The New Zealand Society of Local Government Managers (SOLGM) thanks the Ministry for the Environment (the Ministry) for the opportunity to submit on the discussion document *Planning for successful cities* (PSC): *A discussion document on the proposal national policy statement on urban development* (we use the acronym NPS-UD).

**Who are We?**

SOLGM is a professional society of approximately 750 local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities.¹ We are an apolitical organisation. Our contribution lies in our wealth of knowledge of the local government sector and of the technical, practical and managerial implications of legislation.

Our vision is:

> Professional local government management, leading staff and enabling communities to shape their future.

Our primary role is to help local authorities perform their roles and responsibilities as effectively and efficiently as possible. We have an interest in all aspects of the management of local authorities from the provision of advice to elected members, to the planning and delivery of services, to the less glamorous but equally important supporting activities such as electoral management and the collection of rates.

¹ As of 1 July 2019.
The Wider Policy Context

The NPS-UD is a smaller part of a much bigger picture

SOLGM agrees that there is room for improvement in the performance of our urban areas and their impact on well-being. Recent work by PwC has highlighted how most of our main urban areas have fallen behind Australia on one key indicator - disposable incomes. The drivers of this are many and varied and call for a total systems response, of which an NPS-UD is a part of much larger whole.

Some of the other aspects of this total system that we’d expect to see progress on include

- addressing skills shortages in trades such as construction work, electricity and in civil engineering
- placing property investment on a level playing field with productive investment.
  We didn’t see anything new in the Tax Working Group report that achieves this – indeed it appeared the Government actively ruled capital gains and other things out. We do acknowledge that regulation as to country of residence has had some impact – especially in Auckland
- funding and financing of infrastructure – we’ll come back to this one
- economic development policy (and especially regional development policy). The five high-growth areas do not exist ‘by accident’, each is one of the high growth areas of the economy. The Provincial Growth Fund appears to be the flagship initiative in this space – to date evidence of job creation is spotty at best.

It appears key elements of the NPS-UD will be revisited in the short-medium term future

We agree with the contention that the future development strategy (FDS) is a step (we would say a substantial step) towards the development of an integrated strategic plan (which we take to mean a plan that integrates land-use and spatial development, economic development and infrastructure planning). As a former Auditor-General once observed “knowing where people live and work is critical for good asset management”.

---


3 PSC, and other papers, have repeatedly referred to spatial planning – this is but one model for integrated planning, we’re not sure there has ever been a conscious selection of this as ‘the way things are done’. It’s also worth noting that there is more than one approach to spatial planning.
One of the questions we had about the NPS_UD was how it might dovetail (or not) with the so-called Phase Two of RMA reform. PSC comments that “The upcoming Comprehensive Review of the Resource Management Act will look at options for making spatial planning integral to our planning system.”

In short, the requirement to prepare a FDS that has significant elements of integrated planning of land use and infrastructure planning could change in terms of the legislative vehicle, linkage to other legislation, content and procedural requirements. Based on the timeframes provided in the recent cabinet paper it appears that any legislative change would happen in early-mid 2022. That timing would be either:
- as local authorities are preparing their first FDS or (worse)
- shortly after the first FDS

No-one will welcome the cost and time involved in doing an FDS now and having that potentially change significantly not long afterward. Let’s not forget that ultimately, it’s the local ratepayer that bears the cost of local authority compliance with these (and other requirements). While slightly beyond the scope of the consultation we ask that the transition timeframe for the FDS requirements in this NPS-UD and any spatial planning requirements that come out of the comprehensive review allow the first FDS to run their course.

**The lack of progress towards funding solutions foreshadows a large number of ‘discussions’ with Ministers.**

The draft NPS-UD shows a better understanding of, and concern, for the funding realities of getting the trunk infrastructure in place to make land ‘shovel ready’ than the preceding NPS-UDC. But generally speaking, progress on the policy work considering the funding of growth needs has been slow.

The so-called Infrastructure Funding and Financing review (started under the previous government) is progressing three streams of work. The first is looking at the establishment of so-called Special Purpose Vehicles. The model we have seen shows promise – but the foundations of this were laid in the repurposing of Crown Infrastructure Partners and its work in partnership with the Auckland Council in the so-called Milldale development. Consideration of the use of existing funding mechanisms (targeted rates and development contributions) is at the ‘discussion document’ stage. We suspect that Parliament recently ‘gifting’ Kainga Ora an exemption from development contributions has probably signalled how much this work is likely to advance. And the third stream is considering whether the covenants applying to borrowers from the LGFA are unduly restrictive is advancing but our understanding is that its likely to make a difference to ‘only’ a single council.
We note that the FDS requires local authorities to set out “any financing gaps or other risks to the delivery of development options ... and options for resolving this” (draft policy P1D) with a requirement that local authorities “notify the Minister” when “they determine they cannot provide the required development capacity” (policy P4B). PSC suggests that the Government will then enter into discussions with the council – we’d suggest that these ‘discussions’ are no substitute for a robust framework for co-investment developed before the fact.

There is little apparent guidance on the ‘fit’ between the NPS-UD and other NPS currently out for consultation.

The NPS-UD is not the only draft NPS out for consultation at this time – there is a draft NPS on highly productive land (NPS-HPL, submissions also due 10 October) and a draft NPS on freshwater management (NPS-FM, submissions due on 31 October). There are linkages between each of these.

SOLGM is concerned at the respondent burden that this creates for all submitters – especially those smaller organisations where there may be only 1-2 people with the skills and knowledge to craft a response.4

We concur that it is important that the three NPS are well aligned. We do not consider that the three give much guidance on the alignment of the three. All that PSC says on these issues is that the FDS will enable local authorities to identify areas where urban development is not appropriate in future.

Beyond that it seems that the draft NPS will leave it to local authorities to balance priorities at local level. We foresee a raft of challenges to this balancing of priorities that may defeat the overall responsiveness the Government wants local authorities to exercise.

Coverage of the NPS-UD

SOLGM concurs that the requirements of the NPS-UD should be targeted to those 20 local authorities that contain what has been designated as a ‘major urban centre’, and those (such as Waikato District, Waimakariri District and Selwyn District) where development spills over boundaries. We also noted the extension of the scope to cover the entire Wellington urban agglomeration – this also seems appropriate as any degree of growing ‘out’ in Wellington City will inevitably mean spillover, and there is a considerable degree of urban interconnectivity (as any civil servant will tell you).

4 Our own organisation is unlikely to submit on the NPS-HPL, having prioritised the NPS-UD and NPS-FM based on the impacts these draft NPS have on local communities and local authorities.
Undertaking housing and business development capacity assessments (HBA) and a future development strategy (FDS) in the form envisaged in the draft will be major pieces of analysis and should be targeted to those centres where growth and capacity needs are most urgent and sizeable.

We noted that there is a group of 15 local authorities who are not defined as major urban centres for the purposes of the NPS-UD. They are ‘urban environments’ and but are not required “to prepare full HBAs every three years” (page 20). That seems to envisage some lower level of requirement – yet as best we can see this is not reflected in the design of the HBA requirements. We suspect most will elect to prepare some form of HBA – we wonder if the NPS mightn’t encourage them to undertake an HBA, having had regard to the costs and benefits of doing so?

Settlement patterns change and it will be important to periodically review the targeting of these policies. For example, as Auckland moves north some parts of southern Kaipara may de facto integrate into the Auckland conurbation. We’re not clear what the review cycle for this particular NPS (if these is one) and suggest the settings should be reviewed after each Census of Population and Dwellings.

**Recommendation**

1. That the NPS-UD be reviewed after each Census of Population and Dwellings, with a particular focus on those local authorities that are deemed ‘major urban centres’.

**The Future Development Strategy**

We support the repurposing of the existing provisions of the NPS-UDC to require an FDS.

**Timing**

We concur with the suggestion that rigid timeframes in the NPS-UDC didn’t align with the LTP cycle, which made integration difficult and may have contributed to the outsourcing of these functions.\(^5\)

---

\(^5\) Note – the discussion paper uses the acronym HPA here, this appears to be a typo.

\(^6\) PSC, page 54.
The draft NPS-UD does not replicate the rigidity of the NPS-UDC, preferring instead only to say that HBA and FDS need to be completed in time to “inform the relevant LTPs”. The lack of specificity in timeframe leaves it open to the reader to draw the conclusion that this all needs to be in place for the 2021-31 LTPs. We initially did, and we suspect Ministers, the media and the development community will also.

Let’s consider the practicalities of these requirements. The FDS must be adopted in time to inform the development of the LTP – and in particular the infrastructure and financial strategies. (By the way these are core parts of an LTP – the current wording of the draft policy P1(C)d suggests that the infrastructure strategies stand separate from an LTP. We’d also note that the financial strategy and its identification of the financial requirements and their interplay with the local authority’s fiscal envelope is also an important part of implementing the FDS).

These strategies are core components of the LTP – as a pair they explain how the strategic framing of the LTP is ‘made real’ and give effect to many of the key decisions taken earlier in the process. The stylised process map of the ‘typical’ LTP process and timeline (overleaf) shows that ‘good practice’ is for local authorities to have completed their infrastructure strategy, financial strategy and the associated supporting documents (such as asset management plans) in draft by around July or August 2020. Local authorities wanting to undertake early engagement on any issues might need them as early as February or March 2020.

**Figure One: A Stylised 2021-31 LTP Process Map and Timeframe**
The draft NPS-UD has much the same chain of sequencing/logic in its requirements as the outgoing NPS-UDC. That is to say the HBA informs and therefore must be prepared before the FDS, which local authorities are ‘strongly encouraged’ (draft policy P1H) to use to inform the LTPs.

If the final shape of the HBA requirements is not known until early 2020 (and our experience is ‘early 2020’ means April/May at the earliest) literally they will not be
available until late 2020. The practicalities dictate that the ‘new style’ HBAs with their wider requirements and any revisions to the FDS cannot practically be accommodated in the 2021-31 LTPs.

There are mechanisms for amendment to an LTP ‘between the cycles’. Those are subject to the same engagement and audit requirements as an LTP conducted in the statutory timeframe. But growth and development is such a driver of infrastructural needs and expenditure requirements in the 20 local authorities that will have to prepare an FTS, that they would be adopting a new LTP.

It would be prudent for the final NPS-UD to better manage expectations (Ministerial not least) by being clear that local authorities may, but are not required to, revise the HBA and FDS in time for the 2021-31 LTPs.

**Recommendation**

2. That the final NPS-UD make it clear that local authorities may, but are not required to revise their HBA and FDS in time for the 2021-31 LTPs

**Engagement processes could be a great deal clearer**

One of the barriers to successful urban planning is the culture of litigious behaviour and the haven that a merit based Environment Court appellate process can create. This particularly manifests itself when decisions such as intensification, ‘zoning’ of low-income housing and the placement of infrastructure is notified. We accept that the design of the appellate process is more properly a matter for the wider reform of the RMA – our point is that the NPS-UD should clearly spell out exactly what engagement process the Government intend we use.

As it stands, the draft Policy P1F supposedly gives local authorities two choices when undertaking a ‘consultation process’ on their FDS – either a process that complies with Part Six of the Local Government Act 2002 (LGA), or a process that complies with Schedule One of the RMA. In fact, there are two consultation processes available under Part Six of the LGA – one is the special consultative procedure of section 83 of the Act, and the other is consultation that ‘gives effect to section 82 of the Act’.

The former is used for documents such as the LTP. The latter with some of the financial policies. There are advantages and disadvantages to each. Local authorities are more able to tailor a process to circumstances using section 82, but this flexibility
also requires the exercise of judgement, which are reviewable at administrative law (and where the case law is far from settled).

We suspect the Ministry probably intended the former process – in which case the final NPS should state this.

And then, we saw the draft policy AP17 in the requirements to prepare an HBA that requires that ‘local authorities must seek and use input from the property development sector ... requiring authorities and the providers of development infrastructure and other infrastructure’. We agree that all of these groups have information and perspectives that are helpful to the HBA, and that there should be some engagement with these groups.

However, the obligation on local authorities is to use (emphasis supplied) the input they receive in the process. This is an obligation literally without any parallel elsewhere in New Zealand law or policy – read in some lights it suggests all information need be taken at face value with no judgment as to relevance, quality, and timeliness. We suggest that the more ‘usual’ obligation at law is for the decision-maker to receive input and consider with an open mind when making decisions (in this case developing the HBA).

We must confess we’re also surprised that groups such as community groups are not accorded the same treatment in the draft AP17. However, we accept that there is nothing to prevent local authorities from ‘seeking input’ from other groups and that the local authorities that are required to prepare an HBA would probably engage with them.

On that note, the HBA and FDS are important documents, the latter especially so. Our expertise in the LGA leads us to question whether reliance on a formal proposal that need only be out for one month would be sufficient for matters of this nature and importance. Local authorities are increasingly turning to early non-statutory engagement for the strategic issues that frame an LTP, managed retreat decisions and the like. Although a practice matter, the Ministry might like to consider whether the NPS could encourage engagement to supplement the statutory process, or what guidance could do.

**Recommendations**
3. That the Ministry note that there are two engagement processes available to local authorities under part six of the LGA, and that the draft policy P1F be amended to clarify whether the Department had one in mind.

4. That references to ‘use’ of input be deleted from policy AP17.

5. That the Ministry consider whether guidance or ‘encouragement’ to supplement the engagement under policy P1F and AP17 would be desirable.

Monitoring

We wholly agree that decisions of this significance require a robust, verifiable, and relevant evidence base.

However, we consider that the monitoring requirements are excessive in their frequency. As the LGNZ report The National Policy Statement on Urban Development Capacity noted, quarterly reporting is too frequent to show significant change and is onerous for many councils.

Submissions on the NPS-UDC suggested that some of datasets necessary to monitor land markets was available at national level, and that there was merit in a greater level of monitoring at national level. If there was an effort made to fill these needs it is not apparent to us from the content of PSC, or the present NPS-UDC, or the present guidance to support the NPS-UDC.

Some aspects of this part of the policy appear unnecessarily detailed and almost patronising in the level of their prescription. For example, it should not be necessary for an NPS to instruct local authorities both to “use information from indicators of price efficiency ... “ (draft policy P8C(a)) and to “analyse that information to understand etc etc” (draft policy P8C(b)). This policy should be redrafted to require only that local authorities periodically publish the results of an analysis of the functioning in the property marker and how planning might influence this.

Recommendations
6. That Policy P8C be simplified to require local authorities to periodically publish the results of an analysis of the functioning in the property market and how planning might influence this.

7. That the Ministry for the Environment consider what information and monitoring deemed necessary for the operation of the NPS could be undertaken at a national level.

**Guidance needs will be significant and urgent**

Any policy change is only as good as its implementation. All too often, implementation guidance is often not seen as a priority by decision-makers. Temptation to downplay the role of implementation will be especially acute when the Government and Ministry are involved in a significant number of other NPS. We submit that whatever guidance and resources are produced will need to be available by the end of the second quarter of 2020 (calendar) at latest.

We remain concerned about quality data – especially as the data quality issues with the 2018 Census of Population and Dwellings are still being assessed. It concerns us that there is a lack of quality sub-national series that track economic activity. We suggest that discussion of the data needs and development of a strategy to fill them is something that is required as soon as consultation closes. SOLGM would be happy to facilitate this.

**Recommendations**

That:

8. the Ministry for the Environment ensure that implementation guidance for this NPS is accorded sufficient resources and a high enough priority to see guidance completed by June 2020

9. the Ministry for the Environment and SOLGM host a workshop to identify the data needs necessary for NPS implementation.