

Submission on the Proposed National Policy Statement on Urban Development Capacity – Consultation Document

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Introduction

1. The Todd Property Group (Todd Property) is responsible for designing and delivering some of New Zealand's largest urban developments in a high quality and sustainable manner. These projects include:
 - Stonefields – 100 hectares, providing 2500 homes within a master planned community in Auckland;
 - Ormiston Town Centre - 19 hectares delivering a multi- functional town centre for the new community emerging in Flat Bush, Auckland;
 - Long Bay – 162 hectares, providing 2000 dwellings in Auckland;
 - Pegasus – a master planned community providing 1700 homes north of Christchurch;
 - Napier Hill – a redevelopment of the previous Napier Hospital site involving a range of residential living options from standalone housing to apartments; and
 - Kapiti Landing – a 125 hectare business park which includes the operation of the Kapiti Coast Airport.

Earlier Feedback

2. Todd Property provided comments during the initial consultation phase on the Proposed National Policy Statement for Urban Development Capacity (NPS-UDC). Its feedback (5 February 2016) noted its support for the NPS-UDC and commented that it should:
 - a. Recognise that urban environments are different from other land areas under the jurisdiction of the RMA and will have different issues, pressures and drivers that need to be appropriately weighed. Urban development inherently involves change to existing environment patterns (for example, streams or topography of natural features) and does generate effects, whether in brownfields or greenfields areas. Protectionist policies that do not provide for or recognise population growth will restrict development in urban areas.
 - b. Acknowledge that urban areas need to evolve to stay relevant and vibrant and that they benefit from change and innovation. As such, the focus should be on outcomes rather than setting restrictive parameters within which change is allowed to occur.

- c. Explicitly acknowledge that within urban areas or growth boundaries the presumption is that urban development will occur.
- d. Allow for any urban growth containment boundaries to be tested via the RMA by entities other than the local authority.
- e. Use high growth scenarios as a basis for long-term planning to ensure local infrastructure planning meets demand (ie enable it to be truly proactive rather than reactive to growth). Any NPS should also provide for the ongoing monitoring of land supply to ensure that there is sufficient *deliverable* land supply, rather than just theoretical development capacity.
- f. Encourage local infrastructure solutions.
- g. Address the conflict between the benefits of urbanisation in the coastal environment and impacts on the coastal environment itself.

General Submission

3. Todd Property is supportive of the intent of the NPS-UDC and many provisions contained therein that address its earlier feedback. It does, however, have a concern that the effectiveness of the NPS-UDC may be diluted by some of the provisions as currently drafted and may not result in the appropriate growth accommodation regimes that all parties appear to agree are necessary. In this respect, Todd Property is of the opinion that certain provisions necessarily require amendment to be more robust and certain to ensure high quality urban outcomes.
4. The three critical issues that the NPS-UDC seeks to address are: connecting planning decisions with economics, providing a more responsive planning framework and rebalancing of the national and local interests.¹ To address these issues, the NPS-UDC provides objectives and policies in the following four areas:
 - a. Outcome of decision making (OA1-OA3, PA1 -PA3).
 - b. Evidence to support decision making (OB1 and PB1-PB5).
 - c. Co-ordinating evidence base and decision making (OC1 and PC1-PC3).
 - d. Responsive planning (OD1-OD2, PD1-PD9).
5. Todd Property supports the NPS-UDC to the extent that the NPS-UDC addresses the matters raised in its earlier feedback. In particular, Todd Property supports:
 - a. Distinguishing between and providing a different policy approach for urban areas that are experiencing different levels of growth.

¹ Consultation Document, Message from the Minister, page 5

- b. Recognition of the positive effects of urban development at a national through to local level.
 - c. Requiring a housing and business assessment every three years to assess the short, medium and long term capacity and requiring action if sufficient capacity is not identified.
 - d. Adopting a pragmatic approach by defining sufficient capacity as including a margin of 15%-20% to take account of the reality that not all capacity will be developed.
6. Todd Property does, however, suggest a number of amendments below to ensure the purpose and objectives of the NPS-UDC are achieved and that changes are not limited to simply processes, without there also being a real change in how planning is implemented in urban areas.

Outcome of decision making (OA1-OA3 and Policies PA1 -PA3)

7. The consultation document recognises that while local authorities must consider the needs of the whole community and the future generations: *“This can be difficult when planning processes often favour those who are most vocal and able to make their views known to decision-makers... This can lead to decisions that protect current, local interests at the expense of broader outcomes and future generations”*.² It is therefore considered imperative that the wellbeing of future generations be explicitly referenced within the objectives.
8. The consultation document goes on to acknowledge that there is an inherent tension between protecting and managing precious natural and physical resources (such as heritage, landscapes and amenity values) and urban development. It acknowledges that there is a need to appropriately balanced protecting these resources and providing opportunities for cities to adapt and change so as to allow significant parts of the current and future community access to housing and employment.³ There are both positive and negative effects associated with urban development *“however, current planning decisions appear to focus more on the negative effects of development rather than the positive contribution development can make.”*⁴
9. The proposed objectives and policies address the above matters to some extent but risk not fully addressing the issues identified. For example, the current wording of OA1 is inconsistent with PA3 and risks prioritising existing communities over future generations. OA2 is supported and, in particular, the references to providing “sufficient” (ie 15%-20%) development capacity, which ensures that the focus is on capacity that is likely to be realised. While OA3 sets an objective of enabling development and change in urban areas, this is not reflected in the subsequent policies. In addition, within urban areas, it is appropriate to not merely enable development and change but to encourage it so that

² Consultation document, page 21

³ Consultation document, page 21.

⁴ Consultation document, page 28

urban areas continue to evolve and remain competitive with other similar urban areas nationally and internationally. Amendments are proposed to OA3 and PA1 to address these matters and to remove reference to “social and economic exchange” as it is unclear what this term is intended to address, particularly as capacity, rather than urban form, is the focus of the NPS. Finally, it is important to recognise that positive effects from urban development can occur at a local level. The NPS-UDC has the potential to play an important role in recognising the positive effects of urban growth as these effects are often underrepresented in planning documents.

Proposed amendments

10. Todd Property considers that the following amendments would assist in achieving the purpose of the RMA and objectives of the NPS-UDC:

OA1: To support effective and efficient urban areas that enable ~~people and communities~~ existing and future generations to provide for their social, economic and cultural wellbeing.

...

OA3: To ~~enable~~ encourage ongoing development and change in urban areas.

PA1: By decision-makers:

- *Providing for an evolving urban form that maximises the social, cultural and economic benefits of development and change ~~the potential for social and economic exchange~~ within the urban area.*

...

PA3: When considering the effects of urban development, decision-makers must:

...

- *Provide sufficient development capacity, whilst maximising the positive effects of development, ~~and~~ balancing and minimising the adverse effects of development.*
- *Have particular regard to the positive effects of urban development at a national, regional ~~and district~~ scale, as well as its and local level effects*

Evidence to support decision making (OB1 and PB1-5)

11. Todd Property supports OB1 and agrees that there is a need for councils to ensure that planning documents are based on robust, accurate and frequently updated information. Todd Property supports the three year review period proposed in PB1 but considers that it would be beneficial for the NPS-UDC to require an external check on this process to ensure that the information informing the housing assessment is in fact robust and accurate. This would include requiring the housing and business assessments to be published and a formal consultation process to inform these assessments. The benefits of a formal testing process have already been proven through the Proposed Auckland Unitary Plan process, where initial Council capacity for growth assumptions were reviewed via hearings and evidence with accepted beneficial and meaningful changes implemented as a result. In addition, Todd Property supports an amendment to allow the most recent Statistic New Zealand figures to be used on an ongoing basis.

Proposed amendments:

PB1: Local authorities must, by the end of 2018, or within 12 months of becoming a Medium or High Growth Urban Area, and thereafter on at least a three-yearly basis, carry out:...

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

PB2: In carrying out the assessments required under policy PB1, local authorities shall seek public feedback and provide for this feedback to be considered by appropriately qualified independent experts. Prior to finalising the assessments required under policy PB1, local authorities must have particular regard to:

- *Demographic change, including population growth and household size projections, using the most recent Statistics New Zealand high growth projections set out in Appendix A2...*
- *Evidence or submissions provided by any party as part of the public consultation process and the recommendations of the appropriately qualified independent experts.*

...

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 and any other stakeholders ~~as they see fit,~~ including by way of a public consultation process.

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:...

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

Co-ordinating evidence base and decision making (OC1 and PC1-PC3)

12. Todd Property supports OC1 and PC1 - PC3 and agrees that infrastructure provision is a crucial issue in terms of enabling growth. Todd Property agrees that it is important that infrastructure is available to service and meet growth, but it does not consider that infrastructure should determine growth and urban form. For example, if a development is feasible and is likely to be developed then the lack of a proximate bulk water or wastewater supply should not restrict urban development if a viable localised solution can be provided. This could allow for development that does not accord with infrastructure providers' sequencing (as required under PD3 and PD8) but which is otherwise ready to go.

Responsive planning (OD1-2 and PD1-9)

13. Todd Property considers that responsive planning is the critical issue for actually realising urban development. Monitoring capacity and providing processes for updating this information will be of no effect if the planning response is not able to react quickly, particularly where insufficient capacity is identified in the short term.
14. Todd Property considers that the NPS-UDC would benefit from amendments to the policies to ensure that the intent of the objectives is achieved. For example, while OD1 and OD2 seek to ensure that planning decisions enable urban development and that local authorities adapt and respond to market activity, there is little incentive to act promptly (other than a requirement to set minimum targets in the RPS). In addition, while PD1 requires councils to provide further development capacity where the evidence indicates it is insufficient and

PD2-PD4 set a range of matters to be considered or had regard to, there is no stated remedy if councils fail to act.

15. Councils are required to set targets in their RPS and prepare a future land release and intensification strategy. While both steps are useful to document the issue and provide a theoretical plan to address it, they fall short of *requiring* immediate changes to planning rules or incentives in response. The risk is that “consideration” is demonstrated, without any actual improvement or accountability. Todd Property does not object to PD6 providing for minimum targets to be included in RPS documents without going through the Schedule 1 process provided there is a contesting hearing to ensure these figure are robust (as proposed in the amendments to PB2 and PB4 above).
16. Ensuring that councils are held to account if sufficient development capacity is not provided and allowing private entities and the market to respond to any shortfall will be critical to ensuring the NPS-UDC achieves its objectives. For example, Todd Property considers that any urban growth containment measures (urban boundaries) be spatially defined within district plans rather than regional documents, particularly where a unitary council is involved. This would enable private plan changes to be utilised to investigate shifts to the line rather than leaving RMA testing in the hands of local authorities only. While the policy parameters and matters for consideration could be enshrined within a Regional Policy Statement, the actual location of any line would be subject to the usual RMA tests prior to implementation. Past practice has indicated that where such shifts have been the sole preserve of local authorities, they have been reactive rather than proactive, waiting for problems to manifest before action is taken. It has also been observed that where shifts have occurred, actual implementation has taken longer and produced less housing than anticipated, possibly due to a disconnect between councils and landowner aspirations. Allowing landowners to explore this possibility themselves is likely to lead to actual outcomes more quickly and more closely aligned with anticipated outcomes than otherwise. A developer is not likely to prepare and pursue a private plan change, which can be a costly process, unless it has an actual intention to develop the land in question.

Proposed amendments

17. Todd Property proposes the following minor amendments to address the matters discussed above:

OD2: To ensure that in the short and medium terms local authorities adapt and respond promptly to market activity.

...

PD2: A local authority must ~~consider~~ assess all options available to it under the Act to enable sufficient development capacity to meet residential and business demand and to encourage development of this capacity, including but not limited to:

...

- *Consenting processes that are expedient, efficient ~~customer focused~~ and coordinated within the local authority to ensure timely outcomes for applicants; and*

...

- Other non-statutory methods or mechanisms available under other legislation.

PD3: Local authorities must implement ~~consider~~ the following responses:

- In the short term, further enable development through ~~customer-focused~~ consenting processes that are expedient, efficient and coordinated within the local authority and, where appropriate, amending the relevant plans. ...

PD5: Regional councils must set minimum targets for the supply of sufficient residential development capacity that must be achieved, in accordance with its Housing Assessment, and incorporate these into the relevant regional policy statement. While minimum targets are to be included in the relevant regional policy statement the RPS shall not limit development capacity to particular areas. Any planning controls including planning maps that require development capacity to be contained within an urban limit shall be provided for in District Plan only.

PD8: The future land release and intensification strategy must:

- Identify the location, timing and indicative sequencing of future development capacity over the long term; and
- Provide a process for flexible implementation and sequencing.

Definitions

18. Todd Property generally supports the definitions included in the NPS. Any amendments to definitions should be carefully considered for unintended consequences. For example, expanding the definition of infrastructure to include social infrastructure could undermine the NPS by making it practically unworkable.

Other changes sought

19. In the event councils fail to provide sufficient capacity (eg fail to pursue a plan change) there are remedies under the RMA (for example, the Minister intervening under s24A-25A). Todd Property considers these should be expressly provided for in the NPS. This would ensure a level of accountability and clearly signal the options that are available (and that may be used) in the event that development capacity is not appropriately addressed.

Proposed guidance

20. The government intends to put in place an implementation programme that will include the development of guidance and likely training and monitoring. Todd Property supports this, including providing guidance on how to balance the proposed NPS with other national direction (for example, the National Policy Statement for Freshwater Management and the New Zealand Coastal Policy Statement), or specific matters listed in sections 6 and 7 of the RMA. At the present time, there is significant uncertainty around how development within the coastal environment is to be treated in an urban context. Coastal locations are obviously attractive places to live, accommodating growth in a timely fashion and potentially acting as a catalyst for growth in stagnating areas. Such development can also bring about other advantages such as enhanced coastal access, ecological restoration and enhancement planting. Coastal environments are also sensitive environments with a heightened sense of

public 'ownership'. While the NZCPS addresses these matters to some extent it is considered appropriate that an NPS on Urban Development should ideally address this but at a minimum provide guidance on how to manage these potential conflicts.

21. Todd Property considers it would be beneficial for the Ministry to provide councils with specific guidance in the following areas in order to ensure national consistency rather than developing ad hoc and potentially divergent methodologies in different growth areas:
 - Best practice methodologies for assessing demand and development capacity.
 - Best practice methodologies for specified monitoring indicators and other indicators that may provide useful information.
 - Understanding the market, including assessing development feasibility, monitoring and interpreting price signals.
 - How local authorities can work with other actors, including local authorities and infrastructure providers.
 - Assessing market failures and making the case for planning regulations (including cost–benefit analysis).

22. Todd Property appreciates the opportunity to provide the above comments and is willing to engage with the Ministry or other relevant parties if this would be of assistance in finalisation of the NPS.