



## **SUBMISSION TO THE MINISTRY FOR THE ENVIRONMENT ON THE PROPOSED NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT CAPACITY**

### **1. EXECUTIVE SUMMARY**

- 1.1 Fulton Hogan Limited ("**Fulton Hogan**") welcomes the opportunity to comment on the Proposed National Policy Statement on Urban Development Capacity ("**NPS**").
- 1.2 Fulton Hogan supports the objectives of the NPS to provide sufficient residential and business development capacity for the short, medium and long terms. However, Fulton Hogan considers that the NPS needs to be more directive, to ensure sufficient development capacity is enabled, including in relation to business land and in particular industrial land.
- 1.3 In addition, Fulton Hogan seeks amendments to ensure:
  - (a) reverse sensitivity effects are recognised and effectively managed;
  - (b) business land is given due consideration, and the unique needs of the various types of business land (such as industrial, and particularly those industrial land uses that have some unavoidable offsite effects) are well understood and these types of land uses are provided for;
  - (c) councils are clearly directed to consult with key stakeholders; and
  - (d) councils do not exclude affected parties from participating in planning processes.
- 1.4 Given implementing the NPS will be a complex process, Fulton Hogan strongly supports the creation of a technical working group that includes industrial operators along with local authorities, infrastructure providers, and developers, to develop guidance material on how the NPS should be given effect to.
- 1.5 Fulton Hogan is grateful for the opportunity to submit on the NPS and would welcome any opportunity to speak to the Ministry about this submission in more detail. Fulton Hogan has also filed a submission on the NPS in relation to its residential land development portfolio. That submission should be read in conjunction with this submission.
- 1.6 Proposed amendments to the NPS are detailed below.

### **2. WHO WE ARE**

- 2.1 Fulton Hogan is a New Zealand civil contracting company that has been operating since 1933. Fulton Hogan specialises in civil construction, particularly (but not limited to) road construction and maintenance and asphalt surfacing. Fulton Hogan's civil contracting and construction operations operate throughout New Zealand, Australia and the South

Pacific. Employing over 5,500 people, Fulton Hogan remains privately owned, having approximately 35% employee ownership.

2.1 Fulton Hogan's extensive operations include:

- (a) 32 quarry sites across New Zealand (including both hard rock and gravel quarries) and river gravel extraction in the South Island.
- (b) Asphalt plants and bitumen plants as well as regional and branch depots around the country.
- (c) Supporting the creation of infrastructure required to support growth in residential development, including installation of water and waste water infrastructure, construction and maintenance of bridge structures, rail construction and maintenance, airport runway construction and maintenance, ports hardstand areas, irrigation infrastructure, and precast / pre-stressed concrete fabrication amongst other things.
- (d) Residential and industrial land development including a number of substantial residential developments in both Auckland and Christchurch.

2.2 Given Fulton Hogan's extensive involvement in industrial, infrastructure and residential activities, and the role it takes in planning and consenting processes throughout New Zealand, it is well positioned to comment on the NPS.

### 3. AMENDMENTS SOUGHT

#### **Ensuring reverse sensitivity effects are effectively managed**

- 3.1 It is vital that an NPS on urban development capacity effectively manages reverse sensitivity effects on industrial activities. Unfortunately, the objectives and policies of the NPS are silent on this critical issue.
- 3.2 Reverse sensitivity effects go hand in hand with the development of residential land. As such, any NPS promoting and encouraging the development of residential land must address reverse sensitivity effects. While Fulton Hogan supports the need to provide sufficient development capacity for residential land, this development capacity must be provided in suitable locations that does not restrict or constrain established industrial activities.
- 3.3 The Consultation Document identifies the difficulty that industrial operators face in protecting their activities from reverse sensitivity effects<sup>1</sup>, yet the NPS provides no way of addressing this concern.
- 3.4 A useful example of "industrial businesses that would be expensive to move"<sup>2</sup> and are affected by reverse sensitivity effects is Fulton Hogan's long-established asphalt plant at Reliable Way, Mount Wellington, Auckland. Despite being zoned on industrial land, Fulton Hogan has been required to invest extensive time and effort (including in renewing an air discharge consent and involvement in the Proposed Auckland Unitary Plan process) to protect the plant's operations from reverse sensitivity effects from the ever increasing pressure of residential activities in close proximity to the site. The residential activities had been established as non-complying activities on marginal land near to Fulton Hogan's asphalt plant. Those same residential activities then attempted to restrict Fulton Hogan's operations at the site through submitting on Fulton Hogan's air

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<sup>1</sup> National Policy Statement on Urban Development Capacity, pages 23 and 24.

<sup>2</sup> National Policy Statement on Urban Development Capacity, pages 23 and 24.

discharge application. The decision of the Hearing Commissioners on the application concluded.<sup>3</sup>

Our overall finding in relation to the existing environment is that there is a **valid expectation that industrial activities, such as those that have existed on the Fulton Hogan site since 1986, are appropriately located in terms of the zoning** that has been applied under the Operative District Plan. In relation to the expectations of those submitters, who own and/or occupy residential properties on land currently zoned Business 4, **we cannot ignore the lawfully established Fulton Hogan activities.** The existing environment, regardless of zoning, consists of industrial and residential activities and the merits of consent being sought needs to be assessed in terms of the relevant provisions of the RMA and the regional and district planning documents.

3.5 Objective OA1 states:

To support effective and efficient urban areas that enable people and communities to provide for their social, economic and cultural wellbeing.

3.6 Industrial activities are a critical part of providing effective and efficient urban areas. If residential development is encouraged and enabled without managing how that development can occur near established industrial activities or industrial zoned land, then Objective OA1 will not be met.

3.7 The amendments Fulton Hogan proposes below ensure that reverse sensitivity effects are managed, while providing sufficient development capacity for residential and business demand.

***Relief sought***

Amend the definition of "development capacity" as follows:

**Development capacity** means in relation to residential and business land, the capacity of land for urban development to meet demand, taking into account the following factors:

- the zoning, objectives, policies, rules and overlays that apply to the land; and
- the provision of adequate infrastructure, existing or likely to exist, to support the development of the land, having regard to—
  - the relevant proposed and operative regional policy statements, regional plans and district plans; ~~and~~
  - any relevant management plans and strategies prepared under other Acts; and
- the need to manage reverse sensitivity effects.

Amend policy PA3 as follows:

When considering the effects of urban development, decision-makers must:

- Recognise and provide for the contribution that urban development will make to the ability for people and communities and future generations to provide for their social, economic and cultural wellbeing.

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<sup>3</sup> Decision of the Hearing Commissioners in relation to Fulton Hogan's application to discharge contaminants into the air, 9 September 2014 at paragraph 43.

- Provide sufficient development capacity, whilst maximising the positive effects of development, and minimising the adverse effects of development, including potential reverse sensitivity effects.
- Have particular regard to the positive effects of urban development at a national, regional and district scale, as well as its local effects.

### **Better recognition of business development capacity**

- 3.8 Fulton Hogan supports objective OA2 to provide sufficient residential and business development capacity to meet demand. However, residential development is given greater weight in the NPS over business development. For example, policies PD4, PD5, and PD6 solely relate to residential development capacity and provide minimum targets for the total number and different types of dwellings.
- 3.9 Fulton Hogan's industrial activities are fundamental to the residential and other business development that the NPS promotes, as well as the required infrastructure to support it. Enabling residential growth by setting the minimum targets for dwellings without corresponding provisions to enable business growth has the potential to lead to undersupply of business land, including industrial land. If residential development is enabled without industrial development capacity being provided, Objective OA1 will not be met.
- 3.10 Giving equal (better) acknowledgement to both residential and business development in the NPS will also be in line with the seven objectives of the NPS, which do not include any bias towards residential development.
- 3.11 We recommend policies PD4, PD5, and PD6 are amended to better acknowledge residential *and* business development throughout the NPS.

### ***Relief sought***

Amend policies PD4, PD5, and PD6 as follows:

PD4: In giving effect to policy PD1 with respect to residential and business development capacity local authorities should have particular regard to enabling capacity:

- In the locations that the Housing and Business Land Assessments, required under policy PB1, indicates are of highest demand; and
- That is feasible.

such that it maximises the contribution to meeting demand for residential and business development.

[...]

Regional councils must have amended their proposed and operative regional policy statement to give effect to policies PD5 to PD6 by:

- The end of 2018; or
- Earlier if the Housing and Business Land Assessments required under policy PB1 shows development capacity is insufficient to meet demand; or
- Within 12 months of becoming a High Growth Urban Area.

PD5: Regional councils must set minimum targets for the supply of sufficient residential and business development capacity that must be achieved, in accordance with its Housing and Business Land Assessments, and incorporate these into the relevant regional policy statement.

These minimum targets for residential development capacity must specify:

- The total number of dwellings; and
- Different types of dwellings.

The minimum targets for business development capacity must specify:

- The total number of business lots (including the size of those lots); and
- Different types of business lots to provide for different types of productive economic activities.

[...]

PD6: A regional council's minimum targets set under policy PD5 must be set for the medium and long terms, and must be reviewed every three years. When a regional council's Housing and Business Assessments required under policy PB1 shows that the minimum targets set in the regional policy statement are insufficient to meet demand, regional councils must revise those minimum targets in accordance with policy PD5 and incorporate those targets into its regional policy statement in accordance with section 55(2A) of the Act without using the process in Schedule 1 of the Act.

[...]

### **Functional and operational requirements of "business" land**

- 3.12 The reasonably broad definition of "business land" in the NPS rightly acknowledges that "business land" includes industrial land along with other business activities.
- 3.13 There are a range of unique factors to consider before developing land for industrial activities. Unlike housing, it is unrealistic to expect industrial activities to "go up rather than out".
- 3.14 Fulton Hogan's experience is that industrial activities have specific requirements for appropriate land, and the location and size of lots for industrial activities are critical in identifying suitable sites for development or redevelopment. Large lots suitable for industrial activities are difficult to find. Other factors relevant to the location of Fulton Hogan's operations, especially its asphalt plants, include the need for:
- (a) a central location with good access to motorways to reduce costs and delays in trying to navigate across Auckland's congested road networks;
  - (b) asphalt mix to arrive at site at a suitable temperature;
  - (c) access to bulk gas supply; and
  - (d) sufficient separation from existing other sensitive uses (given that asphalt plants cannot completely internalise all effects).
- 3.15 Further, quarries can only be located where the suitable mineral resource is located and do not have the luxury of site selection. In other words, quarries and asphalt plants cannot be placed just anywhere.

- 3.16 Fulton Hogan therefore supports the Business Land Assessment under policy PB1 which estimates "the demand for **different types and locations of floor area for the local business sectors**".
- 3.17 However, there needs to be greater direction in the NPS for local authorities to expressly provide for the functional and operational requirements of different business activities and the need for outward expansion of these activities to meet demands of residential growth, along with the need for reverse sensitivity effects to be managed. Such an approach will provide flexibility to industrial operators as to what land they purchase and how they develop sites to meet the demand of residential and business land. This greater flexibility will in turn lead to greater investment in industrial land.
- 3.18 To further address functional and operational issues faced by businesses in developing land, local authorities should be required, in carrying out their Business Land Assessments under PB1, to estimate demand for different types and locations of lot sizes in addition to floor area. This will result in Business Land Assessments that more fully take into account the requirements of different business types and enable local authorities to have a better basis on which to determine how to provide for sufficient development capacity.
- 3.19 Amendments to the definition of "demand" and the additional bullet points proposed for PA1 below will further assist in decision-makers providing for the functional and operational requirements of industrial and business land and ensure that demand for different locations of business land is not inappropriately restricted to being "within the urban area".
- 3.20 There should also be greater provision in PB5 as to the range of business indicators local authorities must monitor, to ensure they are well-informed about the market's response to planning.
- 3.21 Detailed guidance should also be provided by the Ministry to local authorities on how to undertake the monitoring.

### ***Relief sought***

Amend the following definition:

Demand means:

In relation to residential development, the demand for residential dwellings within an urban area in the short, medium and long-terms, having particular regard to:

- a) the total number of dwellings required to meet projected household growth;
- b) demand for different types of dwellings;
- c) the demand for different locations within the urban area; and
- d) the demand for different price points.

recognising that people will trade off (b), (c) and (d) to meet their own needs and preferences.

In relation to business land, the demand for floor area and lot sizes in the short, medium and long-terms, having particular regard to:

- a) the quantum of floor area to meet forecast growth in different sectors;

- b) the demands of both land extensive and intensive activities; ~~and~~
- c) the demand for different locations ~~within the urban area;~~ and
- d) the demand for different types and locations of lot sizes.

Insert the following bullet points in policy PA1:

- Providing for the functional and operational requirements of different business activities and development.
- Providing for the outward expansion of different business activities to meet the demands of residential growth.

Amend the second bullet point of policy PB1 as follows:

- A Business Land Assessment that estimates the demand for the different types and locations of floor area and lot size for the local business sectors, and the supply of development capacity to meet that demand, in the short, medium and long-terms.

Amend policy PB5 as follows:

PB5: To ensure that local authorities are well-informed about the market's response to planning, local authorities must monitor a range of indicators on a quarterly basis, or as frequently as possible, including:

- The relative affordability of housing, including the ratio of house price to income and the relative cost to rent;
- The increase in house prices and rents;
- The number of resource and building consents granted relative to the growth in population;
- Vacancy rates for business land;
- The increase in land value for business land;
- The number and type of lots available for different business activities;
- The number of lots available for business activities that are owned by a single entity;
- The proximity of business land to residential land;
- The ratio of the value of land between rural and urban zoned land; and
- The ratio of the value of improvements to the value of land within the urban area...

Provide detailed guidance on how local authorities should carry out the monitoring under PB1 to PB5, including local authorities specifically taking into account the different types of business land.

### **Provision of infrastructure**

- 3.22 Fulton Hogan supports policies PC1-PC3 which promote a co-ordinated approach between local authorities and infrastructure providers to planning decisions, integrated land use and infrastructure planning, and responsive planning processes.

- 3.23 Lack of infrastructure is a common obstacle for the development of business and residential land. It is important that local authorities work closely with infrastructure providers when providing sufficient development capacity.
- 3.24 However, we query how such coordination will take place in practice. In order to effectively implement policies PC1-PC3, local authorities will need clear guidance from the Ministry as to how local authorities and infrastructure providers will "work together" to ensure coordinated land use planning and infrastructure provision.

### ***Relief sought***

Provide detailed direction in a Ministry guidance document on how local authorities should implement policies PC1-PC3 and the coordinated approach with infrastructure, including guidance on:

- (a) which infrastructure operators should be consulted in certain circumstances;
- (b) how consultation will take place and in what capacity; and
- (c) how to address disagreements between local authorities and infrastructure providers on data and projections used in the development of the Housing and Business Land Assessments.

### **Ensuring appropriate consultation**

- 3.25 Policy PB4 requires local authorities when carrying out the Housing and Business Land Assessments to:
- ...consult with infrastructure providers, community and social housing providers, the property development sector and any other stakeholders as they see fit.
- 3.26 The second bullet point of PD9 requires local authorities, when developing a future land release and intensification strategy, to:
- [t]ake into account the views of infrastructure providers, land owners, the property development sector and any other stakeholders as they see fit.
- 3.27 While business and industrial operators could potentially be considered as part of the "any other stakeholder" provision, local authorities need only consult with those other stakeholders "as they see fit". This means there is no assurance in the NPS that the relevant local authority will consult with key stakeholders in the business sector in carrying out these critical assessments and developing the future land release and intensification strategy.
- 3.28 Business and industrial activities provide critical support to local communities. Local authorities should be required to consult with and take into account the views of the business sector in relation to assessments and strategies for the release of residential and business land to ensure that local communities are adequately serviced by the business sector, and sufficient and appropriate land is provided for their development.
- 3.29 Industrial operators like Fulton Hogan are best placed to inform local authorities on the functional and operational requirements of industrial activities and the commercial viability of establishing them. Consultation enables the business sector to provide such information to local authorities about business demand and their specific requirements for land to make development commercially feasible. It is therefore critical local authorities consult with them in the implementation of the NPS.

- 3.30 Fulton Hogan also seeks clarification as to how consultation will take place in practice. In order to effectively implement policies PB4 and PD9, local authorities will need clear guidance from the Ministry as to how local authorities will identify appropriate stakeholders in the business sector to consult with.

### **Relief sought**

Amend policy PB4 as follows:

PB4: In carrying out the assessments required under policy PB1, local authorities must consult with infrastructure providers, community and social housing providers, the property development sector, business sector, and any other stakeholders ~~as they see fit~~.

Amend the second bullet point of policy PD9 as follows:

- Consult with and Take into account the views of infrastructure providers, land owners, the property development sector, business sector, and any other stakeholders ~~as they see fit~~;

Provide detailed direction in a Ministry for the Environment guidance document on how local authorities should carry out consultation under policies PB4 and PD9, including a requirement that relevant industrial activities are consulted when residential and business land could potentially cause reverse sensitivity effects.

### **Responsive planning**

- 3.31 Policy PD2 requires local authorities to consider all options available to it under the RMA to enable sufficient development capacity to meet residential and business demand, including changes to:
- (a) provisions in plans and regional policy statements regarding the notification of applications for resource consent; and
  - (b) existing overlays, or the introduction of overlays which enable development.
- 3.32 The changes local authorities make to the notification provisions of their district plans and regional policy statements in order to enable sufficient development capacity run the serious risk that situations will arise where parties who are affected lose out on the opportunity to participate. While local authorities have the ability to amend the notification provisions of their plans and regional policy statements, Fulton Hogan does not consider such powers should be encouraged in the NPS as a way to address issues of development capacity as it could lead to outcomes which inappropriately limit public participation.
- 3.33 Fulton Hogan relies heavily on the notification requirements in plans to protect its operations from reverse sensitivity effects. Fulton Hogan needs to stay vigilant to applications for consent to establish activities like residential dwellings that could potentially be affected by its operations. Fulton Hogan's ability to be involved in these resource consent applications could be significantly curtailed if changes are made to plans that reduce the notification of resource consent applications.
- 3.34 In addition, the promotion in the NPS of amendments to existing overlays and introduction of new overlays in order to enable sufficient development capacity is of concern to Fulton Hogan. Fulton Hogan, along with many other industrial operators, has had extensive involvement in the development of regional and district plans (like the Proposed Unitary Plan in Auckland) in order to protect its current operations and provide capacity for development of future operations. The potential for local authorities like Auckland Council to further amend plans in the short term in relation to overlays creates

unnecessary investment uncertainty and has the potential to undermine the significant amount of work parties have undertaken to develop these plans.

- 3.35 An NPS which does not take into account reverse sensitivity effects and promotes limiting notification, or changes to overlays, will only exacerbate the growing issue that Fulton Hogan has in trying to protect its operations from reverse sensitivity effects. It will also encourage people to live in areas which are not suitable for residential uses.
- 3.36 Fulton Hogan also has reservations regarding references to "customer focused" consenting processes in policies PD2 and PD3. This is an ambiguous term which could be misinterpreted by local authorities. A more appropriate term is "efficient".

### ***Relief sought***

Amend policy PD2 as follows:

A local authority must consider all options available to it under the Act to enable sufficient development capacity to meet residential and business demand, including but not limited to:

- Changes to plans and regional policy statements, including changes to:
  - Objectives, policies and rules, zoning and the application of those in both existing urban and undeveloped areas;
  - Activity status; and
  - ~~○ Provisions about the notification of applications for resource consent;~~
  - ~~○ Existing overlays, or the introduction of overlays which enable development; and~~
  - Make them simpler to interpret.
- Consenting processes that are efficient~~customer focused~~ and coordinated within the local authority; and
- In granting consent, the conditions of consent imposed.

Amend policy PD3 as follows:

Local authorities must consider the following responses:

- In the short term, further enable development through efficient~~customer focused~~ consenting processes and, where appropriate, amending the relevant plans.
- In the medium term, amending the relevant plans and policy statements to provide more development capacity.
- In the long term, providing a broad indication of the location, timing and sequencing of development capacity in order to demonstrate that it will be sufficient.

### **Ensuring monitoring assessments are published**

- 3.37 Under PB1 and PB5 "[l]ocal authorities must have regard to the benefits of publishing" the Housing and Business Land Assessments and the results of local authorities monitoring of a range of indicators. Fulton Hogan considers that local authorities should

be required to publish the assessments and monitoring under the NPS, rather than merely have regard to the benefits of publishing them.

- 3.38 Requiring the assessments and monitoring to be published places an appropriate check on the local authorities that they are effectively carrying out the objectives and policies of the NPS. If a local authority decides not to publish its assessments and monitoring, key stakeholders will struggle to determine whether appropriate monitoring is being undertaken by the local authorities and whether key indicators are being taken into account.
- 3.39 The assessments also provide critical information to the industrial, business and development sector as to potential future demand for activities and allows them to forecast with greater clarity the community's needs in the short, medium and long terms.

### ***Relief sought***

Amend the last sentence of policy PB1 as follows:

Local authorities must ~~have regard to the benefits of publishing the~~ assessments under policy PB1.

Amend the last sentence of policy PB5 as follows:

- Local authorities must ~~have regard to the benefits of publishing the~~ results of its monitoring under policy PB5.

### **Definitions**

- 3.40 Appendix A1 of the NPS provides a detailed classification of urban areas. As such a definition of "urban area" is unnecessary and will lead to confusion as to what amounts to an urban area when this is already clearly identified in Appendix A1.
- 3.41 We are also concerned that the definition as currently provided will enable local authorities to discount rezoning developable Greenfield land on the basis that the land does not have "urban characteristics" and a "moderate to high concentration of population".

### ***Relief Sought***

Delete the definition of urban area.

### **FULTON HOGAN LIMITED:**

**Signature:**




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**Date:** 15 July 2016

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