Using Land for Housing
NZ Productivity Commission Issue Paper, November 2014

Submission by Western Bay of Plenty District Council

The Western Bay of Plenty District Council welcomes the Commission's Report and the opportunity to comment on it. This Council has had considerable experience in many of the matters raised in the Report and we are therefore able to offer informed input. We appreciated the Commission's visit to us and this submission expands on matters discussed.

The submission points are grouped as follows with references to question and page numbers provided where relevant:

1. Summary of Key Points
2. Practice
3. District Plans and Rules
4. Resource Consents
5. Plan Changes
6. Infrastructure
7. Development Community
8. Other matters

1. Summary of Key Points

1.1. For local authorities the key issue is the provision of infrastructure and how to recoup the costs. Of concern is the interest cost of that debt, particularly when actual development does not meet the planned growth such as occurred with the impact of the GFC.

1.2. While improvements can be made to the legislative framework, many of the problems stem from practice: changing legislation does not fix poor practice. Examples of good practice are given, along with suggested improvements to legislation.

1.3. Increasing the supply of zoned land will not, in itself, decrease section prices.

1.4. The other matters discussed in the previous report by the Commission are just as, if not more, critical. They include building regulations, performance of the building industry, household income levels, and affordability variations across the country.

2. Practice

2.1. Q4. Improvements can be made to the system, but these will not solve the problem of lack of affordable housing.

2.2. Reference is made to planning being like a production chain (p13) and therefore problematic. However like any production chain it is only effective if it is efficiently designed and operated, and properly maintained. P15 states that distinctive local characteristics in different Councils means a successful approach in one will not

always be applicable in others. We disagree – it is about process and need for consistency. Notwithstanding, improvements can always be made to both the legislative framework and to practice.

2.3. While it is important how the RMA plans are written (Q25), successful outcomes are more about the attitudes of the Council staff and the applicant. Not everything is black and white – many are grey and it is attitudes that determine whether the shade of grey is towards the lighter or dark side! Q2 asks if there is need for a different system. Our answer is no: it is about good practice, by both regulators and the industry (applicant).

2.4. Q9 raises the intelligibility of plans. The reality is that because of the intense scrutiny by lawyers and recourse to the Environment Court, plans must be written for legal scrutiny, and therefore cannot be "R13".

2.5. Page 14 discusses whether to change the whole system, or whether there is a need for a different framework for "major externality and coordination problems faced by our growing cities". Decisions on plan preparation and plan changes related to growth management under the RMA are made by Councils as part of their policy function. This includes the essential integration with the LTP for the provision and funding of infrastructure. Policy decisions should not be functions of the Court, therefore the appropriateness of appeals to the Environment Court on such matters is questioned. Whilst this is particularly in relation to growth management matters that have an LTP linkage, it may also be applied to other plan changes. Thus the focus on any changes to the framework would be better focused on growth management itself, rather than just particular growing cities. However interpretation matters such as resource consents are appropriately dealt with by the Court.

2.6. Q5. relates to the time for preparing and processing plan changes. There is a need to understand the time for each step to identify where the best gains can be made. Apart from the appeal component, another possibility is changing the further submission component. Further submissions are important for parties to be able to protect their interest when something is raised in a submission that they were not aware of and would negatively affect them. However many further submissions are in support of original submissions. They generally add little value, add more parties to the process, can take up significant administration time, and add complexity to the whole process. Thus an option is to allow for further submissions in opposition only.

2.7. Time taken for plan changes need not be lengthy if sufficient time and resources are provided. For example over the last 12 years WBOPDC has processed 12 plan changes related to new growth areas. The longest time frame from notification to operative (including resolving appeals, which all plan changes had except 2) was 5 years and 11 months. Apart from this "aberration", all others were less than 2 years 10 months (four were less than 2 years). The quickest at 11 months was also the most complex. It was for a residential development of 3,000 dwellings, straddled two districts, involved Regional consents, and NZTA for state highway access. It was able to progress efficiently because of the collaboration between all the agencies and the developer and its consultants prior to lodging the private plan change. There were no appeals.

2.8. Q11.The steps used to involve potentially affected parties depend on the issue involved. Some of a minor technical nature will not involve consultation, whereas those involving complex issues such as structure plans or new rules on changing

residential zones to commercial will involve significantly more, and likely targeted, consultation.

2.9. Q14 raises the assessment of supply and demand. Assessment of supply is straight forward and uses systems that are already in place. Demand is not so easy. The total demand should be reasonably accurate, but the nature and style of demand is difficult – developers, real estate agents, and the market do that. WBOPDC and Tauranga City have been producing an "Annual Development Trends" report for a number of years. It documents the total capacity of each urban growth area, the remaining capacity, the last 5 year average growth rate, and then uses this information to assess the number of years of supply remaining. With these annual figures, plus ongoing monthly reporting we can be aware of emerging trends. The years of capacity remaining provides the trigger for zoning more land to ensure that there is adequate land supply available at all times.

2.10. Q18 Integrated Planning. Growth needs to be managed effectively and this can only be done through integrated management. In the early days there were challenges, but Councils now have processes in place to ensure integration. For example structure plans for new growth areas are not done in isolation, but in conjunction with infrastructure requirements (asset management plans), and not only the physical requirements but also funding. Thus the RMA and LGA are used in parallel to support each other. The key to success is that Council controls the planning process plus most of the infrastructure. The main difficulties we have experienced occur where integration with the State Highway network is required (Q19), particularly with regard to obtaining access to and use of the network.

2.11. CCO's, privatization and the like are not the answer as such devolving leads to disjointed decision making because of the different priorities of the various agencies. South East Queensland is an example of this when local government was restructured and the control of infrastructure was devolved from the new Councils.

3. District Plans and Rules

3.1. P35. The discussion on rules ignores some key points. There was a backlash against purely effects based plans because they gave less certainty to applicants and the community as to what could happen where. District Plan rules actually set minimums and there is ample flexibility above those minimums. Most difficulties arise when applicants want to go to lower standards; that is below standards that have been put in place for generally good reason with community input. Architects could design to comply but sometimes they choose not to when there are no valid reasons as to why they couldn't comply. Also there are many examples where flexibility exists in District Plans, but most consultants tend to be conservative (for some, read "lazy") because they are more comfortable doing what they have always done rather than looking at new ways. For example our Development Code provides for alternative designs, but there is reluctance from consultants to look at innovative ways of achieving acceptable outcomes.

3.2. Q21. Rules in the District Plan do not unnecessarily restrict the use of land for housing. The real restriction is the cost of servicing.

3.3. Q22. It is very important that rules provide certainty, not just for the applicant but for the existing community. In that regard it is possible to provide both certainty and flexibility (Q23).

3.4. Q24, Q28. An approach we use is what we call "Package of Plans". This is where developers/applicants are encouraged to come and meet with us before they have committed to any particular proposal. At such a meeting we have all the appropriate staff present including utilities, roading, reserves, policy planner and the consenting planner. At such a meeting we are able to better understand what the applicant wants to achieve, and to clarify what our requirements are likely to be; flexibility is applied to meet agreed outcomes. It provides a no surprises approach, there is frequently more than one meeting, and the applicant is not charged for Council time. It leads to a high level of certainty and much faster processing of the application when it is lodged. As part of our consenting process we also frequently send draft conditions to the applicant for comment prior to finalising the consent.

3.5. Spatial plans (in our case SmartGrowth), Regional Policy Statements and District Plans are hierarchical in nature, with objectives and policies in each being reflected in each subsequent level. Despite the fact that each goes through a rigorous consultative process, every objective and policy is subject to re-litigation in each plan or policy document. An option to overcome this is that objectives and policies already adopted should be able to be incorporated in lower level plans without the need for further consultation and not be subject to further challenge as they have already been though that scrutiny.

4. Resource Consents

4.1. The report implies that rules stifle creative and innovative development: it is true that some provisions can. In large part it is up to Council staff and elected members to avoid this, which depends on how forward thinking and enabling they are. What delegated authorities do staff have to avoid the need for hearings? Is there a win-win for the design (on balance) against the provisions of the Plan? A proposal with some infringements may be a 'better' outcome. Not all rules fit all sites.

4.2. Our District Council has few performance standards for conventional dwellings. Essentially they are height, daylight, yards, fence heights, and coverage. Other Councils' plans have rules around paved surfaces, landscape, open space, building in relation to boundary, privacy, vegetation, earthworks, driveways, access, rubbish, separation distances, excavation, retaining walls, building length, and service courts (to name a few).

4.3. Q23. We believe our rules are consistently applied. They are not complex and can be readily understood. With daylight and yards, they are a Permitted Activity if written approval is received from the adjoining neighbor. This removes the resource consent process with its associated cost and time delays. Planners need to be allowed to make informed decisions. Some Council's rules are very litigious and are often complicated by neighbours who do not get along and escalate processes.

4.4. Q26. An example of inappropriate use of design guidelines is a development in Snell's Beach (Auckland) where the million dollar view was to the water but Council rules required the main living area to face the street (CPTED) – the rules did not fit the site. Over-prescriptive design guidelines stifle free design by architects and force a dwelling into predetermined forms resulting in 'clones'.

4.5. Q29. Behind our Council's consistency and efficiency is the stability and experience of the Consents Team together with well developed systems and procedures that ensures consistency when dealing with similar application types that regularly crop up. Consents are compiled from templates using a menu of conditions e.g. standard templates for minor dwellings and for engineering based consents such as geological stability, flood hazard, coastal risk. On cultural issues we have an agreed Tangata Whenua protocol for engagement and referral processes. Our Consents Team was cited as a case study by MfE for best practice for consents processing in 2011.

4.6. Q30. Our experience is that resource consent process times have not resulted in unnecessary delays to development. We meet all statutory processing times, and find that any delays are caused by agents for the applicants not fulfilling their requirements in a timely or accurate manner. For this Council, the recent legislative changes to processing timeframes has not addressed delays but added more time, complexity and cost to the applicant. Consent processing at WBOPDC since 1 August 2005 has resulted in the following timeframes:

- 2292 land use consents = 11.21 working day average
- 2128 subdivision consents = 12.48 working day average
- Only 15 consents went over 20 working days

4.7. Q36. S.37s are applied where volumes are high, and by agreement with the applicant. This is because we are more timely and cost effective than putting the consent approval out to consultants. Also consultants do not want other consultants handling their work.

4.8. Q31. Sections 92 & 37 (Fig 10) – we question why are these figures so high. Is it down to individual practices by Council's? Volume of work? Complacency by consultants? Lack of knowledge and ability of lay people preparing their own applications? Boundaries being pushed? Council's being too strict on dotting every 'i' and crossing every 't' on information, rather than a pragmatic need for information appropriate to the type and scale of the effect of the application?

4.9. Q32. Notified consents can be delayed by vexatious submitters that frustrate the process, increasing time and cost to applicants.

- On average notified Fees for WBOPDC range from $4,500 – $8,500.
- Notification status of consents processed:

Year	Non-notified	Notified
2006	693	13
2007	566	12
2008	701	6
2009	704	22
2010	398	5
2011	365	5
2012	374	3
2013	408	3

4.10. Q33. We have had very few pre-hearing meetings since August 2005. Applicants do not appear to want the associated costs and delays. They just want to get to the hearing and address the issues there, as they know submitters are unlikely to compromise in a pre-hearing meeting.

4.11. Q37. Consent conditions have been consistently applied, tested, and refined over time with the consultant community. This has achieved a fair and reasonable balance, and practical mitigation of the effects of the application in the light of the types typically presented to Council.

4.12. Q38. Conditions on resource consents are not onerous in our view. Our conditions are requirements to meet the plans as applied for, such as engineering services and access formation, or operational (noise, landscape, hours of operation). The main impediment to the viability of developments is the cost of infrastructure.

5. Plan Changes

5.1. Q41. It is important to have the appropriate zoning for the development, otherwise the consenting process is more complex, and hence time consuming and costly.

5.2. Q42. We undertake plan changes on a regular basis (every 12-18 months) and commonly add private plan changes to those processes at the request of developers. This significantly reduces costs to the applicant as they prepare the S32 Report to our satisfaction and we take responsibility for processing the plan change.

5.3. Q43. The only plan changes that may "hinder" the supply of capacity are those whose purpose is to impose restrictions related to natural hazards or ecological or cultural values, otherwise plan changes play an enabling role by zoning land to allow development to happen, including the provision of infrastructure.

6. Infrastructure

6.1. Funding infrastructure is a major barrier to developing land for housing and is a significant issue for Councils.

6.2. Q50. Debt levels are a significant barrier to the provision of infrastructure. In particular is the cost of that debt (interest) and how to fund it, particularly when actual growth is lower than the planned growth, as happened with the recent GFC. An option would be for Central Government to set up an infrastructure fund with interest free loans available for critical infrastructure. Repayment should be spread over the life of the asset being funded. They could also be tied to the actual take up of sections for housing which would help considerably with the cashflow of Councils and developers and consequential improvement in the affordability of housing. Criteria would need to be applied to ensure appropriate use of such a fund.

6.3. Q51. Costs of infrastructure are variable and depend upon the circumstances of each authority. They can also vary for different locations within an authority because of different requirements such as adequacy of existing infrastructure in that particular area. The use of the word "unnecessary" is inappropriate. There is a cost to providing infrastructure and it has to be paid for. In this regard it is noted that Councils provide and fund the infrastructure, and thus take the risks in recouping its costs for the profit of the private sector.

6.4. Q53. Greenfields are generally more expensive to service than infill, with the latter benefiting from the availability and capacity of existing infrastructure. However

sometimes infill requires existing infrastructure to upgraded for capacity reasons and therefore can be more expensive than greenfield.

6.5. Q54. Development and financial contributions are used to recoup the costs of servicing land and is considered to be efficient. If such contributions were not charged, the infrastructure would need to be provided by the developer at their cost which is not likely to be sustainable. Similarly rate funding of infrastructure is not sustainable for many communities because of the significant rise in rates that would occur. If our District's financial contribution regime was converted to become totally rates funded, ratepayers would face a 25% increase in their rates bill. This would be unacceptable from an affordability perspective, plus it would have the effect of reducing growth significantly as new residents and home owners would be put off by the high rates.

6.6. Q57. The recent change to require long term infrastructure strategies will have no effect on the availability of land for housing. Prudent Councils are already using such plans.

7. Development Community

7.1. Developers and builders tend to aim at the medium to higher end of the market because of higher profit per section/dwelling and their perceptions of housing preferences. Little research has been done in NZ on this, both in terms of typology of housing and costs. The distribution of the cost of new dwellings (as indicated by the value given on building consents for new dwellings) in residential zones for the Western Bay of Plenty District is as follows:

Value	**%**
<$200,000	12.5
$201,000 - $300,000	39.5
$301,000 - $400,000	26
$401,000 - $500,000	9
>$500,000	13

7.2. What is not known is whether this represents the actual demand for housing, or is it simply the market demand as determined by those able to pay for housing?

7.3. Q71. Developers frequently use covenants. However these do not so much affect the supply of sections and housing, but the type and design because their restrictive nature excludes affordable housing.

8. Other matters

8.1. The Report states that "A lot of factors affect the supply of affordable housing, but one of the most important is the availability of land." The Commission produced a graph showing the relative changes between land prices and dwelling costs (p4), but what is not shown is the cumulative effect of the two, or how the cost of home ownership has been increasing at a disproportionately higher rate than increases in income. It is this widening gap that has caused the affordability issue: the significant increase in the size of mortgages compared to the owners ability to pay.

8.2. Q8. Other statutes have a significant effect on the costs of providing housing in NZ. In particular are recent changes to the Building Act and Health and Safety legislation. Some examples are:

- Changes to the Building Act have resulted in the cost of obtaining a consent for a dwelling increasing from $2,600 in 2006/07 to $5,900 in 2013/14 (average per consent for WBOPDC). This increase is directly in response to changes in the Act.
- Health and Safety changes have had a significant impact with examples such as scaffolding ($5,000) and nets ($1,000).
- Additional compliance costs plus internal audits.
- Additional paperwork (eg a driver having to complete a Task Analysis report for delivering a truckload of materials to a building site). Also additional co-ordination, and hence down time, of sub-contractors has added another 2 weeks onto construction time and results in less dwellings being constructed per team per year. As a consequence one company's Construction Manager's output has dropped from 22 to 14 dwellings per year.
- It is estimated that the cost of building the same house has risen by 12% since 2011, of which half is attributed to legislative requirements and half to the cost of materials.
- There is concern within the industry that many of these changes have been introduced with a lack of evidence base, particularly around cause and effect, and without understanding the impact on the cost of housing.

8.3. Fig 1 p2.

- Need to add another contributor: Rural land - the need to protect high quality land for food production.
- "Other infrastructure or regulatory requirements" is posed as a negative. It would be more accurately worded as follows: "the extent to which residential land use needs to contribute to infrastructure such as wastewater, roading, and recreational land".

8.4. Land is frequently banked by developers. As Q69 suggests some of this is held in anticipation of future price rises. It is also purchased in advance so that the developer has an ongoing supply, and to minimize competition with other players in the market.

8.5. Another significant problem is that the value of the land can be greater for the current land use (e.g. horticulture) than it would be if converted to housing. This is an issue in our District where both Katikati and Te Puke are effectively being strangled because of the high value of kiwifruit orchards, and there is limited choice of alternative locations for growth that could be affordably serviced.

8.6. Similarly, there are instances where land could be feasibly developed but the current owner is not interested in pursuing residential development or selling to a developer. There are examples of reasonably sized landholdings, zoned Residential and served with infrastructure, that are owned by independently wealthy individuals or family trusts that are not motivated to sell or develop.

8.7. Q63. Heritage has been singled out as potentially impacting on the supply of land. So do other matters such as natural hazards, landscape and ecological values. These can all have a valid impact on the supply of land, however if structure planning and rezoning is done properly, it will involve a constraints analysis that will identify such matters and present solutions for dealing with them. Thus any impact will be known by developers.

8.8. Q64. Maori land. Council, in conjunction with its SmartGrowth partners and tangata whenua, has produced a "Maori Housing Toolkit" which is a step by step guide for Maori Trusts to navigate through the labyrinth of regulations for building housing on multiple owned Maori land. This starts with how to form a trust, through to obtaining finance, and planning for and gaining planning and building approval. In this regard (Q65) the RMA and infrastructure requirements are no different to what is required for any other comparable development, nor should they be. The real barriers are related to:

- The complexities related to multiple owned Maori land, Te Ture Whenua Maori Act, etc.
- The level of knowledge of the participants of the processes, and their ability to engage consultants to assist.

8.9. Q70. Whether rates are based on capital or land value does not have any influence on the supply of land in our District. The most effective change to the rating system would be to be able to charge full residential rates on any greenfield land if it can proven that such land will be needed for residential development within, say, 5 years. This is the reverse of the Urban Farmland Roll that existed within the Rating Act some years ago.

8.10. Q72. HASHAA. The advantage of this Act is the ability to use the restricted resource consent process, rather than the longer plan change process. In particular is the limited notification provision, and removal of recourse to the Environmental Court.