



THE ASSOCIATION FOR RESOURCE MANAGEMENT PRACTITIONERS

Te Kahui Ture Taiao

TO: Ministry for the Environment

Proposed National Policy Statement on Urban Development

**Submission on behalf of the
Resource Management Law Association of New Zealand Inc**

Introduction

1. This Submission is made by the Resource Management Law Association of New Zealand Inc (RMLA).
2. The RMLA is concerned to promote within New Zealand:
 - a) An understanding of Resource Management Law and its interpretation in a multi-disciplinary framework
 - b) Excellence in resource management policy and practice
 - c) Resource management processes which are legally sound, effective and efficient and which produce high quality environmental outcomes.
3. The RMLA has a mixed membership. Members include lawyers, planners, judges, environmental consultants, environmental engineers, local authority officers and councillors, central government policy analysts, industry representatives and others. Currently the Association has some 1,100 plus members. Within such an organisation there are inevitably a divergent range of interests in views of members.

4. While the membership has been consulted in preparing this submission, it is not possible for the RMLA to form a single universally accepted view on the proposed regulations. It should also be noted that a number of members may be providing their own individual feedback and those may represent quite different approaches to the views expressed here.
5. For these reasons, this submission is kept at a reasonably high level and is made with a view to ensure that the proposed National Policy Statement on Urban Development (“NPSUD”):
 - a) is consistent with the general framework of existing laws and policies of relevance, and the Resource Management Act 1991 (“RMA”);
 - b) has elements which are practicable and workable; and
 - c) will assist in promoting best practice.

SUBMISSION

6. This submission addresses the draft NPSUD as set out in the MfE discussion document **Planning for Successful Cities** (August 2019). We note the discussion document does not present a complete draft NPSUD, as it includes a combination of draft objectives and policies, together with some which are simply indicated as examples. This submission has been prepared on the basis that:
 - a) any ‘example policy’ is intended to closely represent a policy likely to be included in the final NPSUD; and
 - b) it is not intended to materially extend or add to the draft objectives, policies and example policies beyond those contained in the discussion document.

Summary

7. Many of the objectives and policies in the draft NPSUD may be expected to contribute positively to sound resource management outcomes. This applies in particular to provisions relating to spatial planning principles, understanding of economic principles, appropriate location and timing of urban development and use of a sound evidence base, as well as many aspects of the provisions for HBAs.
8. However, there are important aspects where the draft NPSUD does not offer a strong and sound basis for urban development, as set out below.

The need for a national policy statement on urban development

9. One basic matter is whether there is need for a specific NPS on urban development. We note that the Resource Management Act is currently undergoing a comprehensive review, with key issues to be addressed including¹:

- *Recognising objectives for development including housing and urban development and infrastructure networks and projects)*
- *Aligning land use planning and regulation with infrastructure planning and funding through spatial planning;*
- *Enabling faster and more responsive land use planning;*
- *Ensuring processes enable sufficient certainty for major infrastructure*

This is all in the context of “*removing unnecessary complexity from the RMA.*”

10. That scope means there will be capacity for the RMA to take into account all the key matters relating to urban development, which are contained in the NPSUD. The Association considers there will be a benefit from having those matters examined in the RMA context and framework rather than the NPSUD, because the RMA framework and scope is considerably wider than the NPSUD framework as currently drafted. One of the strengths of the NPSUDC is that its objectives do align closely with the RMA itself. The draft provisions of the NPSUD offer no such comfort (see below our concerns about the inadequacy of the “quality urban environment” concept).

The “Quality Urban Environment” as described is not adequate

11. The concept of a “quality urban environment” is central to the NPSUD, including through the FDS requirements (Objective O1), and objectives and policies relating to the scale, location and timing of urban development. However, the description (not a definition) of the “quality urban environment” is very limited in scope, and is inadequate as a basis for national guidance on sound urban development outcomes - particularly in relation to people and communities (Objective O2(a)), and to business activity (Objective O2(b)).

12. As described in O2(a), the “quality urban environment” is intended to make it possible for people, whanau and communities

- a) to provide for their well-being by*
- b) offering*
- c) access to a choice of homes*

¹ Proposed Scope for a comprehensive review of the resource management system, July 2019.

d) which meet their:

- i. demands
- ii. jobs
- iii. opportunities for social interaction
- iv. high quality diverse services and
- v. open space

13. This described “quality urban environment” is inadequate because it covers only a limited number of matters through which urban environments contribute to well-being. There are many more matters which would constitute a quality urban environment.
14. Moreover, the NPSUD assumes there to be only a single portal – that of “*offering...access to a choice of homes*” – through which well-being may arise. This appears to reflect the focus on housing affordability which is clear in the discussion document. However, it is not adequate for assessing how urban development affects people and communities. A broader scope is required which offers a comprehensive basis for sound economic and social assessment and evaluation.
15. The Association submits that the “quality urban environment” relating to people whanau and communities needs to be described using a substantially more comprehensive set of indicators than is offered in the draft NPSUD, and which is able to reflect the processes and effects which contribute to well-being in the urban environment - including access to housing choices but certainly not limited to that. We note that the NPSUDC offers a much stronger basis for assessment than the draft NPSUD - in particular, the NPSUDC Objective OA2 for “*Urban environments that have sufficient opportunities for the development of housing and business land to meet demand, and which provide choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations, working environments and places to locate businesses.*” is much more appropriate.
16. The discussion document itself offers a more balanced and comprehensive approach than is included in the NPSUD. “*Allowing for growth must not be at the expense of well-functioning, vibrant urban and natural environments. The Government wants to maximise the benefits of good urban growth, while minimising costs and drawbacks. We can create high-quality, liveable cities that contribute to the well-being of people and the natural environment.*”(p14). Those aspects are not picked up well in the draft provisions.

Quality Urban Environment for Business

17. We have similar concerns about the description of the “quality urban environment” applied to business activity in Objective O2(b). This description is very limited, and is inadequate. It describes the quality urban environment in terms only of providing for businesses:

- a) *economies of scale and*
- b) *access to:*
 - i. *many consumers,*
 - ii. *suppliers*
 - iii. *skilled people*
 - iv. *sources of innovation*

18. Those provisions for business activity are simplistic and incomplete. The description appears to be only a quite basic model for assessing some commercial business location drivers at the micro-scale. There are many more matters relevant to business activity in the urban environment. The NPSUD description contrasts with the provisions of the NPSUDC, which adopted a more principled, higher level and comprehensive approach. A “quality urban environment” which delivers only those limited aspects would not be an adequate basis for the needs of businesses (private and public sector) in the urban environment.

19. The Association submits that the “*quality urban environment*” as described in the NPSUD does not offer an adequate basis for evaluating business and public sector service activity within an urban economy. It submits that the “quality urban environment” relating to businesses (commercial and public sector activities) needs to be described using a substantially more comprehensive set of indicators than is offered in the draft NPSUD, and which is able to reflect the processes and effects which contribute to sound economic performance in the urban environment - including matters listed in the NPSUD but certainly not limited to those. Objective OA2 of the NPSUDC (cited above) appeals as offering a more comprehensive and higher level scope than the proposed NPSUD.

The shortcomings in the “quality urban environments” concept risk undermining other provisions in the NPSUD

20. The “quality urban environment” concept flows through as the focus for other objectives and policies of the NPSUD, including such critical matters as the location, scale and timing of urban development. Because of this, its shortcomings have high risk of detracting from or undermining the otherwise valid provisions for sound and sustainable urban development and resource management. In particular:

- a) The concept is at the core of O1 where the starting point for long term planning through an FDS has only two requirements – to provide for integrated land use and infrastructure and to provide for “quality urban environments”.
- b) This objective O1 then sits over subsequent policies. In particular, P1C which in and of itself would provide a sound basis of spatial planning – through examination of the costs and benefits of different spatial scenarios and different growth rates – is at risk of producing much less robust assessment if the “quality urban environment” as described is to be adopted as the guide to desired urban development outcomes.
- c) Objective O6 and policies P5A to P5D are similarly valid provisions for urban development planning based on sound resource management principles. However, the critical matter of the costs and benefits of urban development options is here based only on the “*quality urban environment*”. Unless that quality urban environment is defined more appropriately, then the positive aspects of P5D and related policies are likely to be substantially devalued.
- d) Of particular note, P5D is a core policy for managing urban growth, which sets out requirements for local authorities to identify the resource management matters, the costs and benefits of different urban development options, the adequacy of development capacity, and to apply a sound evidence base, in a manner generally consistent with P1C. These are sound provisions. However, as written they are limited to achieving the “quality urban environment”. The provisions of P5D would be much more effective in achieving sound urban development if they were applied to a more comprehensive and robust range of matters to provide sound assessment of urban development outcomes.
- e) Similarly, P2B requires that when making policies plans and strategies – a) and b) - and resource consent applications - c) and d) - local authorities must have particular regard to how urban development “*contributes to a quality urban environment as described in O2.*”

These matters can be largely rectified if the quality urban environment concept is appropriately defined.

There is limited reference to other urban development outcomes from sound resource management

21. The NPSUD is heavily focused on housing affordability and concepts of land market efficiency, and - apparently as a consequence - it contains few provisions relating directly to assessing sound and sustainable urban development outcomes, and people’s well-beings. In a national policy statement on urban development, more

focus on the implications of urban development would be expected. The NPSUD appears to have a primary role of delivering perceived efficiencies in urban land markets in the expectation that such efficiencies will by themselves lead to sound urban development outcomes. Of note, P2A requires that local authorities when making planning and consenting decisions on urban development and the way and rate capacity is provided, need to have particular regard to only two matters:

“(a) enabling a range of dwelling types and locations, working environment and business locations”, and to

“(b) limiting as much as possible adverse effects on the competitive operation of land and development markets.”

22. Two main concerns are that there are many other considerations to which local authorities should have particular regard when making decisions on such fundamental matters as the way and rate at which urban capacity is provided; and that it is likely to be very difficult to assess whether and the extent to which a decision will adversely affect the competitive operation of a land or development market. The provision appears to be intended to allow a case to be put that an application should be approved because declining it will adversely affect competitive processes. Since all provisions and consenting decisions must have some effect on the competitive operation of the land and development markets, P2A(b) appears superfluous in light of the requirements of P2B to have regard to the benefits and costs of urban development, while P2A(a) is covered in P4A.

Include specific references to transport

23. The objective of using land, energy and infrastructure efficiently (O2(c)) is supported. O2(c) would be considerably improved by including reference to using transport efficiently. Similarly, Objective O1 for planning documents to provide for integrated land use and infrastructure would be considerably improved by adding transport to the mix.
24. The Association supports the integration of land use and infrastructure in planning. A major reason is that transport infrastructure has a key role in enabling economic and social interactions in urban economies. This role distinguishes it from other infrastructure such as water and waste systems which enable activity to occur in a place. It is common for land use assessment to incorporate transport, for example in land use and transport integrated models (LUTI).
25. The association submits that transport be referenced directly in Objective O1 and Objective O2(c) as follows:

Objective 1: To ensure long-term strategic planning, reflected in planning documents, provides for:

*a) integrated land use, **transport** and infrastructure*

and

Objective O2

*c) using land, energy, **transport** and infrastructure efficiently*

Providing for Further Greenfield Development

26. The issues relating to the sparse description/definition of quality urban environment are further evident in relation to greenfield development. The only specific reference to greenfield development is in the section on “Providing for Further Greenfield Development” (p39) which appears to relate primarily to private plan change initiatives since councils are required to provide for 30+ years’ of projected growth, and it appears unlikely that additional greenfield capacity beyond the 30+ year timeframe would be introduced other than through the 3-yearly update of the FDS. The key concern is that greenfield development could be assessed only in regard to its “contributing” (presumably positively) to a quality urban environment. The other assessment criteria (b through e) do extend the range for evaluation, but the combination of the quality urban environment description and criteria b through e does not constitute a suitably robust framework for assessing proposed urban development in a new greenfield location. It is important that greenfield development would be specifically required to be consistent with the FDS, and subject to the rigour of other provisions relating to the location, timing and nature of urban development, including but not limited to O2(c), O3, P1C, P1D, P2B and P5D.
27. The example policy for greenfield development includes the proviso that when providing for urban development, “Development enabled by the plan change would not have adverse effects on protected areas or areas identified for restoration.”. This is supported in principle, as being consistent with Part 2 of the Act. However, there is a lack of certainty about what “protected areas” means. Also, there are no similar protective provisions where the NPS-UD seeks to provide for urban intensification (O7, P6A, P6B), which may result in conflicting policy direction and inconsistency with Part 2 RMA.
28. The effects of climate change must be considered whenever functions and powers are exercised under the RMA. There is no provision made for councils to consider the effects of climate change when enabling greenfields or intensified development.

The “Likely to be taken up” filter

29. The Association is concerned about the proposed inclusion of a “likely to be taken up” provision when assessing development potential, as provided for in P4A, AP3-AP16. An assessment of whether development is “likely to be taken up” will at best be a broad value judgement. Its inclusion introduces significant risk of undermining the accuracy and integrity of the sound evidence base, for which the NPSUD already provides. The provisions require councils to take account of demand, of plan-enabled capacity and of development feasibility, all of which require relatively robust processes. To complement these, substantial extra capacity margins are already included, and on-going monitoring is required. The concern is that the notion of what development is “likely to be taken up” is primarily speculative, particularly when applied across a 30+ year time period.
30. The experience from the Auckland Unitary Plan hearings is that it was difficult to identify any additional benefit from adding a “likely to be taken up” over-lay, especially once the rationale for using development feasibility analysis across a long time frame was understood. The obvious risk is that the case for providing for more development capacity could be made based only on speculation, but having to be taken into account because it is included in the NPSUD provisions.
31. The Association submits that Policy P4A be amended to exclude reference to the likelihood of capacity being taken up:

“Local authorities must ensure at all times their plans enable at least enough development capacity that is feasible ~~and likely to be taken up~~ to meet the demand for dwellings (in terms of location, typology and price ... over the short medium and long term.”

and that other references to the likelihood of development uptake are removed from the NPSUD.

Spatial planning and Development Timing

32. The Association supports the intent to incorporate spatial planning. Although the benefits are recognised in the discussion document, the principles of sound spatial planning are included only obliquely in the draft NPSUD provisions. Although key aspects of spatial planning especially the importance of the combined effects of location and timing of urban development are implicit such as in P1B, P1C and P5D, the draft provisions refer only to “spatial layers” (P4G(b)) and “spatial scenarios” (P1C(b)).

33. The NPSUD would be materially improved by more specific reference to the importance of development timing, consistent with spatial planning principles. In combination, Objectives O2 and O3 will enable urban development in appropriate locations, with regard to efficiency in O3(c) for land, infrastructure, and energy and accessibility (including travel efficiency and capacity plus affordability aspects) for people and businesses and location (O3).
34. The Association submits that Objective O3 be amended to include specific reference to the time element, in order to be consistent with the spatial planning philosophy and urban efficiency considerations of the NPSUD:

*O3 To enable development in locations and **at a rate and** in ways that maximise its positive contribution to, and minimise its negative impact on, quality urban environments.*

Intensification Policies

35. The NPSUD intensification policies relate to specific areas around CBDs, transport hubs and other centres in high and medium growth cities. Given the variation in circumstances, and advantages of tailoring plan provisions to specific economies and communities, the Association prefers Option 1 the descriptive approach in P6C.

Consistency between the NPSUD and the Urban Growth Agenda

36. To the extent that the UGA will be affected by the NPSUD, it is important that recommended amendments to the NPSUD should also carry over to the UGA.

Request to be heard

37. If there is any further opportunity to do so, the RMLA wishes to be heard in support of this submission.



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