

13 July 2016

Chair
Local Government and Environment Select Committee
Parliament Buildings
Wellington

Dear Sir/Madam,

**SUBMISSION FOR WATER NEW ZEALAND ON THE PROPOSED NATIONAL
POLICY STATEMENT URBAN DEVELOPMENT CAPACITY**

Introduction and overview

1. Water New Zealand (“Water NZ”) appreciates the opportunity to provide a submission on the proposed national policy statement for urban development capacity (“NPS UDC”).
2. Water New Zealand is a not-for-profit organisation that promotes and represents water professionals and organisations. It is the country's largest water industry body, providing leadership and support in the water sector through advocacy, collaboration and professional development. Members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies and scientists.
3. In terms of overall comments, Water NZ questions whether a national policy statement is the most appropriate mechanism to address development capacity issues, given growth and housing affordability issues are not issues for every district or region, given housing affordability is not just an issue of land supply; and given the other measures being implemented to address these issues – such as loan and overseas borrowing restrictions, special housing areas legislation, and the measures proposed in the Resource Legislation Amendment Bill.
4. Water NZ also considers that the NPS UDC misses an opportunity to provide guidance as to the form the development capacity should take – i.e. whether it should be provided through intensification of existing urban areas or further urban expansion (or both). The greater adoption of active demand management by councils and the showcasing of different housing options (rather than the traditional quarter acre plot) is likely to be helpful in this regard.
5. There are also a number of issues which the NPS UDC does not address but which will ultimately impact on the availability and/or take up of development capacity. These include the ability of the construction industry to respond quickly to additional capacity; the reluctance of some areas/councils to accommodate growth (given the costs associated with such growth); the fragmented consenting system which requires multiple consents from different local authorities for developments; and how consenting processes can be made

more “customer focused” given the existing resource management system. While it may be beyond the scope of the NPS UDC to address such matters, Water NZ considers it is important that reforms in the resource management sphere recognise these impacts and progressed in a co-ordinated manner.

6. Assuming the NPS UDC is proceeded with, there are seven specific aspects of the NPS UDC aspects that Water NZ wishes to comment on:
 - (a) The provision of infrastructure;
 - (b) Efficiency;
 - (c) The lack of consideration of the productive rural use of land;
 - (d) Estimating sufficient development capacity;
 - (e) The process for changing plans and policies;
 - (f) The process for considering the NPS UDC with other NPSs and legislative instruments; and
 - (g) Statistic New Zealand references.
7. These issues are discussed in turn and the specific changes sought by Water NZ to address its concerns are outlined at the end of this submission.

Infrastructure

8. Water NZ is pleased to see that the NPS UDC acknowledges (in policies PC1 to PC3) that infrastructure providers need to be part of the decision making process for determining growth areas. There are however four issues around infrastructure that Water NZ wishes to comment on. These relate to: the requirement for infrastructure, the adequacy of infrastructure, the timing of infrastructure and the funding for infrastructure.
9. In terms of the requirement for infrastructure, it is noted that while there is a specific requirement to provide sufficient “residential and business development capacity”, there is not a similar requirement to provide or ensure that there is sufficient infrastructure available. Instead the requirement is to take into account the existence/likely existence of adequate infrastructure¹ and to have particular regard to the actual and likely availability of infrastructure.² Water NZ is concerned that this could lead to the situation where local authorities feel forced to provide additional land for business and housing even where appropriate infrastructure is not available. This could include for example pressure to allow on-site wastewater systems and roof tank water supplies in high density urban areas as an interim measure until public infrastructure catches up. Where infrastructure doesn’t catch up, this creates a legacy problem for the future. To avoid this issue occurring, Water NZ considers that the NPS UDC should be amended to clarify that the requirement to provide sufficient residential and business development capacity is subject to adequate infrastructure being available or likely to be available to support the proposed urban use.

¹ NPS UDC, section 3, definition of “development capacity”.

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10. In terms of adequacy, there is reference in the definition of development capacity to the need to take into account the provision of “adequate infrastructure existing or likely to exist to support the development of land”. However, unlike the term “sufficient” which is defined in relation to development capacity, no definition or guidance is provided as to what is adequate infrastructure. Water NZ suggests that a definition for “adequate infrastructure” be provided in the NPS UDC.
11. For consistency, Water NZ also considers that Policy PB3 should be amended to refer to the adequacy of infrastructure.
12. In relation to timing, while recognising that infrastructure will be required, the proposed NPS UDC does not expressly recognise the potential timing delays in the provision of infrastructure and the effect that this will have on development capacity. This is important as if land is activated for urban development prior to the infrastructure being available this can cause issues downstream in terms of consenting (such as how stormwater is dealt with and provided) and also result in unnecessary and inappropriate removal of production land from productive use. The timing of infrastructure can be affected by a number of factors, some of which are matters outside the control of local authorities. These include: the availability of skilled engineers, project managers and trades people in the infrastructure (and also housing) sector – of which there is currently a shortage; national immigration and macro-economic policies; funding; and the need to involve other parties such as the New Zealand Transport Agency where the development necessitates changes or access to State Highways. Water NZ therefore considers that the proposed NPS UDC should be amended to specifically require consideration be given to the timing of infrastructure availability.
13. With respect to funding, the discussion document indicates that costs associated with the provision of infrastructure will be met using a combination of development contributions and rates due to the new ratepayer base that the urban growth will provide. Water NZ has a number of concerns in this regard:
 - (a) Given the existing under-provision of infrastructure in some areas, and the limitations on development contributions (in terms of only being responsible for a proportionate share of the growth related costs directly related to a particular development), Water NZ considers that there is likely to be a significant funding shortfall, which could compromise the achievement of the urban growth capacity;
 - (b) Given the requirements in policy PD1 to provide development capacity (which includes infrastructure), in the short, medium and long-term, ratepayers could end up footing the bill for infrastructure which is not required for another 20 or 30 years; and
 - (c) An over-reliance on development contributions may effectively undermine the policy intent of increasing housing affordability by passing the infrastructure capital costs onto the end consumer (through increased section prices).

14. To ensure that the NPS UDC meets its aims, Water NZ considers that alternative funding arrangements for infrastructure, such as a contribution from central government to regionally significant infrastructure should be investigated. Consideration could also be given as to what existing mechanisms are available under the Local Government Act 2002 (“LGA”) and Land Transport Management Act 2003 (“LTMA”) to assist with funding of infrastructure and any (legislative) linkages required to enable such funding to be used in this context.

Efficiency

15. In the preamble to the NPS UDC it states that it is important that cities “use resource efficiently and minimise their environmental footprint.” However, no specific direction to this effect is contained in the body of the NPS UDC. Water NZ considers that it would be useful to include a policy regarding efficient use, not just of land, but of water and infrastructure associated with urban development. This would also provide a linkage to the NPS freshwater and the need to manage water wisely.
16. Such a policy would also support the requirement to ensure that sufficient work is done to ensure that land in the right areas is set aside, increasing the likelihood that the land will actually be developed for urban purposes.

Lack of consideration of productive rural use of land

17. At present the proposed NPS UDC does not require that consideration be given to value of any existing or potential productive uses of rural land proposed to be urbanised. The particular rural uses, the ability of those uses to transfer elsewhere, the characteristics of the land (such as soil classifications), and the efficiency of the rural productive use versus an urban use are all matters that should be considered.

Estimating sufficient development capacity

18. The proposed NPS UDC requires each Council to undertake assessments and monitoring of development capacity. The focus of such assessments and indeed the NPS UDC itself is on ensuring there is a sufficient quantity of such land available without any consideration being given to the quality of the resulting developments. Water NZ considers that quality aspects of urban development ought to also be considered as this will lead to better outcomes and (as mentioned below) may assist in achieving the goals in other national policy statements such as through the adoption of water sensitive design.
19. Water NZ considers that requiring each individual Council to monitor such matters may not be an efficient use of resources and that there may not be a one size fits all approach. For a very large unitary council like Auckland, (which Water NZ understands is already undertaking such monitoring) the monitoring may best sit with that council, but for other smaller councils, it may be a matter which could more easily and effectively be undertaken by central government – e.g. the Ministry for the Environment or the relevant regional council. Imposing such a requirement on every individual council creates extra work (without any extra funding) in an area which councils have traditionally had limited

involvement. This is particularly given the changes to the Local Government Act in 2012 to refocus the purpose of local government back on the provision of good quality local infrastructure, local public services and the performance of regulatory functions.³ Water NZ considers that the estimation of sufficient development capacity is a task better left with central government or the relevant regional council.

Changes to plans and regional policy statements

20. The NPS UDC states that regional councils are required to change objectives and policies in their policy statements to give effect to the proposed NPS UDC without going through the Schedule 1 process. No express mention is made of regional plans or of district documents. However, the requirement in section 55(2A) of the Resource Management Act 1991 (“RMA”) applies to all regional and district documents and is not limited to the regional policy statement. In other words, changes may also be made to objectives and policies in regional and district plans to give effect to the NPS UDC without going through the Schedule 1 process.
21. Further, and while the section 55(2A) requirement only applies to objectives and policies and not rules, given the interdependence of the two, and the ability of some policies to be directive, the public’s opportunity to influence the outcome of the resultant plan change processes may be quite limited. In other words, the die may already be cast by the time the plan change is notified for submissions. This is particularly concerning given the issues with the proposed NPC UDC’s as set out in this submission.
22. While understanding the proposed NPS UDC is directed at ensuring sufficient urban residential and urban capacity is available, Water NZ considers that the NPS UDC cannot and should not do this in a vacuum. The NPS UDC also needs to consider and balance the needs of the wider community and provide them with a proper opportunity to participate in and make submissions on changes that may affect them.
23. Water NZ is also concerned that without a public process being required there may be a potential disconnect between the way in which regional and district councils interpret and therefore give effect to the NPS UDC. While ultimately district councils would be required to amend their plans to give effect to the regional documents, a more collaborative or joint approach at the outset would assist in ensuring a consistent approach is taken and an efficient process is followed.

Consideration of NPS UDC with other national policy statements and legislative instruments

24. The proposed NPS UDC does not currently provide any guidance as to how it relates to other national policy statements (“NPS”) – such as the NPS for Freshwater Management (“NPS FM”) and the New Zealand Coastal Policy Statement (“NZCPS”). Water NZ considers that this is very important particularly where, as here, the NPS UDC is likely to be pulling in a different

³ Refer section 10(1)(b) of the Local Government Act 2002.

direction to these other NPSs – at least in some respects (increased urban activity versus protection and enhancement of water bodies/coastal environment). Water NZ considers that this tension between the NPS UDC and NPS FM/NZCPS is likely to lead to uncertainty and confusion for regulators and applicants in consenting and planning processes. Further clarification as to how these NPSs can be reconciled is required. There are also potentially opportunities to link up capacity with meeting freshwater and marine objectives for example by applying water sensitive design in any urbanised areas.

25. While the consultation document notes that the Government is intending to issue non-statutory guidance as to how to balance the NPS UDC with other NPSs, there are issues with such an approach. Non statutory guidance is by its nature not mandatory, meaning decision makers can choose whether or not to follow it. Indeed, as the guidance matters are not stated in the RMA or other planning documents, decision-makers may not even be aware of them.
26. Water NZ considers that it would be more appropriate to provide guidance in the NPS UDC or the RMA as to how it fits with other NPSs and which prevails in the event of any conflict. Guidance in the NPS UDC could include a specific objective indicating how the NPS UDC could be read consistently with the other NPSs and also a policy which indicates which NPS trumps in the event of any conflict.
27. Further, and related to this, is the issue of how the NPS UDC gives effect to the sustainable management purpose of the RMA. While it appears, through policies such as PA3, to provide for peoples wellbeing by providing for urban development, very little guidance is given as to how that is balanced with environmental considerations.
28. There is also a need to align the NPS UDC with the changes proposed in the Resource Legislation Amendment Bill (“RLA Bill”) in relation to development capacity. Water NZ suggests that changes could be made to that Bill to clarify how the NPS UDC fits with other NPSs and the existing Part 2 matters. This would ensure that there was a proper legislative framework to support the NPS UDC. Accordingly, and to provide the most assistance to decision-makers, Water NZ suggests that the NPS UDC should follow or at least be contemporaneous with the RLA Bill.

Statistics New Zealand references

29. Finally, there is reference throughout the NPS UDC to the “most recent” Statistics New Zealand growth projections and to these projections being attached in an Appendix. It is not clear whether the intention is that this data will be continually updated – and if so the process for that update - or whether the data is intended to be a snapshot at this point in time. Water NZ considers that further clarification of these matters is required.

Changes sought

30. Water NZ requests that the following changes or changes to similar effect or which are appropriate to address the concerns expressed above be made to the NPS UDC:

- (a) Provide further guidance about the form that development capacity should take in terms of intensification or expansion (or both) of urban areas;
- (b) A definition for “adequate infrastructure” be included;
- (c) Add a new objective and policy to clarify how the NPS UDC relates to other NPSs;
- (d) Amend policy PA2 to clarify that the requirement to provide sufficient residential and business development capacity is subject to adequate infrastructure being available or likely to be available to support the proposed urban use;
- (e) Add an additional policy PA4 to require decision-makers to have regard to:
 - the efficient use of land;
 - the quality of the development outcomes achievable on that land;
 when determining what land to use for urban development;
- (f) Add an additional policy PA5 to require local authorities within a region to consult with each other before implementing any steps to give effect to the NPS UDC to ensure that a consistent region-wide approach is taken;
- (g) Delete or amend policies PB1 to PB5 to make it clear that (with the exception of Auckland Council and any other large unitary councils):
 - the Ministry for the Environment (“Ministry”) or the relevant regional council is responsible for undertaking the housing and business land assessments under PB1 and the monitoring under PB5;
 - the Ministry or the relevant regional council is required to consult with local authorities when undertaking the assessments;
 - local authorities are required to assist the Ministry or the relevant regional council by providing information reasonably required by the Ministry for the assessments under PB2, PB3 and PB4;
- (h) Amend the matters the Ministry must have particular regard to under PB3 as follows:
 - ...
 - *The actual and likely availability of adequate infrastructure.*
 - *Whether the land is currently production land and any particular characteristic(s) of the land which make proposed urban use more or less appropriate*
- (i) That in terms of the process to give effect to the NPS UDC:
 - only those objective and policies in the regional policy statement and regional and district plans which are necessary to give effect to the NPS UDC will be changed without using the Schedule 1 process;

- any other complementary objectives and policies and all rules will be changed using the applicable plan change process;⁴
- (j) The RLA Bill be amended to include specific reference as to how the NPS UDC fits with the other NPSs and Part 2 considerations;
- (k) That the timing of the NPS UDC follow or be aligned closely with the RLA Bill;
- (l) That alternative funding arrangements for infrastructure, such as a contribution from central government to regionally significant infrastructure, and funding mechanisms under other Acts (such as the LGA and LTMA be investigated); and
- (m) That reference to the “most recent” Statistics New Zealand growth projections throughout the NPS UDC be amended to refer to the May 2016 projections or that further detail be provided as to how updated projections are intended to be incorporated in the NPS UDC going forward.

31. Water NZ also requests that consideration be given to other issues which bear on the ability to provide sufficient development capacity and mechanisms to address these issues.

Conclusion

32. Water NZ thanks the Ministry for the opportunity to make comments on this document and is happy to elaborate if required.

John Pfahlert
Chief Executive

⁴ “Applicable” is used here to refer to the plan change process given the proposals in the Resource Legislation Amendment Bill to expand the options for plan change processes.