BETTER URBAN PLANNING SUBMISSION

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Introduction

This is not a comprehensive submission but tries to focus on area's where my practice knowledge and research provide me with insights that may be of use in the Commission's work.

Chapter 2: A Rationale for Planning

The discussion on what planning is seems to have been undertaken with only limited understanding of the history of planning. That history can tell you a great deal about why we need planning, what it addresses and how it might be defined. Using definitions from professional organisations such as the APA and the NZPI will not prove useful as they are linked to defining planning as a professional activity which is clearly not what is needed here. Equally, planning theory is not going to produce a universal definition of planning because theory underpins definitions it does not produce them. Further, as Gordon Cherry a practitioner turned academic observed 'planning is what planners do' which in the New Zealand context I'd modify into planning is largely what planners are allowed to do. Since 1926 planning in New Zealand has be a statutorily defined activity and none of our four planning acts contained any definition of planning. Thus to start deciding if some present day activities such as urban design requirements fall within a definition of planning is likely to produce nothing except circular argument. As an activity prescribed by statute, planning and planners are obliged to take account of the advice provided by the ministry in charge of that legislation. In the case of planning that ministry is the Ministry for the Environment (MFE). Thus as this report identified MFE produced the Urban Design Protocol and appointed champions to advocate its use in planning which helped to unleash the present day enthusiasm for urban design beyond the public realm.

Ironically planning was originally design based with the first town planning qualification in 1909 being the Diploma in Civic Design at the University of Liverpool. To enter the diploma candidates had to already be qualified as architects, engineers or surveyors. The first New Zealand qualification was the 1957 Diploma of Town Planning at the University of Auckland was based in the existing School of Architecture. The fact that the latter university planning schools all had social science bases is a reflection of the time in which they were established. In most countries town planning is considered to have a strong urban/civic design base as it contributes to amenity. Amenity values have always been part of what

planning attempts to achieve and are about the central aim of planning to try to create liveable communities. New Zealand's planning legislation (Town-planning Act 1926, & Town & Country Planning Acts 1953 and 1977) until 1991 did not include what we might now call design and appearance controls which is presumably why there present day use is contested. However, most our countries have retained a much stronger design underpinning to their planning legislation and design an appearance controls are common. Controls over design features as basic as the colour of a door are commonplace. Generally the return to an urban design focus in planning is viewed as planning returning to its roots because that is part of the expectation of politicians and communities. The foci of planning changes in the same way as the use and evaluation of land changes as illustrated in the changing nature of Petone. Nothing, be it planning or land use is frozen in time.

A useful source in the search for a definition of planning and a definition of its appropriate scope can be found in Yvonne Rydin's *The Purpose of Planning: Creating Sustainable Towns and Cities* (2011). From its broadly based discussion emerges a picture of planning not as an 'all-powerful process of shaping our cities' (Rydin, 2011,2) but as an essential element of a solution who have a key role as a 'guarantor of a desirable environment within which we can live and work to our full potential'(Rydin, 2011, 8). A knowledge of planning history will also reveal that it is society, the government and communities who determine what a desirable environment is. That is why there is no universal definition of planning. This I think takes us back to the planners trying to assist with creating liveable environments. Planning has always depended on acceptance of the right of government to restrict individual property rights in the interests of the community as a whole. Planning emerged because the exercise of individual property rights in the Industrial Revolution when more people began to crush into rapidly and uncontrolled cities, created adverse conditions for everyone. Disease like typhus killed the urban poor and Prince Albert. Controls through public health and town planning aimed to limit individual property rights to produce an acceptable living environment for all. One of the issue that does seem to have been overlooked is the future orientation of planning which is what separates it from other professions. Planners effectively work in the present and the future and given our predicative tools with regard to the future are poor in many areas that does expose plans and planners to great risk in terms of making their future predictions accurate. When the RMA was introduced it replaced the former 5 year planning timeframe with one of 10 years. The intention was to reduce the cost of plans by requiring them to be reviewed less regularly. In doing that and making district and regional planning process more complex and time consuming , the change induced a higher degree of uncertainty into the process and with it the potential for inaccurate predictions of the future to creep in. This can help to induce a lag into the system between what could be realistically be predicted about the future on which to base a plan and what actually happened.

The Scope of Planning

With the 'vaguely worded' examples of urban design provisions in plans it was not clear from what part of the plans these had been taken from. It is worth remembering that plan provisions only have legal effect if they are rules or specific assessment criteria. If they are objectives or policies then they will be used in any assessment of an activity requiring a resource consent along with a wide range of other factors. If these extracts are part of the text the reality is that they are good advice to be accept or rejected at will. In many plans Design Guides fall into this category. What seems to be happening with urban design controls in our plans is an attempt to return to some almost utopian view of what communities are and how they function. Much of the urban design practice in New Zealand seems to be informed by American based models particularly New Urbanist models. New Urbanism has always seem to me to be based on ideas of how small town America functioned in some past almost utopian period, a place where people walked down the road stopping to socialise with the neighbours who were sitting in rocking chairs on front porches. Such towns do exist in America where the tradition was not to fence properties and where gardening seems to have been much less part of their urban traditions but for much of America they have little relevance to their urban experiences. While that style of living exists in dying towns in the mid-West and bears little resemblance to either modern day America and even less to present day New Zealand. In applying these overseas derived urban design ideas to our urban areas we are imposing a model that never existed in New Zealand. Our urban traditions are much more British based with fences marking property boundaries and rear gardens as the focus of family life. Thus our urban designs are derived from a tradition where amenity controls created living environments that equated with what people expected in their communities. With increasingly small sections that make better use of our urban land raises with it the need to allow residents to have some private space and that might involve having the front yard shielded from noise and traffic by a fence. While you can make an argument for not having such fences to allow more observation of properties to protect them from burglaries, the question must be asked about who will actually be in those suburbs for most of the day to undertake that surveillance? If we are to have urban design as part of our plans then it must be a New Zealand focused version that reflects our urban heritage and our cultural experiences, not some poorly adapted overseas models.

How Should We Plan

Here I think there needs to be some care about suggesting that cities are now becoming so complex that they cannot be effectively planned for. This work is based on the large overseas cities with populations larger than New Zealand as a whole and in quite different contexts. While Auckland is convinced it is an international city in reality it is on a level with the secondary Australian cities such as Adelaide and Perth rather than Melbourne, London and New York. Equally, we cannot create a planning system for the country based largely on Auckland's needs. The problems created by suggesting our cities might be too complex to govern/plan for is highlighted on p12 with the example quoted from Moroni i.e. '..site Z can

be developed within 2015 by building three-storey residential blocks for y number of people..'. This suggests a planning system where zoning is directly related to achieving particular densities in a particular area through a process of neighbourhood/site specific zoning and probably through specific site applications. That is not a type of zoning that has ever been used in New Zealand in terms of creating zones to achieve overall densities by site by site applications. New Zealand planning has had zones that determine the nature of development and specific application but the requirement for an application tends to be determined by the potential effects of a proposal and the ability of planners to predetermine those effects and develop controls to, as the RMA requires, 'avoid, remedy and mitigate' the adverse effects on the environment. New Zealand's use of zoning usually includes permitted activities which are permitted because their effects can be determined as the plan is being developed along with the means of addressing those effects, usually referred to as performance or development standards. Development defaults to some type of application process when the effects cannot be judged ahead of time and dealt with by performance standards usually because there has been an attempt to allow flexibility in what can be developed on a particular site. Most overseas planning systems also link planning and housing so that the production of housing is specifically linked to planning systems and in most cases national targets are produced at the national level and then disaggregated to local councils. This type of link has never existed in New Zealand and has I believe added to our issues in producing sufficient housing of a type and location consistent with the planning outcomes sought.

Q3 A New Model

If we want a new model of planning for New Zealand we must derive it from our planning experiences, what suits our unbalanced urban hierarchy and which reflects the expectations and needs of all urban dwellers. Essentially there are three strands in our planning history viz:

- Planning as designing living space – Garden city/suburbs, state housing programme
- Planning as improving the urban fabric – civic design & City Beautiful
- Planning as the regulation of space & activities – planning legislation, district or town plans etc.

Perhaps we need to go back and decide which of these three strands are still needed in planning in urban New Zealand and how they should best be provided for. Having attempted to make an effects based approach work in an urban sphere through the RMA we need to abandon that as a sensible way of planning for urban areas. We probably need specific urban planning legislation with separate provision for Auckland and other fast growing centres that might include, Christchurch, Wellington, Hamilton and Tauranga. That would ensure that urban New Zealand gets the type and style of planning suitable for it. We also need to look at how much urban design as presently constructed should apply outside the public realm. We need a public conversation on what urban design means in this country and what design standard we see as essential outside the public realm. I'm

suggesting many of our existing tried and true, to use an old term bulk and location controls, controls aimed at securing largely amenity outcomes, already achieve much of what the public expect in residential areas. Planners continue to use these controls because they work at the lowest cost possible in terms of achieving amenity outcomes.

We also need to look why subdivision and the provision of infrastructure which look at a range of issues, particularly around the costs of and who pays for infrastructure provision have always been a very poor fit with the RMA. This area needs to be taken out of any planning legislation to remove a difficult area which would lend itself in such a small country, to some nationally determined standards. I would also make the revolutionary suggestion that housing and planning need to be directly linked in any legislation for our faster growing centres. That will encourage better planning for housing that has created some form of crisis for most of the twentieth century and continues to be one without a visible solution in the twenty-first century. In the Auckland context that would allow much closer planning to be taken about where intensification should take place, how many additional dwellings that area would yield and how that intensification would be achieved. Challenging perhaps but maybe what is needed?

Plan would also benefit from being less bulky and wordy which is a consequence of including what is in effect the process of developing a plan in the plan itself. By that I mean the inclusion of issue, objectives and policies in plans. We also need to look at where and how public consultation can be meaningfully included in planning processes. Those directly affected who will live with the consequences of a development long term will always be the most important group to include. The issue of notification also needed to be addressed. From the outside it looks to be a very uncertain process but the statistics suggest there is a uniformity of practice that has been sustained for several decades. Over that period no more than 7% of planning applications are publically notified and in most years it is less than 5% which suggests a very developer responsive system. Perhaps the time has come to pre-determine what will be notified and when as was done under previous legislation so there is less angst around the process and submitters do not form unrealistic expectations about their role in planning processes. In reality even if an application is notified the complexity of RMA process and its reliance on more and more documentation, expert opinions and the central role of lawyers means that the average resident is not in a very powerful position in having their voice heard or their concerns taken notice of.

Q5 Property Rights and Planning

Property rights have always been seen as a problem in terms of how planning limits those rights. However, we do seem to overestimate the degree of private property rights we actually have left or have been able to exercise since the nineteenth century. Historically the full exercise of our supposed property rights were at their greatest prior to the Industrial Revolution and became immediately more limited when we began to suffer the effects of having no controls when we began to live in larger urban centres. At that point however

those property rights given the concentration of land and capital in relatively few hands. When people began living in closer proximity and the ownership of land and capital expanded private property rights had to be limited if both individuals and the community as a whole were to be able to live in growing towns and cities. The surrendering of property rights that has taken place is not just a product of planning restrictions but at least in a planning context that surrender of property rights has been undertaken on the assumption that the community as a whole benefits in some way e.g. by not having to breath polluted air to the detriment of everyones' health.

Boast & Quigley's assessment of planning role in private property rights and planning again seems to draw on overseas models again hence the reference to zoning laws which have never existed in New Zealand. Zoning in New Zealand emerged through the Town-planning Act 1926 through the following innocuous statement that town plans could allow 'areas to be used exclusively or principally for specific purposes, and classes of purpose'. Subsequent legislation in fact never required zoning but it had proved to be a quick, easy and cheap way to cope with already developed land and to separate incompatible activities. It also allowed compatible activities to be grouped together and to be subject to particular controls to retain compatibility, secure amenity outcomes etc. That is the New Zealand concept of zoning which has little in common with the American concepts of zoning. In exchange for giving up some property rights planning delivers certainty, certainty about what I can do on my land and certainty about what my neighbours can do on their land. Certainty is enormously valuable because it feeds through to a range of economic decision making. If the certainty of what the plan says are to be varied then individuals are assured in terms of their surrender of property rights that they will get some say on if that variation/development will be allowed. Some groups of residents in Auckland's concerns with the Unitary Plan seem to stem from the fact that they feel that basic property rights/planning compact has been undermined because there was no process for them to be involved in deciding where intensification takes place. It is this essential compact/ agreement that underlies the private property rights/planning relationship.

Qs 9 & 10 Public Consultation & Participation

The two most important consultations processes are first when a plan is written and then when a particular development has been proposed that has significant impacts on local amenity values. In the first situation the most important participants are the community at large as the plan could in time transform the nature of that community. In the second case it is the affected parties who will direct bear any effects from a development and who may have the amenities that value in their area transformed permanently. In both cases the issue is how you achieve meaningful consultation and how to change the public perception of what consultation is. Consultation is essentially the process of identifying and articulating ideas/response/concerns about what is being proposed. In this conception no voice is more important than another and some views will not find expression in what is actually done.

Unfortunately some people these days seem to view consultation as telling decision makers what to do and if their view is not reflected in what is done they believe the process is a sham. In the past the planners in their assessments of what was proposed by way of submission or participation outcomes, with local body politicians weighed up all they heard and used that to inform a decision which was intended to achieve the best outcomes possible for as many participants, proposers, the community etc. that as was possible. Today the community or parts of it see consultation as just another adversarial process with winners and losers and with no real trust in their elected politicians to make the 'right' decision. The greater intrusion of lawyers into planning processes has genuinely made planning processes appear more adversarial than they need to be. Equally, consultation like appeals have become uneven battlegrounds with individuals and communities feeling underpowered in the system. Given the bulk and technical nature of many application and plans they have a right to feel that way. What we need to do is to re-establish some more realistic ideas about consultation and participation and decision making. The Making Good Decisions programme, while probably improving the overall quality of decision making, needs to be revisited. What I doubt was envisaged at the outset was that 'independent' commissioners would so effectively replace councillors or that being a commissioner would become a career and important income stream for some commissioners and their companies. If commissioners are to displace elected councillors in this way we need to be very sure that they are quality decision makers and that they are accountable. At present the work of a commissioner cannot be complained about unless they belong to a professional body and even then it is not certain that they will be covered in their role as commissioners.

We also need to be more realistic about collaborative processes. Getting people together to sit down and talk about an issue is all very well and can produce some useful compromises. However compromises made in more theoretical situation e.g. when a plan is being developed are much more likely that ones' where real resources and issues are at stake. If for instance my farm or business needs a certain amount of water then there is no way I can or will agree to a compromise that delivers anything less than what I need. There may in many cases be no other effective way of obtaining those resources so compromise of the type needed is never likely to be on offer. That latter is where no compromise may be able to be found and where the relative power of the participant becomes important. A homeowner is no match for a company complete with technical and legal assistance and I say that with some conviction having been part of an Environment Court mediation. In my and others experiences collaboration is not a rapid process and sitting talking about an issue may achieve little except to confirm set positions.

Qs18, 19 & 20 RMA

Some of the questions posed her I have already discussed above. Most of the run down on the RMA's failure such as the lack of central government guidance and participation are

points well made. I think the problems of the RMA were compounded by limiting it to some truncated form of sustainability, called sustainable management, which assumed the environment alone could be the sole focus of planning legislation and the social and economic could be ignored. That was always unrealistic as planning has always worked at the intersection of all three and you cannot simply ignore the other elements. The RMA was also introduced when local government was just settling down from the local government reforms of 1988-89. That process also introduced the policy implementation split which was completely inimical to good planning processes. In most cases local bodies divided up their planning departments putting the policy planners who wrote the plans in one department and the resource consent planners who implemented the plans with building inspectors and dog rangers. This was a disaster for planning as it cut off the good feedback loops that are at the heart of good planning processes. Now 25 years later the planners who write plans have often had no experience of implementing the plans they write and resource consent planners seem to be regarded as second class planners. One of the most confounding aspects of the writing of the RMA was the belief that theory would provide all the answers. No one on the RMA writing team had had any day-to-day experience of local body planning and yet they believed they could write legislation that would work in practice.

Much of the life of the RMA has been marked by the demonising of planners and what they do. Planning in the 1990s became a toxic profession because planner bashing was regarded by the public and politicians to be quite an appropriate thing to do. As a result to a degree the profession became cowed and unwilling to take the sorts of risks that create good plans. Successive central and local governments have become enamoured of a variety of overseas approaches which we have imported and tried to use without asking how they needed to be changed before they became suitable for use in this country. We need to have more faith in the techniques we have developed over many years and planners and politicians alike need to accept that we continue to use some methods developed in the past because they work. A trend also seemed to have developed that suggests the complexity of a plan in some way reflects its sophistication. That created plans such as the Christchurch effects based plans that were a nightmare to administer. More importantly in the end they did not achieve any different outcomes to the ones achieved by earlier plans. The nonsense that was oft quoted in the RMA's early years that its new approaches would allow anything to be built anywhere as long as its adverse effects could be avoided, remedied or mitigate, was never achievable. That approach would have required incredibly strict controls to deal with the effects of activities and probably the only way to ensure that anything could go anywhere would be to make them subject to a resource consent. That would hardly have been the speedy system promised. Equally, it would have removed much of the certainty planning renders, certainty that follows into land values. It was however a myth that was trotted out regularly and used to suggest that planners and local body politicians were being deliberately obstructionist by not delivering it. The belief that everything could be rendered into effects was simplistic at best and destructive of good planning at its worst. The RMA also lacked any appropriate

recognition of urban issues or planning for urban areas. As a result the effects based environmentally focused RMA was used to plan for that part of New Zealand that 86% of us live in i.e. urban areas. In some ways it is amazing that it has worked as well as it has managed to. Finally the RMA has not worked the way it was sold to the development community and the public alike because it was based on two quite contrary expectations. The RMA was sold to environmentalists and the public as raising environmental standards and protecting that environment and to the development community as an act that would simplify planning, speed up the system and deliver those outcomes at a much lower cost. These are clearly two incompatible goals which have left everyone believing they have been misled or that the planners and local body politicians are just being obdurate in not delivering these visions of the act. The constant amending of the act has left it as a disjointed patchwork that needs to be replaced. The changes were not small changes and as a result systems that might just have been got to the point of running effectively only to have it replaced with yet another version. Finally, the belief in the RMA that all resources can be administered and planned for through some universal system has not worked and the series of exceptions for this or that resource is an indication of that. However, not all the RMA has failed. While not perfect it has made Māori issues and a Māori world view much more prominent parts of planning processes and the acts enforcement provisions work well.

Q21 & 22 The Use of Law suits and covenants as alternatives to planning

The use of covenants and common law solutions are often offered as alternatives to zone based plans. Changing to that type of system essentially shifts the power from the community to the developer if covenant based planning of the type used in America is adopted. Presumably the developer and the local body agree to the standards for development though how much regard those have to adjoin developments is not immediately obvious. In New Zealand developers of residential land often use covenants as sales tool to assure buyers that they are buying an exclusive product. That aspect is surely also part of a covenant based system. The issue also arises when the developer as they do disappears when they have sold all the land involved. That leaves individual landowners or groups of them to maintain the covenants through common law mechanism. One trip to the District Court will convince you that that would hardly be the epitome of a speedy and efficient process. Our court system is already overloaded as it is. If you instead leave the enforcement of the covenants to the local body are you not in effect leaving them with a complex task of administering a huge number of different requirements? If that is the case why not use the more efficient process of having a plan which uses zoning which also includes some input from affected parties in particular? It also leaves the local body to create and secure some overall direction for urban growth and development through a series of agreement negotiated over a potentially long time period. That seems to create a very difficult task and could degenerate into a piecemeal approach. It also makes negotiation rather than planning as the main skill needed to ensure good outcomes. Such a system may work in America but that seems to be a reflection of a quite different planning

history and a legal system based on a written constitution and which is highly litigious. To institute it in New Zealand would be to ignore the long history of public involvement in planning processes and expectations that the community should have some voice in developments that effect it. It would also heighten the involvement of the legal profession in planning, something that most planners and lawyers would confirm has already increased the cost of planning processes. Decisions would also be determined by legal rather than planning concerns something that I believe is already a problem. A covenants based system would also increase the inequities that already exist in the system in terms of access to the resources to participate in planning processes and pursing appeals.

Q23 & 24 Tradeable Rights & Economic Instruments

Given the RMA provided for economic instruments and lots of goods examples exist throughout the world of their use I do not know why their use in New Zealand has never been properly examined. Prior to the RMA tradable rights were being used quite successfully but when the RMA came into existence we were told that their use was not compatible with the act's provisions. In terms of securing heritage buildings and sites and enhancing urban amenities tradable rights have much to offer. If we had a proper urban planning act or act then these sorts of new instruments could be specifically provided for. European planning models such as horizontal zoning do seem to have much to offer but we to need to look at how we adapt any new instruments to New Zealand processes and expectations so they work properly in this country. Germany, Australia and Canada do offer a number of good ideas but we do have to factor in that all have a federal governance system and often a weaker local government sector. There are also often income flows between the different levels of government and all those factors need to be considered when adapting these techniques to New Zealand conditions.

While I lack the time to fully address all the questions raised in your publication, I hope this material will be of some use to you.

Thank you for the opportunity to make these comments.