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Using Land for Housing

Local Government New Zealand's Submission to the Productivity Commission

22 December 2014

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Contents

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

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

We are keen to engage with the Commission to explore some of the matters contained in this submission.

Introduction

Thank you for the opportunity to submit on the Productivity Commission Inquiry: Using Land for Housing. This submission has been prepared on behalf of New Zealand's local authorities.

Local and Central Government is concerned that a number of New Zealand cities and regions are facing housing affordability problems, particularly those towns and cities experiencing population growth. Of particular concern is Auckland, New Zealand's major metropolitan centre, where the cost of housing is regarded as severely unaffordable, not only by New Zealand standards but also in comparison to major cities worldwide.

In addition to Auckland, other territorial authority areas are identified as having significant housing supply and affordability issues[1]: Christchurch; Hutt; Kāpiti Coast; Porirua; Queenstown–Lakes; Tauranga; Upper Hutt; Wellington; Western Bay of Plenty; Hamilton; Nelson; Selwyn; Tasman; and Waimakariri.

Housing unaffordability has both social and economic costs that extend beyond the jurisdictions of individual councils and can have an impact on New Zealand's macro-economic performance, for example, by way of its contribution to inflationary pressures. Consequently the issue is of concern to all our members, not just those individual councils with housing affordability issues.

There are many factors contributing to the affordability of housing such as the cost of construction materials and the demand for larger houses. This Inquiry concentrates on one aspect, the ability to provide serviced land, ready to build, to meet housing demand and we hope the comments contained in this submission are useful. In terms of specific processes, individual local authorities will provide the examples of "best practice" that you have requested, in the context of this Inquiry.

In order to bring adequate land to market ready for construction, the local government sector considers that the following matters need focus:

- The planning system and measures to improve its agility, including removal of recourse to the Environment Court in the case of plan changes, variations and plan reviews;
- Incentives and mechanisms to encourage the release of land by owners of residential land to the market;
- Incentives or ways government and local government can share risk with the private sector to bring "shovel ready" land to market; and
- Additional methods for funding infrastructure.

[1] For the purposes of the Housing Accords and Special Housing Areas Act 2013

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Background

The premise of this Inquiry is that land has been made artificially scarce by a range of factors, such as regulation, that cumulatively restrict its availability for development and act to make land supply unresponsive to demand.

Monitoring of development trends and land use change to track development activity is important to growth management. In February of 2013, in order to try and better understand the "land supply" problem, LGNZ commissioned an analysis of residential land availability by territorial authority. We were interested in understanding the current availability of residential land across New Zealand and sought to tabulate the residential "dwelling opportunities" existing at that time, with a dual focus on the existing vacant (and serviced) allotments, and on land subject to subdivision consent approval but awaiting final certification.

Understanding the level of reserve is key, and whether the reserve relates to zoned land or land that is fully serviced. It was not easy to extract the information and, given there is a housing affordability problem in New Zealand, it would seem sensible to gather this information regularly. MfE's National Monitoring System (which replaces the RMA biennial survey) would seem to be a useful vehicle. A useful line of inquiry for the Commission might be to determine whether other jurisdictions collect this information and hold it centrally. A clear set of definitions would be necessary as there are a number of stages in the process of land servicing and bringing land to be "shovel ready." We understand the Valuer-General's land classification system would give a good snapshot of the available land (Categories RV, RB, and RM) but his office has not held the information centrally since 1998 and it currently rests with each local authority in their district valuation roll.

Of particular relevance was the feedback, as part of the survey, from a number of territorial authorities (Tauranga, Christchurch, Wellington, Kāpiti Coast, Tasman and Dunedin) which advised that they have large tracts of residentially-zoned land within their respective districts with trunk infrastructure readily available, awaiting subdivision. A number of these markets are characterised as being unaffordable[2] despite the untapped capacity of these zoned resources numbering in the thousands of potential dwellings for each territorial authority. Other areas have land zoned but not yet provided with trunk infrastructure.

This indicates that even when local authorities are doing their part in making land available for development, the economic conditions need to be right for the developer to release the land. Local authorities can control the amount and location of land that is zoned for residential development and the provision of trunk infrastructure to service the land, but not its release to market timetable. That is a matter for land developers.

In the Ministry for the Environment's Discussion Document[3] an idea was proposed that local authorities be required to "ensure there is adequate land supply to provide for at least 10 years of projected growth in demand for residential land in their plans." There is little detail regarding this proposal but it does raise questions as to whether it would include development capacity within the existing urban area. As a proposal under the RMA, this relates to the zoning framework for residential land supply, an important step. It cannot prescribe the timing of servicing with trunk infrastructure or that land will be released to market at a particular time.

The LGNZ report also illustrates that simply increasing the supply of housing does not automatically lead to the provision of affordable homes. The Ministry of Business Innovation and Employment's (MBIE) assessment of affordability in the Wellington Region states that Kāpiti and Porirua average above the level of supply needed to meet their high projections and that Hutt City and Upper Hutt were at levels between medium and high. MBIE still assessed these areas as experiencing significant affordability issues.

[2] For the purposes of the Housing Accords and Special Housing Areas Act 2013
[3] http://www.mfe.govt.nz/publications/rma/improving-our-resource-management-system

Supply and affordability

A significantly increased supply of development capacity, however, will not necessarily lead to an increased supply of affordable housing and it has been noted that such mechanisms are likely to just redistribute the costs (the more expensive houses will be relatively expensive). The Auckland Housing Accord has recognised that increased development capacity cannot be relied on to provide affordable dwelling and has built a quota into the Accord.

Likewise, Queenstown Lakes District Council recognised that increased supply on its own would not necessarily deliver housing that is affordable. In 2008, it initiated a change to its district plan which sought to introduce a formula based approach to requiring affordable housing into the policies of the district plan. The initial objective was to require a contribution of land/finished dwellings or a cash equivalent from developers when plan changes/variations were proposed, as well as when resource consent applications for non-complying and discretionary activities were considered. The plan change was appealed to the High Court, which granted leave to appeal to the Court of Appeal; the principal question being whether the scope of the plan change was within the scope of the RMA. A deal was ultimately struck between the council and opponents and confirmed by way of a consent order in 2013. The compromise position was to remove all prescriptive requirements, reference to retention mechanisms, and replace the initial proposal with provisions that require access to "*community housing* ***or*** *the provision of a range of residential activity*". A range of incentives are now being explored to promote increased supply of the right type of housing to meet the demands of Queenstown's particular market.

The planning system

The nature of the planning system and the importance of coordination across the Resource Management Act (RMA), Local Government Act (LGA) and Land Transport Management Act (LTMA) underpin some of the issues addressed in the Commission's Issues Paper.

Planning under the RMA

A critical issue in the supply of developable land is the length of time a plan change/variation/plan review takes. LGNZ has long advocated for "plan agility", removing the ability to appeal these substantive decisions to the Environment Court. The HA&SHA Act has addressed this and restricted the ability of third parties to be involved in the council's process and to challenge the council's decision. The HA&SHA Act has thus recognised some of the process issues associated with land supply. The bespoke provisions for the Auckland Unitary Plan and for the Canterbury recovery have similarly restricted the ability for third parties to be involved in plan-making processes under the RMA.

It is worth also considering the philosophy of the respective statutes. Under the RMA the need to provide for residential development is not explicit; the purpose of the RMA is to promote the sustainable management of natural and physical resources…while managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety.

This breadth of purpose provides the mandate for a council to provide for the residential needs of a community. "Housing needs" are weighed up alongside others. The HA&SHA Act, on the other hand, has as its purpose to enhance housing affordability by facilitating an increase in land and housing supply in certain regions or districts; the HA&SHA Act treats housing as essential infrastructure, elevating housing delivery. The provision of adequate infrastructure has weighting in the Housing Accords and Special Housing Areas Act (HA&SHA) and the Minister must not recommend the making of an Order in Council unless s/he is satisfied that adequate infrastructure exists/is likely to exist to service qualifying developments, and a resource consent must not be granted unless sufficient and appropriate infrastructure will be provided to support the qualifying development.

It is worth noting that previous planning legislation, the Town and Country Planning Act 1977 (TCPA) was much more directive when compared with the RMA. The TCPA's listed matters of national importance directly supported the prevention of sporadic urban development and the unnecessary expansion of urban development into rural areas

which some councils translated into support for the creation of Metropolitan Urban Limits. While also being much more directive, the TCPA may have also created a culture of interventionist land use policies that the "effects based" philosophy of the RMA sought to counter in 1991. Some would argue that the biggest problem with the RMA is that the effects-based framework works against directive planning and an important matter that future reform of the RMA needs to address is whether the "effects based" approach of the RMA (ie planning is very focused on avoiding negative effects) is compatible with urban planning. Some would argue that the biggest problem with the RMA is that the effects-based framework works against strategic planning. This raises questions as to (1) whether a policy shift is required and (2) how this can be achieved within the framework of the RMA. Greater central direction may be part of the solution.

The relationship between regional provisions and district provisions across a region is also worthy of exploring. Should regional plan provisions be tailored across a region in order to support residential growth, ie be more enabling? Is this approach already adopted in some regions? If "housing" had greater statutory weight, this might support such an approach.

Coordination

The planning and development system coordinates the provision of infrastructure with the provision of land for residential development. The Commission will find this is done well in some areas and less well in others. Understanding the reasons for this will be an important part of the findings.

This also includes using the capacity in existing infrastructure. The planning statutes the local authority works with are: the Resource Management Act, the Local Government Act and the Land Transport Management Act. While these statutes all have different purposes and timeframes, local authorities are well used to working with this framework (although that is not to say that better alignment of these statutes and process efficiency could not be attained).

A number of inquiries have identified some of the problems with the interplay between the statutes[4] and the Local Government Infrastructure Efficiency Expert Advisory Group (EAG), established by the Minister of Local Government in late 2012, had, as one recommendation; simplification and integration of the statutory framework within which local government infrastructure is planned would be one of the most important commitments the Government could make towards increasing efficiency of delivery. LGNZ agrees that attention could be given to simplifying the process burden of multiple planning processes.

Trying to coordinate the three statues adds to the complexity of integrating good strategic thinking. Some councils have used the Local Government Act to develop spatial plans; others have developed growth management strategies, often involving neighbouring local authorities and the regional council. A spatial plan is a useful coordinating mechanism, used to integrate land and infrastructure across a region and can incorporate matters that are outside of the relatively narrow environmental ambit of the Resource Management Act.

A spatial plan is implemented through a variety of delivery mechanisms, including an RMA plan/policy. As the law stands, even though a spatial plan goes through considerable consultation with the community, the RMA requires a separate consultation process to embed it into a statutory plan developed under the RMA. This entails additional process and, in addition, is subject to appeal to the Environment Court. The weighting in law which is given to a plan prepared under another statute is relatively light. S66(2) and 74(2) of the RMA requires a local authority to "have regard to" a management plan/strategy plan prepared under another statute when preparing a regional plan/district plan. And a decision on a resource consent can take a spatial plan into account as an "other matter" under s104(1)(c).

Spatial plans are arguably more suited to areas experiencing growth and LGNZ would not support them being mandated for all geographical areas. In some markets an "effects based" approach will be suitable.

Best practice is to incorporate land use, infrastructure, funding and feasibility; when land use planners are considering opening up new land they need to be working alongside 1) their engineering colleagues on Infrastructure/

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

transportation planning; 2) their financial colleagues on the funding implications for the council's balance sheet and ability to recover debt funded capital land; and 3) infrastructure providers on the feasibility, timing and location of development. Connection with the development community is also necessary to understand the feasibility and timing of land release. If the land is not viable for development, there is a much greater risk for the council to proceed because capital investment in new/additional services/infrastructure will not be recouped effectively and the debt remains for longer. Some councils do this at a growth strategy level, for example the Western Bay of Plenty's SmartGrowth which is a sub-regional strategy which involves the key stakeholders such as NZTA, the regional council and the territorial authorities. At a more detailed level, it can then be driven at a growth cell level through structure planning which drives the Long Term Plan and District Plan policy. Rezoning under the RMA should be the last step in the process and is done when the prior strategic thinking is done.

Understanding how the internal process works in practice (across asset management/finance/planning within a local authority) **and** takes place with the development sector will be useful for the Commission; how formal is the process; how regular is the engagement; and who it takes place with.

The current system creates a great deal of process churn with duplication of planning processes as the different statutes are effectively integrated into local plans. This is costly, time consuming and uncertainty prevails until final resolution of any decisions on RMA plans, even though the difficult strategic planning has already been done and codified into a spatial plan or growth management strategy. Local authorities have managed to work around the complexities but if the overall planning system is simplified, certainty will be delivered more quickly.

In relation to other matters, covenants are routinely used by land developers to protect the value of housing and councils have no control over their use. In some jurisdictions they are not allowed in law. For example in Queensland, covenants that hinder the building of affordable housing are not permitted.

Recommendations

1. The Productivity Commission explore how local authorities work internally across departments and externally with the development sector to plan for growth;
2. Simplify the process burden across the LGA/RMA/LMA;
3. Give greater status to a plan/strategy prepared under the LGA to a plan/policy under the RMA;
4. Restrict the ability to appeal substantive decisions on plan changes, variations and plan reviews under the RMA to the Environment Court; and
5. Explore the wider use of provisions contained in the Housing Accords and Special Housing Areas Act to the RMA.

Incentives and mechanisms

Councils have a range of planning and decision-making tools to influence the provision of 'shovel ready' land; however there are questions about the efficacy of some mechanisms and whether or not councils are adequately incentivised to provide for such land.

Land aggregation

The Urban Technical Advisory Group[5] was established in 2010 by the Minister for the Environment, Nick Smith. It identified two main question marks over the way the Resource Management Act is working in urban areas; the incentives for developers to do the best urban design in our largest cities and the policy of metropolitan urban limits (MULs). He also noted the effect MULs have on section prices, the negative flow-on effects to the broader economy,

[5] http://www.beehive.govt.nz/release/new-work-underway-phase-ii-rma-reforms

and that we do not have a good track record of having the right infrastructure in place at the right time for supporting urban development.

The TAG recommended some options to improve land assembly, which included:

- Extending the scope of the Public Works Act (PWA) to ensure that local authorities are able to compulsorily acquire and amalgamate land for major urban regeneration projects (subject to provisos);
- Developing new tools for land assembly, i.e. development of comprehensive development plans to engage landowners previously uninterested, or unable, to develop their land;
- Increasing the ways to share land while retaining freehold title; and
- Reviewing tenure options and land management models to increase methods for land-sharing.

Each of these options needs further investigation and should be considered as part of the review.

Release of land for housing

Councils can control the zoning of land for development through a range of mechanisms, such as:

- Promulgating changes to district plans;
- Managing private plan changes to district plans; and
- The provision of main trunk infrastructure.

Councils cannot control when the subdivision process is initiated and when sites are released for development and building.

Wellington City Council has some 30 years worth of capacity for residential development, yet Wellington is classified as being unaffordable[6]. The capacity has not been realised as residential sections, ready to be built on. The argument that land use regulation locks up land for development is too simplistic and the LGNZ survey discussed above shows this not to be the case. Developers lock land up for development and what needs to be explored is; what are the conditions that are needed to encourage the release of land for subdivision and construction? If more land is zoned, will this help the release of land or is the opposite more likely to be true? Will scarcity inflate land prices to a point where it is more likely to be released to market?

Relying on the market to release land appears not to be sufficient to address affordability concerns. Indeed, one could argue that the incentives are such that they act against the goal of housing affordability. The previous Minister for the Environment recognised this as an issue and in the 2013 discussion document[7] explored the issue of land release. It does not appear to have been progressed[8].

The RMA provides (s 125) that resource consent (land use or subdivision) lapses, the default period being five years, with a further 3 years available to obtain RMA s224(c) approval for subdivision consents. The HA&SHA Act enables a lapse period of just one year to be imposed. The RMA provides a process for an extension of time to be applied for; one criterion is that substantial progress or effort has been, and continues to be, made towards giving effect to the consent. The provision enables that the costs sunk into the local authority processes and the provision of infrastructure by the developer can be realised and the project continued.

There is no similar lapsing associated with zoning (and no suggestion that there should be) but understanding the incentives for land release is perhaps the most important part of the housing affordability jigsaw. Exploring supply side incentives would be useful; density bonuses to developers; tax incentives to investors and developers. Other

[6] For the purposes of the Housing Accords and Special Housing Areas Act 2013
[7] http://www.mfe.govt.nz/publications/rma/improving-our-resource-management-system
[8] http://www.mfe.govt.nz/publications/rma/resource-management-summary-reform-proposals-2013

jurisdictions have adopted "use it or lose it" planning incentives.

Wellington City Council is looking at a grace period of two years before full rates are charged; a trial to forego full rates for two years once the land is subdivided.

The Local Government (Rating) Act 2002 can be used to incentivise or discourage the release of land. Local authorities rate on capital value or land value; understanding why a local authority chooses one method or the other will be important. There are also other rating options available under the Act which should be explored.

Recommendations

1. Work with the development sector to understand their incentives regarding the release of land;
2. Explore supply-side incentives to encourage release of land;
3. Specifically look at options currently available under the Local Government (Rating) Act 2002 to incentivise the release of land; and
4. Encourage a central database of statistics on residentially zoned and serviced land to be held.

Infrastructure funding

In essence, the availability/future provision of infrastructure is a de facto urban limit. Zoning as a tool provides certainty about the sequencing of development and infrastructure, and deferred residential zoning is a common tool in district plans, acting as a land release strategy and resolving how much land is needed and when. It can also provide the signals to residents and developers about the council's intentions to provide main trunk infrastructure as, ultimately, the land is not 'shovel ready' until main trunk infrastructure has been extended to a point at which it becomes economical for a developer to meet the cost of connecting. The release of deferred land for development is sequenced to coincide with the availability of services.

This highlights the fundamental question; how should councils pay to provide the network infrastructure required to make land 'shovel ready'.

The issue is both a funding and financing one. Councils will generally fund long life infrastructure through debt, either in the form of loans or bonds, on the principle of inter-generational equity. Nationwide, council debt is low and well within prudent levels, but this is not always the case, with individual councils experiencing growth. These councils are required to invest now to meet the needs of future residents and it is important that the challenges that these councils in particular face in providing lead infrastructure are understood. The current model requires councils to take on debt to fund the lead infrastructure and then to recoup it. Thus, councils take on the risk on behalf of their ratepayers and communities to manage and facilitate urban growth. While the obvious incentive is to provide for a growing community, there are many real disincentives to doing this because of the financial risk involved.

The need for councils to provide the lead infrastructure is greater where multiple land owners are involved. Where a single land owner is involved, it is possible to develop a private infrastructure agreement which removes/reduces the financial risk to a local authority. An issue for some councils is how to determine the share of the cost of providing infrastructure to new residents that should be met by those residents.

Limited funding and financing tools can create obstacles to the provision of 'shovel ready' land. This is an important issue that the Commission will need to grapple with in the review. Councils with high growth cite infrastructure funding as the single biggest issue affecting the supply of residential land. If a council has a high debt profile, it will inhibit that council's ability to bring forward capital works to support new residential growth. Solutions to this challenge are necessary if land is to be unlocked for housing supply in some areas. Additional tools to those currently available need to be looked at and this could include infrastructure provided by the developer. Consideration could also be given to a central government fund; zero interest loans; bonds; private /public partnerships; and betterment taxes.

Arguably, the "growth local authorities" are being asked to carry the debt burden for New Zealand without the balance

sheet to do so, ie to provide the infrastructure upfront. If it is accepted that growth is in the national interest, this supports the argument that alternative funding mechanisms should be explored.

Recommendation

1. Explore alternative funding tools to support the up-front costs to provide the strategic infrastructure, particularly for the councils experiencing high growth.

Conclusion

The issues paper is concerned with identifying factors that influence the delivery of 'shovel ready' land in response to housing demand. Local authorities have a degree of influence on a number of these factors, however a number of critical factors are either outside a council's legislative mandate or can only be influenced indirectly.

As noted in the submission it is not uncommon to have a situation where development capacity has been provided (by way of zoning and provision of main trunk infrastructure) without any corresponding upswing in the availability of serviced sections delivered to market ready for building. We consider that the critical matters for the Productivity Commission to address are; the incentives for both local authorities to provide serviced land; the incentives for land developers to release land; how to support those councils experiencing growth; and how to minimise the local authority's holding costs.