



THE ASSOCIATION FOR RESOURCE MANAGEMENT PRACTITIONERS

*Te Kahui Ture Taiao*

## **PROPOSED NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT CAPACITY**

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

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#### **Introduction**

1. This Submission on the Proposed National Policy Statement on Urban Development Capacity (**NPS**) is made by the Resource Management Law Association of New Zealand Inc (**RMLA**).
2. The RMLA is concerned to promote within New Zealand:
  - a. An understanding of Resource Management Law and its interpretation in a multi-disciplinary framework;
  - b. Excellence in resource management policy and practice; and
  - c. Resource management processes which are legally sound, effective and efficient and which produce high quality environmental outcomes.
3. The RMLA has a mixed membership. Members include lawyers, planners, judges, environmental consultants, environmental engineers, local authority officers and councillors, central government policy analysts, industry representatives and others. Currently the Association has some 1,100 plus members. Within such an organisation there are inevitably a divergent range of interests in views of members.
4. While the membership has been consulted in preparing this submission, it is not possible for the RMLA to form a single universally accepted view on the proposed NPS. It should

also be noted that a number of members may be providing their own individual feedback and those may represent quite different approaches to the views expressed here.

5. For these reasons, this submission does not seek to advance any particular policy position in relation to the proposed NPS, but rather is kept at a reasonably high level and is made with a view to ensure that the proposed NPS:
  - a. is consistent with the general framework of existing laws and policies of relevance, and the Resource Management Act 1991 (**RMA** or **Act**);
  - b. is practicable and workable; and
  - c. will assist in promoting best practice.

## **SUBMISSION**

### **Purpose of the NPS**

6. **Specific Matter:** The NPS requires local authorities to provide sufficient residential and business development capacity to enable urban development that meets demand in the short, medium and long term. It places an obligation on local authorities to monitor land supply and demand, and adapt and respond to market activity.
7. **Submission:** The purpose and intent of the NPS is supported. It is considered necessary for local authorities to monitor residential and business land supply relative to demand, and respond when there is insufficient capacity. It is also appropriate that the NPS set different levels of action and response required subject to the growth characteristics of the area. The NPS policies for the medium and high growth areas provide more detail on what is required by local authorities. However, the objectives and policies that apply to all local authorities could be interpreted that areas with minimal or even negative growth are still required to undertake substantive economic analysis.
8. **Recommendation:** The purpose and intent of the NPS is supported. The hierarchy of objectives and policies are also appropriate. However, the objectives and policies that apply to all local authorities need to be clearer on what is required of those local authorities that are not within medium or high growth urban areas to give effect to the NPS.

### **Relationship with the Resource Legislation Amendment Bill**

9. **Specific Matter:** The Minister in introducing the NPS states that it complements the specific new legal requirements in the Resource Legislation Amendment Bill (**Bill**) for councils to provide enough development capacity to meet demand.
10. **Submission:** It is understood that the Minister is referring to clause 105 of the Bill which

proposes to insert new section 360D for Regulations to be made on the recommendation of the Minister that permits or prohibits certain rules, including providing for a particular land use to be a permitted activity. The RMLA submission on the Bill recorded concern with this proposed new section as it runs contrary to the devolved planning framework and local decision making process that is central to the Act. Concern was also expressed that such clauses are contrary to important constitutional and rule of law principles and should only be used in exceptional circumstances. The RMLA sought that clause 105 be removed from the Bill, and in the alternative proposed section 360D be amended to delete the highly subjective assessment of whether regulations are in fact required.

11. **Recommendation:** Review the NPS and ensure that its effectiveness and efficiency is not dependent on the Regulation making powers proposed under the Bill. If, contrary to the RMLA's submission on clause 105 of the Bill, the Regulation making powers remain, they could be used to supplement the NPS – but the NPS should be capable of standing alone.

#### **Relationship with other National Policy Statements, and Part 2 matters**

12. **Specific Matter:** The relationship of the NPS with other existing (and future) National Policy Statements, and Part 2 matters.
13. **Submission:** There is potential for the provisions of the NPS to pull against or be in tension with another current or future National Policy Statement. There is currently no statutory guidance on how any such tension is to be resolved, for example by recourse to Part 2. There is also no statutory guidance given as to how to apply a narrowly focused National Policy Statement like the NPS (as opposed to the New Zealand Coastal Policy Statement, which “covers the field” in the coastal environment), where other section 6, 7 or 8 matters not addressed in the NPS come into play.
14. **Recommendation:** Consideration be given within the NPS itself to how it is intended for the NPS to be given effect to in any particular circumstance where there are tensions with any other National Policy Statement or Part 2 matter.

#### **Interpretation**

15. **Specific Matter:** Definition of Business Land.
16. **Submission:** The definition of business land includes ‘centres’ with ‘mixed use’ and is qualified to the extent that it is available for productive economic activities. The qualification is a duplication from the beginning of the definition and should be deleted. Centres are also distinct from mixed use areas and should also be listed separately.

17. **Recommendation:** It is recommended that the definition of Business land be amended as follows:

**Business land** means land that is zoned for productive economic activities in urban areas, including but not limited to the following:

- industrial
- commercial
- retail
- centres
- business and business parks
- mixed use and centres, to the extent that it is available for productive economic activities.

but does not include residential dwellings that are also used for a productive economic activity such as home occupations.

13. **Specific Matter:** Definition of Demand in relation to residential development.
14. **Submission:** The definition of demand for residential development requires local authorities to have particular regard to the total number of dwellings to meet projected household growth, demand for different types of dwellings, demand for different locations, and demand for different price points. It is not clear if the analysis requires these matters to be considered separately or in combination. It is understood that it would be very difficult and may not produce helpful results if these matters are tried to be assessed in combination. There should also be flexibility to only consider those matters that are relevant to a particular area.
15. **Recommendation:** Amend “having particular regard to” to “with consideration to the following matters as applicable”.
16. **Specific Matter:** Definition of Demand in relation to business land.
17. **Submission:** The definition of demand for business land should also provide flexibility to only consider those matters that are relevant to a particular area. It should also refer to both “land and built capacity”, rather than just “floor area”. Some yard based activities, for example, need land as well as floor area.
18. **Recommendation:** Amend “having particular regard to” to “with consideration to the following matters as applicable”; and replace “floor area” with “land and build capacity”.

19. **Specific Matter:** Definition of Feasible.
20. **Submission:** The definition of feasible only requires consideration of the current likely costs, revenue and yield for development. However, the relevant time periods in the NPS are over short (3 yr), medium (10 yrs), and long terms (30 yrs). As existing built development can become viable for redevelopment over time it is important that this is accounted for. If it is not, it may result in the amount of additional land required to be overstated.
21. **Recommendation:** Delete “current” from the definition.
22. **Specific Matter:** Definition of Urban Area.
23. **Submission:** The definition of urban area means “an area with urban characteristics and a moderate to high concentration of population, irrespective of local authority boundaries”. This definition is limited to those areas that are already urbanised, while the use of the term ‘urban area’ in Objectives A1-3 is intended to also cover greenfield areas.
24. **Recommendation:** The definition of urban area be amended to read “an area with urban characteristics and a moderate to high concentration of population, irrespective of local authority boundaries, and includes undeveloped land identified or likely to be required for residential and business growth”.

#### **Objectives that apply to all Local Authorities**

25. **Specific Matter:** Objective A1.
26. **Submission:** Objective A1 is appropriate and should be retained. It is important that direction be given to support effective and efficient urban areas.
27. **Recommendation:** Retain Objective A1.
28. **Specific Matter:** Objective A2.
29. **Submission:** Objective A2 is supported, but it is not clear what analysis will be required by local authorities outside medium and high growth areas to give effect to this objective.
30. **Recommendation:** If objective A2 is retained, there needs to be clear guidance of what analysis is required for local authorities outside medium to high growth areas.
31. **Specific Matter:** Objective A3.
32. **Submission:** This requires ongoing development and change in urban areas. The amendment to the definition of ‘urban areas’ as sought above will confirm that this

objective is also to enable change in currently undeveloped or greenfield areas. It is considered that it would also be helpful to explicitly state that change can be intensification or greenfield development.

33. **Recommendation:** Amend objective A3 to provide “To enable ongoing development and change in urban areas, by intensification and more efficient use of existing urban land and/or greenfield development”.
34. **Specific Matter:** Objective B1.
35. **Submission:** The requirement for plans and regional policy statements to be based on robust, accurate and frequently updated evidence base is appropriate. However, this objective is to apply to all local authorities and having regard to the other objectives and definitions, could be interpreted as a very onerous and expensive exercise. It is considered that there needs to be a clearer distinction between the obligations of local authorities that are facing or are likely to face growth pressure and those that are not, and not require all local authorities to undertake the same level of detailed economic analysis. If the obligations and level of economic analysis required by local authorities is not clear, there is the risk that they will be challenged for not undertaking sufficient analysis.
36. **Recommendation:** If objective B1 is to apply to local authorities outside medium and high growth areas there needs to be further clarification on the level of analysis that they are required to undertake.
37. **Specific Matter:** Objective C1.
38. **Submission / Recommendation:** Objective C1 is appropriate and is a relevant directive for all local authorities.
39. **Specific Matter:** Objective D1.
40. **Submission:** Objective D1 requires planning decisions to enable urban development for the next 5 years, 10 years and 30 years. It is appropriate that local authorities are required to consider these planning horizons, while it should also be recognised that projections for a 30 year period are less certain and therefore ‘planning decisions’ for this period need to be different than that required for the short to medium terms. This is not clear in this objective, but is clear in policy D3. However, objective D1 applies to all local authorities and policy D3 applies only to medium and high growth areas.
41. **Recommendation:** It may assist to have the expected planning responses over the short, medium and long terms included in the definitions section.
42. **Specific Matter:** Objective D2.

43. **Submission:** Objective D2 is appropriate and is a relevant directive for all local authorities. However, this objective could be used by proponents of a development and result in reactive planning, that fails to achieve the objective of efficient and effective urban development.
44. **Recommendation:** Add the following wording to Objective D2: “To ensure that in the short and medium terms local authorities adapt and respond to general market activity (not just individual developer aspirations), having particular regard to efficiency and urban form considerations.”

#### **Policies that apply to all Local Authorities**

45. **Specific Matter:** Policy A1.
46. **Submission:** Policy A1 is an important policy, and the first two points cover key considerations that should be addressed. The third point ‘enabling the competitive operation of land and development markets’ is also an aspect of urban economies, but it is not clear how a local authority can assess the ‘competitive operation’ or seek to achieve it. If the third point is retained, it is important that these matters operate equally and that one sub-part is not elevated over the others.
47. **Recommendation:** If the third point is retained, provide further guidance on how a local authority is to assess and address this matter.
48. **Specific Matter:** Policy A2.
49. **Submission:** Policy A2 requires local authorities to at all times provide sufficient residential and business development capacity for the short, medium and long terms. How sufficient is defined (as addressed above) is critical. It is also considered that the intent of the policy is to provide different stages of development capacity for the different time periods, in the short term land should have a live zoning and infrastructure provision enabled, while in the long term it could have a future urban zone and signaled future infrastructure investment. However, this important distinction of what is required to achieve sufficient capacity over these time periods is not clear in the policy or the relevant definitions of ‘sufficient’ and ‘development capacity’.
50. **Recommendation:** As addressed for objective D2, it may assist to have the expected planning responses over the short, medium and long terms included in the definitions section.
51. **Specific Matter:** Policy A3.
52. **Submission:** The first and second points in Policy A3 are supported. However it is considered that the third point does not enable a balanced assessment to occur.

53. **Recommendation:** Amend the third point to read: “Have regard to the effects of urban development at a national, regional and district scale, as well as its local effects.

**Evidence and monitoring to support decision making**

54. **Specific Matter:** Policy B1.
55. **Submission:** Policy B1 is helpful as it provides more direction on what analysis is required by local authorities in the Medium and High Growth Urban Areas. However, it does not help to clarify what analysis is still expected of local authorities in low or ‘no’ growth areas.
56. **Recommendation:** Retain policy B1 and consider what similar guidance can be provided for local authorities outside the medium and high growth areas.
57. **Specific Matter:** Policy B2.
58. **Submission:** This policy is also helpful as it establishes clear guidelines in terms of the economic assessment required.
59. **Recommendation:** Retain policy B2.
60. **Specific Matter:** Policy B3.
61. **Submission:** Policy B3 requires a significantly more detailed assessment. It is understood that this is the level of analysis undertaken for the Proposed Auckland Unitary Plan (**PAUP**) at considerable time and cost. It is understood that this level of analysis is not being undertaken by any other local authorities at present. It should be considered if this level of analysis is necessary for Medium Growth Urban Areas.
62. **Recommendation:** Consider the practical implications of requiring this level of assessment and, if it is appropriate, to only impose these requirements on High Growth Urban Areas.
63. **Specific Matter:** Policy B4.
64. **Submission:** The requirement in policy B4 for local authorities to consult with infrastructure providers, community and social housing providers, and the property development sector is appropriate.
65. **Recommendation:** Retain policy B4.
66. **Specific Matter:** Policy B5.
67. **Submission / Recommendation:** Policy B5 sets out a number of important considerations which should be included. However, the requirement to consider ‘ratio of value of land between rural and urban zoned land’ needs to be carefully worded so that it does not imply



that an urban limit is not an appropriate tool to apply. Consideration should also be given to what matters can be more efficiently monitored at a national level and provided to local authorities.

#### **Co-ordinated evidence of decision making**

- 68. **Specific matter:** Policies C1-3.
- 69. **Submission:** Policies C1-3 are appropriate and are supported.
- 70. **Recommendation:** Retain policies C1-3.

#### **Responsive planning**

- 71. **Specific matter:** Policy D2, point 1.
- 72. **Submission:** Policy D2 includes a list of matters that local authorities can implement to enable sufficient development capacity. Point 1 provides for changes to plans and regional policy statements, and includes ‘provisions about the notification of applications for resource consent’ and ‘to make them simpler to interpret’. The notification direction suggests that there should be no public notification or limited notification where capacity is required. It is considered that this is contrary to the public participatory process of the Act, particularly where it may result in significant changes to urban form. It is not considered that a change to a plan or regional policy statement should be made to make the plans simpler to interpret. If this was an issue it would be more efficient for a local authority to provide guidance on the interpretation of the relevant plan.
- 73. **Recommendation:** Delete the points ‘provisions about the notification of applications for resource consent’ and ‘to make them simpler to interpret’.
- 74. **Specific Matter:** Policy D2, point 2.
- 75. **Submission:** Point 2 provides for ‘consenting processes that are customer focused and coordinated within the local authority’. It is considered that the intent of this provision is to provide a similar coordinated council and infrastructure provider consent and approval process as undertaken by the Housing Project Office at Auckland Council for special housing areas. If this is the intent, the wording of this point could be clearer and include coordination with infrastructure providers.
- 76. **Recommendation:** Amend point 2 to read “Consenting processes that are efficient and are coordinated with infrastructure providers.”
- 77. **Specific Matter:** Policy D3.

78. **Submission / Recommendation:** Policy D3, point 1 should be amended as per policy D2 point 2 above.
79. **Specific Matter:** Policy D4.
80. **Submission:** Policy D4 requires local authorities to have particular regard to enabling capacity in locations that the Housing Assessment indicates are of highest demand. There is no reference in policies D1, D2 and D3 to provide development capacity in locations of highest demand. The Housing Assessment (policy B1) considers demand for different types of dwellings, locations, and price points. All of these matters should be considered rather than just location.
81. **Recommendation:** Amend point 1 of Policy D4 to provide “For the types of dwellings, location, and price points identified of highest demand in the Housing Assessment required under policy B1”.
82. **Specific Matter:** Policy D7.
83. **Submission:** Policy D7 requires local authorities to provide a future land release and intensification strategy. The development capacity could be met by intensification, land release or a combination of both. The “and” should be an “and/or”.
84. **Recommendation:** Amend policy D7 to read “...future land release and/or intensification strategy...”.
85. **Specific Matter:** Policy D8.
86. **Submission:** Policy D8 provides that the land release and intensification strategy must identify the location, timing and sequencing of development capacity over the long term. As above, this policy should address that development capacity could be met by intensification, land release or a combination of both. As also addressed above it would be helpful to identify the different levels of ‘development capacity’ over the short, medium and long term.
87. **Recommendation:** Amend policy D8 to read “...future land release and/or intensification strategy ...” and provide further clarification on what is required over the short, medium and long terms.
88. **Specific Matter:** Policy D9.
89. **Submission:** The reference back to policy A1 is supported and should be retained.
90. **Recommendation:** Retain the reference to policy A1.

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



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Signature of James Gardner-Hopkins, on behalf of the Resource Management Law Association

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