



Submission to LGNZ “Blue Skies Planning & Resource Management” thinkpiece

Prepared by NZPI Senior Policy Adviser, 26th February 2016

1. Introduction

The NZPI welcomes and values the Local Government New Zealand’s (LGNZ) contribution to the debate about New Zealand’s resource management regime. We value the relationship that exists between our two partner institutions and appreciate opportunities to share ideas and to debate important issues that arise recognising that our members often find themselves working alongside each other on similar matters. We also welcome the opportunity of making submissions and thank you for extending the deadline for us to do this by a week.

Other policy initiatives are underway to review and reform New Zealand’s planning system. For example: the Productivity Commission, under Government direction, is formally reviewing New Zealand’s system of urban planning; Ministry for Environment is progressing the Resource Legislation Amendment Bill through Parliament; the National Council for Infrastructure Development has provided policy advice after an examination of urban and renewal planning in Australia and the UK. We are also aware of the “whole of government” Resource Management System Design package of work presently underway in the Ministry of Environment which is separate from the Resource Management Reform work stream.

Responding to these various initiatives the NZPI has embarked on a range of actions that tap into the enormous depth of knowledge held by our members. NZPI is conducting enquiries into what is working well, what needs to be improved, and what needs to be added in New Zealand’s planning system.

As part of its policy programme NZPI responds to calls for submissions from a range of agencies and at multiple scales. This report responds to issues raised in LGNZ’s “Blue Skies – Planning and Resource Management” paper and contains suggestions which may be of interest and relevance. NZPI’s contribution to processes and discussions that are expanding across the country will be further developed through active engagement with all of these processes, and consultation with its members whose knowledge of, commitment to, and practical experience with, our country’s planning system will be of immense value.

NZPI would like to reiterate points made in submissions to previous inquiries that considering the planning and development system only as a means of dealing with externalities associated with land use co-ordination problems is too narrow an approach. Policy interventions that address urban planning issues need to be comprehensively considered alongside other urban development objectives and strategies. NZPI generally supports the use of spatial planning for the successful

development of an urban environment. However, we caution that spatial planning cannot be limited to addressing the provision of land for housing and must be an integrated process which includes all elements that make a successful, livable city. These include locations for employment, social and public services and facilities, transport networks, other infrastructure, parks and reserves, amongst other amenities.

This submission begins with a brief summary of our findings and recommendations. This is followed by more in depth submissions.

2. In a Nutshell

In a nutshell, NZPI finds a lot it can agree with in LGNZ's paper. We find it to be a well argued and substantial piece of evidence-based research that makes a significant and wide-ranging contribution to a debate that can sometimes become too focussed on purely economic or environmental outcomes without sufficient attention being given to social and cultural outcomes. The next bullets provide a summary of our submissions, by section:

A 'blue skies' discussion

1.1 Is NZ's RM system still fit for purpose?

1.2 Focus on the planning Acts at the core of NZ's RM system

1.3 What do we stand to gain (or lose from RM reform?)

1.4 A roadmap for discussion

This is a good summary description of the current RM institutional system. But it should mention LGA development levies as an important revenue source and regulatory incentive. In reviewing the strengths and weaknesses of the current system it is important to reflect more systematically to understand the rationale and for, and reasons behind any systematic failings.

The current and emerging context

2.1 Increasing resource scarcity and competition for access

2.2 A changing society

2.3 An increasingly dynamic context

2.4 Unavoidable change

This is a useful contextual description. Critical resource management issues of immigration; climate change; and agricultural greenhouse gas emissions are all usefully introduced. Would have been useful to identify NZ's poor track record in transport energy use.

What kind of future do New Zealander's want?

3.1 A common goal

3.2 A broad view of prosperity

3.3 Local solutions to local issues

This section is limited, and limits the overall discussion. One of the reasons for this is the absence of analysis of the ideas driving the present RM system: that the market is the most efficient method of

allocating resources (ie that it is essentially unregulated), while the environmental effects are regulated. The view expressed of the environment – that it is the natural environment – fails to recognise that in an urban setting (Auckland, Tauranga etc), the environment – in the sense of receiving environment for development – is areas of existing urban settlement. Thus urban neighbourhoods – rather than natural ecosystems – are the environment for redevelopment. Ideas about what environment is and means for urban New Zealanders are changing.

Views on NZ's resource management system

4.1 A high-level overview of system performance

4.2 Commonly held views on the RM system

This is a very strong section. Well researched, and strongly evidence based. Again it lacks a comprehensive account of existing urban environments where economic gains and losses caused by a potential development are more influential in determining outcomes than environmental effects recognised by the existing RM planning system.

Evolution in NZ's resource management system

5.1 A drive to develop responsibly

5.2 A drive to consider the big picture and national interest

5.3 A willingness to tailor governance and decision-making arrangements

5.4 A slow move to valuing ecosystem services

5.5 Increasing customer focus and use of collaborative processes

5.6 Recognition of the rights of the environment

An interesting section but limited because it does not draw on an examination of RM systems in other developed countries. Perhaps this reflects the scope of the study. However it is important in this case for NZ to learn from international best practice and not adopt a “not invented here” mentality to RM planning systems reform. NZ has experimented with environmental offsetting – carbon trading is the classic example as were initiatives to compensate for gas-fired power station carbon emissions by massive tree planting programmes. Again, while the need to properly account for losses and gains caused by a development project is touched on, the use of approaches like collaborative planning does not reflect the range of tools that are available and in increasing use in other jurisdictions to address the economic and social issues that inevitably arise in urban renewal.

What would a fit for purpose resource management system look like?

6.1 A stepped programme of reform – from evolution to revolution

Step 1

Step 2

Step 3

The overall impression is that this section does not appear to address the planning problems and resource management issues that are robustly described in sections 2 and 4 or the blue skies document. The section appears to respond to a set of objectives and needs that are not described elsewhere in the thinkpiece. Instead, many of the suggestions that are contained in ‘Step 1’ appear to relate to proposals that are contained in the Government/Ministry for Environment Resource

Legislation Amendment Bill. It is difficult to see how Step 2 could proceed without first of all setting out a rationale and objectives to be delivered by the “over-write”. Generally we suggest that because the thinkpiece does not engage with property right issues that are fundamental to the problem of urban redevelopment (which largely pertain to who loses and who gains and what needs to be planned to achieve mutual gain), then its proposals for change inevitably miss that point.

3. In depth submissions

3.1 The Resource Management Act

NZPI concurs with aspects of the paper’s account of NZ’s current RM planning system, but considers that it is particularly relevant to any review that the account of the background properly and fully describes the political origins and the policy objectives of the Resource Management Act reforms. Without this background any account of the outcomes and learnings is problematic. We suggest that the outsider’s account of the Resource Management Act (RMA) that was provided by US environmental specialist Julie Frieder while on an Ian Axford Fellowship for Public Policy in New Zealand where her host institution was the Ministry of Environment, constitutes a well-researched and independent account¹ providing an appropriate policy basis for an understanding of the forces and influences that led to and are enshrined in the RMA. The introduction to her report states:

It is well known that the RMA was part and parcel of a massive reform programme in New Zealand that lasted from 1984 through 1990. A hot-bed of neo-libertarian thinking, New Zealand’s Fourth Labour Government embraced public choice theory and managerialism to overhaul New Zealand’s economy, local government, health and education systems, state sector, social welfare and resource law. Two objectives evident in every area of reform were economic efficiency and public accountability. These two reform objectives featured prominently in resource management law review. But there was a third driver of resource management law reform – the desire for superior environmental protection. A new resource management law and policy took shape out of the alignment of “pull and push” forces. The “pull” came from government reformers anxious to replace regulations with market-driven approaches to resource policy. The “push” came from environmental advocates, both within and outside government, who were disappointed with the Muldoon-led government’s environmental record and were demanding superior environmental protection.

A fair assessment as to whether the RMA reforms met those objectives would be in the affirmative. Regulations were removed to make way for a planning system that was permissive and largely driven by market forces. Environmental bottom lines satisfied the concerns of environmental advocates, decision-making was localised and the potential – at least - for public accountability was established. Those objectives were met. But there have been unintended consequences. Frieder writes tellingly of the public policy challenges that arose/would arise with the implementation of many planning policy ideas in New Zealand – many of which were imported from her native United States of America:

¹ Frieder, Julie (1997) *Approaching Sustainability: Integrated Environmental Management and New Zealand’s Resource Management Act*. (Available: http://www.fulbright.org.nz/wp-content/uploads/2011/12/axford1997_frieder.pdf)

Are (were) the people in New Zealand ready for the RMA and its necessary departure from the status quo? This question must not be read as accusatory or value-laden. It is simply a statement that getting from an old way to a new and improved way requires commitment from people to take risks and change. Consider that some laws are “technology forcing.” They set emission standards at levels that are not achievable with existing technology. Thus, a “technology forcing” law actually “forces” new technologies on to the market. In a similar vein, the RMA is a “behavior forcing” law. Its objectives, namely integrated environmental management, cannot be met with the existing behavior, attitudes, and norms. Compliance with the RMA is “forcing” new behavior, new ways of doing business. The resistance to change stifles innovation and makes compliance unnecessarily costly and slow.

Another issue related to culture is the importation of foreign ideas into New Zealand society. In the 1980s, several New Zealanders (who later became leaders in the reform) traveled to England and the United States. There they were introduced to new models of planning, impact assessment, public participation and deregulation. With little tailoring, these ideas became part of the RMA fabric. Take, for example, the idea of using market mechanisms, as opposed to rules, to achieve environmental objectives. In the US, market mechanisms are viable policy instruments because environmental quality data and corporate emissions data are widely available to market. Without that information, the market cannot allocate efficiently. In New Zealand, there is a presumption of privacy. Corporate emissions data is believed to be private. Environmental data are not readily available to the market or to the public which limits the use of information and market-based mechanisms as viable alternatives to regulations.

Attitudes toward public participation illustrate another way in which culture influences RMA implementation. The RMA provides for extensive participation by divergent interests such as iwi or community groups. This “multi-stakeholder” model of participation moves the process of reconciling competing resource values to the front end of the policy process. It is increasingly common in the United States where it is successful because third parties and nongovernmental organisations (NGOs) are equipped with resources, experience, access and the capacity to participate fully. In some cases federal or local government funds NGO participation to guarantee a fair and balanced process is achieved. Collaboration of this sort is a new paradigm of participation in New Zealand. It inverts the conventional consultation method of formal notification and eleventh hour submissions followed by possible courtroom battles. Moving to the new approach envisioned by the RMA requires (among other things) a cultural transition from legal formalism to approaches that use informal negotiation and consensus building techniques.

Lynton Caldwell summarized well the importance of culture when he wrote: “Individual and institutional change must proceed together if society is to be transformed. Human behaviour is at once individual and social; it is structured and reinforced through institutions. A strategy for action must, therefore, apply to individual, institutional and social behaviour simultaneously.”

The seeds for many of the RMA urban planning problems that are described in LGNZ's thinkpiece were built into the Act and its receiving environment when it was passed into law. Because of the lack of appropriate monitoring and information about emissions and other discharges the market inevitably failed to efficiently correct itself. Because of the absence of rules and controls to protect private property from the activities of adjacent property owners and developers it was inevitable that local councils would reach back into previous regimes and reuse Town and Country Planning Act scheme processes and rules to correct for that aspect of market failure. This comes as no surprise to urban planners who have worked professionally under both regimes.

NZPI submits it is important to learn from mistakes that have been made in previous reforms in order to avoid making them again in future reforms.

3.2 Learning from International Best Practice

We noted above the gaps that arise in LGNZ's research because of the absence of any research into international best practice. (We note that international research comes at a cost and that resources may have been limited). However, NZPI suggests that an excellent and authoritative starting point for a review of New Zealand's system of urban planning is the text *Australian Urban Land Use Planning: Principles, Systems and Practice*², by Nicole Gurrán. She refers to the concept of planning as a form of urban or environmental governance, a set of expectations or principles for the 'procedural' aspects of planning (how the planning system operates), and the 'substantive' outcomes of this process (what the planning system delivers). She suggests:

Before understanding why we undertake a process such as land use planning and the objectives of this process, it is important to clarify what we mean by 'planning'. The term 'planning' has different meanings in different contexts. In the context of urban policy, the expressions 'town and country planning', 'urban planning', 'land use planning', 'environmental planning' and, increasingly, 'spatial planning' are used to refer to a formal process regulating the use of land and the development of the built environment, in order to achieve strategic policy objectives. In this strict sense, planning is a 'particular form of public policy intervention in the arena of private decisions with regard to the use of land, governed by particular legislation' (Bramley et al. 1995, p38). The international Society of City and Regional Planners (ISOCARP) describe the activity or land use planning as anticipating, preparing for, 'regulating and promoting changes in the use of land and buildings' (ISOCARP 2001. pxi). Consistent with this definition, planning can be understood as a methodology for identifying appropriate future actions to occur within a defined environment, including the use of various aspects or 'resources' contained within it. More broadly, and in relation to the Australian context, Brendan Gleeson and Nicholas Low argue for an understanding of spatial planning as a form of urban governance justified by the 'ideal of social justice' and directed to the 'challenge of ecological sustainability' (Gleeson & Low 2000, p2). (Gurrán, 2011, Chapter 1)

² Gurrán, Nicole (2011) *Australian Urban Land Use Planning: Principles, Systems and Practice*, Sydney University Press

NZPI notes the significance of any potential central government intervention that will be required to give effect to recommendations that are accepted from any review of NZ's RM planning system. This significance requires a very careful assessment of the purpose of that intervention. Gurran provides this advice when building a rationale for a planning intervention:

A primary justification for public intervention through the land use planning system relates to the potential negative impacts, or 'externalities' of an individual's activities in the private use of land upon neighbouring landholders and the broader community (Bramley et al. 1995). In other words, 'one householder's environmental gain from a new or improved dwelling may well signify a loss of amenity for their neighbours' (Blake & Collins 2004, p124). To use a common example, a new addition to a house next door that achieves an additional storey and better views can also result in a loss of sunlight, privacy and outlook for the neighbours, and, depending on the design, may also detract from the visual appearance of the streetscape. Inappropriate development adjoining a nature conservation area could reduce experiential values for visitors and result in the spread of exotic plants and weeds, threatening the delicate ecological systems within the adjoining reserve. Over time, the cumulative effect of many such developments can make a significant impact on the qualities of our shared urban and regional landscapes. Therefore, a clear land use plan, developed with public input, and setting out the rules governing future changes and the parameters for assessing particular development proposals, gives members of the community a degree of certainty and involvement about future changes. In other words;

(The) certainty provided by a publicly accountable land use plan, supported by consistently applied development controls, may be seen as a social freedom outweighing the traditional right of the individual to develop land anywhere and in any manner (Blake & Collins 2004. p124).

In her review of the land use planning system in Britain, Kate Barker concluded that the planning system plays an important role in managing urban growth and particularly in addressing areas that are not effectively dealt with by the private market (Barker 2006). For instance, if it were solely up to the private market there would likely be an insufficient provision of important community infrastructure or protection of open space, or only those areas able to incorporate these amenities within private developments, such as premium master planned estates, would enjoy access to them, exacerbating social inequalities. The planning system can also directly contribute to socially fair outcomes in urban development, for instance, by structuring strategies to encourage the regeneration of areas suffering economic decline, or the promotion of socially mixed communities within new and changing areas. Planning is intended to provide a key mechanism for public participation and representation to protect all sectors of the community from developments that may have an unjust impact on them. It provides a process for generating and disseminating necessary knowledge needed to inform urban development strategies. Planning also provides a defined methodology and policy framework for coordinating and resolving the different components of urban development - housing, employment opportunities, public space, transportation, water, biodiversity protection, and so on. Often these matters seem to relate to rival objectives - for instance, the need to provide new housing and infrastructure, and

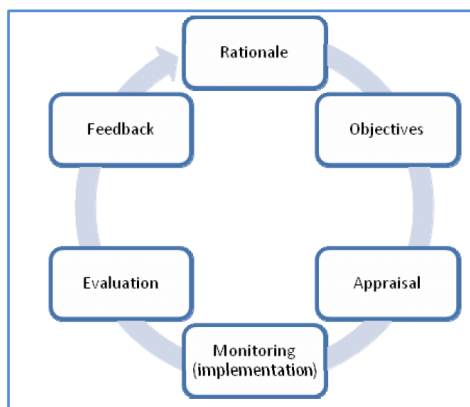
the need to protect the environment. Planning provides a process and forum for resolving these competing issues. Finally, the planning system helps overcome blockages to essential development of land that could arise if landowners choose to act in a monopolistic manner (by refusing to sell sites needed for essential urban developments). Planning interventions including the compulsory acquisition of land can help to address this problem (Barker 2006, p26). (Gurran, 2011, Chapter 1)

NZPI submits that an appropriate review of New Zealand’s system of urban planning would benefit from this kind of rounded and integrated approach in order to engage with the challenge posed.

3.3 Importance of reflection and review processes in RM policy development

We noted above the importance of reflection and systematic analysis of the influence of various policy settings in NZ’s system of RM planning before making changes. We submit that a key aspect of the policy change process is a framework by which future reforms might be judged. NZPI considers that this requirement is fundamental to reform of New Zealand’s urban planning system. This would recognise that there is a need for a planning system that is reflective, that ‘learns’, and that adapts as circumstances change, and that changes as systematic monitoring and evaluation of system performance in achieving its objectives suggests there is need for further change.

There are many policy cycle framework examples that could be adopted. Here, we describe, summarise and adapt the so-called ROAMEF³ approach promoted by the UK Government for the management of policy interventions.



Alternative Urban Planning system policies may be comprehensively assessed and managed through the ROAMEF Cycle. The Rationale, Objectives, Appraisal, Monitoring, Evaluation, Feedback cycle ensures policy makers design into the policy process evidence of whether interventions are achieving their aims and objectives. This is a proven, sequential, robust evaluation process. It is systematic and follows a logical process.

Rationale

In the case of NZ’s RM planning system the policy maker will be required to deliver Government requirements. NZPI suggests that the rationale for a new system of urban planning needs to be transparently stated. This will then allow for the statement of transparent and measurable policy objectives. We note, for example, that the stated aims and scope of the proposed policy intervention that are set out in the TOR for the Productivity Commission’s review, are:

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.

³ See for example: <http://www.roamef.com/what-we-do/roamef-cycle>

This statement, which might be described as the rationale for the intervention, suggests it is to achieve certain desirable outcomes. In order for a framework to be produced whereby the achievement of those outcomes can be judged, those outcomes need to be analysed and classified into specific objectives whose delivery can be measured. LGNZ may come to a view that a different wording is required for the planning system rationale it has in mind – but it should describe a set of outcomes and objectives.

Objectives

SMART objectives should be designed for the short, medium and long term. Options and alternatives are generated and initial feasibility studies conducted. Options would typically be appraised for effectiveness and efficiency. In the case of urban planning there are many types of urban development – one size will not fit all. Appraisals may include the best estimate of costs and benefits.

Appraisals

Appraisals might be developed as follows (quoting liberally from ROAMEF sources):

- Identify and value the costs of each option
- Identify and value the benefits of each option
- If required, adjust the valued costs and benefits for:
 - Distributional impacts (the effects of proposals on different sections of society)
 - Relative price movements
- Adjust for the timing of the incidence of costs and benefits by discounting them, to obtain their present values
- If necessary, adjust for material differences in tax between options
- Adjust for risk and optimism to provide the Base Case, and consider the impacts of changes in key variables and of different future scenarios on the Base Case
- Consider unvalued impacts (both costs and benefits), using weighting and scoring techniques if appropriate

This helps to set the parameters of an appropriate solution.

Monitoring

The policy monitoring system must be in place. This must establish appropriate baseline data before implementation begins. The new system then begins to provide the activities and regulatory services. While delivering their activities, monitoring projects capture data to see if the policies are achieving what they set out to do and that they are on course to deliver all their intended outputs and outcomes. NZPI observes that while various environmental baselines may have been available when the RMA was originally enacted, these were generally vague and contested and did not serve the purpose as either environmental bottomlines or as baselines.

Evaluation

Formative evaluation can demonstrate early findings from, and the extent to which, the policies and their implementation are achieving the objectives of the intervention as a whole. Where they are

not, corrective action can be taken. Once the initial phase of implementation is complete, a final, summative evaluation of specific monitored areas or developments takes place. Evaluations and the aggregated final monitoring data are supplemented with more extensive qualitative data from strategic stakeholders and built into a final picture of outcomes.

Feedback

Completing the cycle: the findings of a final public policy intervention evaluation can then feed back to the original overarching rationale for the programme and provide evidence of what works, why it works, for whom and under what conditions.

(The source for much of this material is: <http://www.roamef.com/what-we-do/roamef-cycle>)

3.4 Principles in RM Planning System

In the previous paragraph we describe the importance of a statement of rationale for a system for RM planning. A government policy statement perhaps. Commonly, part of a rationale for a planning system whose purpose is to guide and regulate the allocation of natural resources, would be a set of principles. NZPI has embarked on research in pursuit of a set of principles that might also inform the policy development process. This research suggests that wherever groups of people, or individuals, use land and its resources, that land use is planned. Land use planning is not only practised when national authorities intervene or as a result of development projects. Land use planning happens even if the term is not used. NZPI suggests that New Zealand's present review largely deals with cases or situations in which an intervention occurs in order to change or improve land use and to sustain natural resources. There are many models for managing or regulating such interventions. One model of land use planning follows the sense of a rational model of planning. There it is assumed that the optimisation of the set of planning tools in connection with rationalisation of the planning system will result in the best possible solution to the problem to be solved. Social conflicts may be disregarded in this process (technical planning approach, experts know best). Another model is to create a social platform for solving problems and settling conflicts. Land use planning is thereby described as a political process in which the constellation of forces determines the result. In this type of planning process the stakes of differing groups with different power potential and different influence meet one another. In this process the mechanisms of conflict resolution and forming a consensus are the major political factors (participatory planning approach, collaborative planning systems of many sorts).

New Zealand's present RM planning system doesn't fit either of these models exactly, but the tendency to use prescriptive plans (inherited from Town and Country Planning Schemes) is shifting the implementation of the RMA more toward the so-called rational model, and away from models that enable participation and negotiated outcomes.

Somewhere in the middle of these models might be found an approach that would fit into New Zealand: *Land use planning creates the prerequisites required to achieve a type of land use, which is sustainable, socially and environmentally compatible, socially desirable and economically sound. It sets in motion social processes of decision making and consensus building concerning the use and protection of private, communal or public areas.*

We submit that New Zealand's RM planning system needs to recognise the importance of property rights – both private property rights and public property rights – and provide for opportunities and mechanisms that give those rights a place at the table when planning the development and redevelopment of natural resources.

Ends