

15 October 2016

Better Urban Planning Inquiry
New Zealand Productivity Commission
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Re: Draft Report on Better Urban Planning Inquiry

This submission is from the Architectural Centre, an incorporated society dating from 1946, which represents both professionals and non-professionals interested in the promotion of good design.

1. We commend the Commission on the quality of the draft report. It is a considered and comprehensive document, which, within the given scope, identifies important issues and complexities.

Proposed Legislative Framework

2. The proposed split between urban environment and natural environment appears to us to be a crude division. How, for example, does the rural environment fit into this framework? There is an interaction between aspects of nature and urban life which appear to us to be difficult to separate simply. For example, in the built environment sustainable strategies such as grey water systems, water sensitive urban design and designation of green corridors cross categories of the urban and natural environment. Issues pertaining to resilience are similarly complex. We agree with the statement that: *"the quality of the natural environment in urban areas plays a major role in the liveability of cities"* (p. 197). Consequently **we do not favour separate planning and natural environments laws** (pp. 10-11).
3. The Commission holds up transport legislation as being successful and effective (p. 6). Our observation is that the current transport decision-making framework has resulted in conservative and inflexible thinking that disproportionately supports infrastructure for private motor vehicles, which are an inefficient transport system in terms of land use, carbon and fuel efficiency. This is clearly reflected in the finding that: *"New Zealand had the lowest average public transport kilometres travelled per person, the lowest number of public transport trips per person, and the lowest share of overall trips by public transport"* (Bachels, Newman & Kenworthy paraphrased, p. 145). It is also relevant to note that most transport decision-making in New Zealand is initiated by central, regional and local government, and so does not involve a significant private sector component, in the same way as changes to our built and natural environment do. This aspect of the RMA contrasts transport legislation.

Participation, Democracy and Quality Decision-making

4. We are very concerned about the intention to narrow parties able to participate in planning decisions (pp. 185-186). In the introduction to the Draft Report this is framed in terms of avoiding *"vexatious litigation"* (p. 9), but we find it difficult to believe that this is a serious or substantial problem. As the report states, in 2014/15 there were only 1% of subdivision resource consents publicly notified; only 2% of land use consents publicly notified (p. 160, Table 7.1), with 99.8% resource consents approved (2014/15) (p. 161). Any planning legislative



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framework must ensure that there is scope for rigorous debate and challenge at the more extreme end of the spectrum of proposals. **A framework which uncritically guarantees development will deliver poor built environment results.** The current threshold for public notification of more than minor effects appears to us to be very appropriate.

5. We oppose R7.5, that *"Any appeal rights on Plans in a future system should be limited to people or organisations directly affected by proposed plan provisions or rules"* (p. 187). While this narrowing may be appropriate in many instances, it could be inappropriate in relation to a site or proposal which has broader interests (e.g. one of heritage value, sites in public ownership etc.), and could exclude the voice of relevant community groups (pp. 9, 158). Many of these groups have important roles representing different parts of the community. Iwi, Forest and Bird, Historic Places NZ, the NZ Green Building Council, the Urban Design Forum, and the Civic Trusts throughout NZ, for example, have relevant expertise and important contributions to make.
6. The Draft Report states that *"[a]llowing anyone who made a submission on a Plan to appeal council decisions (as is currently the case) introduces uncertainty and delay for unclear benefits."* (p. 187), and notes that *"it has become clear ... that the threat of notification weighs heavily on developers"* (p. 186). **Given the context in which 99.8% of consents are approved, shifting the litigative balance further towards an applicant appears to us to be patently unfair.** How are the interests of the community vs individual rights to be evident with such an imbalance? Often it is community groups which play the important role in protecting the communal values that are often sacrificed in arguments from the business sector because of the inherent tension between individual and communal interests (Hardin, 1968). In addition, the cost of legislative action is a significant barrier to participation beyond the initial submission stage, so greater exclusion would only skew power further away from communities.
7. This imbalance is often one of businesses or organisations (with paid participants, and well-resourced legal teams) opposed by community groups of volunteers or neighbours - who are not well-resourced for legal action, are required to both fundraise and work on any submissions in spare time, and often must rely on finding lawyers and experts willing to work on a pro-bono basis (at least in part). In addition to issues of inequity there are also issues of inefficiency, and, with parties commissioning experts, the independence of evidence can be inconsistent.

Decision-making

8. The need for efficient processes, and a desire for local research, suggest that a **central independent organisation (such as the EPA) should be charged with the identification and organisation of experts rather than parties to appeals.** This evidence could be paid for, as it currently is, by the applicant. Such a system would significantly reduce court time and increase the impartiality of evidence, which the EPA could collate to contribute to a larger database forming the evidence base for further decisions. Such a system would support R9.2 *"As part of the transition to a future planning system, central government should establish a centre of excellence or resource that councils could draw on to conduct real-options analysis in the development of land use plans"* (p. 238).
9. We are concerned that the Draft Report appears to give priority to the feedback that *"the threat of notification weighs heavily on developers"* (p. 186) over any finding regarding the quality of decision-making (e.g. *"Whether wider*

participation has led to better decisions is potentially empirically testable, but the current insufficient data means such testing is impossible" (p. 186)). How is the Commission going to understand whether or not the current system has improved decision-making? We agree with the Commission's finding F8.6 that: *"Recent steps to strengthen central government oversight of the Resource Management Act have focused predominately on process indicators (such as the time taken to process consents) rather than the environmental outcomes of planning decisions" (p. 206),* and consider that **the current focus on expediency of decision-making over quality outcomes needs to be reversed.**

10. We endorse the Commission's call for greater inhouse expertise in local councils in areas of Māoritanga, environmental science, economics, communication, facilitation and mediation (p. 6). We also note that council capacities regarding: urban design, sustainability and heritage are usually under-resourced. A question remains regarding who will pay for this (as this will affect the viability of the proposal). We see this as an important issue for the Commission to also address. As the draft report notes, many already councils have difficulty funding aspects of new infrastructure which are not economically viable in a narrow sense but are critical for the public good: *"Fast-growing cities may sometimes need large, costly city-shaping pieces of investment that neither NZTA nor local councils are able to fund or finance out of their normal budgets. If these investments have wider benefits, as they sometimes will, then a partnership approach with central government is called for" (p. 245); "available evidence suggests that infrastructure projects can fail to pay for themselves" (p. 246);* and F10.2 *"Financial modelling provides some support for arguments that it can take a longtime to recover the costs of new infrastructure" (p. 254).*
11. In a similar vein we support the Commission's call for decisions to be based on local evidence. We see this as complementing, rather than replacing, the need for relevant international studies. In order to meet this request for locally-based studies, funding will be required to produce relevant research (p. 6). Who will pay for this? There is potential for the EPA, DoC, the Ministry for the Environment, and Heritage NZ to contribute to this work (pp. 204, 206).
12. We encourage the Draft Report to also be informed by psychological research in relation to decision-making and participation. There is significant work done which indicates that human beings are poor at engaging with events forecast to occur in the distant future, and with abstract ideas (Lowenstein et al. 2001; Slovic 1987; Slovic et al., 1982). This means that aims for greater democratic input into Plans, rather than Consent applications,¹ will likely fail without the input of this expertise, as public engagement is more likely to be successful for near future and concrete proposals (i.e. actual consent applications). This psychological input would strengthen the aims to *"encourage the active use of tools that ensure the full spectrum of interests is understood in council decision-making processes, and that allow the public to understand the trade-offs involved in decisions" (p. 158)* and achieve *"communication and engagement processes that promote the legitimacy of the regulatory regime" (p. 47).*
13. Apart from our reservations expressed above regarding reduced participation, we support the proposal for a permanent Independent Hearing Panel (pp. 188-189), and consider that such a group would enable more consistent expert decision-making. It would need expertise in design, including sustainable design, urban design and heritage, and could be supported by the EPA.

¹ *"The general public would continue to be able to participate in the processes for reviewing land-use plans, but the ability to appeal council decisions on a Plan would be limited." (p. 335).*

14. We appreciate that the Draft Report acknowledges that there are voices which are not currently heard in RMA processes: *"Those who do not have the time or capability to make written submissions are underrepresented"* (p. 187). **Is it possible that similar issues might also have affected the capacity of some sectors of the community to participate in the consultation related to this report on *Better Urban Planning*?** As indicated above, the current system also privileges those with financial resources beyond the written submissions stage of RMA processes.

Sustainability and Climate Change

15. **The Centre strongly supports a Government Policy Statement (GPS) on Environmental Sustainability** (R8.1 pp. 208-209). The need for this is apparent in the report's statement that: *"New Zealand has no authoritative policy that sets out the country's long-term vision and direction for environmental sustainability ... The end goal would be to have the GPS embedded in all levels of government decision making"* (p. 221).
16. The draft report distinguishes the roles of planning for climate change adaptation and mitigation, stating that planning's role *"in mitigating New Zealand's GHG emission is less straight forward"* (p. 196).
17. **We consider that climate change mitigation is as, or more, important than adaptive strategies** (pp. 210-213), and that mitigating the consequences for young and future generations must be prioritised. Built environment contributions to CO₂ emissions are not simply limited to transport but also include: construction, building design and operation, and issues of adaptive re-use, which may need to be understood in terms of local site-specific conditions, as well as under the Building Act (pp. 213-217).
18. We also agree that *"market-based instruments can lower the cost of achieving environmental objectives"* (pp. 6, 218), but caution that **such measures must be understood within a context of finite natural resources and specific carbon emissions reduction** policies, standards and international commitments. We note that any proposal for the use of market-based instruments must be scrutinised to avoid perverse outcomes which undermine meaningful environmental outcomes (e.g. the trading of bogus carbon credits).
19. We support R10.1: *"A future planning system should allow councils to: set volumetric charges for both drinking water and wastewater; and apply prices for the use of existing local roads where this would enable more efficient use of the road network"* (p. 258).

Urban Design and Heritage

20. The Architectural Centre considers that the draft report is particularly light on issues of heritage, urban design, and amenity (p. 42). Just as the report has identified the need for environmental monitoring, the monitoring of built environment outcomes is currently lacking. This is strange for us given that historic heritage is a matter of national importance (RMA s.6.), and amenity is also a Part II matter (RMA s.7).
21. For example, it is well-established that retention of built heritage has economic benefits for cities, though the economic return is at the communal level, rather than directly to the owners of individual heritage buildings. Donovan Rypkema, of Place Economics, and Historic England have published a number of relevant studies (e.g. Leeson, 2016; Rypkema, 2012; Rypkema, 2014). Rypkema, for example, has found that heritage buildings support tourism (and that heritage

tourists stay longer, spend more than other tourists), and employment. The Spargo Report estimated the benefit of historic property tourism for Wellington in 2007 was \$39 million (Spargo, 2007, [11]).

22. **Good urban design and amenity have value** (CABE, 2001; McIndoe et al., 2005). While, we agree that there can be variation in the type of urban design advice that can be given, which can be due to site-specific issues (pp. 170-172), we do stress the importance of good urban design, and the appropriateness of councils reserving discretion on urban design (p. 160). We also encourage the Commission to recommend a review and revision of the *Urban Design Protocol* so that it better operates to provide guidance to the Court, councils and applicants.
23. We strongly oppose the suggestion to require councils *"to pay for some, or all, costs associated with their visual amenity objectives for private property owners"* (Q7.5, p. 195). We do not consider that reference to local body heritage grants as a viable model for this (p. 194), not the least because of the ineffectiveness of the paltry sums granted for achieving heritage outcomes. This proposal would appear to us to require unnecessarily complex calculation of value and be largely unworkable, when many aesthetic decisions (e.g. proportions, colour etc.) are not financially onerous, but relate to the skill of the designer involved. Often pre-application meetings can address many of these issues without unreasonable delay or penalty to applicants.
24. In addition, the report avoids the complications which are likely to result with the earthquake prone legislation which is about to come into force. If the Commission considers council should fund the consequences of DP amenity provisions, is it suggesting that government consequently fund the heritage and amenity ramifications of this legislation?
25. Finally, in relation to heritage issues, what are the consequences of the Treaty in relation to urban heritage and amenity?

Housing



26. We support aims to ensure better access to housing and encourage more efficient land-use to achieve this (building up rather than building out). Two key issues which we believe prevent the best use of land for housing are requirements for on-site car parking, and the urban form resulting from sunlight

access planes and building recession planes. We encourage the Commission to investigate:

- a) the efficiencies of using land for on-site car-parking and associated driveways. Not requiring on-site car-parking would both enable greater development choice, housing density, and transport options, including for cycling infrastructure (e.g. *"The majority of motor vehicle/cycle crashes occur at urban intersections and driveways"* Cycling Safety Panel p. 10).



- b) removing daylight access planes (DAPs) and building recession planes (BRPs) and increasing residential building heights (3-5 storeys) with a requirement for backyards along the lines of a terrace housing suburban form. We recommend that requirements for front yards be limited to 1.5m, backyards be at least 9m, with no requirement for side yards. We believe that this will appropriately increase density and ensure good open space provisions. Removing the current DAP and BRP rules would also address the current inequity which permits developers to build tall attached multi-dwellings, but prevents single lot owners from having similar rights.

27. In closing, we make two final points:

- a) the Draft Report both observes the dependence of the RMA on the Town and Country Planning Act, including *"[t]he carrying over of old traditions and institutions"* (p. 5), and the inability for legislation on its own to implement meaningful systemic change. From our own observation, it is apparent that local government frequently struggles to keep its head above water in relation to requirements to comply with changes in legislation. The parroting between hierarchically distinct documents, or parts of documents, is one example where insufficient resourcing and expertise disables innovation and sophisticated implementation of planning legislation occurring at local government level. If central government wants meaningful change to occur at local government level it must provide meaningful resourcing.
- b) the focus on infrastructure in the report appears to assume large, invasive infrastructure, likely to have significant land use requirements. We urge the Commission to ensure that the planning systems it proposes prioritises light interventions. In addition to reducing environmental impacts, the rationale for suggesting this is the increasing role of technology to make heavy infrastructure less necessary. Information sharing and travel demand

management (TDM), including behaviour change, for example, can significantly improve transport effectiveness without resorting to building more motorways. The advent of 3D-printing may significantly reduce inter-regional freight demand. The increasing mobility and sophistication of technology is likely to facilitate smaller, locally-based, de-centralised solutions which will radically shift the current understanding of what infrastructure means and how planning might best facilitate how communities live. We endorse the proposal that "[a] future planning system needs to be responsive in providing key infrastructure" (p. 333), but only if such a system is also responsive to changing notions of what infrastructure means, and whether infrastructure is actually needed.

Thank you for this opportunity to comment on the Productivity Commission's Draft Report on Better Urban Planning. If you have any questions please do not hesitate to contact me.

Yours faithfully



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