Is COVID-19 the culture shift we need to reimagine urban amenity?

THE IMPETUS FOR THE RE-EVALUATION OF AMENITY

The COVID-19 lockdown period saw many New Zealanders develop new relationships with how they live, play and work within urban environments. Whilst it is unknown at this stage how the pandemic and the attendant economic downturn will impact on the housing system, given the lengthy time horizon of planning instruments, this paper posits that it is unlikely that the pandemic will have any sustained impact on the fundamentals of how we should plan future urban environments. What is likely, however, is that it will generate sustained changes to the amenity values that communities consider important within the compact urban form model, which will have implications for how different housing typologies are delivered and the preferences for quality outdoor and local public spaces within those typologies.

THE ‘AMENITY VALUES’ PROBLEMATIC

Even before COVID-19, the interpretation of the terms ‘amenity’ and ‘amenity values in Resource Management Act 1991 (RMA) jurisprudence and the propensity towards protection of the status quo was problematic. Case law had inadvertently cast the consideration of amenity as being a maintenance of the status quo. Earlier cases under the Town and Country Planning Act 1977, for example, had the effect of limiting the inquiry as to the effects on amenity to a consideration of whether or not “the proposed use is likely to have a detrimental effect on the existing amenities of the area”. This had then spilt into statutory understandings of the concept under the RMA (Reids Holiday Park v Rangiora Borough [1979] D B13332(A); see also Storer v Erye County [1980] 7 NZTPA 268).

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Indeed, this shortcoming in the legislation and its implementation was alluded to in the *Opportunities for Change: Issues and Options* paper released in November 2019 by the Resource Management Review Panel, whom were tasked with considering the opportunities for reform of the RMA. Specifically, that paper made the following observations regarding the innate bias towards the status quo in the current system ([35–36]):

**A bias towards the status quo**

Decisions made through the resource management system have favoured existing users and uses, and as a result have inadequately provided for future generations, as well as poorer communities and iwi/Māori. Problems that have exacerbated this bias include:

- an emphasis of the RMA on avoiding or remediying adverse effects
- the protection of use rights, for example in relation to land use planning and the right to take water
- processes (eg, legal appeals) that favour the well-resourced
- the application of ‘permitted baselines’ in resource consent processes.

Furthermore, until recently there has been insufficient recognition of the importance of proactive and strategic planning in the system. Over the last decade, some councils have developed strategic plans and joint spatial plans for their regions, districts and communities to help fill this gap. Central government has encouraged this form of planning by requiring Auckland to prepare a spatial plan, future development strategies through the National Policy Statement for Urban Development Capacity, and spatial planning partnerships under the Urban Growth Agenda. However, the lack of legal weight and disconnection with RMA plans means that the full benefits of strategic planning are not being realised throughout the system.

Prior to the Resource Management Review Panel’s identification of the statutory conceptualisation of amenity and how it was inadvertently acting as a roadblock to future urban development, the amenity problem had already been earmarked in the Urban Growth Agenda as a matter requiring urgent redress. The discussion documents supporting the proposed National Policy Statement – Urban Development (2020) (NPS-UD), for example, viewed the statutory conception of amenity as disenabling of flexible growth and the development of quality urban environments. Specifically, the Beca Report *Enabling Growth – Urban Zones Research: Key Observations, Findings and Recommendations* (August 2018) concluded (at 2):

> the barriers to facilitating development appear to be from the emphasis local authorities put on the ‘present state’ and built form of amenity, rather than any future environment that would result in an area, and the social and physical infrastructure parts of amenity.

As such, (as notified) the NPS-UD included a proposal which established higher order planning directives which emphasised that amenity values can change over time and that urban development offers opportunities for changes to amenity which can better support communities and their values. The policy intent of such a proposal was to shift the widely held perception that urban development has only negative effects on amenity for individuals.

**CONTEXT SETTING – THE AUCKLAND UNITARY PLAN AS A MODEL FOR CHANGING THE WAY AMENITY IS CONSIDERED**

The promulgation of the Auckland Unitary Plan in 2016 signalled what the Independent Hearings Panel described in its Overview Report as a “large step-change” in the planning for urban development capacity, creating the establishment of a planning pathway for the ongoing long-term supply of residential, business and industrial capacity in the Auckland Region (Auckland Unitary Plan Independent Hearings Panel Report to Auckland Council *Overview of recommendations on the proposed Auckland Unitary Plan* (Auckland Council, 22 July 2016)). Against significant community opposition, the Auckland Unitary Plan introduced what in the New Zealand planning context must be considered to be a novel response to urban development capacity: the removal of density requirements and the introduction of region-wide graduated intensification around both existing and planned centres, transport nodes and corridors. The Overview Report went on to set out the Independent Hearing Panel’s recommended blueprint for dealing with the provision of capacity:
(i) utilising several planning methods for greenfield development and brownfield redevelopment, thereby providing flexibility in the way the region could respond to growth; and

(ii) introducing planning controls that most appropriately enable growth, whilst balancing the protection of existing values in significant areas and items of natural and historical heritage and of ecological value, the taonga held closely by mana whenua, volcanic viewshafts and the maunga themselves, air and water quality, the natural character of the coastal environment, and the special character of many places.

The timing of the Auckland Unitary Plan was critical to achieving this outcome. The hearing of submissions came at a time when there was a growing awareness of a significant housing supply issue, leading the Independent Hearing Panel to record in the opening to its Overview Report that the current resource management issue of greatest significance facing the Auckland Region was its capacity for growth.

Indeed, as the hearings on the Auckland Unitary Plan progressed, the Government was to notify the first national direction on urban development – the National Policy Statement: Urban Development Capacity (2016) (NPS-UDC). Whilst that national direction did not play a part in the outcome for the Auckland Unitary Plan, it required that local authorities throughout the country follow in Auckland’s footsteps by introducing new national planning requirements for local authority responses to urban development capacity issues in the short, medium and long term.

The relatively recent decision of Summerset Villages (St Johns) Limited v Auckland Council [2019] NZEnvC 173 illustrates that with a more innovative planning instrument such as the Auckland Unitary Plan and with effective national direction, there is scope even within the existing framework to recast the concept of amenity.

By way of background, that case involved an appeal by Summerset Villages (St Johns) Ltd relating to an application to establish a retirement village on a 2.6-hectare site adjacent to St Johns College in Meadowbank. Pursuant to the Auckland Unitary Plan, the bulk of the site was zoned Mixed Housing Urban (MHU) and the application fell to be considered as an integrated residential development.

The application was declined at council hearing stage on the basis of the adverse impact the scale and height of the development had on the amenity of the area.

Summerset appealed the Council’s decision to the Environment Court, but for the purposes of the Environment Court Hearing, revised the application so that the development took a more tiered or stacked approach to bulk approach when viewed from within the adjacent Mixed-Housing Suburban (MHS) area surrounding the east and north of the site.

In granting the appeal, the Environment Court held (at [80]):

We have reached the view that the consent as now proposed by the applicant is appropriate and properly balances the interests of intensification with the need for compatibility with the residential environment and impacts on visual amenity. Overall, we are satisfied that the activity constitutes an urban built character of predominantly three-storeys and therefore meets the policy of the Plan and other policies and objectives of the Plan generally.

Importantly, the Environment Court made several key observations regarding how the NPS-UDC (referred to in the decision as the UPS) and the Auckland Unitary Plan should be interpreted. In summary, the Court concluded that (at [17–18]):

Both the National Policy Statement Urban Development (Urban Policy or UPS) and the AUP stress compact urban form in the context of the existing urban areas requires intensification. This Site is appropriate for such intensification for integrated residential development and in particular for a retirement village …

Fundamentally we do not accept the proposition that the change envisaged under the UPS and AUP can be countermanded by reference to the existing residential amenity without a reference to the plan changes that are envisaged in terms of the UPS and AUP. To determine the residential character without reference to the UPS and the AUP would be a failure to properly administer both the Unitary Plan and the Policy Statement in terms of the requirements under s 104.
The Court also made several important observations regarding how decision-makers should approach the task of interpreting and implementing the Auckland Unitary Plan, noting that the tenor of the Auckland Unitary Plan was to promote a compact urban form in the context of existing urban areas requiring future intensification (at [52]):

… However, we conclude that the apparent and perceptible thrust of the AUP undeniably embraces the philosophy of the UPS: namely a focus on enabled outcomes for intensification rather than the more conventional and traditional preservation of amenity as defined and circumscribed by now-superseded planning instruments.

And earlier in the decision (at [33–34]):

… Compatibility does not mean similarity.

Our conclusion is that the proper meaning of the AUP wording as to compatibility is that there must be some features of the development allowing the residential and MHU zones to interact and relate to one another.

In that regard, the Court was critical of the Council’s witnesses who had focused more on existing residential amenity and the surrounding area in its current form rather than the future form brought about by the Auckland Unitary Plan and required by the NPS-UDC, noting with respect to that approach (at [32]):

If this is to be the outcome of the application of these two criteria, we conclude that it must be seen as direct contravention of the imperatives of the UPS and of the AUP to achieve a compact urban form and in particular the intensification along public transport corridors envisaged and reflected in the zoning of this Site as MHU and the zoning along St Johns Road and Remuera Road of both terraced housing and buildings.

Also of interest are the following comments regarding the focus of the MHU zone (at [58]–[59] and [61]–[62]):

Firstly, the flavour of the zone is established by the zone description and its unequivocal articulation of change and the resultant creation of a new paradigm of urban growth (emphasis added):

“H5.1 Zone Description

The Residential – Mixed Housing Urban Zone is a reasonably high-intensity zone enabling a greater intensity of development than previously provided for.

Over time, the appearance of neighbourhoods within this zone will change, with development typically up to three storeys in a variety of sizes and forms …”

We conclude that this aspiration creates a context that invites the exercise of development ambitions that are in step with the direction of the UPS as well as confirming an environment more tolerant towards growth and change. As an affirmation of this encouragement, the zone objectives particularise the vision and provide clear guidance in respect of intended outcomes (emphasis added):

“H5.2 Objectives

(1) Land near the Business-Metropolitan Centre Zone and the Business-Town Centre Zone, high-density residential areas and close to the public transport network is efficiently used for higher density residential living and to provide urban living that increases housing capacity and choice and access to public transport.

(2) Development is in keeping with the neighbourhood’s planned urban built character of predominantly three-storey buildings, in a variety of forms and surrounded by open space.”

…

This range of opportunities is encapsulated and given validity in terms of the anticipated, future, urban environment as foreshadowed in the objectives set out above and, in particular, articulated in Objective H5.2(2). The term used to describe the resultant physical manifestation of development that may emerge pursuant to the provisions is “predominantly”. (Emphasis original)
The Court heard much on the matter of “predominantly” and the meaning, if not the essence, of the word. It was a matter of some tightly-held views as to its meaning and relative importance. The Court is confident that this term was used in the AUP quite deliberately. There is a deliberateness and flexibility to the word. This means the concept is in fact contextual to allow robust and pragmatic assessment on individual applications for consent.

With regards to the NPS-UDC, the Court noted that it was a planning instrument that was at the top of the planning hierarchy and required due consideration by decision-makers when establishing policy frameworks on matters of urban growth and redevelopment (at [44]). Specifically, the Court noted the future focus of the NPS-UDC, commenting (at [46], [49] and [50]):

At this point, we recognise the use of critical language in these provisions of the UPS. Deliberately, it seems to us, the authors of the document have deployed the words ‘change’ and ‘future’. Unarguably, the use of these terms intends a future focus for development planning.

…

There is a clear commonality of purpose and principle to be found, on the one hand, in the theme of the UPS, set out above, and, on the other, in the particular thrust of the OA3: ‘change’. In our view, the inescapable conclusion in apparent: the UPS gives direction to decision-makers to have regard to urban growth outcomes which have previously been under-emphasised in favour of local environmental or amenity considerations.

The UPS requires evaluation in the context of ‘national significance’ within which planning endeavours are to be undertaken and which will allow ‘urban environments to develop and change’. Accordingly, our conclusion is that a more future-oriented, outcome-focused conclusion than what might have been the case otherwise and common-place before the promulgation of the UPS is envisaged. (Emphasis added)

In conclusion, the Court held that the amended development was appropriate in terms of the Auckland Unitary Plan stating that (at [66]–[67]):

Applying the criteria as suggested by the Council leads to our conclusion that this is an acceptable amended proposal. Thus, it is not necessary for us to consider the wider issues. We comment that the application of the AUP and UPS cannot be viewed in the context of only allowing activities that are similar to or the same as existing residential character and adjacent zones. In our view, that would be an incorrect application of the provisions and arguably may undermine the very purpose of the AUP and the UPS. This decision cannot be taken as an endorsement of the Council’s approach to these provisions generally or even in this case. What it demonstrates is that the amended application is clearly appropriate and anticipated in this zone.

Given we reach our conclusions in the absence of having to decide this point, we comment only for the purpose of guidance for the future. Clearly, the Auckland Plan anticipates future change. That is not only evident in the Plan but is explicitly stated in the preamble to the Auckland Unitary Plan. In the initial stage, such changes, particularly within or adjacent to residential zones, will be unsettling for existing residential owners. To this extent, we understand the concerns that have been expressed by Mrs Ngata and others at the original hearing. There is no doubt that the degree of intensification envisaged within the Plan is significant. It will bring with it impacts in terms of the construction periods which are now evident through Auckland central and beginning to radiate into the suburbs. (Emphasis added)

This case is important not only because it records the future focus of amenity values incorporated into both the NPS-UDC and Auckland Unitary Plan, but also because it is a current example of a departure from the Court’s traditional approach to consideration of amenity effects within the existing statutory framework (namely that consideration of adverse effects on amenity values is confined to an inquiry as to the potential adverse effect on the existing amenities of an area, rather than the planned future amenities). Indeed, recognition that amenity values develop and change over time is now explicitly recognised in the NPS-UD with Objective 4. Further, Policy 4 requires that when making planning decisions that affect urban environments, decision-
makers have particular regard to the fact that changes to planned urban built forms may detract from the amenity values appreciated by some people, but will improve the amenity values appreciated by other people, communities and future generations, including by providing increased and varied housing densities and types. Policy 4 goes even further to state that such amenity changes are not, of themselves, an adverse effect.

COVID-19 AND ITS POTENTIAL INFLUENCES ON THE HOUSING MARKET

Turning now to the potential influences of the pandemic on the local housing system; whilst the actual impact may not be known for some time, discussions thus far have largely focused on house price effects.

There is considerable variance in the predicted scale and timing of a market shift, but there seems to be consensus among economists that a significant drop in house values is on the horizon (for a summary, see Susan Edmunds “What’s really going to happen with New Zealand’s house prices?” (28 June 2020) Stuff <www.stuff.co.nz>). A combination of distressed sellers, a smaller number of potential purchasers and general wariness in the face of rising unemployment and market instability is expected to result in house price drops of between five and 15 per cent over the next 12 to 18 months. To put this in perspective, the Global Financial Crisis of 2008 resulted in a national drop of around eight per cent but over a longer period.

Although the post-lockdown market has seen only a 1.5 per cent drop on pre-lockdown values, this may well be the calm before the storm. Indeed, CoreLogic have noted that in the main centres and holiday destinations, prices have already declined significantly: Auckland is down 2.4 per cent and Queenstown 7.2 per cent (Greg Ninness “The worm seems to have turned for property values in the main centres” (16 July 2020) Interest.co.nz). It is widely expected that when the buffering effects of the wage subsidy scheme and the mortgage repayment holiday recede, and as the predicted recession deepens, there will be a significant increase in properties brought to the market by vendors facing financial pressure. The relative buoyancy of the market at present is attributable to a combination of pent-up demand and limited supply, as potential vendors respond warily to market uncertainty (see, for example, Anne Gibson “Economists question house market rally” The New Zealand Herald (online ed, Auckland, 14 July 2020; Susan Edmunds “Property market: were predictions of doom misplaced?” (14 July 2020) Stuff <www.stuff.co.nz>; “House prices rise again but economists expect correction” Otago Daily Times (online ed, Dunedin, 14 July 2020)).

Currently New Zealand has about 5,000 people a week returning to New Zealand from other countries and very few New Zealanders are departing – to put this in context, we would typically have a net loss of 10,000 to 15,000 New Zealanders per annum through out-migration. These people may be here permanently, or at least until the global situation stabilises, and they will need places to live. For now, this influx will be partly mitigating the impact of New Zealand’s border closure and international travel restrictions more generally, which have effectively curtailed international immigration at present. When the arrivals of returning New Zealanders slows down, we may well see reduced net in-migration over the medium term, and this will reduce pressure on housing supply. It has been noted, however, that New Zealand’s comparative success in addressing COVID-19 may also make the country an attractive prospect for potential migrants when the border does reopen.

The rental sector, too, is likely to face changes in the context of COVID-19, and these will have further flow-on effects on house prices. Prior to the pandemic, there were approximately 37,000 short-term rentals marketed through websites such as Airbnb to both domestic and international travellers. While domestic tourism is being promoted as a fillip for the struggling tourism sector now that travel internally is possible again, it seems unlikely that the volume will be sufficient to fill short-term rentals as well as more established accommodation facilities such as motels and hotels if the border closure continues for many months. The potential for these dwellings to be shifted into the long-term rental market is significant, and this could relieve rental supply issues in some areas and put downward pressure on rents.

RE-CONCEPTUALISING AMENITY VALUES IN THE URBAN DEVELOPMENT CONTEXT

The urban efficiencies of a spatial pattern of capacity based on a compact urban form mean that urban development, which intensifies around centres and transport nodes and corridors, will in the authors’ view still continue to be

Continued
a prerequisite to the efficient and effective functioning of urban environments, including public transport and other significant infrastructure. Whilst that model for urban development is unlikely to change as a result of the pandemic, arguably, delivery of the Terrace Housing and Apartment Buildings (THAB) typology by developers might need to be reconsidered to accommodate new ways of utilising housing (for example, increased demands to work from home necessitating office space within dwellings or communal office spaces in THAB typologies).

Acknowledging that future amenity values are an important consideration in any urban development proposal, COVID-19 has seen a shift in people’s housing and outdoor living preferences and, as a consequence, neighbourhood amenity. Such shifts are not unexpected as historically global pandemics have resulted in lasting changes to urban growth patterns. As Kyle Chayka suggests, the experiences of isolating in place, working from home, and having one’s sphere of activity reduced to one’s immediate neighbourhood is likely to change understandings of home, and shape what people look for in a dwelling, along with changes to the importance and requirements of outdoor and local public spaces (Kyle Chayka “How the coronavirus will reshape architecture” The New Yorker (online ed, New York, June 17 2020)). This, therefore, may be an aspect of the delivery of urban development planning that may be permanently changed by people’s experiences of the COVID-19 pandemic.

Historically, New Zealanders have also been wary of denser residential typologies, and reports from Australia and elsewhere of the rampant spread of the virus through “vertical cruise ships” may harden these views (Yara Murray-Athfield “Why Melbourne’s public housing towers have ‘explosive potential’ for coronavirus to spread” (5 July 2020) ABC News <www.abc.net.au>; Katrina Raynor, Alan Pert and Catherine Townsend “Vertical cruise ships? Here’s how we can remake housing towers to be safer and better places to live” (15 July 2020) The Conversation <www.theconversation.com>). Such perceptions may be difficult to change, however, more dense typologies are still capable of delivery as part of a resilient urban form if they are undertaken in a manner which is cognisant of the socio-economic and psychological perspectives of people and communities, and if the design principles incorporated into such typologies respond appropriately to those perspectives.

At the time of writing this paper, the Resource Management Review Panel had not released its system reform recommendations, but the Urban Development Act 2020 can be seen as a likely indicator of the potential change in store, albeit with the potential for slightly different terminology. In that regard, the Urban Development Act modifies the application of the definition of amenity in Part 2 of the RMA by introducing the concept that urban amenity may change over time. This involved specifically recording that in promoting sustainable management of natural and physical resources, recognition must be given to the fact that amenity values may change (Refer to s 5 of the Act).

In a similar vein, Objective 4 of the NPS-UD provides that “New Zealand’s urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities and future generations”. Policy 4 further requires that when making planning decisions that affect urban environments, decision-makers have particular regard to the matter that planned urban-built forms may involve significant changes to an area, and those changes may detract from the amenity values appreciated by some people but improve the amenity values appreciated by other people, communities and future generations, including by providing increased and varied housing densities and types, and are not, of themselves, an adverse effect.

CONCLUDING REMARKS

Since the introduction of the NPS-UDC in 2016, there has been a wave of plan changes and plan reviews notified throughout the country with the objective of addressing intensification and growth issues. As these plan reviews and plan changes continue through the statutory process, and in light of the recently gazetted replacement national direction on urban development, the NPS-UD, the question now exists as to whether or not the COVID-19 pandemic and the ensuing economic downturn should impact on and change our response to urban development in New Zealand in the long term.

Given the long-term horizons of planning instruments, it is the view of the authors that the pandemic is unlikely to have any sustained impact on the fundamentals of how we plan future urban environments, but may change the amenity values that communities consider important both in terms of how different housing typologies are delivered and the
preference for quality outdoor and local public spaces within those typologies. In that regard, the comments of the Independent Hearings Panel regarding the need for long-term resilience in any urban development model adopted are apposite both to this context, as well as in relation to the approach taken in the development of the Auckland Unitary Plan (at 51):

There are compelling reasons to ensure the Unitary Plan enables a development pattern that is capable of meeting residential demand over the long term and does not limit its focus to just the next ten years or so. The first is that housing development is not readily reversible and generally has an economic life of at least 50 years, so that once an area is developed according to an existing land use plan, future plan changes to that area are unlikely to have any effect on capacity until it once again becomes economic for redevelopment. Thus it is important that the Unitary Plan is calibrated to demand over the long term, and not to just immediate concerns.

Note: The views expressed in this paper are those of the authors and not Kāinga Ora – Homes and Communities. The authors would also like to acknowledge the helpful comments received from Jessica Phillips, Ministry for the Environment.

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