

# Practice and Guidance Note

## National Policy Statement – Urban Development

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# 1 Introduction

The [National Policy Statement on Urban Development 2020](#) (“NPS-UD”) was approved by the Governor-General under [section 52\(2\)](#) of the Resource Management Act 1991 (“the RMA”) on 20 July 2020, and was published by the Minister for the Environment under [section 54](#) of that Act.

The NPS-UD replaces the National Policy Statement on Urban Development Capacity 2016.

The NPS-UD comes into force on 20 August 2020 (“commencement date”).

For the purpose of the NPS-UD, Auckland is a Tier 1 **urban environment** and Auckland Council is a Tier 1 local authority. That is not to say that all land falling within the jurisdiction of Auckland Council is “urban environment” – this is defined in the NPS-UD as any area of land that is, or is intended to be:

- (a) predominantly urban in character; and
- (b) part of a housing and labour market of at least 10,000 people.

This will exclude those rural areas surrounding Auckland that are not predominantly urban in character (but not land zoned as FUZ, as this land is intended to be part of the housing and labour market in future).

This Practice and Guidance note (“PGN”) explains what a national policy statement is, and how they relate to plan and regional policy statement changes and resource consent decision-making. It also includes a table of each objective and policy in the NPS-UD with a summary of whether and how they may apply to decision-making on resource consent applications, specific to Auckland.

## 2 What are the key timeframes for the NPS-UD?

- Tier 1 local authorities must comply with **Policies 3 and 4** not later than 2 years after the commencement date.
- The first Future Development Strategy (“FDS”) to be made publicly available after the commencement date in time to inform the 2024 long-term plan (Tiers 1 and 2 local authorities).
- Housing and Business Development Capacity Assessment (“HBA”) pertaining to housing by 31 July 2021 (Tier 1 and 2 local authorities).
- HBA pertaining to both housing and business land in time to inform the 2024 long-term plan (Tiers 1 and 2 local authorities).

- Minimum car parking rules to be removed not later than 18 months after commencement date (**Policy 11**).

### 3 What is the purpose of an NPS, and how does it relate to plan-making?

The purpose of national policy statements is to state (and they must state) objectives and policies for matters of national significance that are relevant to achieving the purpose of the RMA.<sup>1</sup>

A local authority must amend a document<sup>2</sup> (which in Auckland’s case, relates to the RPS and district plan component parts of the AUP (and any changes), if a national policy statement directs so,—

- (a) to include specific objectives and policies set out in the statement; or
- (b) so that objectives and policies specified in the document give effect to objectives and policies specified in the statement; or
- (c) if it is necessary to make the document consistent with any constraint or limit set out in the statement.<sup>3</sup>

without using the process in [Schedule 1](#), and give public notice of the amendments within 5 working days after making them.<sup>4</sup>

The local authority must also make all other amendments to a document that are required to give effect to any provision in a national policy statement that affects the document (i.e. the RPS/AUP).<sup>5</sup> Any changes that affect other parts of the document (such as methods, rules or standards) must be made in accordance with the process in [Schedule 1](#) (i.e. a Council-initiated publicly notified plan change).<sup>6</sup>

In all cases, the local authority must make the amendments—

- (a) as soon as practicable; or
- (b) within the time specified in the national policy statement (if any); or
- (c) before the occurrence of an event specified in the national policy statement (if any).<sup>7</sup>

A regional policy statement, regional plan and district plan must give effect to a national policy statement.<sup>8</sup>

<sup>1</sup> s45(1) of the RMA and s45A(1) of the RMA

<sup>2</sup> s55(1) of the RMA

<sup>3</sup> s55(2) of the RMA

<sup>4</sup> s55(2A) of the RMA

<sup>5</sup> s55(2B) of the RMA

<sup>6</sup> s55(2C) of the RMA

<sup>7</sup> s55(2D) of the RMA

<sup>8</sup> ss62(3), 67(3)(a) and 75(3)(a) of the RMA

## 4 How does an NPS relate to decision-making on resource consent applications?

When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to any relevant provisions of a national policy statement<sup>9</sup> (among other matters).

When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which:

- (a) a discretion is restricted in national environmental standards or other regulations;
- (b) it has restricted the exercise of its discretion in its plan or proposed plan.<sup>10</sup>

It is also important to note that when considering applications for resource consent for restricted discretionary activities pursuant to sections 104 and 104C of the RMA, the Council has a duty to have regard to:

- (a) all the matters over which discretion is restricted in the AUP;
- (b) the objectives and policies of the AUP in so far as they relate to matters over which discretion is restricted; and
- (c) the objectives and policies of the NPS-UD in so far as they relate to matters over which discretion is restricted.

An application for a controlled activity consent must be considered in terms of sections 104 and 104B. While there is nothing in section 104B that limits a controlled activity from being considered against the NPS-UD, an application for a controlled activity must be granted (unless there is insufficient information to determine whether or not the activity is a controlled activity).<sup>11</sup> Any conditions imposed on a controlled activity resource consent must relate only to those matters reserved for control.<sup>12</sup>

A NPS can be considered without limitation for discretionary and non-complying activities. However, objectives and policies in the NPS-UD will have no bearing on the second limb of the 'gateway test' for non-complying activity applications in section 104D. This is because the second limb of the 'gateway test' only relates to whether the activity is contrary to the objectives and policies in an operative or proposed plan.<sup>13</sup>

Every decision on an application for a resource consent that is notified must be in writing and must state any relevant provisions of the NPS (if any) that were

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<sup>9</sup> s104(1)(b)(iii) of the RMA

<sup>10</sup> s104C(1) of the RMA

<sup>11</sup> s104A(a) of the RMA

<sup>12</sup> s104A(b) of the RMA

<sup>13</sup> s104D(1)(b) of the RMA

considered by the consent authority.<sup>14</sup> The same requirement does not apply to non-notified applications, which are only required to state the reasons for the decision.<sup>15</sup>

## 5 Consideration of the NPS-UD objectives and policies as part of resource consent decision making

The NPS-UD applies to all local authorities that have all or part of an urban environment within their district or region (i.e. tier 1, 2 and 3 local authorities), and to planning decisions (including resource consent decisions) by any local authority that affect an urban environment.

The table on the following pages includes commentary about the objectives and policies of the NPS-UD and how they may apply to resource consent decision making from 20 August 2020, specific to the Auckland region.

Relevant provisions of the NPS-UD must be considered in terms of section 104, and only in so far as they relate to matters over which control is reserved or discretion is restricted (for controlled and restricted discretionary activities).

The following definitions (per NPS-UD Part 1, clause 1.4) are relevant to the interpretation of provisions in the table in terms of impact on resource consent application processing.

Where these terms are used, they have been emphasised in **bold**.

**Development capacity** means the capacity of land to be developed for housing or for business use, based on:

- (a) the zoning, objectives, policies, rules, and overlays that apply in the relevant proposed and operative RMA planning documents; and
- (b) the provision of adequate development infrastructure to support the development of land for housing or business use

**Planning decisions** means, among other things, a decision on a resource consent.

**Well-functioning urban environment** has the meaning in Policy 1. There is an Ministry for the Environment fact sheet on this policy, [click here](#).

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<sup>14</sup> s113(1)(ab)(ia) of the RMA

<sup>15</sup> s113(4) of the RMA

Objective	Text	Commentary	Applies to RC decision making?
Objective 1 (links to Policy 1)	New Zealand has <b>well-functioning urban environments</b> that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.	This is a relevant provision of the NPS that should be considered when determining whether to grant or refuse an application. A <b>well-functioning urban environment</b> has the meaning set out in Policy 1. <a href="#">MfE fact sheet on this objective.</a>	Applies
Objective 2	<b>Planning decisions</b> improve housing affordability by supporting competitive land and development markets.	This is a relevant provision of the NPS that should be considered when determining whether to grant or refuse an application.	Applies
Objective 3 (links to Policies 3, 4 & 5)	Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply: (a) the area is in or near a centre zone or other area with many employment opportunities (b) the area is well-served by existing or planned public transport (c) there is high demand for housing or for business land in the area, relative to other areas within the urban environment.	This is a policy that applies to plan-making, not to resource consent decision making. <a href="#">MfE fact sheet on this objective.</a>	Does not apply

Objective 4 (links to Policy 1)	New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.	This is a relevant provision of the NPS that should be considered when determining whether to grant or refuse an application.	Applies
Objective 5 (links to Policy 9)	<b>Planning decisions</b> relating to urban environments, and FDSs, take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).	This is a relevant provision of the NPS that should be considered when determining whether to grant or refuse an application. <a href="#">MfE fact sheet on this objective.</a>	Applies
Objective 6 (links to Policy 8)	Local authority decisions on urban development that affect urban environments are: (a) integrated with infrastructure planning and funding decisions; and (b) strategic over the medium term and long term; and (c) responsive, particularly in relation to proposals that would supply significant development capacity.	Will apply at a plan-making/governance level, not to resource consent decision making (e.g. out of cycle rezoning of FDZ). <a href="#">MfE fact sheet on this objective.</a>	Does not apply
Objective 7	Local authorities have robust and frequently updated information about their urban environments and use it to inform <b>planning decisions</b> .	This is a relevant provision of the NPS that should be considered when determining whether to grant or refuse an application.	Applies
Objective 8	New Zealand's urban environments: (a) support reductions in greenhouse gas emissions; and	This is a relevant provision of the NPS that should be considered when determining	Applies

	(b) are resilient to the current and future effects of climate change.	whether to grant or refuse an application.	
Policy	Text	Comments	Applies to RC decision making?
Policy 1	<p><b>Planning decisions</b> contribute to <b>well-functioning urban environments</b>, which are urban environments that, as a minimum:</p> <p>(a) have or enable a variety of homes that:</p> <ul style="list-style-type: none"> <li>(i) meet the needs, in terms of type, price, and location, of different households; and</li> <li>(ii) enable Māori to express their cultural traditions and norms; and</li> </ul> <p>(b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and</p> <p>(c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and</p> <p>(d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and</p>	<p>This is a relevant provision of the NPS that should be considered when determining whether to grant or refuse an application.</p> <p><a href="#">MfE fact sheet on this policy.</a></p>	Applies



	<p>(e) support reductions in greenhouse gas emissions; and</p> <p>(f) are resilient to the likely current and future effects of climate change.</p>		
Policy 2	<p>Tier 1, 2, and 3 local authorities, at all times, provide at least sufficient <b>development capacity</b> to meet expected demand for housing and for business land over the short term, medium term, and long term.</p>	<p><b>Development capacity</b> cannot be provided for via a resource consent decision. Development capacity is provided for via rezoning and adequate development infrastructure. This policy will not be relevant.</p>	Does not apply
Policy 3	<p>In relation to tier 1 urban environments, regional policy statements and district plans enable:</p> <p>(a) in city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification; and</p> <p>(b) in metropolitan centre zones, building heights and density of urban form to reflect demand for housing and business use in those locations, and in all cases building heights of at least 6 storeys; and</p> <p>(c) building heights of least 6 storeys within at least a walkable catchment of the following:</p> <ul style="list-style-type: none"> <li>(i) existing and planned rapid transit stops</li> <li>(ii) the edge of city centre zones</li> </ul>	<p>This is a policy that applies to plan-making, not to resource consent decision making. <a href="#">MfE fact sheet on this policy.</a></p>	Does not apply

	<p>(iii) the edge of metropolitan centre zones; and</p> <p>(d) in all other locations in the tier 1 urban environment, building heights and density of urban form commensurate with the greater of:</p> <p>(i) the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or</p> <p>(ii) relative demand for housing and business use in that location.</p>		
Policy 4	Regional policy statements and district plans applying to tier 1 urban environments modify the relevant building height or density requirements under Policy 3 only to the extent necessary (as specified in subpart 6) to accommodate a qualifying matter in that area.	This is a policy that applies to plan-making, not to resource consent decision making. <a href="#">MfE fact sheet on this policy.</a>	Does not apply
Policy 5	Regional policy statements and district plans applying to tier 2 and 3 urban environments enable heights and density of urban form commensurate with the greater of:	N/A, Auckland is a Tier 1 urban environment. <a href="#">MfE fact sheet on this policy.</a>	Does not apply
	<p>(a) the level of accessibility by existing or planned active or public transport to a range of commercial</p>		

	<p>activities and community services; or</p> <p>(b) relative demand for housing and business use in that location.</p>		
Policy 6	<p>When making <b>planning decisions</b> that affect urban environments, decision-makers have particular regard to the following matters:</p> <p>(a) the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement</p> <p>(b) that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:</p> <p style="padding-left: 40px;">(i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and</p> <p style="padding-left: 40px;">(ii) are not, of themselves, an adverse effect</p> <p>(c) the benefits of urban development that are consistent with <b>well-functioning urban</b></p>	<p>(a) and (b) will not apply, as the relevant RMA planning documents – i.e. RPS and AUP – will not have given effect to the NPS (but will need to be amended “as soon as practicable” and not later than 2 years after commencement).</p> <p>(c), (d) and (e) will apply to RC decision making.</p>	Applies in part

	<p><b>environments</b> (as described in Policy 1)</p> <p>(d) any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise <b>development capacity</b></p> <p>(e) the likely current and future effects of climate change.</p>		
Policy 7	Tier 1 and 2 local authorities set housing bottom lines for the short-medium term and the long term in their regional policy statements and district plans.	Cannot be done via a RC decision, N/A	Does not apply
Policy 8	Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to <b>well-functioning urban environments</b> , even if the development capacity is: <p>(a) unanticipated by RMA planning documents; or</p> <p>(b) out-of-sequence with planned land release.</p>	Will apply at a plan-making/governance level, not to resource consent decision making (e.g. out of cycle rezoning of FUZ). <a href="#">MfE fact sheet on this policy</a> .	Does not apply
Policy 9	Local authorities, in taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) in relation to urban environments, must: <p>(a) involve hapū and iwi in the preparation of RMA planning documents and any FDSs by undertaking effective</p>	(a) & (b) will apply at a plan-making/governance level, not to resource consent decision making. (c) will apply to decision-making on resource consents. This is generally given effect to already via the existing plan mechanisms relating	Applies in part

	<p>consultation that is early, meaningful and, as far as practicable, in accordance with tikanga Māori; and</p> <p>(b) when preparing RMA planning documents and FDSs, take into account the values and aspirations of hapū and iwi for urban development; and</p> <p>(c) provide opportunities in appropriate circumstances for Māori involvement in <b>decision-making on resource consents</b>, designations, heritage orders, and water conservation orders, including in relation to sites of significance to Māori and issues of cultural significance; and</p> <p>(d) operate in a way that is consistent with iwi participation legislation.</p>	<p>to assessment of effects on mana whenua.</p> <p>(d) will apply to decision-making on resource consents.</p> <p><a href="#">MfE fact sheet on this policy.</a></p>	
Policy 10	<p>Tier 1, 2, and 3 local authorities:</p> <p>(a) that share jurisdiction over urban environments work together when implementing this National Policy Statement; and</p> <p>(b) engage with providers of development infrastructure and additional infrastructure to achieve integrated land use and infrastructure planning; and</p> <p>(c) engage with the development sector to identify significant</p>	<p>Will apply at a plan-making/governance level, not to resource consent decision making.</p>	<p>Does not apply</p>

	opportunities for urban development.		
Policy 11	In relation to car parking: (a) the district plans of tier 1, 2, and 3 territorial authorities do not set minimum car parking rate requirements, other than for accessible car parks; and (b) tier 1, 2, and 3 local authorities are strongly encouraged to manage effects associated with the supply and demand of car parking through comprehensive parking management plans	While this policy is a direction to local authorities to make changes to their district plans, it is also necessary to have regard to it as part of resource consent decision making from the date of commencement. Consent will still be required for any minimum parking rate infringement (as long as the minimum car parking rate rules remain in the AUP), and the effects of any infringement must still be considered for the purposes of making a notification determination and substantive decision. <a href="#">MfE fact sheet on this policy.</a>	Will apply

## 6 Summary

- There are [NPS-UD](#) provisions that will be relevant to the consideration of resource consent applications from the date of commencement on 20 August 2020.
- Consideration of NPS provisions and any operative (or proposed) plan provisions is necessary as part of the resource consent decision-making process. Noting the requirement for assessing controlled and restricted discretionary matters, a consenting planner must form an overall opinion of an application having regard to all relevant provisions of both these statutory documents (among other matters).
- Relevant provisions of the NPS-UD must be had regard to in terms of [section 104\(1\)\(b\)\(iii\)](#), but for controlled and restricted discretionary activities, only in so far as they relate to matters over which control is reserved or discretion is restricted.

- Generally speaking (and subject to part 2 where necessary), [section 104\(1\)](#) does not elevate the status of one matter over the others, and matters can be given weight as appropriate in the circumstances. It may be appropriate to give greater weight to the relevant provisions of the NPS-UD given it is a higher order statutory document and is likely to post-date the relevant AUP provisions.<sup>16</sup>
- The AUP provisions will not give effect to the NPS-UD from the commencement date, nor will they need to do so. However, the AUP will need to be amended to give effect to the provisions of the NPS-UD as soon as practicable, and in all cases, within the timeframes specified.
- The NPS-UD is enabling. Each consent application needs to be assessed on its merits, however a consideration of its relevant provisions (while necessary) may have little bearing on a recommendation to grant consent under the existing AUP plan provisions. A more careful consideration of its relevant provisions may be necessary where an assessment against the AUP provisions may not, on their own, support a recommendation to grant consent (for example, for applications seeking consent for out-of-sequence greenfield development, intensification within existing urban areas within a zone that does not provide for increased density such as Single House Zone, or a proposal with less than the specified minimum car parking numbers).

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<sup>16</sup> See for example the Environment Court discussion in *Bunnings v Queenstown Lakes District Council* [2019] NZEnvC 59, at [113] and [191]-[194].