

MEMORANDUM

Date: 23 November 2023

To: Greater Christchurch Spatial Plan Hearing Panel

From: Michelle Mehlhopt, Kate Dickson

Greater Christchurch Spatial Plan – requirements to spatially identify “broad locations” for development

1. Whakawhanake Kāinga Komiti (**WKK**) has been appointed to deliver on the urban growth priorities, including development of the spatial plan for Greater Christchurch. The draft Greater Christchurch Spatial Plan (**Spatial Plan**) has been developed and consulted on under the Local Government Act 2002 (**LGA**), with hearings being held during October 2023.
2. This Spatial Plan is also the Future Development Strategy (**FDS**) required by the National Policy Statement on Urban Development 2020 (updated 2022) (**NPS-UD**).
3. Through the hearings process, submitters have raised concerns that the FDS component of the Spatial Plan does not comply with the NPS-UD, namely that it does not sufficiently show areas for “greenfield” development.
4. You have asked us to consider whether the approach to identifying future urban development areas in the Spatial Plan meets the requirements of clause 3.13(2)(a) of the NPS-UD to spatially identify the broad locations in which development capacity will be provided over the long term, in both existing and future urban areas, to meet the requirements of clauses 3.2 and 3.3 of the NPS-UD.

Executive summary

5. In our view, the FDS component of the Spatial Plan (in Part 2) does spatially identify the broad locations in which development capacity will be provided over the long term, in both existing and future urban areas, in accordance with clause 3.13 of the NPS-UD.
6. Despite submitters’ concerns that the areas identified provide only limited future greenfield development (and that some of those areas are already zoned for development), the Spatial Plan does identify other areas within Greater Christchurch that are a focus for intensification.
7. In this case, given the scale of the Housing and Business Development Capacity Assessment being on a district / township level, we consider that the maps have identified broad locations for future development, including in existing areas. Clause 3.13(2)(a) does not require the areas that are provided to meet future development capacity to be greenfield areas; it specifically anticipates that the capacity may be able to be provided through further development of existing urban areas. We consider that this approach is consistent with the wording of clause 3.13(2) and the purpose of the NPS-UD.
8. Given our view that the FDS does spatially identify the broad locations within which future development capacity can be provided, we consider that the FDS does meet this requirement of clause 3.13(2)(a) of the NPS-UD.
9. Our detailed advice follows.

Approach of the Spatial Plan to identifying broad locations

10. The purpose of the Spatial Plan, as described in the Officers’ Report, is to:
 - (a) Set a desired urban form for a projected population of 700,000 (to 2051) and beyond that to 1 million people to ensure Greater Christchurch is future-proofed in the context of population growth and climate change;

- (b) Deliver the first priority of the Urban Growth Partnership for Greater Christchurch: a Spatial Plan that coordinates and aligns the aspirations of central government, local government and mana whenua;
 - (c) Satisfy the requirements of the NPS-UD for the Greater Christchurch councils to jointly prepare an FDS.
11. The FDS component of the Spatial Plan is largely contained in Part 2 of the Spatial Plan (addressing an urban form for people and business). Map 14¹ is the key map for the purposes of this advice – while Map 2 is similar in appearance, it is providing the spatial strategy for a population of 1 million, which is further into the future than what the NPS-UD requires consideration and identification of areas for development for. Map 14 is the map showing the broad locations of housing and business development capacity for 700,000 people (representing the next 30 years of growth).
12. Map 14 shows existing urban areas, as well as significant urban areas, major towns and locally important urban centres. Key transport links are also demonstrated, including a plan for a mass transit network and other core public transport routes. Areas of growth around central city, centres and corridors are shaded in yellow. The map also shows urban areas recently zoned / consented, and those which are anticipated for “future urban area”.

Requirements of an FDS under the NPS-UD

13. The purpose of an FDS is to promote long-term strategic planning by setting out how a local authority intends to achieve well-functioning urban environments in its existing and future urban areas and provide, at least sufficient development capacity, as required by clauses 3.2 and 3.3, over the next 30 years to meet expected demand.²
14. Additionally, the purpose of an FDS is to assist in the integration of planning decisions under the Resource Management Act 1991 (**RMA**), with infrastructure planning and funding decisions.³
15. To fulfil the obligation of setting out how the local authorities intend to provide at least sufficient development capacity, an FDS must spatially identify the “broad locations” in which development capacity will be provided over the long term, in both existing and future urban areas. An FDS must also identify the infrastructure required to support or service that development capacity, along with the general location of the corridors and other sites required to provide it, and any constraints on development.⁴
16. Every FDS must be informed by:⁵
- (a) the most recent applicable Housing and Business Development Capacity Assessment;
 - (b) consideration of the advantages and disadvantages of different spatial scenarios for achieving the purposes of the FDS;
 - (c) the relevant long-term plan and its infrastructure strategy, and any other relevant strategies and plans;
 - (d) Māori, and in particular tangata whenua;
 - (e) values and aspirations for urban development feedback received through the prescribed consultation and engagement;

¹ References to maps in the Spatial Plan in this advice should be read as reference to the recommended amended version of the maps in Addendum 1 to the Officer’s Report, dated 25 October 2023, being the latest version of the maps for discussion.

² NPS-UD, cls 1.4 and 3.13(1)(b).

³ NPS-UD, cl 3.13(1)(a).

⁴ NPS-UD, cl 3.13(2).

⁵ NPS-UD, cl 3.14.

- (f) every other National Policy Statement; and
- (g) any other relevant national policy required by, or issued under, legislation.

Concerns raised by submitters

17. We understand several submitters have raised concerns with the Spatial Plan’s approach to compliance with the FDS requirements, in particular in relation to the identification of “broad locations” in which development capacity will be provided.
18. Some of the concerns of the submitters can be summarised from the legal submissions as follows:
 - (a) Birchs Village Ltd and WDL Enterprises Ltd claim that the Spatial Plan fails to meet the criteria of a FDS as it has not broadly identified the location of future development areas. Birchs Village Ltd says that the land identified as future development areas in Maps 2 and 14 are sites that have already been rezoned and development is imminent (and therefore are current developments, not future developments).⁶
 - (b) Infinity Investment Group’s concerns are similar to Birchs Village Ltd, in that no broad locations for new (greenfield) residential areas are identified (as the land identified in Maps 2 and 14 is land that has already been rezoned and development is imminent).⁷ Infinity Investment Group also says that setting criteria for the identification of broad locations for development does not satisfy the NPS-UD clause 3.13 requirement to actually identify those locations⁸ (although Infinity also says that these criteria should be included above and beyond further locations identified, given what it says are deficiencies in the housing capacity assessments and draft Spatial Plan).⁹
 - (c) The Momentum Land group of submitters¹⁰ consider that the Spatial Plan makes no provision for greenfields residential or business areas, and for this reason does not provide sufficient development capacity (as required by the NPS-UD).¹¹ These submitters state that the future development areas identified do not meet the requirements of the NPS-UD to identify these broad locations as these areas give no certainty as to how much land will be available for housing or business uses.¹²
 - (d) Submitters have also commented on the greenfield “significance criteria” proposed to be included within the Spatial Plan for when greenfields development may be able to be considered. The submitters are critical of these criteria on the basis that they “fail to provide sufficient flexibility...if they cannot be met by greenfield sites”. Although this advice does not specifically address this question, we note that we expect that the monitoring and review requirements of an FDS (in clauses 3.9 and 3.16 of the NPS-UD) would address any constraints on development identified in the time that the FDS / Spatial Plan has been in place.

Has the Spatial Plan shown “broad locations” in which development capacity will be provided?

19. In determining whether the Spatial Plan complies with the requirement in the NPS-UD to spatially identify “broad locations” for development capacity, it is necessary to consider the meaning of “spatially” and “broad locations” in more detail.

⁶ Legal submissions on behalf of Birchs Village Ltd and WDL Enterprises Ltd, dated 24 October 2023, at [13].

⁷ Legal submissions on behalf of Infinity Investments Ltd, dated 31 October 2023, at [15].

⁸ We note that it is our understanding that it is not the intent of these criteria to satisfy the clause 3.13 requirement, so have not addressed these criteria as part of our response below.

⁹ Legal submissions on behalf of Infinity Investments Ltd, dated 31 October 2023, at [22(a)].

¹⁰ Momentum Land Ltd, Balance Developments Ltd, Greg Gaba and Arumoni Developments Ltd.

¹¹ Legal submissions on behalf of Momentum Land Ltd and others, dated 31 October 2023, at [21].

¹² Legal submissions on behalf of Momentum Land Ltd and others, dated 31 October 2023, at [22].

20. The NPS-UD itself and the guidance produced by the relevant Ministries provide little guidance in respect of this particular question. Both “spatially” and “broad locations” are not defined in the NPS-UD.
21. “Spatially” is defined as “as regards, in or with reference to, space; by means of space”. As the proposed areas for the “broad locations” within which development capacity is intended to be provided are identified through various different mechanisms on Map 14 of the Spatial Plan, we consider this is sufficient to identify the areas “spatially”.
22. We understand that further advice has also been sought from the Ministry of Housing and Urban Development regarding the requirements for an FDS. In relation to the “broad locations” point, this advice states:¹³
- The level of detail on FDS map(s) should be sufficient to identify future urban environments and intensification opportunities, and to reflect the level of detail provided in the HBAs. So if, for example, an HBA was broken down suburb-by-suburb, the FDS could also be broken down on a suburb-by-suburb basis.
23. In this case, as the housing and business capacity assessment was undertaken at a district-wide level (with some further breakdowns based on townships within districts), we consider that the Spatial Plan is at a similar level of detail as the capacity assessment (and therefore consistent with the advice from the Ministry of Housing and Urban Development, noting that the advice provided cannot alter the meaning of the NPS-UD provisions themselves).
24. As the NPS-UD is secondary legislation,¹⁴ the Legislation Act 2019 applies to its interpretation.¹⁵ The Legislation Act provides that the meaning of legislation must be ascertained from its text and in the light of its purpose and context.¹⁶ This requires closer attention to be paid to the plain meaning of the text itself.
25. In the absence of further guidance as to the meaning of “broad locations”, the Oxford English Dictionary defines “broad” (relevantly) as:¹⁷
- Covering or including a large number and wide range of subjects, possibilities, or kinds of things; widely applicable; inclusively or generally defined.
26. This definition anticipates that “broad” is defined inclusively, and covers a large number or wide range of subjects. The very definition of “broad” anticipates that assessments are not completed on a granular scale. In our view, there is a good policy reason behind this approach in terms of not constraining locations for future development in an FDS in an area that may for some reason not be feasible to develop (for example, due to natural hazards), and that reason is not apparent at the time of introducing the FDS.¹⁸ It is appropriate that the FDS is kept broad for the purposes of identifying possible future locations for development.
27. In this case, given the scale of the housing and business capacity assessment being on a district / township level, we consider that the maps have identified broad locations for future development, including in existing areas. Some of the areas that are identified for greenfields developments have already been rezoned for development (either as part of a recent plan review process, or a private plan change), but there remains areas where future urban development is signalled and anticipated on land that has not yet been zoned for this purpose.

¹³ Letter to Greater Christchurch Spatial Plan Hearings Panel from Fiona McCarthy (Ministry of Housing and Urban Development), dated 15 November 2023.

¹⁴ RMA, s 52(4).

¹⁵ Legislation Act 2019, ss 5 (definition of legislation) and 9.

¹⁶ Legislation Act 2019, s 10.

¹⁷ “broad, adj.¹ & n.¹”. *Oxford English Dictionary*, Oxford University Press, September 2023, <<https://doi.org/10.1093/OED/9280615924>>

¹⁸ We note that we anticipate any restriction on development capacity that may arise as a result of identification of reasons that development may not proceed in a particular area could then be addressed and dealt with through the monitoring and review provisions applying to an FDS under the NPS-UD, as noted above.

28. We note that the recommendations and decision report on the NPS-UD states the intention of the NPS-UD (which includes strengthening and broadening the existing requirements of the NPS-UDC) and:¹⁹

To achieve this [intention], the NPS-UD discussion document proposed FDS policies that would require...the FDS to show... the broad locations for urban development (**including future residential intensification**) [emphasis added].

29. The changes made to the NPS-UD provisions as part of the recommendations and decision in this report did not relate to this particular requirement. While this guidance is not determinative of the issue, it does indicate that when preparing the NPS-UD, the Ministries for the Environment and Housing and Urban Development did anticipate that the broad locations shown for urban development would include future residential intensification (and therefore did not need to be solely greenfield developments). In our view, this indicates the purpose of the NPS-UD is to enable further urban development through both intensification and greenfield development, with whichever is most appropriate in a particular area to be determined by the relevant local authority in that local context.
30. This is consistent with the wording of the NPS-UD itself. Clause 3.13(2)(a) of the NPS-UD requires the FDS to spatially identify the broad locations for development capacity over the long term, in both existing and future urban areas. This reference to development capacity in existing areas recognises that development capacity may be able to be provided through intensification of existing areas, rather than requiring new future urban areas to be created.
31. This is consistent with the intensification direction of the Spatial Plan, and the areas that are identified for future development. Clause 3.13(2)(a) does not require the areas that are provided to meet future development capacity to be greenfield areas; it specifically anticipates that the capacity may be able to be provided through further development of existing urban areas.
32. The NPS-UD does not determine or codify the split between existing and future urban development that must be achieved through the FDS, leaving this up to the relevant territorial authorities to determine, based on the information before them (including the Housing and Business Capacity Assessment).

Conclusion

33. Given our view that the FDS does spatially identify the broad locations within which future development capacity can be provided, we consider that the FDS does meet this requirement of clause 3.13(2)(a) of the NPS-UD.
34. Whether the FDS as a whole sets out how the local authorities intend to provide at least sufficient development capacity (so as to meet the requirements of clauses 3.2 and 3.3 of the NPS-UD) is a factual question for the Panel to determine, weighing the competing evidence as necessary. We can provide further advice on specific elements of clauses 3.2 and 3.3 and their requirements if the Panel has further questions.
35. Please do let us know if the Panel has any further questions.

Wynn Williams

¹⁹ Ministry for the Environment and Ministry of Housing and Urban Development. 2020. Recommendations and decisions report on the National Policy Statement on Urban Development. Wellington: Ministry for the Environment and the Ministry of Housing and Urban Development, p 33.