Submission on the Better Urban Planning Draft Report

Thank you for the opportunity to make a submission on the Draft Report. Unfortunately, due to pressing personal circumstances, I have not been able to devote the time and resources, I had hoped.

I confirm that this submission is a personal submission.

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Chapter 7 – Regulating the Built Environment

Question 7.1

The benefit of a common consultation and decision making process is likely to depend on the scale of works being considered, the degree of detail available and the amount of research into potential effects which exists.

If good information existed for say a town centre redevelopment with increased provision for residential accommodation in mixed use development, there would benefit in a single consultation exercises covering District plan matters, infrastructure investment and other planned investment by the Council to improve the town centre.

However, the level of detail and research appear to significant vary between the strategic planning stage currently carried out under the Local Government Act and the drafting of proposed Planning Provisions currently carried out under the Resource Management Act. This means it is typically impossible for adjacent property owners to understand effects on their properties from studying spatial plans and land use strategies. It is not until the precise nature of planning rules is known, such as activity status for resource consent, permitted standards (particularly those about height, bulk and location – permitted development baseline) and notification provisions, that it is possible to work out potential effects on neighbouring properties.

For example, both the Auckland Mixed Housing Urban zone and Johnsonville (Wellington) medium density area are intended to accommodate 3 storey residential dwellings. However, the variations in plan rule drafting, means that the rules recommended by the Auckland Independent Hearing Panel for the Mixed Housing Urban zone could have a much greater adverse impact on the sunlighting experienced by neighbouring properties, than those contained in the Wellington District Plan for the Johnsonville Medium Density area.

A compromise situation could involve a two level planning approval – whereby general principles established in spatial plans or similar following public consultation, do not need to be reconsidered under separate legislation. However, the second stage would be to get agreement on a finer level of detail. For example, a spatial plan could establish the principle of areas like Tawa/Newlands in Wellington being suitable for medium density residential development with three storey buildings. With a further consultation stage required on the

exact rule drafted to be put into a District Plan. This would have some similarities to the British 2 stage planning approach on some sites known as outline (in-principle) approval and reserved matters approval.

Question 7.5

I am very concerned about the suggestion of Councils paying for visual amenity objectives.

I believe a good standard of visual amenity should be expected for all developments, as demanded for in the English National Planning Framework 2012, Planning Policy Wales 8th Edition 2016, Welsh Technical Advisory Note No. 12 Design 2016, 2015 NSW Apartment Design Guide and 2016 Victorian Better Apartments Draft Design Standards, NSW State Environmental Policy 65: Residential Apartment Design and Victorian Planning Provisions.

However, there could be benefit in offering financial and other types of rewards for above average and in particular excellent/outstanding design.

If Councils have to pay private developers to produce developments which have acceptable visual effects on the streetscene and amenity of neighbours, as well as financial inducements for other benefits such as on-site stormwater retention, landscaping, energy efficiency and life-style adaptation, on top of needed infrastructure upgrades and very costly planning processes, it is likely to prove financial catastrophic on the local government sector.

Christchurch City Council introduced a voluntary design guide in 1999 and has since abandoned a voluntary approach to urban design as ineffective. Christchurch Council proposed plan change 53 covering Living 3 and 4 Zones (more intensive residential zones) circa 2010 and Plan Change 56 (Business 1,2 and 2P zones – Urban design and amenity in Suburban Centers) in 2013 because of the poor quality of medium to high density residential and commercial development which had been built over the previous 10 to 15 years. Past development was considered poor quality in terms of its urban design, appearance and amenity.

The officer report to the 3 December 2009 Christchurch City Regulatory Planning Committee stated

"It is recognised that poorly designed places can have a detrimental impact on the character of an area and on people's attitude to, experience and enjoyment of, a place… For this growth management strategy to be effective, it is important that more intensive residential development achieves good standards of urban design and amenity…

In addition to the existing rule package, the Council introduced voluntary design guides for the these L3 and L4 zones in 1999…. the guides carry very little weight when it comes to assessing development proposals as they fall outside the City Plan. As such they lack sufficient regulatory status to actually require good design. The form of development which has occurred since 1999 has shown that the guides have actually had little influence in raising design standards… Experience has shown that a bulk and location rule package,

accompanied by voluntary design guides, is not sufficient for ensuring that acceptable levels of urban design are achieved".

The 2010 report *'Technical Report on Urban Design'* prepared by Boffa Miskell for Christchurch City Council also stated: *"This confirms there are substantial amenity issues being generated by recent developments in both zones [*Inner-city Living 3 and Living 4 Residential zones*] and that current planning controls and existing non-statutory guidance are insufficient to achieve satisfactory or desirable urban design amenity outcomes."*

The above stance was recently tested in the Christchurch Independent Hearing Panel for the Christchurch Replacement Plan. The December *2015 Decision Report for Residential zones (Stage 1)* supported the use of mandatory design assessment for larger scale development. The decision report contains the comments that *"good urban design is an essential ingredient not only in the recovery but also in providing for the long-term future of Christchurch"* and that this context warrants "*the capacity to decline consent where a development's design is so deficient that it would significantly derogate from the quality of its residential environment."*

Whilst not specific to urban design, the 2015 report published by the Royal Society for the Protection of Birds titled '*Using Regulation as a Last Resort: Assessing the Performance of Voluntary Approaches'* systematically evaluated the performance of over 150 voluntary approaches used in in policy making around the globe.

This report found:

"The impact of most voluntary schemes is limited – voluntary approaches are rarely if ever an effective substitute for regulatory or fiscal measures in seeking to achieve public policy objectives…The principle of using regulation as a last resort is difficult to justify based on the findings of this assessment. It is not evidence based and risks compromising the effectiveness and efficiency of public policymaking. Instead, we recommend a presumption in favour of what works…

The use of voluntary approaches is not appropriate in situations where high rates of participation and compliance are required, where there is limited flexibility regarding actions and timings, or where serious social or environmental risks are involved (e.g. risks that are persistent, irreversible, or poorly understood)."

I am not aware of any Council in New Zealand which has demonstrated that buildings with positive visual effects on the streetscene can be secured without regulation.

The 1990 Social Research Report by the National Research Bureau Ltd. titled *'Satisfaction with Multi-Unit Developments in the Lower Hutt Region'* refers to 76 existing multi-unit developments in the District, of which 14 (18%) are described as above average, 21 (46%) as average and 41 (56%) as below average.

The criteria used in the report for categorising developments related "*mainly to the aesthetic appearance of the property".* Criteria for below average developments included

older, generally poorly maintained, cheaper materials, often large 'state' type blocks, little architectural merit, little aesthetic appeal, little or no landscaping and often untidy.

The 2010 *Urban Technical Advisory Group Report to the Ministry of the Environmen*t, contained recommendations which recognised the importance of quality urban and built environments and supported the use of urban design panels. This report strongly supported the claim that *"objectivity in design review is both possible and essential…"*

Urban Designer, *Graeme McIndoe's Statement of Evidence to the Christchurch Hearing Panel on Urban Design Outcomes* dated 11 March 2015 on behalf of Christchurch City Council, directly comments on the benefits of using regulation to secure good urban design outcomes. He states:

"*Non regulatory approaches offer some merits but are relatively ineffective and give no certainty that poor outcomes with adverse effects will be avoided. Only regulatory approaches give certainty that acceptable outcomes will be achieved…*

In my opinion, applying minimal design controls and relying on the market to determine quality would lead to failure. This would result in a wide mix of quality, including a proliferation of poorly resolved, low quality development produced with no consideration to the neighbourhood and specific context in which it sits, and which offers an unnecessarily poor living environment…

From my current experience undertaking design review work on residential projects in Palmerston North and Wellington, many of the developments are of poor quality…Many [project designers for multi-unit residential development] neither understand urban design issues nor consider them relevant or give them appropriate weight in their designs…

If a matter is important, or the project is large and complex, then in my opinion delivering an acceptable result should not be left to chance, that is, to the market. A well-focused, effective and efficient regulatory approach is necessary…."

The University of Auckland, National Institute of Creative Arts and Industries '*Future Intensive: Insights for Auckland's Housing*' 2012 states *"Multi-unit housing tends to be shaped by the requirements and strategies of investors, rather than the needs of owner-occupiers. Investor demands might result in the creation of housing stock that is less attractive to owner occupiers".* It also identifies design flaws in three large apartment complexes in Auckland, as well poor design results from infill development.

Urbanismplus Ltd, Patrick Partners Pty. Ltd, Pocock Design Environment Ltd and TTM Consulting Pty Ltd. 2010 in '*Hasting's Urban Issues and Urban Design Framework'* express the view that *"poor quality development will set the market context for all subsequent developments that follow. Some developers will follow suit with equally poor outcomes, and some (especially higher quality) ones would be deterred from entering the market. "*

Development aimed at low-medium affordability end of market has had *"reduced attention to materials, detailing and integration with the local surroundings. Development may have comprised on-site amenity and privacy due to the squeeze to maximise building coverage."*

Hastings District Council 2013 Section 32 Evaluation Report for the replacement Hasting District Plan points out that poor quality infill housing has lowered the quality and undermined the character of the Hastings residential area. *"Some of the factors that have resulted in poor quality developments are: new infill dwellings being disproportionately large in relation to the site, leaving very little or no open space around the dwelling; the development results in a loss of greenery and a significant increase in hard surfaces (e.g. concrete, tarmac, paving)…"*

The 2013 notified version of the 'Proposed Auckland Unitary Plan' referred to poor design outcomes for some apartment developments.

Harrison Grierson 2010 in *'Future Proof Implementation Group, Intensification Toolkit'* report there is a *"general consensus that the built quality of some of the areas where there has been intensification has been poor."*

I believe history (pre 1930's) and 3rd world countries have shown us the potential outcomes from unregulated housing markets – substandard housing, overcrowding, unhygienic conditions and dwellings with little natural light and ventilation. A fairly unregulated approach to apartments in New Zealand in the 1970's and 80's has led to a legacy of 'ugly' apartment towers and sausage flats.

The importance of maintaining amenity has also been emphasised in reports by the Office of the Parliamentary Commission for the Environment in the 1990's.

"Strategic management of urban living must encompass the management of amenity values, heritage and urban design".

'*Towards Sustainable Development, The role of the Resource Management Act 1991'* (PCE Environment Management Review No. 1), Office of the Parliamentary Commissioner for the Environment, August 1998

"*The provisions of the RMA that address amenity values and the interactions between development and the environment (including people and communities) are essential and they must be retained."*

'*The Cities and Their Profile: New Zealand's Urban Environment'*, Office of the Parliamentary Commissioner for the Environment, June 1998

"The failure to appreciate the linkages between the major 'systems' that affect amenity values in cities (i.e. population growth, demography, sewerage, transport, water, open space, vegetation and building design) will inevitably result in a decline in the environmental qualities of our urban landscapes."

'*The Management of Suburban Amenity Values*, *Administration by Auckland, Christchurch and Waitakere City Councils'*, Office of the Parliamentary Commissioner for the Environment, March 1997

Recommendation 7.1

Responding to growth pressures is very important in an urban setting. However, urban growth still needs to occur within the framework of environmental sustainability. Greenfield expansion onto land with high biodiversity, landscape and cultural heritage values is undesirable; as is urban redevelopment which results in wide scale losses of built heritage resources. New subdivisions without active stormwater management control, in particular place high risks on water quality.

Recommendation 7.3

A much greater extent of analysis and research is required prior to the introduction of the type of responsive rezoning promoted, such as effects on social, environmental, cultural and economic resources.

Allowing large-scale development as a permitted activity (absence of resource consent) has the potential to have severe adverse effects on the private amenities of occupiers of existing dwellings (particularly in terms of sunlighting, passive solar heating, outlook and sense of visual domination, costs of home heating and exposure to unhealthy living conditions such as damp and mould. It also has the potential to lead to the construction of ugly multi-level developments – particularly those intended for the 'buy to let' property market with renters having little say over amenities provided. Basic design techniques can be used to lift the external appearance of buildings from that which is a permanent blot on the streetscene to something which provides a much more acceptable streetscene appearance.

New Zealand already has a number of hideous buildings built post WWII (e.g. state housing flats and low quality private rental units built in the 70's and 80's) without any real design considerations and it would be a detrimental step to go back to this situation.

If Local Councils are expected to disregard effects on amenities and quality of the environment (currently s7 matters of the RMA Act), in the pursuit of housing growth, this should be clearly specified. Otherwise, Councils are bound to be torn between competing objectives of increasing development capacity with satisfying Part 2 of the Act and improving the liveability of areas in accordance with local community expectations.

Recommendation 7.4 and 7.6

I strongly disagree with the recommendation of limiting notification to those directly affected, particularly for proposed plan changes. I believe this would unnecessarily eliminate the ability of various local groups and organisations to participate in local decision making, such as local residents, environmental and heritage groups, as well as individuals and organisations holding specialist knowledge which use to promote good planning principles. It is suggested that the Productivity Commission review submissions on the Resource Legislation Amendment Bill which proposed the same limitation on notification provisions.

Whilst I support the concept of Councils employing a wide range of consultation tools, it needs to be acknowledged that it always be difficult to encourage participation by some community groups – this particularly seems to apply to youth, renters, migrants and refugees, persons with English as a second language and low-income earners. Auckland Council's experience of using social media on the Unitary Plan, was that it was useful in increasing the number of comments received, but some comments were of low quality.

The general public has a poor understanding of RMA processes, and this is likely to inhibit effective participation for many groups. This is also why, it is particularly important to continue to provide the ability to comment for those groups which have already built up experience.

Recommendation 7.5

Whilst I support the concept of amending existing appeal rights, I do not support the recommended suggestion. There can be good grounds for persons and organisations not considered directly affected to lodge an appeal, in the interests of achieving planning provisions which are more efficient and effective. I note that the Environment Court has supported appeals from Wellington Waterfront Watch and NZ Forest and Bird in recent years, which indicates that these groups submissions on plan changes do have merit.

Recommendation 7.7

Whilst seeing merit, in the creation of a permanent independent hearing panel, I believe this idea requires further exploration. I am particularly concern about the proposed loss of appeal rights for Council decisions in accordance with the hearing panels.

In particular, I consider the highly compressed timeframes used for the consideration of the Proposed Auckland Plan and Christchurch Replacement Plan, could have compromised the final quality of replacement plans, as the ability to collect additional information and undertake additional research was highly limited.

Mechanisms would also need to exist as ensure quality control for hearing panel members, and consistency in decision making on local plans where the same issue applies. Councils and the Central Government should not be able to pick and choose panel members, as they think will be most likely to support their own position. There does already seem to be some variation in recommendations made by Auckland and Christchurch Independent Hearing Panels - for example the Auckland Independent Hearing Panel recommended reliance on Building Act Provisions (1 in 50 years) to determine floor levels in new buildings in existing urban areas, whilst Christchurch Independent Hearing Panel recommended the 1:200 year flood event level.

Question 7.2

Some exceptions to independent hearing panels are at least warranted for modest plan change variations, where there are few or no submissions and issues are tightly defined to a small area of land. In many cases, a single commissioner may be sufficient, as often used for resource consent hearings.

Recommendations 7.10

I have serious concerns about this recommendation. The Productivity Commission should have regard to submissions made on the Resource Legislation Amendment Bill. The RMA already provides a number of avenues for Central Government to intercede with local decision making.

Chapter 8 – Urban Planning and the Natural Environment

Recommendation 8.1

I support the concept of national guidance on environmental sustainability. This guidance does however need to set minimum bottom lines, that should not be crossed – even when this reduces economic growth and development opportunities.

Recommendation 8.3

I would support an agreed set of principles for central and local government, but note that the poor relationship between these levels of government are unlikely to change, until meaningful consultation and engagement takes place, with a willingness to treat the other as an equal partner. Frequently the Central Government appears to have rushed research and consultation timeframes, failed to properly investigate costs to local government and implementation problems, and have predetermined outcomes so that consultation feels like a tick-box exercise. Good relationships are hindered rather than helped by these situations.

Recommendation 8.4

Considerable care needs to be used in employing market based tools to manage spillover effects.

Considerable concern has been raised by Environmental Groups, such as Forest and Bird to 'bonus lot' provisions, which have financially rewarded landowners for legally protecting land, by giving them additional development rights in rural areas.

My understanding is that all of the following plans contain some form of 'bonus' lot provision:

- Kapiti 2016 (Proposed hearing version)
- Rotarua 2016

- South Waikato 2015
- Whankatane 2015
- Horowhenua 2015
- Waipa 2014 (Appeal version)
- Hastings 2014 (Appeal version)
- Western Bay of Plenty 2012
- Wairapa 2011
- Thames-Coromandel 2015 (Appeal version)
- Auckland 2016 (Council decision version)
- New Plymouth 2005
- Whangarei 2007
- Waikato 2013
- Far North 2009
- Taupo 2007
- Matamata Piako 2005

Yet I have not been able to locate any S32 (District Plan justification) or s35 (District Plan monitoring) report which justifies the existing provisions based on past performance. The above plans, largely seem to justify their usage based on potential benefits. Some monitoring of plan outcomes was found for Auckland Council, Thames-Coromandel, Hastings and Waipa Councils. Monitoring from the first two Councils indicated problems with the system, with anticipated benefits over estimated and high administrative costs. Monitoring from the second two Councils indicated little market interest and potentially a greater ability to achieve development in rural areas, without reliance on this tool.

Monitoring by Auckland and Thames-Coromandel Councils largely focused on the number and size of land parcels now benefiting from legal protection. However, they generally failed to recognise, that legal protection may not have secured additional benefits that could have already have been secured through the use of regulation. That is, monitoring often failed to realise that legal protection was not an end in itself, but intended as a means of achieving better quality biodiversity resources.

Outcomes in Auckland and Thames-Coromandel appear to have been:

- Relative small land parcels given legal protection and significantly smaller than average lot size for QEII land covenants;
- Lack of compliance with consent conditions;
- High costs to Council in undertaking monitoring;
- Land legally protected was often of lower ecological value and did not target land of highest ecological value;
- Isolated fragments of land had been legally protected;
- Promised benefits by landowners were often not delivered; and
- Uptake of provision in Auckland was beyond resources of staff to manage.

Generally legal protection of private land which has been motivated by altruistic reasons (as generally applies to land with QEII covenants) has generally achieved more positive results than legal protection of private land motivated by private profit.

I believe various Councils have also experimented with the use of performance bonds, as a form of economic incentive, to encourage positive environmental outcomes. I believe some land developers have challenged the use of such bonds through appeals.

Chapter 10 – Infrastructure, Funding and Procurement

Question 10.4

I am very concerned about the possibility of Council's auctioning and selling development rights above standard controls in the District Plans. I fear that this has the potential to degenerate into cash-strapped Councils effectively selling planning permissions in order to secure additional funding and/or local development.

The resource consent process already allows developers to seek resource consent for development which exceeds the permitted bulk and location provisions in the District Plan. Many thousands of these types of resource consents are already expected to be approved. For example, in Hutt City – Rymans Retirement Homes gained resource consent for 6 storey retirement apartments and ancillary works up to 18.5m in height, in a zone with a maximum permitted building height of 8m. We know that over 99% of resource consents get approved each year with less than 5% notified to the public or neighbours. These statistics may mean that many developers may not be willing to pay a cost higher than going through the resource consent process would entail.

In the event that development of abnormally tall height was built under such a system, it would then be difficult for the Council to resist similar height development nearby without such a sale agreement, as the effect of the surrounding area would be generally the same.

Chapter 13: A future planning framework

Question 13.1

I am very concerned about the separation of natural and built environment issues into either two Acts or separate parts of the same Act. I believe this would be contrary to integrated management of the entire environment, and could lead to effects on the natural environment from the urban environment being ignored. Urban development has considerable potential to result in declining water quality, if soil erosion and stormwater are not adequately controlled at source. The overloading of stormwater drainage systems from new development (e.g. loss of permeable surfaces and rain absorbing vegetation) could lead to untreated sewer being discharged into urban streams and harbours.

Because urban environments and natural environments can be close to each other – for example housing in a coastal area or a subdivision adjoining a regional or local reserve – the potential for impact and damage is significant. In addition to the above, these effects can include clearance of vegetation; loss of habitat for flora/fauna; loss of landscapes; threat from invasive and introduced species; and cumulative effects of any/all of the

aforementioned – such as urban development on steeper slopes with higher risk of land instability, increases the need for vegetation clearance and structural works (such as concrete sprayed cliff faces). Hard structural works could prevent vegetation from being re-established, increase surface water run-off, increase soil-erosion on land lower down, and increased the spread of contaminants on land lower down.

Furthermore, the natural environment can have important recreation values for urban residents.

The recently enacted *Queensland Planning Act 2016* covers both the urban and natural environment, with the purpose of the Act identified in s3 referring to both land use planning and ecological sustainability. National guidance in England (National Planning Framework 2012) and Wales (Planning Policy Wales 2016) also emphases sustainability in planning, including sustainability in urban environments.

Concern is raised that the division of considerations for the built and natural environment, would lead to similar problems which has occurred in water management in New Zealand with functions and responsibilities split between local and regional councils. The collective outcome of which is that some local and regional Councillors do have not a co-operative management process in place that protects water quality, from activities occurring on both land and water. It would be equally undesirable if undeveloped areas with strong natural qualities, were damaged by nearby urban development, because of a failure to understanding the interrelationships between the two.

The 2016 Conservation and Environment Science Roadmap Discussion Paper published by the Ministry for Environment and Department of Conservation states on page 11 that

"Urban intensification puts increasing demands on the natural resources (e.g. fresh water) needed to support good economic, environmental, social and cultural outcomes. We need to understand the consequences of these changes, including the impact of urban development on conservation lands, and on coastlines where most of our cities are located."

The 2010 Report of the Minister for the Environment Urban Technical Advisory Group, recommended that the current approach in the RMA of integrated management of environmental and planning/urban matters be retained.

"*Separation risks losing the benefits of integrated thinking, policy and decision-making, and by establishing further statues is likely to complicate rather than simply and streamline processes."*

Geoffrey Palmer in his keynote address at the NZPI April 2016 conference stated:

"We do think the Local Government New Zealand's option to create a separate planning act and environment act would cause extreme upheaval. We think that would be a seriously retrograde step. It is contrary to the objective of better integration and would push us back 25 years."

Natural environment considerations also form a key consideration for spatial planning – in terms of identifying places where new urban development is less suitable. In this respect, they have a similar role to play as other land constraints such as natural hazards, heritage values (e.g. listed buildings), difficult topography (e.g. steep) and ground contamination.

Question 13.2

I have concerns that neither option put forward recognises the role of territorial authorities in natural environment management. At least in the Wellington region, territorial authorities are given the responsibility for the identification and protection of significant indigenous vegetation and habitats of fauna, with the exception of land owned and managed by the regional Council. Nevertheless, District Plans for Upper Hutt, Hutt City, Porirua City and Wellington City Council area indicate deficiencies in this area. The fact that this situation exists some 24 years into the RMA, means that there has been little effort to monitor local government performance in this area. Under proposed option 2, it would still be possible for the regional council to score highly on regional council performance, even if local biodiversity management remained inadequate, because the regional Council could argue that they had carried out their side of arrangement – in terms of introducing new regional policies and explanatory guidance, which is then the responsibility of territorial authorities to implement.

<u>Overview Comment</u>

I believe that the *Resource Management Act (RMA) 1991* needs more than ever to establish strong bottom lines for both the urban and rural development and maintain these standards in the interests of safeguarding the sustainable management of resources.

In urban areas, good planning should ensure that reasonable standards of amenity are achieved for residents of existing and future developments. Amenity standards should at the very least ensure that residents do not fall ‘sick’ as a result of inadequate levels of lighting, insulation, heating, and ventilation. The pursuit of housing affordability should not turn into a ‘race to the bottom’ of environmental, social and amenity standards in the pursuit of minimum development costs, maximum development feasibility/profits and maximum growth potential.