

Before the Independent Hearings Panel
at Waimakariri District Council

under: the Resource Management Act 1991

in the matter of: Proposed private plan change RCP31 to the Operative
Waimakariri District Plan

and: **Rolleston Industrial Developments Limited**
Applicant

Closing legal submissions for Applicant

Dated: 8 September 2023

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CLOSING LEGAL SUBMISSIONS FOR APPLICANT

INTRODUCTION

- 1 These closing legal submissions are made on behalf of Rolleston Industrial Developments Limited (*RIDL*, the *Applicant*) in relation to its request (*PC31*) to the Waimakariri District Council (the *Council*) to change the Operative Waimakariri District Plan (the *District Plan*) to rezone approximately 156 hectares of rural zone land at Ōhoka.
- 2 These legal submissions will consider the following issues:
 - 2.1 the level of information/certainty required;
 - 2.2 the National Policy Statement on Urban Development (*NPS-UD*), including consideration of the well-functioning urban environment;
 - 2.3 the National Policy Statement on Highly Productive Land (*NPS-HPL*);
 - 2.4 groundwater interception; and
 - 2.5 traffic effects.
- 3 The purpose of these submissions is not to repeat matters already covered in the opening legal submissions, or in the evidence of others, but rather to respond to matters that arose during or following the course of the hearing.

THE LEVEL OF INFORMATION/CERTAINTY REQUIRED

- 4 In response to questions from the Panel at the hearing, **Mr Schulte** provided a set of supplementary legal submissions dated 15 August 2023 which addressed the level of information that the Panel need when considering a plan change request. This directly relates to the level of certainty required for the Panel to find that proposed solutions are viable and which matters can appropriately be left to the resource consent stage.
- 5 We generally agree with the sections of the RMA that **Mr Schulte** points to and, in particular, that:
 - 5.1 The key test for assessing a plan change against is contained in section 32 of the RMA; and
 - 5.2 In terms of the level of detail required, the key words in s 32 are that plan changes "*contain a level of detail that corresponds to the scale and significance of the*

environmental, economic, social and cultural effects that are anticipated from the implementation of the proposal”.¹

- 6 Clearly, the important point is that the “proposal” is the proposal to change the zoning of the land (with an ODP and rules) and is not an application for a resource consent for subdivision.
- 7 Case law is not particularly helpful as the assessment will be highly fact dependent on the particular plan change in question and its context. In that respect, the cases referred to by **Mr Schulte** on this issue do not provide much assistance as they are each very different to the current proposal on their facts.
- 8 For example, in *Self Family Trust v Auckland City Council* while the Court found some information to be lacking (with respect to pedestrian connectivity which required further resource consents for bridges and the lack of detailed technical assessment to support the plan change from an infrastructure perspective), the Court found that this was not fatal in and of itself to the proposed plan change.² Ultimately the Court declined the plan change on the basis of effects which were not able to be dealt with at a later resource consent stage e.g. cultural considerations and the fact that the sites were located within the coastal environment and outstanding natural features.³
- 9 **Mr Schulte** accepts that “for most plan changes, there will be a point at which the decision maker is satisfied of the fact that the proposal, including any mitigation measures, are achievable and will sufficiently address any actual or potential adverse effects.”⁴
- 10 It is agreed that the Panel needs to have evidence that the mitigation measures are likely to be achievable and in other words that there are no potential show-stoppers which would prevent applications for resource consent being granted and the outcomes envisaged to arise from rezoning being realised.
- 11 **Mr Schulte** submits that plan changes will sit on a spectrum and says that in the case of PC31 the Panel needs to be “particularly sure” regarding the outcomes proposed. He does not elaborate why PC31 differs from, or requires more certainty than, other plan changes which have recently been considered in Greater Christchurch. This includes rezonings of larger scale and with a different, but not necessarily less significant, set of effects. Nor does

¹ Noting that clause 22(2), Schedule 1, RMA also reflects this wording in requiring that requests for plan changes should include an assessment of environmental effects anticipated “in such detail as corresponds with the scale and significance of the actual or potential environmental effects from the implementation of the change, policy statement, or plan.”

² *Self Family Trust v Auckland Council* [2018] NZEnvC 49 at [208].

³ At [533]-[534].

⁴ Supplementary legal submissions on behalf of the Waimakariri District Council dated 15 August 2023 at [19].

Mr Schulte provide any indication as to the level of information or certainty that he would expect for a plan change of PC31's scale and significance in terms of effects (wherever that may fall on his spectrum).

- 12 **Mr Walsh's** supplementary evidence demonstrates that the level of information and detail provided for PC31 is commensurate with his knowledge and experience of other rezonings of similar scale and with their own set of effects. **Mr Walsh** goes on to state that PC31 is not unusual with respect to scale, the effects considerations that arise, nor the level of detail which will be required at subdivision resource consent stage.
- 13 It is submitted that the level of detail submitters (including Council) seek overall is completely understandable but demonstrates a lack of understanding that the plan change is only the start of a number of processes. Rigorous and detailed examination of information is still required at the subsequent resource consent stage(s) at which point without those details consents would not be able to be granted and no houses could be built.
- 14 Putting all of the above aside, it is the Applicant's case that in any event the uncertainty with respect to potential effects arising from the rezoning proposal raised by **Mr Schulte** have subsequently been addressed primarily in the joint witness statements for the transport and three waters experts, and in the supplementary evidence of the Applicant:
 - 14.1 The transport joint witness statement has assisted in now 'flushing out' the concerns of the Council's transport experts so that these can be specifically addressed by the Applicant in the ODP and rules. The joint witness statement has informed a number of changes to the ODP and rules which are designed to address the concerns of the Council with respect to transport related matters and to provide certainty that any effects will be managed at specific thresholds of development through subsequent processes.
 - 14.2 The three waters joint witness statement significantly reduces the level of disagreement between the Council's (including the Regional Council) and the Applicant's three water experts. This caucusing process has resulted in changes to the ODP to ensure the Council's concerns will be appropriately managed in the detailed development of PC31.
- 15 To require any more information at this point would effectively require the Applicant to undertake a full detailed design and assessment of the development and would merge the processes of plan change and resource consent. It would set the bar for information provided to satisfy s32 at a standard which would undermine future plan change processes and would create significant practical difficulties in processes, such as the review of

the Proposed District Plan (the *Proposed Plan*), where a large number of rezoning proposals are being heard.

- 16 We address the other joint witness statements (regarding public transport and planning constraints) later in these submissions but we did not understand these to be matters which **Mr Schulte** is saying lack information.

THE NPS-UD

- 17 As set out in the Applicant's opening legal submissions, the core issue at play is the correct interpretation of the NPS-UD. The Panel has heard a range of views from various legal counsel and submitters on this matter. This section of these legal submissions addresses some of those further matters raised. The issues are grouped by general topic.

The urban environment for the purposes of the NPS-UD

- 18 **Mr Schulte**, on behalf of the Council as submitter, submits that there is doubt that Ōhoka forms part of the 'urban environment' for the purposes of the NPS-UD.
- 19 **Mr Schulte** states that if the relevant urban environment is Greater Christchurch "*then the NPS-UD requirement, under policy 10, that local authorities need to "work together when implementing this [NPS]", should equally apply to the implementation of the capacity requirements.*"⁵
- 20 However, while the definition of 'urban environment' in the NPS-UD is wide enough to encompass a range of overlapping urban environments, the requirement in Policy 2 of the NPS-UD to 'at all times provide at least sufficient capacity' applies to each Tier 1 local authority individually, and not the overall Tier 1 urban environment comprised of multiple Tier 1 local authorities.⁶
- 21 The Applicant maintains its position that Ōhoka forms part of the Greater Christchurch urban environment (being the relevant urban environment in which to consider the NPS-UD) for the reasons set out in the opening legal submissions.⁷
- 22 It is noted that the Regional Council (which is comprised of the three District Councils and their urban environments) accepts that Ōhoka does form part of the Greater Christchurch urban environment.⁸

⁵ Legal submissions on behalf of the Waimakariri District Council dated 9 August 2023 at [24].

⁶ NPS-UD, Appendix: Tier 1 and Tier 2 urban environments and local authorities, Table 1.

⁷ Opening legal submissions dated 3 August 2023 at [17]-[25].

⁸ Legal submission on behalf of the Regional Council dated 8 August 2023 at [34].

Capacity

- 23 It is generally agreed that the medium-term is the most relevant of the three timeframes (short, medium, and long) to consider in the context of PC31. We understand this is on the basis that:
- 23.1 PC31 is expected to be realised over the next 10 years (noting that the medium-term in the NPS-UD is defined as between 3 and 10 years), this is the term in which the PC31 capacity will become available; and
- 23.2 'Sufficient' in terms of capacity is only sufficient if it is 'plan-enabled'.⁹ 'Plan enabled' for the long-term requires land to be identified for future urban use or urban intensification in a FDS or other relevant plan/strategy.¹⁰
- 24 While the medium-term is the most relevant term to consider for the purposes of this application, the long-term is still relevant too. This is on the basis that the definition of 'plan-enabled' for the long-term also contemplates that this capacity could be provided for through zoning in an operative or proposed District Plan.¹¹
- 25 It is therefore important to recognise that long-term capacity has also been understated given the reliance the WCGM22 places on new development areas (NDAs), and that the errors picked up in the medium term will extend to the long term as well.¹² The Applicant does not accept the Council's confidence that these areas (specifically the Kaiapoi NA) could be developed in light of their location relative to the CIAL airport noise contours and the high flood hazard risks. We elaborate on both of these issues and why they signal real constraints on development of the NDA's at Kaiapoi in **Appendix 1** and **2**. The point simply is that it is also likely that the WCGM22 also overstates long-term capacity.
- 26 With respect to the medium-term, the supplementary evidence of **Mr Akehurst** and **Mr Walsh** sets out in detail the validation that has been undertaken by the Applicant as to the WCGM22 that **Mr Yeoman** relies on, based on his responses to the Panel's Minute 5 which clarified a number of assumptions and inputs in the WCGM22 which were not clear from **Mr Yeoman's** evidence.
- 27 The supplementary evidence demonstrates that the WCGM22 overstates residential capacity that is realistically realisable and commercially feasible in the medium-term by 1,573 dwellings.¹³ When this value is compared with the agreed medium-term demand

⁹ NPS-UD, cl 3.2(2)(a).

¹⁰ NPS-UD, cl 3.4(1)(c).

¹¹ NPS-UD, cl 3.4(1)(c) and the words "*either paragraph (b) applies*".

¹² Supplementary evidence of Mr Sellars and Mr Akehurst dated 5 September 2023.

¹³ Supplementary evidence of Greg Akehurst dated 5 September 2023 at [17].

(plus competitive margin) of 5,600, the Council finds itself in a shortfall of 1,239 dwellings to meet medium-term demand.¹⁴

Feasible and reasonably expected to be realised

- 28 Commissioner Day-Cleavin asked whether there was any guidance with respect to the term ‘feasible’ in clause 3.2(2)(c) of the NPS-UD. That clause reads:

(2) In order to be **sufficient** to meet expected demand for housing, the development capacity must be: [...]

(c) *feasible and reasonably expected to be realised (see clause 3.26); [...]*

- 29 ‘Feasible’ is defined in the NPS-UD as follows:

feasible means:

(a) *for the short term or medium term, commercially viable to a developer based on the current relationship between costs and revenue*

(b) *for the long term, commercially viable to a developer based on the current relationship between costs and revenue, or on any reasonable adjustment to that relationship*

- 30 Attached at **Appendix 3** of these legal submissions are the following Ministry for the Environment guides:

30.1 “Guidance on Housing and Business Development Capacity Assessments (HBAs) under the National Policy Statement on Urban Development” published in December 2020; and

30.2 “Housing and business development capacity assessments, monitoring requirements, and providing development Capacity” published in July 2020.

- 31 These documents provide guidance on the words ‘feasible and reasonably expected to be realised’ in the context of clause 3.26 of the NPS-UD. Relevantly:

31.1 The ‘and reasonably expected to be realised’ provision recognises that not all commercially feasible land will be realised, for many reasons. For example, landowners’ preferences may mean that development capacity is not put on the market to be developed.¹⁵

¹⁴ Supplementary evidence of Greg Akehurst dated 5 September 2023 at [18].

¹⁵ Ministry for the Environment “*Housing and business development capacity assessments, monitoring requirements, and providing development Capacity*” published in July 2020 at 5.

31.2 HBAs produced under the National Policy Statement on Urban Development Capacity 2016 (NPS-UDC) found that some local authorities had enough feasible development capacity, but that this was not actually being developed (realised). This meant that the policy did not lead to sufficient housing or commercial development. Therefore, the concept of 'reasonably expected to be realised' has now been included in development capacity under the NPS-UD.¹⁶

31.3 Of the development capacity that is also infrastructure ready, only some of that capacity is likely to be commercially feasible.¹⁷ There is generally more commercially feasible land than reasonably expected to be realised development.¹⁸

31.4 The Guidance provides:

*"As with the NPS-UDC, feasibility is from the perspective of what would be viable to a developer. The assessment will still compare the costs and revenue that would be faced by a developer, including costs of the physical development and external costs such as development contributions. However, the NPS-UD aims to create a balance between realistic and prudent assessments of commercial viability across time, by focusing on the current relationship between costs and revenue for the short and medium term, while allowing for "reasonable adjustments" to the relationship in the long term. This recognises prices can change over time, and sets out to achieve conservative estimates of viable development capacity for the short and medium term by keeping the relationship constant. This avoids the assumption that near-term sales prices will rise and automatically create feasible development capacity."*¹⁹

31.5 'And reasonably expected to be realised' assumes that not all commercially feasible areas will be fully developed or reach their maximum potential density and acknowledges the possibility that some development may fall outside areas

¹⁶ Ministry for the Environment "Housing and business development capacity assessments, monitoring requirements, and providing development Capacity" published in July 2020 at 5.

¹⁷ Ministry for the Environment "Guidance on Housing and Business Development Capacity Assessments (HBAs) under the National Policy Statement on Urban Development" published in December 2020 at 25.

¹⁸ Ministry for the Environment "Housing and business development capacity assessments, monitoring requirements, and providing development Capacity" published in July 2020 at 5.

¹⁹ Ministry for the Environment "Guidance on Housing and Business Development Capacity Assessments (HBAs) under the National Policy Statement on Urban Development" published in December 2020 at 26.

enabled by the district plan (i.e., resulting from a private plan change or non-complying or discretionary consent).²⁰

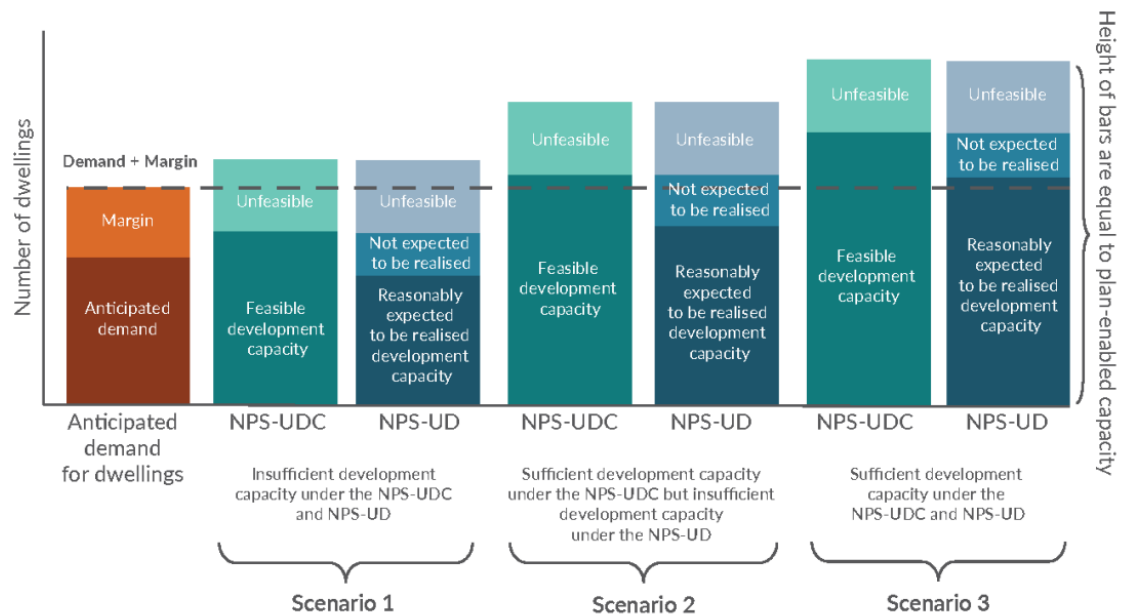
- 31.6 Using what is reasonably expected to be realised means realistic supply assessments fall on the conservative side, and avoid an undersupply of development capacity. This is accomplished through a better understanding of ownership, developer intentions, and the timing and staging of development that will complement the quantitative analysis. It provides a wider view of the market, improves planning responsiveness to demand, and leads to a more competitive market.²¹
- 32 It is important that the development capacity provided for in any capacity assessment is 'feasible and reasonably expected to be realised'. Many of the errors in the WCGM22 identified in the Applicant's supplementary evidence relate to this issue. We understand from **Mr Yeoman's** oral responses to questions in the hearing that his exercise inherently involved a number of judgement calls. It is now clear that these were not necessarily informed by what is actually occurring on the ground in the District.
- 33 The concept of 'feasible and reasonably expected to be realised' is demonstrated in the following figure from an MfE guide on the NPS-UD which also further highlights the difference between what was

²⁰ Ministry for the Environment "Guidance on Housing and Business Development Capacity Assessments (HBAs) under the National Policy Statement on Urban Development" published in December 2020 at 26.

²¹ Ministry for the Environment "Guidance on Housing and Business Development Capacity Assessments (HBAs) under the National Policy Statement on Urban Development" published in December 2020 at 26.

'sufficient' under the previous NPS-UDC and now the NPS-UD:²²

Figure 2: Calculating sufficiency the NPS-UDC vs the NPS-UD



- 34 The WCGM22 as demonstrated by the supplementary evidence appears to fall more within Scenario 1 and 2 of the above figure. This is insufficient development capacity under the NPS-UD.
- 35 We note that **Mr Yeoman** accepted during the hearing that if there isn't sufficient capacity in the medium-term then Councils must act quickly, as 10 years is not a long time.

The relevance of Plan Change 1 to Chapter 6 of the CRPS in the context of capacity

- 36 Both **Ms Edwards** and **Ms Mitten** for the Regional Council assert that Plan Change 1 to Chapter 6 of the CRPS (*PC1*) gives effect to the NPS-UD requirement in policy 2 that local authorities must provide at least sufficient development capacity to meet expected demand for housing and business land over the short, medium, and long term.²³ **Mr Schulte** for the Council as submitter also adopted this position.²⁴

²² Ministry for the Environment "Guidance on Housing and Business Development Capacity Assessments (HBAs) under the National Policy Statement on Urban Development" published in December 2020 at 30.

²³ Evidence of Ms Mitten dated 21 July 2023 at [62]; Legal submission on behalf of the Regional Council dated 8 August 2023 at [58].

²⁴ Legal submissions on behalf of the Waimakariri District Council dated 9 August 2023 at [31].

37 While it is accepted that the CRPS as amended by PC1 does to some limited extent give effect to the NPS-UD this is, at most, 'partial effect':

37.1 The scope of PC1 was restricted to only include additional land identified in the Our Space 2018-2048 process, initiated under the previous NPS-UDC and not the NPS-UD.

37.2 Given the NPS-UDC only required local authorities to determine the 'sufficient development capacity' required in the short, medium, and long term, the CRPS (as amended by PC1) could only ever identify the minimum amount of development capacity that is required to be enabled by the NPS-UD. The NPS-UD requires 'at least' sufficient development capacity to be provided for.

37.3 The Report prepared by ECan itself on PC1 expressly recognises that:²⁵

- (a) the purpose of PC1 is not to identify any additional areas appropriate for future rezoning;
- (b) the purpose of PC1 is to give effect to Policy 2 and clause 3.7 of the NPS-UD and that therefore this would give effect to the NPS-UD "in part";
- (c) PC1 does not purport to give full effect to the NPS-UD given the scope of PC1 under the streamlined planning process;
- (d) further changes to the CRPS would be required in order to fully give effect to the NPS-UD (including the introduction of the criteria required under clause 3.8 NPS-UD); and
- (e) further work to the CRPS is currently being undertaken and in the meantime, any plan change requests will need to be considered in light of the NPS-UD.

37.4 We further note that in any case the capacity provided for by Plan Change 1 is not 'plan-enabled' and therefore would not meet the definition of 'sufficient' under the NPS-UD for the short and medium terms.²⁶

38 To assist the Panel, we provide a summary timeline of the relevant planning instruments at **Appendix 4** for reference.

²⁵ Report to Minister for the Environment on Proposed Change 1 to Chapter 6 of the CRPS, March 2021.

²⁶ NPS-UD, clause 3.4(1).

- 39 During the hearing **Ms Edwards** was asked whether land could be 'unanticipated' (as per Policy 8 of the NPS-UD) if it has previously been considered and ruled out as land appropriate for development. **Ms Edwards'** response was that such land would still be 'unanticipated' as considerations change over time, particularly with respect to contributions to well-functioning urban environments and future unknown technologies and mitigations. We note that there has been no re-assessment of appropriate land for greenfield development since Our Space in 2018/2019, with the exception of private plan changes and district plan reviews. Processes such as Our Space have only considered urban growth at a very high level. It is our submission that these processes cannot possibly be said to have considered and ruled out all of the rural areas of Map A as not being appropriate for development.

Is a shortfall required to trigger the NPS-UD responsive planning framework?

- 40 In legal submissions, **Ms Edwards** stated that the "*Regional Council does not accept that there is a shortfall in development capacity, such that the responsiveness policy in the NPS-UD is triggered*".²⁷
- 41 The implication that Policy 8 is triggered only where there is a capacity shortfall is incorrect. Nothing in the NPS-UD suggests this is the case. Policy 8 applies (whether or not there is a sufficient capacity in the District) to a plan change provided it:

41.1 would add significantly to development capacity; and

41.2 contribute to well-functioning urban environments.

- 42 The Applicant's position is that any shortfall in capacity for the District goes to the level of 'significance' the proposed development capacity would provide under Policy 8.

Significance of capacity

- 43 A question has been raised by **Mr Willis**²⁸ as to whether the full 850 households will eventuate given there are rules proposed that could theoretically halt development at specified thresholds (with respect to the transport joint witness statement). He queries whether these thresholds would still meet the definition of providing significant development capacity under Policy 8.
- 44 The supplementary evidence of **Mr Walsh** and **Mr Akehurst** addresses this question and states that the 250 households that could occur before any trigger is reached are in and of themselves significant particularly in the context of a District that is not providing sufficient medium-term capacity as required under the NPS-UD. In any case, the Applicant is confident that it will be able to deliver the full 850 households on the basis of the rules proposed,

²⁷ Legal submission on behalf of the Regional Council dated 8 August 2023 at [40].

²⁸ Supplementary evidence of Mr Willis dated 23 August 2023 at [13].

even where those rules require further future assessments and mitigation.

Responsiveness in which process?

- 45 It was suggested by a number of submitters at the hearing that a more appropriate process under which the rezoning of the site subject to PC31 could be considered is via the Proposed Plan process currently underway and stretching into mid next year.
- 46 With respect to this point, we note that Policy 8 requires responsiveness of local authority decisions on each plan change that would meet the criteria in Policy 8. It would not be responsive for the Panel to defer any decision on this application to be considered under the Proposed Plan which is still in the early stages of holding hearings (with rezoning requests not being heard until April/May 2024), or some other future process where outcomes cannot be guaranteed (such as the Greater Christchurch Spatial Plan). This has been accepted by decision-makers on private plan changes in Selwyn, with one noting that such an approach would be “*antithetical to the timing requirements of the NPS-UD*”.²⁹
- 47 In light of the demonstrated development capacity short fall within the District in the medium-term, there is a need to be particularly responsive to this and any future plan changes until that capacity has been provided as required by the NPS-UD.

Changes to amenity

- 48 **Mr Schulte** considers Objective 4 and Policy 6 of the NPS-UD must be read carefully alongside section 7(c) of the RMA.
- 49 Objective 4 and Policy 6 of the NPS-UD read:

Objective 4: *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.*

Policy 6: *When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters: [...]*

(b) *that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:*

(i) *may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by*

²⁹ Decision on Private Plan Change 68 to the Selwyn District Plan by Commissioner Hughes-Johnson dated 23 June 2023 at [7.77].

providing increased and varied housing densities and types; and

(ii) are not, of themselves, an adverse effect [...]

50 Section 7(c) of the RMA reads:

7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to— [...]

(c) the maintenance and enhancement of amenity values: [...]

51 **Mr Schulte** in his legal submissions states that these provisions of the NPS-UD are at odds with s 7(c) of the RMA.³⁰ At the hearing, we took him to go as far as suggesting that the NPS-UD may not be consistent with the RMA as it appears to override the particular regard that is afforded by s 7(c) to maintenance and enhancement of amenity values.

52 That is an incorrect approach to statutory interpretation. Decision makers are required to strive to interpret two provisions together in a way where they can be reconciled.

53 It is submitted that the provisions can be easily reconciled. Simply because amenity values may develop and change over time does not inherently mean that the amenity value itself is not maintained or enhanced. Nor does section 7(c) prevent the detracting of amenity values appreciated by some people in every circumstance. As recognised by policy 6(b)(i) where a detracting from some people's amenity values, may be an improvement to the amenity values of others.

54 **Mr Schulte** points to the evidence of **Mr Goodfellow** and **Mr Knott** as supporting a conclusion that the level of change proposed under PC31 goes beyond the level of change that the NPS-UD was seeking to authorise.³¹ **Mr Nicholson** shares the same view. However, Policy 6 contemplates "significant changes to an area" and none of the expert witnesses at the hearing were able to articulate the basis for their assertion that the changes inherent in PC31 were beyond the overall level of change in amenity values (both detracting and improvement) contemplated by the NPS-UD.

³⁰ Legal submissions on behalf of the Waimakariri District Council dated 9 August 2023 at [96].

³¹ Legal submissions on behalf of the Waimakariri District Council dated 9 August 2023 at [98] and [100].

- 55 The only witness who attempted to quantify the level of change contemplated by the NPS-UD was **Mr Goodfellow**, who when queried by the Panel regarding the scale of development he would support at this location, responded with approximately “half” of what is being proposed in PC31.
- 56 The Applicant does not accept there is any basis for **Mr Goodfellow’s** conclusion read against the backdrop of the NPS-UD. However, for completeness **Mr Walsh** in his supplementary evidence has included a ‘reduced ODP’ to demonstrate one of the options available to the Commissioners should they prefer the evidence of **Mr Nicholson, Mr Knott, Mr Goodfellow**, and other submitters over the evidence of **Mr Compton-Moen, Mr Falconer, Ms Lauenstein**, and **Mr Milne**.
- 57 The Applicant stresses however that the reduced ODP would provide significantly less capacity (approximately 360-442 dwellings) when compared to the current proposal which is highly undesirable in the context of reading the NPS-UD as a whole and in light of the shortfall in medium-term residential capacity in the District.
- 58 Further, there would be no ecological enhancement of the south branch stream within the site that does not adjoin the ‘reduced ODP’ as the District Plan does not require any esplanade reserves to be provided along this waterway.³²
- 59 Similarly, if the Panel were to accept the evidence of **Mr Yeoman** with respect to the smaller commercial area, then it would be open to the Panel, to remove this area from the ODP. We note that all of the economic experts are agreed as to the nature and scale of the larger commercial area.
- 60 Further on the topic of changes to amenity, **Mr Nicholson** places an emphasis on planning documents (such as the Operative District Plan) which require retention of the existing character of Ōhoka. He fails to acknowledge that these documents were pre-NPS-UD (some of them well before) and now must be read alongside, and reconciled consistently with, Objective 4 and Policy 6 which recognise that urban environments change and develop and cannot be frozen in time.
- 61 In any case, PC31 has been carefully developed in a way that contributes to and enhances the existing village character of Ōhoka.
- Well-functioning urban environment**
- 62 Submitters have suggested that PC31 needs to go further than simply “contributing” to a well-functioning urban environment and must, in and of itself, achieve a well-functioning environment.

³² Refer to Chapter 33 of the Waimakariri District Plan, Esplanades: Locations and Circumstances – Rules.

- 63 One example of this is in the legal submissions of the Council as submitter where it is stated that PC31 *"needs to include access to public transport in order to contribute to well-functioning urban environments."*³³ Further, Mr Boyes' assessment concludes that it has not been demonstrated *"that PC31 results in a well-functioning urban environment"*.³⁴
- 64 These submitters rely on Policy 1 of the NPS-UD which sets out, as a minimum, the requirements of a well-functioning environment in (a)-(f). They imply that in order to meet the test in Policy 8 of the NPS-UD *'to contribute to well-functioning urban environments'* each of the minimum requirements must be met.
- 65 Policy 8 does not however say that each of the matters in Policy 1 must be met by the plan change, but rather that the plan change *"contributes"* to the well-functioning environment in which it is located. In this case it is Greater Christchurch which as a minimum should be meeting those matters listed in Policy 1.
- 66 The question remains what is meant by *'contribute'*. In terms of the plain meaning of the word, the Merriam-Webster definition of *"contribute"* is as follows:
- "to give or supply (something, such as money or time) as a part or share"*
- 67 To this end, the words *'contribute to well-functioning urban environments'* in Policy 8 contemplate a plan change that furthers (at least in part) one or more of the matters listed in Policy 1. It is also submitted that a plan change could contribute to some of those matters in Policy 1 and even detract from others provided that, on balance and in the round, the plan change generally contributes to the well-functioning urban environment.
- 68 This approach was accepted by the decision maker on a private plan change in Selwyn, who found *"consideration must be given to whether, when the elements are viewed collectively, the planning decision in question can be said to contribute to a well-functioning urban environment."*³⁵
- 69 We note that **Mr Willis** in his section 42A report found that PC31 would, at the very least:³⁶

³³ Legal submissions on behalf of the Waimakariri District Council dated 9 August 2023 at [83].

³⁴ Evidence of Mr Boyes dated 21 July 2023 at [77]; Legal submissions on behalf of the Waimakariri District Council dated 9 August 2023 at [80].

³⁵ Decision on Private Plan Change 68 to the Selwyn District Plan by Commissioner Hughes-Johnson dated 23 June 2023 at [7.1].

³⁶ Section 42A report dated 3 August 2023 at [7.3.17] onwards.

- 69.1 contribute to a variety of homes (Policy 1(a));
 - 69.2 support the requirement to have a variety of business sector sites (Policy 1(b)); and
 - 69.3 support the competitive operation of land and development markets (Policy 1(d)).
- 70 For the reasons collectively set out in the evidence of the various experts, the Applicant has demonstrated that PC31 will contribute to Greater Christchurch as a well-functioning urban environment in all aspects contemplated by Policy 1. Greenhouse gas emissions
- 71 Considerable focus has been applied to greenhouse gas emissions, and in particular vehicle kilometres travelled (VKT). One of the requirements of a well-functioning urban environment under Policy 1 is that it is an environment that “*support[s] reductions in greenhouse gas emissions.*”
- 72 PC31 should therefore *contribute* to that requirement. It is not a matter of demonstrating that PC31 itself will reduce greenhouse gas emissions, or will produce less greenhouse gas emissions than the existing land use. In order to contribute to that requirement, it must be demonstrated that the plan change facilitates future users of the site in reducing their greenhouse gas emissions. PC31 does this through a range of means set out in full in opening legal submissions.
- 73 We note that contributing to supporting reductions in greenhouse gas emissions is not the same as regulating greenhouse gas emissions through zoning or land uses.
- 74 Simply because VKT in and of themselves may increase as a result of PC31 does not mean that PC31 is not contributing to supporting reductions in greenhouse gas emissions. We note that public transport requires a critical mass to establish, PC31 will provide some of that mass in Ōhoka such that future public transport to and from Ōhoka is likely to occur should this plan change proceed. This would contribute to reducing the greenhouse gas emissions of both residents from the plan change site and Ōhoka more generally.

New information with respect to transport

- 75 The Applicant has yesterday become aware of a report that has just been approved by Council for consultation titled the “Waimakariri Integrated Transport Strategy”. This report indicates among other things an intent to implement the following actions:³⁷

³⁷ Report “Moving Forward: Waimakariri Integrated Transport Strategy 2035+ – Draft for Consultation”, Waimakariri District Council Agenda for 5 September 2023, item 7.4.

- 75.1 provide passenger transport service along Tram Road;
 - 75.2 enhance intra-District bus services that proved better, additional public transport connections to district towns and settlements;
 - 75.3 establish more passenger transport connections, including between townships and rural areas;
 - 75.4 explore and trial more innovative ways to provide public transport such as on-demand services and vanpools integrated with Environment Canterbury services, with a focus on rural communities such as Oxford or Cust; and
 - 75.5 continue to review speed limits and implement changes to ensure they are safe and appropriate, prioritising areas where the greatest benefit can be realised.
- 76 The report also confirms that PC31 will adjoin the planned walking and cycling network for the District which is intended to provide cycling connections between urban centres and rural developments.
- 77 It is disappointing that the Council experts who were involved in the conferencing on transport and public transport matters did not draw the Applicant's or the Panel's attention to the work being undertaken by Council which we understand has involved a number of workshops and iterations and has been underway for some time (we understand around 12 months).

Affordable housing

- 78 **Mr Boyes**³⁸ and other submitters pointed out that there is no provision for affordable housing within PC31. This comment is made in the context of Objective 2 of the NPS-UD which required planning decisions to "*improve housing affordability by supporting competitive land and development markets.*"
- 79 We are unclear as to what **Mr Boyes** means by 'affordable housing' or the mechanism through which any decision maker could require a landowner to provide 'affordable housing' if the implication is that it includes the type of social housing developments undertaken by Kāinga Ora.
- 80 **Mr Boyes** does not engage with the words in Objective 2 which sets out how housing affordability is to be improved which is "*by supporting competitive land and development markets*". This is the mechanism by which the NPS-UD anticipates housing affordability will be improved. The evidence of the Applicant is that PC31 will support competitive land and development markets:

³⁸ Evidence of Mr Boyes dated 21 July 2023 at [73].

80.1 The evidence of **Mr Akehurst**³⁹ was that PC31 would increase competition which has the effect of causing other landowners in the District to bring their land to market as efficiently and in as timely a manner as possible. This is because, if competition does not exist, other landowners experience a higher degree of market power, relating to the partial monopoly they hold over supply of residential land where they effectively become the price setters. The price that is set is always higher than the price that would result in a fully competitive market.

80.2 The supplementary of **Mr Sellars**⁴⁰ further discusses this issue in the context of recent and drastic price increases in residential land within Canterbury (particularly Selwyn District) which resulted from a mixture of unprecedented demand, constrained supply, and low interest rates. Where there is a lack of supply, people are more willing to spend over and above what they normally would, and the parties holding this limited supply know their power and monopolise on the demand. The way to improve affordability is to increase supply.

Integrated with infrastructure planning and funding

81 The Regional Council asserts, as it has done at every hearing in Selwyn District, that despite the clear wording in Policy 8, decisions on plan changes must still be integrated with infrastructure planning and funding decisions and be strategic over the medium and long term.⁴¹ We understand this position is derived from the wording of Objective 6. **Mr Schulte** takes the same position.⁴²

82 As set out in the Applicant's opening legal submissions any suggestion that plan changes that are unanticipated by RMA planning documents or out-of-sequence with planned land release (under Policy 8) need to be integrated with planned infrastructure from the get go is wrong, illogical, and would undermine the very purpose of Policy 8. Unanticipated and out-of-sequence proposals are by their very nature extremely unlikely to have been considered in any existing infrastructure planning and funding decisions, and therefore could not be 'integrated' with these, at least until the plan change is confirmed and incorporated into those decisions. Objective 6(a) must be read in this context as to not render Policy 8 nugatory.

83 The MfE Guidance on the NPS-UD confirms the consideration for infrastructure under Policy 8 is whether it can be demonstrated that

³⁹ Evidence of Mr Akehurst dated 6 July 2023 at [99]-[100] and [124]-[127].

⁴⁰ Supplementary evidence of Mr Sellars dated 5 September 2023 at [30]-[34].

⁴¹ Legal submission on behalf of the Regional Council dated 8 August 2023 at [41].

⁴² Legal submissions on behalf of the Waimakariri District Council dated 9 August 2023 at [61].

there are viable options for funding and financing the infrastructure required for the development.⁴³ The Applicant has demonstrated through evidence that there are viable options for funding all of the infrastructure required for PC31.

- 84 With respect to Objective 6(b) requiring council decisions on urban environments to be strategic over the medium term and long term, the Applicant says that approving PC31 would achieve this. In the context of a District that is not meeting its obligations under the NPS-UD to provide at least sufficient development capacity into the medium term (as well as the long term), enabling up to 850 households within its District that will be realised within the next 10 years is a strategic decision in the medium and long term. The Council will need to find this capacity somewhere, and it has a significant and viable proposal before it that would largely cover this deficit in capacity.

THE NPS-HPL

- 85 The full legal argument with respect to the application of the NPS-HPL is set out in our opening legal submissions.⁴⁴ In summary, the NPS-HPL does not apply to the site because the interim definition of highly productive land in clause 3.5(7)(b)(ii) excludes land that is subject to a Council initiated notified plan change to rezone land to rural lifestyle zone. The site has been notified in the Proposed Waimakariri District Plan with a rural lifestyle zoning.
- 86 We understand that **Ms Edwards, Mr Schulte, and Mr Willis** all agree with the interpretation that the NPS-HPL does not apply to PC31.
- 87 The Panel has raised questions to various witnesses as to whether this interpretation results in a policy gap particularly in the context that the Proposed Plan has yet to determine whether the extent of the notified rural lifestyle zone is appropriate. To respond:
- 87.1 As correctly set out in the legal submissions of **Ms Edwards** for the Regional Council such a policy gap would only persist until such time as the Regional Council carries out its mapping exercise in accordance with the requirements of clause 3.4 of the NPS-HPL.⁴⁵ Under clause 3.5(1) this must occur by 17 October 2025. This exercise would not prevent the Regional Council from including land as highly productive in its mapping that has been determined as not being

⁴³ Ministry for the Environment "National Policy Statement on Urban Development 2020 – Understanding and implementing the responsive planning policies" published in September 2020 at 6.

⁴⁴ Opening legal submissions dated 3 August 2023 at [117]-[134].

⁴⁵ Legal submission on behalf of the Regional Council dated 8 August 2023 at [54].

appropriate as rural lifestyle under the Proposed Plan (noting in that case, the land would likely revert to rural zoning).

87.2 Regardless, we say that this is simply the correct operation of the NPS-HPL as intended by its drafters. The Guidance is clear that the intent of this exception to the interim application of highly productive land was so that the NPS-HPL does not undermine the work undertaken by Councils to date to provide for 'urban' land in their District.⁴⁶

88 **Ms Scully**, on behalf of submitter Janet Hadfield, puts forward an interpretation that the NPS-HPL does apply to PC31. That interpretation is based on:⁴⁷

88.1 a premise that the Council did not appreciate the implications of notifying land rural lifestyle in the Proposed Plan as this notification pre-dated the release of the NPS-HPL; and

88.2 the nature of the rural lifestyle zone within the Proposed Plan as compared to the brief description provided in the National Planning Standards, including that the rural lifestyle zone:

(a) is categorised as a rural zone in the Proposed Plan; and

(b) includes a description and objective related to primary production activities which does not align with the National Planning Standard's description for a rural lifestyle zone which describes "*areas used predominantly for a residential lifestyle*" (her emphasis).

88.1 the Council 'inadvertently'⁴⁸ (or plain wrongly⁴⁹) notified the 'Rural Lifestyle Zone' descriptor from the National Planning Standards and should have notified that area as a general rural zone with a precinct overlay instead (as was deliberately done in Selwyn).

88.2 given the Council has not implemented its Proposed Plan (as it is not yet operative) the nearest equivalent zone should be assessed with reference to the National Planning Standard descriptors against the description, objectives, policies of the rural lifestyle zone in the Proposed Plan.

⁴⁶ National Policy Statement on Highly Productive Land: Guide to Implementation, at p 17.

⁴⁷ Legal submissions on behalf of Janet Hadfield dated 15 August 2023 at [4]-[34].

⁴⁸ Legal submissions on behalf of Janet Hadfield dated 15 August 2023 at [23].

⁴⁹ Further memorandum of counsel on behalf of Janet Hadfield dated 15 August 2023 at [9].

88.3 the nearest equivalent zone to the notified rural lifestyle zone in the Proposed Plan is the general rural zone under the National Planning Standards.⁵⁰

- 89 This interpretation cannot be correct. Firstly, the fact that the rural lifestyle zone is a rural zone in the Proposed Plan is not of any consequence. In fact, the name 'rural lifestyle' in itself implies that must surely be the case and the description of the zone in the National Planning Standards expressly recognises these zones as being "*within a rural environment.*"
- 90 The purpose of the NPS-HPL is not to protect rural zones, but to protect highly productive land, which is purposefully defined within that document. In fact, the NPS-HPL seeks to avoid rural lifestyle rezoning and development on highly productive land, despite not defining the rural lifestyle zone as 'urban'. This in and of itself does not prevent a rural lifestyle zone from being a rural zone.
- 91 With respect to the introduction and the objective in the Proposed Plan not being consistent with the National Planning Standards description for that zone, we respectfully disagree. The 'How the Plan Works' section of the Proposed Plan describes the rural lifestyle zone exactly as it is described in the National Planning Standards.⁵¹
- 92 While the descriptions contained within the zone chapters themselves are slightly different, they are not incompatible. The Council has engaged with and implemented (albeit that it is not operative yet) the National Planning Standards framework into their Proposed Plan. They actively considered the list of available zones, and chose the rural lifestyle zone as being the most appropriate name and descriptor for the area that they ultimately notified as rural lifestyle. This is highlighted in some of the other provisions of the Proposed Plan that **Ms Scully** has not pointed to, which are entirely consistent with a rural lifestyle zone as described in the National Planning Standards:

92.1 The description in the introduction to the rural lifestyle zone which also goes on to say:

"The Rural Lifestyle Zone, focused in the east of the District, recognises that this area comprises the densest residential unit and development site pattern in the rural areas of the District. This rural area is defined by its fine grained pattern of development and human induced characteristics."

92.2 The rural objective (RURZ-O1) which set out in full provides:

⁵⁰ Further memorandum of counsel on behalf of Janet Hadfield dated 15 August 2023 at [13].

⁵¹ Proposed Waimakariri District Plan, How the plan work – General approach.

"An environment with a predominant land use character comprising primary production activities and natural environment values, where rural openness dominates over built form, while recognising:

1. the east of the District has a predominant character of small rural sites with a pattern of built form of residential units and structures at more regular intervals at a low density compared to urban environments; and

2. the remainder of the District, while having a range in the size of rural sites, has a predominant character of larger rural sites with a corresponding density of residential units and built form."

92.3 Policy RLZ-P2 which specifically enables residential development on lots down to 4 ha.

92.4 The section 32a report on Rural Zones for the District Plan explains the difference between the general rural and rural lifestyle zones as follows:⁵²

*"The objectives recognise that the predominant character is different between the east of the district and the west. While there are a number of smaller lots within both areas the overall character of the western area of the District is larger lots. The objectives recognise and address the importance of the rural areas of the District both as a lifestyle choice location but also as a working and productive environment on which a large proportion of the District's population is reliant on. Given this, the approach **is to recognise the more dominant lifestyle character in the east of the District**, but also provide for a range of rural activities and activities reliant on a rural environment within this zone. Within the western part of the District, greater emphasis is placed on maintaining the potential for land to be used for a range of rural productive uses and retain larger site sizes while also providing for a range of activities reliant on the natural resources in the rural areas. The difference in these two zones is related to managing further fragmentation of land into small rural sizes. This is restricted in the General Rural Zone by Objective GRZ-O1, but recognised as being the dominant character within the Rural Lifestyle Zone in Objective RLZ-O1."*

⁵² Proposed Waimakariri District Plan, Section 32 Report 'Rural' dated 18 September 2023 at 41-42.

- 93 **Ms Scully** submits the only difference between the general rural zone and the rural lifestyle zone is the density of residential units and subdivision that is enabled.⁵³ We would agree that this is one of the key differences, and that is precisely the point of why the NPS-HPL distinguishes rural lifestyle zones from general rural and rural production zones – they do not protect productive capacity. This is recognised throughout the s 32 for the Proposed Plan:

*"While the minimum land size required to maintain rural productivity is not solely determined by land area minimum scale is important to maintaining productive potential of land now and in the future. 4ha does not provide a property of a size that provides a range of longer term sustainable productive potential with a productive area (excluding buildings and curtilage areas) a minimum of between 10 to 15 - 100ha being needed for a range of productive activities."*⁵⁴

*"In the context of the Waimakariri District lots sized between 4-7.99ha do not typically sustain productive potential of land."*⁵⁵

*"Four hectares of land is not sufficient to provide for a range of primary productive activities."*⁵⁶

- 94 With the above in mind, it is irrelevant that the Council when it notified the zone could not have appreciated the implications this would have in respect of the NPS-HPL, as it clearly had already contemplated in its decision to notify that the rural productive capacity of that land would be compromised by that zoning. This was justified given the area they zoned rural lifestyle was already subdivided substantially into lots that could not sustain productive potential.
- 95 Further, the rural chapter of the Proposed Plan and its provisions are still in the early stages of the plan review process (with hearings to be held later this year). It is very likely that the wording of these zone provisions will be tested and refined through that process to align with the National Planning Standards if necessary.
- 96 We note that the National Planning Standards are very prescriptive in the Zone Framework Standard with the first mandatory direction being *"a district plan [...] must only contain the zoned listed in [this*

⁵³ Further memorandum of counsel on behalf of Janet Hadfield dated 15 August 2023 at [8].

⁵⁴ Proposed Waimakariri District Plan, Section 32 Report 'Rural' dated 18 September 2023 at 58.

⁵⁵ Proposed Waimakariri District Plan, Section 32 Report 'Rural' dated 18 September 2023 at 41.

⁵⁶ Proposed Waimakariri District Plan, Section 32 Report 'Rural' dated 18 September 2023 at 66.

standard] with the description of those zones” with a few limited exceptions. It may be that the Proposed Plan panel will need to amend the wording of the Proposed Plan to ensure the National Planning Standards are appropriately implemented.

- 97 In summary it is clear that the Council, with intention to implementing the National Planning Standards, notified a rural lifestyle zone in its Proposed Plan. Clause 3.5(7)(b)(ii) of the NPS-HPL expressly exempts from the interim definition of highly productive land, land that is subject to a council initiated notified plan change to rezone it to rural lifestyle as at the commencement date of the NPS-HPL.
- 98 The Council have implemented this interpretation across the District by granting subdivision resource consents since the NPS-HPL.
- 99 The NPS-HPL does not apply to PC31.

GROUNDWATER INTERCEPTION

- 100 As signalled in the Applicant’s opening legal submissions,⁵⁷ the issue with respect to the interception of groundwater in the Canterbury Land and Water Regional Plan (CLWRP) is much wider than just this application.
- 101 The Regional Council’s interpretation of the rules are a significant issue to many developers and consent applicants across the whole of Canterbury. There is a strong argument that the Regional Council is misapplying the rules in light of the recent Court of Appeal decision.⁵⁸ We are aware of parties who are seriously considering applying for a plan change to the CLWRP in order to resolve this issue.
- 102 The Regional Council’s current interpretation has effectively stymied a number of developments and consents across Canterbury, including as we understand it creating issues with the Christchurch City’s own global stormwater consent renewal.
- 103 The position held by the Regional Council is untenable and something must and will budge in the near future, such that this barrier with respect to in particular management of stormwater with a net neutral effect on groundwater will be able to be overcome.
- 104 In any case, in the interim, the Applicant’s experts are confident that all of the PC31 infrastructure can be designed and constructed in a manner that will not intercept groundwater while ensuring no off-site effects. These experts are local and well respected

⁵⁷ Opening legal submissions dated 3 August 2023 at [138]-[140].

⁵⁸ *Aotearoa Water Action Incorporated v Canterbury Regional Council* [2022] NZCA 325.

throughout Canterbury who deal with these issues and find solutions to these regularly.

- 105 The Panel asked **Mr O'Neill** for the ECan Fact Sheet he referred to at the hearing regarding the rules applying to wetlands and ponds. We attach this for the Panel's information at **Appendix 5**.

TRAFFIC EFFECTS

- 106 With respect to the traffic effects, and the joint witness statement, we address the issue raised by **Mr Walsh**⁵⁹ in his supplementary evidence as to whether PC31 which is first in time is required to make allowances made for District Wide growth in the transport modelling for PC31 as provided for in the joint witness statement.⁶⁰
- 107 **Mr Walsh** notes that the 20% increase assumed for Tram Road (for example) could only be generated by increased development opportunities, in other words new residential zoning on an unapproved rezoning. Any such new zoning would need to go through its own Schedule 1 process where the transport effects from that new land would need to be assessed in the context of the transport environment at that point in time as PC31 has had to do. Similarly, the 35% growth assumed for the Flaxton Road and Skewbridge Road intersection is likely to be generated through infill and development of NDAs, which also must go through a Schedule 1 process.
- 108 Accepting that PC31 is a plan change and not a resource consent application, the policy in the RMA is still relevant that:
- 108.1 It is well established that priority to a hearing is accorded on a "*first come, first served*" basis.⁶¹ This means that the consenting authorities are required to deal with applications (and their effects) in turn as they appear before them and on their merits, and are not permitted to compare applications as claims for the same resource.⁶²

⁵⁹ Supplementary evidence of Mr Walsh dated 5 September 2023 at [28].

⁶⁰ Joint witness statement in relation to transport infrastructure provision dated 22 August 2023 at [8] which states the assessment contained in that joint witness statement was on the basis of 20% growth on the Tram Road corridor and 35% growth on the Flaxton Road / Skewbridge Road corridor over the next decade.

⁶¹ *Fleetwing Farms Ltd v Marlborough District Council* [1997] 3 NZLR 257 (CA). In *Central Plains Water Trust v Ngai Tahu Properties Ltd* (2008) 14 ELRNZ 61, [2008] NZRMA 200 (CA) the Court of Appeal confirmed that priority for competing applications for the same resource under "the first come, first served rule" is determined by the date of filing.

⁶² In *Unison Networks Limited v Hawke's Bay Wind Farm Limited* [2007] NZRMA 340 (HC) at [67]-[69] the High Court confirmed that there is no material difference between finite and non-finite resources in relation to the priority issue and would apply in the adjudication of consecutive applications involving different areas even though both applications may intend to use the same resource.

108.2 In *Queenstown-Lakes District Council v Hawthorn Estate Limited* the respondent sought consent for the subdivision of 32 residential lots in Queenstown.⁶³ The proposed subdivision was in an area subject to large amounts of development with multiple resource consents granted, but not yet implemented. The key issue for determination was whether the Council, when considering the application, was obliged to restrict its consideration of effects to the environment in existence at the time of the decision or whether the Council should have considered the future state of the environment.

108.3 *Hawthorn* confirmed that the environment embraces the future state of the environment as it might be modified by the utilisation of rights to carry out a permitted activity under a district plan. The Court of Appeal held that the environment to be considered:⁶⁴

...includes the environment as it might be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented.

108.4 In *Burgess v Selwyn District Council*, the Environment Court said that to assume that the receiving environment includes an activity merely because the plan permits something (or might later permit something), whether or not that activity is likely to happen, would create an artificial environment against which the effects of a proposal are to be considered.⁶⁵

108.5 In summary, the environment which resource consent applications are to be considered against includes the future state of the environment as it might be modified by permitted activities and by resource consents which have been granted, where it is likely that those activities will be implemented and are not fanciful. It does not include the effects of resource consents that may be made in the future.

109 There is no direct authority on the issue of priority in the context of plan changes however there is no reason why the same policy should not apply that PC31 should be determined in the context of the environment as it exists and not including some other future theoretical rezoning.

110 Applying the “*first come, first served*” principle in the context of a private plan change would indicate that the effects of future plan

⁶³ *Queenstown-Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424 (CA).

⁶⁴ *Queenstown-Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424 (CA) at [84].

⁶⁵ *Burgess v Selwyn District Council* [2014] NZEnC 11.

changes that are still required to go through the Schedule 1 process need not be accounted for. To say otherwise, would require the Panel to consider a future environment which is artificial and inconsistent with the sustainable management of natural and physical resources.

- 111 All of the growth assumed in the transport joint witness statement has not yet been tested or assessed under a Schedule 1 process. This includes new residential zoning both through prospective private plan changes and in submissions on the Proposed Plan process (including the NDAs) currently in the early hearing stages.
- 112 PC31 does not need to take into account this growth when considering the effects of the plan change because at this point in time, it is too fanciful to say with certainty what, where, and how much growth might occur as a result of future Schedule 1 processes in the District.
- 113 It is further noted that in Mr Binder's report attached to the s 42A, he notes the Emissions Reduction Plan commits local councils to reduce VKT from light vehicles by 2035, where a sub-regional VKT reduction target for the Waimakariri District is still being finalised, but is expected to require a 24% reduction in VKT from light vehicles in the District by 2035.⁶⁶ Once finalised, this too may well influence considerations under those future Schedule 1 processes noted above.
- 114 Nevertheless, the assessment contained in the joint witness statement has assumed growth and is therefore very conservative with respect to the transport effects arising from the plan change. On this basis, the additional proposed rules with respect to transport as a result of the joint witness statement go well beyond what is required to demonstrate that transport effects from PC31 can be appropriately mitigated.

CONCLUSION

- 115 Attached at **Appendix 6** is Mrs Barbara Warren's responses to the Panel's questions.

⁶⁶ Section 42A Report, Appendix 7, Evidence of Shane Binder dated 22 June 2023, at [22].

116 We do not consider there are any matters remaining that would prevent the Commissioners from approving PC31. All concerns and issues raised during the course of this hearing have been addressed by the proposed rules package and amended ODP.

Dated: 8 September 2023

A handwritten signature in blue ink, appearing to read 'Jo Appleyard' or 'Lucy Forrester', written in a cursive style.

Jo Appleyard / Lucy Forrester
Counsel for the Applicant

APPENDIX 1

THE CHRISTCHURCH INTERNATIONAL AIRPORT NOISE CONTOURS

- 1 This section of the legal submissions clarifies the likely constraint on development that arises from noise generated by aircraft using Christchurch International Airport (CIAL).
- 2 This was a matter considered by the planning joint witness statement on development constraints. Counsel acts for CIAL who are advancing the newly, as of May 2023, remodelled 50dBA airport noise contour in planning processes across Canterbury (the *remodelled contour*).⁶⁷
- 3 We provide some further comment and analysis to supplement and clarify some of the matters of disagreement regarding this development constraint in the joint witness statement.
- 4 With respect to the application of the remodelled contour:
 - 4.1 The relevant provision in the CRPS is Policy 6.3.5(4) which reads:

"Recovery of Greater Christchurch is to be assisted by the integration of land use development with infrastructure by: [...]"

4. Only providing for new development that does not affect the efficient operation, use, development, appropriate upgrading and safety of existing strategic infrastructure, including by avoiding noise sensitive activities within the 50dBA Ldn airport noise contour for Christchurch International Airport, unless the activity is within an existing residentially zoned urban area, residential greenfield area identified for Kaiapoi, or residential greenfield priority area identified in Map A (page 6-28) and enabling commercial film or video production activities within the noise contours as a compatible use of this land; and [...]"

- 4.2 This policy does not refer to the 50dBA Ldn airport noise contour as shown on Map A, and CIAL's position is that the avoidance policy applies to all land which is subject to levels of noise of 50dBA Ldn or greater. At present the most

⁶⁷ The newly modelled contours, as well as the technical modelling methodology and assumptions, are set out in CIAL's expert report *2023 Updated Christchurch International Airport Noise Contours* available at <https://www.christchurchairport.co.nz/about-us/sustainability/noise/noise-contour-review/>. These are endorsed by the Regional Council as set out in the *Christchurch Airport Remodelled Contour Independent Expert Panel Report* available at <https://www.ecan.govt.nz/get-involved/news-and-events/2021/council-reviews-airport-noise-contours/>.

accurate evidence to show that area of land is the remodelled contour which has been peer reviewed by a panel of experts appointed by the Regional Council.

- 4.3 The purpose of Map A is not to define the extent of land subject to levels of 50dBA or greater, but rather to identify areas for future growth within Canterbury as required by the (then) NPS-UDC and the NPS-UD. It is not in and of itself the mechanism through which the airport noise contour is given effect to in the CRPS.
- 4.4 The direction in Policy 6.3.5(4) is to avoid new development within land subject to levels of 50dBA Ldn or greater as shown by a noise contour. The location of the noise contour is an evidential matter. CIAL's position is that Policy 6.3.5(4) applies to land within the remodelled contour as this is based on the most up to date technical information as to where noise sensitive activities are likely to experience 50dBA Ldn or greater.
- 4.5 We appreciate the Panel's sentiment expressed at the hearing that it is preferable for such a policy in the CRPS to identify the extent to which a constraint such as this applies, but we note that:
 - (a) the remodelled contour is readily available to the public online; and
 - (b) the need to check compliance with the CRPS against some other document is not an uncommon approach. For example, the definition of "high hazard areas" in the CRPS is highly technical and the extent of this area cannot simply be determined by reference to a map contained in the CRPS.
- 4.6 Overall, the policy thrust of the CRPS is clear, as it:
 - (a) recognises the social and economic importance of Christchurch Airport, and the need to integrate land use development with infrastructure;
 - (b) seeks to avoid incompatible activities within areas subjected to 50dBA or more which may result in reverse sensitivity effects on Christchurch Airport;
 - (c) recognises that Christchurch Airport should not be compromised by urban growth and intensification; and
 - (d) enables Christchurch Airport's safe, efficient and effective operation and development.

- 4.7 It would be contrary to the CRPS to allow new development under the remodelled contour, and any such application would be strongly opposed by CIAL in any planning process.
- 4.8 These arguments will be advanced by CIAL at the Proposed Plan hearings.
- 5 With respect to the exceptions to the CRPS Policy and in particular what is colloquially referred to as the 'Kaiapoi exception', we respond as follows:
- 5.1 The 'Kaiapoi exception' is contained in the 'principal reasons and explanation' for Policy 6.3.5 which reads:
- "The only exception to the restriction against residential development within the 50dBA Ldn airport noise contour is provided for at Kaiapoi.*
- Within Kaiapoi land within the 50dBA Ldn airport noise contour has been provided to offset the displacement of residences as a result of the 2010/2011 earthquakes. This exception is unique to Kaiapoi and also allows for a contiguous and consolidated development of Kaiapoi."*
- 5.2 This exception is effectively provided for through the following words in Policy 6.3.5(4) *"unless the activity is within an existing residentially zoned urban area, residential greenfield area identified for Kaiapoi, or residential greenfield priority area identified in Map A (page 6-28) and enabling commercial film or video production activities within the noise contours as a compatible use of this land"*.
- 5.3 There are two issues that arise from this:
- (a) what is the impact of the phrase "unless the activity is within an existing residentially zoned urban area" as used in Policy 6.3.5; and
- (b) similarly, why is there an exemption for the "residential greenfield area identified for Kaiapoi".
- 5.4 With respect to the broader reference to "existing residentially zoned urban area" used in the policy, some guidance on this can be found in the decisions of the Independent Hearings Panel (the Panel) appointed to consider the Replacement Christchurch District Plan. Overall, the Panel determined that, although there is no absolute direction in the CRPS to avoid any further noise sensitive activities in existing residentially zoned land within the Air Noise Contour, there is still a need to evaluate whether such activities should be avoided or restricted so as to give proper effect to Policy

6.3.5 and related CRPS objectives and policies.⁶⁸ The Panel recognised the need for an ongoing capacity to assess relevant reverse sensitivity and noise mitigation matters for residential intensification above a certain scale.⁶⁹ Ultimately the Panel determined that, for residential zones in the Christchurch District that sit within the Air Noise Contour, residential activities which do not meet permitted zone standards should have restricted discretionary activity status.⁷⁰ While this is a specific planning response for Christchurch City, there is no reason why the principle of the Panel's findings should not apply to all residential land including in Waimakariri.

- 5.5 Given this, the direct impact of the Panel's assessment and decision was to reinforce the position that density (amongst other things) was a key matter to control in order to give effect to the CRPS.
- 5.6 This is relevant insofar as infill/intensification is proposed within the existing urban areas of Kaiapoi and the need to consider the airport noise contour in this context. To this extent, we note that CIAL are seeking that areas subject to aircraft noise of 50dBA Ldn or greater are subject to a qualifying matter under Variation 1 to the Proposed Plan to ensure that MDRS intensity is not enabled, including relevant land in Kaiapoi.
- 5.7 It is also important to understand why the specific reference to Kaiapoi was included in the policy in the first place and this can be found in the 'principal reasons and explanation' for Policy 6.3.5 set out above. Following the 2010/2011 Canterbury earthquakes, areas of Kaiapoi were severely damaged and the only places for new development lay under the 50dBA Ldn contour. A trade-off was needed and an exemption was carved into the CRPS avoid policy to address this issue only.
- 5.8 CIAL's position is that this particular exemption does not apply to Kaiapoi in totality. Rather, it applies to "land" that "has been provided to offset" displaced residences specifically as a result of the of the 2010/2011 Canterbury earthquakes. The land required to offset that displacement has already been provided by subsequent plan changes and the exemption is now spent.
- 5.9 We also note the reference in Policy 6.3.5 is to the *"residential greenfield area identified for Kaiapoi... identified in*

⁶⁸ Decision 10 Residential (Part), Independent Hearings Panel, 10 December 2015, at [195].

⁶⁹ At [235].

⁷⁰ At [237].

Map A". This is a reference to the 'greenfield priority areas' only in Map A; it would not include 'future development areas' that were introduced subsequently through Plan Change 1 to Chapter 6 of the CRPS.

- 5.10 The NDAs in the Proposed Plan being relied on by the Council as providing the necessary long-term capacity are those areas identified as 'future development areas' in Map A. These areas are not exempt from the avoid policy which applies to land subject to levels of aircraft noise of 50dBA Ldn or greater. At present, that land is represented by the remodelled contour.
- 6 The remodelled contour impose a significant development constraint (by way of an avoid policy) on Kaiapoi and areas which the Council relies on as providing sufficient capacity under the NPS-UD.

APPENDIX 2

HIGH HAZARD AREAS AND THE CRPS

- 1 **Mr Willis** and **Mr Bacon** provided examples in evidence on how development has and can occur in high flood hazard areas through, for example, raising ground level or the construction of new drains and culverts.

- 2 Reliance is placed on the fact that Policy 11.3.1(6) of the CRPS specifically provides for flood mitigation works:

"Within greater Christchurch, is proposed to be located in an area zoned in a district plan for urban residential, industrial or commercial use, or identified as a "Greenfield Priority Area" on Map A of Chapter 6, both at the date the Land Use Recovery Plan was notified in the Gazette, in which the effect of the natural hazard must be avoided or appropriately mitigated;"

- 3 We note, however, that this provision extends only to Greenfield Priority Areas and not to the Future Development Area (which are the NDAs). Therefore, this part of the Policy would not apply to the Kaiapoi NDAs.

- 4 To raise the ground level (or construct new drains and culverts) in the Kaiapoi NDA would be contrary to the CRPS as this would be deemed 'new or upgraded hazard mitigation works'. The relevant parts of the CRPS Policy state:

Policy 11.3.1 Avoidance of inappropriate development in high hazard areas

To avoid new subdivision, use and development (except as provided for in Policy 11.3.4) of land in high hazard areas, unless the subdivision, use or development:

...

3. is not likely to require new or upgraded hazard mitigation works to mitigate or avoid the natural hazard;

- 5 Policy 11.3.1 places a clear requirement of 'avoidance' of inappropriate development in high hazard areas. It is well established from *King Salmon*, that the term 'avoiding' "has its ordinary meaning of "not allowing" or "preventing the occurrence of".⁷¹

⁷¹ *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [24].

- 6 To raise the ground level of sites in the Kaiapoi NDA would require new (or upgraded) hazard mitigation works (in order to mitigate or avoid the high hazard area).
- 7 We understand **Mr Willis** differs in view and does not think that raising the ground level constitutes 'hazard mitigation works.' Hazard mitigation works are not defined in the CRPS. Our view, consistent with the evidence given by **Mr Walsh**, is that raising the ground level would very clearly be hazard mitigation works. As put by **Mr Walsh**:⁷²
- "The purpose of the works would be to mitigate or avoid the flood hazard. This is not provided for in Policy 11.3.1 of the CRPS and therefore the application would need to be declined."*
- 8 The appropriateness of developing within the Kaiapoi NDA is yet to be tested under the Proposed Plan and we understand there are submitters opposing development of this area on the basis that it is within a high hazard area as defined in the CRPS.

⁷² Supplementary evidence of Mr Walsh dated 5 September 2023 at [15].

APPENDIX 3



Ministry for the
Environment
Manatū Mo Te Taiao



**MINISTRY OF HOUSING
AND URBAN DEVELOPMENT**

Guidance on Housing and Business Development Capacity Assessments (HBAs) under the National Policy Statement on Urban Development

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**MINISTRY OF HOUSING
AND URBAN DEVELOPMENT**

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1 Introduction

1.1 Purpose

This guidance has been developed to help local authorities understand and interpret the provisions for producing a Housing and Business Development Capacity Assessment (HBA) under subpart 5 of the National Policy Statement on Urban Development (NPS-UD). This document should be read with the guidance produced for the previous [National Policy Statement on Urban Development Capacity 2016](#) (NPS-UDC), as the focus of this document is on new or amended requirements not previously contained in the NPS-UDC. This document includes explanations and examples of good practice to support local authorities implementing the new HBA requirements.

Prior guidance and other related documents to use with this guidance include:

- the [fact sheet](#) providing a high-level overview of policies within subpart 5
- [guidance provided for the NPS-UDC](#)
- [guidance for subpart 3, 'Evidence-based decision-making'](#), which will be published at the same time as this document
- the interactive [online dashboard](#) of housing market data and indicators.

1.2 Scope

Subpart 5 of the NPS-UD outlines requirements that all tier 1 and 2 local authorities must follow to prepare an HBA, including:

- a description of the purpose of an HBA
- who to engage with
- how demand and capacity assessments should be prepared and what evidence it should consider
- how to assess sufficiency of development capacity.

This HBA guidance currently focuses on the sections of subpart 5 on conducting housing assessments, which are due by 31 July 2021. This includes general aspects covered by clauses 3.19 and 3.22, and clauses 3.23 to 3.27 that specifically relate to housing assessments.

Guidance will be updated to cover the requirements for business land assessments (clauses 3.28 to 3.30) at a later date.

1.3 Objectives

HBAs are designed to provide local authorities with a robust evidence base for housing and business land markets, to inform plans, planning decisions, and related strategies (such as Future Development Strategies (FDSs)). The NPS-UD states where and how the HBA evidence should be used, including:

- informing long-term plans and infrastructure plans
- improving the quality and timing of evidence supporting planning decisions
- more explicit requirements to use this evidence in section 32 (Resource Management Act 1991 (RMA)) reporting.

Local authorities are not required to develop and maintain in-house capability for HBA assessment and modelling, but it is recommended, as it allows HBA and monitoring evidence (clause 3.9) to be more easily used for evaluating and updating council plans and policies. This in turn supports more responsive planning decisions and helps ensure development capacity (supply) stays ahead of demand.

Many of the NPS-UD objectives and policies are supported by the production and continual use of evidence from HBAs, as outlined below.

Objective 1: New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and in the future.

The assessments required for producing an HBA, particularly the demand assessments for clause 3.23, contribute to evaluating and monitoring well-functioning urban environments.

Objective 2: Planning decisions improve housing affordability by supporting competitive land and development markets.

Ensuring sufficient development capacity helps keep urban environments affordable and competitive. HBAs contribute to objective 2 by quantifying the future development capacity for expected housing demand by type and location, which informs housing bottom lines (clause 3.6). Competitive margins are added to demand forecasts to enable more competitive land and development markets, giving an overall housing bottom line (clause 3.6). Market indicators must be used to analyse how planning and infrastructure decisions support housing affordability for different community groups and provide for competitive housing markets. Clause 3.27(3) also requires that any undersupply of development capacity (and the reasons for this) are identified, so they can be addressed.

Objective 6: 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.

Objective 7: Local authorities have robust and frequently updated information about their urban environments and use it to inform planning decisions.

Objectives 6 and 7 are supported by the detailed modelling of housing demand and supply that is included in HBAs. This modelling needs to project housing demand over time, by both type and location; supply is estimated by assessing the commercial feasibility and expected realisation of development capacity. HBAs are updated every three years to support well-informed and timely planning decisions, which ultimately seek to achieve competitive markets and improved housing affordability.

2 Key changes from the National Policy Statement on Urban Development Capacity

Subpart 5 includes many amended policies from the National Policy Statement on Urban Development Capacity (NPS-UDC), making them clearer and providing more specific direction. The [NPS-UDC guidance](#) applies to a number of National Policy Statement on Urban Development (NPS-UD) policies, and should be read alongside this guidance. Key policy changes for Housing and Business Development Capacity Assessments (HBAs) (subpart 5) are shown in table 1.

Table 1: Key changes for the NPS-UD

NPS-UD clause	New element to HBA under the NPS-UD	Reason for the change
3.19(1) & 3.20(1)(b)	HBAs must be completed in time to inform long-term plans (LTPs).	To integrate evidence across wider local government decision-making processes.
3.21	Direction that local authorities must engage with development sector, providers of infrastructure, and others with important information.	To provide a stronger evidence base by engaging with stakeholders with relevant information.
3.22	The 20% and 15% take-up margins in the NPS-UDC are repurposed to support competitiveness.	To make land markets more competitive, based on British example in which a margin is applied to increase choice and competition in land markets by ensuring a generous supply of land. (Paragraph 73, National Policy Planning Framework 2019)
3.23	An analysis of how planning and infrastructure decisions impact the competitiveness and affordability of the local housing market for different community groups and types of housing.	To provide local authorities with evidence on how well the local housing market meets the current and future needs of diverse communities, especially for those in need. The intent is that this analysis shows where and why development capacity is needed, and can inform a wide range of council policies.
3.24(1), 3.25(2), 3.27(2)	Requirement to assess demand, development capacity, and sufficiency of capacity by type and location.	More granular information can help local authorities ensure they don't unreasonably constrain development from meeting demand for particular types of homes and in particular locations.
3.24(5)	A range of demand projections must be produced, with the most likely projection identified for each of the short, medium, and long terms. Assumptions, reasons for projections and the most likely projection to be set out.	To improve the accuracy, robustness and transparency of the demand assessment and create alignment with Local Government Act 2002 (LGA) projection requirements for planning and infrastructure strategies.
3.25(1)(c)	Housing development capacity has had <i>reasonably expected to be realised</i> added to its definition, instead of <i>rate of take up</i> .	To provide more direction and scope for quantifying a more realistic supply of development capacity, rather than establishing a precise rate of take up.

NPS-UD clause	New element to HBA under the NPS-UD	Reason for the change
3.25(1)(c) & 3.26	Feasibility estimates of housing development capacity based on the current relationship between costs and prices, with flexibility to alter this relationship for long-term feasibility.	To recognise the uncertainty of prices in longer term forecasting. 'Reasonable adjustments' can be made to the current housing cost/price relationship; for example, to reflect council investments in amenity, infrastructure or building technologies.
3.26	Options and examples to calculate housing development capacity that is <i>feasible</i> and <i>reasonably expected to be realised</i> , and ensuring transparency of methods, inputs, and assumptions.	To provide greater direction, flexibility and transparency when calculating housing development. The intent is to err on the higher side of realistic supply, to avoid an undersupply of development capacity.
3.27(3), 3.30(3), 3.7	Identify any insufficient development capacity, and its cause, and notify the Minister for the Environment of the insufficiency.	To encourage central and local government collaboration where insufficiency is identified, and to ensure HBAs can be translated into actionable responses in district plans, LTPs or other interventions.
3.6	<i>Housing bottom lines</i> replace minimum <i>targets</i> in regional policy statements (RPSs) and district plans, and should be inserted as soon as practicable after the HBA has been published, without a Schedule 1 process.	To ensure planning decisions provide the development capacity required to meet HBA demand projections and support competitive markets by ensuring there is at least a minimum provision of supply, and encouraging supply beyond this minimum bottom line as needed.
3.11(b)(i)	Use evidence from HBAs to assess the impact of different regulatory and non-regulatory options for urban development, and their contribution to well-functioning urban environments.	To ensure the evidence created through the HBAs is used to help understand and achieve well-functioning urban environments.

3 Subpart 5's interaction with subparts 1 and 3

Subpart 5 is integral to the implementation of subpart 1 – *Providing development capacity*, and subpart 3 – *Evidence-based decision-making*. Subparts 1, 3 and 5 should be read together, as they support each other's requirements.

3.1 How subpart 1 informs subpart 5

Subpart 1 informs subpart 5 through:

- Clause 3.4 – *Meaning of plan-enabled and Infrastructure-ready* informs clause 3.25 – *Housing development capacity assessment*. Clause 3.4 defines *plan-enabled and infrastructure-ready* which must be used when fulfilling housing development capacity assessments under clause 3.25.
- Clause 3.2 – *Sufficient development capacity for housing* informs clause 3.27 – *Assessment of sufficient development capacity for housing*. Clause 3.2 defines sufficiency, which must be used when assessing sufficiency under clause 3.27.

3.2 How subpart 5 informs subparts 1 and 3

Subpart 5 informs requirements under subparts 1 and 3 through:

- Clause 3.24 – *Housing Demand Assessment*, informing clause 3.6 – *Housing Bottom Lines, for tier 1 and 2 urban environments*. The identified demand plus competitiveness margin must be inserted into district plans and regional policy statements as housing bottom lines.
- Clause 3.27 – *Assessment of sufficiency to development capacity for housing* informs clause 3.7 – *when there is insufficient development capacity*. Where insufficiency is identified through analysis of sufficiency under clauses 3.27 or 3.30, local authorities must give effect to clause 3.7. If evidence from the Housing and Business Development Capacity Assessments (HBA) suggests insufficiency is due to planning documents, subclause 3.7(1)(b) will require that planning documents are amended to increase development capacity as soon as practicable. Other options for increasing or enabling development capacity (as per subclause 3.7(1)(c)) should also be considered.
- All of subpart 5 informs clause 3.11 – *using evidence and analysis*, as subpart 3 now requires evidence from the HBA to be used when assessing the impact of regulatory and non-regulatory options for urban development.

4 Timing of HBAs

Objective 6(a) of the National Policy Statement on Urban Development (NPS-UD) requires local authorities to integrate urban development decision-making with infrastructure planning and funding. Quality evidence must be available to integrate the relevant decision-making processes. This section provides more information on timing requirements for the Housing and Business Development Capacity Assessment (HBA) to inform other planning processes.

4.1 Informing long-term plans (clauses 3.19 & 3.20)

Clause 3.19 and 3.20 outline the obligation and purpose of the HBA under the NPS-UD. These provisions have the same intent as the National Policy Statement on Urban Development Capacity's (NPS-UDC's) HBA, but a key shift of the purpose is to use the HBA to inform local authorities' long-term plans. The two policies in the NPS-UD that show the shift in purpose are paraphrased below.

3.19(1) – Every tier 1 and tier 2 local authority must prepare... an HBA for its tier 1 or tier 2 urban environments every 3 years, in time to inform the relevant authority's next long-term plan.

3.20(1)(b) – The purpose of an HBA is to... inform RMA planning documents, FDSs, and long-term plans.

The purpose has been adjusted to integrate evidence across planning decisions. This is important because the NPS-UD (under the Resource Management Act 1991 (RMA)) and long-term plans (LTPs) (produced under the Local Government Act 2002 (LGA)) can be used together to ensure available funding and infrastructure to address any insufficient development capacity for housing or business land.

4.2 Publishing the HBA

Table 2: Timing requirements of the NPS-UD from Part 4.1(2)

Local authority	Subject	National Policy Statement provisions	By when
Tier 1 only	Intensification	Policies 3 and 4 (<i>see</i> Part 3 subpart 6)	Not later than 2 years after commencement data
Tier 2 only	Intensification	Policy 5	Not later than 2 years after commencement data
Tiers 1 and 2	First FDS made publicly available after commencement date	Policy 2 (<i>see</i> Part 3 subpart 4)	In time to inform the 2024 long-term plan
Tiers 1 and 2	HBA so far as it relates to housing	Policy 2 (<i>see</i> Part 3 subpart 5)	By 31 July 2021
Tiers 1 and 2	HBA relating to both housing and business land	Policy 2 (<i>see</i> Part 3 subpart 5)	In time to inform the 2024 long-term plan
Tiers 1, 2, and 3	Car parking	Policy 11(a) (<i>see</i> clause 3.38)	Not later than 18 months after commencement date

Information gathered for the HBA should be used to inform the FDS process, and the documents may be published at the same time. When using third parties for HBAs, local authorities should consider a schedule of deliverables that will allow the information to be incorporated into FDS development.

The next HBA must be published as soon as possible before 31 July 2021. Local authorities are only required to update the housing part of the assessment at this time and may choose to leave the business assessment to include in a complete HBA informing the 2024 long-term plan. Complete HBAs must be prepared every three years, in time to inform long-term plan cycles.

5 Involving the development sector (clause 3.21)

The primary purpose of clause 3.21 (and partly 3.26) is to provide real-world evidence and contribute to the quality of a Housing and Business Development Capacity Assessment (HBA). This is particularly important for understanding potential development outcomes and supporting aspects of the HBA such as calculating *feasible* development capacity and assessing the amount that is *reasonably expected to be realised*.

Clause 3.21 does not require a specific consultation process such as under section 82 of the Local Government Act 2002 (LGA); local authorities will determine the best engagement process to inform their HBA. These provisions are designed to encourage local authorities to actively seek expert technical information in preparing their HBA, to ensure they have the best information available. Additional guidance for each subclause of 3.21 is provided below. It is important to note the examples only show a few options, and local authorities are encouraged to engage with all stakeholders who can contribute meaningfully to the HBA.

5.1 Engaging with development experts (clause 3.21(1)(a))

Example 1 shows the approach used by Dunedin City Council (DCC) when engaging the development sector on HBAs.

Example 1: Dunedin City Council engages with the development sector

DCC was able to model more accurate estimates of feasible development capacity by engaging with developers regarding actual development rates.

After emails and face-to-face meetings with developers, there were two key insights. The first insight was that two-bedroom dwellings were not feasible to develop in the standard residential zone (GR1). Secondly, DCC were able to attain a more precise understanding of how to calculate greenfield yields.

These two insights enabled the feasible development capacity model to better reflect market conditions. More information on this method can be found in DCC's 2019 HBA.

5.2 Providers of development infrastructure and additional infrastructure (clause 3.21(1)(b))

Infrastructure providers will vary between local authorities and will include any provider that a local authority considers important to shaping or facilitating urban development. Some examples of infrastructure providers identified in prior HBAs were education, healthcare, power and gas, internet and telecommunication and transportation.

5.3 Engaging other information holders (clause 3.21(1)(c))

Clause 3.21(1)(c) also requires that local authorities consult with “anyone else who has information that may materially affect the calculation of the development capacity”. This includes a wide range of people, such as large landholders, group housing providers (eg, student housing or retirement villages), seasonal accommodation providers (eg, for tourism or labourer hostels), or community housing providers. Relevant groups will be specific to each local authority. Example 2 outlines the engagement commissioned by Tauranga City Council (TCC) with large greenfield landholders.

Example 2: Tauranga’s engagement with greenfield developers and landowners

In 2019, Tauranga City Council commissioned Veros Property Services (Veros) to independently review residential development capacity, as developers and council staff believed Tauranga had insufficient development capacity to meet demand.

As part of the review, Veros contacted large greenfield landholders (considered those that could provide 20+ dwelling capacity) to discuss their development intentions, including whether they planned to develop in the near future. This information was used to better inform greenfield capacity estimates.

Many of these landholders were already part of the SmartGrowth Development Forum, which made it easier to speak about future development. The intentions of landholders were added to a database of resource consents and estimated yields.

When Veros modelled residential development capacity using landholder intentions, they found a shortfall of capacity due to the idiosyncratic preferences of landholders.

6 Competitiveness margin (clause 3.22)

Clause 3.22 outlines the requirements for using *competitiveness margin*, paraphrased as:

3.22(1) – A competitiveness margin is a margin of development capacity, over and above the expected demand that... is required in order to support choice and competitiveness in housing and business land markets.

The 20 per cent margins on expected demand for the short and medium terms and 15 per cent margins for the long term have been carried through from the National Policy Statement on Urban Development Capacity (NPS-UDC), with the National Policy Statement on Urban Development (NPS-UD) modifying the margins applied, to allow for more choice and competitiveness in land markets. In practice, this means applying the margins as an excess of the demand modelled.

The NPS-UD clarifies that the assessment of what is *reasonably expected to be realised* should be performed as a separate process with *competitiveness margins* added on top. This clarification ensures the margins can be dedicated to increasing development capacity, which helps ensure enough supply is available to provide for more choice in the market. The application of margins mainly relates to the requirements for assessing sufficiency in clause 3.27, discussed in section 11.

7 Analysing the impacts of planning (clause 3.23)

This policy directs local authorities to analyse a range of housing market indicators, to increase their awareness of the effects of planning and infrastructure decisions. Two high-level pieces of analysis are required by this clause; the first focuses on how planning decisions and infrastructure affect the affordability and competitiveness of the local housing market (clause 3.23(1)); the second focuses on understanding how well the housing demands of different community groups are met by planning and infrastructure decisions (clause 3.23(2)).

Local authorities have discretion over the depth of analysis, but should consider that later sections of the Housing and Business Development Capacity Assessment (HBA) will be informed by the results. Clause 3.23(1) will help inform critical aspects of *plan-enabled* and *infrastructure-ready* capacity in clause 3.25; while clause 3.23(2) will add to the understanding of housing demand by subgroups in clause 3.24. The following section provides frameworks for the different analysis that can meet this policy requirement.

7.1 Planning decisions and infrastructure provision (clause 3.23(1))

Clause 3.23(1) requires local authorities to acquire a better understanding of the impacts of planning and infrastructure on the housing market. Local authorities can use a variety of methods and information sources to ensure the foundation is properly set for the more detailed analyses required later. There are two main parts required for this clause; the first is to analyse affordability, the second to consider competitiveness.

7.1.1 Affordability

No single indicator can be used to assess housing affordability; a number of indicators are needed to analyse and monitor affordability trends. These can include basic ratios (eg, mean household income/mean house price) or indicators like the housing affordability measure (percentage of households spending 30 per cent or more of disposable income on housing) to gain initial insights into affordability. These affordability indicators are already provided for local authorities through the Ministry of Housing and Urban Development's (HUD's) [urban development dashboard](#), under market indicators.

To meet this requirement under the National Policy Statement on Urban Development (NPS-UD), local authorities should use more complex methods to understand affordability in their local context (eg, affordability models accounting for catchments and subgroups, type and size of dwellings, number of earners in households, or total household size). The needs of different groups should be incorporated to meet the clause 3.23 requirements, and the methodology reasoning should be explained as part of the HBA and its insights regarding planning decisions.

7.1.1.1 Example of affordability and planning linkage

At a high level, tracking affordability and capacity will give authorities a better understanding of the links between planning, infrastructure and affordability outcomes. Below is a hypothetical example of how a local authority might use planning and capacity assessments to understand issues of affordability.

Example 3: Linking affordability, planning and infrastructure

A local authority has five sub-areas they are assessing for their HBA. The authority finds that three are performing well for affordability, but two areas are not. They review the capacity and housing demand portions of their research, and discover that the first unaffordable area has doesn't have enough infrastructure to meet the desired development capacity. The second area has sufficient infrastructure, but building density limits are constraining the supply of high-demand attached units and apartments in the area.

Having assumed the affordability issues are linked to different capacity constraints, the local authority may amend plans to allow infrastructure expansion in the first unaffordable area, and increased density in the second.

7.1.2 Competitiveness

Competitive broadly means there is a sufficient supply of alternatives and opportunities for development, with the result that land prices are not artificially inflated through scarcity.

HUD's [dashboard](#) provides four price efficiency indicators to help local authorities in their HBA assessments. Three are directly related to housing and residential land, and the fourth uses residential land as one of the modelling components. All four can assist local authorities in understanding competitiveness of their land markets. Note that these indicators are not the only information source that should be used, and local authorities are encouraged to build on these or create new assessments to fit their specific circumstances.

7.1.2.1 Using price efficiency indicators

More detailed guidance for using these indicators, including methodologies for how they were created and how they can be interpreted, is available through the [NPS-UDC guidance](#). Information in table 3 is taken from the summary table on page 131 of the guidance.

Table 3: Price efficiency indicators

Indicator	What it tells you	Description
1 Price-cost ratio (for homes)	A general indicator of the extent to which the costs of land or construction have been contributing to the prices of homes. This signals if there is a shortage of sections and development opportunities relative to demand.	House prices are compared to construction costs to estimate how much of the remaining price is driven by the cost of land (infrastructure-serviced sections) and whether this proportion is changing over time.
2 Land ownership concentration indicators (for residential land)	Whether the market for new developable residential land is dominated by a few owners (who could significantly affect development opportunities and/or land prices).	Quantifies the amount of undeveloped residentially zoned urban land and how ownership of this is distributed across different land owners.

Indicator	What it tells you	Description
3 Rural-urban differential (residential)	The impact on the value of urban sections at the edge of the city, of current land use regulations that constrain urban residential development capacity. Whether plans have been providing sufficient urban development capacity for homes	The modelled ratio and per square metre dollar difference between the values of all similar residential land parcels 2 kilometres either side of the boundary between urban and non-urban zones after major explainable other factors that affect different land values have been removed.
4 Industrial zone differential	Whether zoning at specific locations matches current relative demands for different land uses. More expensive land uses may be more capacity constrained than cheaper land uses. A starting point for considering rezoning between uses.	Compares the values of properties 250 metres either side of the boundary between an industrial zone and other zones. These include commercial, residential or rural land.

With respect to competitiveness, the price-cost ratios and rural-urban differentials can be helpful starting points for assessing the aggregate conditions of urban environments. They can show when planning or infrastructure is constraining development and potentially contributing to land price inflation. Neither indicator offers a granular assessment of the urban environment.

Land ownership concentration indicators might show where a few large land owners are land banking and potentially impacting land price and development potential; in this case, authorities may need to provide development capacity elsewhere or consider how to introduce competition for future zones.

The industrial zoning differentials can show how the price of residential-zoned land relates to that of other zoning categories. If the residentially zoned properties have a notably higher price, this may indicate pressure for more residentially zoned land and the potential insufficient capacity. This indicator is limited by the fact that industrial-zoned land is used as the basis for comparison. Information for locations without industrial land is not available.

7.1.2.2 Creating more detailed indicators

While these indicators can help local authorities understand capacity and competitiveness issues at a higher level, more detailed assessments may be required to understand competitiveness in the locations identified for the HBAs in clause 3.25(2). Local authorities can choose to create new indicators or build on the methods provided in the [technical guidance](#). For instance, local authorities could build on the methodologies by adding parameters specific to their urban environment, making the results more fit for purpose. Another option is to apply the methods to sub areas of the region to create more granular information that better fits the locations chosen for the HBAs.

7.2 Analysis of housing demand by Māori and other groups (clause 3.23(2))

Assessing demand from Māori for housing is required in clause 3.23(2). As there is wide variability between local authorities, their partnership with local Māori, and requirements under existing plans and strategies, local authorities will need to determine the best methods for assessing and monitoring Māori housing demand. Guidance to assist with this section is currently being developed.

Other groups should also be identified to satisfy clause 3.23(2). Population and cultural composition can vary widely between local authorities, and it can be helpful to do an initial population assessment to identify primary groups of interest for housing demand. As part of this assessment, it is important to be aware of existing plans or strategies (eg, pensioner housing strategies) that may influence future housing options. An example from Dunedin City Council (DCC) highlights one method of using household types as subgroups to assess demand.

Example 4: Dunedin City Council quantification of demand by household type

The following information was taken from DCC's 2019 HBA. DCC chose to separate the population into household type subgroups. The first step to assess demand was to use results from a prior survey on housing choice to determine what type of dwelling was preferred by each group.

Table 4: Dwelling type preferences by household type¹⁷

Preferred dwelling type	Single	Couple	Single + Children	Couple + Children	Flatting households	Other
Standalone house	61%	79%	94%	93%	79%	96%
Townhouse/terraced house	18%	11%	2%	3%	8%	4%
Apartment	4%	4%	2%	3%	0%	0%
Flat ¹⁸	16%	5%	2%	1%	11%	0%
Other	2%	1%	0%	1%	3%	0%

Population projects were performed that considered the changes in broad age groups. The projected change in age group composition allowed DCC to refine the assumptions for likely future household compositions.

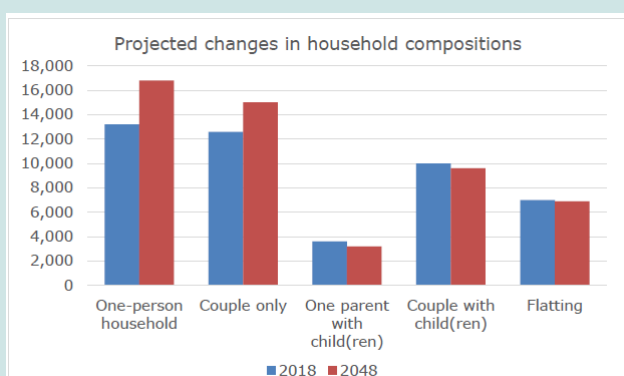


Figure 7: Projected changes in household composition

By applying the dwelling type ratios to the household projections, DCC was able to quantify the expected demand for future dwellings.

Table 6: Projected urban area dwelling demand

	2021	2023	2028	2038	2048
Standalone house	850	1,200	1,900	3,100	4,050
Attached units	450	550	950	1,550	2,150
Total	1,300	1,750	2,850	4,650	6,200

8 Assessments by location and type (clauses 3.24 (1), 3.25(2) and 3.27(2))

As well as analysing different demographics, the National Policy Statement on Urban Development (NPS-UD) has added requirements that local authorities use greater detail when assessing demand (clause 3.24), supply (clause 3.25), and capacity (clause 3.27). This includes having more granularity on different locations in the urban environments, and dwelling types. These additions were made as having sufficient capacity at the aggregate level does not guarantee that demand for different types of housing in subareas will be met. Taking a more detailed approach helps ensure that the types of homes developed can better match the demand for a given location.

8.1 Choosing location and types

Local authorities have discretion to choose how locations are identified for clauses 3.24 and 3.25, but should consider how the chosen locations complement other planning and strategy documents. Local authorities also have flexibility in choosing dwelling types (clause 3.24(3)) and must at a minimum “distinguish between standalone dwellings and attached dwellings”. When choosing housing types, the demands of the groups identified in clause 3.23(2) should be considered.

To satisfy subclause 3.27(2) for assessing sufficient development capacity, local authorities must compare the demand from clause 3.24 (plus competitive margins) with the supply from clause 3.25. For this comparison, it is important that local authorities retain a level of consistency between the granularities in outputs from the methods used for the two assessments.

9 Housing demand assessment (clause 3.24(5))

Clause 3.24 outlines the requirements of a housing demand assessment, and clause 3.24(5) introduces new requirements for modelling demand. Local authorities must create a range of demand projections, identify the most likely projection, and provide assumptions and justification of why they have identified this as the most likely projection. This new requirement is similar to the Local Government Act 2002 (LGA) sections on long-term planning, and allow local authorities to use the same projections for a broader range of purposes. These changes are intended to provide a more robust, comprehensive and transparent analysis of future housing demand.

9.1 Identifying and justifying the most likely projection (clauses 3.24(5)(b & c))

There are a number of important factors that must be considered when identifying the most likely demand projection for each time horizon. This includes producing models using the best and most current data available, or comparing projections from a number of providers (Infometrics, Stats NZ, academic research, etc) to establish projection ranges and find the best fitting scenario.

It is important to remain as objective as possible while selecting and justifying the preferred projections. Local authorities should avoid selecting projections based on desired or ambitious outcomes. At a high level, the best selection will have a well-reasoned explanation based on sound assumptions, be supported by the most up-to-date evidence, and consider both negative and positive growth pressures for a given area.

Another important part of demand projection is ensuring that the projection models used, and growth scenario selected, are not constrained by factors in the development capacity assessment in clauses 3.25 and 3.26. The Housing and Business Development Capacity Assessment (HBA) is designed to assess demand and supply separately, and compare the results of assessing sufficiency in clause 3.27. If demand is greater than supply, then the HBA will identify insufficiency, and mechanisms to address the insufficiency of development capacity in the National Policy Statement on Urban Development (NPS-UD) come into effect for clause 3.7.

9.2 Additional information for demand assessment

Additional information for local authorities to consider when conducting the housing demand assessment includes:

- There is no set number of demand projections required. The expectation is for a low-, medium-, and high-growth projection as a minimum. If more projections are useful then local authorities are encouraged to produce more.
- At a minimum, demand models must distinguish between standalone and attached dwellings.
- Providers other than Stats NZ can be used to produce demand projections.

- Demand projections can be developed that incorporate requirements for other strategies and planning documents, such as those informing the long-term plan, to allow for application beyond the HBA.

Guidance for how to estimate demand was produced for the NPS-UDC in parts 2 and 3 of the [evidence and monitoring guidance](#).

10 Capacity assessments (clauses 3.25 and 3.26)

Clause 3.25 outlines the requirements for capacity assessments. There have been two key changes to these assessment requirements under the National Policy Statement on Urban Development (NPS-UD). The first is change is to the definition of *feasible*, which now allows for “reasonable adjustments to the relationship” of costs and revenue in the long term. The second change is the replacement of *take up* with *reasonably expected to be realised* in the definition of development capacity.

Although there have been changes, much of the National Policy Statement on Urban Development Capacity (NPS-UDC), the [evidence and monitoring guidance](#) is still relevant to assessing capacity and for understanding the following sections. The rest of the section presents more information on clause 3.25 and highlights new requirements with examples from 3.26.

10.1 Plan-enabled, infrastructure-ready (clause 3.25(1)(a–b))

The NPS-UD retains many aspects of the NPS-UDC’s guidance on development capacity, particularly the layering of the four areas of development capacity. The main change is to the last area of capacity, *take up*. This has been replaced with *reasonably expected to be realised*. The clause is paraphrased below:

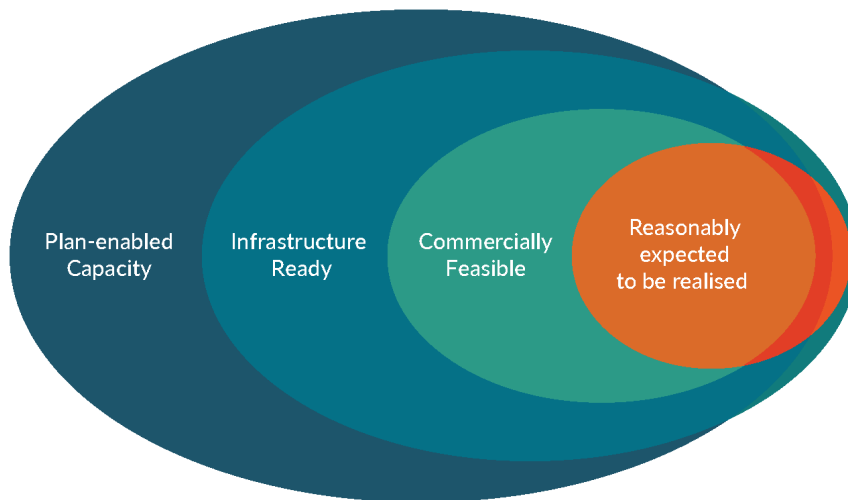
3.25(1) – Every HBA must quantify, for the short term, medium term, and long term, the housing development capacity for housing in the region and each constituent district of the tier 1 or tier 2 urban environment that is: ...

c) plan-enabled, infrastructure-ready, and feasible and reasonably expected to be realised.

The relationship between the four aspects of development capacity in clause 3.25 is shown in figure 1. Note that the figure is not to scale and is used only to illustrate how these aspects relate.

The first aspect, *plan-enabled capacity*, is the largest circle in the diagram, as it includes all land zoned or set aside for housing without accounting for any constraints. Clause 3.4(1) of the NPS-UD should be used to identify plan-enabled areas. The areas that can be considered plan-enabled depends on the timeframe involved. For the short term, only areas in an operative district plan are considered *plan-enabled* (subclause 3.4(1)(a)). The medium term allows for areas in either the operative or proposed district plan to be considered *plan-enabled* (subclause 3.4(1)(b)). The long term can be in an operative or proposed district plan, or indicated as future urban use or urban intensification in a Future Development Strategy (FDS) or other relevant plans or strategies.

Figure 1: Development capacity model



Only some of that land considered *plan-enabled capacity* will be *infrastructure ready*, as shown in figure 1, and some may also fall outside of the plan-enabled land (eg, intensification in single dwelling zone).

In the NPS-UD, *infrastructure ready* in the short term is defined as having adequate development infrastructure to support development of the land (subclause 3.4(3)(a)). In the medium term, *infrastructure ready* means either having adequate development infrastructure or having funding for adequate infrastructure identified in a long-term plan (subclause 3.4(3)(b)). For the long term, either the above definitions apply or when development infrastructure to support development capacity is identified in the infrastructure strategy (subclause 3.4(3)(c)).

10.2 Commercially feasible (clause 3.25(1)(c))

Of the development capacity that is also *infrastructure ready*, only some of that capacity is likely to be commercially *feasible*. As with the NPS-UDC, the assumption is that not all plan-enabled development capacity would be assessed as *feasible* to a developer, and it is less likely to occur outside of plan-enabled areas. The primary difference is to assess feasibility using the new definition outlined below.

10.2.1 Change in definition of feasible

The new definition for feasible in the NPS-UD is:

feasible means:

- a) for the short term or medium term, commercially viable to a developer based on the current relationship between costs and revenue
- b) for the long term, commercially viable to a developer based on the current relationship between costs and revenue, or on any reasonable adjustment to that relationship

As with the NPS-UDC, feasibility is from the perspective of what would be viable to a developer. The assessment will still compare the costs and revenue that would be faced by a developer, including costs of the physical development and external costs such as development contributions.

However, the NPS-UD aims to create a balance between realistic and prudent assessments of commercial viability across time, by focusing on the current relationship between costs and revenue for the short and medium term, while allowing for “reasonable adjustments” to the relationship in the long term. This recognises prices can change over time, and sets out to achieve conservative estimates of viable development capacity for the short and medium term by keeping the relationship constant. This avoids the assumption that near-term sales prices will rise and automatically create feasible development capacity.

For longer term estimates of commercial viability, “reasonable adjustments” can be made to the current relationship of costs and revenue to reflect changes in factors such as council investments in amenity, infrastructure, or building technologies. These adjustments should be supported with evidence that changes to the influencing factors are likely to occur (eg, changes are documented in plan or strategy), and to what extent the changes will affect the relationship between cost and revenue of development (eg, revenue may increase 5 per cent relative to cost) based on analysis or research.

10.3 Reasonably expected to be realised (clause 3.25(1)(c))

The last aspect *reasonably expected to be realised* builds on the aspect of *take up* from the NPS-UDC. Both aspects assume that not all commercially feasible areas will be fully developed or reach their maximum potential density. Both also acknowledge the possibility that some development may fall outside areas enabled by the district plan (ie, resulting from a private plan change or non-complying or discretionary consent).

Using what is *reasonably expected to be realised* means realistic supply assessments fall on the conservative side, and avoids an undersupply of development capacity. This is accomplished through a better understanding of ownership, developer intentions, and the timing and staging of development that will complement the quantitative analysis. It provides a wider view of the market, improves planning’s responsiveness to demand, and leads to a more competitive market. Example 5 illustrates the difference from the NPS-UDC:

Example 5 Reasonably expected to be realised

As a hypothetical example, to begin the assessment of development that is “reasonably expected to be realised” for the NPS-UD, a council has performed a similar quantitative analysis of building consent trends to determine “take up” as was used for the NPS-UDC. However, after incorporating the findings of landholder and developer intentions (as recommended by the NPS-UD), the council found that the amount of feasible development capacity that is “reasonably expected to be realised” in the short and medium terms was reduced by 40 per cent. In other words, they will need to enable at least an additional 40 per cent more feasible capacity than was required under the NPS-UDC, to achieve the same final amount of development capacity. This idea builds on that shown in figure 2 discussing sufficiency under clause 3.27.

10.4 Examples for estimating feasible and reasonably expected to be realised (clause 3.26)

Clauses 3.26(1) and (2) give examples of assessing and calculating development capacity that is feasible and reasonably expected to be realised. As for the NPS-UDC, the use of land owners' and developers' intentions may complement any quantitative analysis performed, though the NPS-UD offers local authorities more discretion over their methodologies used under clause 3.26(1). Note that these are only examples, and local authorities are encouraged to use any appropriate alternatives, as long as they "outline and justify the methods, inputs, and assumptions used to arrive at the estimates" according to clause 3.26(1)(b).

The bullet points below show the council HBA that each clause's methodology was based on:

- 3.26(2)(a) – [Wellington City Council \(WCC\)](#)
- 3.26(2)(b) – [Tauranga City Council \(TCC\)](#)
- 3.26(2)(c) – [Dunedin City Council \(DCC\)](#)
- 3.26(3)(a–b) – [Palmerston North City Council \(PNCC\)](#).

10.4.1 Wellington City Council (clause 3.26(2)(a))

Below is WCC's methodology as outlined in the NPS-UD.

3.26(2)(a) – separately estimate the number of feasible dwellings (using a feasibility model) and the number of dwellings that can reasonably be expected to be realised (using building consents data on the number of sites and extent of allowed capacity that has been previously developed), for the short, medium and long term; compare the numbers of dwellings estimated by each method; then pick the lower of the numbers in each time period, to represent the amount of development capacity that is feasible and reasonably expected to be realised.

WCC did two exercises, complex feasibility modelling and analysis of building consent data. These two exercises produced development capacity figures. The two results were then compared, and the lower estimate was picked. [Appendix 1.3](#) outlines both the feasibility and realised work that was performed by Property Economics for [WCC's last HBA](#).

10.4.2 Tauranga City Council (clause 3.26(2)(b))

Below is TCC's methodology as outlined in the NPS-UD.

3.26(2)(b) – estimate the number of feasible dwellings or sites, and then assess the proportion of these that can reasonably be expected to be developed in the short, medium and long term, using information about landowner and developer intentions.

The policy outlines TCC's approach. The exercise was a bespoke, customised investigation into greenfield sites. The first step is calculating feasibility; guidance on calculating feasibility can be found in the NPS-UDC [evidence and monitoring guide](#). The second step involves engaging with developers and land owners to find out their intentions. Using this information, what is

reasonably expected to be realised as a portion of feasibility can be quantified. It is important to note that this method was only used for greenfield areas. The feasibility modelling for this was relatively simple, because it concluded all the capacity was feasible. The issue lay in the timing of when that development would be realised.

This wasn't an effective method in brownfield areas for Tauranga, because most of the new capacity is added in greenfield areas and there is currently little redevelopment in brownfield areas. This highlights the importance of subclause 3.26(4), which is about using appropriate methods for calculating different typology and location.

10.4.3 Dunedin City Council (clause 3.26(2)(c))

Below is DCC's methodology as outlined in the NPS-UD.

3.26(2)(c) – integrate information about past development trends and future landowner and developer intentions into the feasibility model, which could mean modifying assumptions about densities, heights, and timing of development.

The policy outlines DCC's methodology. This method for calculating *reasonably expected to be realised* capacity is only a one-step process. The normal feasibility modelling is done, but land owner and developer intentions are built into the model. An example from DCC's last HBA is:

Example 6 DCC residential zone development assumptions

Once the maximum floor space per site has been calculated, the model applies additional assumptions to ensure modelled developments are realistic. Properties within the inner-city residential zone are limited to three storeys, and other residential zones are limited to two storeys. While this is less than what is permitted under the District Plan, it reflects the scale of current development. This information was obtained through looking at historic building consent data.

This example shows that analysing building consent data can reveal information about development. In this case, only two and three storeys were actually being built, despite DCC's plan enabling more intensive development. This information was added to DCC's feasibility model, and better reflected capacity that was reasonably expected to be realised.

When using this method, it's important to be aware that assumptions in the model are based on current market conditions. For example, if certain zoning restrictions were removed, then the development market might respond by building up to four storeys. Therefore, when there are changes to planning rules, this method has issues because past data is not as reliable. This highlights the importance of talking with developers and updating the HBA every three years to account for changes in demand and supply.

10.4.4 Palmerston North City Council (clause 3.26(3)(a–b))

Below is PNCC’s methodology as outlined in the NPS-UD.

3.26(3)(a&b) – assess the number of dwellings that can reasonably be expected to be developed (using building consents data on the number of sites and extent of allowed capacity that has been developed previously), for the short, medium and long term; and then seek advice from the development sector about what factors affect the feasibility of development.

The policy outlines PNCC’s two-step approach. First, the amount of *reasonably expected to be realised* capacity is assessed using building consent data. Then feasibility can be factored in by collecting information from the development sector to determine what the applied (in practice) outcomes are, based on their judgement and experience. Information on this methodology can be found in sections 6.117 to 6.144 of [PNCC’s HBA](#).

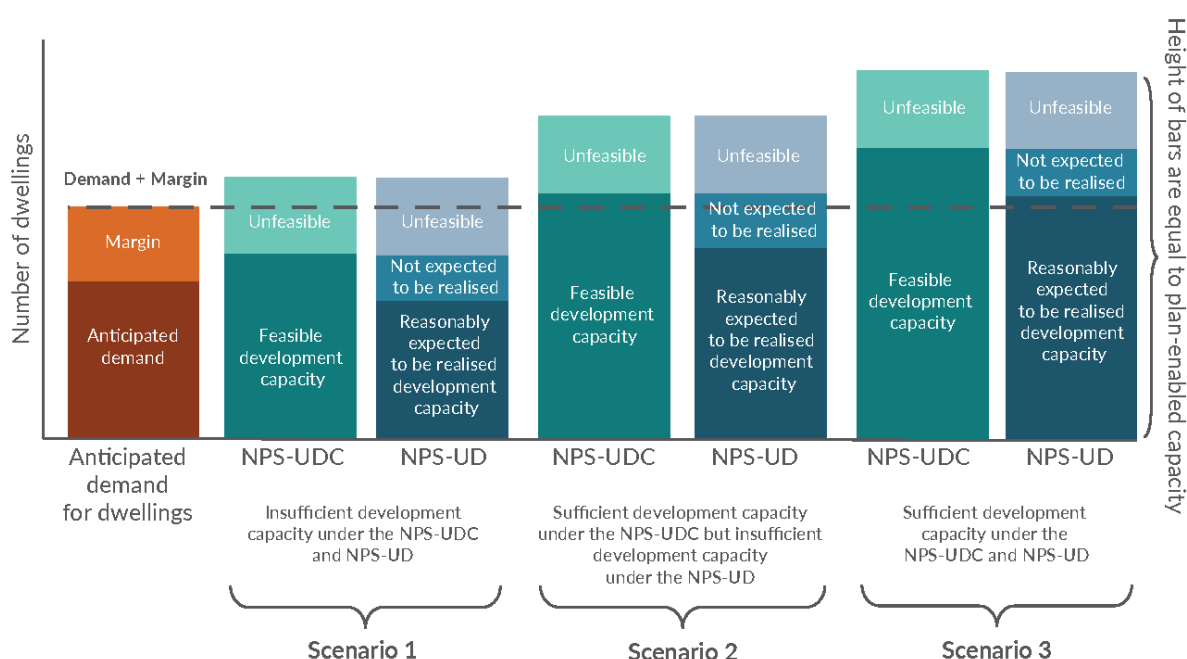
11 Assessment of sufficiency (clause 3.27)

Clause 3.27 outlines the requirements for calculating sufficiency, which primarily consists of combining the demand from clause 3.24 with the capacity identified in clause 3.25. These requirements have remained largely the same as those in the National Policy Statement on Urban Development Capacity (NPS-UDC), with changes to the use of competitiveness margin and “reasonably expected to be realised” development capacity. This section will discuss these requirements, with a worked example to provide a better understanding of how all the new policies fit together.

11.1 Sufficiency in the NPS-UDC vs the NPS-UD

Figure 2 shows the key differences between the National Policy Statement on Urban Development (NPS-UD) and the NPS-UDC relating to sufficiency calculation and the impacts of the reasonably expected to be realised requirement of development capacity.

Figure 2: Calculating sufficiency the NPS-UDC vs the NPS-UD



In Figure 2 there are three main scenarios. The most important one to focus on is scenario 2, which illustrates that although sufficiency would be met under the NPS-UDC, it would not be in the NPS-UD. This is because not all feasible land would be realised under the NPS-UD criteria. Scenario three shows that more plan-enabled and feasible land must be enabled to meet the at least sufficient requirement for the NPS-UD. The worked example below builds on Figure 2 by adding quantities to each of the scenarios to highlight the same message.

Worked example of Figure 2

A council has completed their housing demand assessment, and found that in the short term they need 100 new dwellings more than currently provided for in their district plan. Then they add the 20 per cent competitiveness margin to this number, which gives a demand plus margin result of 120. This council therefore needs to provide 120 dwellings worth of development capacity.

They have three development capacity scenarios (1, 2, 3).

In scenario 1 the council proposes enabling 140 new dwellings. Of these 110 are feasible, and 90 are feasible and reasonably expected to be realised. Under both the NPS-UDC ($90 < 120$) and NPS-UD ($110 < 120$) definitions there is insufficient development capacity.

In scenario 2 the council proposes 180 dwellings. Of these, 130 are feasible and 110 are feasible and reasonably expected to be realised. Under the NPS-UDC ($130 > 120$) there is sufficient development capacity but for the NPS-UD ($110 < 120$) there is insufficient capacity.

Scenario 3 proposes 200 dwellings, of which 160 are feasible, and 130 are feasible and reasonably expected to be realised. This shows that for sufficiency to be met under the NPS-UD there needs to be higher levels of plan-enabled capacity provided, as well as commercially feasible land that is infrastructure serviced or ready.

11.2 When insufficiencies are identified (clause 3.27(3))

In the event that any insufficiency is identified, the NPS-UD has added a new clause (3.27(3)), which requires the local authority to “Identify where and when this will occur and analyse the extent to which RMA planning documents, a lack of development infrastructure, or both, cause or contribute to the insufficiency”.

The first aspect of this is to identify when and where the insufficiency will happen. “When” is defined in terms of short, medium, and long term; all terms that will experience a shortfall should be addressed. “Where” means the location(s) (such as those determined for clauses 3.24(1) and 3.25(2)) that will experience shortfall. This should include some detail on the type (eg, attached dwellings), the quantity of shortfall, and ideally the community groups affected by the shortfall.

The second aspect deals with addressing how planning or lack of infrastructure contributes to the shortfall. This will require local authorities to assess how various Resource Management Act 1991 (RMA) planning documents and the provision of infrastructure contribute to constraints, and to determine the best options for creating capacity. Examples of constraints include an insufficient area for a type of zone or zone rules, such as minimum setbacks and impermeable surface limitations, which can hinder higher densities or infill. When faced with capacity shortfalls, such limitations could prompt a review of zone rules to help unlock capacity in existing residential area. Other local authorities may have capacity shortfalls due to insufficient suitable greenfield areas for new residential development; for instance, due to issues with slopes or liquefaction. These areas could be used for development by establishing building requirements that help mitigate risks for dwellings built in the zone.

12 Housing bottom lines (clause 3.6)

The assessment of housing sufficiency in clause 3.27 underpins creating housing bottom lines. Housing bottom lines in the National Policy Statement on Urban Development (NPS-UD) have replaced a set of targets from the National Policy Statement on Urban Development Capacity (NPS-UDC). The NPS-UD wording is intended to change perception of housing targets from a maximum or fixed amount required, to a bottom line of what is at minimum needed but more could be produced.

This is intended to function as both an accountability mechanism and a means for local authorities to be proactive in responding to projected demand and enabling supply. The new requirements are paraphrased below:

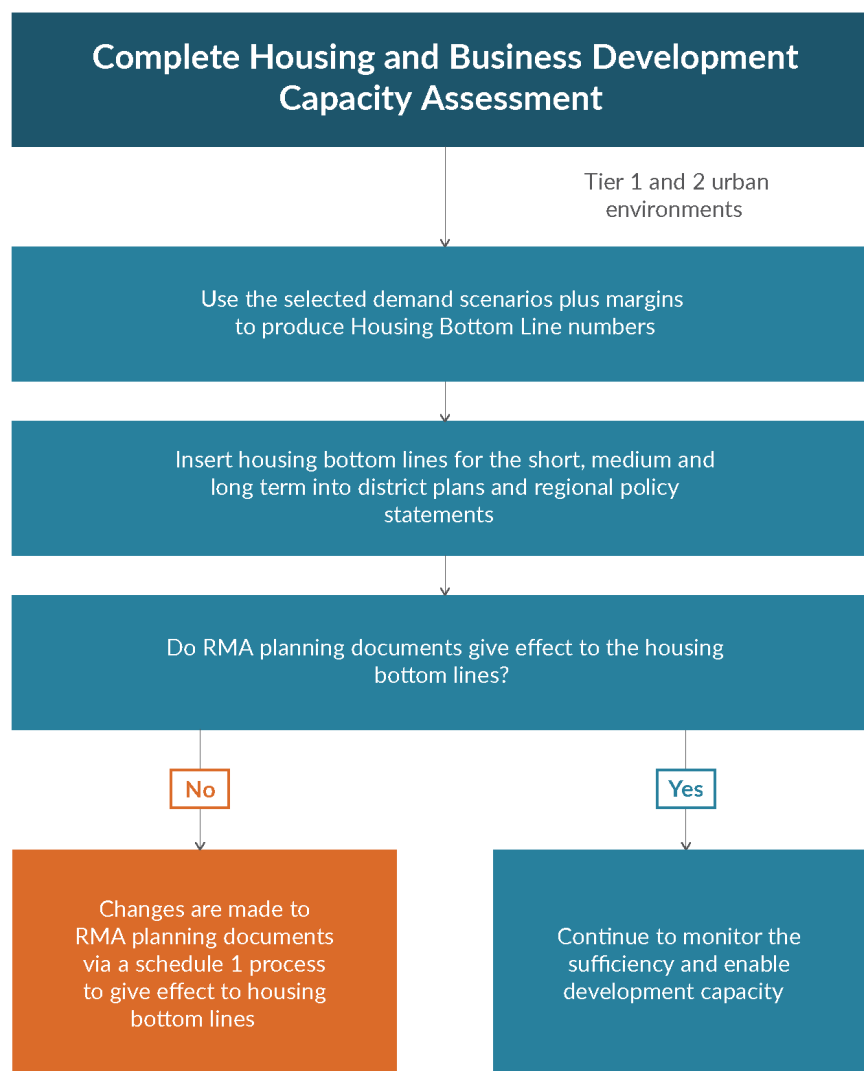
3.6(1) – The purpose of the housing bottom lines required by this clause is to clearly state the amount of development capacity that is sufficient to meet expected housing demand plus the appropriate competitiveness margin...

3.6(2) – For each tier 1 or tier 2 urban environment, as soon as practicable after an HBA is made publicly available, the relevant regional council or territorial authority must insert into its regional policy statement or district plan a housing bottom line for the short-medium, and long term.

These bottom lines ensure regional policy statements and district plans enable at least sufficient development. Including bottom lines ensures planning decisions account for the required minimum development capacity to meet demand, rather than a maximum target that may be aspirational and not achieved. Bottom lines are yet another opportunity for the HBA to integrate evidence across the planning space.

The implementation of this policy is fairly simple. On the following page, Figure 3 outlines the process of producing housing bottom lines.

Figure 3: Housing bottom lines



13 Informing well-functioning urban environments (clause 3.11(b))

Clause 3.11 sets out the requirement that local authorities:

3.11(b) ... use evidence, particularly any relevant HBAs, about land and development markets, and the results of the monitoring required by this National Policy Statement, to assess the impact of different regulatory and non-regulatory options for urban development and their contribution to:

- (i) achieving well-functioning urban environments ...

Policy 1 provides the minimum aspects of a well-functioning urban environment that local authorities must consider for clause 3.11(b)(i).

Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

- a) have or enable a variety of homes that:
 - (i) meet the needs, in terms of type, price, and location, of different households; and
 - (ii) enable Māori to express their cultural traditions and norms; and
- b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and
- 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
- d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and
- e) support reductions in greenhouse gas emissions; and
- f) are resilient to the likely current and future effects of climate change.

It is important to note that these are only the minimum aspects outlined by Policy 1 to ensure local authorities include adequate information about markets for housing and business land in their planning processes. Local authorities are encouraged to explore other aspects that may be important to their specific communities, and conduct additional research and analysis (beyond the Housing and Business Development Capacity Assessment (HBA) process) that may support well-functioning urban environments. Additional information on how the HBAs relate to each aspect of Policy 1 is presented in the following sections.

13.1 Policy 1(a)(i)

For this policy, clause 3.23 sets out the minimum requirements for household groups and market and price efficiency indicators to be analysed for planning. The housing sufficiency analysis process of the HBA will provide further evidence on the demand (clause 3.24), capacity (clause 3.25), and sufficiency (clauses 3.26 and 3.27) for the variety of homes needed to create a well-functioning urban environment. These sections will be supported by the assessment of market indicators required in clause 3.23(3) and the analysis of how “planning decisions and provision of infrastructure affects the affordability and competitiveness” required for clause 3.23(1).

13.2 Policy 1(a)(ii)

This policy informs the requirement for assessing Māori demand for housing under clause 3.23(2), which will help inform planning decisions for well-functioning urban environments. Taken together, Policy 1(a)(ii) and clause 3.23(2) will require more than quantifying the type of dwelling (eg, detached, attached, or apartment) needed to meet Māori housing demand. The HBA assessment should describe aspects such as the demand for papakāinga housing, development trends on Māori land, identifying the impediments to living on or developing Māori land, or barriers to using traditional housing options. More guidance is being produced to assist with assessing Māori demand.

13.3 Policy 1(b)

Tier 1 and 2 local authorities are required to assess demand (clause 3.28), capacity (clause 3.29), and sufficiency (clause 3.30) of various business land types. This, at a minimum, requires assessing land or floor area “for commercial, retail, or industrial uses” and “include suitability in terms of location and site size.”

13.4 Policy 1(c)

Using the evidence from the HBA on housing and business land will help inform the degree of accessibility between people and jobs. In practice, the HBA should identify nuances in demand and where potential insufficiencies in planning and capacity to meet demand exist. By ensuring that both housing and business land capacity are met across the urban environment, it is more likely that housing and employment needs are matched.

13.5 Policy 1(d)

The price efficiency indicators can be used to perform an initial assessment on the competitiveness for different types of land. Technical guides on how to use these indicators are included in the [urban development dashboard](#). In addition to the price efficiency indicators, the competitive margins required for tier 1 and 2 local authorities in clause 3.22 will provide evidence that can be used to assess and support competitiveness in land markets.

13.6 Policy 1(e)

Promoting intensification and creating well-functioning urban environments under HBAs is expected to minimise factors of urban environments that contribute to greenhouse gas (GHG) emissions. For example, by increasing density, emphasising transit areas, and creating better connections between jobs and housing, there will be reductions in sprawl and long commutes (which contribute to emissions).

13.7 Policy 1(f)

Issues related to climate change should be incorporated into the HBA through the various assessments that are required. Methodologies will likely include climate change and hazard layers (eg, for coastal erosion zones, sea-level rise, or flood events) where needed, to assess what is feasible and reasonably expected to be realised. For instance, areas in coastal erosion zones may increase the cost of private development (mitigation) or reduce the chances that infrastructure will be provided. By capturing these effects in HBA assessments, local authorities will be able to provide more flexible options for growth and adaptation.



Ministry for the
Environment
Manatū Mō Te Taiao

National Policy Statement on Urban Development 2020

Housing and business development capacity assessments, monitoring requirements, and providing development capacity

This is part of a series of seven fact sheets that give an overview of the National Policy Statement on Urban Development (NPS-UD). This fact sheet provides information on objectives 2 and 7, policy 2, policy 7 and subparts 1, 3, 5 and 7 of Part 3.

These provisions come into force on commencement of the NPS-UD.

Purpose

This direction is to ensure that local authorities provide at least sufficient development capacity to meet demand for housing and business land, and have robust and frequently updated information on the supply and demand for housing and business land. These policies are designed to work together to enable well informed planning decisions and at least sufficient development capacity. The purpose of each subpart is outlined below.

Policy 2, and Part 3, subpart 1 – Providing development capacity

The NPS-UD requires tier 1, 2 and 3 local authorities to provide at least sufficient development capacity for housing and business land, to ensure there is sufficient developable land to meet demand, plus a competitiveness margin for tier 1 and 2 local authorities (clause 3.22). Subpart 1 describes the requirements for development capacity for both housing and business land, as well as requirements to insert bottom lines in regional policy statements and district plans that clearly state the amount of development capacity needed to meet expected housing demand (plus the appropriate competitiveness margin).

Part 3, subpart 3 – Evidence-based decision-making

Tier 1, 2 and 3 local authorities are required to monitor available data on business land and a set of key housing market indicators quarterly, and publish the results at least annually. This will provide local authorities with a robust and frequently updated evidence base that can be used to inform planning decisions, future development strategies, and to ensure at least enough development capacity is enabled at all times.

Part 3, subpart 5 – Housing and business development capacity assessments

Tier 1 and 2 local authorities need to prepare housing and business development capacity assessments (HBAs) every three years, to ensure their planning decisions are well-informed by the demand and supply of housing and business land. This will mean planning is based on evidence, and that local authorities understand their development market. HBAs will help inform Local Government Act 2002 long-term plans, future development strategies and RMA planning documents.

Part 3, subpart 7 – Ensure development outcomes for zones are achieved

The HBA policy is supported by requirements for tier 1 territorial authorities to monitor development within certain zones against the development outcomes expected (see clause 3.37 and the monitoring requirements in clause 3.9(2)). This will help territorial authorities understand if the cumulative effect of rules and spatial layers (overlays) is preventing zone outcomes from being achieved and limiting development capacity. This will provide evidence to inform subsequent plan changes to increase development capacity or to address other factors preventing zone outcomes from being achieved.

Requirements

The key requirements of local authorities are outlined below for each subpart.

Subpart 5 – Housing and business development capacity assessments

Tier 1, 2 and 3 local authorities must assess the demand for housing and business land in their urban environments, and determine how much development capacity is needed to sufficiently meet that demand (clause 3.10). Tier 1 and 2 local authorities must do this by preparing an HBA for their urban environment, that:

- analyses the affordability and competitiveness of the housing market and the impact of planning decisions and infrastructure on this market
- estimates demand for housing and business land, by type and location, in the short, medium and long term
- quantifies development capacity for housing and its feasibility and what is reasonably expected to be realised in the short, medium and long term
- provides the basis for ‘bottom lines’ for sufficient housing development capacity
- quantifies development capacity for business land and its suitability in the short, medium and long term
- quantifies any insufficiencies in development capacity for housing or business land, and whether the shortfalls are due to planning or infrastructure constraints.

HBAs prepared by tier 2 local authorities may present a simpler assessment of feasible housing development capacity and simpler business land demand projections than tier 1 HBAs.

Local authorities that share an urban environment must work together on their HBA. HBAs must be prepared three-yearly in time to inform long-term plans. The next HBA must be published as soon as practicable, but before 31 July 2021. It may update only the housing part of the assessment. An HBA relating to both the housing and business land must be made publicly available in time to inform long-term plans in 2024.

Subpart 3 – Evidence-based decision-making

Tier 1, 2 and 3 local authorities must monitor a range of indicators in relation to each of their urban environments. Monitoring must be done quarterly, and results published at least annually. The indicators include:

- demand, supply, price and rents of dwellings
- housing affordability
- realised housing capacity in brownfield and greenfield areas
- available data on business land.

In addition to these monitoring requirements, when preparing or changing RMA planning documents that affect urban development, local authorities must use evidence about land and development markets (including any relevant HBAs) to assess the impact of different options for urban development. Local authorities must demonstrate this analysis in the relevant section 32 and 32AA evaluation reports.

Tier 1 territorial authorities have additional monitoring requirements. They must monitor the proportion of development capacity that is realised in zones specified in clause 3.37(1), which are higher-density zones. This is to ensure that the outcomes described by the zone objectives are being achieved.

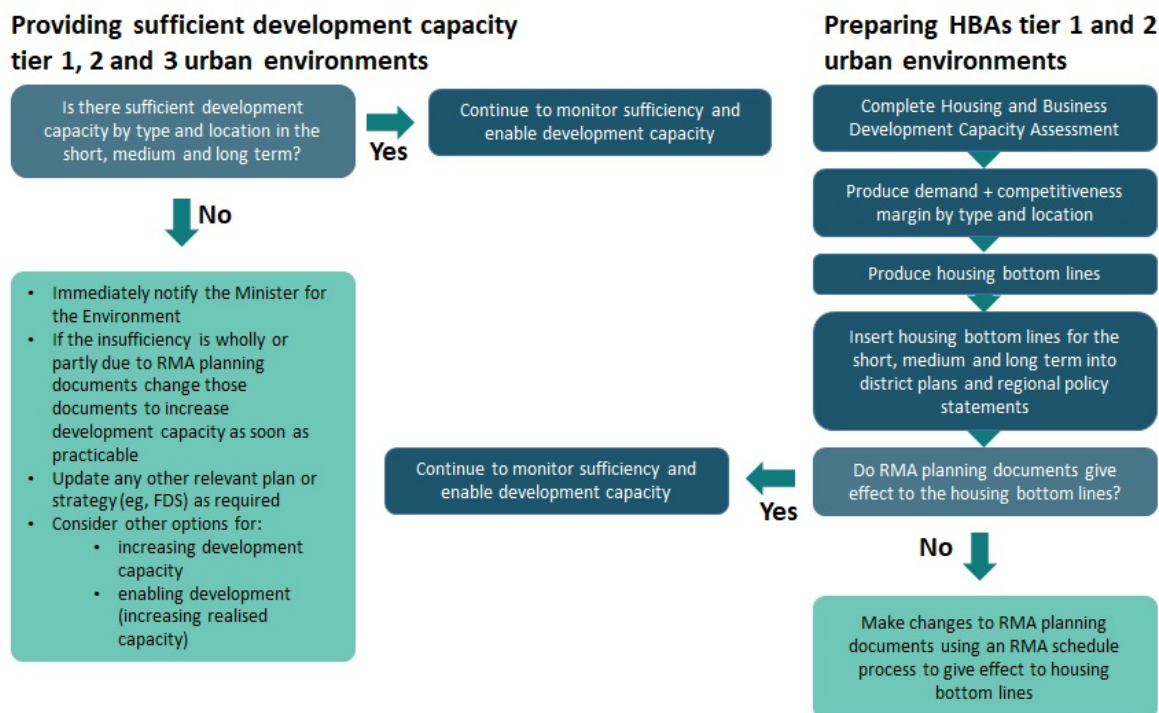
Local authorities sharing an urban environment are jointly responsible for monitoring.

Subpart 1 – Providing development capacity

Tier 1, 2 and 3 local authorities are required to ensure their planning documents provide sufficient development capacity to meet expected demand for housing (categorised by type and location) in the short, medium, and long term. The same requirement exists for business capacity, but demand must be categorised by business sector. It is important to note these requirements are not a target, but a minimum that local authorities must provide.

Local authorities with jurisdiction over tier 1 or 2 urban environments must produce housing bottom lines. A housing bottom line is the amount of development capacity that is sufficient to meet demand plus the competitiveness margin. For regional councils this means inserting housing bottom lines into regional policy statements for the short, medium, and long term. For territorial authorities the same is required but for district plans. Figure 1 outlines the requirements of local authorities:

Figure 1: Local authority requirements for providing development capacity



What has changed from the National Policy Statement on Urban Development Capacity?

While the policies are worded differently, the NPS-UD includes many of the same requirements that were included in the National Policy Statement on Urban Development Capacity 2016 (NPS-UDC) in relation to HBAs, evidence-based decision-making and providing development capacity requirements. Key changes and differences are outlined below.

Housing and business development capacity assessment

The following are the new or substantively different HBA policies.

- All HBAs must be completed in time to inform long-term plans.
- There are different assessment requirements for tier 1 and tier 2 local authorities.
- HBAs must include an analysis of the affordability and competitiveness of housing markets and the impact of planning and infrastructure on these markets.
- HBAs must present a range of housing demand projections, and tier 1 HBAs must present a range of business land demand projections.
- HBAs may estimate the long term feasibility of housing development capacity by changing the current relationship between costs and revenue.
- HBAs are required to assess the 'suitability' of development capacity for business land, rather than its feasibility or take-up.
- HBAs include a margin for competition in the calculation of sufficient development capacity for housing and business land.
- The sufficiency of housing development capacity must be assessed by type and location.
- The assessment must be used to inform housing bottom lines.

- The analysis of the housing market needs to include an assessment of how well the current and likely future demands for housing by Māori and other groups in the community are met, including the demand for different types and forms of housing (including, but not limited to papakāinga).

Evidence-based decision-making

The following are new or substantively different policies.

- Tier 3 local authorities are now required to monitor housing and business market indicators just like tier 1 and 2 local authorities.
- The monitoring must be done quarterly, and results published annually (previously this was a recommendation not a requirement).
- Tier 1 territorial authorities are now required to monitor the proportion of development realised in each zone identified in clause 3.37(1).
- When making plans that affect urban development and preparing section 32 and 32AA evaluation reports, local authorities must use evidence from monitoring and HBAs to assess the impacts of regulatory and non-regulatory options for urban development. They must consider how these options contribute to well-functioning urban environments and to providing at least sufficient development capacity.

Providing development capacity

The main changes in the NPS-UD are that development capacity has been redefined, housing bottom lines have been introduced and there are new measures to follow if there is insufficient development capacity.

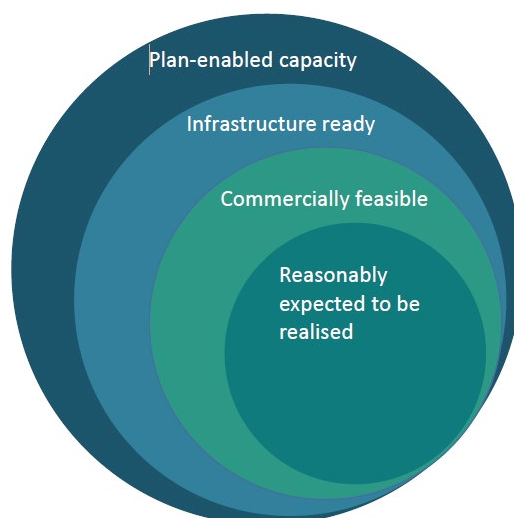
In the NPS-UDC, local authorities were required to provide development capacity that was plan-enabled, infrastructure serviced and commercially feasible. NPS-UD replaces this with provisions stating that development capacity for housing must be ‘reasonably expected to be realised’. Development capacity for business land must be plan-enabled, infrastructure-ready and ‘suitable’ to meet the demand for different business sectors.

It builds on the concept of ‘take-up of development capacity’ that was in the NPS-UDC ([guidance released for the NPS-UDC discusses take-up](#)). The ‘reasonably expected to be realised’ provision recognises that not all commercially feasible land will be realised, for many reasons. For example, landowners’ preferences may mean that development capacity is not put on the market to be developed. Clause 3.26 allows local authorities flexibility to determine how to model ‘feasible and reasonably expected to be realised development capacity’, but they must outline and justify their methods, inputs and assumptions.

HBAs produced under the NPS-UDC found that some local authorities had enough feasible development capacity, but that this was not being developed (realised). This meant that the policy did not lead to sufficient housing or commercial development. Therefore, the concept of ‘reasonably expected to be realised’ is now factored into development capacity under the NPS-UD.

Figure 2 illustrates that there can be an array of plan-enabled, infrastructure ready and commercially feasible land, but only some of that is reasonably expected to be realised. The diagram also highlights that there is generally more commercially feasible land than reasonably expected to be realised development. Local authorities are likely to have to provide more capacity than under the NPS-UDC. It is important to note that figure 2 is a stylised diagram and in reality, the relative sizes and overlapping of circles will be more complicated.

Figure 2: Development capacity



Insufficient development capacity

The NPS-UD adds a requirement for local authorities to notify the Minister for the Environment if there is insufficient development capacity. This policy has been included to alert central government to potential constraints on development capacity.

Integrated policies

The new housing bottom lines policy requires local authorities to put the amount of development capacity sufficient to meet housing demand plus the competitiveness margin from their HBAs into their regional policy statements and district plans. This policy was introduced to integrate evidence into planning processes at a regional and district level, providing a link between RMA planning documents and the development capacity evidence base. The process for implementing this is outlined in figure 1 above.

Additional support

Government will support local authorities to implement these requirements by providing:

- written guidance on methods for meeting the housing assessment requirements and monitoring requirements, to be released at commencement of the NPS-UD
- written guidance on the business land assessment requirements to be released later in 2020
- facilitation of a central government-local government evidence network to share good practice
- an interactive online dashboard of housing market data and indicators
- all past HBAs and evaluations on the Ministry of Housing and Urban Development's website
- formal written evaluation of the next HBAs
- evidence and monitoring report templates.

It is important to note there has been extensive guidance provided on each of the subparts discussed above in conjunction with the NPS-UDC. Although the policies have been reworded, the NPS-UDC guidance is still relevant. The written guidance to be released with the NPS-UD will only focus on new and amended policies. For those sections that are unchanged, the NPS-UDC guidance is still useful and relevant and can be found on the Ministry for the Environment's [website](#).

Fact sheets in this series

This is one of a series of seven fact sheets providing an overview of the National Policy Statement on Urban Development.

The full set of fact sheets is available on our website: www.mfe.govt.nz/about-national-policy-statement-urban-development.

Find out more

Contact the Ministry for the Environment by emailing npsurbandevelopment@mfe.govt.nz, or visit: www.mfe.govt.nz/contact.

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*Making Aotearoa New Zealand
the most liveable place in the world*
Aotearoa – he whenua mōta kōwhiri mā te tangata



**MINISTRY OF HOUSING
AND URBAN DEVELOPMENT**

New Zealand Government

APPENDIX 4

Document	Time of implementation	Comments
Land Use Recovery Plan (<i>LURP</i>) ⁷³	Took effect in December 2013 .	<p>A regional planning document prepared under Canterbury Earthquake Recovery Act 2011.</p> <p>It puts land use policies and rules in place to assist the rebuilding and recovery of communities (including housing and businesses) disrupted by the Canterbury Earthquakes.</p> <p>Of most relevance, however, it amended the RPS to include Chapter 6 (Recovery and rebuilding of Greater Christchurch) and identified 'greenfield priority areas'.</p> <p>The LURP introduced the first iteration of what we know as 'Map A' into the RPS.</p>
National Policy Statement on Urban Development Capacity (<i>NPS-UDC</i>) ⁷⁴	Took effect in December 2016 .	<p>The purpose of the NPS-UDC was to ensure that councils enabled development capacity for housing and businesses (through their land-use planning infrastructure) so that urban areas could grow and change in response to the needs of their communities.</p> <p>The emphasis of the NPS-UDC was to direct councils to "<i>provide sufficient development capacity and enable development to meet demand in the short, medium, and long term.</i>"⁷⁵</p>
Our Space 2018-2048: Greater Christchurch Settlement Pattern	Final report endorsed by the Greater Christchurch Partnership in June 2019 .	<p>This document was expressly prepared to give effect to the NPS-UDC in Greater Christchurch and in particular the provision of "sufficient development capacity". Our Space identified that housing development capacity in Selwyn and Waimakariri is potentially not sufficient to meet demand</p>

⁷³ <https://dpmc.govt.nz/our-programmes/greater-christchurch-recovery-and-regeneration/recovery-and-regeneration-plans/land-use-recovery-plan>

⁷⁴ https://environment.govt.nz/assets/Publications/Files/National_Policy_Statement_on_Urban_Development_Capacity_2016-final.pdf

⁷⁵ Refer for example OA2, PA1, PC1, PC3, PC4 of the NPS-UDC.

Document	Time of implementation	Comments
Update (<i>Our Space</i>) ⁷⁶		<p>over the medium and long term (10 to 30 years).</p> <p>It was intended that this document then form the basis of changes to Regional and District Planning documents to give effect to the NPS-UDC in a planned and collaborative way across Greater Christchurch.</p> <p>Our Space proposed that Map A of the RPS be amended to include 'Future Development Areas' which would give effect to the NPS-UDC.</p> <p>We note that Map A as included in Our Space includes an advice note at the bottom of this map which provides "<i>While it is intended Our Space provides some direction to inform future RMA processes, [this map] is indicative only.</i>"</p>
National Policy Statement on Urban Development (NPS-UD) ⁷⁷	Took effect in August 2020.	<p>This national policy statement replaced the previous NPS-UDC.</p> <p>Of particular relevance is the following change in the direction to councils to "<i>at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.</i>"⁷⁸</p> <p>It also introduced a range of policies and objectives not even contemplated in the NPS-UDC. Of particular note is Objective 6 and Policy 8 (which we consider in more detail below).</p>
Plan Change 1 to Chapter	PC1 made operative July 2021.	PC1 was approved by the Minister for the Environment (the <i>Minister</i>) under the Streamlined Planning Process (which we

⁷⁶ <https://greaterchristchurch.org.nz/assets/Documents/greaterchristchurch/Our-Space-final/Our-Space-2018-2048-WEB.pdf>

⁷⁷ <https://environment.govt.nz/assets/Publications/Files/AA-Gazetted-NPSUD-17.07.2020-pdf.pdf>

⁷⁸ Refer Policy 2, Clause 3.2, Clause 3.3, Clause 3.11, Clause 3.13 of the NPS-UD.

Document	Time of implementation	Comments
6 of the RPS (PC1) ⁷⁹		<p>explain in more detail in paragraphs 5-23 below).</p> <p>PC1 effectively amends the RPS to include in Map A the Future Development Areas identified in Our Space. Map A as contained in Our Space and PC1 are identical. It also introduced new objectives and policies around the new future development areas.</p> <p>PC1 does not fully give effect to the NPS-UD as it includes only the Future Development Areas from Our Space which only gave effect to the NPS-UDC.</p>

⁷⁹ <https://www.ecan.govt.nz/your-region/plans-strategies-and-bylaws/canterbury-regional-policy-statement/change-chapter-6/>

APPENDIX 5

Wet ponds and constructed wetlands

Canterbury Land and Water Regional Plan (LWRP)

LWRP definitions (Section 2.9):

Groundwater means all water beneath the surface of the earth contained within the saturated zone, but excludes the water chemically combined in minerals.

Interpretation:

Wet ponds constructed into a groundwater system can allow additional flow loss if the outflow is below groundwater-level at any time (Analogous to a spring), and can also allow for evaporation of the exposed groundwater.

Evaporative losses depend on the area of the exposed water and can exceed 15 mm on any day and are regularly above 5 mm/day averaged over a month in summer. These rates equate to 50 m³/day/ha average and over 150 m³/day/ha peak.

NIWA provide estimates of open water evaporation, and penman transpiration evaporation (for vegetation) on their [cliflo](http://cliflo.niwa.co.nz) and data.niwa.co.nz websites.

Relevant Regional Rules (sub-regional chapter rules may differ):

Groundwater lost through flow to surface water or evaporation results in a consumptive take of *groundwater*, and where the Permitted Activity rates or volumes (under Rules 5.113 or 5.114) are exceeded:

For long-term *groundwater* takes where water is not used Rule 5.6 would apply. The effects on the greater allocation zone needs to be assessed as part of any application.

Rules 5.128-5.130 (The taking and use of *groundwater*) apply if *groundwater* is taken and used as part of the system design (e.g. for vegetation maintenance, basin maintenance, basin flushing purposes, etc).

Use of *groundwater*:

- Where groundwater is a nuisance, and in no way integral to the wet pond design or function, it is not considered to be a used. The groundwater is simply being removed, so the activity is a take only and no associated use.
- However, where water is being used to sustain vegetation or flushing or dilution this is a use.

APPENDIX 6

Questions

1. How is customer base data collected (reference to para 8 of her evidence)?

Customer numbers were based on our Facebook Page which admittedly does not translate to actual real visits to the market but is an indicator. We use Facebook for publicity purposes only, not as a form of engagement with our audience. There are 8,251 people in our audience of which 88% are women and 3,500 of the Facebook audience come from Christchurch and 952 Rangiora. We know from real life experience that inclement weather in Christchurch and not in Waimakariri translates to fewer customers on Fridays.

2. Why a Friday market? Has she ever considered a weekend day?

The better Farmers Markets are genuine working markets; places where growers, producers and makers of foods sell and trade their foods to the general public. It is an alternative and serious means of shopping instead of having to be dependent on just in time supermarkets. Operating during the 'working' week is what makes the Friday morning Ohoka Market as successful as it is. New Zealand is one of the few industrialised countries that generally only have weekend farmers markets. Weekend markets run the risk of degenerating into entertainment with people simply attending to fill in time. Fresh food markets are not about entertainment. Friday morning is also considered to be a normal shopping day for people serious about local food and it is an opportunity to purchase quality food for the weekend. It also enables the traders to spread their attendance and preparation for markets easily as opposed to having to operate several sites on the same day at different locations. Christchurch/Canterbury has ample weekend markets. Ideally all regions in New Zealand who were serious about food security and the health of their residents would encourage and support at least one farmers market selling fresh food during the week. We provide this service in the Waimakariri with resounding success every Friday.

I would like to stress that Friday is market day and will not move to a weekend for the reasons given.

- 3 Has Barbara ever tried to approach the Council to assist in resolving the issues the market faces in winter? Particularly regarding the facilities at the Ohoka domain?

I would like to stress the Council and in particular some people within it have been extremely helpful and encouraging over the years. I am of course appreciative of the help they have provided us. Ideally any issues we encounter in operating this market weekly are ones we can solve ourselves at a grassroots level, or through council departments or with supportive people within the local community. The council has done a great job at the Ohoka Domain with respect to developing the playground, working in with the volunteers who have created the Ohoka Bush and slightly enlarging the carpark area for the market. They have enabled the market to be what it is today.

However, there are issues I alluded to that are beyond our control and have little to do with the facilities at the Ohoka Domain. They do however affect our winter markets in particular. The immediate problem is not to do with the facilities so much but the complaints that Council receives about the market using these facilities and how the Council responds to those complainants. Car parking over winter can raise issues for us.

I have the impression, rightly or wrongly, that council have been unable to help the market as much as they may have liked because of the complaints from a small group of individuals. Effectively it is not a case of the Council doing what is best but rather the Council giving credence to these complainants.

The market is popular because people overwhelmingly like it.

After over a decade of the same scenario in winter with regards to a handful of disgruntled people to deal with, the offer by Mr Carter for a purpose built winter market facility that should nullify the complaints is appealing but not essential.

Additional car parking and improvement of local facilities as proposed by the developers would be an asset not only to the market but also to the wider community. The market and the hundreds of weekly supporters would also benefit whether the improvement was provided by the developers or by the council, but for reasons given above the council is unlikely to do anything.

My husband and I made personal submissions regarding this plan change as we live adjacent to this proposed subdivision. We have also lived in Ohoka for 32 years and have seen many new people move into new subdivisions during that time. We have witnessed an increase in native bird life and wildlife generally as a result of tree planting on lifestyle blocks.

I would also like to include a paragraph that was inadvertently missing from my initial market submission as I think it is relevant in this case, and I stand by it.

I have always considered small blocks to be more productive than broad acre farming in almost every respect if we are to take biodiversity and food resilience seriously.

Farmers markets ideally encourage intensive ecologically sensitive food production for local consumption.

This plan could also provide intensive sensitive development that provides the ability for people to work from home, thereby enabling healthy, vibrant communities.

Thank you
Regards
Barb Warren