

Submission by Stuart Kinnear on the Issues Paper – Using Land for Housing Published by the Productivity Commission – November 2014

1. Introduction

- 1.1 I am making this submission in a private capacity as a land-use professional in private practice. The views expressed in the submission are my own and are not intended to represent the views of the professional bodies of which I am a member, any of my past or current clients, or any local authority.
- 1.2 I have limited my submission primarily to the questions dealing with the evaluation and review of the current planning and development system and some questions relating to the performance of local authorities.
- 1.3 I have over 47 years of experience as a land-use professional both in private practice and in local government. I am a full member of the New Zealand Planning Institute and a Fellow of the New Zealand Institute of Surveyors.

2. The Submission

Q1. *Is it helpful to think of the planning and development system as a means of dealing with externalities associated with land use and coordination problems? What other factors should the Commission consider in evaluating the role of the planning and development system?*

- 2.1 It is essential that a planning and development system is maintained that is capable of dealing with externalities associated with land use and coordination problems. The present 'system' does not achieve this satisfactorily. This is primarily because the Resource Management Act 1991 (the RMA) was not conceived as a 'planning and development' statute. The following extract from 'A Guide to the Resource Management Act 1991' illustrates:

'The RMA does not intend to prevent progress, innovation, economic growth, or increases in the standard of living. Neither is it a mechanism for balancing the economic or social benefits of a particular proposal against its adverse environmental effects, or for making decisions about the merits of one use of land over those of a potential competitor.

*This does not mean that the RMA has been developed without any regard for the economic, social or cultural welfare of New Zealanders; quite the opposite in fact. The RMA requires a focus on the environmental effects of activities. The underlying assumption is that any use, development or subdivision should proceed if there are no adverse environmental effects, or if those effects can be avoided, remedied or mitigated. The RMA does not provide councils or other decision-makers with the ability to direct investment through regulatory controls.'*¹

¹ Section 1.4 - Your Guide to the Resource Management Act – Ministry for the Environment – updated August 2006

- 2.2 The Local Government Act 2002 (the LGA) is essentially a framework for local authorities to make decisions, and to be accountable to their communities for those decisions, in order to meet current and future needs for infrastructure, services and other authorised activities. While there are a number of mandatory plans and strategies prescribed under the LGA, these general provisions remain subservient to the specific provisions of the RMA in terms of consultation and consenting.
- 2.3 The Land Transport Management Act 2003 (LTMA) governs the funding of major transport projects and services, including road policing, public transport, and maintaining and developing the state highway network and local roads. In a 'planning' sense the LTMA sets out the central and local government transport plans that must be followed in order to allocate funds from the National Land Transport Fund to projects and services.
- 2.4 The RMA require councils to have regard to management plans and strategies prepared under other acts to the extent that their content has a bearing on resource management issues of the district/region, when preparing or changing a regional policy statement, regional plan and district plan. These would include Regional Land Transport Plans and regional public transport Plans prepared under the LTMA.
- 2.5 However, as noted in the Ministry for the Environment working paper referred to on page 33 of the Issues Paper:

"...the three 'planning' Acts were never designed to work together as a complete urban planning system. Each Act, its plans and decision-making are all subject to different legal purposes, processes and criteria, and operate over different time frames. This results in duplication and lack of clarity, and demands considerable time and resourcing from all parties involved."

- 2.6 In particular, the RMA has a codified submissions and hearings process, where it sets out the process and timeframes to be followed, the manner in which hearings must be conducted, and the matters that must be taken into account in making decisions. This quasi-judicial process allows for councils' RMA decisions to be appealed to the Environment Court. Any submitter or further submitter can also be a 'party to proceedings' in the Environment Court unless doing so on trade competition grounds.²
- 2.7 Members of the public can only challenge LGA decisions in the High Court on the basis that the correct process has not been followed or on a point of law. Legal challenges cannot be made on the merits of the decision. This is the main point of difference between RMA and LGA decisions.³
- 2.8 A key factor that the Commission should therefore consider in the evaluation of the planning and development system is the lack of integration between the statutes, their different purposes and the different legal processes and time frames for the consideration and resolution of issues and decisions.

Q2. *Can the current land planning and development system be made to work better to benefit cities throughout New Zealand? Is a different type of planning system required to meet the needs for housing in New Zealand's fastest growing cities?*

² Quality Planning Website

³ Quality Planning Website

Q3. *What criteria should the Commission consider in evaluating the current land planning and development system in New Zealand?*

2.9 The Town and Country Planning Act 1977 specified that regional and district planning should have for their general purposes:

“...the wise use and management of the resources, and the direction and control of the development, of a region, district, or area in such a way as will most effectively promote and safeguard the health, safety, convenience, and the economic, cultural, social, and general welfare of the people, and the amenities, of every part of the region, district, or area.”

2.10 Part 20 of the Local Government Act 1974 contained a comprehensive, nationally applicable code of the local authority’s powers when dealing with the subdivision and development of land. These included provisions for the vesting of reserves, (or making a monetary contribution towards reserves), provision of infrastructure and other services. Part 21 of the same Act dealt with powers as to roads and access to properties.

2.11 While not advocating a return to those prescriptive statutes, the evidence is persuasive that more direction and purpose is required in the planning system for New Zealand, particularly in urban areas. I believe that the relevant issues are well articulated in the report – *“Building competitive cities: Reform of the urban and infrastructure planning system. Technical working paper. Wellington: Ministry for the Environment 2010.”*

2.12 Following on from that report the Technical Advisory Group appointed by the Minister for the Environment to examine RMA Principles recommended two relevant amendments to Part 2 of the RMA that would give direction in terms of land for housing and the provision of infrastructure.⁴ These are the inclusion in a list of ‘Sustainable Management Principles’ of the following;

“(j) The planning, design and functioning of the built environment, including the reasonably foreseeable availability of land for urban expansion, use and development; and

(k) The planning, design and functioning of significant infrastructure:”

2.13 This is one example of the matters that should be considered in evaluating this current planning and development system. A statutory role for spatial plans should also be considered.

2.14 In my view a more coordinated system that remedies the disconnection that presently hampers the effectiveness of the current statutes is required. More direction and guidance as to outcomes for the urban environment also needs to be specified in the statutes, including provision for spatial plans.

Q4. *Would a significantly increased supply of development capacity lead to an increased supply of affordable housing, or would further regulatory or other interventions be required to achieve that outcome?*

⁴ TAG Report on RMA Principles February 2012

- 2.15 Not necessarily. The problem of land banking, and the slow or non-release of land for housing development will contribute to lack of supply and may need regulatory intervention. This could be in the form of economic instruments or taxation policies.

Q5. What data sources will be most useful in identifying effective local authority planning processes for the development of land for housing?

- 2.16 Amount of serviced and zoned land. Potential land (zoned but not serviced/ un-zoned and un-serviced). Numbers of potential, but undeveloped sites, numbers of developed sites, take-up rates for new sites. Rates of take-up of greenfield sites and infill sites. Demographic trends and projections. Infrastructure capacity inventories and infrastructure supply costs and constraints.

Q8. Alongside the Resource Management, Local Government and Land Transport Management Acts, are there other statutes that play a significant role in New Zealand's planning and development system?

- 2.17 There are some remnants of Part 21 LGA 1974 (as enacted by the LG Amendment Act 1978) that may be relevant.

- 2.18 The Unit Titles Act 2010 (the UTA) which has as its purpose to provide a legal framework for the ownership and management of land and associated buildings and facilities on a socially and economically sustainable basis by communities of individual owners. In particular, the UTA allows for the ownership of stratum estates, the creation of bodies corporate and a flexible governance regime.⁵

- 2.19 The UTA is an essential tool in any move to encourage more sustainable residential living/ownership options in urban areas and also has application in commercial and industrial uses and in retirement villages. District Plans will need to pay more attention to the specialised nature of planning policies and rules relating to unit developments.

Q9. How easy is it to understand the objectives and requirements of local authority plans? What improves the intelligibility of plans?

- 2.20 It is sometimes difficult for land use professionals to understand the precise meaning of objectives, policies and rules of local authority plans. It must be difficult for land owners or other users without some training or experience in planning matters. Intelligibility is always improved by the use of plain English, avoiding jargon, and not over-complicating matters.

Q10. Is ensuring an adequate land supply for housing an objective of current District or Unitary Plans? If so, what priority is this objective given?

- 2.21 I have no definitive information on this matter but comment that it is unusual for plan objectives to be given a priority ranking.

⁵ Unit Title Act 2010 s.3

Q11. *What steps do local authorities take to ensure that all people potentially affected by land use Plan provisions or changes have the opportunity to comment? How effective and efficient are these steps?*

Q12. *What steps do local authorities take to understand and incorporate the views of people who are potentially affected by Plan provisions or changes, but who do not formally engage in the Plan process?*

- 2.22 The minimum required steps are set out in the RMA. A common and useful non-statutory practice is to issue a draft plan or plan change and seeks comments. Because the process is informal it can have benefits in attracting comments from people who may wish to avoid a formal submission process.

Q13. *How can the Plan development process be improved to increase the supply of development capacity?*

- 2.23 A 'residential strategy' could be developed as part of plan development work, seeking comments of a more informal nature than when a plan or plan change is notified. The strategy would set out options, advantages and disadvantages, and environmental effects of a range of development areas.

Q14. *How accurate are local authority assessments of the demand for and supply of land? How well do they reflect market demands and the actual development capacity of land? Are there any good examples of supply and demand forecasts?*

- 2.24 Market demand is often difficult to determine. Sometimes local authorities try to influence the market by insisting on particular types of development, for example, low density residential to avoid servicing, maximum sizes for allotments to cater for infill or apartment living. Sometimes artificial urban limits are established which severely constrains the market.

3. Concluding Comments

- 3.1 If requested, I would attempt to provide additional information on the above answers. I am also available to meet with Commission personnel if necessary.



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