

A review for the NZ Productivity Commission
of its report on
Better Urban Planning (February 2017)

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Introduction

This is a review of the NZ Productivity Commission's report in February 2017 on its inquiry into "Better Urban Planning" for New Zealand, made under a contract with the Commission.

The terms of reference for my review are in Annex A.

The terms of reference for the Commission's inquiry are in Annex B.

I begin as requested by the Commission with a summary assessment of the report. I then present some of the analysis in the report which, necessarily because of the breadth of the inquiry, is partial and selective. In that I have focused on issues arising that are more likely to be controversial within the respective planning professions – decision makers, planners, lawyers, urban and landscape designers, architects and engineers. I conclude with a discussion and some observations on what might happen next.

Because of the breadth of matters covered in the report I have adopted a more narrative form of review, starting with an outline of the key findings and recommendations.

Summary Assessment

The Right Focus

"The relevance and materiality of the inquiry report"

The Terms of Reference (TORs) for this inquiry were very broad. In essence a "first principles" review of the urban land use allocation and planning system - as that system is currently circumscribed by the Local Government Act 2002, Resource Management Act 1991, the Land Transport Management Act 2003, and those elements of the Building Act 2004, Reserves Act 1977 and Conservation Act 1987 relating to land use (as well as the formal and informal processes, institutions and practices around these pieces of legislation).

The TOR includes an exclusion clause requiring that this inquiry not constitute a critique of previous or on-going reforms to the systems or legislation that make up the urban planning system. Rather, it is intended to take a 'first principles' approach to the urban planning system.

That exclusion clause could have been read narrowly, which would have severely constrained this inquiry – after all the RMA, to take one example, has undergone a significant number of amendments (at least 15) since its passage in 1991 leading many commentators (including the Commission) to criticise that fact alone as contributing to confusing practice. Sensibly, in my opinion, the Commission read that exclusion purposively and did not shrink from offering a critique of the architecture of the legislation where that is deemed to go to the heart of its derived first principles.

While many practitioners will undoubtedly express reservations on a number of substantive matters (some of which are discussed further below), few will doubt the relevance and materiality of this report. Its focus is clearly articulated, unswerving in its pursuit, and the 105 findings and 64 recommendations well signposted. Interestingly I suspect that the architectural recommendations will find support in quarters even where disagreement over functional scope issues – such as the narrower rationales proposed for urban planning and the relegation of broader well-being values to subsidiary status - remain.

The importance of urban infrastructure provision (including social infrastructure) and alternate funding mechanisms is a coherent and particularly important focus of the report. One that not only makes a valuable contribution to the debate on these matters but will also be welcomed by many in the various policy, regulatory and development communities.

Good Process Management

“The timeliness and quality of the inquiry process”

Given the breadth and nature of the inquiry it is hardly surprising that an extension to the original November 2016 deadline of 3 months was required. In part that was also the result of the calibre of the consultation and submission processes undertaken and the quality of the respondent submissions. A scan of the c.100 professional and technical submissions received (and the additional engagement meetings) provides confidence that all relevant sectors were engaged by and in this inquiry.

In that regard the Commission met its own expectations for the planning system of being “open, responsive and respectful”.

The inquiry process appears to have been managed effectively and efficiently.

High Quality Work

“The quality of the analysis and recommendations”

As is to be expected of a report that is heavily critical of the wider planning system for its lack of analytical rigour, analysis and “overreach”, the Commission is careful not to fall into that same trap. Its analysis of the key systemic “problems”, examination of solutions, and codification of recommendations is well researched (through library, oral inquiry, and particular engagement with professional bodies and persons on shore and in Australia), documented, displayed graphically and with abundant figures, and well-matched to its findings.

A number of supporting technical reports were also commissioned – referenced in the draft report as supplementary documents and included in the extensive bibliography contained in the final report.

As a “first principles” inquiry, albeit required to “set up a framework against which current practices and potential future reforms in resource management, planning and environmental management in urban areas might be judged”, the report stops short of the precipice of detail. That was not its brief but remains a codicil for others to write.

Effective Engagement

“How well the Commission engaged with interested parties”

The Commission released its *Better Urban Planning - Issues Paper* in December 2015, followed by its *Better Urban Planning - Draft Report* in August 2016. Both were subject to a 2-month submission process.

The final report indicates the range of persons and organisations/institutions with which it engaged either directly (some 100+ meetings recorded) or by means of the >100 submissions received on its 2016 draft report.

It is clear that the final report responds directly to submissions, including an expanded chapter on Urban Planning and the Treaty of Waitangi following the receipt of extensive comments.

Engagement was a key part of the Commission's process and was well executed and received.

Clear Delivery Of Messages

"How well the work is communicated and presented"

Despite the breadth and complexity of this inquiry's TOR, the messages are delivered clearly and consistently; summarised well in its findings and recommendations; populated throughout with graphics and figures; and restated frequently enough throughout the chapters such that "wayfinding" is facilitated even where individual chapters are read in isolation.

Although the text runs to 432 pages, and the analysis often assumes a technical understanding of the matters to hand, this does not obscure the basic messages.

It is unlikely that many serious planning professionals and development interests would not have dipped into this report.

Overall Quality

"The overall quality of the inquiry taking into account all factors"

This inquiry has produced a very important, quality contribution to the on-going public policy discussion on the proper limits to urban planning, plan-led regulation, public infrastructure funding, and the role of development interests in our larger urban centres. It will not be completely endorsed by all practitioners but that is the nature of policy debate. It proposes a rational framework for urban development within the context of urban environmental management which, arguably, turns a corner in the debate over what sensibly constitutes sustainable urban management.

Few will argue about the overall quality of this inquiry even as they might disagree with substantive findings or recommendations.

The report meets and satisfies the TOR.

Having Intended Consequences

"What happens as the result of the Commission's work"

On 29 March 2017 Hon Steven Joyce, Minister of Finance, issued a press release welcoming the report and indicating that Government would respond in due course.

At the time of writing Government had not formally responded to the report and its recommendations. That is, perhaps, not surprising since at the time of release Government's substantive Resource Legislation Amendment Bill was due to be reported back to the House from the Local Government and Environment Committee – subsequently enacted by Royal assent on 18 April 2017 – many provisions of which have yet to come into force.

On the matter of planning culture, which is not dependent upon a government lead, it would be fruitful for the Commission to engage directly with tertiary institutions despite its announced reservations since the structure of formal planning qualifications (across the board) is a fundamental aspect of the step-change process promoted.

Overview

This report clearly (and appropriately) builds upon four earlier inquiries (at least) conducted by the Commission - housing affordability (2012), local government regulatory performance (2013), regulatory institutions and practices (2014) and using land for housing (2015).

In its own press release on the report, the Commission highlighted the following recommendations:

Regulatory framework

- make a distinction, within a single statute, between the built and natural environments with clear objectives and principles for each (Chapter 13);
- set statutory principles for efficient and proportionate plans and land-use decisions (Chapter 13);
- provide clearer protective limits for the natural environment within which development can occur, and a more flexible and adaptive approach to addressing the cumulative effects of development (Chapter 9);
- set stronger expectations for the active protection of Māori Treaty interests in the built and natural environments, through a National Policy Statement (Chapter 7);
- make clear provision for development in urban areas, subject to clearly articulated limits (Chapters 8 and 9)

Land-use and resource-management planning and review

- include more responsive rezoning through the use of predetermined price triggers to signal when land markets are out of balance and rezoning is needed (Chapter 8);
- make spatial plans (in the form of Regional Spatial Strategies) a mandatory component of the planning hierarchy (Chapter 10);
- provide for Independent Hearings Panels (when required) to review new plans, and substantial plan changes (Chapter 8);
- require local authorities to develop together, as a package, the Regional Spatial Strategy, a Regional Policy statement for the Natural Environment, and District Plans, for review by an Independent Hearings Panel (Chapter 13);
- give local authorities more flexible consultation and engagement tools to gauge the views of stakeholders and the public in developing plans (Chapters 8 and 13)

Infrastructure

- make the Regional Spatial Strategy the platform for long-range infrastructure planning and for specific infrastructure investment plans (Chapter 10);
- provide councils in high-growth cities with better funding and financing tools (eg, value capture) and more sophisticated procurement tools (Chapter 11);

Alternative development models

- provide for alternative development models through competitive urban land markets and through urban development authorities

Stewardship of the planning system

- have stronger central government stewardship of the planning system, with better use of national instruments (Chapter 13); and

- provide for Māori participation in system stewardship through a National Māori Advisory Board (Chapter 13).

These are presented in more detail below.

First Principles

The TOR tasked the Commission with taking a *first principles* approach to its land use allocation inquiry. What principles were thereby deduced or revealed? These are not explicitly identified in the report but, at the risk of trivialising, a number of themes clearly emerge throughout and may be distilled as:

- cities are complex adaptive systems;
- agglomeration benefits derive from the collective results of individual choices;
- the advantages of agglomeration shift over and through time;
- agglomeration costs;
- successful cities ensure the benefits of agglomeration outweigh the costs.

Therefore:

- an urban planning system needs to be open to change and growth, and flexible in responding to development; and
- because urban planning involves coercive regulatory powers, these require careful and judicious exercise in the interest of facilitating the agglomeration benefits and mediating the costs, in order to contribute to an efficient and vibrant local economy; and
- the principle of *subsidiarity* should apply to decision-making unless there is good counter-reason, with genuine devolution of some decision rights.

The Commission identifies three distinct problems areas of urban development that justify urban planning:

- to regulate external (spillover) effects on others and on the natural environment from the use of land by people and businesses;
- to make fair and efficient collective decisions about the provision of local public goods; and
- to plan and implement investments in transport and water infrastructure, and coordinate these investments with land use and investments in other infrastructure controlled by other parties.

The Commission concludes that these three matters, properly integrated both vertically and horizontally, should be the sole function of urban planning, rather than making wider social, environmental or economic objectives formal priorities or responsibilities of the planning system. The latter simply dilute focus and, in any case, are often derivatives of the former when those functions are well-performed.

From this deceptively simple base the Commission examines the “problems” posed by the existing structural architecture, content drivers, professional practices and culture, and toolkits in the course of identifying its solution(s) – noting the self-evident but often overlooked truth that the complexity and scale of planning for large cities is vastly different compared to smaller towns.

NZ’s current planning system

Chapter 5 of the report is a critical examination of NZ’s current planning system as that is represented through the primary statutes of:

- land use regulation through the Resource Management Act (RMA) 1991;
- budgeting, service and infrastructure provision and planning through the Local Government Act (LGA) 2002; and
- transport planning, provision and management through the Land Transport Management Act (LTMA) 2003.

The Commission characterises the purpose outcome of those three planning statutes as:

- the maintenance of or improvements in environmental quality;
- the supply of local infrastructure and services in a timely and cost-effective manner and to desired standards; and
- the safe and reasonably easy movement of goods and people.

This leads the Commission to conclude that the system lacks clear limits because of the wide scope of the respective purposes and definitions, coupled with a general lack of central government guidance or direction – particularly with respect to identifying matters central to urban development (only latterly addressed through such vehicles as the National Policy Statement on Urban Development Capacity).

This lack is not assisted, in the Commission’s view, by opportunities for judicial review of decisions and appeals up through the superior courts; statutory requirements for engagement and participation; funding and financing practices; weak evaluation, monitoring and review systems at both local and central levels of government; and increasing legislative complexity arising from the frequency of statutory amendment.

To be clear, the Commission is not opposed to democratic participation or appeal provisions *per se*; it is the ability of parties to “game” the system and for others to “scope creep” or engage in “democratic deficit” behaviour that is of concern.

Outcomes

The Commission ultimately argues for an integrated dualistic system whereby natural environment and urban environment matters are dis-integrated architecturally but integrated systemically. That is, they are subject to different imperatives within the integrated framework. That enables the two halves to be considered and their “needs” determined separately before any resolving of tensions is required.

In terms of urban environmental outcomes the Commission focuses on (and considers that they are the primary ones an urban planning system should also focus on) those that are most directly connected to cities, urban development and land use, being:

- air quality;
- drinking and recreational water quality; and
- climate change.

In terms of urban outcomes the Commission identifies four measures that it considers essential to the effective functioning of cities consistent with the key statutes:

- the availability of sufficient development capacity to respond to changing social and economic needs;
- the speed and safety with which people and goods can move around a city;
- the extent to which essential infrastructure and services (e.g. roads, water treatment, waste management, public transport) keep pace with demand and are maintained; and

- the ability of local residents and governments to fund essential infrastructure and services over time.

While the planning system is not the only party with hands on the relevant levers to achieve those outcomes, the Commission accepts it is an important player both as a positive force and, when not performing as it thinks it should, as a countervailing force.

The Treaty of Waitangi and urban planning

Chapter 7 reviews the means by which active protection of Treaty interests has been provided for and managed in the wider planning system; concludes unsurprisingly that the system could do better; and proposes additional measures including:

- giving Māori a statutory role in the stewardship of the planning system through a National Māori Advisory Board on Planning and the Treaty of Waitangi;
- providing clearer guidance (through a National Policy Statement on Planning and the Treaty of Waitangi) on the active protection of Māori Treaty interests in the environment; and
- providing guidance in particular on the recognition and protection of sites of significance to Māori; co-governance arrangements for such sites when appropriate; the involvement of mana whenua in spatial planning and the recognition of Iwi Management Plans; planning provision for papakāinga and other kaupapa Māori development; and support for the development of iwi and hapū capability to participate in planning.

A particularly useful discussion is had with respect to urban Maori – matawaka (both *taura here* and *taonga hou*) – who significantly outnumber mana whenua in the larger cities but whose issues are essentially invisible in the planning system. While the Commission concludes that the urban planning system is a minor player among the wider social, cultural and economic agency players in this area, it recognises that it has a role and one that requires further development. Crucially that will involve capacity strengthening and stronger prospects for co-governance and joint-management.

Regulation

Chapter 8 extends the Commission's previous work on regulatory policy and practice, emphasising that land use planning should:

- ensure adequate supplies of development capacity;
- reduce regulatory burdens and unnecessary prescription;
- reduce uncertainty around the role of urban design in planning decisions;
- provide for more immediate and more systematic checks on planning regulation; and
- encourage more flexible and more representative consultation.

The Commission acknowledges the essential tension between undue prescription and providing certainty in rule making, but argues that less discretionary decision-making will result in greater efficiency. That, in turn, requires greater clarity and precision in drafting outcomes and their associated objectives, policies and rules (at all levels of the planning system) – hence the Commission's emphasis on a slimmer functional system – and a less risk-averse, status quo-biased culture, prepared (and sufficiently skilled) to adopt a wider range of analytical tools.

The Commission identifies a number of well-known issues including:

- the slowness with which changes to landuse controls are able to be made;

- the system’s blindness to price signals – particularly in terms of land release policies;
- political barriers to full use of existing alternative tools such as tolling and congestion pricing;
- the multiplicity of and variations between statutory plans;
- poor monitoring of the system; and
- the role of the Courts in plan decision-making.

This leads the Commission to recommend a different hearing and decision-making structure for plans – being a structure of Independent Hearings Panels (IHPs) with arms-length appointments (by an Independent Statutory Agency) from both councils and Government conducting single-stage merit reviews of all plans and significant plan changes with appeals only on points of law. The Commission recommends that those appeals proceed by way of the Environment Court (EC) rather than the more usual route to the High Court. That is somewhat controversial and begs a number of machinery questions – such as would appeals from the EC then go direct to the Court of Appeal; would the EC be able to make merit decisions and amendments to Plans; how would judicial review proceedings be managed; would referrals back from the EC (if that is proposed) go to the same IHP? More flexible arrangements for consultation and engagement processes are also proposed.

The Natural Environment

The Commission’s approach to the relationship between the urban environment and the natural environment is that of two interlinked and interacting complex adaptive systems, with regulation being required at the intersection of those two systems. It then argues for the establishment of effectively impermeable natural environmental bottom lines so that regulation “bites” only on the side of the urban environment, but because the natural environmental limits are set (albeit these may move over time with better information) and are therefore able to be clearly monitored, provision can be made for adaptive management approaches.

Of course this depends on the ability to establish clear outcomes and objectives, good information flows and monitoring, and full use of analytical (including market-based instruments) and decision-making instruments. Furthermore, the natural limits of ecological sustainability need to be determined and agreed so that the sustainability of ecosystem services can be managed. The Commission suggests that possible objectives for the natural environment might include:

- safeguarding the integrity of the natural environment;
- maintaining biodiversity;
- protecting places of outstanding natural character; and
- recognising and actively protecting tāngata whenua kaitiakitanga interests in the natural environment.

The Commission recommends that the existing “combined” regional policy statement instrument be separated into two policy instruments – being a Regional Spatial Strategy (RSS) for urban development matters and a Regional Policy Statement for the Natural Environment (RPS-NE). The latter would, among other things, establish standards and limits for the regional natural environment.

In terms of the urban environment, the Commission identifies adapting to and mitigating climate change as a particularly important environmental quality example that intersects the two complex systems and that could be addressed and managed through the structure proposed.

Infrastructure

Chapter 10 on Infrastructure touches on one of the “big” issues of the report. The Commission identified this issue as a “binding constraint” on urban development, noting that urban infrastructure includes transport, water, energy, telecommunications, and social infrastructure, having three main categories:

- Strategic or “city-shaping” infrastructure (mainly transport-related);
- Structural infrastructure (essentially “trunk” services); and
- Follower infrastructure (essentially localised services).

The problems identified by the Commission are:

- Insufficiently responsive supply – particularly in terms of constraints on land release to match demand;
- Misaligned land use rules / regulation and infrastructure investment – the lag between infrastructure provision and zoning (and vice versa);
- Impaired mobility of residents and freight.

Four causes are identified by the Commission, being:

- Statutory and institutional barriers;
- Political and cultural barriers;
- Funding and financial barriers; and
- Analytical barriers.

While integrated approaches across the system are an issue, the Commission does not favour omnibus legislation, recognising that different legislative purposes and roles necessarily limit the practicality of common decision-making. Instead it places value in its proposed planning and analytical measures – in particular through rigorous and targeted spatial planning and the Regional Spatial Strategy / NPS-NE instruments, based on a combination of high-quality Cost Benefit Analysis and Real-Options Analysis.

The benefits of such spatial planning are identified as enabling:

- a high-level overview and coordination among those responsible for supplying the various different sorts of infrastructure;
- those responsible to plan well ahead and deliver sufficient land for residential and business expansion; and
- many other public and private parties with an interest in city growth and development to make better, more timely decisions.

Infrastructure funding, financing and procurement

Chapter 11 is a detailed analysis of the problems and some solutions to the issue of funding and financing infrastructure in a timely and efficient manner, with the aim of strengthening the incentives and capacity of councils.

The Commission identifies the suite of infrastructure cost recovery tools currently available to councils as:

- Development contributions;
- Financial contributions (removed as an option from the RMA in 2022);
- Prices and user charges;
- Targeted rates;
- General rates; and
- Uniform annual general charges.

The Commission identifies a number of barriers to the efficient provision of infrastructure including:

- Infrastructure projects often only pay for themselves over long periods and this creates financing problems for some councils (particularly high-growth councils).
- Councils face “demand risk”, where development fails to occur at the rate originally assumed;
- Current legislation limits the ability of councils to price wastewater use and road use, and to recover the costs of some community infrastructure through development contributions;
- Self-imposed or externally set limits on council borrowing - including credit-rating risk, debt benchmark regulations, and LGFA financial covenants - are curtailing needed infrastructure investment in some high-growth cities; and
- Community resistance to higher council debt, rates increases and the pricing of water services constrains revenue and limits the supply of infrastructure and development.

As the Commission notes, a future planning system should allow councils to fully, fairly and efficiently cost-recover infrastructure provided – assuming efficient pricing and investment, and agreement as to what constitute merit goods as opposed to public goods.

In response the Commission proposes a hierarchy of funding tools for councils to fund local infrastructure. Pricing and user charges (e.g. water and congestion pricing) should be employed where practical and efficient. Where benefits are localised, councils should use development contributions (and developer agreements) and targeted rates. Otherwise, they can use general rates (noting that the Commission argues for a shift from capital value rating to unimproved land value rating as being more efficient and fairer in urban areas), value capture (i.e. betterment arising from infrastructure investment) and, sometimes, central government funding to ensure costs are fully recovered.

The Commission does not favour a local income or general sales tax because of implementation difficulties but acknowledges that narrower forms of sales tax (such as local fuel taxes, tourist-related levies, and a portion of GST on new buildings) are more promising options.

In terms of infrastructure investment barriers or constraints, the Commission offers the following combination of options:

- raising more revenue so it can borrow more within prescribed debt-to-revenue limits;
- financing more infrastructure on the balance sheets of others, such as private homeowners and body-corporate entities in large new subdivisions;
- working with central government and finance experts to make the case to credit-rating agencies to impose less stringent limits in return for assurances on creditworthiness and fiscal prudence; and
- Central government to consider capital grants or some form of debt guarantee, if that proves necessary to enable councils such as Auckland Council to invest in sufficient infrastructure for growth.

The third leg of this stool is procurement, and the Commission focuses on the choice of infrastructure delivery model and the choice of commissioning entity.

The commission favours the Public-Private Partnership (PPP) model (with its many variants) for significant infrastructure projects, and notes the potential for both a specialist local government procurement entity with its advantages of bargaining

power and single centre of excellence; and joint procurement arrangements at a lesser scale.

Other development models

As the TOR required consideration of other development models, Chapter 12 reviews three such:

- Competitive urban land markets (CULMs) and/or Autonomous Community Districts (ACDs) whereby more land and infrastructure at the fringe of cities (but not necessarily contiguous) is supplied by giving private developers greater scope to invest in large new subdivisions and supplying them with the trunk transport and three-waters infrastructure normally supplied by councils;
- establish local urban development authorities (UDAs); and
- auction development rights.

The Commission acknowledges that the CULM and ACD models are not well-developed in NZ and therefore the machinery issues will need to be worked through in fine detail – and provides a useful script for that work with respect to ACDs.

NZ has greater familiarity with UDAs and their variant forms – and examples from the three main cities are provided. For these to develop further the Commission suggests additional regulatory and acquisition powers.

The Commission revisits its earlier inquiry on land for housing and the issue of compulsory land acquisition powers to address housing shortages, noting that this ability remains unclear and should be addressed to support UDAs.

The Commission's version of auctioning (or selling) development rights relates to limited opportunities for increasing higher-than-normal densities within a predetermined limit. The Commission acknowledges the risk of councils using such as a revenue generating (rather than a planning) opportunity but considers those risks manageable within the broader planning system framework it proposes – the revenue from which could be invested in the additional infrastructure or services needed by way of “compensation” to affected communities.

The new architecture

Which brings us to the second “big” issue chapter – 13 - on statutory framework, institutions and governance.

As already foreshadowed, the Commission proposes some substantial changes to the present planning architecture including IHPs, a revised hierarchy of planning documents (notably the RSS and RPS-NE), a National Maori Advisory Board on Planning, along with more specific (and fewer) functional areas, greater specificity of statutory purposes, principles and outcomes, greater use of market-led analytical tools and financial instruments, and greater oversight and monitoring of and in the system.

All in the service of a planning system that:

- enables land use to be flexible and responsive to changing needs, preferences, technology and information;
- provides sufficient development capacity to meet demand;
- promotes mobility of residents and goods to and through the city;
- safeguards the natural environment by defining the boundaries within which development and land-use activities must operate; and

- recognises and actively protects Māori Treaty interests in the built and natural environments.

The Commission does not support separate legislation for the built and natural environments but prefers the integrating manner of a single resource management statute, albeit with two clearly differentiated components at the interface, and respectively different statutory presumptions. Similarly, while the Commission is attracted to a single planning instrument for the region, it doesn't go so far as to recommend a single local authority, noting that regional councils should have the primary responsibility for setting regional environmental standards and the regulation of the natural environment.

With respect to the relationship between the three identified primary planning statutes, the Commission considers formal and reciprocal cross-referencing sufficient, within the "new" structure, for the purpose of alignment and integrated planning.

On the question as to where stewardship for the planning *system* should lie, the Commission notes the current somewhat muddled arrangement across ministries at the central government level and urges, without identifying, a more rational arrangement for the "new" system – with enhanced capability and systems. The Commission records much advice about problems in and with the vertical relationship between local and central government.

Lastly, and because the system is necessarily data and information hungry, the need for better centralised systems to capture, hold, analyse and provide access to that information is a fundamental requirement going forward.

Culture and capability

In its penultimate chapter the Commission reviews the planning profession, its culture, and the skills and capability it considers is required going forward. Following its earlier inquiry into regulatory institutions and practice, it identifies the planning culture that it considers will lead to good planning outcomes as one that:

- insists on robust, evidence-based, outcome-focused decision-making;
- values continuous learning and feedback (i.e. learning cultures);
- empowers staff to "speak up" and challenge existing practice;
- stresses the importance of being open, transparent and accountable;
- values operational flexibility and adaptation to changing socio-economic or environmental conditions;
- recognises the significance of the civic responsibility that comes with using the coercive powers of the state; and
- favours collaboration and communication.

However, the more immediate issue for planning is the capability gap the Commission discerns at local and central government levels. Among the more pressing, the Commission finds, is the need for well-developed policy skills and critical thinking. Specifically the Commission identifies a sound understanding of:

- *Substantiality* - Does the issue require attention. Does it even require some sort of regulatory resolution at all?;
- *Subsidiarity* – Where is the issue best addressed, and by whom. Should planners even be involved?; and
- *Negotiability* – Does the science or the relevant national policy statement enable choices to be made and, if so, how constrained are the choices?

The Commission is unsure who will lead the necessary cultural and capability reforms but lacks confidence in academic and planning organisations due to their perceived resistance and adherence to the status quo.

The most important changes

In its final formal chapter the Commission identifies the four most important changes that a future planning system should contain, which are:

- clear statutory objectives and principles for the built and natural environments;
- a revamped set of regulatory plans for each region – plans that are built on the platform of a spatial strategy and clear environmental limits;
- timely, independent and systematic review of plans against the statutory objectives and principles; and
- new mechanisms and models to free up the supply of infrastructure-serviced land for development - particularly in high-growth cities.

Discussion

A difficulty many may find having read this report is that the devil is always in the detail. As a first principles report that detail was not required, but as so many good ideas are brought together the question “how would this work?” is rarely far away. That must remain for another day.

As a consequence, there will undoubtedly be temptation to cherry pick ideas rather than take the whole framework and work with it. That would be a typical, practical response. For example one could adopt the decision-making architecture without reforming the planning instruments or narrowing the functions, or the infrastructure funding and financing recommendations without the architecture. However that would not satisfy the overall intent of this inquiry.

If the decades long debates over the RMA (and to a lesser extent the LGA) have taught us anything it is that the holy grail of clarity and simplicity of provisions and process remains wanting. As the Commission itself notes in discussing the genesis of the RMA, these were essentially the goals of that endeavour back in 1989-1991. How to avoid a repeat performance under the Commission’s proposals remains an open question. The tension between public and private rights and privileges in the planning arena – however those are framed – seems inevitably to lead to ever finer-grained practice. That is certainly not a reason for not reforming systems but is a caution about the extent to which such reforms can stem the tide of ambition when statutorily based.

There will be little disagreement that enhanced skills and expanded analytical toolkits are required for planning in the modern world – and as much for the urban environment as for the natural environment – and that the sector needs to be much more fleet-footed in responding to and resolving emerging issues.

One of the more interesting side debates relates to the extent to which planning should involve itself in matters such as general amenity and urban design considerations – that is, defining the “grey” boundary between the private and public realm.

The Commission raises reasonable concerns regarding the nature of regulation in these “grey” areas, without going so far as to recommend their removal from the legitimate domain of future planning. Indeed, arguing that planning concerns should be proportionate to the purposes of the legislation and not permit such concerns undue weight in that regard.

Similar concerns were expressed many years ago with respect to landscape and visual amenity issues and assessments. In that latter case increasing methodological sophistication and application has seen those criticisms largely silenced, and while there is still professional debate, the legitimacy or otherwise of the issue as a planning concern has largely disappeared. Few significant projects proceed without such an assessment. The same is likely with respect to urban design as that discipline matures and the ambit of legitimate concern becomes codified and refined.

While urban amenity is an amorphous concept, like most such concepts there can be broad agreement about what does not constitute such – unrelentingly plain high-rise apartment buildings are a common example, while tree-lined streetscapes exemplify the opposite. I note that *amenity* has been an identified matter in the NZ planning system since the early days (and is typically found in overseas planning jurisdictions). Regardless of whether it is specifically identified in legislation (and in the RMA it only finds its way by means of section 7) participants will undoubtedly reference amenity value matters in one form or another – as happened in the translation from the Town and Country Planning Act and the RMA when no other obvious vehicle for “urban” issues was evident.

Where the report treads lightly around the elephant in the room is over the future role of “the community” in this system. A recommended system that moves deliberately toward an expert, technical planning system, rather than the process-orientated system criticised. While acknowledging such concerns as “democratic deficit” and “scope creep”, how to address those trends in a participatory democracy where citizens expect to exercise some collective control over their neighbourhoods – as is always seen when plans move to increase density provisions or liberalise certain activity classes – is one of the ever-present issues for the planning professions. Many communities seek plan certainty not the uncertainty that responsiveness portends – and with nervousness and suspicion of decision makers comes the demand for rule rigidity and a reluctance to engage on alternative solutions. Whether the framework proposed by the Commission increases public acceptance of policy-making and development aspirations is a pudding whose proof is yet to be tested.

In part the Commission’s response is in the narrowing of urban planning functions, emphasis on a wider gamut of engagement and collaborative practices, and the removal of political decision-making through the IHP process. That provides less leverage for the expression of wider community interests and concerns – which would, presumably, then be directed through other channels (such as local area or community plans under and within the statutory purpose of the LGA). That then becomes a question of horizontal integration between the RMA and the LGA – and how to avoid a regressive feedback loop. That is the sort of detail that arises – not a criticism of the Commission’s report but, rather, an elaboration to be teased out.

A closer examination of just how the three statutes (LGA, RMA and LTMA) could be better integrated so that their respective purposes (modified as necessary) complement each and are not frustrated is a key piece of next stage work. While the Commission’s proposed RSS performs that function in part there is a risk that it becomes little more than the reception vehicle for others’ infrastructure plans rather than a truly integrating strategy capable of generating new thinking where potentially conflicting objectives arise. To that end, presumably, it would need statutory priority over the other statutes in that regard.

The Commission’s recommendations with respect to the role and capability of central government are likely to meet with a mixed reaction from practitioners. Few will argue against the need for better stewardship of the urban planning system and a

more robust monitoring and data repository system – especially when one reflects on the apparent “waste” of the literally millions of dollars worth of technical evidential data generated each year in first instance and appellate court hearings which effectively disappears once decisions are finalised, but which could be selectively captured. There is likely to be more nervousness about centralised directions that do not go through an independent process – a matter on which the Commission’s report is silent. In an open, responsive and respectful planning system the value of expert independent review should be paramount. There will be occasions when Ministers consider direction necessary and warranted; that is provided for in statute. However independent review should still be the preference since unintended consequences are best avoided.

On the big issue of infrastructure, funding and provision the issue is always the fine balance between risk and reward. The options proposed by the Commission are generally all available in practice – albeit the detail remains to be determined. The imprecise art of “right timing” is easier written about than practiced. Nonetheless the issue is of such importance – and is clearly of the moment – that continuing progress is inevitable with or without the sort of structural reform recommended. Certainly fleshing out the detail of the alternative institutional options makes real sense.

The idea of removing plan decision-making from merit review by the courts is not new. However that has, as yet, not gained government support. The IHP structure proposed with attendant changes to the policy instruments advances the idea beyond a principle. If planning is to be more responsive, then the ability to change plans becomes a key element in the arsenal and the increased “perfection” of a two-step merit approval process with appeals to superior courts is then, arguably, unduly cumbersome. The remedy therefore is straightforward – remove one layer and require participants to marshal their arguments once only. Leaving that layer with the EC risks severely clogging that court, so the option of an IHP which can draw from the existing experienced hearings commissioner pool and others makes good sense. In that respect too it represents a relatively simple institutional evolution. A question then arises as to what role, if any, might that structure have with respect to plans developed under the other two statutes in order to ensure integration. The Commission is silent on that but more work to examine how that integrating mechanism might work is recommended.

Conclusion

The Commission has brought together a significant body of thinking on the matter of urban planning and its framework within a modern market economy. While there is much that appears on first reading as radical, it is largely evolutionary. Certainly many instruments are proposed for change but the institutional framework is left largely intact. That shows a sophisticated sense of the practical. The Commission charts an important course and role for urban planning – ostensibly more evident than has been the case since the days of the Town and Country Planning Act. Its proposed separation of urban and natural environments within the same statute is a novel deconstruction of some of the problems seen in Part 2 of the RMA which, prior to *King Salmon* witnessed the overall broad judgement approach that frequently co-mingled the two. Since that seminal decision we would expect plans to more carefully delineate the interface of the two environments.

The government response will be awaited with interest.

Annex A: Review of Urban Planning Inquiry

Background

The deliverable is a report similar in style and structure to that produced for our earlier inquiries.

The report is intended to tie into the Commission's performance framework, as described further below

The report will subsequently be published.

This independent review is a valuable opportunity for the Commission to learn from a seasoned operator about what the Commission or the inquiry report done well or could have done better. You should free to speak with a few stakeholders as you see useful.

Deliverables

The deliverable is a report of your review of the Commission's inquiry report: 'Better Urban Planning'.

The review should evaluate (based mainly on the final report) the quality of the Better Urban Planning inquiry against the following performance measures:

- the right focus - the relevance and materiality of the inquiry report;
- good process management - the timeliness and quality of the inquiry process;
- high quality work - the quality of the analysis and recommendations;
- effective engagement - how well the Commission engaged with interested parties;
- clear delivery of messages - how well the work is communicated and presented; and
- overall quality - the overall quality of the inquiry taking into account all factors.

Note that the Commission's performance framework also contains another dimension:

- Having intended impacts - what happens as the result of the Commission's work.

While it is mainly too early to judge this aspect, you should make any observations that you feel make.

The review should note any lessons that can be taken and make recommendations for any future improvements.

The report must also contain a 'summary assessment' (or alternate name) that summarises your perspective on each of the performance dimensions (a short paragraph on each) - this is useful for the Commission's Annual Report

Annex B: Terms of Reference

NEW ZEALAND PRODUCTIVITY COMMISSION INQUIRY INTO THE SYSTEM OF URBAN PLANNING IN NEW ZEALAND

Issued by the Minister of Finance, the Minister of Local Government, the Minister for Building and Housing, the Minister for the Environment, and the Minister of Transport (the “referring Ministers”).

Pursuant to sections 9 and 11 of the New Zealand Productivity Commission Act 2010, we hereby request that the New Zealand Productivity Commission (“the Commission”) undertake an inquiry into alternative approaches to the urban planning system.

Context

In its 2012 housing affordability report, the Productivity Commission noted:

Planning must take account of the Resource Management Act (RMA), the Local Government Act (LGA) and the Land Transport Management Act (LTMA). These statutes have different legal purposes, timeframes, processes and criteria. With multiple participants and decision-makers, there is no single mechanism for facilitating engagement, securing agreement among participants and providing information for robust decision-making. The Government should consider the case for reviewing planning-related legislation. (p10)

Development proposals are broken down into economic, infrastructure and environmental components, and examined separately according to relevant legislation. This disconnect can make it difficult to achieve quality integrated urban development. (p121)

The Commission recommended the Government "consider the case for a review of planning-related legislation to reduce the costs, complexity and uncertainty associated with the interaction of planning processes under the Local Government Act, the Resource Management Act and the Land Transport Management Act."

These regimes underpin not just planning for housing but the productivity of New Zealand’s wider economy. Many parts of the regime have been in existence for considerable time and have evolved in a piecemeal fashion. International best practice has also moved on, and a fundamental review of the urban planning system is due.

Scope and aims

The purpose of this inquiry is to review New Zealand’s urban planning system and to identify, from first principles, the most appropriate system for allocating land use through this system to support desirable social, economic, environmental and cultural outcomes.

The review should identify options to align the priorities of actors and institutions within these regimes, where possible; improve economic, environmental and community outcomes through urban planning; and to deliver optimal efficiency in the delivery of these outcomes.

This will include identifying the most effective methods of planning for and providing sufficient urban development capacity including residential, commercial, industrial and place-based amenity uses, supporting infrastructure and linkages with other regions.

The review should look beyond the current resource management and planning paradigm and legislative arrangements to consider fundamentally alternative ways of delivering improved urban planning, and subsequently, development.

It should also consider ways to ensure that the regime is responsive to changing demands in the future, how national priorities and the potential for new entrants can be considered alongside existing local priorities and what different arrangements, if any, might need to be put in place for areas of the country seeing economic contraction rather than growth.

The scope of this review should include, but not be limited to the kinds of interventions and funding/governance frameworks currently delivered through the Local Government Act, the Resource Management Act, the Land Transport Management Act and the elements of Building Act, Reserves Act and Conservation Act relating to land use (as well as the formal and informal processes, institutions and practices around these pieces of legislation).

The review should also consider the interaction of the urban planning system with planning for other regions and identify those areas where broader system-level change is needed to deliver more efficient urban planning.

The inquiry should cover:

- Background, objectives, outcomes and learnings from the current urban planning system in New Zealand, particularly:
 - how environmental and urban development outcomes have changed over the last twenty years.
 - explaining the behaviour, role and capability/capacity of councils, planners, central government, the judiciary and private actors under the regime.
 - the tendency for increasing complexity and scope creep of institutions and regulatory frameworks.
- Examination of best practice internationally and in other cases where power is devolved to a local level in New Zealand.
- Alternative approaches to the urban planning system.

The report should deliver a range of alternative models for the urban planning system and set up a framework against which current practices and potential future reforms in resource management, planning and environmental management in urban areas might be judged.

Exclusions

This inquiry should not constitute a critique of previous or ongoing reforms to the systems or legislation which make up the urban planning system. Rather, it is intended to take a 'first principles' approach to the urban planning system.

Consultation

To ensure that the inquiry's findings provide practical and tangible ways to improve the performance of the urban planning system, the Commission should consult with Local Government New Zealand, the Society of Local Government Managers and the wider local government sector.

The Commission should also consult with the Parliamentary Commissioner for the Environment, nongovernmental organisations, resource management practitioners and lawyers and affected industry groups; taking note of the significant bodies of work already produced by many of these groups.

Timeframes

The Commission must publish a draft report and/or discussion document, for public comment, followed by a final report that must be presented to referring Ministers by 30 November 2016.