUL) may be seen as a quick win, all types of development, including urban intensification, peripheral urban growth and rural lifestyle development, raises its own issues.
20. We have also debated extensively the issues associated with different urban forms and their impact on the efficient and effective operation of the metropolitan economy, including on such matters as housing affordability, greenhouse gas emissions and so forth. Every city has its own unique characteristics that influence planning, investment and other policy decisions such that we cannot attempt to make broad statements in this report to guide government on high level strategy in relation to appropriate urban form. Factors such as the overall pattern of development in a city are of such significance that to attempt to identify one type of urban form as being more efficient than another would be overly simplistic (e.g. polycentric v monocentric cities).
21. The Government has required the preparation of a spatial plan for Auckland, and similar spatial planning exercises are being carried out in some other metropolitan centres. The question of whether government should provide context for these processes is key, and our view is that it must – through an NPS and/or GPS as outlined later in this report.
22. Ultimately, the combined endeavours of central government, local government and private sector parties will play out over a long term. Long term action is required and cities evolve over many decades. Provided cities remain resilient as a result of long term objectives/planning, and urban form decisions do not create further social problems or reduce affordability, we consider the current evolution towards better integration of legislation and a focus on spatial planning has a potential to promote improved urban outcomes.

#### **1.4.2 Urban Design**

23. One of the issues that should undoubtedly be addressed as our cities grow is that of urban design. The TAG has concluded that this term needs to be cast more broadly as “built environment”, of which urban design is but a sub-set. As we indicate in chapter 9, the RMA’s focus on effects (and in particular adverse effects) is not conducive to achieving optimal planning and design solutions.
24. The RMA was born of an era in which there was a reaction against the direct and control philosophy of the Town and Country Planning Act, the RMA’s predecessor. As we note in chapter 9, the RMA is not focused upon urban issues. Only one of the seven matters of national importance detailed in s.6 refers to the built environment.<sup>6</sup> Then, of the eleven “other matters” referred to in s.7, only three relate indirectly to the built environment.

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<sup>6</sup> s.6(f) – “The protection of historic heritage from inappropriate subdivision, use and development.”

25. Thus as the late Barry Rae, one of New Zealand's foremost and first urban designers<sup>7</sup> wrote, the RMA focuses on the protection of the natural environment:

"The bottom line is that the RMA requires adverse effects to be avoided, remedied or mitigated irrespective of the benefits of the proposed development. This is understandable in respect of the natural environment, but is totally at odds with the reality of the built environment."

"Human settlements are complex systems constructed to support the lives of most people most of the time. Their importance, and the process of planning and designing them, go well beyond the notions of natural resource management."

"The management of current complex urban growth, intensification and restructuring (long term issues especially for the upper north island) cannot be left simply to the avoidance, remediation and mitigation of adverse effects on the existing environment."

"With urban design, the emphasis is on positive physical outcomes and it inevitably involves value judgment tradeoffs amongst different and competing elements and effects in achieving an optimum outcome with overall benefits and possibly with some adverse effects that cannot, or need not, be avoided, remedied or mitigated."

As well as designing adverse effects out (as required by the RMA), more emphasis should be on designing social, economic and cultural value in, to create sustainable human settlements of complexity, diversity and vitality."

26. Barry Rae's conclusion, and one for which we have considerable sympathy is that:

"There is thus a fundamental disharmony between the sustainable management of resources and sustainable urban design. The importance of human settlements is lost to resource management...."

The RMA has failed the urban built environment."

27. Our preferred approach to addressing this is by introducing a National Policy Statement on the Built Environment. There may also be merit in amending s.6 to explicitly recognise the urban and built environment, although we leave the exact wording to others to determine. Our intent is to address the concerns raised by Barry Rae and others, specifically that Part 2 of the RMA needs to address the urban built environment.

### 1.4.3 Cities and Central Government's Role

28. This is an issue which impacts upon the topics Spatial Planning, Metropolitan Urban Limits (MULs) and the Voice of Central Government.
29. From our readings and the advice received by us we are strongly of the view that central government is much less involved in planning for our cities (or indeed planning for anywhere) than is common overseas. We set out several examples in our Chapter 4.

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<sup>7</sup> *Urban Design & Reform of the Resource Management Act – Resource Management Journal April 2009*

30. Another way of putting the same proposition is that New Zealand has an extremely devolved planning/land and resource use regulation system: more so than any of the countries with which we commonly compare ourselves. This devolved system, combined with the multitude of local authorities in New Zealand, means there are many inefficiencies that arise. For example, there are many costs associated with RMA, LGA and LTMA implementation at local authority level. These costs are often hidden or spread across many financial years. There is significant and unnecessary duplication of the 'infrastructure' required to write RMA and LGA plans. Furthermore, in order to resolve this issue, we consider central government needs to take the opportunity to provide a greater level of guidance and leadership, notwithstanding that the RMA does set a hierarchy from national through to regional and district levels. Such guidance may include seeking to identify the greatest areas of duplication, and use national policy instruments to avoid this in future.
31. Related to that is the fact that we also have the most participatory regime of any we have come across, including
  - compulsory obligations to consult before preparing a Plan,
  - the unconfined submission and cross-submission rights,
  - rights of appeal both on policy and specific project matters to a specialist court.
32. The result is a land and resource use regulation system that is regarded by many as complicated, burdensome and slow to respond to changing circumstances.
33. Given the government aim is to promote economic growth, this regulatory regime has particular ramifications as far as the provision of infrastructure is concerned. Government is also focussed on promoting a better environment for our cities; and it is upon the latter that this TAG has been invited to focus.
34. The issues facing both TAGs however share a degree of similarity – a burdensome regulatory regime being foremost among them.
35. However, as with infrastructure, governments of the last 20 years have not been as proactive in taking advantage of the opportunities the RMA affords them. We consider future governments must make greater use of these opportunities with a particular focus on “least costly delivery of good environmental outcomes” through a range of regulatory and non-regulatory means. We explore these further in this report, and we concur with government’s drive to ensure we get value for money for our investment.
36. The obligations cast upon local government to prepare 10 year plus funded plans for their cities, districts and regions through the LTCCP process are typically more visible and transparent than central government functions – with the exception of transport where a GPS provides guidance in the LTMA framework. Likewise a clear expression of central government capital spending priorities on infrastructure has been largely absent (noting the recent work on the National Infrastructure Plan as a preliminary but positive step in this direction). The recent introduction by the Minister of Transport of a list of seven Roads of National Significance is remarkable for it being an exception in that regard. It is clear that government has the wherewithal to



provide greater clarity of direction and action in respect of urban issues in New Zealand.

37. If economic and environmental benefits are achieved through co-ordination of planning and co-operation in the provision of infrastructure, then central government, which is responsible for well over half the infrastructure spend in New Zealand, must ensure that it is so structured.
38. If it is indeed the case that an important factor in the future economic success of New Zealand is the health of its cities, and in particular its biggest city, then there is much to be said for a regulatory regime which allows for significant input by central government into how the cities are to develop.
39. We advise that the present regulatory structures are not well suited to this. We hope that all local government agencies will accept greater central government involvement, by way of partnership in which shared objectives are developed and implemented. Indeed, many of them have lamented the lack of such involvement in the past; and we hope that the policies which we and ITAG seek to advance will go some way towards promoting economic growth and high quality urban outcomes.

#### **1.4.4 Efficient Allocation of Resources and Capital**

40. A final common theme we have found in our deliberations is the context in which these integrated decisions for urban areas are made. While much of the focus of this report is on the “planning framework” under the RMA, LGA and LTMA, as well as a focus on the current Auckland planning framework, this report is not focussed on planning per se.
41. Rather than planning being an end in itself, our focus has been on identifying efficiencies in the legislative framework that will allow better decisions to be made. City shaping decisions are made by central and local government, and by the private sector. Whichever sector, these decisions typically involve allocating capital to the most effective and efficient projects. Also, attention must be directed towards reducing inefficient activity. We consider that the reforms in Auckland are likely to deliver efficiency gains. For example, reducing the number of plans should result in greater clarity and certainty. Spatial planning has the potential to enable a range of organisations to be more efficient in directing capital towards projects that will align with the spending of others.
42. In the end, the urban outcomes sought by government will require a degree of co-ordination and planning. If this is set in a context of making improved funding decisions, capital allocation and reducing inefficiency, all will be better off. Given the scale of the Auckland and other metropolitan economies in New Zealand, even small improvements to efficient policy setting, infrastructure delivery and funding decisions as well as an improved regulatory environment can be of significant benefit.

## 2. GREATER VOICE FOR CENTRAL GOVERNMENT

### 2.1 Questions

43. We have been asked to advise as to how we might:
- a. achieve a greater voice/role for central government on a project or place specific level, particularly in respect of projects for which central government is largely the funder;
  - b. make provision for a greater degree of central government direction.

### 2.2 Observations

44. Central government already has wide powers to participate in the planning process.
- a. Every local authority is required to consult with the Minister for the Environment specifically, and other Ministers who “may be affected” during the preparation of any proposed RMA document.
  - b. The Minister has a right of audience before every planning and consent hearing, both at council and appeal level.
  - c. The Minister may, by introducing a National Policy Statement or National Environmental Standard under the RMA, require that every Plan in the country be changed. Such Statements and Standards are also amongst the criteria by reference to which applications for consent are determined.
  - d. The Minister may exercise call-in powers and appoint the hearing panel in respect of significant projects; and the decision maker is required to “have regard to” the Minister’s reasons for calling it in.
  - e. The Minister of Transport has significant powers by way of the Government Policy Statement procedure provided for in the Land Transport Management Act 2003.
45. Central government is a major provider and funder of infrastructure. The official’s report prepared for UTAG in January 2010 noted that

“many areas of central government action such as housing, transport, infrastructure, economic development, environmental management, and social development, play out in cities. In particular central government owns, and makes decisions about, a range of infrastructure assets which include vast networks of schools, hospitals, prisons, roads, railways and other transport facilities as well as electricity transmission lines. Central government, in fact, provides the bulk of public expenditure in urban areas across a range of portfolios.

Transport funding expenditure alone is forecast to reach NZ\$2.8 billion in the 2009-10 year and expenditure is forecast to be NZ\$8.7 billion over the next three years. While both central and local government spend large sums in the transport sector, central government is responsible for the bulk of funding. Central government’s proportion of public funding on transport for the 2007-2008 financial year was 75% in Auckland, 70% in Wellington and 66% in Canterbury.

Despite this major investment, central government traditionally has not set overall objectives for towns and cities ...”

46. In other jurisdictions however central government's role is considerably greater than that in New Zealand; particularly in the case of spatial or regional plans.
47. Thus for example in the State of Victoria the Melbourne metropolitan strategy is prepared by the Victorian State Government and it can only be changed by Act of the State Parliament<sup>8</sup>. In Queensland, the State Government prepares the regional plan for South East Queensland<sup>9</sup>. In Canada, the Ontario Provincial Government prepares the growth plan for the "Greater Golden Horseshoe" centred on the city of Toronto<sup>10</sup>.
48. In some other jurisdictions it is quite common for central government to have a significant statutory role early in the preparation of the plan, and for the Minister to have a power to approve or refuse to approve a proposed plan prior to its notification.
49. In England, on those occasions when submissions to a proposed regional spatial strategy are to be heard (and not all of them are), then it is the Minister who appoints the hearing panel and the Minister who makes a decision on amendments or otherwise to be made to the spatial plan as a result of the hearing process.
50. Indeed in England the purpose of the plan is not to reflect the priorities of the area concerned, but rather the Secretary of State's policies for that area.
51. In our chapter relating to spatial plans we set out how we propose that such plans be initiated, prepared and approved.
52. Undoubtedly the effect of introducing spatial plans as proposed will give central government a greater voice, but as we emphasise in Chapter 4 (Spatial Plans) that this relationship must be one of partnership rather than dominance. Our proposals would certainly confer wider responsibilities and powers on central government, but would also require greater commitment to local government.
53. The RMA framework provides for a national through regional through to local hierarchy. However as a result of central government's disengagement from the process, the reality is that in New Zealand we have a virtually unfettered devolution of planning powers to a relatively low level. Such proposals as we have put forward are mild in their conferring of further power upon central government when compared with overseas jurisdictions with which we customarily make comparisons.
54. We think that New Zealand could learn from overseas experience, and are supportive of the Minister preparing an NPS on the Built Environment in order to provide statutory guidance to all planning documents. With such an NPS in place, Regional Policy Statements and District Plans will need to be amended to meet these national priorities. We consider this approach will provide a positive signal about how government considers issues relating to

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<sup>8</sup> State of Victoria (2002) Melbourne 2030: Planning for Sustainable Growth

<sup>9</sup> State of Queensland (2009) South East Queensland Regional Plan 2009-2030

<sup>10</sup> Government of Ontario (2006) Growth Plan for the Greater Golden Horseshoe

growth should best be dealt with at a local level. This then leaves details relating to the particulars of the planning approach to local government.

55. Greater guidance from central government is also relevant to the Auckland Spatial Plan, where in our view, a Government Policy Statement (under the LGA) setting out objectives for Auckland should be part of the policy framework. This would provide a basis for the partnership between government and local government, and would allow the government to provide a level of input into the development of Auckland. Of course, like any partnership, government would also be held accountable by the Auckland Council to its commitments to implementation of the spatial plan.
56. Other legislative tools commonly found overseas include:
  - a. The provision of special development areas where specific policies and rules are enunciated by the Minister to enable an area to redevelop according to agreed objectives. An example of this technique is to be found in the “State Development Areas” provided for in Queensland where the State Government prepares a “Development Plan” and then assesses any proposed development against that plan.
  - b. Project specific legislation is also used, as it was in New Zealand with the America’s Cup Planning Act: particularly for specific projects of national interest, approvals to which would not otherwise emerge in time. Indeed, we note that on 10th June The Rugby World Cup 2011 (Empowering) Bill was introduced to Parliament, with the intent of setting up a new authority, and providing for urgent consents and a Rugby World Cup specific liquor licensing scheme.
57. We do not however suggest any changes along these lines be currently pursued, but should be considered as an option in the future.
58. For example, in New South Wales, a common, routine proposal can be classified as a “*complying development*” by way of State Planning Instrument. A similar procedure applies in the UK with regard to General Permitted Development Orders issued by the Secretary of State in England.
59. Two examples of existing mechanisms by which central government can provide direction include:
  - a. By engaging with local authorities during RMA plan-making: Every local authority is required by clause 3 of the First Schedule of the RMA to consult with the Minister during the preparation of a proposed plan or plan change.

This affords the Minister an early opportunity to have an influential voice in the preparation of every planning document throughout the country.<sup>11</sup>

Our understanding however is that the Ministry no longer engages in this role to anything more than the most limited or cursory extent. Indeed, it

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<sup>11</sup> The strength of this provision is clear from the recent High Court Judgment of Allan J in *Waikato Tainui Te Kauhanganui Inc v Hamilton City*, High Court Hamilton, 3 June 2010; in which the public notification of a significant proposed plan change was invalidated due to a failure by the City Council to consult tangata whenua as required by Clause 3.

may not be going too far to say that the Ministry has virtually withdrawn from this role altogether. We do not suggest the MfE should devote extensive resources to second guessing local authority expressions of local policy priorities. We do however see a potential for central government to exercise a much higher degree of influence than it has chosen to over the last decade or more; and see this as being a particularly valuable opportunity in respect of those plans governing areas of importance to the national economy.

- b. By preparing National Policy Statements: We note that but 2 NPSs have been completed under the RMA. We understand that there are a number at various stages of preparation/promulgation.

One of the more significant issues affecting our major cities is provision for their growth. Customarily this is provided for by way of both consolidation/intensification and greenfields development.

In Auckland in particular, there is evidence to suggest the ARC has enforced and maintained its metropolitan urban limit to such an extent that the future supply of land for greenfields development has become sorely limited (one study<sup>12</sup> suggests that a mere five years' supply exists to the south). At the same time difficulty in amalgamating sites and planning restrictions applying to more central infill and "brownfield" sites compromise the potential to provide for adequate levels of redevelopment within existing urban areas.

Given the importance of urban growth being managed to deliver a range of outcomes, we suggest that an NPS<sup>13</sup> be prepared requiring local authorities to provide an adequate supply of land to meet future growth demands for at least a 20 year period with ongoing analysis of land uptake and related development pressures. At the same time there should be an expectation that greenfield development be well-connected, well-designed, aligned with transportation and other urban infrastructure and provide a convenient access to the range of services and facilities which constitute a liveable urban neighbourhood.

- 60. As well as making use of existing tools at its disposal, we believe central government should also look for opportunities to provide more policy as well as practical guidance to both government agencies and local government to ensure better urban outcomes in the future.
  - a. One of the undoubted root causes of local government's difficulties with the Resource Management Act has been the lack of central government direction and assistance in its early years; a lack which has only been partially alleviated by the introduction of new programmes such as, for example, the Quality Planning Website and the Making Good Decisions programme.

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<sup>12</sup> "Beachlands Village: New Avenues Structure Plan – Demographic Assessment and Growth Projections" prepared for Manukau City Council by Market Economics, April 2010, p.5

<sup>13</sup> See Chapter 8 of this report, where a potential scope of the NPS is provided.

We consider that much more could be done centrally to advise councils of “*what works and what doesn’t*” and also to assist with a standardisation of plans.<sup>14</sup>

There is still too much reinventing of the wheel as the country’s 70 odd local authorities each strive to improve their plans, and central government guidance could do much to reduce this wasteful duplication of effort.

This would however require the Ministry to commit more resources to the task. At present it is simply not staffed to fulfil this role. Were it able to be adequately resourced, we would be hopeful that not only central government would secure a “greater voice”, but that wasteful duplication of effort at a local level would be reduced thereby saving resources locally.

- b. We consider that some form of national guidance on infrastructure policy, prioritisation and delivery will be useful in relation to engagement between central and local government. This may ultimately take the form of a GPS. However, recent work on the National Infrastructure Plan is a step in this direction. Whether it should, in due course, be given weight of some significance (as it could be if it were referred to in the Minister’s reasons for announcing a call-in) requires further debate. The document was not produced with a view to being used in this manner<sup>15</sup>, and hence lacks any prioritisation and does not seek to provide a scope of government policy. These would be useful additions in future.
- c. By necessity, central government departments and agencies are focussed on their specific legislative mandates and delivering on their accountability agreements such as Statements of Intent. This results in an understandable and laudable focus on delivering results within the mandate of that department or agency, and less on “joined up” action for a particular urban area or city. Even with collaborative efforts across agencies – and we are aware of some – the lack of a political mandate translated into accountability agreements can make such efforts ad hoc and subject to a lower priority. Without proper oversight and leadership, the risk is that a “silo mentality” develops.

61. In order to strengthen central government’s ability to deliver integrated urban outcomes, and maximise opportunities to make optimal investments, government should consider appropriate means to coordinate responses on urban issues for our major metropolitan centres (including Auckland, which will have a particular focus as the reforms take shape in the coming months and years). Whichever mechanism is considered best, the opportunity to provide greater co-ordination and co-operation not only between government departments and agencies but between central government and local government is too significant to pass up. Such an approach can and

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<sup>14</sup> Even a standard set of Plan definitions throughout the country would be of some help. We understand that the Ministry undertook some work in this respect some years ago, but nothing has materialised.

<sup>15</sup> Indeed the plan expressly records that it is “not intended to provide more specificity or certainty about future projects than is already provided by individual sectoral plans and strategies” (page 13). See chapter 8 of this report.

should build on the progress made to date in these areas in the past 12 months.

The Urban Task Force which reported in 2009 recommended that

“The Government identified a lead department to provide strategic leadership and to:

- champion quality urban development and productive, competitive cities;
- develop new responses to meet new growth pressures;
- mandate new partnering models to lead and deliver complex projects;
- provide strong inter-agency co-ordination;
- work with private sector and local government on urban development issues, including implementation of the recommendations in this report.”

We endorse that recommendation and note the critical need to ensure resourcing and appropriate expertise to make it effective.

- d. We are also attracted to the suggestion contained in the Royal Commission Report that there be a cabinet committee dealing with Auckland issues; although our preference would be that it concern itself with, say, the major six or seven metropolitan areas.

The choice of the particular mechanism is not really a question in respect of which the TAG would claim any expertise.

We do however consider there are significant benefits to be gained by establishing a lead agency with appropriate institutional support.

62. As we previously indicated, decision makers on projects the subject of a Ministerial call-in are required to “*have regard to*” the Minister’s reasons for calling it in.

63. The expression “*have regard to*” is a very “low weight” term in law. It has been considered by the Courts on a number of occasions, and it has been specifically held that the expression “*have regard to*” is not synonymous with “*shall take into account*”; rather, all that the expression requires is that the Minister’s reasons

“must be given genuine attention and thought, and such weight as is considered to be appropriate.”<sup>16</sup>

64. It is clear then that the present terminology does not serve to accord central government policy objectives any primacy or priority.

65. We do not suggest a particular alternative wording, but are certainly of the view that a stronger, more robust phraseology that required that weight be given to the Minister’s view, would be appropriate. The RMA provides an existing opportunity for the government to increase the level of direction by the Minister as to what “sustainable management” means in respect of

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<sup>16</sup> Potter J in *Unison Networks Ltd v Hastings District Council* (High Court, Wellington, CIV2007-485-896, 11 December 2007). See also a helpful article by D Minhinnick “*Second Time Around – Section 290A and having regard to Council decisions*” April 2010- Resource Management Journal p.23.

urban areas. We suggest there would be a positive response from many stakeholders should the Minister chose to use these tools more often.

### 2.3 Recommendations

66. Our key recommendations in relation to providing a greater voice for central government are as follows:

**Recommendation 1. Amend the Local Government (Auckland Council) Amendment Act to require ministerial certification of spatial plans' compliance with Government Policy Statements**

**Recommendation 2. Amend the RMA in relation to projects called-in by the Minister, to give greater status to the reasons for ministerial call-in.**

67. In addition, over the course of our deliberations, a number of more detailed recommendations have emerged that we consider will enable a more comprehensive response to the questions raised in our TOR.

**Recommendation 3.** Ensure that the next version of the National Infrastructure Plan contain a firm statement of priorities such as will serve to appropriately inform those responsible for the preparation of other planning instruments.

**Recommendation 4.** Investigate the most effective means for government (and its agents) to coordinate its urban objectives and policies (such as by establishing an urban affairs committee of cabinet).

**Recommendation 5.** That MfE take up the opportunity afforded by the First Schedule of the RMA to consult directly with local authorities during the preparation of Plans in areas of importance to the national economy.



### 3. HOUSING AFFORDABILITY

#### 3.1 Question

68. We have been asked to examine the merits of the tools currently available to promote housing affordability.

#### 3.2 Observations

69. Many factors affect housing affordability, including house prices, interest rates, credit availability, after-tax incomes and the costs of other essential purchases. House prices, in turn, are affected by the cost of land (which is affected, in part, by location), development costs (and associated levies), construction costs, regulatory costs associated with construction (including costs borne to meet required standards), and the type and size of dwelling. Some of these costs, such as development and construction costs, may be related to construction scale: it is cheaper to develop and build a large number of properties together than to undertake bespoke development and/or construction.

70. Our focus in this chapter is on those contributors to affordability that fall within the realm of local government, regulation and legislation. We consider these to include (but not be limited to):

- Resource consent costs;
- Subdivision costs, including those associated with meeting engineering standards
- Financial (RMA) and Development (LGA) Contributions
- Constrained land supply and development potential.

71. While these factors can be influenced by local government, there are many factors that are outside their control. In our experience, the above contributors from the RMA/LGA/BA all lead to less affordable housing being available to the market. However, while these factors are within government's control, there are many that are not. These are only part of a wider subset of legal, institutional, financial settings, and a comprehensive approach to resolving this problem is required.

72. We consider that there are regulatory issues to be addressed, but there is no one silver bullet that can be used to substantially improve housing affordability. We note that there are likely to be many small regulatory initiatives which individually may not be seen to make a material difference, but which collectively could make substantial improvements to the time and cost of construction.

73. Housing affordability is sometimes measured on a stock basis (house price relative to income) and sometimes on a cashflow basis (rent or mortgage and other payments relative to income). The latter is generally most relevant in terms of the constraint facing a household (at least with moderate to high interest rates). One flow measure of housing affordability is the "Intermediate Housing Market" defined as households with at least one

working adult who cannot afford to purchase a lower quartile dwelling in their local area under standard bank lending criteria. Research shows that the number of households in the intermediate housing market increased substantially between 2001 and 2006. Potentially of most concern is that over 70,000 working households with children were unable to purchase a lower quartile property in 2006.<sup>17</sup>

74. Existing tools designed to promote housing affordability are conspicuous by their absence. Central government has few, if any, tools directly aimed at promoting housing affordability on a wide spread basis. In part, this may be because there is no (inter-) government agency tasked with the goal of improving housing affordability other than through very specific measures.<sup>18</sup> Some local authorities promote denser housing (and hence smaller sections with correspondingly lower section costs) in defined areas through planning/zoning regulations, but these are comparatively rare.
75. New Zealand's urban house prices have increased substantially relative to household incomes since financial deregulation in the mid-1980s. The Reserve Bank of New Zealand's May 2010 *Financial Stability Report* (Figure 3.12) shows that New Zealand-wide house prices are now approximately five times average annual household disposable income, whereas between 1970 and 1995 the ratio was two-and-a-half to three times. In major New Zealand cities, the ratio is around six. New Zealand's major city house:income ratios are similar to those in major Australian cities. Furthermore, the long run trend of real house prices in New Zealand follows that in Australia's major cities quite closely.<sup>19</sup> Australasian house prices, in turn, are influenced by international asset price trends.
76. A corollary of these observations is that housing and urban policies within New Zealand may modify, but not completely nullify, the broader macroeconomic effects impacting on the Australasian, and specifically New Zealand, housing markets. Analysis of the effects of Auckland's application of its Metropolitan Urban Limits (MUL), for instance, indicates that tightly drawn MUL's have affected Auckland's land prices.<sup>20</sup> However land prices rose in the decade to 2008 across a range of localities, including cities with different types of 'smart-growth' policies (e.g. Auckland, Tauranga and Christchurch) and across cities and towns without such policies.
77. Because of the macroeconomic influences, house prices cannot be expected to form a stable ratio over time relative to incomes. A prolonged period of low real interest rates and/or easier access to credit (i.e. fewer credit

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<sup>17</sup> DTZ New Zealand. 2008. *The Intermediate Housing Market in New Zealand*. CHRANZ Research Report, Centre for Housing Research Aotearoa New Zealand: Wellington.

<sup>18</sup> Income-related support for housing arguably raises the price of houses with a capitalised benefit for dwelling owners, including investors. Housing New Zealand Corporation provides affordable housing, but this is available only to about 5% of the population and so cannot be considered a comprehensive response to issues of housing affordability.

<sup>19</sup> Grimes, Arthur, Mark Holmes and Nicholas Tarrant, *New Zealand Housing Markets: Just a Bit-Player in the A-League?*, Paper presented to LEANZ Conference, Auckland, June 2010.

<sup>20</sup> Grimes, Arthur & Yun Liang. 2009. "Spatial Determinants of Land Prices: Does Auckland's Metropolitan Urban Limit Have an Effect?", *Applied Spatial Analysis and Policy*, 2, 23-45.

constraints) will result in a higher ratio of house prices to rents and hence of house prices to incomes than a regime with high interest rates and and/or stricter credit controls. Changes in these ratios are therefore not a sufficient indicator to establish that there is a policy problem; for instance, a cashflow measure (outgoings relative to income) may be more stable than a stock measure of affordability when interest rates fall substantially.

78. Furthermore, unlike some simplistic (stock or cashflow) measures, the cost of housing should not be considered in isolation. Transport costs are part of the affordability equation; for instance, a household may face the same combined costs if they (a) live on the city outskirts (on a relatively cheap section) but have high transport costs (including the value of commuting time), or (b) live near the centre of the city, or on an easily accessible transport node and have low transport (and time) costs.
79. As a corollary of this observation, care must be taken in comparing housing affordability measures across cities. A highly dispersed city may have comparatively low direct housing costs, but residents on the outskirts may nevertheless have high combined (housing plus transport) costs that equate to those of residents in a more compact city with low travel costs but higher house prices.
80. High housing (and transport) costs have a number of unfortunate social effects.
  - a. High mortgage servicing (and/or transport) costs reduce households' (post-housing) disposable income and spending power;
  - b. Related to (a), there is a reduced ability to spend on house maintenance, thereby contributing to a deterioration in the quality of existing housing over time;
  - c. High housing cost to income ratios relative to those elsewhere may provide an incentive for New Zealanders to emigrate and may provide a disincentive for expatriate New Zealanders to return home;<sup>21</sup>
  - d. Increasing house prices increase wealth inequalities. As was noted in the DPMC report of March 2008<sup>22</sup>:

"Housing assets are not distributed equally. When prices increase there is a redistribution of wealth from non-home owners to existing home owners. Non-home owners have to save a larger deposit to buy a house, or take on more debt. Existing home owners can usually increase equity to borrow against for consumption, or accumulate more assets, or they can sell their house and capture the equity

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<sup>21</sup> The converse also applies: returning migrants from wealthier economies (e.g. London) may bid up house prices in localities in which those migrants wish to live (see Maré, David and Steven Stillman. 2008. *Housing Markets and Migration: Evidence from New Zealand*. Working Paper 08-06, Motu Economic and Public Policy Research: Wellington.

<sup>22</sup> *Final report of the House Prices Unit : House Price Increases and Housing in New Zealand*, Department of Prime Minister and Cabinet March 2008; available at: <http://www.dPMC.govt.nz/dPMC/publications/hpr-report/hpr.pdf>.

increase. These wealth inequalities can be transferred over time through wealth transfers among home-owner families.”

- e. High house prices make it more difficult for non-homeowners to enter into homeownership. We note that Maori and Pacific Island ethnic groups, in particular, are affected given their current low rates of homeownership and low levels of available equity.<sup>23</sup>

81. A recent report released by the Australian Housing and Urban Research Institute (AHURI)<sup>24</sup> noted, with respect to Australia:

“costs are found to arise in four main areas of the planning process:

- Land acquisition (with land values being affected both positively and negatively by planning policy settings and system efficiency).
- Procedural obligations (time and resources associated with securing planning permission).
- Compliance with design requirements (costs associated with meeting mandatory design controls that exceed basic health and safety standards).
- Payment of fees or charges (for application processing for infrastructure or community facilities).”

82. Each of these applies in New Zealand.

- a. Land costs can be raised by the use of zoning restrictions, including the use of a tightly constraining MUL (although an MUL need not have such an effect if applied in a dynamic, forward-looking manner;<sup>25</sup> see section 5 of this report for further discussion).
- b. Land costs per dwelling are also affected by height limits on residential and/or commercial developments. These limits may be unnecessarily restrictive, and in combination with sometimes unduly onerous on-site parking requirements can artificially raise housing costs, and preclude intensive large scale development in existing urban areas within or close to centres.
- c. Procedural factors that tend to add to costs include:
  - i. the use by councils of full discretionary activity status when for a number of activities restricted discretionary status could be more widely applied. Perhaps even more ideally, greater use of clear standards and permitted or controlled activity status for single

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<sup>23</sup> Grimes, Arthur & Chris Young. 2009. *Pacific Peoples' Homeownership in New Zealand*, Motu Note #3, [www.motu.org.nz](http://www.motu.org.nz).

<sup>24</sup> Nicole Gurran, Kristian Ruming, and Bill Randolph. 2009. *Counting the Costs : Planning Requirements, Infrastructure Contributions, and Residential Development in Australia*. AHURI Final Report No. 140. Australian Housing and Urban Research Institute.

<sup>25</sup> See: Knaap, G. J., & Hopkins, L. D. (2001). “The inventory approach to urban growth boundaries”. *Journal of the American Planning Association*, 67(3), 314–326. Within New Zealand, the application of growth boundaries has differed considerably, e.g. between Auckland and the Bay of Plenty.

dwellings could be used. The added uncertainty of a full discretionary consent and possible appeal adds to risk and therefore costs.<sup>26</sup>

- ii. the use of unnecessarily restrictive district plan rules: it is common for local authorities to draft rules so widely that they catch many properties other than those to which the council intended them to apply. As an illustrative example (there are many others), rules designed to protect heritage streetscapes can result in consents being required for housing alterations on rear sites that are not visible from the street.
  - iii. Consent processing fees – typically at a ‘total cost recovery’ rate, where there is little accountability on councils to justify either the rate or the time spent on processing the application. We note that in many Australian jurisdictions for example, there are set fees for processing consents.
  - iv. processing delays in respect of the consideration of applications for consent represent a cost for which subdividers and developers must make allowance. (The introduction of the discounted charging regime in last year’s Amendment Act may help to ameliorate this difficulty in the case of resource consent applications.)
  - v. appeals against plan matters can be a source of considerable delay and cost.
- d. Compliance with design requirements which became increasingly onerous after the passage of the Building Act 2004, and individual TA requirements can add another layer of cost in this respect.<sup>27</sup>
  - e. Minimum parking requirements in district plans can result in considerably increased costs especially for medium and high density developments. Furthermore, these minimum parking requirements undermine the rationale for developing higher density housing when the rules are applied to developments located around public transport nodes or routes.<sup>28</sup>
  - f. Financial contributions and development contributions are a cost borne initially by a developer. New infrastructure to support additional housing must be funded from somewhere, however, so the issues for housing affordability relate principally to assigning which costs are borne by the

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<sup>26</sup> See Grimes, Arthur, Andrew Aitken, Ian Mitchell & Vicky Smith. 2007. *Housing Supply in the Auckland Region: 2000-2005*, Report published by Centre for Housing Research Aotearoa New Zealand (CHRANZ). Wellington, [www.hnzc.co.nz/chr/pdfs/housing-supply-in-the-auckland-region-2000-2005.pdf](http://www.hnzc.co.nz/chr/pdfs/housing-supply-in-the-auckland-region-2000-2005.pdf). Another factor which adds to delay, risk and cost, is the ability of submitters in opposition to challenge on appeal any consent granted by a local authority. New Zealand is one of the few jurisdictions in which such third parties are granted an automatic right of appeal.

<sup>27</sup> See: *Final report of the House Prices Unit : House Price Increases and Housing in New Zealand*, *op cit*.

<sup>28</sup> See: S. Donovan *et al*. 2008. *Managing Transport Challenges when Oil Prices Rise*. NZ Transport Agency Research Report 357: Wellington; and Grimes, Aitken, Mitchell, Smith, *op cit*.

developer (and/or new house owner) and over which period. See our later discussion on this topic.

83. Given the range of costs, inefficiencies and concerns raised by many that engage with local government, we consider that further checks and balances in the process are required. There is often a significant 'power imbalance' when a developer/consent applicant or member of the general public is dealing with a council. Council tends to hold all the cards, even where case law or other guidelines exist to counter a position taken by a council, an applicant will often do "whatever it takes" to satisfy a council in order to gain approvals to allow a project to progress. This may or may not lead to better quality outcomes, and usually leads to greater expense and by extension, less affordable outcomes.
84. This causes us to recommend some form of check or balance on local authorities specifically in relation to issues that may affect housing affordability. To illustrate further, there are currently well established (albeit often expensive) routes to challenge policy or rules promulgated by councils. However, there is no easy route to challenge inappropriate application of these rules on either a one-off or multiple basis. Government should explore a cost effective and user friendly means to provide building and development industry professionals, as well as members of the public with a means to seek redress for poor implementation by local government. This may include for example a small claims tribunal or local government ombudsmen.
85. Inappropriate rules (e.g. those which are poorly drafted so as to be unnecessarily wide in their scope, as discussed above) often continue in district plans even after their shortcomings have been recognised, so continuing to add unnecessary costs. One reason that such rules remain 'on the books' is that the plan change procedures of the RMA are cumbersome, time consuming and demanding of resources. Councils are sometimes reluctant to devote resources to remedy plans especially when the plan may be due for review within one to two years.
86. The RMA makes provision in s.292 for the Environment Court to order the correction of "any mistake, defect or uncertainty". This section has been the subject of a number of Court decisions, the essence of which is that this discretion is "to be exercised as an exception to the clear and strong statutory background of formal processes for amending planning documents."<sup>29</sup> In our view, the scope of s.292 should be broadened so that rules which are drafted with a greater degree of prescription than is necessary to achieve their objective can be changed (including by being deleted if necessary) by Order of the Court without the need for the formality and expense of a plan change.
87. Councils are often reluctant to embark upon appropriate plan changes to the policy content of their documents, even where the need to do so has been demonstrated. Last year's TAG recommended that the right of appeal to the

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<sup>29</sup> Thames-Coromandel District Council (re an application) decision of the Environment Court W034/09.

Environment Court on plan matters be removed, since it is the role of elected councillors, rather than judges, to make such decisions. That recommendation was not accepted, possibly because of disquiet about councils' performance particularly in relation to rules.

88. The underlying problem that arises in this discussion is the length of time it takes to promulgate policy and/or policy or rule changes under the RMA. This is an issue to which we now return.
89. We consider that a distinction should be drawn between appeals on policy matters and those on rules issues. We agree with TAG1 that Courts have no place sitting as decision makers on the merits of competing policy options. If the right of appeal on the policy and objectives content of plans (rather than on the rules) were removed from the jurisdiction of the Court, we think that councils would be more inclined to embark on changes to outdated policies and objectives. The continuing in force of outdated objectives and policies presents barriers to development and imposes costs on the community. One means of simplifying this process would be to remove the right of appeal to the Environment Court on policy matters.
90. We distinguish between appeals on rule matters and appeals on policy matters - our recommendation being that the former be retained and the latter be removed. To see how the distinction may work in practice, we use the example of a fairly standard urban residential zone. The district plan will set out what the council considers to be the purpose of the zone and the methods it proposes to implement in order to achieve the desired outcomes. Thus a particular zone may be a medium density zone with modest to high environmental outcomes anticipated in terms of amenity standards. The objectives and policies would refer to, for example various bulk and location controls such as height to boundary and minimum yard requirements as the means of securing that outcome. The details of the dimensions required would then be found in the rules. Under our proposed reform, the objectives and policies outlining the nature and purpose of the rules are not themselves to be regarded as rules; they would not be appealable. By contrast the dimensions themselves would be appealable, as they would be set in rules.
91. Similarly we regard the description of the various zones as reflecting policy and objective priorities of the council. We regard the exact positioning of the zone boundaries as depicted on a planning map as rules. Thus the zoning to be applied to a piece of land would be appealable, but the objectives and policies for the zone would not be.
92. We note that s.43AA of the Resource Management Act defines "rule" as follows:
- "Rule means a district rule or a regional rule."
93. This definition was described by Their Honours Judge Sheppard and Judge Skelton in a leading case<sup>30</sup> as

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<sup>30</sup> Application by North Shore City [1995] NZRMA 74,89

“not as unhelpful as it might at first appear. It indicates that when the word is used in the Act it is not intended to have its general meaning, but to refer to the particular kinds of rules mentioned.”

94. Nevertheless, we consider that attention should be given to the question as to whether this definition would benefit by some amplification. We make this comment particularly in the light of the outcome of that case which saw a Metropolitan Urban Limit defined by reference to a zoning map held not to be a rule; when in the common parlance used in this report, it would certainly be considered as such.
95. We note that the issue of appeals to RMA plans and policies has been raised in the past. Concerns are raised by some parties that removing the right of appeal raises the possibility that local authorities could introduce policies and/or rules that are nonsensical.
96. A potential solution to address the range of these concerns came to us late in our deliberations. That is an approach where councils must obtain Ministerial approval of any policy proposals in an RMA document. This could include approval to embark on the plan change process or simply an approval at the conclusion of the submissions and hearings process. In the event the Minister is satisfied the policy is not ultra vires, has passed the section 32 tests, then Ministerial approval could be provided. This would then make the change operative. In the event that the Minister is not confident the change meets RMA requirements, or is highly contentious, it may not be signed off. This would allow submitters to appeal to the Environment Court.
97. Removing the right of appeal on policy matters should also be in combination with a requirement for appropriately comprehensive and robust policy making. While local policy decisions should be made at the local level, they should also consider overall objectives. The recommended vehicle for this is National Policy Statement on the Built Environment, which would give some Government-mandated policy direction on the full range of relevant issues.
98. We consider that this could be an efficient means of promulgating RMA changes to policies which could avoid delays caused by appeals. Rules would continue to be appealable to the Environment Court.
99. In our discussion, we considered the various regulatory costs and hurdles that must be overcome in order to develop housing. A developer (whether large scale or small) must address RMA requirements in terms of subdivision, land use, and Building Act requirements. This can involve paying contributions under the RMA or LGA, plus subsequent connection fees (e.g. for water).
100. In our view, urgent work is needed to consider whether efficiencies in the consenting process from RMA and BA can be provided. Such a review should include considering whether resource consents for single dwellings can be avoided by crafting better performance standards and rules, improving the guidance on urban design related issues for larger residential developments, and providing greater certainty around the level of contributions required.



Overall, we consider that efficiencies in 'processing' and related costs can be gained without an adverse impact on the quality of the built environment.

101. In chapter 2 we referred to the approach in New South Wales where "*a common, routine proposal can be classified as a "complying development"*". We consider that there is potential in New Zealand for tools to be developed by the Ministry for the Environment to support local authorities in making the processing of consents for housing easier without compromising environmental outcomes. This could, for example, include greater use of the restricted discretionary activity category of consent than is currently the case.

102. The House Prices Unit of the Department of Prime Minister and Cabinet released its report on issues of housing affordability in 2008. After examining the causes of the 80% real rise in house prices over the five years to 2007, it examined ways of making housing more affordable and concluded:

"Reducing costs provides a sustainable way of making housing more affordable. Lower costs of sections and construction are the most likely way of achieving a long term reduction in housing costs. A focus on streamlining regulatory systems, especially around the Resource Management Act and building consents processes, may help. Increasing the amount of land available for housing would also help, as would sustainable development, either in the form of intensive housing developments or new settlements built using sustainable methods and located outside of cities."

103. In relation to these conclusions (and abstracting from macro drivers), we note that lower section costs may arise from:

- a. Lower contributions for new infrastructure being met by the developer/new section owner.
- b. Smaller section sizes, and/or more dwelling units per section.
- c. More competition to supply new sections.
- d. Economies of scale in developing a large number of sections at the same time.

104. The potential for lower infrastructure contributions (given a specific cost of infrastructure) indicates that there is a trade-off between developers/new owners fully meeting the marginal costs of development (with resulting higher section costs) versus some contribution from the existing community towards new infrastructure. The latter approach would result in lower costs being imposed on new sections and in higher costs (local authority rates) for existing section owners in the region which, in turn, could place modest downward pressure on existing section prices.

105. Smaller (and more affordable) section sizes and/or more dwelling units per section may be encouraged either by modifying existing regulations that prescribe minimum section sizes or those that prescribe maximum dwelling densities (and/or height restrictions) within urban areas. A National Policy Statement, or other policy initiative, that enables councils to alter their Regional Policy Statements and District Plans in a manner that enhances

density without recourse to widespread consultation or appeal, could assist policy changes in this direction.

106. More competition to supply sections rests on there being multiple potential new sites for development that are in competition with each other. The competition can occur both at a point in time and across time. For instance, if only a small number of spare plots of land are available in one year, they will still face competition if it is known that a large new supply of sections will be coming on-stream in the following year. The need for competitive section supply means that a considerable surplus of developable land is required at all times that diminishes the monopolistic power of 'land-bankers' and other owners of vacant land.<sup>31</sup>
107. Economies of scale in land development may involve large tracts both of greenfields developable land and brownfields developable land. The former relates to the requirement to have a significant surplus of developable greenfields land at all times. The latter may occur through amalgamation of industrial sites or through amalgamation of previously run-down residential areas.
108. Currently in New Zealand, the Public Works Act enables authorities to acquire land for infrastructure and other significant public works. It is a moot point as to whether it can be used to amalgamate brownfields sites for urban regeneration in cases where a minority of existing owners do not accept an offer to sell voluntarily.<sup>32</sup> In many jurisdictions, including the United States, United Kingdom and Australia, authorities have the ability to force such sales in order to promote sufficient amalgamation of developable land to produce the economies of scale required to redevelop an area comprehensively and cost effectively. A clarification of the Public Works Act may be required in this respect.
109. Even if it was established that the Public Works Act in its current form could be used in this manner, we understand that the offer-back provisions of the Act (s.40) could represent a significant impediment to any large scale urban redevelopment proposal. It is likely that any local authority that seeks to promote such a development would either sell the land to a private development company, or enter into a public-private partnership or some related approach. The requirement that the council offer the land back to the party from whom it was acquired could well apply in a situation in which the land was not to be the subject of a direct council development. The ability of the council to enter into commercial development relationships could therefore be significantly impaired.
110. We are aware that ITAG has recommended to you that the Public Works Act be amended so as to permit, amongst other things, an acquiring authority to pay the owner of land up to an additional 5% of the property's value in return for a surrender of the owner's s.40 rights. We endorse that proposal and see it as significantly facilitating efforts by local authorities and/or

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<sup>31</sup> For further discussion of this approach and the issue of land-banking around Auckland, see Grimes, Aitken, Mitchell & Smith. 2007, *op cit*.

<sup>32</sup> We have been made aware of conflicting legal opinions on this matter.

central government agencies to promote the development of affordable housing in a commercially sound manner.

111. The U-TAG also considers that in providing councils with these new powers, there needs to be constraint to how these can be used to ensure appropriate checks and balances. One key means of achieving this is to only enable the application of these powers in declared “urban development areas.” While council may be able to declare an urban development area, this would be subject to some form of Ministerial oversight. Our suggestion is that the Minister establish criteria for when these powers may apply (either nation-wide or site specific) and measure any request against these criteria. This form of Ministerial approval is well established in the RMA in various forms (for example, the ability to approve a ‘network utility operator’ or requiring authority).

112. In order to provide context to our recommendation, we consider the criteria that may be used could be:

- there is an adopted spatial plan under the LGA which identifies the area as an UDA; or
- comprehensive and collaborative development or redevelopment of the public and private realm is justified; or
- public and private property and amenity values are subject to social and/or economic distress; or
- public and private property and amenity values will be significantly decreased without an UDA; or
- a significant housing stock, employment or infrastructure issue needs to be addressed; or
- to deliver on a significant commitment to integrated investment between the government, local and/or regional government);
- The area is of sufficient scale that intervention will enable strategic objectives to be achieved.

113. Finally, none of these recommendations in any way requires or necessitates any form of public intervention in the development process itself – such as through an ‘urban development agency.’ This is not required, as the private sector is capable of delivering redevelopment once any land ownership/amalgamation issues are resolved through the application of these proposed powers.

114. The Resource Management Act, either through its wording or through case law, currently places little emphasis on housing and other urban needs as a factor to be balanced against other factors in decisions concerning prospective developments. A National Policy Statement and an amendment to the RMA (s.6) that accords emphasis to a quality built environment and urban outcomes that would raise the likelihood that affordable housing and other beneficial urban outcomes will result is recommended.

115. In addition, section 32 of the Resource Management Act requires that councils undertake a cost:benefit analysis before introducing new rules. Worthwhile as this objective is, s.32 has not proven to be an effective check on interventions that intentionally or otherwise result in a rise in the price of housing. An RMA amendment that defines affordable human habitation as an explicit environmental goal would impact positively on the attention given to housing outcomes within s.32 analyses.

116. The Local Government (Auckland Council) Amendment Act 2010 includes provision for a spatial plan for Auckland. We discuss this plan elsewhere in this report. Here we note the importance of both local government and central government playing their parts in ensuring that the spatial plan delivers beneficial outcomes that include an appropriate degree of housing affordability.

117. We note with interest that in April 2010, the Australian Government requested the Productivity Commission to undertake a “benchmarking study into Planning, Zoning and Development Assessments”. Amongst the factors to be examined are “business compliance costs” and “processes in place to maintain adequate supplies of land suitable for a range of activities.” This report is due to be completed late in the year, and its recommendations will be of considerable interest on both sides of the Tasman. The Ministry of Building and Housing should examine the Commission’s conclusions when they are released to see if further moves can be made, based on their analysis, to improve housing affordability in New Zealand.

### 3.3 Recommendations

118. Our key recommendations in relation to housing affordability are:

**Recommendation 6.** That government urgently and comprehensively identify a wide ranging group of regulatory issues that collectively can address the many contributors to affordability of housing for New Zealanders.

**Recommendation 7.** The RMA (s.6) be amended to include recognition of the importance of urban outcomes and that a National Policy Statement be prepared that includes direction on housing affordability in all considerations under the Resource Management Act.

119. In addition, over the course of our deliberations, a number of more detailed recommendations have emerged that we consider will provide a more comprehensive response to the questions raised in our Terms of Reference.

**Recommendation 8.** That as part of a wider investigation, government consider charging the Ministry for the Environment with developing tools to support local authorities to make the processing of consents for housing easier without compromising environmental outcomes. (For example, this could include greater use of the restricted discretionary activity category of consent.)

**Recommendation 9.** The Public Works Act be reconsidered to ensure that local authorities have the ability to compulsorily acquire and amalgamate land for major urban regeneration projects (provided some form of central government oversight is required as a safeguard).

**Recommendation 10.** Government support the ITAG recommendation with regard to the Public Works Act by which an acquiring authority be permitted at its discretion to pay a 5% premium over fair market value in return for a surrender of the initial owner's s.40 rights.

**Recommendation 11.** That s.292 of the Act (or such other section as may required) be amended so as to allow for a greater ease in the correction or deletion of defective Plan rules.

**Recommendation 12.** That options to amend the RMA appeals process in relation to plan policy be explored, including seeking to remove the right of appeal to the Environment Court in respect of Plan policy matters, but to retain appeals against rules.

Ministerial approval of plan policy matters should be explored as one means to provide sufficient checks and balances.

**Recommendation 13.** Government should explore a cost effective and user-friendly means of challenging inappropriate application of District Plan Rules by councils. Possible solutions include the establishment of a Small Claims Tribunal equivalent, or the Local Government Ombudsman.

## 4. SPATIAL PLANS

### 4.1 Questions

120. We have been asked to advise as to:

- a. What role can a spatial plan fulfil?
- b. How should the key planning instruments under the RMA, LGA and LTMA be better aligned? Is there a better way to bring the different plan processes together?
- c. Can we simplify the consultation requirements around each of the various plan making processes?

### 4.2 Observations

121. Spatial planning for urban areas is an age old practice that has gained renewed interest in New Zealand in the recent past.

122. In 2009 and 2010 Cabinet considered the role of a spatial plan and regional infrastructure investment plan in detail and resolved to include provisions for spatial planning in the Local Government (Auckland Law Reform) Bill – the third and final Bill to implement the Government’s decisions on governance arrangements for the Auckland region. That Bill was reported back from the Select Committee to Parliament with significant changes to the spatial planning provisions, and has now been enacted.

123. Cabinet decided to provide for a statutory spatial plan for Auckland with no legislative linkages to other planning functions for Auckland and to examine this further under RMII-U. The Select Committee report back to Parliament has also left this aspect of the spatial plan to be addressed through RMII-U. We are aware that a significant number of submissions to the Select Committee suggested various linkages from the spatial plan to other key planning documents.

124. This TAG is tasked with considering the replacement of existing strategic plans, legislative linkages, appeal rights and consultative processes and in particular the overall shape of the planning framework for New Zealand and relationships between the key Acts – RMA 1991, LGA 2002 and LTMA 2003. This is informed by and shaped by the local government reform underway in Auckland.

125. It is pertinent to focus on spatial planning in an Auckland context, as this is the only region in New Zealand to have a proposed statutory requirement for spatial planning. We also address, following our focus on Auckland – whether spatial planning and some of our related findings have relevance in other parts of New Zealand.

126. We specifically note our familiarity with large scale collaborative<sup>33</sup> integrated planning projects carried out or underway in the Bay of Plenty, Wellington region, Canterbury – greater Christchurch area, and the greater Hamilton area of the Waikato region. Auckland region likewise has carried out collaborative integrated planning over many years.

127. After an 18 month investigation, the Royal Commission on Auckland governance identified a large number of pressing problems for Auckland, but focussed on two fundamental systemic problems that had to be addressed:

“the Commission believes that most, if not all of the specific day-to-day problems”... (with local government arrangements in Auckland)...” arise as a result of two more fundamental systemic problems:

- Regional governance is weak and fragmented.
- Community engagement is poor.” (page 288 volume 1)

128. The Royal Commission went on to deal in depth with “practical solutions to pressing problems” and identified:

“failures in aligning the land use side of growth management with the funding and provision of city-shaping infrastructure (motorways, regional arterial roads, the rapid transit network, regional water and wastewater networks, and open space networks).” page 527 Volume 1

129. A key recommendation of the Royal Commission was that the Auckland Council should prepare a regional spatial plan and infrastructure investment plan to provide a vision for the Auckland region and to guide growth management, regional and district planning and public works investment in the region.

130. The Local Government (Auckland Council) Amendment Act 2010 (LGACAA) sets out a detailed prescription for “spatial planning for Auckland” in section 79 and 80 (see Appendix 1 for amendments to the Act following Select Committee stage).

- a. Auckland Council must prepare and adopt a spatial plan for Auckland – but there is no time limit as to when this might occur
- b. The purpose of the spatial plan is to contribute to Auckland’s social, economic, environmental and cultural well-being through a comprehensive and effective long term strategy for Auckland’s growth and development. It will contain broad-based objectives; propose a high level development strategy and support co-ordinated decision-making by Auckland Council and other parties involved with critical infrastructure, services and investment. It is also intended that the spatial plan provide a basis for aligning implementation, regulatory and funding plans of Auckland Council.
- c. To give effect to the spatial planning function the plan must address:
  - i. Social, economic, environmental and cultural objectives for Auckland and its communities (c.f. the community outcomes

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<sup>33</sup> In all cases the studies have taken place between three or more local government units including a regional council and have had technical, and political dimensions.

process under sections 91 and 92 of the Local Government Act 2002)

- ii. The role of Auckland in New Zealand
- iii. Existing and future land use pattern (residential, business, rural production and industrial)
- iv. Existing and future location of critical infrastructure such as transport, open space, water supply, wastewater and stormwater, other network utilities and cultural and social infrastructure
- v. Identify nationally and regionally significant
  - ecological areas that should be protected from development
  - recreation and open space areas
  - environmental constraints on development (such as unstable land)
  - landscapes, areas of historic heritage and natural features
- vi. An illustration of how Auckland might develop, including the sequencing of growth and provision of infrastructure
- vii. Policies, priorities, programmes and land allocations to implement the strategic direction and how resources will be provided to implement the strategic direction.

131. It is a statutory requirement for the Auckland Council to involve central government, infrastructure providers, communities of Auckland (key role envisaged for local boards), the private sector and others throughout the preparation of the spatial plan.

132. Statutory provisions for spatial planning for Auckland do not specifically refer to an infrastructure investment plan as described by the Royal Commission but the legislative provisions are sufficiently wide and enabling as to encompass the concept of an infrastructure investment plan – indeed the provisions enable a much wider scope in describing an investment programme to support the spatial plan – including the investments of other parties outside of the control of Auckland Council.

133. Spatial planning for Auckland as envisaged by the LGCAA should:

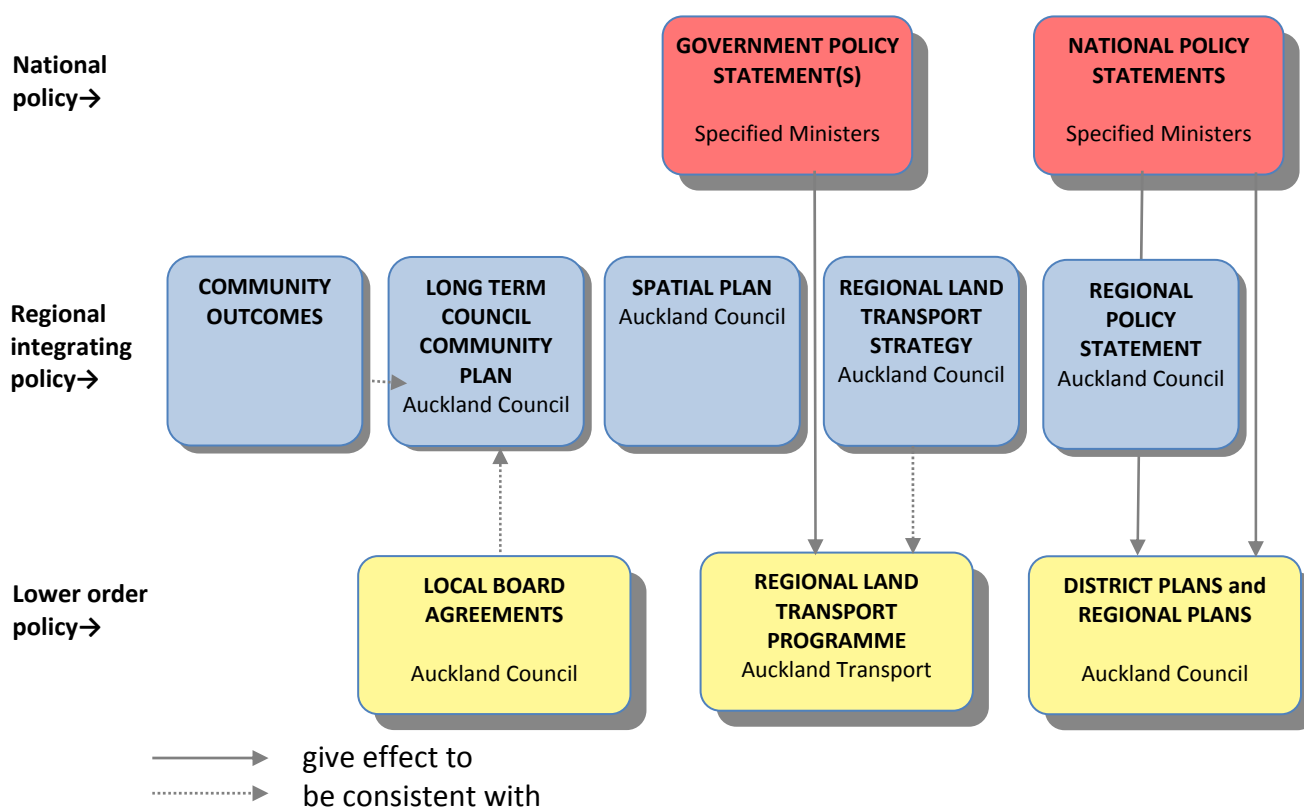
- a. Be driven by Auckland Council (the largest single council in Australasia)
- b. Be based on broad objectives
- c. Have a long term scope which therefore can influence city and region direction and growth
- d. Involve significant engagement with the Crown, communities of Auckland, infrastructure providers, including its own CCOs
- e. Drive other key planning documents for Auckland Council and by implication its CCOs – although the latter is further discussed in this report.



134. The proposed strategic and overarching planning framework for Auckland as envisaged by existing legislation and the LGA is complex. While Auckland governance reform will, over time greatly simplify the planning framework (if only by reducing the number of councils and therefore plans and policy documents), there are nevertheless significant complexities and overlaps remaining. The UTAG acknowledges papers produced by ATA and the existing Auckland councils in informing this report.

135. We consider this to be unnecessarily complicated. It leaves the spatial plan isolated, and does not capture the efficiency benefits that are possible with co-ordination and integrated decision-making. The spatial plan is not linked to other plans and processes, thus adding to the complication of the planning system, but without any efficiency gains or co-ordination benefits. Multiple separate processes and plans address issues in different ways. In short, this is unwieldy and inefficient, and incapable of producing optimal outcomes.

136. Figure 1 below illustrates the current proposed statutory planning framework for Auckland Council (after 1 November 2010 and the establishment of Auckland Council, Auckland Transport and Watercare) as core local government and council controlled organisations. The planning framework includes documents and processes which establish high level objectives and outcomes desired by key participants, strategic directions, long term land use patterns, resource management objectives, policies and rules, funding plans and strategic and long term infrastructure plans and investment.



**Figure 1: Statutory planning framework for Auckland**

137. It has been noted by many parties to the Select Committee that the spatial plan has no statutory linkages to other council plans - and that it should. This was altered in the reported back Bill and now the LGA allows Auckland Council to nominate plans and strategies that the spatial plan should take into account. Figure 1 above illustrates the spatial plan "floating" within a planning framework.
138. The LGCAA proposes that the spatial plan is prepared using the special consultative procedure under the Local Government Act. The special consultative procedure is simple compared to RMA notification procedures and has more limited requirements for public consultation. In summary the council prepares a proposal (the spatial plan) including an explanatory statement and assessment of options, which is publicly notified. Written submissions are received within a specified timeframe of not less than 1 month. Any submitter must be given a reasonable opportunity to be heard. After consideration of all submissions the council changes the proposal as it sees fit and adopts the plan. There are no rights of appeal, although the council decision may be challenged by way of Judicial Review in the High Court. That procedure does not allow a challenge to the merits or wisdom of the decision - it merely provides a check to make sure the council has followed the correct procedural steps and has made a reasonable decision in all the circumstances.
139. On the other hand plans and strategies prepared under the Resource Management Act, which have the force of law, with policies and rules that govern the use of land and resources, are subject to extensive rights of hearing and appeal before councils and Environment Court.
140. We observe that a Government Policy Statement under the Land Transport Management Act requires consultation by the Minister only with the NZ Transport Agency. We also observe while it is essentially an allocative mechanism for Crown funding it can also contain background and objectives with respect to transport objectives for New Zealand.
141. We will return to the issue of consultation and rights of hearing and appeal later in these observations.
142. We have focused our attention on making spatial planning work for Auckland (and perhaps other parts of New Zealand), and can support the concept if it will improve integrated planning which delivers better places for Aucklanders, better environmental protection, enhanced economic outcomes, a better investment and development climate, more investment certainty and improved growth management. We also note that considerable thought and effort will be required to ensure that the spatial plan operates at the right level. It cannot become the "shopping trolley" for all activities, projects and aspirations or it will lose its strategic, long term and integrative role. In our view it will be a high level document and for example will not be at a level where detailed future zoning changes can be determined, or at the level of detail typical of a structure plan or precinct plan. Spatial planning for Auckland must provide a practical and fundable basis for achieving economically efficient alignment of infrastructure investment and land use development.

143. Figure 2 is an illustration of strong and clear linkages that we propose. These linkages are described further below. We note that linkages themselves will not be enough to achieve the outcomes we have described in other sections of this report. Such linkages, which are illustrated in Figure 2, will not be adequate without expansion of the scope of the spatial plan, and the introduction of best practice to ensure collaboration with a number of key parties.

144. The legislative provisions for spatial planning need strong and clear statutory linkages with the other planning functions and instruments of Auckland Council and its major CCOs to justify the very significant amount of time and cost that will likely be devoted to the spatial planning function as envisaged by the LGACAA. In particular, we note that councils can and do carry out spatial planning as a core activity supporting district planning, infrastructure planning and the development of LTCCP, amongst other things, without the need for a well specified statutory direction.

145. The TAG proposal is this:

- a. Central government provides a clear statement of its objectives for Auckland through a Government Policy Statement which would require amendments to the Local Government Act's spatial planning provisions. There is already an example of a Government Policy Statement affecting Auckland - under the Land Transport Management Act. This GPS is issued by the Minister of Transport and guides NZTA and the land transport sector on levels of likely funding and the objectives and outcomes the Crown seeks through the national land transport programme.
- b. We envisage the development of the Crown's objectives<sup>34</sup> would follow from discussions with Auckland Council. The Crown's objectives would be high level but meaningful, both as the basis for partnership between the Crown and Auckland Council, and also very importantly as a basis for the Crown to use in its own accountability planning with its agencies and entities. In the same way that Auckland Council will have a critical integrative role with its CCOs and other major players in Auckland, so the Crown through designated Ministers should have an integrative role with numerous bodies for which it is shareholder, owner and/or funder. This process will essentially bring a spatial dimension to much government funding, policy and implementation decisions which has not necessarily been explicit in the past. Looking beyond Auckland, this may have significant implications for the way in which government makes decisions in each region around New Zealand. This is particularly the case when considering investment decisions which 'shape' urban areas.
- c. It is our view that a spatial plan under the Local Government Act should have to give effect to any NPS prepared under the RMA, as relevant to the circumstances of the region. This would require amendment to the provisions of the LGA for spatial planning. While there are very few

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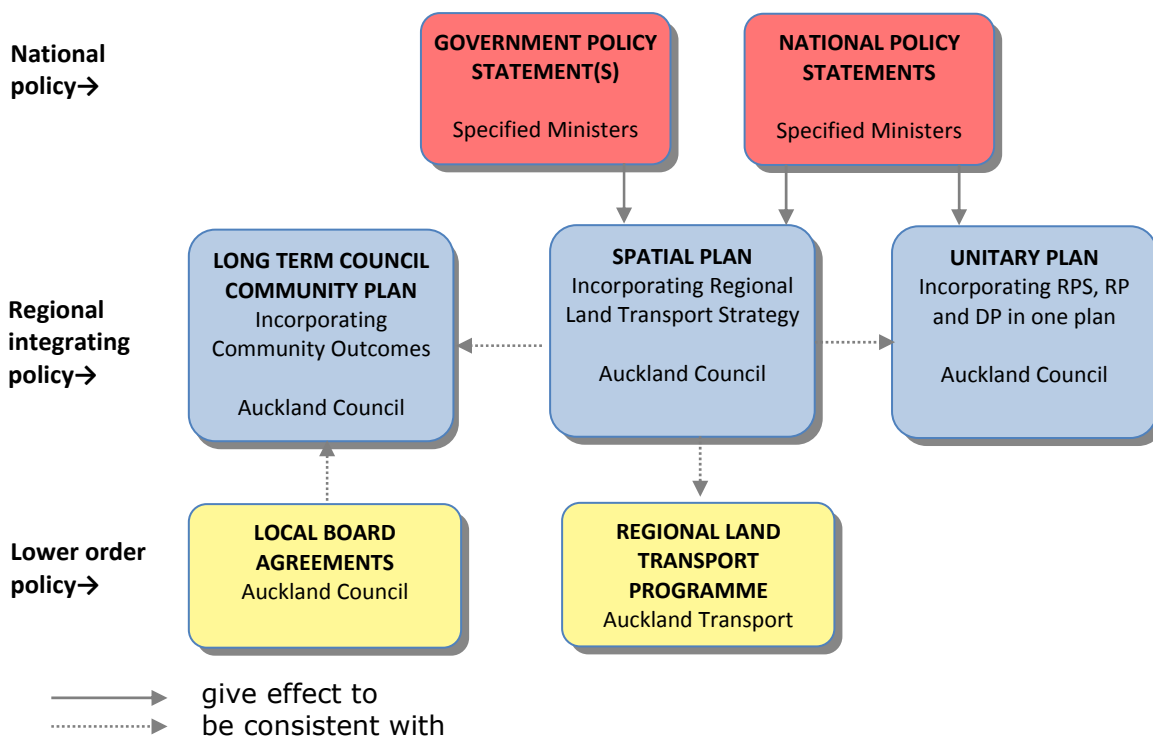
<sup>34</sup> The Crown's objectives for Auckland could relate to a wide variety of directions and outcomes relating to the economic, cultural, social, and environmental contribution and performance of Auckland in a wider New Zealand perspective. Specific objectives relating to provision for nation building infrastructure and facilities could also be addressed.

National Policy Statements (NPS) under the RMA (NZ Coastal Policy Statement and NPS on electricity transmission), the potential scope of an NPS is very wide - “objectives and policies for matters of national significance that are relevant to achieving the purpose of this Act”. In other parts of this report we have addressed the need for a programme of NPSs that would be of guidance in spatial planning – both as to method and as to outcome. The benefit of an NPS is that lower order plans such as RPS and district plans must give effect to the provisions of a NPS. In Australia and the UK – jurisdictions we have examined, there are many examples of state or nationwide guidance on matters of some detail in urban planning.

- d. The relationship between the spatial plan and the LTCCP should be one of ‘complementarity’, rather than hierarchical subservience. While both will be prepared by the same body in Auckland, this is the result of local government reform. In other parts of New Zealand the alignment between the spatial plan and local government will seldom be as synchronous. Even in the Auckland situation the scope of the spatial plan will extend significantly beyond the mandate and budgets of Auckland Council – hence the need for a collaborative approach with government (and many other stakeholders).
- e. A LTCCP is comprehensively reviewed and prepared every three years and is forward looking with supporting financial statements for at least ten years. Significant expenditure identified in a spatial plan will be the accountability of the council, as well as general land use and transport planning, and so a spatial plan should be prepared just prior to or in association with the preparation of the LTCCP. Amendments to the spatial planning provisions of the LGA may be required to ensure that the spatial plan is adopted before or at the same time as the LTCCP. We understand there are legislative proposals to merge the community outcomes process under the LGA with the LTCCP process and this is illustrated in Figure 2. As community outcomes are likely to be of significant importance in the preparation of the spatial plan this lends further weight to mandating a relationship between the spatial plan and the LTCCP.
- f. In the case of Auckland, it is our recommendation that the spatial plan replace the requirement for a Regional Land Transport Strategy (RLTS) under the Land Management Transport Act (LTMA). In future the RLTS will be prepared by Auckland Council. The ARC has just adopted the RLTS which will have statutory effect until June 2016, but our proposal would see a spatial plan adopted not later than 30 June 2012 and the RLTS could then be retired. The spatial planning provisions of the LGA would need to be amended so that the transport specific matters set out in the LTMA are covered in the spatial plan. This would mean more effective land use transport planning because transport specific objectives, policies and methods would be integrated with a wide variety of economic, social and environmental objectives, and the spatial plans would provide a single platform for the integration of transport and land use outcomes.
- g. The final part of the simplified framework relates to the policy statements, regional plans and district plans prepared under the RMA. Auckland local government reform has provided an opportunity to bring together more than 13 policy statements and plans (including hundreds of proposed plans,

plan changes and plan variations) into a single RMA unitary plan for Auckland. This will be a major undertaking but will provide the opportunity to provide a single integrated framework for resource management policy and strategy for the region, and to bring more consistency and clarity of approach to RMA regulation. Such approaches have been adopted in other parts of New Zealand, but in much smaller and less complex jurisdictions.

- h. Figure 2 shows a “being consistent with relationship” between an adopted spatial plan and RMA documents for two reasons: first while a complex task, it is our estimation that a spatial plan will be prepared in much shorter time frames than an RMA unitary plan and so after a year or two the synchronicity between the plans will always be out; and second it is the RMA unitary plan that takes with it actual rules and rights with respect to the use and development of land and resources; and so there are lengthy submission, hearing and decision processes before councils and the Environment Court.
- i. An adopted spatial plan should certainly inform and shape an RMA unitary plan, but they should not be confused as to purpose. A spatial plan should be a flexible document, readily reviewed, particularly relating to currency of projects and priorities for action. It should present a clear vision for Auckland, supported by funded investment programmes to support the strategic direction. It should shape the investments and priorities of the private sector and non-government organisations. It will succeed if it has a compelling and enduring story that Aucklanders understand and own. The RMA unitary plan is a regulatory plan which in particular governs and integrates the management of natural resources, and land use and development. Its pre-eminent role should not be a land use plan or strategy, or an infrastructure investment plan.

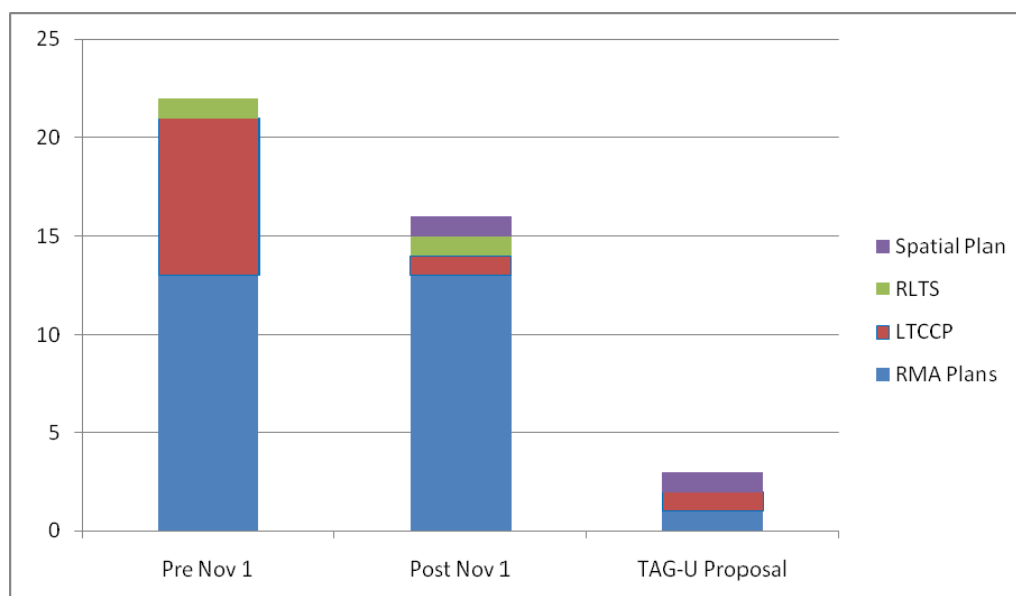


**Figure 2: Simplified statutory planning framework for Auckland**

146. We wish to emphasise the importance of our proposal that the Crown both set objectives for Auckland, and also endorse that the spatial plan has met those objectives before it can be adopted. As already noted, councils do not need a statutory directive to carry out spatial planning – it is becoming a fairly common local government practice. However we can support the statutory requirement for a spatial plan for Auckland, if the legislation is amended to require the “bookends” of Crown involvement at the outset of its preparation, and before the plan is adopted. Without the Crown’s active involvement and commitment to the spatial plan we seriously question the justification for statutory direction to prepare a spatial plan. It is our view that local government should welcome these amendments to the spatial planning provisions because it provides the right framework for the Crown to engage with local government, to be integrated with each other and aligned with those of the council.

147. We note that significant simplification of the RMA plans in Auckland should follow the preparation of a single unitary plan under the RMA. If Auckland Council decides not to do this, but rather to prepare a series of plans and policy statements then the simplification assumed by our Figure 2 would not eventuate. In our view, the government should provide direction on this matter, so as to achieve the stated aims of “simplifying” the RMA process. In our view, while a single plan is a challenging task, it is essential that the regulatory regime is consistent across the region. Such direction may include the region preparing a single Unitary Plan (We note this point explicitly because there is no requirement for the new Auckland Council to prepare a unitary plan).

148. The following diagram provides a visual expression of the existing policy framework, the framework that will exist after the 1 November reform, and the framework that is proposed in our report. The table also provides a summary of this framework.



**Figure 3: Number of Plans: A Simplified Policy Framework for Auckland**

149. What role can a spatial plan fulfil? Spatial planning should be thought of as a verb and not a noun. With the right statutory linkages and changes to the LGA and RMA, it could be the most effective statutory planning tool in New Zealand's history to achieve place based economic growth, investment in infrastructure, integration of land use and transport planning and development. Because a spatial plan is necessarily results based (not rule based like an RMA plan) it should provide a better basis for engagement of local government with its communities, and in particular provide support to community outcomes and LTCCP processes under the LGA. If our proposals are adopted, the spatial planning tool also provides a basis for the Crown to engage with local government, and to guide its own departments, agencies and entities. It will be possible to illustrate and demonstrate success because of the investment and action oriented bias of the spatial plan. There are many ad hoc examples of successes and failures of achieving integration between central government and local government planning and investment.

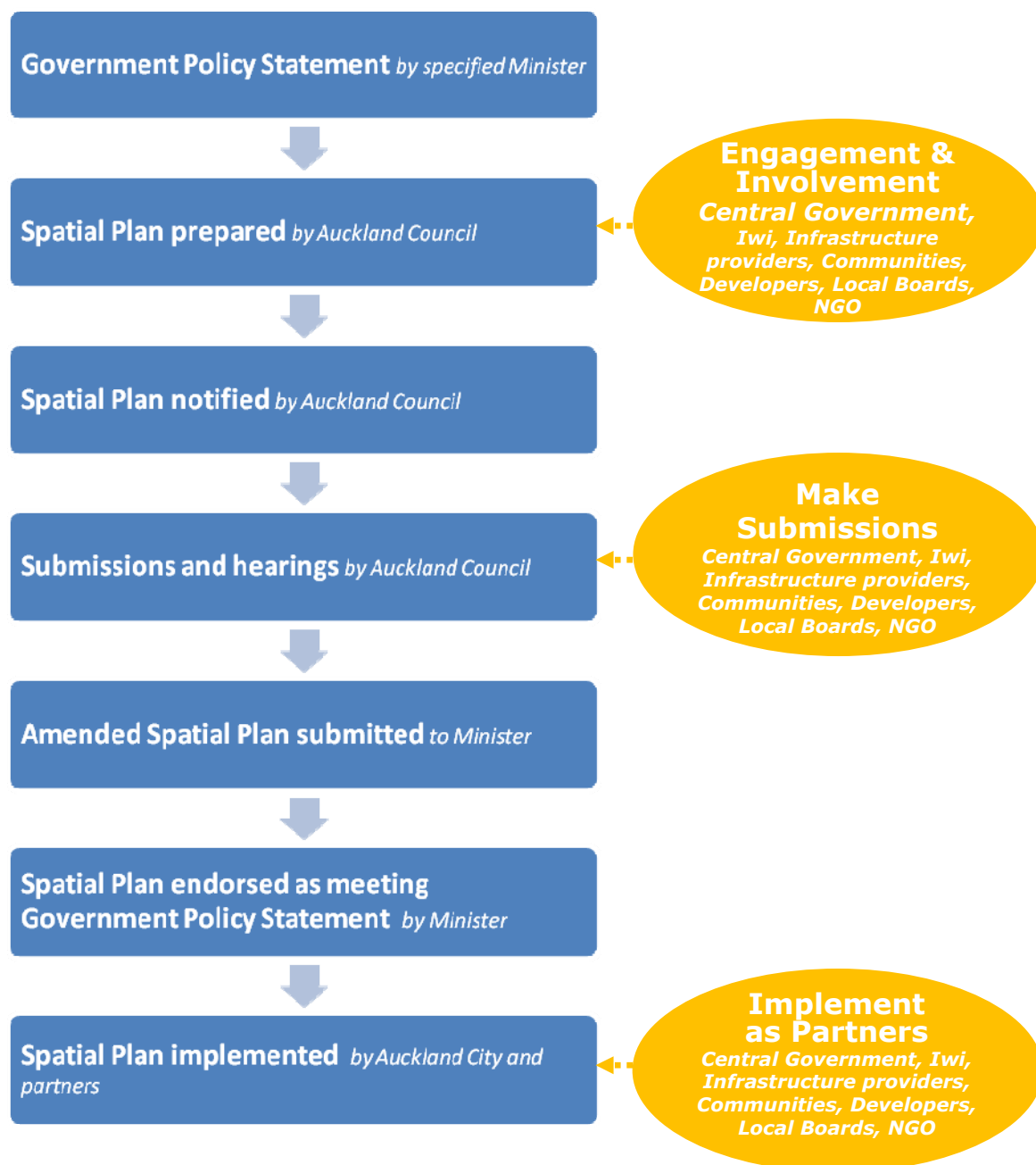
150. As already discussed it is the view of the TAG, that unless there is a high level partnership between the Crown and local government in the preparation and implementation of a spatial plan the legislative mandatory directive to prepare a spatial plan cannot be justified. As we noted in earlier sections, local government already carries out spatial planning in various guises to support district planning, growth management strategies, regional policy statements, long term council community plans, transport strategies and many other functions under the LGA, RMA and LTMA. Special legislation prescribing what should be done - especially without statutory linkage to other plans and strategies - just adds to the complexity of the existing statutory planning framework without additional benefit. In our opinion, the benefits of such a high level partnership might include:

- a. Improved investment in infrastructure that has significance in terms of defining future urban form;
- b. Monitoring and oversight of important government outcomes, such as the provision of land supply and housing stock sufficient to ensure housing is affordable;
- c. Coordinated and timely investment in specific parts of the city
- d. An ability to act with greater flexibility in relation to economic development initiatives that may have land use or transport implications;
- e. Greater certainty for business and economic investment;
- f. Reduced risk of unclear policy objectives.

151. The process for preparing the spatial plan must allow the partnership between central and local government to be a key influence on the overall process. The role of the GPS here would be key, as the spatial plan must be consistent with it. As noted previously, the process to prepare the spatial plan need not be overly complicated, and the plan must be able to be reviewed every three years without an overly complex procedural approach. Similarly, once agreed, neither the Auckland Council nor government should

be able to disengage from the implementation process or seek to change the plan until the next scheduled review. That is, all of those affected by and participating in Auckland's growth – including government and the Auckland Council – require a reasonable level of policy and investment certainty.

**Figure 4: Preparing the Spatial Plan**





152. Along with local government reform, our proposal greatly simplifies the planning framework for Auckland. Because there would be a small number of statutory and integrated plans and strategies at the highest level, the required consultation should be more focussed. We are confident that the proposed framework can work, and create the right conditions for success.
153. This part of the TAG report has focussed on Auckland for obvious reasons surrounding the formation of a new Auckland Council and new statutory provisions for spatial planning. The TAG has discussed at some length whether spatial planning should be required in other parts of New Zealand. We note that there are special circumstances in Auckland which, subject to our views with respect to Crown involvement, justify the mandatory requirement for spatial planning.
154. We think that spatial planning as set out in the LGA may be appropriate and justified for other large and growing metropolitan areas of New Zealand; greater Christchurch, western Bay of Plenty, greater Hamilton, Napier/Hastings and greater Wellington. There are however complications in applying the Auckland LGA model which has a “community of interest” with spatial planning boundaries and unitary council administrative boundaries coinciding. In the other cases set out above the area likely to require spatial planning would in all cases be only part of a region and include part of some territorial authorities in those regions and may exclude some territorial authorities altogether. The conditions for successful spatial planning as per the Auckland model in other parts of New Zealand would include:
- a. Complex metropolitan growth issues that require an integrated and long term plan;
  - b. That the regional council or unitary council has the capacity and resources to undertake spatial planning in collaboration with territorial authorities;
  - c. That affected councils are willing and collaborative partners in spatial planning (which will affect the LTCCP of individual councils);
  - d. That the Crown has capacity and resources to carry out its functions in regionally based spatial planning.
155. The TAG has not considered the merits of further local government reform, but nevertheless we make the observation there is a natural fit between larger scale unitary councils and the type of spatial planning set out for Auckland under the LGACAA.

## **Case Study 1: Australian Federal Government Guidance for Capital Cities.**

The Australian Federal Government is taking a proactive interest in the planning and development of Australia's major cities. (Speech by Kevin Rudd to Business Council of Australia 27 October 2009)

Its approach focuses on productivity in recognition of the significant contribution Australia's major cities make to the national economy (60 percent of GDP in 2006). It also recognises that cities must also manage rapid population growth and the impacts of climate change, since Australian cities are responsible for 70 percent of Australia's greenhouse gases.

The Government established a Council of Australian Governments (COAG) Cities Taskforce with states and territories to address urban policy. A 7 December 2009 COAG communiqué outlined National Objectives for Major Cities and national criteria for future strategic planning. The national objective is to "ensure Australian cities are globally competitive, productive, sustainable, liveable and socially inclusive and are well placed to meet future challenges and growth"

The communiqué noted that the "criteria are intended to ensure ...(that) cities have strong long term plans in place to manage population and economic growth, address climate change, improve housing and urban congestion. They will also:

- provide for future oriented and publicly available long term strategic plans
- be integrated across functions (for example land use, infrastructure and transport) and coordinated between all three levels of government
- clearly identify priorities for the future investment and policy efforts by governments
- provide for effective implementation arrangements and supporting mechanisms; and
- support and facilitate economic growth, population growth and demographic change."

The Federal Government has an expectation that if it is to fund significant infrastructure investment in Australia's major cities, it expects to have confidence in the integrity of strategic planning in major cities.

Officials expect a second phase of this focus by the Federal Government on urban planning to be launched early in 2010.

Australia's major cities are mapping out their own strategic directions with their international competitiveness in mind. The criteria being applied to Australian Capital Cities Planning Frameworks are as follows:

### **156.Objective**

**157.To ensure Australian cities are globally competitive, productive, sustainable, liveable and socially inclusive and are well placed to meet future challenges and growth.**

**158.Criteria****Capital city strategic planning systems should:**

1. Be integrated:
  - across functions, including land-use and transport planning, economic and, infrastructure development, environmental assessment and urban development; and
  - across government agencies.
2. Provide for a consistent hierarchy of future oriented and publicly available plans, including:
  - long term (for example, 15-30 year) integrated strategic plans;
  - medium term (for example, 5-15 year) prioritised infrastructure and land-use plans; and
  - near term prioritised infrastructure project pipeline backed by appropriately detailed project plans.
3. Provide for nationally significant economic infrastructure (both new and upgrade of existing) including:
  - transport corridors
  - international gateways;
  - intermodal connections;
  - major communications and utilities infrastructure; and
  - reservation of appropriate lands to support future expansion.
4. Address nationally significant policy issues including:
  - population growth and demographic change;
  - productivity and global competitiveness;
  - climate change mitigation and adaptation;
  - efficient development and use of existing and new infrastructure and other public assets;
  - connectivity of people to jobs and businesses to markets;
  - development of major urban corridors;
  - social inclusion;
  - health, liveability, and community wellbeing;
  - housing affordability; and
  - matters of national environmental significance.
5. Consider and strengthen the networks between capital cities and major regional centres, and other important domestic and international connections.
6. Provide for planned, sequenced and evidence-based land release and an appropriate balance of infill and greenfields development.
7. Clearly identify priorities for investment and policy effort by governments, and provide an effective framework for private sector investment and innovation.
8. Encourage world-class urban design and architecture.
9. Provide effective implementation arrangements and supporting mechanisms, including:
  - clear accountabilities, timelines and appropriate performance measures;

- coordination between all three levels of government, with opportunities for Commonwealth and Local Government input, and linked, streamlined and efficient approval processes, including under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999;
- evaluation and review cycles that support the need for balance between flexibility and certainty, including trigger points that identify the need for change in policy settings; and
- appropriate consultation and engagement with external stakeholders, experts and the wider community

### 4.3 Recommendations

159. Our key recommendation relating to spatial planning is as follows:

**Recommendation 14. Amend the Local Government (Auckland Council) Amendment Act to require a Government Policy Statement setting out Crown (or national) objectives for Auckland to be prepared prior to the preparation of a spatial plan.**

**Recommendation 15. Amend the Local Government (Auckland Council) Act to require Crown endorsement that the GPS objectives have been met in the spatial plan prior to final adoption by the Council.**

**Recommendation 16. Simplify the statutory planning framework for Auckland, by providing a clear statement of objectives with a Government Policy Statement for Auckland, integrating the Regional Land Transport Strategy into the Spatial Plan, and replacing the Regional Policy Statements and District Plans with a single Unitary Plan<sup>35</sup>.**

**Recommendation 17. Amend the Local Government (Auckland Law Reform) Act to establish a power of specified ministers to prepare a Government Policy Statement on Auckland.**

**Recommendation 18. Amend the Local Government (Auckland Council) Act to require spatial plan to be reviewed every 3 years, with defined responsibilities for government and the Auckland Council in the review process. Neither party can force a review in between the 3 year period.**

160. In addition, over the course of our deliberations, a number of more detailed recommendations have emerged that we consider will enable a more comprehensive response to the questions raised in our Terms of Reference..

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<sup>35</sup> Figures 1 and 2, 'Existing' and 'Simplified' statutory planning frameworks for Auckland (pages 36 and 41) describe the proposed simplification. Figure 3 (page 42) shows how the number of plans applying to Auckland can be reduced from the currently proposed 16 down to three.

- Recommendation 19.** Government to develop suitable and appropriate mechanisms to direct its entities, agencies and departments, and funding agencies to give effect to GPS for Auckland and to be consistent with the adopted spatial plan.
- Recommendation 20:** Amend Local Government (Auckland Council) Act and LTMA to remove the requirement for the preparation of a separate RLTS, requiring suitable provisions to be included within and incorporated within the spatial plan.
- Recommendation 21.** Amend Local Government (Auckland Council) Act to require statutory linkage with LTCCP and require spatial plan to be adopted at same time or up to 1 year prior to adoption of LTCCP.
- Recommendation 22.** Prepare NPS and include within the GPS for Auckland specific provisions on urban growth management that require the provision of adequate appropriate and suitable land for urban development for at least 20 years anticipated urban growth at all times.

## 5. METROPOLITAN URBAN LIMITS

### 5.1 Question

161. Our view was sought as to the merits of Metropolitan Urban Limited as an urban planning tool.

### 5.2 Observations

162. The question of how effective MULs have been, or what role they should play in the future is, in our view now an outdated one. With the introduction of the spatial plan, urban growth planning in Auckland will become more sophisticated. MULs will simply be one tool in the toolbox for the future planners of Auckland to use. Elsewhere, MULs in various forms are used in different ways and they have caused significant debate. It is therefore useful to understand some of the issues associated with them, so that should they be employed as part of the spatial plan for Auckland, or continue to be used elsewhere, the key advantages and disadvantages of this planning tool can be understood. Our particular concerns relate to MULs being used to address a wider range of issues than they are capable of addressing, and their impact on housing affordability.

163. MULs are a planning technique commonly used to direct and/or limit the outward growth of cities onto greenfield areas. Given the strength of this tool, they should be seen as providing long term (e.g. 30-50 year) guidance on growth. When applied with a short time frame in mind, they tend to have the effect of directing industrial, commercial and residential development onto existing vacant land or onto brownfield sites, rather than onto greenfield alternatives. Often, it is intended that they will result in intensification of residential development onto smaller sections and into apartments rather than in stand-alone houses on larger lots. While this is the intention, MULs can have other unintended consequences, such as increasing the cost of land and housing.

164. MULs are commonly justified on the grounds that they facilitate more efficient use of infrastructure and hence lower infrastructure costs, greater use of public transport and the reduced use of private transport with a consequent drop in vehicle emissions, the protection of valued environmental landscapes and features, and the creation of more vibrant city and town centres.

165. A further justification for MULs has been the protection of important environmental, cultural or other values from urban development. In some instances, MULs have been historically used in the protection of strategically significant infrastructure (e.g. noise protection for airports).

166. Within the urban area, a more intensive pattern of land use will increase the use of public transport, thereby delivering benefits such as reducing congestion on some routes. More recently, the impacts of transport choices on green-house gas emissions has entered the argument in relation to urban

growth management and MULs. Given that public transport operates most efficiently in densely populated areas, intensification has benefits for the provision of a more viable, efficient and effective public transport system.

167. MULs generate much debate, and are commonly criticised as resulting in intensification of urban residential areas which may be contrary to the wishes of people already living there, restricting the provision of stand-alone housing choices preferred by many New Zealanders, and for raising the cost of section and house prices.

168. The transport choice and housing choice of households is a complex decision involving many factors. Some of the 'economic' factors are that people can choose to locate near the city centre with higher section prices but less travel cost (if they work near the city centre) or locate near the periphery with cheaper land but higher travel costs. If they locate in a sparsely populated area on the periphery they are likely to have to utilise private rather than public transport. Where the full costs of travel and infrastructure provision (including congestion and emissions costs) are properly priced, the location decisions of households may be broadly optimal. However where some of these elements are not correctly priced (e.g. lack of congestion pricing, or under-pricing of emissions or of new infrastructure servicing the development) then additional peripheral development is likely to be inappropriately incentivised.

169. The housing preferences of New Zealanders were the subject of recent research undertaken for the NZ Centre for Sustainable Cities, centred at the University of Otago, Wellington. The survey was based on a sample size of 3,244 respondents with a response rate of over 30%.

- a. When asked whether they would prefer to live in a stand-alone house, or apartment; 80% voted for the former and about 4% for the latter.
- b. When asked whether they would prefer a larger house further out, or a smaller house or apartment in the city; 53% said the former, 23% the latter, 17% didn't mind and 6% responded "other".
- c. When asked whether having space is more important than a longer commuting time, or having a short commute to work or other activities was more important; 56% said the former, 15% said the latter, 22% didn't mind and 5% were "other".<sup>36</sup>

The authors noted:

"Twice as many people (particularly people currently renting) prefer to live in a larger house further out than a smaller inner city apartment, because of factors such as gardening opportunities. These preferences for more land and space hold, even if it means more commuting time, and are even more marked when the respondents were asked about their 'no constraints' preferences."

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<sup>36</sup> Preval, N., Chapman, R. & Howden-Chapman, P. For whom the city? Housing and locational preferences in New Zealand. In Howden-Chapman, P. Stewart, K & Chapman, R. (2010). *Sizing up the City: Urban form and transport in New Zealand*, Wellington: Steele Roberts, Pages 40,41

170. This research also found:

“The proportion of respondents identifying travel costs as a significant influence on their decision about where to live, either now or in the future with rising oil prices (61%) substantially out-weighs the proportion (36%) for whom travel costs are not a significant factor. And three times more people than not favour mixed-use, smart growth communities. However, most people still want to live in a stand-alone house. Twice as many people (particularly people currently renting) prefer to live in a larger house further out than a smaller inner city apartment, because of factors such as gardening opportunities. These preferences for more land and space hold, even if it means more commuting time and are even more marked when the respondents were asked about their ‘no constraints’ preferences.”<sup>37</sup>

171. This does not mean of course that these proportions reported above necessarily apply to preferences regarding additions to the housing stock. Nor does it mean that people wish to stay in one form of housing type for their entire life; they may for example wish to start in an apartment and end in an apartment.

172. Protection of valued landscapes or environmental features can be achieved by a variety of well established and understood techniques stretching from specific legislation like the Waitakere Ranges Protection Act, to more established techniques under the RMA such as National Policy Statements, zoning controls on development and the application of a Significant Natural Area designation.

173. There will inevitably be cases where infrastructure costs of intensification will be less than the infrastructure costs related to Greenfield investments. The ability for existing infrastructure to deal with intensification will vary greatly, even from suburb to suburb.

174. The creation of vibrant places and spaces in our city centres is a very complex exercise. More often than not, it may be that vibrancy is created in some places in spite of the best made plans and vice versa. What is important to note, is that MULs are simply one tool in a toolbox for managing urban growth, and are not intended to create vibrant centres (though some contend that they may contribute to that); other tools are available for this purpose.

175. In Auckland, the role MULs have played in managing urban growth has been significant. They have been the focal point for the debate on how to manage growth for many decades. Over this time, the reason and the manner in which MULs have been applied has also changed.<sup>38</sup> What is clear to the UTAG, is that a continuing focus on MULs alone will be damaging to the debate in Auckland (and potentially other metropolitan areas) as to how to deliver a better quality of living environment for its residents.

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<sup>37</sup> Chapman, R. & Howden-Chapman, P. Urban form transport: the transition to resilient cities. In Howden-Chapman, P. Stewart, K & Chapman, R. (2010). *Sizing up the City: Urban form and transport in New Zealand*, Wellington: Steele Roberts, Pages 10.

<sup>38</sup> For a more detailed review of the history of MULs, see Hill, G. 2008. The Effectiveness of the Auckland Metropolitan Urban Limit – ing Fencing Urban Development.



176. Creating vibrant urban areas requires a range of tools. Many of these will operate at a more fine-grained level – that is, they will be more closely related to the micro planning and zoning of those centres than it is to large scale issues relating to the form of development on the periphery of cities. If some of our major city centres lack “vibrancy”, the answer lies in more innovative thinking, perhaps emulating the downtown investment, planning and zoning practices of those (New Zealand) cities that do have a vibrant core.

177. In other parts of this report we have provided commentary on affordable housing, but there is a wider issue affecting growing New Zealand cities and regions, which is the means by which land is made available for urban development. Much of the focus of this discussion has been on the merits or otherwise of MULs. We consider that Councils should have to consider and make adequate and long term provision for land for urban development (e.g. at least 20 years), and to consider the effect of growth management policies on the affordability of housing. This could be done by:

- a. Setting Crown objectives for a region as a precursor to the preparation of a spatial plan – and then endorsing the spatial plan before adoption (as already described in this report) and/or;
- b. Preparing an NPS under the RMA which outlines how adequate provision for land for urban development should be undertaken and requires assessment of the effects of RMA plans on housing affordability. Under our recommended simplified framework this would be reflected in the spatial plan and the RMA unitary plan;
- c. Ensuring that MULs are not used as a directive tool to limit land supply, but as guidance as to future growth direction. On this basis, any form of MUL must be only one of a number of tools used to manage urban growth. Their effect can and should be monitored by the government to ensure no causal impact on land prices.
- d. Developing a consistent methodology for local government to implement relating to monitoring and reporting of house prices, housing diversity and availability, housing stress, the impact of regulation and land availability.

178. Ultimately, our view is that MULs are a blunt instrument for achieving their desired outcomes.<sup>39</sup> In many cases, the desired outcomes have not been well articulated, or are not well understood. It is our view that MULs should not in themselves be seen as a means to continue to manage urban growth in Auckland. However, they are likely to remain as part of the toolbox for urban planners to use, but within the context of the spatial plan and with clearly defined objectives. Providing clarity on the timescale over which land

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<sup>39</sup> MULs have been described by Greg Hill, a former General Manager - Policy & Planning to the Auckland Regional Council, as a “*generalised and relatively blunt planning instrument*”: Paper delivered to the Environmental Defence Society Conference, June 2008. The McDermott Fairgray Group, in a 2000 study prepared for the Auckland Regional Council, “*Moving the Metropolitan Urban Limits: Requirements under section 32*” expressed the view that “*urban limits comprise a generalised and somewhat insensitive instrument*”.

supply is to be provided could be one such objective where MULs in some form are contemplated.

179. One final observation is that the MULs have moved on a number of occasions since they were first proposed in Auckland. Typically, in the RMA era, MULs in Auckland were applied by the Regional Council, with territorial authorities implementing them through District Plans. Where appropriate, TAs would either negotiate changes or challenge the MULs in Court. With the creation of the Auckland Council, it is considered that government must have a key role to play in terms of monitoring the use of any planning tool (MULs or another other tool) that may constrain or artificially inflate the cost of housing so as to affect affordability. The proposed GPS for Auckland that provides a basis for the spatial plan is one avenue through which central government can influence the supply of developable land for Auckland. Similarly, elsewhere in the country where MULs are applied, the NPS that we propose would address land supply issues.

### 5.3 Conclusions

180. We are of the view that a comprehensive spatial plan, as described in the previous chapter can provide a sound basis on which to drive the future growth and development of Auckland. Being based on a partnership between the Auckland Council and central government will provide it with a much greater mandate and significantly improved powers of implementation.

181. In the end, the focus on MULs is unhelpful. MULs have not have been applied in the ideal manner in the past in various locations. The real debate is how to grow a city and provide certainty and clarity to the community, and we believe the larger regional planning issues should take on a greater focus.

182. We consider that sequencing of urban development is desirable in order to constrain infrastructure costs and to achieve an urban form that meets the needs of both the city's existing and new residents. MULs on their own are a blunt instrument for achieving these outcomes and, when applied in a rigid way with infrequent reviews, they place pressure on land prices across the urban area while paying insufficient regard to the housing preferences of the majority of New Zealanders. A three-yearly review of the spatial plan (including any MULs that may or may not be included within it) will provide much greater flexibility, and the ability to achieve the stated objectives.

183. The Auckland Council may choose from a variety of tools in preparing its spatial plan, and it is our view that no tool should be off limits. Provided the spatial plan has clear objectives and takes a collaborative approach, it is imperative that a range of tools is available. To illustrate this point, it is possible that MULs may be replaced with a policy of zoning current and future urban areas (for residential, industrial and commercial uses) with progressive rezoning of new urban land based on well-articulated principles. However, the decision on which tool to use in which situation should be left to more detailed consideration by the Auckland Council. MULs may well

have their place, as will other tools. This policy approach can be clearly articulated in a spatial plan or in equivalent planning documents.

184. Progressive rezoning of newly zoned land enables infrastructure provision to be coordinated with land use decisions. Proper pricing of infrastructure (both at the capital stage and operating stages) will assist in ensuring that the residents of new subdivisions meet the full costs (including emissions and congestion costs) associated with new greenfield development, thereby providing proper incentives to achieve appropriate density.

185. Finally, we observe that if the recommendations of the UTAG are adopted, the majority of concerns relating to MUL's and their application will be avoided. That is, by applying an NPS to address land supply, and ensuring the Auckland spatial plan is consistent with an Auckland GPS, government will be able to provide clear direction to all metropolitan areas on the outcomes sought.

#### **5.4 Recommendations**

186. Our key recommendation in relation to MULs is:

**Recommendation 23. Through a National Policy Statement require regional and district policy anticipate and plan for urban growth over at least a 20 year period.**

## 6. FINANCING AND FUNDING FOR INFRASTRUCTURE

### 6.1 Background

187. Due to the urgency of other priorities and the complexity of this issue, the TAG was unable to devote as much time as it would have wished to the broad issue of financing and infrastructure funding.

188. We accept that local government funded infrastructure must be financed either by the purchasers of new developments (or the developers themselves), or by rate payers. However we have concluded that the timeframe given to us prevents a more in-depth analysis of alternative funding mechanisms.

189. We concur that the current local government infrastructure funding mechanisms lack coherence, and are inconsistently applied across the country. We have outlined some of these issues in this chapter and have made limited and specific recommendations accordingly.

190. However we are aware that other countries use a broader range of financing and funding tools than are currently available in New Zealand. These include bonds and Tax Increment Financing (TIF). The TAG was unable to give any consideration to these. Therefore our principal conclusion is that a further, more comprehensive exploration of the issue is needed – and we have recommended accordingly.

### 6.2 Observations

191. Legislation currently provides for three alternative mechanisms for infrastructure funding in local authorities: Rates, Financial Contributions (FCs) under the Resource Management Act 1991 (RMA), and Development Contributions (DCs) under the Local Government Act 2002 (LGA), as inserted by section 199(1).

192. We have confined our observations to FCs and DCs as both mechanisms have been specifically designed to fund infrastructure.

193. DCs and FCs operate quite differently and are controlled by different statutes. FCs are restricted in scope, particularly when compared to their predecessor, the Development Levy mechanism under the old Local Government Act 1974 (Part XX).

194. The Ministry for the Environment's "Quality Planning" website provides a clear explanation of the differences between and relative strengths of the FC and DC regimes:

DCs "are focussed on paying for the effects that a development may have on infrastructure due to the growth component that the development brings to bear. Whereas financial contributions are concerned with the actual effects (i.e. on-site or localised effects) that a development has. In the writer's view to focus on one

regime and not the other can have the potential of cutting off an important funding source for infrastructure.”

FCs “can only be imposed as a condition of resource consent granted under the RMA. Accordingly, permitted activities do not attract financial contributions, although as discussed below some Councils effectively require financial contributions for permitted activities by imposing them as development or performance standards with which an activity must comply in order to retain permitted status.”

FCs “are founded in planning provisions, which in turn determine their applicability, type, scope and level. The requirements and issues associated with preparing planning provisions therefore apply to them. The ability to seek redress from the Environment Court on financial contributions provisions, and their imposition through the resource consent process, is in part a reason why development contributions, which are not subject to the same process, are an attractive additional funding tool for local authorities.”

“Prior to the arrival of the DC regime, local authorities could only rely on financial contributions to finance or otherwise manage environmental effects from developers specifically. As a result, all local authorities would have been heavily involved in financial contributions through their respective planning processes.”

“Clearly, territorial authorities saw significant advantage in the development contributions powers and processes, reflected by their lobbying of Central Government in the formulation of the LGA in support of an alternative funding power to that which had been provided by the RMA for some 10 years at that time. On the other hand, resource users may see the financial contributions regime as providing a fairer system for managing environmental effects.

“Their particular benefit is that they provide for a more inclusive opportunity for public participation through the RMA planning process. It follows that a key requirement for the lawfulness of FCs is that the relevant planning instrument expressly allows it. However, the ability to require FCs to provide for positive effects cannot go beyond those which off-set relevant adverse effects.<sup>40</sup>”

195. FCs have a particular applicability to the provision of land for community purposes in general and the provision of reserves in particular. The TAG noted that considerable variation exists between councils in the methodology used to determine the need for parks and reserves within their respective communities, and how this determination underpins its need for FCs.

196. For example, a 2008 survey of territorial authorities within greater Auckland revealed that some included and others excluded existing Crown-owned beach reserves and adjacent Regional Parks from their stock take of existing recreational facilities and reserves. In the latter case those councils that excluded such facilities then charged FCs and purchased land for reserves on the assumption that their residents’ requirements for recreational space were not being met.<sup>41</sup>

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<sup>40</sup> Quality Planning, [Review of Financial Contributions & Development Contributions](http://www.qp.org.nz/qp-research/review-financial-contributions/index.php). August 2008. Paragraphs 2.11, 3.1 to 3.4 and 2.2 [http://www.qp.org.nz/qp-research/review-financial-contributions/index.php]. Quality Planning is a web based resource of the Ministry for the Environment in conjunction with Local Government New Zealand, the Resource Management Law Association, New Zealand Institute of Surveyors, and the New Zealand Planning Institute.

<sup>41</sup> Survey of territorial local authorities conducted by Property Council of New Zealand September 2008

197. A consistent national methodology for the calculation of land requirements for reserves and for the evaluation of community requirements for public open space would be desirable. Councils should adopt a consistent approach to reviewing the frequency and criteria adopted in public open space stock takes.
198. As noted, above, in 2001 Government provided DCs as an enhanced funding tool, and reverted back to local government legislation (the LGA 2002) to effect this. By 2009, 44 of the 73 territorial local authorities had an operative development contributions policy; and at the same time 70 territorial authorities had a financial contributions policy<sup>42</sup>.
199. At that date DCs were forecast to yield \$3.9 billion of the total cumulative revenue of the 70 territorial local authorities that have an operative development contributions policy. In areas of New Zealand that were then experiencing significant population growth, development contributions were forecast to yield up to one fifth of all revenue of selected councils.<sup>43</sup> Nevertheless, households in some fast growing local authorities had high rates requirements reflecting a situation in which existing residents were in part paying for costs engendered by new developments.<sup>44</sup>
200. Between 2002 and 2008 many (but by no means all) of those councils facing the greatest levels of population growth commissioned capital infrastructure works in anticipation of future DC revenue streams. However since the Global Financial Crisis, and the consequent fall-off in development and construction, several councils are facing deficits. Examples include: Queenstown, North Shore, Tauranga, and Hamilton.

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<sup>42</sup> Property Council of New Zealand - analysis of draft LTCCPs

<sup>43</sup> Loc. cit.

<sup>44</sup> Kerr, Suzi, Andrew Aitken & Arthur Grimes. 2004. Local Taxes and Revenue Needs as Communities Grow and Decline: Evidence from New Zealand. Motu Working Paper 04-01.

201. Financial Contributions and Development Contributions have statutory limitations. Neither mechanism is designed to fully “fund growth” or fully “fund infrastructure” *per se*. DCs are limited under the LGA to the specific role of assisting territorial authorities to fund their capital expenditure on additional capacity in infrastructure and facilities, required to meet the demands of ‘growth’. Nonetheless these limitations have not always been fully appreciated or understood by local authorities.<sup>45</sup>
202. A specific “development” must occur before a DC can be levied. The TAG noted that this point was clarified by Justice Potter in *Neil Construction Limited & Ors v North Shore City Council*,<sup>46</sup> where she found that North Shore City Council
- “... made an error of law in failing to ensure that its development contributions policy complies with the requirements of the Act to assess development contributions against a “development” (as defined as s197) that generates a demand for reserves, network infrastructure and community infrastructure.”
203. Her Honour’s decision was of course given in the context of whether the Council’s policy complied with the requirements of the Act. The wider question of who should finance generalised increases in local authority costs that arise as an indirect result of new development is one which in the view of the TAG requires a comprehensive review.
204. The Local Government Act requires that the ‘growth’ portion of capital expenditure is distinguished from expenditure required to raise levels of services to existing users, to raise environmental standards, or to provide additions to meet the demand of past growth, also known as ‘catch-up’. The LGA 2002 does not permit territorial local authorities to use development contributions to ‘cross-subsidise’ deferred capital expenditure that would wholly or substantially meet the benefits of existing users.

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<sup>45</sup> As evidenced by a series of successful appeals by developers to the High Court, but most noticeably in *Neil Construction Limited & Ors v North Shore City Council 2005*. In *Domain v Auckland City Council*, the High Court ruled against the practice whereby Auckland City Council used development contributions as a “top-up” after charging a financial contribution on the same development. Auckland City Council charged Domain Nominee Ltd (the plaintiff) a financial contribution of \$222,318 and took 510m<sup>2</sup> for reserves based on a 27-unit residential development in Parnell. In January 2007, the company decided to subdivide the property and reduce the number of units to 24. During this period, Auckland City Council had introduced a development contributions policy and subsequently demanded a development contribution for the second consent. In *Ballintoy Developments Limited v Tauranga City Council*, the Ballintoy Developments Limited (“BDL”) challenged Tauranga City Council’s interpretation of the payment clauses and transitional provisions in its development contributions policy. BDL applied in June 2006 for resource consent to subdivide its property. BDL tendered an amount, which they believed represented the amount of development contribution payable to Tauranga City Council in accordance with the formula in force as of 30 June 2006. Tauranga City Council subsequently amended that formula and rejected the amount tendered on the basis that the amount has been wrongly calculated. The new sum that Tauranga City Council demanded exceeded the amount that had been initially tendered by BDL by more than a million dollars. The High Court ruled in favour of BDL, and concluded that, “there is an entitlement of developers to a significant element of certainty so that they can plan and implement development projects with a certain amount of financial confidence.”

<sup>46</sup> *Neil Construction Ltd v North Shore City* [2008] 275, 304

205. We note that there are two complex issues for local authorities to navigate to implement a DCs scheme:

- Cost allocation; That is, how to allocate the costs of council’s capital works between growth on one hand and backlog and renewal; and
- Cost recovery; how to spread the cost over geographical areas and over time.

206. One commentator is of the view: “In terms of cost allocation, two factors arise in the context of equity:

- Causation – that is the question, “who caused us to spend money on infrastructure?” Costs should be allocated to those who cause them to be incurred. This lines up with section 199 of the LGA 2002 which states that development contributions may be required to be paid if the effect of the development is to require new or additional assets and the local authority, as a consequence, incurs capital expenditure.
- Benefits Received – that is, we ask the question, “Who benefits from the spending of this money? Costs should be allocated to those who benefit from them. This becomes important when there are externalities involved because a purely causation-based approach will fail to bring about equitable outcomes.”<sup>47</sup>

207. We suggest that a reliable methodology that uses both a causation and benefits approach will bring about more reliable outcomes which will reflect efficiency, consistency, transparency and practicality.

208. Section 199(1) of the LGA 2002 codifies that: “... development contributions may be required in relation to developments if the effect of the development is to require new or additional assets or assets of increased capacity and, as a consequence, the territorial authority incurs capital expenditure to provide appropriately for-

- Reserves
- Network infrastructure
- Community infrastructure.”

209. FCs levied through the RMA are subject to the normal review processes enshrined in that Act. The same principle does not apply to DCs. DC policies adopted by individual Councils are enumerated in each authority’s Long Term Council Community Plan (LTCCP). Interested parties can submit on those plans at draft stage – though the ability to effect changes to a printed LTCCP is at best, limited. Whilst an appeal mechanism to the Environment Court existed for Development Levies under the old Local Government Act 1974; the same level of scrutiny does not apply to DCs. Under the LGA 2002 judicial review of the DC policy is possible only on points of law, and then only to the High Court.

210. As noted above, the LGA 2002 does not permit councils to use DCs “to ‘cross-subsidise’ deferred capital expenditure that would wholly or substantially meet the benefits of existing users”. The High Court cases to date lead us to the view that the statutory obligation for local authorities to accurately “distinguish the ‘growth’ portion of capital expenditure from expenditure required to raise levels of services to existing users, to raise

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<sup>47</sup> Sue Simons, (Partner, Ellis Gould) in “*Examining the Impact of Development Contributions*” speech to the Local Government Asset Management Conference 11 March 2008 paragraphs 43 to 50.



environmental standards, or to provide additions to meet the demand of past growth”, is difficult and complex.

211. As outlined in the Appendix, we note that considerable variations exist between authorities in the substance of DC policies and the manner in which they are applied. In these circumstances the TAG takes the view that judicial review is an unnecessarily high threshold. We are agreed that an appeal to the Environment Court for infrastructure levies raised pursuant to the Local Government Act should be reintroduced. Some of us feel that this should be done only after a thorough review of the funding and financing principles and practicalities in relation to new developments. Others of us are of the opinion that whether or not there is a right of appeal is a separate question, and one that can be dealt with in advance of the review.
212. We weighed up the possibility of developing a national best practice document as an alternative to statutory amendment. However we noted that the local government sector has, to date, failed to reach any consensus on a consistent approach to DC best practice. In 2003 Local Government KnowHow published “*Best Practice Guide to Development Contributions*”.<sup>48</sup> The Guide was withdrawn following the Neil Group decision. It has never been replaced.
213. Our attention was drawn to the fact that commonly DCs are a condition of a section 224(c) Certificate of Consent. Developers are commonly obliged to finance the DC before title is issued or construction begins. However banks are reluctant to lend for DCs because they may be inadequately secured. In the past developers have turned to finance companies to fill the gap. Today that option is less available.
214. DCs are commonly paid long before any revenue flows to the developer. Councils can also be over-extended where they have been required to provide infrastructure for urban growth before funding becomes available in the form of contributions. The system is in need of rigorous re-examination with a view to resolving these problems. This factor should be included in any further review in the future.
215. Recent amendments to the RMA, and proposed amendments to the Building Act, will reduce the time taken for major projects to work their way through the consent and appeal process. However the lack of clarity over the role of FCs, DCs and local authority rates may still stifle necessary growth and development.

### 6.3 Recommendations

216. Our key recommendations in relation to infrastructure funding are:

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<sup>48</sup> Local Government KnowHow comprises Local Government New Zealand, the Society of Local Government Managers and the Department of Internal Affairs.

- Recommendation 24.** That a separate review be established to evaluate:
- the effectiveness and applicability to New Zealand of financing and funding tools as applied in other jurisdictions, and
  - the broader efficiency and effectiveness of existing tools in New Zealand.
- Recommendation 25.** That an appeal right to the Environment Court in respect of Development Contributions be restored. As previously indicated, we were divided as to whether this reform should take place before or after the overall review which we have recommended.

217. In addition over the course of our deliberations a more detailed recommendation emerged, namely:

- Recommendation 26.** That a consistent national methodology for the calculation of land requirements for reserves and for the evaluation of community requirements for public open space should be developed; and that territorial authorities should adopt a consistent approach to reviewing the frequency and criteria adopted in of public open space stock takes.

## APPENDIX

Territorial Authority	Description of Development Contribution levied against new property owners (LTCCP 2006/16)
North Shore City Council	Various catchments based levies ranging from \$10,000 to \$25,000 plus reserves (value 20 m <sup>2</sup> or 7.5 per cent allotment value) for all catchments based levies.
Auckland City Council	Divided into residential, non-residential and Wynyard Point per HUE <sup>49</sup> . Wynyard Point Residential \$27,726, residential other than Wynyard Point \$19,534. Non-residential in Wynyard Point \$14,966, non-residential outside Wynyard Point \$6774. Plus for all an equivalent land value of 5.69 m <sup>2</sup> .
Manukau City Council	Residential \$6,300 per HUE, non-residential \$18.75 per m <sup>2</sup> .
Papakura District Council	Catchments based levies. Charges per HUE are between \$3,500 and \$20,000.
Franklin District Council	17 catchments based levies, per HUE from \$7,440 to \$24,000.
Hamilton City Council	Greenfields: residential, \$21,823 per HUE, industrial \$4,656 per 100 m <sup>2</sup> , commercial \$6,022 per 100 m <sup>2</sup> ; and Infill: residential \$8,132 per HUE, Industrial \$3,659 per 100 m <sup>2</sup> , Commercial \$4,518 per 100 m <sup>2</sup> .
Tauranga City Council	City wide plus varying catchments based levies. From \$2,000 to \$22,000.
Rotorua District Council	Various catchments based levies ranging from \$8,741 to \$22,000.
Taupo District Council	Various catchments with levies ranging from \$4,000 to \$13,000 plus \$2000 per 100 m <sup>2</sup> plus reserve contributions (value 20 m <sup>2</sup> or 7.5 per cent allotment value).
Palmerston North City Council	24 different catchments based levies. Per m <sup>2</sup> charges. Range from \$6,380 to \$9,100 per 700 m <sup>2</sup> .
Wellington City Council	Catchments-based levies, vary between \$4,678 and \$10,477 per HUE.
Christchurch City Council	Combination of city wide and catchments based levies specific charges. Charges from \$26,000 to \$31,000 per HUE. Transaction period with 57% discount 2008 to full rate 2010.
Queenstown Lakes District Council	15 catchments based levies ranging from \$6,232 to \$20,781 plus 27.5 m <sup>2</sup> of land value for all areas.

<sup>49</sup> HUE = Household Unit Equivalent.

## 7. RELATIONSHIP BETWEEN THE RESOURCE MANAGEMENT, LOCAL GOVERNMENT AND LAND TRANSPORT MANAGEMENT ACTS

### 7.1 Question

218. We have been asked to examine whether there might be some way of better integrating and aligning the plan making requirements of the Resource Management, Local Government and Land Transport Management Acts.

### 7.2 Observations

219. We have discussed elsewhere the relationship between the various plans in terms of the statutory Auckland Spatial Plan. In this chapter we discuss the relationship as regards the rest of the country.

220. Territorial local authorities are required by the RMA to prepare District Plans and by the Local Government Act to prepare Long Term Council Community Plans (LTCCP). The District Plan's purpose is described in s.72 as being to assist councils *"to carry out their functions in order to achieve the purpose of"* the RMA. Those functions are in turn described in s.31 of the RMA as being to manage *"the effects"* of land use.

221. The LTCCP is largely focused on the activities and functions a Council expects to deliver and the operating and capital costs of those activities, over a 10 year period. There is a high level of certainty for the first 3 years, and less certainty for the remaining 7 years of the 10 year outlook.

222. Regional Councils are required to also prepare a LTCCP and by the RMA to prepare Regional Policy Statements and Regional Plans. The purpose of the Regional Policy Statement is described in s.59 as *"providing an overview of the resource management issues of the region ..."* and the purpose of the Regional Plan (as set out in s.63) is to assist a Regional Council *"to carry out any of its functions in order to achieve the purpose of [the RMA]"*

223. The purpose of the Regional Transport Plan is very largely to prioritise funding, particularly so far as the Central Government component is concerned.

224. Regional Councils are also required to prepare a Regional Land Transport Strategy enabling it to *"provide guidance on the land transport outcomes sought by the Region"*. [s.73].

225. Only the Resource Management Act documents involve a right of appeal against Council decisions (for different reasons both TAG1 last year and TAG-U have recommended that these rights be limited so that no appeals are available on policy matters).

226. Regional land transport strategies and LTCCPs are subject to the Special Consultative Procedure of the Local Government Act, which requires

notification, the opportunity to make submissions and the requirement to conduct hearings on those submissions. There is no right of appeal.

227. There is therefore a difference in the status to be accorded the RMA documents and those prepared under the LGA and LTMA.

228. Not only is each of the plans prepared in terms of different statutory objectives and requirements; each is prepared in the context of different time frames. For example LTCCPs are reviewed three yearly, Regional Land Transport Strategies every six years, Regional Land Transport programmes every three years, Regional Policy Statements and District Plans are subject to periodic review with a ten year maximum..

229. Similarly each of the plans are subject to different consultation and decision making requirements.

230. Arguably each of these different procedures and requirements has been specifically and carefully tailored to the requirements of the role of each plan.

231. As a result of last year's amendment to the RMA, consultation undertaken under other Acts can be regarded as meeting the consultation requirements of the RMA.

232. If the object is to produce a "seamless" consultation regime, then corresponding amendments could be made to the Local Government and Land Transport Management Acts.

233. The point is often made that the plethora of plans produces confusion, particularly when in some respects they may if not actually contradictory, will often be inconsistent.

234. This should be no surprise, given their different foci, different timing of preparation and different procedural requirements and purposes.

235. A particularly unsatisfactory feature of this inconsistency is a lack of certainty which is introduced into decision making as regards future economic activity.

236. Proponents of particular proposals will commonly measure their expectations against a regulatory regime governing the approval or otherwise of their project. The only formal constraints on their land use rights in that regard are to be found in the relevant RMA documents.

237. There will be occasions when those plans are "out of sync" with other plans; and regulators and other participants may wish weight to be given to the considerations underlying those plans.

238. That confusion/inconsistency cannot be resolved so long as each plan is:

- a. Prepared for a different purpose;
- b. Has a different focus; and

c. Seeks to promote its own objectives to a position of some primacy.

239. All that can readily be achieved is to require that each of the other plans be given some weight in considerations under the RMA plans that do decisively affect land use rights.<sup>50</sup>

240. In our view that is already the case by virtue of s.104(1)(c) of the RMA which requires that consent authorities must *“have regard to ... any other matter the consent authority considers relevant and reasonably necessary to determine the application.”* That expression has been held to enable weight to be given to other documents: *Howick Residents & Ratepayers Assn v Manukau City*, Environment Court decision A001/09.

241. To the extent that RMA plans do not adequately reflect the intentions of councils expressed in their other policy documents; we are of the view that such inconsistency is to a large extent a product of the difficulty, cost and inconvenience involved in effecting changes to RMA plans.

242. It is surely a truism that a dollar spent on administration is a dollar not spent on solving the problem. Certainly we in New Zealand have a highly devolved and highly participatory planning system. That comes with a cost; and one of those costs is that fewer resources are available to address environmental issues and problems as a result of the costs of administration.

243. Elsewhere we have recorded steps that may be taken to reduce those costs/administrative burdens. If such steps are not acceptable, then present problems will persist.

244. We are not ourselves in a position to make more positive recommendations.

245. We reject any suggestion that RMA plans and policies should give effect to LTMA documents. The latter are prepared with a singular focus inappropriate to a more broad environmental context.

246. So long as LGA and LTMA documents can be had regard to in the making of decisions on actual proposals; then we are content that the competing factors can be evaluated in the appropriately broad context which the RMA demands.

247. Nevertheless, we are of the tentative view that not all the burdens which the various statutes currently place on local government can be fully justified.<sup>51</sup>

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<sup>50</sup> Having said that, the preparation of a Regional Land Transport programme must *“take into account”* any National Policy Statement or relevant Regional Policy Statements or plans that are in force under the RMA. The expression *“take into account”* is however a very *“low weight”* term in law.

<sup>51</sup> Two factors which each of the planning regimes of the three Acts have in common are that the plans are to be prepared by local government agencies, and that they are required by statute so to do. Interestingly, central government has imposed these obligations on local government, but has refrained from doing so in respect of its own, often more significant, responsibilities.

248. While good democratic practice would suggest that submissions be called for on LTCCPs; we doubt that it would require that every submitter actually be heard. Certainly, even in the case of the preparation of such important documents as Spatial Plans, overseas practice at least in the UK and Australian States does not require the conduct of an actual hearing.
249. The fact that LGA and LGMA plans have but modest statutory force in terms of regulating decisions on land use, does not however mean that these plans serve no purpose.
250. Such LTMA and LGA plans are still of value in so far as they serve to inform the public and Council executives as to the detail of Council policy. They also provide a helpful accountability mechanism by reference to which their performance may to some extent be assessed.
251. But like so many of the procedural obligations imposed upon local government, there is doubt as to whether the costs of the process are worth the commitment of such resources.
252. A particularly expensive consequence of the statutorily imposed consultation and hearing requirements is that arising from litigation over such clearly executive acts as the location of a Council's office, or the construction of sports facilities. It will also be the case that the possibility of such litigation introduced costs of a deadweight loss nature and in terms of Councils taking an unnecessarily conservative approach to its various consultation requirements. We see no reason why, for example, a Council decision on the location of its offices should be subject to such procedures as are required under the Special Consultative procedures of the LGA.
253. Each of these administrative/procedural requirements imposes costs. One effect of those costs is to divert Council expenditure from its other more pressing functions, and another is to increase the costs of its own administration.
254. Neither of these consequences is, to quote from our Terms of Reference, consistent with achieving "least cost delivery of good environmental outcomes".
255. We are of the view that spatial planning as required by the LGALRA for Auckland, and as further amended in accordance with our recommended simplified planning framework for Auckland, should be given time to be implemented. Depending on the success of the simplified and integrated framework, an amended version could have application to many other parts of New Zealand. Compared to all other regions of New Zealand, Auckland has a comparative advantage in establishing a simplified and integrated planning framework because:
- a. it is a very large local government unit,
  - b. it has growth management challenges and opportunities due to population, household economic growth,

- c. it has both territorial and regional council functions and powers contained within the one Council,
- d. by virtue of the above it will be the largest single investor in urban infrastructure in New Zealand for the benefit of Auckland,
- e. by virtue of the above and Auckland's relative size in New Zealand, it should be relatively easy for central government to partner with Auckland in prepared and delivering integrated plans.

256. The question the TAG has had is whether some of the potential advantages of a simplified planning framework now possible for Auckland could be promoted in other parts of New Zealand, without local government reform as in Auckland. Our initial view is that some elements of the simplified planning framework could be implemented in other parts of New Zealand. The question is how can regional councils and territorial councils be incentivised to come together and prepare, e.g. one spatial plan incorporating the Regional Land Transport Strategy for a region, and one unitary RMA plan for a region. There may be some interest by some regions on taking this course of collaborative action, if the incentive of Crown engagement in planning and funding alignment is seen as attractive. If our recommendations contained in the Spatial Planning chapter are adopted, then this proposition will be tested in Auckland. This matter could therefore be revisited in two or three years when the experience of the Auckland reforms and simplified planning framework will have been better tested.

### 7.3 Recommendations

257. Our key recommendations in this regard are

**Recommendation 27. That Councils be relieved of many of their statutory obligations such that impose additional administrative/procedural burdens.**

Explanation: Whilst many of the consultative and plan requirements imposed upon local authorities represent good practice and would be undertaken anyway, their being formally imposed by statute exposes Councils to considerable litigation risk and raises costs

**Recommendation 28. That as an immediate simple reform, consultation undertaken by Councils in respect of any of their obligations under one of the three statutes be regarded as consultation for the purpose of the other two.**

Explanation: Given the similarity of the consultation requirements of the three Acts, consultation undertaken for one should be sufficient to meet obligations under the other two.



## 8. URBAN DESIGN

### 8.1 Question

258. Our terms of reference requested that we examine the merits of urban design panels.

### 8.2 Observations

259. The focus of the urban planning workstream is to include “the quality of outcomes delivered by urban design and urban planning.”<sup>52</sup> While the question to be addressed refers explicitly to urban design panels, to enhance the quality of urban planning and design outcomes, mechanisms that complement a panel must also be considered.

260. While urban design panels can offer many benefits, they do not give statutory direction, and do not ensure that key objectives will be considered. For the design review undertaken by an urban design panel to be effective, it should be with reference to accepted objectives or criteria, and these concerns should be explicitly recognised by the RMA.

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

262. While referencing social, economic and cultural well-being, the RMA’s principal focus is upon the natural and biophysical environment. According to one commentator:

Section 6 of the Act identifies seven matters of “national importance” of which only one, concerning the protection of historic heritage, has any direct bearing on the built environment. Section 7 of the Act identifies eleven “other matters”, of which only two have a direct bearing on the built environment. These concern the maintenance and enhancement of amenity values, and of the quality of the environment. It has to be said that the RMA attaches little importance to the urban environment.<sup>53</sup>

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<sup>52</sup> Cabinet Minute CAB Min (09) 34/6A: *Progress of Phase Two of the Resource Management Reforms*, paragraph 20.

<sup>53</sup> Hunt, Prof. J., 2008, *Urban Design Controls and City Development in a New Zealand context: Reflections on Recent Experiences in Auckland’s Urban Core*. Paper presented to the *International Planning History Society* international conference, Chicago, July 10-13, 2008, pp 8,9. Hunt cites Peart, R, and Oram, R.

263. This same commentator summarises perceived problems with the RMA which impact on its effectiveness to deal with key aspects of the urban and built environment<sup>54</sup>:

- Biophysical emphasis
- Management rather than development
- Procedures rather than environmental outcomes
- Focus on development effects rather than development outcomes
- Implicit reductionism in the resource consent decision making process
- A “market forces” planning model

264. As noted previously, Barry Rae emphasised the RMA’s focus on the biophysical, and finally concluded that the “the RMA has failed the urban built environment.”

265. Options for remedying the failure of the RMA to explicitly address the urban and built environment should include:

- a. introducing the quality of the design and planning of the built environment; as a matter of National Importance
- b. modifying the definition of Environment to specifically include the built environment;
- c. extending the definition of amenity values so that it addresses the quality of the urban and built environment to a greater extent.<sup>55</sup>

266. While this would recognise the urban and built environment in the Act, it would be insufficient to give clarity of direction and certainty to either what better outcomes are, or if these outcomes have been identified, that they will be achieved. Other initiatives are required:

- a. Recognising urban planning and urban design objectives and principles and the means by which they help achieve higher quality urban outcomes with a National Policy Statement on the Built Environment.
- b. Establishing the non-statutory resources and processes that will contribute to better and more efficient outcomes. These should include guidance to Territorial Authorities, use of urban design panels and recognition of the findings of a properly constituted panel in the consent process.

267. A National Policy Statement (NPS) which focuses on the built environment would be a means of setting expectations for the planning and design of the urban environment and ensuring their consistent application nation-wide. Such an NPS should also require the exercise of local discretion to ensure an informed local response to local conditions, and provide for appropriate local participation.

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<sup>54</sup> Hunt, 2008.

<sup>55</sup> These actions are also addressed by the list of 10 recommendations by Rae, B., March 2009 in an article published in the March issue of the URBAN Magazine, and the April 2009 issue of the Resource Management Journal.

268. The benefits of an NPS on the Built Environment include:

- a. greater central government direction, including direction for Spatial and District Plans;
- b. consistency and certainty of approach across New Zealand, and in particular across territorial boundaries; and
- c. contributing to certainty and consistency as an agreed and robust set of assessment criteria for any national (or local) urban design panel.

269. In 2008/09, the Ministry for the Environment carried out extensive consultation on the scope of a possible *NPS on Urban Design*. From 120 submissions the following reasons for supporting an NPS were identified. Submitters:

- a. considered an NPS would be crucial to achieving high-quality, more sustainable urban areas;
- b. stated an NPS would be integral to achieving broad goals of sustainability, economic transformation and improved public health;
- c. agreed that the main advantage of developing an NPS would be to increase consistency and reduce duplication of effort across local authorities;
- d. considered an NPS would foster a more integrated approach to dealing with urban issues;
- e. stated a key benefit of an NPS would be to legitimise urban design as a valid matter for consideration under the RMA.<sup>56</sup>

270. The same MfE study identified reasons for not supporting an NPS. Reasons identified by submitters included:

- a. a high level policy tool would not add value to existing guidance, and there were other more effective tools available than an NPS.
- b. the Urban Design Protocol provided sufficient guidance.
- c. urban design was too broad a concept for an NPS and could result in a 'one size-fits-all' approach
- d. urban design initiatives would be best developed at the local level.
- e. the impact on housing affordability and compliance costs.

271. The reasons identified for not having an NPS are issues of detail that either can be addressed in a properly scoped NPS or are not compelling relative to the reasons for having an NPS. For example, while the New Zealand Urban

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<sup>56</sup> Ministry for the Environment. March 2009. *Report on Submissions on Scope: National Policy Statement on Urban design*. Wellington: Ministry for the Environment. pvi

Design Protocol has been beneficial and effective up to a point, because it is advisory rather than statutory, it does not offer the certainty of an NPS.

272. On balance an NPS provides for greater central Government direction and integration and consistency of approach at the high level, while still allowing for local interpretation. We concur with the findings of the MfE study that “a useful structure would be to set out high-level principles, objectives and policies, but not prescribe the details of how these should be achieved at the local level”<sup>57</sup>.

273. Urban design is broad ranging and integrative, and covers a range of scales. It overlaps with urban planning, and in New Zealand is typically defined as follows:

Urban design is concerned with the design of the buildings, places, spaces and networks that make up our towns and cities, and the ways people use them. It ranges in scale from a metropolitan region, city or town down to a street, public space or even a single building. Urban design is concerned not just with appearances and built form but with the environmental, economic, social and cultural consequences of design. It is an approach that draws together many different sectors and professions, and it includes both the process of decision-making as well as the outcomes of design.<sup>58</sup>

274. While the NZ Urban Design Protocol definition includes urban planning within the over-arching definition of urban design, the title an NPS on Urban Design downplays the importance of integrating planning and design. Furthermore, ‘urban design’ as a term is ambiguous, being both an outcome and an activity. These concerns might be resolved by naming any document an NPS on Urban Planning and Design. However we recommend that an NPS covering the area of the MfE’s scoping study for an NPS on Urban Design, should be an NPS on the Built Environment. This would complement the existing RMA focus on the natural environment, and would simply and explicitly identify the intended focus of an NPS covering the urban and built environment.

275. The findings of the MfE’s process supports the view that an NPS on the Built Environment should provide high level principles covering regions, metropolitan areas, cities, towns, neighbourhoods, individual spaces and buildings.<sup>59</sup> There has been extensive debate on the level of detail of an NPS, with the consensus that it should be “high level, visionary and strike a balance between being not too prescriptive and providing a useful level of direction.”

276. While an NPS on the Built Environment should be visionary, enabling and flexible, specificity is important, to avoid it becoming superficial and vague. An NPS should focus on the key issues and objectives, not routine considerations. The table below illustrates a preliminary TAG perspective on the scope and general content of an NPS on Built Environment. This demonstrates that scoping an NPS is relatively straightforward. In this case content has been adapted from the MfE’s New Zealand Urban Design

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<sup>57</sup> MfE, 2009, pvi

<sup>58</sup> MfE *Urban Design Protocol* definition of urban design, 2005, p7

<sup>59</sup> The MfE (2009, pvii) report that: “Most submitters thought an NPS should cover all spatial scales.”

Protocol, *The Value of Urban Design: The economic, environmental and social benefits of urban design, and international practice.*<sup>60</sup>

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<sup>60</sup> This scope is also broadly similar to UK practice. For example the 'What is a sustainable community' initiative (HM Government 2005, adopted by the EU as 'the Bristol Accord') suggests that communities should be: "Active, inclusive and safe; Well-served; Well-designed and built; Well run; Environmentally sensitive; Well connected; Thriving; Fair for everyone." (Bramley and Power, 2009, p32 *Urban form and social sustainability: the role of density and housing type*. In *Environment and Planning B: Planning and Design* 2009, volume 36, pp30-48.)

**Figure 5:** A Concise Indicative Scope for an NPS on the Built Environment

<b>Considerations: Key issues to be addressed by RPS's and District Plans and in consent decision-making, and the scale at which they apply:</b>	<b>Regions</b>	<b>Metropolitan</b>	<b>Cities</b>	<b>Towns</b>	<b>Neighbourhood</b>	<b>Site Specific</b>
<b>1 Intelligent growth management</b> Planning which integrates transportation and land use to achieve economic development, infrastructure and resource efficiency, and beneficial social outcomes.	•	•	•	•		
<b>2 Future Land Supply</b> Planning over sufficient timescales to ensure sufficient urban land, such that housing remains affordable and long term certainty is provided to stakeholders. At least 20 years supply should be identified.	•	•	•	•		
<b>3 Response to local conditions and context</b> Successful planning and design is always with considered reference to local economic, social, cultural and environmental contexts.	•	•	•	•	•	•
<b>4 Distinctive sense of place</b> Celebrating local character derived from location, landscape setting and activity, and maintaining and expressing key items of cultural heritage.			•	•	•	
<b>5 Ecological responsiveness</b> Recognising ecologically important areas and elements, and designing to maximise the ecological and recreational benefits gained from these.	•	•	•	•	•	
<b>6 Network of connections to and within an area</b> Ensuring highly interconnected urban structures at macro and micro levels contribute to easy and efficient access, and support a range of travel modes.	•	•	•	•	•	
<b>7 Mix of densities</b> Highest density encouraged in strategic locations to take advantage of infrastructure, promote active travel, with lower densities elsewhere.			•	•	•	
<b>8 Choice of environment to meet preferences</b> Providing a range of neighbourhood and building types and lot sizes to meet preferences and address housing affordability.		•	•	•	•	•
<b>9 Mixed use</b> Mixing different activities to serve people and business; concentrating in city and neighbourhood centres, and dispersing centres to serve communities.				•	•	•
<b>10 Adaptability</b> Recognising that change is inevitable and resilience is important, and designing structures, places and spaces to readily accommodate change.		•	•	•	•	•
<b>11 High quality public realm</b> Streets and other open spaces that meet people's access and recreational needs, are walkable, safe and attractive, and support businesses.				•	•	•
<b>12 Great places to live</b> Making neighbourhoods and dwellings attractive and desirable, especially medium and higher density residential. E.g. acoustic privacy, sun and daylight, access to private and public open space.					•	•

277. Process initiatives are important aspects of any NPS on the Built Environment. These may include giving effect to Central Government strategies<sup>61</sup> (potentially with a spatial structure plan), integrated decision-making between and within sectors, public participation appropriate to situation, and application of the findings of a recognised urban design panel.

278. A properly constituted, skilled and managed urban design panel is a useful means of helping to achieve better quality outcomes in urban planning and design. An urban design panel undertakes 'design review' which is a peer assessment of the quality of a design proposal. Part of design review is to provide constructive feedback with the objective of improving the quality of project outcomes.

279. Design quality can be objectively assessed. While opponents of design review often claim that the process is subjective, this claim is countered by the fact that professional educators in design are able to teach, recognise and assess design skill, and competition and awards jurors are able to objectively assess professional design quality. In a resource management context, expectations of good design can be made explicit in policies, objectives, assessment criteria and design guidelines. Objectivity in design review is both possible and essential and is based on having robust criteria and skilled experienced assessors. The UK's Commission for Architecture and the Built Environment (CABE) writes:

"...it is possible to distinguish good design from bad design. By good design we mean design that is fit for purpose, sustainable, efficient, coherent, flexible, responsive to context, good looking and a clear expression of the requirements of the brief. We believe that assessing quality is to a large extent an objective process. Ultimately, of course, some questions come down to matters of individual taste and preference. It is not often, however, that questions of this kind are important in deciding whether a project, judged in the round, is a good one. What matters is quality, not style."<sup>62</sup>

280. Design review by a panel has certain characteristics:

- a. This is a technical not political process. While usually informed by Council officers, a panel should be independent of local authority decision-makers, and of political influence.
- b. Design review is most effective when it occurs early in the design process, before significant resources have been spent on design and before the applicant is committed to a project design that may be significantly flawed, or has flaws which if identified at the conceptual design stage could have readily been addressed. Design review at the stage of application for consent is much less likely to be effective in achieving positive change to a poor development.
- c. An effective urban design panel process is collegial. It is based on design advocacy and persuasion, attempting to assist the applicant to achieve a

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<sup>61</sup> E.g. New Zealand Transport Strategy, and NZ Energy Strategy, raised by New Zealand Transport Agency and MoT, and EECA respectively (MfE., 2009, p5); and also addressing public health as influenced by planning and design.

<sup>62</sup> CABE, *How CABE evaluates quality in architecture and urban design*, 2006, p5

better result when a proposal is poor, and also to support good design proposals. If a panel review process is formalised, that process should allow the necessary collegial discussion.

- d. Panel members are selected on the basis of their expertise, experience in design review, objectivity, good judgement and constructive approach. They will all have high standing in their respective professions.

281. Urban design panels make recommendations which influence good decision-making by others, but the panel itself is not and should not be the consent decision-maker<sup>63</sup>. Panel review of the design quality of a project, typically over one to three hours, is not a substitute for the detailed study that resource consent decision-makers are required to undertake. Because of this time limitation, it is best for a panel to deal only with the 'big picture' planning and design issues.

282. Panel review is typically at the cost of local government. However, design review of significant projects might be charged for on a cost-recovery basis. In this case the cost of design review to the applicant is likely to be a very small component of the overall costs of project process. The value-added benefits it offers (in terms of both quality and value of outcome, and smoother process – assuming a competent project team) can be expected to compensate for the cost of review.

283. The benefits of urban design review by an urban design panel are summarised by the UK's Commission for Architecture and the Built Environment (CABE):

**How design review secures good design<sup>64</sup>**

Design review delivers public benefit by improving the quality of architecture, landscape architecture and urban design, including the design of streets and public spaces. The key features of the process are that it:

- is conducted by an independent panel of experts – practitioners with current experience in design and development, a track record of good design in their own projects and the skills to appraise schemes objectively
- advises and empowers decision makers on how to improve design quality so as to meet the needs of their communities and customers
- can support decision makers in resisting poorly designed schemes
- exists to offer comments on schemes that will lead to their improvement, not to redesign them.

284. The first survey of the effectiveness of design review panels in the UK revealed that 91% of the planning authorities interviewed considered there were benefits in involving design panels, with the main perceived benefits being "objectivity, independence, knowledge and expertise".<sup>65</sup>

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<sup>63</sup> Design review decision-making by urban design panels is a common practice in some parts of the USA, and has been subject to significant criticism.

<sup>64</sup> CABE, *Design Review Principles and Practice*, 2009, p7

<sup>65</sup> CABE, *Design Review Principles and Practice*, 2009, p3



285. Design review by an urban design panel is a tool that can be used to achieve better outcomes and more robust and efficient processes. It:

- a. provides independent, high-level expertise to both applicants and council assessors;
- b. will assist the Council to give the applicant robust pre-application design advice early on in the process;
- c. can lead to better and higher-value planning and design outcomes by identifying flaws, allowing them to be addressed wherever possible;
- d. identifies issues which may be resolved before consent application, consequently reducing process timing through support from the processing authority, and reducing project time and design cost by helping the applicant to avoid abortive design work;
- e. is based on a collegial approach focused on achieving improvement as distinct from the adversarial approach that is common during formal consent processes;
- f. provides advocacy for enhanced outcomes, including potentially considered support for high quality but controversial or innovative approaches not anticipated by the District Plan.
- g. can redress any scarcity of trained and experienced professional urban designers, and the difficulty of attracting and retaining such professionals in some Councils;
- h. can give confidence to Council decision-making, including confidence not to notify an application where this is justified and provided for in the District Plan; and
- i. provides a compelling robust peer review and moderation of any Council design review advice that is questioned by the applicant.

286. The benefits outlined above are already achievable under the current RMA provisions. Urban design panels of various types are currently successfully used in various places through New Zealand including Auckland City, Wellington City, Nelson City, Tasman District, Christchurch City and Queenstown and Wanaka.

287. Design review by a panel should be applied only to projects of recognised significance<sup>66</sup>. While design review by a panel is an inherently straightforward process, it is resource intensive, and requires a group of skilled people. Therefore panels should be complemented by 'in-house' Council design review which would be responsible for dealing with all other

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<sup>66</sup> One of the CAFE 10 principles of design review is that it should be "Proportionate: It is used on projects whose significance warrants public investment in providing design review at national, regional and local level, as appropriate. Other methods of appraising design quality should be used for less significant projects". CAFE, Design Review Principles and Practice, 2009, p9

projects, that is, the majority. The UK's CABE recommends that only certain proposals should be subject to design review:

- Proposals that are significant because of their size or the uses they contain.
- Proposals that are significant because of their site
- Proposals with an importance greater than their size, use or site would suggest.<sup>67</sup>

288. Urban design panels are currently used to review discrete projects. However an appropriately skilled panel could usefully provide expert review on innovative or controversial planning and design-related aspects of policy and District Plan approaches and could be used as a sounding board for Spatial and Structure Plans.

289. Large projects of regional or national significance would benefit from review by a National Urban Design Panel. A properly constituted, independent National Urban Design Panel would have the status and expertise to provide persuasive and compelling advice on sensitive and controversial projects, potentially assisting with process efficiencies as well as better planning and design outcomes. The effectiveness of such a review would be maximised if the panel reports had recognised status in the consent or policy-making process.

290. A National Urban Design Panel would need to be formally constituted with clear terms of reference and supported or administered by Government. To be consistently effective across New Zealand, support for urban design panels is important. This could be by guidance on panel constitution and operation on the MfE's *Quality Planning* website. Successful precedents for operating national urban design panels include the Commission for Architecture and the Built Environment (CABE) in the UK, and expert design review is a core task of the Office of the Government Architect in several Australian States.

291. To maximise the benefits gained from an urban design panel review process, the recommendations of a properly constituted urban design panel might be recognised as an "other matter" (in terms of s.104(1)(c) of the RMA) to be taken into account in Resource Consent and Plan Change decision-making. Where provided for in the District Plan, a report from a panel might be used to inform decisions around notification, however, whether notification is required is specified by the RMA and District Plans, and remains best addressed by the Plan.

292. This use of panel reports might be something that District Plans are required to include, or potentially a process like this might be covered in an NPS on the Built Environment.

293. Appropriate resourcing for policy advice, implementation and management of processes including any National Urban Design Panel is critical to success. If an NPS is produced, guidance on the various techniques, tools and District Plan rules and criteria that can give effect to it should be made available, potentially using the MfE's *Quality Planning* website. This would help local

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<sup>67</sup> CABE, *How CABE evaluates quality in architecture and urban design*, 2006.

authorities to implement an NPS and increase efficiency and consistency. To resource central government agencies to develop policies and mechanisms that can be applied nationwide will be more efficient than expecting each territorial authority to do so independently.

### 8.3 Recommendations

294. Our key recommendations in relation to urban design and the use of panels are as follows:

**Recommendation 29. Introduce an NPS on the Built Environment.**

**Recommendation 30. That the RMA be amended to recognise the urban and built environment by:**

- Under matters of National Importance, covering the quality of the design and planning of the built environment;
- Modifying the definition of Environment to specifically include the built environment; and
- Extend the definition of amenity values so that it addresses the quality of urban and built environment to a greater extent.

295. In addition, over the course of our deliberations, a number of more detailed recommendations have emerged that we consider will provide a more comprehensive response to the questions raised in our Terms of Reference.

**Recommendation 31.** That a National Urban Design Panel be established to provide expert design review of nationally and regionally significant plans and projects, as well as providing support to smaller authorities on local matters, and that this is provided with ongoing expert and administrative support, including:

- The scope for an expert review panel should include planning and policy as well as design review.
- The potential for cost-recovery charging for panel review might be explored for such projects.

**Recommendation 32.** That resourcing to develop and implement an NPS and to form and administer a national urban design panel be allocated.

**Recommendation 33.** That potential to link a positive report from a properly constituted urban design panel to time efficiencies in the resource consent process be explored. Any linkage might be addressed in an NPS on the Built Environment.

## 9. APPROVED COLLABORATIVE APPROACHES

### 9.1 Question

296. We were asked to examine approved collaborative approaches, and their potential as an incentive mechanism to achieve better urban design

### 9.2 Observations

297. Questions posed to the UTAG have led us to consider what scope there might be for achieving better urban built environment (including urban design) outcomes through promotion and/or strengthening of the role for collaborative approaches.

298. In turn, this has led us to question whether a strengthened basis for using collaborative process might reduce current reliance on heavily process focussed/appeal based decision-making. There is evidence of extensive engagement processes on non-statutory spatial and strategic plans achieving high levels of agreement amongst stakeholders, only to have to go back through 'first principle' tests under the RMA First Schedule, and/or requirements of the Local Government Act.

299. In this light, is there scope for an 'approved' collaborative governance process that, if successful, could avoid the need for statutory decision-makers to hand down a decision? In essence this would have parallels with the RMA's current provision for Alternative Dispute Resolution methods at the appeals phase, with the crucial difference being that this type of structured process would be available and statutorily 'recognised' at the beginning of strategic direction and policy setting processes.

300. There is evidence that practice under RMA and LGA around consultative and collaborative mechanisms has continued to evolve and improve over the last decade. This is at both the level of developing strategic direction for the urban built environment and design, and at the project specific level. We anticipate that these types of techniques would be an integral part of well run spatial planning exercises.

301. By 'consultative' approaches we mean where stakeholders are given an opportunity to inform and become informed about a matter, and then convey their preferences or position, following which decision-makers deliberate and hand down a decision.

302. This can be contrasted with 'collaborative' approaches which we understand to mean (in its fullest sense of 'collaborative governance'), where ownership of the process and outcomes is encouraged, and stakeholders are empowered to shape the final agreement. In other words the statutory decision-makers need not be brought in to hand down a final decision (unless the collaborative governance approach fails, with the default position being back to statutory decision-making). This model currently operates in some Nordic countries.

303. The collaborative governance approach has enjoyed only limited use in New Zealand to date. The West Coast Forestry Accord and Upper Waitaki Power resource consent renewals are examples. In the case of West Coast Forestry Accord parties signed up to the Accord 'outside' of other statutory vehicles such as the RPS.
304. For built environment/urban design strategic direction setting exercises, the collaborative approach usually extends to the point where a council needs to exercise their responsibilities for funding urban built form and urban design decisions, and/or any resulting plan changes to enable urban design to be implemented. Notwithstanding what may have been agreed through the collaborative process, obligations remain to 'go back to first principles' in terms of RMA (e.g. First Schedule) or LGA funding policy, and the wider public consultation opportunities these operate under which re-open the matter for submission and attendant appeal rights.
305. For example processes such as intensive 2 to 3 day urban design processes run by some councils (sometimes known as design charrettes) have encouraged and achieved a high degree of collaborative decision-making<sup>68</sup>. However at the conclusion of these processes councils have still needed to go through due process in relation to RMA property rights considerations, and LGA funding prioritisation processes.
306. Collaborative mandates have already successfully been used for a range of region and city scale public/private initiatives addressing the future of New Zealand's metropolitan areas. This has been in terms of strategic direction and high level policy setting.
307. Processes have varied as to how strong the collaborative mechanisms have been. In urban settings, projects exhibiting behaviours towards more collaborative governance are development of the Auckland Growth Strategy, Wellington Regional Strategy, Hamilton Region, Bay of Plenty, and Christchurch Urban Development Strategy.
308. These processes have all incorporated built environment strategic direction and high level policy development, and have been notable for pursuing to varying degrees private sector engagement, and wider stakeholder input. A key driver for these more collaborative processes has been provisions of the LGA encouraging fuller engagement of interested parties than the RMA.
309. An example is the Wellington Regional Strategy (WRS). This process exhibited many elements of efforts towards a collaborative governance approach. The WRS is now a formally adopted (under LGA), non-statutory strategy document addressing economic development and built environment/spatial issues for the Wellington region.

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<sup>68</sup> This process can work relatively seamlessly if concepts have been 'socialised' in to statutory authorities as the collaborative process unfolds. Our observation is that this also benefits from sufficient delegations having been passed to council representatives to enable them to enter into 'in principle' agreements (subject to whatever formal legal process steps still have to be stepped through).

310. The WRS operates under a formal governance mechanism comprising private sector appointees, and public sector representation (all councils in the region, plus arrangements in place for central government interaction). The formal governance group developed and now oversees the WRS.
311. Constituted as a formal standing committee of the regional council (initially it was a voluntary/collaborative grouping), the WRS Committee has been delegated all functions that the Regional Council is legally entitled to delegate; is mandated to make decisions on all economic and high level spatial issues within the WRS ambit; can make these decisions without unanimous agreement of the committee; and has a commitment from the Regional Council (as its parent committee) to not act independently of decisions of the WRS Committee.
312. While development of these collaborative arrangements are laudable, our observation of the WRS and other non-statutory built environment and economic development strategies is that parties to the process are not particularly incentivised, other than to the extent that their own experience shows that collaborative processes improve the likelihood of finding agreed solutions.
313. Notwithstanding the development of varying degrees of collaborative governance arrangements, they all remain high level and are heavily reliant for their implementation through RMA instruments and/or LGA Long Term Council Community Plans. Both processes require going 'back to first principles' in terms of satisfying First Schedule tests for RMA, or LGA assessment criteria for LTCCPs. Recourse to exercising legal rights of appeal against decisions exists for both.
314. It is our view that in New Zealand the ceding of decision-making around urban built environment/urban design issues to stakeholders via collaborative governance arrangements currently has a 'Damocles sword' hanging over it. That is, the legal recourse which remains to either the Environment Court (or less frequently High Court in terms of Judicial Review of LGA or RMA process) following non-statutory collaborative agreements.
315. In terms of built environment strategic direction setting exercises, or urban design projects using collaborative processes at project level, we are aware of very few examples of the final decision remaining with stakeholders to the process. The most common outcome is where collaborative processes around projects result in an absence of RMA submissions in opposition, or more to the point, submissions in support. This is the current litmus test as to collaborative process having achieved alignment between stakeholders.
316. We understand that in Nordic countries (Denmark, Sweden and Finland) there is an established tradition and understandings which enable full 'collaborative governance' models to operation. Stakeholders are incentivised primarily through retaining some control, or knowing the nature of what is to be agreed, rather than making their case and awaiting a decision to be handed down from statutory decision-makers. The model used in the Nordic countries still retains recourse to the statutory decision-makers to hand down a decision if the collaborative governance attempts fail.

317. We are attracted to the concept of formalised 'alternative dispute resolution' type processes (and extending beyond this into the collaborative governance models if feasible). In particular, finding means to give such processes more standing and weight in RMA and LGA decision-making forums has merit in our view.

318. In essence this would represent an extension of collaborative process already being pursued by many New Zealand regions/cities for the early phases of built environment strategic direction setting, and policy development.

319. We see value (potential for time savings and streamlining process) from setting up an approved collaborative process/es to the extent that it might remove the 're-litigation' cycles that our legislative settings currently deliver.

320. What is evident from our examination of the issues is that a substantive piece of further technical work is needed to progress this concept.

321. This is to ensure key principles of natural justice, good governance and fairness could be achieved under any 'approved collaborative approaches'. Consideration is also needed of what would be 'fit for purpose' at different scales (i.e. regional/city/local). There are also a range of practical and legal issues for which detailed assessment is needed and that are beyond the scope of the UTAG to satisfactorily answer as part of the current process.

### 9.3 Recommendations

322. Our key recommendations in relation to approved collaborative approaches are as follows:

**Recommendation 34.** That further investigation be pursued on how the RMA might encourage the use of collaborative processes for urban built environment and urban design purposes, particularly where these can justify a speedier decision making process.

**Recommendation 35.** That such investigations include a focus on how such collaborative processes might be incentivised in the New Zealand context and configured to provide potential for streamlining of RMA processes.

## **10. SEPARATING ENVIRONMENTAL ISSUES FROM PLANNING AND URBAN DESIGN**

### **10.1 Question**

323. In many other jurisdictions it is common for there to be separate pieces of legislation in respect of environmental and planning issues. This is particularly so in Australia, and we were asked to examine this concept.

### **10.2 Observations**

324. In other report sections we note that there are widespread perceptions that the RMA does not currently well serve New Zealand's urban systems and the urban built environment. To address this, one area of our exploration has been the practice from some overseas jurisdictions of separating out statute for environmental issues from planning and urban design.

325. The potential advantage of this approach is that it clearly recognises that urban areas are generally heavily modified and dynamic environments, and therefore justify a more 'anthropocentric' set of assessments, processes and mechanisms for decision-making. Environmental statute is undiminished, but is weighted differently in the decision-making in urban areas. There are also key process decision points where judgements are exercised as to what level of environmental assessment or tests are applied.

326. The flipside argument is that such a split steps away from 'integrated' thinking, can lead to inconsistencies, and suffers from difficulties around distinguishing what is urban and what is not (which is particularly challenging at urban edges). Moreover, establishing another statute would seem at odds with the stated aims of RMA reform to simplify and streamline processes.

327. We have focused on Australian practices as many of the issues and challenges are broadly similar to New Zealand, albeit that institutional and governance arrangements differ materially.

328. Having considered the current and emerging urban planning system in Australia we have concluded that statutory separation of environmental issues from planning and urban design (i.e. built environment issues) is technically feasible, but it is unlikely to be able to deliver on the overall objectives put before the Urban TAG. (Creating a new statute and increasing the number of overlapping processes is not 'simplifying and streamlining'). Such an approach would also appear to involve a fundamental recasting of New Zealand's legislation and we are not convinced this is warranted.

329. Our view is that the existing architecture of the RMA and LGA can readily and more efficiently be modified to address the issues of concern for urban/metropolitan areas. Our recommended options for achieving this are outlined in other report sections.



330. In justifying our position we outline below the relevant matters informing our conclusions.
331. Australia's government is a federal system consisting of the Commonwealth and six States<sup>69</sup> and ten Territories. Planning is the responsibility of State governments, who provide the legislative framework for planning, and undertake key infrastructure development.
332. Local government are responsible for development of local development plans and schemes and are generally the consenting authority. State governments retain significant decision-making and approval powers with the Minister of Planning.
333. Most of the responsibilities of the Commonwealth and State governments are undertaken by central government in New Zealand. However there are some activities undertaken by State governments in Australia, such as regional planning and environmental management and control (e.g. air and water pollution and catchment management) that are the responsibility of regional councils in New Zealand.
334. A recent evaluation report on Australian practice is instructive noting that "...planning and environmental legislation are often separate [in Australia], and while they work in tandem, there is often an initial focus on longer term planning or need, or whether an activity was appropriate in a particular location. Once that more strategic decision is made, then the more detailed assessment of effects is undertaken, and in all likelihood, the proposal is fine-tuned and modified within a supportive strategic framework" (Pollock, G. 2009, page 6).
335. In the New Zealand context this 'supportive strategic framework' is often absent. Our view is that this can be addressed via several options under the existing RMA framework (as described in our other report sections e.g. NPS, GPS, mandated spatial plans, or associated legislative requirements via LGA).
336. We note that the Australian models are not without their own challenges. For example Dodson (2009) has noted that spatial planning in Australia has taken a very infrastructure based focus, and is at risk of relying solely on large scale urban infrastructure development, with a risk of undermining the role and intent of spatial plans in helping to coordinate actions across the range of issues.
337. Our TAG view is that our New Zealand solution needs to strike a balance between these factors. Our view is that the focus of RM Phase 2 reforms be on options other than statutory separation of environmental issues from planning and urban design.

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<sup>69</sup> Extracts from the Report of the Urban Planning Technical Advisory Group, 2010.

### 10.3 Recommendations

338. Our key recommendation relating to the need for separation of environmental legislation from planning and urban design legislation is as follows:

**Recommendation 36. Maintain the current approach of integrated management of environmental and planning matters.**

## APPENDIX ONE

Territorial Authority	Description of Development Contribution levied against new property owners (LTCCP 2006/16)
North Shore City Council	Various catchments based levies ranging from \$10,000 to \$25,000 plus reserves (value 20 m <sup>2</sup> or 7.5 per cent allotment value) for all catchments based levies.
Auckland City Council	Divided into residential, non-residential and Wynyard Point per HUE <sup>70</sup> . Wynyard Point Residential \$27,726, residential other than Wynyard Point \$19,534. Non-residential in Wynyard Point \$14,966, non-residential outside Wynyard Point \$6774. Plus for all an equivalent land value of 5.69 m <sup>2</sup> .
Manukau City Council	Residential \$6,300 per HUE, non-residential \$18.75 per m <sup>2</sup> .
Papakura District Council	Catchments based levies. Charges per HUE are between \$3,500 and \$20,000.
Franklin District Council	17 catchments based levies, per HUE from \$7,440 to \$24,000.
Hamilton City Council	Greenfields: residential, \$21,823 per HUE, industrial \$4,656 per 100 m <sup>2</sup> , commercial \$6,022 per 100 m <sup>2</sup> ; and Infill: residential \$8,132 per HUE, Industrial \$3,659 per 100 m <sup>2</sup> , Commercial \$4,518 per 100 m <sup>2</sup> .
Tauranga City Council	City wide plus varying catchments based levies. From \$2,000 to \$22,000.
Rotorua District Council	Various catchments based levies ranging from \$8,741 to \$22,000.
Taupo District Council	Various catchments with levies ranging from \$4,000 to \$13,000 plus \$2000 per 100 m <sup>2</sup> plus reserve contributions (value 20 m <sup>2</sup> or 7.5 per cent allotment value).
Palmerston North City Council	24 different catchments based levies. Per m <sup>2</sup> charges. Range from \$6,380 to \$9,100 per 700 m <sup>2</sup> .
Wellington City Council	Catchments-based levies, vary between \$4,678 and \$10,477 per HUE.
Christchurch City Council	Combination of city wide and catchments based levies specific charges. Charges from \$26,000 to \$31,000 per HUE. Transaction period with 57% discount 2008 to full rate 2010.
Queenstown Lakes District Council	15 catchments based levies ranging from \$6,232 to \$20,781 plus 27.5 m <sup>2</sup> of land value for all areas.

<sup>70</sup> HUE = Household Unit Equivalent.