Introduction

This submission makes brief comments on the questions set out in the discussion document on the proposed NPS-UD. This is a personal submission which reflects 40 years experience in the legal areas of town and country planning, resource management, and local government as a university lecturer, author, barrister, and consultant.

Certain comments may appear to be outspoken, but are intended to be constructive. Clearly major issues now apply at the six high growth centres, and in Auckland in particular, which were not a challenge in the past. Other factors outside the scope of the RMA such as immigration and urban settlement patterns; increased overseas investment and speculation in rural, commercial and residential property; the substantial rise in motor vehicle importations; greenhouse gas emissions; water quality degradation; climate change and sea-level rise; are factors which are not addressed directly under the proposed NPS-UD. Certain of these matters in relation to parking and transportation, and affordable housing objectives should be included in a comprehensive NPS on urban development.

Questions and responses

Question 1 justification for NPS-UD

The proposed national policy statement is acceptable in principle as the existing NPS on urban development capacity does not provide sufficient guidance for achieving the objectives that have been postulated.

In respect of figure 1 the summary of the NPS-UD, the blunt statement in the large lower left-hand box “plans do not regulate car parking” is not supported. A total exclusion of car parking regulation is a marginalisation of a major issue. Under the present NPS on urban development capacity, a significant failure is the omission to provide policy and directions on the capacity of arterial and local roads as necessary infrastructure. Ignoring any responsibility for parking condemns the clogging of these roads consequent upon higher urban densities, which is counter-productive to achieving better environmental outcomes for communities. This observation is expanded in relation to question 10 below.

Question 2 major urban cities focus

The rationale for focusing on larger cities and urban centres is wholly supported. The expectations for research, reporting, and plan changes under the proposed NPS are substantial, and will be unaffordable and unnecessary for smaller urban centres where there are no present or foreseeable problems in providing for urban development.
**Question 3 future development strategy**

In principle the proposed changes to ensure long-term strategic planning, through a future development strategy (FDS), are supported. The Auckland Unitary plan has already followed these objectives and similar policies (first identified in the Auckland Spatial Plan under the LGACA). The scale of the obligation should be equated with the scale of the existing and foreseeable need when applied to the major urban centres. The objectives and policies should be simplified to minimise excessive costs to councils in preparation, hearings and paperwork. The procedural principles under RMA s 18A should be maintained.

The FDS in itself may not achieve any action in the field, and may be inflexible and deter initiatives. Elaborate policy analysis obligations support an industry of policy makers and excessive documentation contrary to s 18A of the RMA (policy statements and plans to be *clear and concise*). A proposal to update the FDS every three years is sufficient, and should be co-ordinated with revision of long-term plans and annual plans under the LGA, and regional transport plans under the LTMA. **Question 4 national direction for quality development**

The proposed approach to provide national level direction about the features of a quality urban environment is supported. It is important to emphasise the positive impacts of urban developments and the benefits and costs of urban developments. Proposed policy P2B is supported.

**Question 5 amenity value protection**

Amenity values and urban environments. The proposal to provide more emphasis on future amenity values is timely. The statement that current planning reflects a bias towards the status quo and away from change in the interplay between present expectations and future needs is endorsed as reflecting a prevailing NIMBY culture in many councils and communities.

Under the RMA s 5, the focus is on sustainable management which enables people and communities to provide for their well-being, while sustaining the potential of resources to meet the reasonably foreseeable needs of future generations. Reflecting on a planning consent hearing earlier this year, it is clear that opposition to innovative development comes from the representation and submissions of persons of the present older generation. A proposed visionary development which may cater in a positive way for the foreseeable needs of future generations is not generally or adequately represented within the conventional planning submission and hearing process. The younger generation do not have a voice or representation in many situations.

For this reason, a change of emphasis to recognise that community values are diverse and change over time is supported. Instead of planning decisions that satisfy the present generation for the next five years, the outcome should be a decision which provides for a 30 year outcome, especially as new buildings and infrastructure development will last up to 50 years or longer.

**Question 6 development capacity focus**

The direction to provide development capacity that is both feasible and *likely to be taken up* is supported. There are presently examples with public housing whereby increased capacity
has been financed or endorsed in certain parts of the country where there is minimal demand, so it is important that demand should be meet in areas where it is genuine and reflected in waiting lists for housing and higher prices in the market.

In considering demand it is important to acknowledge the recent law changes preventing the purchase of residential housing by overseas investors. If anything, this law change will result in a better and fairer housing market, and eliminate much speculation which has adversely influenced scarcity and the rise in house prices in the major centres. The final provision in the NPS-UD should be simplified to avoid excessive policy prescription. 05 and P4A are more than sufficient.

**Question 7 plan rule relaxation**

The present system of requiring objectives, policies, and rules in relation to development anticipated by the zone description is supported. Early attempts under the RMA in Christchurch to plan for urban development by performance standards alone were confusing and unsatisfactory. However the objectives, policies, and rules for zones could be simplified as the duplicity and complexity of the policies and rules may result in conflicts, inefficiencies and delays in obtaining consents.

An inclusion in the rules and policies that accommodation should be made for future generations and intensification is a desirable addition. Proposed objective 06, and policy P5A are supported. The other policies P5B-P5D are not supported, as causing more time consuming analysis without any tangible benefit.

**Question 8 intensification support**

The policies to enable intensification in locations where the benefits can best be achieved, are supported. In relation to the two options put forward, P6C option 1 descriptive approach, is supported as retaining and confirming the present responsibility on local authorities to decide on locations for intensification.

Regarding P6C option 2, prescriptive approach, the understanding is that this would make it mandatory for high density residential activities to occur within an 800 m walkable catchment of centres and frequent public transport stops, subject to countervailing evidence, or in the alternative within 1.5 km of city centres for high density development. Both these mandatory approaches under option 2 could disregard the existing urban development, landforms, amenity values, roading access capacity, and could result in unfortunate and inappropriate outcomes. For that reason option 1 is supported, which retains the planning responsibility at the local level but supported by stronger directions to provide for high density residential activities in appropriate locations.

The higher density could be supported by guidelines as to appropriate building heights and coverage together with open space, to provide a balanced amenity for the occupants of the high density buildings e.g. 10% of the land area to be set aside for open space or public reserves which was a former legal obligation. In addition, all high density development should be subject to a condition that public road access will be sufficient to cater for the higher densities. Further, the policy should require appropriate provision to be made for motor vehicle parking, footpath and cycleway access, and public transport, as part of the site access
arrangements. Presently no specific obligations regarding offsite requirements are mandated in many district plans.

**Question 9 greenfields development**

Inclusion of a policy providing for plan changes for out of sequence greenfield development locations, not currently identified for development, is supported. Regional and district plans are fixed in time at the operative date. Unless including future development zones, the plans may act as a fetter against innovative development that may be appropriate and was not foreseen at the time of the plan preparation. The planning process and the council should encourage innovative plan changes, rather than resist the plan changes as not being part of the official version. A reluctance to accept innovative plans and ideas is a problem reflecting a negative culture which is evident among some planning officials and local authorities. In the past, the rural urban boundary (RUB) has been zealously guarded in the Auckland region.

**Question 10 minimum parking spaces removal**

Car parking requirements. The present mantra that car parking requirements should be excluded from local authority plans and regulation is not realistic. The idealism behind this trend appears to be that in time all persons, young and old, should be persuaded to abandon private motor vehicles and be transported by way of public services or possibly taxi services and later mobility scooters. The risk is that no rules on parking spaces will encourage many developers to omit all park spaces with vehicles spilling out and increasingly parked on public road spaces.

The reality is that motor vehicles are required by the majority of persons and family groups (outside the CBD) for a multiple of requirements, including transporting children safely to and from schools, shopping at area retail centres, recreation purposes, and visiting friends. Further, for many persons travelling to business or during employment, private vehicles remain the most efficient option having regard to multiple journeys possibly required under public transport, and inefficient timeframes for some public transport journeys. Carriers, couriers, and work vehicles cannot be replaced by buses, trains or walking.

For persons travelling to work who can use public transport, an increase in “park and ride” facility capacity is greatly required in the Auckland region. Regrettably, there appears to be no initiative, NPS, or other planning compulsion for Auckland Transport to make such provision or build parking buildings to ensure the efficient and capacity use of existing public transport services. The former legal development obligation to provide parking spaces, or contribute an equivalent value to the council to provide spaces in a public vehicle park, has long been deleted.

The removal of on-site parking requirements under the recent Auckland Unitary Plan, was premised and justified on the basis that road capacity and parking would be a matter dealt with by Auckland Transport. The reality is that Auckland Transport has largely failed and continues to fail to make any visible steps in accommodating motor vehicles. The huge increase in imports of motor vehicles has resulted in many urban roads in Auckland having cars parked on both sides of the carriageway, with inadequate space between the vehicles for oncoming vehicles to pass safely. With the increases in width of SUV’s (tanks), together with more buses and trucks, many roads are now effectively one way only and require
vehicles to stop to allow others to pass. Risks to school children crossing roads or cycling are increased, resulting in more car trips to schools. In certain roads, parking has been prohibited on one side of the road, with a result that on-road car parking has been reduced, and cars are parking on grass berms or partly on footpaths.

A possible remedy of widening the road carriageways has, from observation, never been acted upon by Auckland Transport in the replacement of curbs, and this lost opportunity indicates a failure of Auckland Transport to acknowledge the growing parking and road congestion crisis. For the future, many grass berms should be converted into vehicle parking spaces, especially if obligations for on site parking are removed.

A significant omission in the NPS-UD is to include a chapter on road provision and road management, and this is directly connected to the question of off-street car parking. To prevent councils requiring off-street car parking will exacerbate the road congestion problem, and the NPS should include policies on monitoring and remedying road congestion. If central government was serious about reducing greenhouse gas emissions, and accident risks on the highway, it could prohibit substantially the importation of thousands of motor vehicles each year, rather than turning a blind eye to this growing urban crisis.

Further, in relation to road planning, an NPS addition should, where circumstances arise, provide national direction for existing roads to be reconfigured to reduce grass berms and convert the berms to cycleways for ordinary bicycles, electric bicycles, mobility and electric scooters. The bicycles and scooters should be separated out from footpaths, which should be retained for pedestrians, joggers, and persons using pushchairs and walking dogs. The increasing accident rates for electric scooters reflects an omission of policy and planning. The NPS for urban development effectively sidesteps this problem in the proposed discussion document on planning for successful cities.

The reference (p 41) to the proposed change to remove minimum car park requirements as supporting the Government Policy Statement on Land Transport 2018 reflects the failure of comprehension of the vehicle use, needs and solutions which should be addressed in the NPS-UD. Central to the issue is that the government policy statement on transportation under the Land Transport Management Act is focused on new road policy and subsidies, and has no direct impact on existing road capacity to meet urban intensification outside proximate transport hubs.

A consensus and certainty on future government land transport statements (GPS) is a matter beyond the NPS-UD. Of greater importance, the power to make mandatory directions on intensification is inconsistent with and does not support the three options P7A at this time, without any substantial policy providing for accommodation of motor vehicles or alternatives in relation to residential building which does not have any parking provision.

From observation, in respect of several existing apartment buildings with no parking spaces, the occupants of the apartments who own motor vehicles will rent a car park in the nearest car park building or parking lot, or seek to have the council provide spaces for “residents only parking” on the public street. These are interim solutions, but a better solution is to allow the council to require some minimum parking spaces having regard to past experiences, present reality, and future expectations as to motor vehicle ownership.
A statement is made that the parking lots are underused. From daily observation, in Auckland Central all central parking spaces appear to be full most of the time for either day use or overnight use. If there are any empty spaces that is a good outcome which provides for availability for the increasing motor vehicle ownership numbers, and may reduce parking charges. For those without motor vehicles, many of the younger generation may hire or own an electric bicycle or scooter. The need for the Transport Ministry to provide direction for safety for electric scooter and bicycle users, and pedestrians on footpaths, is a matter for urgent attention. Any direction from the Transport Ministry needs to be coordinated with direction under the RMA-UD.

Question 11 minimum development rules

Direct intervention to enable quality urban development with increased flexibility over matters such as height, density, private open space, site coverage and minimum allotment areas, is supported. In relation to the Auckland Unitary Plan, improvements have been maintained to support affordable housing through continuing the minimum size of residential units and lots. A further step could be made to encourage for the future a transition from cross-lease arrangements to freehold titles, with a general minimum freehold allotment size of say 150-200 m² for standalone or semi-detached housing. For multiple level apartment blocks under a unit title system, a minimum unit title area could be 25-30 m², as found in the Auckland Plan.

Regarding internal arrangements and space, a pressing need is for the Housing Improvement Regulations 1947 to be updated to deal with an acceptance of “tiny houses”, which are becoming more relevant and provide a sufficient option for single persons or couples who may wish to have private space but cannot afford the larger units prescribed by many local authorities. An update of the regulations should clarify the question of persons living in sheds, caravans and tents, in circumstances where the structure could be of a size and quality that would support healthy living and avoid overcrowding. At the present time in New Zealand, persons living in sheds, caravans or tents, or living under bridges or doorways as homeless persons, provides evidence that central government and local government are not meeting responsibilities to ensure minimum human rights in respect of accommodation. Social housing is the bottom end of the housing market. Accommodation or adequate shelter for impoverished persons and homeless persons, should be a mandatory part of a comprehensive national policy statement on urban development. The present social housing problem is being overlooked in the proposed NPSUD.

A reference in question 11 that a minimum level of development should, for example be up to 3 storeys as a permitted activity may be good in theory. In practice the present standard 8 m height limit in many lowdensity residential zones has been applied to allow for a basement garage plus 2 storeys, especially on sloping sites, which is effectively three storeys. For properties higher than three storeys it would be appropriate for councils to accommodate these in the areas set aside under other policies identifying locations which would accommodate higher density development. Many existing urban areas in Auckland have now been upzoned to allow for 3 storeys as the norm, and this will in time affect views and shading for other dwellings.
The national planning standards provide for a degree of consistency in the definitions and rules in zones, and specific central government directions could compromise the role of local government and private developers to take the initiative to make appropriate changes to plans and by resource consents to achieve the increased density objectives.

**Question 12 market indicators**

Requirements for urban environments to assess demand and supply of development capacity and monitor the range of market indicators are not supported as prescribed, as being an unnecessary expense for ratepayers, and producing volumes of data which may serve no practical purpose other than for councils to affirm that they are making good decisions.

Valuation New Zealand and the real estate industry and agents carry out this role in any event in promoting property values, sales, rents, and land development of regions and locations. The monitoring of indicators appears to be surplus to the primary obligations on councils to provide for housing and business development capacity. If any assessment is required, a simplified three-year report would be appropriate or a brief report on compliance included in the annual plans and in the long-term plan under the LGA.

**Question 13 iwi engagement**

Policies to improve how local government works with iwi, hapu and whanau, to reflect their values and interests in urban planning could be included, but there should be caution concerning over-expectations and engagement of Maori in this process. Existing provisions appear to be adequate for engagement with the iwi and recognition of Maori cultural objectives. Engagement with iwi, to be comprehensive, needs to be funded by ratepayers, and this commitment should be justified as to purpose and expected role and outcomes. Many local authorities have Maori advisory committees or iwi membership, and Mana Whakahono a Rohe can be established by iwi initiative.

An example of excessive provision and engagement occurred in the proposed Auckland Unitary Plan where 3600 sites were flagged to be of value to Mana Whenua. Submissions revealed that most of the sites had not been researched or investigated. Regrettably the proposed rules had immediate effect, and required property owners within the vicinity of the sites to require a comprehensive “cultural impact report” from iwi before development could occur. In the several years in which the rules were in effect, concerns arose regarding contact persons, excessive fees for the cultural impact reports, and substantial uncertainty as to the purpose of the report (eg rule 2.7.4, 7(d) “a description of how the application ... takes into account the principles of the Treaty of Waitangi...”), and consequences in relation to the private land. The policies and rules were disallowed by the Hearings Panel and by Auckland Council, and an appeal by Maori (IMSB) to the High Court was disallowed. The basis for the expanded rules were not established. Many Maori cultural sites were recognised under the conventional heritage building or site listings.

To the extent that Maori freehold land occurs in any region and district plan area, it is appropriate for zoning of that land to allow for cultural expectations and tikanga. RMA s 6(e) provides for this outcome. That has occurred in the Auckland unitary plan and in other district plans which have Maori purpose zones applied to marae and housing areas. There appears to be no reason for further inclusions in the NPS to involve any greater iwi participation in the
management of regional and district policy and plans, other than already provided for under the RMA. Policies 09, P9A, P9B, are presently found in the plan procedures in RMA, sch 1.

Question 15 timing

The proposed timeframes appear to be reasonable, subject to the NPS dealing with the various matters raised as a precondition: namely (i) the provision for integrating roading capacity, parking, transportation, electric cycles and vehicles in a safe manner, and (ii) the broader issues of planning for affordability, including tiny houses, caravans, tents, homelessness, and updating the Housing Improvement Regulations 1947.

Question 16 guidance for implementation

Supported by experience, a level of guidance is appropriate, but the guidance should not be too extensive. Much of the guidance will already be provided for by in-house officials of the major urban councils, and the bulk of the guidance may be unnecessary and relegated to document piles. A risk also arises from excess of documentation which may expand the scope of the NPS where council officials take statements as mandatory outcomes in assessing plan changes and consent applications. Guidance should be limited to a minimum say one page per policy.

Part 10 alignment with other national direction

As set out, alignment with other national direction under the RMA is an obvious requirement. Potentially some of the other matters of national direction should also be revisited and revised at the present time.

For example, the New Zealand Coastal Policy Statement 2010, following the King Salmon and Davidson decisions, has been interpreted to prevent residents of properties fronting the sea coast from obtaining a consent to build a rock wall to protect their properties. Policy 27 on managed retreat in the NZCPA does not adequately recognise the approval of older subdivisions and building occupation prior to 2010. The policy operates contrary to fairness and the purpose of the RMA under s 5 to safeguard the well-being and safety of people and communities.

This problem of rigidity could be an issue with other policies of a mandatory nature. It is submitted that some flexibility should be reserved under all NPS for exceptions to a policy where special circumstances dictate a different and more sustainable outcome.

Appendix 3 Policies on housing and business development capacity assessments

In my opinion, with respect, too much emphasis, time and expenditure is devoted to capacity assessments. A three-year assessment is appropriate but the scope and depth of the assessment should be much less onerous than proposed and certainly the assessments limited to major urban centres only. In other council areas, the issues and problems should be self-evident and councils could be expected to take appropriate steps to facilitate development and the necessary infrastructure. A prodevelopment presumption incorporated under the NPS-UD should be sufficient.
The reality is that much development and infrastructure occurs with funding from central
government or from local government in the first place, and that type of development
depends on policies of the government or council of the day. Monitoring reports that indicate
inadequate provision or development, do not per se provide for further development unless
the funding is forthcoming.

On the other hand, development which is the initiative of companies and private owners, will
probably follow the market unless there are subsidies for affordable housing. Private
enterprise appears to be well capable of identifying and acting to take advantage of housing
and business development opportunities. Therefore the amount of analysis and investigation
over performance appears to be excessive and will not produce tangible outcomes and
practical solutions. It is an irony that “rent to buy” homes, formerly available from central
government in the 1950s and 60s, are now being reintroduced to assist equitable and
necessary urban development.

Conclusion

As outlined, the proposed national policy statement on urban development (NPS-UD) is
supported in principle, but a number of the proposals need to be reconsidered and other
matters need to be added to the NPS if the problems are to be comprehensibly and effectively
addressed.

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