

Summary

1. Ultimately the district plan is made up of several tools, minimum lot sizes being one tool, multi-unit development being another tool, setbacks, recession planes, design guides and so on. The Operative District Plan had these tools in the "Tool kit" Rule 7.3.3(vi) allows for Multi - Unit development as a restricted discretionary activity with a density of 250m² across all residential zones. The new PDP is proposing that subdivision that allows for 1 approved dwelling to be subdivided off (regardless of lots size) completes the tool kit and provides the missing piece that the PDP did not have. Increasing minimum lot sizes and removing multi-unit development at a meaningful density is not the way to ensure sustainable residential housing stock in the District.
2. Modelling for Cromwell Ward suggests a population of 14,202 by 2034. The Masterplan included new green field development and "Churn and Renewal" from existing residential areas. There is a need to zone additional houses due to market conditions and uptake in zoning, and for infill development. Removing tools from the district plan arsenal cannot be justified given the projected population growth and insufficient housing stock.

Correction

3. On my Submission form under "the specific provisions of the proposal that my submission relates to" I wrote:

Large Lot provisions as they apply to Bannockburn. The 2000m² provision does not allow for infill development minimum lot size should be 1,500m² with no average lot size.
4. Then under "I seek the following decision from the consent authority" I wrote:

Decline or amend as outlined above decrease the minimum lot size for Bannockburn large lot to 1,400m² and reinstate Multi-unit development rule
5. This is a typo and 1,500m² is what I meant to ask for as this is currently the minimum lot size for Bannockburn. Essentially, I asked that the average Lot size be removed and the minimum lot size be retained, to allow for infill development. Although I note that I did support submissions where it was suggested that this number decrease further.

Introduction

6. Regulating land use is important for managing the development and use of land in a manner that balances competing interests, protects the environment, and ensures the sustainable use of natural resources. District plans (especially Council lead plan changes) are typically developed in consultation with the community, and are intended to reflect the **community's** (in this case Central Otago) values and aspirations for the future of the district. As such, community input is critical for ensuring that district plans are effective, relevant, and reflective of the needs and desires of the community.
7. Effective community input involves engaging with a broad range of stakeholders, including residents, property owners, developers, and other interested parties. This input can help identify issues and concerns, clarify objectives and priorities, and inform the development of policies and rules that reflect the community's values and aspirations.

8. Overall, the importance of regulating land use and involving the community in the process cannot be overstated. By working together to develop and implement effective district plans, communities can ensure that development and land use activities are managed in a manner that reflects their unique needs and aspirations, while also protecting the environment and supporting sustainable growth and development.
9. The Environment Court has accepted and indeed emphasizes the importance of district plans as a means of organizing and managing land use within a community, it is the frame by which the community organises itself.

LLRZ Provisions

10. I accept that the district plan needs to be made up of differing zones to capture the character of the District. For example, Cromwell and the settlements that make up the wider housing market (Pisa Moorings, Bannockburn, Lowburn, Ripponvale), have different characteristics where the settlements generally have larger lots compared to the more intensified Cromwell Township.
11. My submission is based on the concept of incremental development. This is based on a development pattern that allows for the next increment of development on a property to be of a smaller scale and lower cost than the last. This approach is centred on building more affordable, diverse, and resilient communities. By encouraging small-scale, financially sustainable development over time, this approach avoids the pitfalls of traditional development models that often lead to long-term financial liabilities, reduced affordability, and an over-reliance on a few large developers. Incremental development can create a more vibrant and diverse urban fabric, with more opportunities for small businesses and local entrepreneurs to thrive, and can lead to stronger, more resilient communities that can weather economic and environmental shocks.
12. My view is that the district needs to take just 1 step towards an increase in density across all its zones and look towards small increases in the zone size rather than to perform a major overhaul of the locations and intensification of the zones. This will ensure that the district keeps its character.
13. This plan change aims to freeze the settlements and create a new zone that is more intense (Medium Density Zone). Rather than taking an incremental approach of allowing for:
 - a. a slight decrease in lot sizes (as I have said with the Bannockburn zone (LLRZ)),
 - b. the multi-unit rule to be retained within all zones as the current district plan does.
 - c. small increases in areas that are to be re-zoned (my further submission supports this in Bannockburn), located around the existing settlements.
14. I do not think that the current approach in the PDP of freezing the settlements increasing the minimum lot sizes and instating a medium density zone is a silver bullet that is not going to work. Also importantly, a side effect of this approach is that the PDP has removed not only development rights but also takes development opportunities away from small community scale developers and places development in the hands of larger developers like Wooing Tree for instance.

Minimum Lot Size

15. As stated above I asked for Bannockburn (LLRZ) lot sizes to be a minimum of 1,500m². This is the current minimum lot size. At paragraph 164 of the Section 42A report states:

The drafting approach taken in the residential chapters has been to remove 'average' lot size requirements and apply minimum lot sizes only.

16. At paragraph 169 it states the below about submissions 34, 117, and mine:

It is also important to note that PC19 proposed minimum allotment sizes only and does not continue to also apply average lot sizes. Therefore, while some of the minimum lot sizes proposed in PC19 are higher than the current minimum lot sizes applying, they are consistent with the current average and overall existing amenity and character. I therefore support the proposed densities being retained in Pisa Moorings and Bannockburn, rather than having additional variations, or re-introducing differences between minimum and average lot sizes.

17. This approach looks to freeze infill development in the LLRZ, whereas the submitters asking for a smaller minimum Lot size wanted the next increment of development to be able to occur. By that I mean allow for a small change in lot size that would not affect the character of Bannockburn. It is unclear what paragraph 169 is saying about the amenity and character of Bannockburn. It is my view that the amenity and character of Bannockburn does not come from the lot sizes, but it is rather the land uses and layout of the settlement in relation to its environment that shapes the character of Bannockburn.

18. For instance:

- a. there is a big vineyard (that this plan change is proposing to remove – to much opposition) in the middle of Bannockburn.
- b. There are historic elements on LOT 4 DP 339137 that should shape development on that land.
- c. Lynn Lane has vineyard and quality soils along with “mixed up” residential zoning.
- d. Lots along Terrace Street have historic sluicings that dictate lot layout.
- e. The end of Hall Road has vineyards again with public access to the gold mining history that shapes the character of that area.

See further Appendix 1.

19. This plan change should not be about freezing exiting amenity. Our urban environments, including their amenity values, develop and change over time in response to the diverse and

changing needs of people, communities, and future generations¹. Going backwards is not where we need to be going. My submission is based on incremental development i.e. not sticking strictly to the existing amenity but not ignoring is completely just making small incremental changes to allow for more development that would not completely change the character of the existing neighbourhoods.

Multi-Unit Development

20. In order to allow for the most efficient use of sites within LLRZ I have also submitted that the Multi-Unit Development rule be retained (currently it applies to all residential resource areas in the District). Currently under the Operative District Plan rule 7.3.3(vi)(a) allows for residential activity under the Multi-Unit Development Rule can occur down to 1 residential activity per 250m². Below are some examples of this in Cromwell and Bannockburn.



¹ Objective 4 of the National Policy Statement Urban Development 2020.



FIGURE 1: RESIDENCES OF CROMWELL AND BANNOCKBURN WHERE MULTI-UNIT DEVELOPMENT HAS OCCURRED

21. It is noted that this rule has not had been taken up widely, but it is a tool that is available and has been used to varying degrees. Importantly multi-unit development should also be considered when looking at the character of residential areas in the District.
22. The current District plan was quite future focused with regard to Multi-Unit development down to 250m² per residential unit. It is not clear to me that a valid resource management reason has

been put forward to remove this (and importantly to affect current development rights). The only comment in the section 42A report around this is:

A restricted discretionary rule is already provided within the PC19 package for multi-unit development (LLRZ-R1; LRZ-R1 and MRZ-R1).

23. With respect, this is not accurate to what I asked for. I asked for the Multi-Unit Development Rule to be reinstated. The Rule as it is currently proposed changes the density (LLRZ-S1, and LRZ-S1) that is allowed for by the ODP, so while it appears from the comment above that my request has indeed been accepted this is not the case. Under the current version of the PDP any Multi-Unit development that is not 1 dwelling per 2000m² in LLRZ would be non-complying. This could be amended by changing LLRZ-S1 to decrease the density requirement to 1 dwelling per 250m² in areas where sewer is available.
24. I am requesting an incremental development approach where the minimum Lot size is brought slightly down; multi-unit development rules are retained; and small areas are re-zoned. I am submitting that this would represent the character of the new LLRZ and would address matters like:
- a. Efficiency of land use
 - b. Feeling of space in the LLRZ
 - c. Character within the LLRZ

In an appropriate way.

25. In short there are a number of tools that can allow for the next increment of development combined with the new subdivision rule that has now been included within the provisions SUB-RX. These tools have been available in the PDP and keeping them is what I am asking for.

Affordability

26. It is now common knowledge and consistently makes nation news that Central Otago and Queenstown Lakes are the most unaffordable places in New Zealand. The average house price has increased by 38% since 2019 to \$806,000².
27. The s42A report states that: *In my view, the appropriate zone to apply is the one that describes what is anticipated moving forwards, not simply a continuation of what has happened*

² [Central Otago properties soar in value | Otago Daily Times Online News \(odt.co.nz\)](https://www.odt.co.nz/news/central-otago/central-otago-properties-soar-in-value)

previously. In this regard, higher intensity development may exist in the LRZ (low density residential), but under PC19 these are intended to be focused in the MRZ (medium density residential).

28. The current PDP was future focused and has set the expectations of the Community and the character that development takes in the district. What is now being proposed is a view of what the character is (or perhaps is believed it should be), through a new lens. This lens proposes that the minimum Lot size increase to 400m² in the LRZ and generally increase in the LLRZ. Increasing lot size leads to 1 thing, increase in price. This is not only across the LRZ as the LLRZ makes up the housing market in Central Otago as well.
29. By way of illustration, the new residential zone under the PDP is now proposing to go from a minimum lot size of 250m² to 400m² as a minimum lot size. The issue I have with this is that developers value land based on a per square metre rate. At the moment land in Cromwell is between \$850 and \$1000/m² so if you wanted to buy a 250m² piece of land it would cost \$250K and if you wanted to buy a 450m² piece of land it would cost \$445K. To a first home buyer that first section that would comply under the current district plan would cost \$250K but under the new district plan that first section will cost upwards of \$400K.
30. So effectively the proposed district plan will double the minimum cost of land. As an example, the property at 8D Ray Street³ (see street view below), can provide a really good starter home for a young family.
31. This was developed by subdividing a 1000m² section into 4 and building 4 townhouses on that section. This townhouse development would be non-complying under the new rules. The reason given for this in the 42A report: *this is what is anticipated moving forwards*. It is unclear who is anticipating this? I was at the Cromwell Masterplan sessions and a medium density zone that would remove development rights from other zones (minimum Lot size and removal of multi-unit development to 250m²) was not expressed through that process. This was certainly not anticipated by me.
32. This is an important point to make and I make it using my experience as a planner. Developers (especially small-scale developers) understand that they can do a resource consent to breach rules, but it is far cheaper and easier (with a significant amount of risk reduced) to just comply with what is anticipated under the district plan. If 8 Ray Street had to be developed under the new district plan only 2 units would have been possible not 4.

³ [Property value - 8D Ray Street, Cromwell - realestate.co.nz](https://www.realestate.co.nz/property/8D-Ray-Street-Cromwell)

33. With respect the above reasons given for removing the 250m² minimum lot size, does not capture the resource management issues at play. The resource management issues that this plan change needs to be addressing are:

- a. Dealing with the change of our urban areas
 - i. Improving housing choice, quality, and affordability
 - ii. Delivering good urban design outcomes, and to improve liveability,
 - iii. Achieve consolidated, well designed and located, development in and around existing urban areas as the primary focus for accommodating the region's urban growth and change⁴.
- b. Creating well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety⁵.

34. The challenges outlined above are facing all urban environments in New Zealand, but my argument is that we feel it in Central Otago more than in many other places, making it vitally important to get this right. Removing the 250m² minimum lot size and freezing the settlements does not address any of the above resource management matters. I will acknowledge that the Masterplan options did say that people preferred development to be focused in Cromwell, so my submission is not to make wholesale change to the settlements (LLRZ), but to freeze and as in Bannockburn impose larger minimum lots sizes is also not the right place to land. That is why I am asking for an incremental approach.

Medium Density

35. My view is that the medium density zone is not going to encourage the "churn" that will be needed to deliver on more houses. Take as an example 15 Sarita Place. It is a house built in the early to mid-2000s nice large brick family home. This house is now in the medium density zone. The issue is that this house is not going to be knocked down so that 3 units can be built - it still has a life span of probably 50 years. So, the density "promised" by the PDP will not be realised in the medium density zone. A version of this example occurs across large tracts of Medium

⁴ UFD-02 Development of Urban Areas, Proposed Otago Regional Policy Statement June 2021

⁵ Objective 1, National Policy Statement Urban Development 2020

Density zone. This would result in the rule, despite being future focused and enabling of a medium density, where development has rarely occurred at this density.

36. Put increase in minimum lots sizes, removal of the Multi-Unit Development Rule and a medium density zone where medium density seldom occurs together, and the equation stacks up to less houses being built within our current urban areas. This is not what we discussed in the Cromwell Masterplan and will at least result in:

- the increase in house prices that this will cause by virtue of the increased land cost (due to minimum sizes doubling), and
- The flow on increase in price that will come about due to reduced supply.

37. At [163] the 42A report states: *I also note that in terms of supply and demand, the densities are consistent with the modelling undertaken in the development of the Spatial Plans and therefore the PC19 zoning framework will not result in under-supply. As noted earlier, this has been confirmed in respect to the Cromwell Ward in more recent yield assessments as well.*

38. If these new dwellings are not feasible as discussed above can this plan change deliver sufficient dwellings? This PDP is a disaster for affordable houses for workers. It does not reflect the local character of the district, and from a practical level will not deliver the houses that we predict we will need.

Cost of plan change

39. The section 42A report has not listened to any (bar very few) rate payers' comments who have taken the time to share local experience and knowledge and has relied on very little evidence.

40. All this does, is increase frustration from rate payers towards Council and increases the cost of the district plan because now submitters will all need to make lengthy submissions to the Commissioners and then will need to appeal the decision and we will all sit in the environment court for years to come. This was the same approach that QLDC took, and they notified their plan in 2015 and only now is it almost done.

41. I do not agree, I do not consider, and I do not recommend are phrases that appear 85 times in the 42A report. Then there are 35 additional requests that have simply been proposed to be denied without more than 1 sentence in a table on page 68.

42. At [163] of the 42A report it states *I have **been advised** that despite this minimum having applied since around 1990, development has rarely occurred at this density.*

43. If advice is given to input into a district plan this advice needs to be provided as evidence as it is unclear where this advice comes from and what weight should be given to it. As can be seen in the photos attached to this submission this statement is not accurate, there has been a wide uptake in lots smaller than 500m² (or even the now proposed 400m²).

44. I am in favour of a plan change that has a light touch in terms of evidence because if the community is ultimately listened to then the plan change has probably landed in the right spot. After all you could employ an expert at great cost to tell you what the community already intuitively knows. I have no issue with this methodology, but if this light touch approach is

taken, I think that the experts that are involved need to take much more time to listen to what has been said and to look to resolve the tensions that can sometimes emerge.

45.

Modelling and housing supply

46. The current usually resident population of Cromwell Ward is 10,000 people. The medium projection is to reach 14,202 in 2034. Note for only Cromwell the projection is just over 8,000 by 2030.
47. Note the Cromwell Masterplan states that the Cromwell Ward population would be sitting at 10,900 by 2038 and the updated modelling from Rationale⁶ shows that the resident population in the Cromwell Ward would likely be 14,202 by 2034. This is an additional 3,302 people.
48. It is unclear to me why Cromwell's population has been broken up in the plan change logic when Pisa Moorings, Bannockburn, and Lowburn are essentially settlements that function as suburbs of Cromwell and the Cromwell Ward should be taken as the most accurate marker for the residents that live in the urban area of Cromwell. I have recently gone through the exercise of buying a house and have looked in all these suburbs for a house as they are in the same housing market (I didn't for instance go out to Wanaka to look for a house). The only difference between these settlements is the price variation between them but ultimately form part of the same market.
49. The Masterplan worked on the concept of new green field development and "Churn and Renewal" coming from existing residential areas Like Cromwell East to meet future demands. Churn was predicted to deliver 915 dwellings to 2050 at a density of 15-20 dwellings/Ha. It is difficult to go back and find supporting reports as they are not readily available on Council's website, to know what the projected delivery of dwellings was, but the Masterplan indicated that there would be enough houses to last until 2048 – noting the predicted growth was lower (when the masterplan was done than what it is predicted to be now). It is also important to note that the Cromwell Masterplan included the Golf Course rezoning that had an additional 680 dwellings attributed to it. This is not yet happening and as such the evidence of Plan Change 19 cannot take Golf Course zoning into account for meeting demand. This to me then means that there is a further shortfall of 680 dwellings on top of the "lost Churn" in east Cromwell ($915/2= 457.5$) that will be non-complying under PC19 compared to what the Masterplan indicated was required to meet demand.
50. There is also a requirement to zone additional houses to account for market conditions and uptake in zoning. Note that there have been PC13, PC14, PC21 all looking to add housing capacity to the Cromwell area and have come post Cromwell Masterplan. PC19 should have been "first in" as the Masterplan came before these other plan changes. The private market is

⁶ This is the report that was made public as part of the plan change process

looking to add these dwellings because the current district plan is not delivering enough capacity. It is then considered that there is not enough housing stock and therefore it is impossible for me to see how we can be theoretically halving the housing stock by increasing the lot size or in the case of large lot zones keeping it lot size the same. This further encourages sprawl which was why the Masterplan was done in the first place.

51. When viewed against the evidence that is available and looking at the analysis presented above where the Medium density land will not be delivering the expected yield due to the nature of the housing stock that is located on the proposed medium density land it is impossible to justify why two tools (Minimum Lot size and Multi-Unit Development (density of 250m²)) that have become and will continue to be critical in the district plan arsenal have been proposed to be removed. Especially when the reason put forward in paragraph 163 of the Section 42A report is that:

52. While I accept that the current minimum will increase from 250m² , I have been advised that despite this minimum having applied since around 1990, development has rarely occurred at this density. The reason for this is likely to be the effect of other existing standards, particularly building setbacks and site coverage, means it would be difficult to site a complying dwelling on a smaller section.

53. With respect because a development tool allowed for in a district plan has not been widely used⁷ is not a valid resource management reason. This tool has been in the district plan to be used should it be needed. Now that we have growth pressure coming on and prices soaring is not the time to be removing these. This is like a parent saying to a 5-year-old you can no longer use this pen because you have not written your name before.

Summary

54. Ultimately the district plan is made up of several tools, minimum lot sizes being one tool, multi-unit development being another tool, setbacks, recession planes, design guides and so on. The Operative District Plan had these tools in the “Tool kit” Rule 7.3.3(vi) allows for Multi - Unit development as a restricted discretionary activity with a density of 250m² across all residential zones. The new PDP is proposing that subdivision that allows for 1 approved dwelling to be subdivided off (regardless of lots size) completes the tool kit and provides the missing piece that the PDP did not have. Increasing minimum lot sizes and removing multi-unit development at a meaningful density is not the way to ensure sustainable residential housing stock in the District.

⁷ Note, there have been no monitoring studies into this that I know of.

55. Modelling for Cromwell Ward suggests a population of 14,202 by 2034⁸. The Masterplan included new green field development and "Churn and Renewal" from existing residential areas. There is a need to zone additional houses due to market conditions and uptake in zoning, and for infill development. Removing tools from the district plan arsenal cannot be justified given the projected population growth and insufficient housing stock.

Definition

Small Scale Developers

Small-scale developers are embedded in the community and having a deep understanding of its needs and strengths. They can create projects that are tailored to the specific needs of the community, rather than imposing generic development plans.

Moreover, small-scale developers are often more flexible and nimbler than large-scale developers. They can respond quickly to changing circumstances and adjust their plans accordingly. This makes them better able to adapt to the needs of the community and create projects that are more financially sustainable. Small-scale community developers are important actors in building strong and resilient communities that are capable of weathering economic and social challenges.

⁸ This means that Cromwell and likely CODC are to be considered as a Tier 3 local authority under the NPS-UD – see attached legal advice.



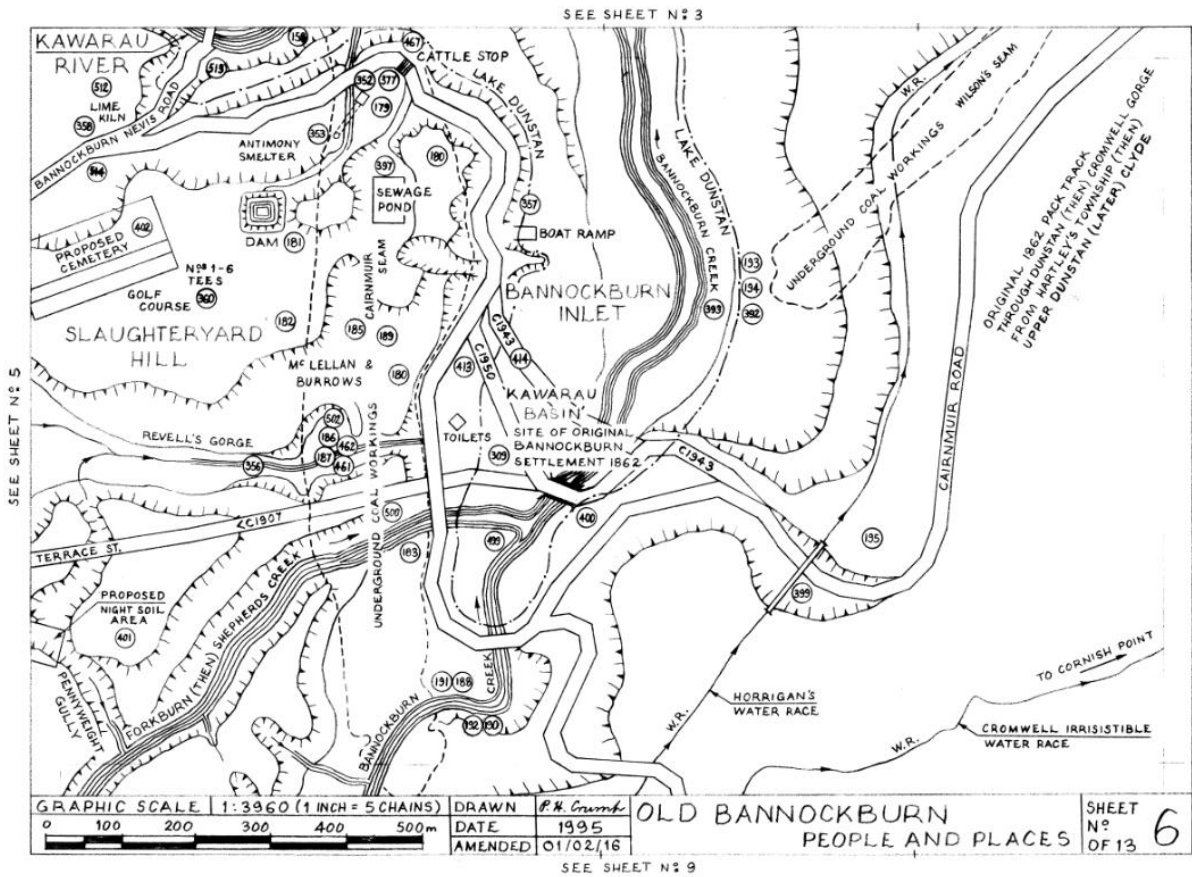




Character of current Residential zone

The character of the residential zone in Central is varied – Lot size is not the only marker of character, there are other elements like vineyards in Bannockburn, Historical influences like sluicings and water races, and mixed uses like health care, day care, education facilities that are all located in the residential zones because we are a small town we do not have a plethora of zones and overlays to accommodate these activities.







In Confidence

Office of the Minister for the Environment

Office of the Minister for Urban Development

Chair, Cabinet Economic Development Committee

National Policy Statement on Urban Development

Proposal

1. We seek Cabinet's approval of the National Policy Statement on Urban Development (NPS-UD) prepared under the Resource Management Act 1991 (RMA). It will replace the National Policy Statement on Urban Development Capacity 2016 (NPS-UDC).
2. The NPS-UD (Appendix two) will require a minimum number of homes to be provided for in local authority Resource Management Act plans, and prohibit some rules that prevent housing from being built. It will help ensure improved housing affordability and improved opportunities for New Zealanders that live in our cities by requiring local authorities to enable more urban development and housing through their plans¹.
3. Subject to Cabinet agreement, we intend to recommend the NPS-UD to the Governor-General in Council for her approval, and proceed to issue the NPS-UD by notice in the New Zealand Gazette.

Relation to government priorities

4. This proposal relates to the Government's priority of ensuring everyone has a warm, dry home. The proposed policies also support the Government's Economic Plan by contributing to the transformation of our housing market and improving productivity.

Executive summary

5. New Zealand has a severe housing crisis that impacts most on our poor, vulnerable and younger generations. Our planning and urban development systems have helped cause and worsen a large part of this crisis and has dramatically contributed to a lack of housing.

¹ Defined in the NPS-UD as 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 Maori 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 between housing, jobs, opportunities for social interaction, services, and public 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.

6. Constraints in the planning system have meant local authorities are not providing enough development capacity for people to build and live in the homes they want. This has led to high land prices, unaffordable housing, and a system that incentivises land banking and speculation. It has also resulted in people having poor access to employment, education and social services. In short, under the current system, the cost of finding a home and living in our cities is too high.
7. The NPS-UD will require local authorities to open up more development capacity to provide housing at affordable price points (that is, they will need to change their RMA plans to enable more homes to be built). This will help New Zealanders build homes in the places they want – close to jobs, community services, public transport, and other amenities our communities enjoy.
8. The proposed policies will have a significantly positive impact across New Zealand. PwC estimates that the benefits of intensification alone would be approximately \$9 billion from now until 2043² - benefits that will be enjoyed most by renters, new entrants to the market, and future generations. Initial work by two local authorities indicates they would have to **increase development capacity by up to 40 percent** to meet new requirements under the NPS-UD.
9. Similarly, enabling developers, rather than councils, to decide how many carparks they will build in their developments will generate indicative benefits of \$670m, compared to indicative costs of approximately \$78m for a cost benefit ratio of 8.6³.
10. By requiring greater flexibility in planning practice, our cities will be better equipped to respond to a range of urban problems, from changing patterns of wealth inequality and housing affordability, to climate change and urban sustainability. This will also support higher productivity and wages and shorter commute times.
11. Introduced in 2016, the NPS-UDC aimed to increase the capacity available for development and the ability of the market to meet demands in growing cities; it has made some progress towards this aim. However, it did not provide direction on where development capacity should be provided. The NPS-UD provides direction to make sure capacity is provided in places accessible for people.
12. In 2017, this Government established the Urban Growth Agenda (UGA), to address underlying system constraints so we can have successful cities that maximise labour markets and opportunities. As part of the UGA, Cabinet agreed to consult publicly on a proposed NPS-UD and the Government consulted on this from 21 August to 10 October 2019.
13. The proposal contained objectives and policies in four key areas: future development strategies, making room for growth, evidence for decision-making and processes for engaging on planning.
14. Submitters were generally supportive of the intent of the proposed NPS-UD. However, submitters identified some issues, and based on their feedback we propose some changes to the proposal. These changes are supported by further analysis undertaken as part of the Cost Benefit Analysis and RMA section 32

² The cost benefit ratio for each city tested is estimated at between four and seven.

³ Cost benefit ratio is estimated for Auckland, Wellington, Christchurch, Queenstown and Hamilton.

analysis⁴. Some of these changes are minor and technical issues that do not change the policy approach consulted on, and only clarify the original policy intent. Other changes are substantive and are required to better achieve the intent of the objectives of the NPS-UD; these are described in detail and set out as recommendations in this paper.

15. The NPS-UD will require councils to:
 - a. plan well for growth and ensure a well-functioning urban environment for all people, communities and future generations
 - b. ensure urban development occurs in a way that takes into account the principles of the Treaty of Waitangi (te Tiriti o Waitangi) (emphasising existing requirements under the RMA)
 - c. ensure that plans make room for growth both 'up' and 'out', and that rules are not unnecessarily constraining growth
 - d. develop, monitor and maintain an evidence base about demand, supply and prices for housing and land, to inform planning decisions
 - e. align and coordinate planning across urban areas.
16. We propose a three-tiered targeting approach that targets the most directive policies to the largest and fastest growing urban centres, and minimising the resource constraints on small authorities. The tiers are distinguished by population size and growth rates, and local authorities are named in specific tiers.
17. The NPS-UD will be supported through the UGA by new tools for infrastructure funding and financing, investment in modern multi-modal transport systems and stronger partnerships between central and local government, hapū and iwi/Māori, and communities.

Background

Successful cities are important for New Zealanders, but they are underperforming

18. Successful cities maximise labour markets, opportunities for education, and social and economic exchanges. They provide affordability, mobility and access, while functioning within environmental constraints and responding to changes in demand. Successful cities support a more diverse, knowledge intensive and productive economy and, in doing so, broaden our economic base. Most importantly, they contribute to the wellbeing of residents and raise living standards for all.
19. However, currently our cities are under pressure, underperforming and are not delivering the benefits we want. They are struggling to keep up with growth and to play their role as places of opportunity for both people and businesses. As part of this the housing crisis has been relentless and has impacted most on the poor, vulnerable and younger generations.
20. The planning and urban development systems have made it difficult to access the benefits of city life and our urban land markets are not functioning as they should,

⁴ Section 32 of the RMA requires that new proposals are examined for their appropriateness in achieving the purpose of the RMA.

resulting in an undersupply of development capacity. This means less people are able to afford homes in the places they want to live.

21. This is driven by an unresponsive planning system characterised by a reliance on restrictive land use regulation and the controlled release of land for urban purposes. Restrictive zoning, including height and density controls are restricting development and pushing up prices across New Zealand. This is alongside poor coordination in and between our land use and infrastructure planning.
22. These underlying problems can be seen in a range of symptoms, including housing unaffordability, increased hardship and homelessness, many housing developments stranded by poor transport connections, high land prices, reduced economic productivity, lowered wellbeing, and increased intergenerational inequality. These issues are likely to be exacerbated in the aftermath of COVID-19, but we as a Government are committed to resolving them.

The NPS-UD as part of the UGA will play a central role in enabling successful cities

23. National direction tools aim to clarify and direct how national interests are provided for in the devolved planning system. The existing NPS-UDC requires councils to:
 - enable sufficient, commercially feasible development capacity in their RMA plans to respond to demand for housing and business land over 30 years
 - set targets in their plans for sufficient housing development capacity
 - produce a Future Development Strategy (FDS) which identifies how that capacity will be provided in the medium and long term.
24. The NPS-UDC has made progress. However, changes are needed in the way urban planning interacts with urban markets to respond to growth. We need a planning system that supports and encourages growth where there is demand, and where the costs of growth are understood and shared in ways that support quality outcomes. Infrastructure investment should come together to shape efficient and liveable cities.
25. We cannot leave this situation to continue. That is why we established the Urban Growth Agenda (UGA), to address the underlying problems above so that we can have successful cities that maximise labour markets and opportunities.
26. The UGA aims to make room for growth both up and out by addressing fundamentals of land supply, development capacity and infrastructure provision by removing undue constraints and making the system more responsive. A central part of the UGA's success will be the ability to address constraints to urban development caused by an unresponsive planning system.
27. We consider an NPS is still the most effective means of supporting the system-wide, long term changes that we need. This is because it impacts on all RMA decision-makers and has the largest influence on local authority plans and decision-making frameworks.
28. The NPS-UD aims to change the culture and practice of land use regulation and its effects and will provide national direction under the RMA and replace the existing NPS-UDC

29. Many of the objectives and policies of the NPS-UD will apply to all urban areas, but the more rigorous provisions will be targeted to our largest and fastest growing urban centres. This ensures the more onerous requirements will apply only in the areas where they will provide the greatest benefits. This targeting approach is discussed in more detail in this paper.

Contributing to the Government's response to COVID-19

30. The NPS-UD can also be seen as part of the wider government response to rebuilding momentum to manage the impacts of COVID-19. We are likely to see the following impacts on urban development.
- a. A drop in residential construction sector activity, like that seen in the Global Financial Crisis (GFC), fuelled by a decline in the availability of credit and lower consumer confidence and demand. Even if most projects underway may be completed, the pipeline of new projects in six months' time looks increasingly uncertain.
 - b. A drop in sector capacity due to closures of our construction and development firms and decline in sector employment, affecting the sector's ability to support the economic recovery.
 - c. A further reduction in the ability of local councils to fund existing planned work, or to bring forward "shovel ready" projects to help stimulate the economy^[1]. Councils will also be pushed closer to their debt covenant cap.
 - d. an increase in market uncertainty for developers, causing projects may be delayed or put on hold, impacting future development and the sectors ability to respond.
 - e. A large proportion of our population negatively impacted by COVID-19 will be in our urban areas as three quarters of our population live in urban areas of at least 30,000.
31. If we do not get on top of these issues now, it will be difficult for both the market and government to address the challenges that COVID-19 brings for people living in our cities and across New Zealand. We have an opportunity to significantly improve the urban development sector outcomes over the coming months and years which will make a difference to building an economy that is more productive, sustainable, and inclusive.
32. COVID-19 has also reinforced the reliance of the urban development work programme on the progress in other portfolios and their response to COVID-19. The NPS UD will play an important role here in creating the conditions for the market to respond to growth, with a focus on freeing up restrictive planning rules. The NPS-UD will enable growth, both up and out, and help the development of more productive and sustainable cities by requiring councils to address overly restrictive rules and provide development capacity to meet the diverse demands of communities.
33. Cabinet recently approved changes to the RMA that will enable faster consenting of development and infrastructure projects in response to the impact

[1] The Local Government COVID-19 Response Unit (LGNZ, SOLGM, Local Government Funding Agency, Treasury and Department of Internal Affairs (DIA))

of the COVID-19 pandemic on the economy. The NPS-UD will work alongside the fast-tracking RMA legislation. The NPS-UD will complement the larger-scale projects by enabling growth in addition to and in areas surrounding these projects.

34. By removing these barriers, we will provide for the construction of a range of housing typologies in a range of locations to meet the diverse housing needs and preferences of New Zealanders (including for apartments and town houses) in order to create sustainable and inclusive communities that are well-connected to employment and educational opportunities.
35. We also recognise that while the NPS-UD will affect change within the existing planning system, there is longer-term RMA reform underway. We consider that the role of the NPS-UD in enabling growth will remain relevant in a new system.

Public feedback on the discussion document has indicated the need for some refinement of policies and some substantive changes to achieve policy intent

36. The discussion document on the NPS-UD was consulted on between 21 August and 10 October 2019 and sought feedback on draft objectives and policies. In it we sought feedback on some sample wording and asked questions to inform the development of policies in the NPS-UD or future national direction. We asked how directive and specific intensification policies should be, how these should be incorporated into RMA plans, and what the timeframe for implementation by councils should be.
37. As part of the officials-led process for preparing an NPS under section 46A(3)(b) of the RMA, the Minister for the Environment established a Technical Advisory Panel. Officials undertook significant work with the Panel throughout the policy development process. This was very useful to analyse initial policy recommendations, road test the proposals against real world scenarios and to highlight any potential legal implications. The proposed NPS-UD was significantly enhanced through input of the Panel. The Panel has indicated their support for the policy outcomes sought through the NPS-UD, but noted that their support can only be expressed in general terms as the Terms of Reference did not enable a review of a final draft.
38. The Panel recommended officials undertake further targeted engagement with local authorities as the direction on some policies had shifted. Officials held meetings with relevant local authorities in January and February 2020 to discuss specific issues including but not limited to targeting of policies, car parking, HBAs, FPSs, intensification and responsiveness policies.
39. The Recommendations Report was prepared in accordance with section 46A(4)(c) of the RMA, is informed by an RMA section 32 analysis⁵ (Appendix four) and a cost benefit analysis.
40. Some technical changes to the NPS-UD are required that do not make substantial changes to the policy approach. These are summarised in Appendix one.

⁵Section 32 of the RMA requires that new proposals are examined for their appropriateness in achieving the purpose of the RMA.

41. We are proposing some changes to the NPS-UD policies that were publicly consulted on [CAB-19-MIN-0380 refers]. The proposed changes primarily relate to making room for growth (i.e. intensification policies) and will better enable well-functioning urban environments and competitive urban land markets – that is not just the availability of more land, but the intensification of existing development in urban areas and greenfield development. The more substantive changes are discussed in the following section.

We propose proceeding with the NPS-UD policies consulted on in 2019, with changes based on the feedback received in consultation and further analysis

Summary and structure of NPS-UD

42. The NPS-UD contains objectives and policies in four key areas. Below is a summary of each of the four areas.

a. *Future development strategy*

- The future development strategy (FDS) policies will require certain councils to carry out long-term planning to demonstrate how they will accommodate growth and ensure a well-functioning urban environment for all people, communities and future generations.
- These policies build on and strengthen the existing NPS-UDC requirements for local authorities to prepare or update an FDS every three years. They would apply only to local authorities in tiers 1 and 2.
- The FDS policies includes requirements for engagement with other relevant local authorities, central government agencies, hapū and iwi, and a public consultation process. Local authorities are strongly encouraged to use their FDS to inform the development of Long Term Plans and Infrastructure Strategies under the Local Government Act 2002, and Regional Land Transport Plans under the Land Transport Management Act 2003.

b. *Making room for growth*

- These objectives and policies set out how RMA plans need to enable growth in a way that contributes to a well-functioning urban environment. This includes enabling growth both upwards through greater intensification and outwards through greenfield development. It also includes requirements aimed at ensuring that rules in plans are not unnecessarily constraining growth.
- This part also incorporates amended NPS-UDC policies requiring plans to provide development capacity for housing and business space. Local authorities must enable enough development opportunities to respond to projected growth. Local authorities in tier 1 must also incorporate bottom lines, setting out the minimum capacity for housing required over the next 30 years, into their regional and district plans.

c. *Evidence for good decision-making*

- Underpinning the other parts of the NPS-UD are requirements to develop, maintain an evidence base to inform planning decisions. This part incorporates many of the existing requirements of the NPS-UDC, with amendments to build on and improve these policies.

- In addition to these more general requirements, tier 1 and 2 local authorities will have to prepare a Housing and Business Development Capacity Assessment (HBA) at least every three years and monitor additional 'price efficiency' indicators.
 - HBAs are an existing NPS-UDC requirement. Under the NPS-UD, the HBA policies will be amended and improved so they provide more useful and fit-for-purpose information to local authorities.
- d. *Processes for engaging on planning*
- This part sets out requirements for who local authorities should be working with as part of their urban planning process and what that engagement should look like. It states existing obligations under the RMA – to take into account the principles of the Treaty of Waitangi (te Tiriti o Waitangi) – and provides direction on what local authorities must do in this regard when planning for urban environments. The NPS-UD does not replace requirements under the RMA for engaging with tangata whenua and iwi authorities. The engagement requirements also ensure coordinated planning between local authorities and infrastructure providers. This section applies to all urban environments.

Providing for intensification policies

43. The discussion document consulted on options (both a prescriptive and descriptive approach) for directing councils proposed to be major urban centres to enable development density in particular locations. Further analysis showed it was difficult to prescribe intensification metrics at a national level, without unintended consequences.
44. For example, in some areas, characteristics such as slope may make a prescribed density incompatible. Therefore, we propose a mixture of descriptive policies, which would provide guidelines for how local authorities set density in certain areas, and prescriptive policies that would set specific density provisions for areas where we have the greatest evidence of benefit.
45. The prescriptive policy would direct councils to enable the higher levels of development around rapid public transport stops, and in and around city centre and metropolitan centre zones. These locations currently provide the best proxy for locations of highest accessibility and demand, and there is strong economic evidence to demonstrate that reducing constraints on development in these locations will have the biggest impact.
46. Over time these changes will particularly assist renting households. PwC estimate that renters will receive around two to six times the net benefits, due to an increase in homes, more choice and discretionary income from lower prices.
47. We propose that the above approach is accompanied by an 'exceptions' policy, recognising that in some locations, intensification will not be suitable to the level envisaged by the policy. Clear direction on the nature of exception would be provided through this policy, and any exception must be supported by clear evidence of the need for exceptions at an individual property level.

Enabling a more responsive planning system

48. The discussion document included an example policy that would direct local authorities within councils to be more responsive to change requests for urban development that were a) out of sequence, or b) unidentified in plans. The example policy was directive, using the term 'must provide for urban development'. Following consultation and further analysis, it appeared the policy would possibly introduce a test that would decrease the ability of local authorities to respond to greenfield plan change requests compared to the status quo.
49. We propose a policy that requires local authorities to be responsive by having particular regard to proposals that would add significant development capacity, contribute to well-functioning urban environments and are well connected along transport corridors. This policy would be complemented by a requirement for councils to consult with developers to understand the nature, scope and timing of development opportunities they are pursuing through the FDS.

Removing car parking minimum requirements in all tiers

50. Minimum parking requirements currently dictate the number of off-street car parks a new development must provide. We consulted on whether to remove car parking minimum requirements in certain zones. This would provide developers the flexibility to determine the number of carparks in their developments.
51. The use of minimum car parking requirements, particularly in major urban centres, has prevented land being used for more productive purposes and added significant cost to housing and commercial developments. Essentially, the rules impose a tax on floor area to accommodate cars, instead of allowing developers flexibility to determine the number of car parks they need. These costs then fall on households and businesses.
52. Removing the ability to set minimum parking requirements will help ensure car parks are not forced in areas where more space for housing could otherwise be achieved. This in turn will help reduce unnecessary development costs and make it easier to build housing, particularly in denser urban areas well connected by public transport where people often do not need to own cars to access their social and economic needs.
53. The policy will have significant benefits. Across the cities tested⁶ PwC estimates this would result in indicative benefits of \$670m, compared to indicative costs of approximately \$78m, a cost benefit ratio of 8.6.
54. This policy will not necessarily result in significant declines in parking availability. Developers will still cater for people who want garages or car ports, but will have more flexibility to provide shared car parking spaces for multi-unit developments if they choose, or none at all if the demand does not exist. Many businesses will still provide car parking for their customers but will not be required to provide more car parks than people actually use at any given time.
55. We therefore propose that all urban areas remove minimum parking requirements in favour of market led solutions. It will allow developers to decide to how many carparks to provide based on their customers' preferences and reallocate land to

⁶ Auckland, Hamilton, Wellington, Christchurch and Queenstown.

other commercial or housing uses. While the benefits of more flexible land use will be immediate for developers, changes in the supply of parking will occur slowly over-time as development and redevelopment occur.

56. This policy would apply to all three tiers. While we did not consult on removing car parking restrictions for all tiers, evidence shows that the benefits of the policy would be greater than the costs in all urban areas. No city is too small to consider removing distortionary parking rules, and the costs of removing minimum requirements will decline in smaller cities with less constraints on parking availability. Extending the policy to all urban environments embeds good planning practice more broadly and prepares smaller urban environments to respond to growth pressures in the future.
57. We also propose the inclusion of new direction, encouraging all urban areas to manage parking spill-over through comprehensive parking management plans.
58. Accessibility carparks must still be provided for, and this policy does not preclude private provision of parking where market demand exists.

Well-functioning urban environments

59. The discussion document proposed giving direction on the nature of quality urban environments both in existing and future urban environments. However, the proposed policy led to varying interpretations from submitters on the scale to which it applied. This undermined the policy intent – to provide national direction on the critical features and functionality of an urban environment while still enabling local authorities to make choices about the particular development that occurs in their local urban environments.
60. Therefore, we propose replacing the term ‘quality urban environment’ with ‘well-functioning urban environment’ to better align with the intent of the policy. The revised policy identifies nationally applicable factors characteristic of a well-functioning urban environment:
 - a. having or enabling a variety of homes that meet the needs, in terms of type, price and location, of different households and enable Maori to express their cultural traditions and norms
 - b. having or enabling a variety of sites that are suitable for different business sectors in terms of location and site size
 - c. having good accessibility between housing, jobs, opportunities for social interaction, services, and public open spaces, including by way of public or active transport
 - d. supporting the competitive operation of land and development markets
 - e. supporting reductions in greenhouse gas emissions
 - f. being resilient to the likely current and future effects of climate change.

Addressing housing affordability

61. Housing affordability was not clearly referenced through an objective in the discussion document. Some submitters and agencies raised this omission. Housing affordability is a key priority for this Government and it is important that this is included as an objective of the NPD-UD.

62. As such, we propose an objective that clearly states the intent of the NPS-UD is to support housing affordability as delivered through planning decisions that support competitive land markets.

Addressing climate change

63. Climate outcomes are a priority for this Government. While the cumulative impact of proposed policies in the NPS-UD was intended to support reductions in greenhouse gas emissions, several submissions noted that the proposed direction did not explicitly reference climate change.
64. We propose including an objective in the NPS-UD that explicitly references climate considerations, accompanied by a policy requiring decision-makers to have particular regard to the current and future effects of climate change when making decisions relating to urban environments. This provides a clear signal that we expect planning decisions to contribute to climate change outcomes.

Taking into account the values and aspirations of Māori

65. We intend to strengthen the ability of Māori to have a role in shaping the future state of the urban environment through the NPS-UD and consider that the discussion document presented a narrow scope of provisions relating to Māori engagement. Therefore, we propose removing reference to whenua Māori and have provided direction to councils to understand and take into account *Māori values and aspirations for urban development, in particular, those of tangata whenua*. This extends the scope of the policy because the identification of values and aspirations for Māori would not be limited to whenua Māori.
66. Submissions we received from hapū and iwi/Māori, including Ngāi Tahu and Waikato Tainui, sought greater recognition of the Treaty of Waitangi (te Tiriti o Waitangi) and of Treaty settlements in the NPS-UD. In response to these submissions, we have included a specific reference to highlight councils' existing obligations to the Treaty of Waitangi and to provide direction to councils on how to take into account the Treaty in planning for urban environments.
67. We also propose to extend the scope of the matters to be taken into account by local authorities to enable hapū and iwi/Māori to identify a desired future state for the urban environment instead of just providing for a reaction to current state.

Housing and Business Assessments will apply to tiers 1 and 2 (rather than tier 1 only)

68. The NPS-UDC requires both high and medium growth urban area councils to prepare detailed housing and business development capacity assessments (HBAs). The discussion document proposed removing these requirements from medium growth urban areas and only applying them to what was referred to in the discussion document as major urban centres. This was due to preliminary analysis that the costs of such policy requirements for smaller, lower growth areas might not be justified by the benefits.
69. However, further analysis and subsequent feedback through submissions, identified that HBAs have value for smaller, lower growth areas. On the basis of this we now propose that both tier 1 and 2 councils be required to publish three yearly HBAs, but allow tier 2 HBAs to present simpler, fit-for-purpose information about the commercial feasibility of housing development capacity, and the demand for business land.

70. The discussion document proposed that the NPS-UD require councils to provide sufficient development capacity, that is commercially feasible and reasonably expected to be realised (referred to as 'likely to be taken up' in the discussion document). We propose replacing this wording with 'reasonably expected to be realised' to clarify the policy intent. This would require local authorities to:
- meet projected demand for housing and business land
 - for tier 1 and 2 councils, also provide an additional margin of 20 per cent in the short and medium terms and 15 per cent in the long term.
71. The margin requirements under the NPS-UD for HBAs are likely to add significantly more development capacity than under the NPS-UDC.

Application of NPS-UD policies

72. The discussion document proposed focusing the most directive policies on the fastest growing areas, with the largest urban pressures or the largest urban areas effectively replacing the NPS-UDC's three-tier system with a two-tier system.
73. Officials have reassessed the targeting of policies in the NPS-UD based on Statistics NZ population size and growth rates made available in December 2019. Further, feedback from medium-growth councils was that the existing policies were useful for their planning activity.
74. We consider that the NPS-UD should use a three-tiered approach more in line with that currently in place under the NPS-UDC. The tiers and policies that would be applicable are outlined below.

Tier 1	Policies that apply
<ul style="list-style-type: none"> Auckland Council Christchurch City Council, Selwyn District Council, Waimakariri District Council, Environment Canterbury Regional Council Wellington City Council, Lower Hutt City Council, Kapiti Coast District Council, Porirua City Council, Upper Hutt City Council, Greater Wellington Regional Council Hamilton City Council, Waikato District Council, Waipa District Council, Waikato Regional Council Tauranga City, Western Bay of Plenty District Council 	<ul style="list-style-type: none"> HBAs FDS Directive intensification policies Detailed assessment of 'take-up' in intensified zones All policies listed in tier 3
Tier 2	Policies that apply
<ul style="list-style-type: none"> Hastings District, Napier City, Hawkes Bay Regional Council Nelson City, Tasman District, Whangarei District, Northland Regional Council Palmerston North City, Horizons Council, New Plymouth District, Taranaki Regional Council Rotorua District Council, Bay of Plenty Regional Council Dunedin City, Otago Regional Council 	<ul style="list-style-type: none"> HBAs (simpler provisions to match capability) FDS All policies listed in tier 3.

<ul style="list-style-type: none"> Queenstown-Lakes District Council, Otago Regional Council 	
Tier 3	Policies that apply
All urban environments: population greater than 10,000	<ul style="list-style-type: none"> Removing minimum car parking Provide sufficient development capacity to meet demand Well-functioning urban environments Responsive planning policies Enable greater density of urban form in locations with good public transport accessibility Amenity provisions Taking into account the Treaty of Waitangi (te Tiriti o Waitangi) (note that this policy does not limit the application of section 8 of the RMA to population areas greater than 10,000) Monitoring housing market indicators

Implementation of the NPS-UD

The NPS-UD will have immediate influence, but more significant changes will take time

75. All objectives and policies in the NPS-UD will apply immediately from when the NPS-UD comes into force.

Timeframe for implementing intensification policies

76. Some submissions expressed concern about implementing the intensification policies within 18 months, so we now propose a staggered implementation to intensification. This would require tier 1 and 2 councils to notify plan changes as soon as practicable and no later than 2 years after the NPS-UD is gazetted, and tier 3 councils to notify plan changes to give effect to the intensification policies as soon as practicable.

77. There are several reasons this extension for tier 1 and 2 councils is appropriate. Firstly, local authorities will also be expected to give effect to other national direction on freshwater, indigenous biodiversity and highly productive land, so the capacity of councils, resource management professionals and the courts will be stretched. Some elements of the intensification policy will require significant groundwork to implement. Secondly, councils may need to socialise this policy with their communities. This will also likely coincide with councils working through the impact of COVID-19 on their work programmes and communities.

Timeframe for implementing car parking policy

78. We propose tier 1 councils have 18 months to remove minimum car parking rules, as proposed in the discussion document. The 18-month timeframe is to ensure councils and communities have sufficient time to develop car parking management plans to manage effects of car parking in other ways. The New Zealand Transport Agency (Waka Kotahi) will be providing guidance on this.

Timeframe for preparing or reviewing a Future Development Strategy

79. We propose the deadline for preparing or reviewing an FDS be linked to informing the 2024 long-term plans. This is because gazettal of the NPS-UD in July 2020 does not allow sufficient time for local authorities to develop the FDS to inform 2021 long-term plans. Additionally, this will focus implementation in the short term on giving effect to the intensification policies and car parking policies that are likely to substantially increase development capacity.
80. HBAs will need to be updated every three years. Tier 1 and 2 councils will be required to complete the housing assessment aspect of the HBA by July 2021 and the full HBA (including business assessment) in time to inform council's 2024 long-term plans.
81. This approach recognises the short timeframe to update HBAs following gazettal of the NPS-UD and the pressing issues with housing development capacity. It will ensure up-to-date information is available to give effect to the development capacity requirements of the NPS-UD. This approach also allows councils more time to develop internal capability to carry out robust business land assessments (under the NPS-UDC, all councils engaged external consultants to carry out this aspect of the first round of HBAs, with varying results).

Implementation programme

82. The benefits of national direction cannot be realised without a change in planning culture and practice to support it. The NPS-UD must be supported by a comprehensive implementation programme that aims to ensure local authorities implement the NPS as intended. HUD and MfE are jointly responsible for the implementation of the NPS-UD.
83. Lessons learnt from implementing the 2016 NPS-UDC reinforce the importance of supporting councils to implement the NPS-UD policies not only through traditional methods such as guidance, but also through enabling cross council collaboration and using existing central government relationships, partnerships and skills.
84. The Office for Disability Issues has noted the importance of the NPS-UD in relation to disabled people and that urban environments are accessible, i.e. places where disabled people are able to fully participate, interact and move about with ease and dignity. We will be working on guidance and implementation to ensure these issues are considered by local authorities when implementing the NPS-UD. MfE and HUD will work with the Office for Disability Issues to determine the appropriate forum to undertake the development of this guidance. MfE and HUD will also work with the Office for Seniors alongside this.
85. The experience with implementation of the NPS-UDC also highlighted that the way in which central government monitors and evaluates council implementation, combined with the way any non-compliance is dealt with, strongly influences the extent to which the key objectives of the policy are achieved. Therefore, the implementation phase of the NPS-UD will be focused on developing and implementing clear and transparent monitoring and enforcement strategies.
86. Officials advise that, overall, Treaty settlement arrangements are not intended to be impacted directly by any of the proposed changes. However, they advise that

moving forward into the implementation phase, MfE must engage with hapū and iwi to assess if impacts may arise, and if so, manage them.

Financial implications

87. Funding has been provided in the 2019 budget for implementation support, including delivery of some guidance material and engagement.

Legislative implications

88. There are no legislative implications arising from this paper.

Other national direction instruments are being amended or developed in a similar timeframe

89. Four other areas of national direction are being developed (freshwater management, highly productive land, indigenous biodiversity), which could require local authorities to achieve multiple objectives. In particular, careful planning will be required to achieve objectives to 'protect' certain aspects of the environment while also 'enabling' urban development. We consider that the cumulative impact of implementing these will be particularly significant on councils and the Ministry for the Environment has been coordinating these processes.
90. Officials have worked to reduce tensions between the proposed NPS-UD and other national direction, however interactions and overlaps still exist. The differing timeframes for development of these national direction instruments adds complexity to managing their interactions and implementation; one may be finalised before changes in another new reveal interactions.

Interactions with the national direction on freshwater management

91. The Government has consulted on updated national direction for freshwater management, including proposed full replacement of the NPS-FM and a new NES-FM to broaden the focus to all aspect of freshwater ecosystem health, in urban and rural environments.
92. While only a small fraction of New Zealand's freshwater bodies are in urban areas, these are some of the most degraded. These is a risk that protection of streams and wetlands and the need to avoid sedimentation could add significant cost to development.
93. Officials working on both instruments have worked to reduce the complexity and clarify the intended outcomes of the processes established by the freshwater package. Officials working on the NPS-UD also understand that the freshwater package will be amended to reflect the broader range of values associated with urban streams than ecosystem health.

Interactions with the proposed National Policy Statement on Highly Productive Land (NPS-HPL)

94. The NPS-HPL is aimed to improve the way highly productive land is managed under the RMA to recognise the full range of values and benefits associated with the use of highly productive land for primary production; maintain the availability

of highly productive land for primary production for future generations and to protect highly productive land from inappropriate subdivision, use and development.

95. It does not preclude the use of land for urban development, instead asking councils to actively consider trade-offs when making land-use decisions.

96.

s 9(2)(f)(iv)

Interactions with a proposal for a National Policy Statement on Indigenous Biodiversity (NPS-IB)

97. The intent of the proposal for an NPS-IB is to identify, protect, manage and restore indigenous biodiversity, including in urban areas. The NPS-IB is earlier in the development cycle and so many interactions may not be clear. The FDS policies of the NPS-UD are expected to be a key tool in managing these interactions, and open spaces with biodiversity, as envisaged by the NPS-IB, would very much be consistent with the well-functioning urban environments desired by the NPS-UD. While the NPS-IB will preclude development in some areas, it provides an opportunity to improve the connections between communities and the natural environment.

Relation to government priorities

98. This proposal relates to the Government's priority theme of improving the wellbeing of New Zealanders and their families. The NPS-UD will contribute to healthier, safer and more connected communities, and to ensuring everyone has a warm, dry home.

99. The proposed policies also support the Government's Economic Plan by contributing to the transformation of our housing market.

Impact Analysis

Regulatory impact analysis

100. The Regulatory Impact Analysis requirements apply to the proposal in this paper and a Regulatory Impact Assessment (RIA) has been prepared (Appendix three).

101. A review panel with representatives from the Treasury's Regulatory Quality Team, the Ministry for the Environment and the Ministry for Housing and Urban Development has reviewed the Regulatory Impact Assessment (RIA) "National Policy Statement on Urban Development" (NPS-UD) produced by the Ministry of Housing and Urban Development and dated 22 May 2020. The review team considers that the RIA meets the Quality Assurance criteria.

102. This is a complex RIA with links to the wider Urban Growth Agenda (UGA). The problem definition and options analysis in the RIA are underpinned by a solid evidence base including a study by Beca on the impacts of specific planning rules

on constraining urban growth, a cost benefit analysis undertaken by PricewaterhouseCoopers and a Resource Management Act Section 32 report by the Ministry for Environment.

103. The RIA indicates that the benefits and costs of the NPS-UD will be unevenly distributed throughout the country and different urban environments, however where the constraints are tightest and the costs are potentially most significant, the benefits are expected to be highest.
104. Evaluation, monitoring and review will be important for successful implementation of the NPS-UD because it will help to manage local and regional differences and the risk of any unintended consequences. As indicated in the RIA, a key part of the implementation strategy will be allowing for some flexibility in the NPS-UD's provisions where evidence of its need can be provided and leveraging other UGA mechanisms (such as the growth partnerships and infrastructure funding and financing tools) to support councils to implement the NPS-UD."

Climate Impact Panel Assessment

105. The Ministry for the Environment has been consulted and confirms that the CIPA requirements do not apply to this proposal. The direct emissions impacts are unable to be accurately determined in quantitative terms. However, the Ministry notes that overall emissions from transport can be expected to further decrease relative to current projections, due to increased density of urban development, particularly where this is enabled in or near centres or employment opportunities, and in areas well-served by public transport. The mandatory removal of car parking minima from plans will remove a subsidy on car parking, and is also expected to contribute to this effect.

Population implications

106. Improvements to urban environments will have greater positive impacts for disabled people if done in a way that promotes accessibility and inclusion and excludes and/or removes accessibility barriers. Well-functioning environments, as defined in the NPS-UD, will also support the Age-friendly work programme. Of particular relevance is having a variety of housing typologies that meet the needs of different households (including older people) and good accessibility between housing, jobs and community services and amenities.
107. It is important that disabled people are included in any consultation as this work progresses. Given the significant proportion of age-related mobility issues and other disabilities, it will also be important for older people to be included in consultation as this work progresses.
108. There are no gender implications associated with this proposal.

Human rights

109. There are no human rights implications associated with this proposal.

Consultation

110. This paper has been prepared by the Ministry for the Environment and the Ministry of Housing and Urban Development.
111. The following agencies have been consulted: Treasury, Ministry of Transport, Department of Internal Affairs, Heritage New Zealand Pouhere Taonga, Office for Seniors, Te Arawhiti, Te Puni Kōkiri, Housing New Zealand Corporation, Ministry of Social Development, Office for Disability Issues, Kainga Ora, Department of Conservation, Ministry of Education, Ministry of Health, Land Information New Zealand and the New Zealand Transport Agency.

Communications

112. The NPS-UD will be notified in the Gazette.
113. The NPS-UD and the report provided to us under section 51 of the RMA will be publicly notified and made available on the Ministry for the Environment's website. A copy will also be sent to every local authority. A summary of the recommendations in the report and a summary of our decisions (including any reasons for not adopting any recommendations) will be made available to submitters (as required by section 52(3)(c)) of the RMA on the Ministry for the Environment website.

Proactive release

114. We intend to proactively release this paper in full following gazettal in July 2020.

Compliance

115. The proposed regulations comply with:
- the principles of the Treaty of Waitangi (te Tiriti o Waitangi)
 - rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - principles and guidelines set out in the Privacy Act 1993
 - relevant international standards and obligation
 - Guidelines on Process and Content of Legislation.
116. The statutory prerequisites that apply to the preparation and finalisation of a national policy statement have been met.
117. Cabinet agreed to publicly consult on a draft National Policy Statement on Urban Development from 21 August to 10 October 2019 [CAB-19-MIN-0380 refers].
118. Section 46A of the RMA requires the Minister for the Environment to choose between using a board of inquiry or an alternative process to inquire into and report on the proposed amendments. The Minister for the Environment chose to use an alternative process under section 46A(3)(b) that meets the statutory requirements to give the public adequate time and opportunity to make a submission; and consider a report and recommendations on the submissions and the subject matter of the proposed amendments.

119. The Minister also appointed a Technical Advisory Panel to provide an independent review. The Panel has indicated their support for the policy outcomes sought through the NPS-UD but notes this support can only be expressed in general terms as the Terms of Reference did not enable a review of a final draft.
120. We have recommended changes to the proposed NPS-UD as a result of submissions to improve clarity, and better achieve the policy intent. We have received, and had particular regard to:
- Recommendations Report prepared under section 46A(4)(c) of the RMA and informed by a section 32 analysis and Cost Benefit Analysis
 - An RMA section 32 and section 32AA report when evaluating proposed changes (Appendix four). This report concluded that there are considerable efficiencies to be gained from adopting the preferred policies, and they meet the tests of section 32 of the RMA.
121. We recommend that the Ministers for the Environment and Urban Development be delegated the ability to make any minor and technical amendments to the drafting of the NPS-UD as required prior to gazettal.
122. We note that Crown Law assisted in the preparation of the draft NPS, but a detailed vires review is required before the NPS can be submitted to the Ministry for Environment Chief Legal Advisor for certification. The review and the certification process are required under the CabGuide and are the final steps in the process before the NPS can be submitted to the Executive Council for approval. Because we are seeking approval to make further minor changes and drafting fixes, these steps have not been carried out yet. However, we intend to have this review and certification completed prior to the NPS being submitted to Cabinet on 8 June.
123. Some changes sought by submitters will be addressed through the proposed implementation programme. A summary of recommendations and our response to them will be provided to submitters as required by section 52 of the RMA as well as supporting documents.

Regulations Review Committee

124. A national policy statement prepared through a process under section 46A(1) of the RMA is a disallowable instrument and must be presented to the House of Representatives.
125. We consider there are no grounds for the Regulations Review Committee to draw the NPS-UD to the attention of the House under Standing Order 319.

Timing and 28 day rule

126. The NPS-UD will come into force 28 days after its notification in the Gazette.

Recommendations

The Minister for the Environment and Minister for Urban Development recommend that the Committee:

1. **note** that in July 2019 Cabinet agreed to publicly consult on a discussion document containing draft policy wording for a National Policy Statement on Urban Development [CAB-19-MIN-0380 refers]
2. **note** that we have considered the summary of submissions and recommendations provided to us under section 51 of the RMA and the section 32AA analysis
3. **agree** that the Minister for the Environment and Minister for Urban Development can make minor and technical amendments to the National Policy Statement on Urban Development to ensure it gives effect to its policy intent
4. **agree** to policy changes to the draft National Policy Statement on Urban Development, including:

Providing for intensification policies

- 4.1. Adopt a 'scaled' approach to most directive policies, with greater specificity in prescription provided to the areas with clear evidence of benefit – city and metro centres, and rapid transport stops
- 4.2. Allow exceptions to enabling intensification where local constraints are incompatible – but require clear and demonstrable evidential basis for this exception

Enabling a more responsive planning system

- 4.3. Include policy direction for local authorities to have particular regard to out-of-sequence and unanticipated development, if they significantly add to development capacity, support well-functioning urban environments and are well-connected along transport corridors
- 4.4. Integrate responsiveness directions into the NPS-UD Future Development Strategy and engagement requirements, by requiring engagement with the development sector on development opportunities

Removing car parking minimum requirements in all tiers

- 4.5. Require local authorities in all tiers to remove minimum car park requirements, in all zones
- 4.6. Encourage all local authorities to manage the supply and demand of car parking through comprehensive parking management plans.

Describing well-functioning urban environments

- 4.7. Replace references to 'quality urban environments' with 'well-functioning' urban environments
- 4.8. Include a policy outlining a non-exclusive list of functions that a well-functioning urban environment is expected to deliver

Addressing housing affordability

- 4.9. Include an objective to recognise the role of planning decisions in improving housing affordability through supporting competitive land and development markets

Addressing climate change

- 4.10. Include an objective that the urban environments support reductions in greenhouse gas emissions
- 4.11. Include policy that decision-makers must have particular regard to the current and future effects of climate change when making decisions relating to urban environments

The values and aspirations of Maori in urban planning

- 4.12. Provide direction to local authorities about taking into account the principles of the Treaty of Waitangi (te Tiriti o Waitangi) in urban planning
- 4.13. Increase the scope of the matters to be taken into account by local authorities to enable Māori to identify a desired future state for the urban environment instead of just providing for a reaction to current state
- 4.14. Require local authorities, in carrying out the HBA, to assess how the housing market is providing for Māori housing demand

Housing and Business Assessments will apply to tiers 1 and 2 (rather than tier 1 only)

- 4.15. Maintain competitiveness margins of 20 per cent in the short and medium term and 15 per cent in the long term
- 4.16. Extend the requirement to prepare a three-yearly HBA in time to inform long term plans under the Local Government Act to tier 2 councils but with simpler requirements for evidence
- 4.17. Clarify meaning of 'take-up', replacing the term with reasonably expected to be realised, and support with guidance and examples

Application of NPS-UD policies

- 4.18. Retain the three-tiered approach with specific policies being targeted to tier 1 and 2 and general policies applying to all urban environments but change the expectations about what policies each tier must follow.
- 4.19. Confirm that tier 1 will include local authorities in: Auckland, Hamilton, Wellington, Tauranga, Christchurch
- 4.20. Confirm that tier 2 will include local authorities in: Napier-Hastings, Nelson-Tasman, Whangarei, Palmerston North, New Plymouth, Rotorua, Dunedin, Queenstown

5. **agree** to the following timeframes for local authorities to implement NPS-UD:

- 5.1 Tier 1 and 2 councils have two years from the NPS-UD gazettal to notify plan changes to implement all intensification policies
- 5.2 Tier 1 councils have 18 months from the NPS-UD gazettal to notify plan changes to implement car parking policy
- 5.3 Tier 3 councils required to notify plan changes to implement the relevant intensification policies as soon as practicable HBAs must be updated every three years
- 5.4 Tier 1 and 2 councils required to complete the housing assessment aspect of the Housing and Business assessments by July 2021 and the full Housing

and Business assessment (including business assessment) in time to inform council's 2024 long-term plans

- 5.5 Future Development Strategies (FDS) should be prepared or reviewed in time to inform council's 2024 long-term plans
- 5.6 Local authorities should review FDS every three years, informed principally by the latest HBA and ongoing with development sector engagement about development opportunities. Local authorities must follow a Special Consultative Process in relation to aspects that are deemed necessary to update
6. **note** the policies in the NPS-UD will not directly impact Treaty settlement arrangements
7. **note** that officials will provide guidance to ensure that Treaty Settlement Act obligations are not adversely impacted
8. **agree** to the Minister for the Environment and Minister for Urban Development:
 - 7.1 recommending the National Policy Statement on Urban Development to the Governor-General in Council for approval
 - 7.2 notifying the National Policy Statement on Urban Development in the *New Zealand Gazette*
9. **note** that when the NPS-UD takes legal effect it will replace the NPS-UDC
10. **note** that the National Policy Statement on Urban Development will come into effect 28 days after its notification in the *New Zealand Gazette*
11. **invite** the Minister for the Environment and Minister for Urban Development to further discuss the NPS-UD implementation programme and associated costs with Housing Ministers

Hon David Parker
Minister for the Environment

Hon Phil Twyford
Minister for Urban Development

Appendix 1

Technical changes to the NPS-UD following consultation and further analysis

Policy	Proposal as consulted on in discussion document	Recommendations
Amenity values in urban environments	Recognising that amenity values change over time, and vary among individuals and communities	<ul style="list-style-type: none"> • Broaden the scope of the amenity objective to focus on allowing for urban environments as a whole to change, but include explicit reference to amenity values. • Strengthen the amenity policy to require decision-makers to have regard to anticipated urban form outcomes, that appreciation of amenity values can differ across individuals and communities, and that change to existing amenity values is not necessarily negative.
Ensuring that plan content enables expected levels of development	Council rules must individually and cumulatively support objectives for growth	<ul style="list-style-type: none"> • Replace zone description requirement with directions to plan-makers to describe in the zone objectives the: <ul style="list-style-type: none"> - intent of the zone outcomes, including the anticipated built form (future anticipated environment) - spatial distribution of the zone in terms of the location principles and spread (area) to achieve the development capacity sought. • Retain zone evaluation policies and provide guidance as appropriate to zone evaluations • Include list of zone type for which monitoring and evaluation must be undertaken • Require consideration of impact of plan-making on development capacity is undertaken alongside the requirements of the development capacity provisions of NPS-UD
Future Development Strategy (FDS)	Broadening and refining the requirements for an FDS, and strengthening its role in the planning system	<ul style="list-style-type: none"> • FDS must be produced every 6 years • FDS must be reviewed, and if necessary updated, every 3 years.

This paper also included a draft of the National Policy Statement on Urban Development, the Regulatory Impact Assessment and evaluation reports prepared under s32 and s32AA of the Resource Management Act 1991. The final versions of these documents are available at www.mfe.govt.nz

30 July 2021

By Email: jeremy@brabant.co.nz

Jeremy Brabant
Panel Chair – Wooing Tree Estate Expert Consenting Panel

WOONG TREE ESTATE APPLICATION

We refer to your instructions seeking our advice on legal questions arising from the Panel's consideration of the above resource consent application under the Covid-19 Recovery (Fast-Track Consenting) Act 2020 (**FTA**).

YOUR QUESTIONS

1. You have asked us to review the applicant's response to¹, and advise on, the following questions, which were posed to the applicant in a further information request dated 21 June 2021:
 - a. In relation to the Cromwell Spatial Framework – Stage 1: Spatial Plan (**Framework Plan**):
 - i. Whether a non-statutory framework plan may be considered pursuant to clause 31(1)(d) to Schedule 6 of the FTA;
 - ii. Whether the Minister's decision not to specify the Framework Plan as a relevant matter under section 19(f) has any implications for the Panel in the context of clause 31(1)(d) to Schedule 6 of the FTA; and
 - iii. If the Framework Plan were to be considered, whether any issues as to weight arise in considering the Framework Plan and/or whether the approach applied to consideration of non-statutory documents in a Resource Management Act 1991 (**RMA**) context are applicable in the context of the FTA.
 - b. In relation to the National Policy Statement on Urban Development 2020 (**NPS-UD**):

¹ As set out in a letter from Simpson Grierson dated 5 July 2021.

- i. The implication or effect of the terminology “intended to be” in the NPS-UD provisions. In particular, does that wording enable or require the Panel to apply the NPS-UD in the context of Cromwell currently being a housing and labour market of less than 10,000 people, but being expected to exceed 10,000 people in the future (with exact timing as to when it will cross the threshold being unknown); and
- ii. Whether the anticipated timing of crossing the 10,000 person threshold is relevant (potentially by reference to the definitions in the NPS-UD of short-term, medium-term and long-term).

EXECUTIVE SUMMARY

2. For the reasons outlined in our Analysis section below, we broadly agree with the applicant’s views regarding the ability to have regard to the Framework Plan and the relevance of the NPS-UD. In summary:
 - a. The Panel can have regard to the Framework Plan as a relevant matter under clause 31(1)(d), Schedule 6 of the FTA.
 - b. The Minister’s decision not to specify the Framework Plan as a relevant matter in his assessment under section 19 of the FTA does not impact on the Panel’s ability to have regard to the Framework Plan in carrying out its assessment under clause 31(1)(d), Schedule 6 of the FTA.
 - c. In terms of weighing the Framework Plan, similar considerations to those applied in the RMA context may be relevant to the Panel’s assessment under clause 31(1)(d) of the FTA, and the exercise of its discretion as to weight (particularly given this FTA provision effectively mirrors section 104(1)(c) of the RMA).
 - d. Having regard to the NPS-UD, applying general principles of statutory interpretation, it is appropriate to have regard to the wider context of the NPS-UD in assessing what is meant by “intended to be” in the definition of an “urban environment”. As discussed below, the NPS-UD provides clear direction that local authorities must assess and provide sufficient development capacity to meet demand, not just in the short and medium term, but also in the long term i.e. in 10-30 years time. We consider that it would be consistent with this approach to apply the same timeframes when assessing whether an area is, or is intended to be, part of a labour and housing market of at least 10,000 people.
 - e. The Panel would be entitled to have regard to strategic plans adopted by Council (e.g. the Framework Plan and the Long-term Plan) which project a population of greater than 10,000 people in Cromwell within 30 years in assessing whether Cromwell is “intended to be” part of a housing and labour market of at least 10,000.
 - f. It would be appropriate for the Panel to have regard to the NPS-UD as a relevant national policy statement pursuant to clause 31(c) of Schedule 6 of the FTA, on the basis that the relevant area forms part of a tier 3 urban environment as defined in clause 1.4 of the NPS-UD.

ANALYSIS

Framework Plan

3. We agree with the applicant's assessment that a non-statutory document such as the Framework Plan may be considered pursuant to clause 31(1)(d), Schedule 6 of the FTA. Clause 31(1)(d) provides that the Panel must, subject to Part 2 of the RMA and the purpose of the FTA, have regard to "any other matter the panel considers relevant and reasonably necessary to determine the consent application". This provision confers a broad discretion on the Panel to consider relevant material, and does not limit the consideration to statutory documents. We note that the Panel's exercise of discretion is subject to Part 2 of the RMA and the purpose of the FTA, but we do not consider that either of these would exclude the ability to consider a non-statutory document such as the Framework Plan, if the Panel considers that it is relevant and reasonably necessary to determine the consent application. While an assessment of these matters is for the Panel, we tend to agree with the assessment by Simpson Grierson at paragraphs [33]-[35] as to the relevance of the Framework Plan to consideration of the application.
4. We agree with the applicant that the Minister's decision not to specify the Framework Plan as a relevant document does not affect the Panel's ability to consider it pursuant to clause 31(1)(d). Section 19 of the FTA sets out the matters that the Minister may have regard to when making an assessment of whether a project will help to achieve the purpose of the FTA, for the purposes of assessing whether to refer the project to an expert consenting panel. Section 19 outlines a number of specific matters that the Minister may have regard to, as well as, at section 19(f), "any other matter that the Minister considers relevant". Section 19 provides that the Minister may have regard to the matters "at whatever level of detail the Minister considers appropriate". We consider that the Minister's assessment under section 19 does not have a bearing on the matters that the Panel may consider under clause 31, Schedule 6 for the following reasons:
 - a. The purpose of the Minister's assessment under sections 18-19 is different to the function undertaken by the Panel when considering the application.
 - b. The Minister is not required to undertake an exhaustive consideration of any relevant material. Section 19 allows for the Minister to consider any matters, at any level of detail considered appropriate. The fact that the Minister has not elected to consider the Framework Plan for the purposes of his assessment does not represent a direction that it is not relevant to the application.
 - c. There is nothing in the wording of the statutory provisions that suggests that the Panel's considerations are limited to matters that the Minister has considered relevant to his assessment. On the contrary, the different nature of the assessment, the clear directions in clause 31 as to the matters that the Panel must have regard to or disregard, and the broad discretion in clause 31(1)(d), expressly provides for an assessment of relevance by the Panel (rather than the Minister), support the conclusion that the Minister's decision not to specify the Framework Plan as a relevant matter does not have any implications for the Panel's assessment of its relevance under clause 31(1)(d).

5. In terms of weighing the Framework Plan, we agree that an analogous approach to the weighing of such documents in the RMA context is appropriate. While an application under the FTA has a different statutory context with its own procedural requirements,² the matters that the Panel must consider under clause 31(1)(d) effectively mirror section 104(1)(c) of the RMA. We consider that similar considerations to those applied in the RMA context may be relevant to the Panel's assessment under clause 31(1)(d) of the FTA, and the exercise of its discretion as to weight.

NPS-UD

6. For the reasons outlined below, we tend to agree with the applicant's analysis that the NPS-UD is a relevant national policy statement that must be had regard to under clause 31(1)(c), Schedule 6 of the FTA.
7. Clause 1.3 of the NPS-UD provides that it applies to all local authorities that have all or part of an urban environment within their district or region, and planning decisions by any local authority that affect an urban environment. A planning decision is defined as including a resource consent, and as a consent granted under the FTA is deemed to have the same force and effect as though it were a consent granted under the RMA,³ we agree with the applicant that a decision on an application under the FTA would constitute a "planning decision" for the purposes of the NPS-UD.
8. Clause 1.4 of the NPS-UD defines "urban environment" to mean any area of land that "is or intended to be:
 - a. Predominantly urban in character; and
 - b. Part of a housing and labour market of at least 10,000 people.
9. We will address below our reasons for concluding that Cromwell meets the definition of an "urban environment", but will first address your query as to timing, because it has a bearing on our reasoning with respect to what is meant by "intended to be" in the definition of "urban environment".
10. It is a principle of interpretation, that when interpreting specific words or phrases in an enactment (or subordinate legislation), regard may be had to both the immediate context, as well as to other parts of the document.⁴ Therefore, while the NPS-UD does not define what is meant by "intended to be", other provisions of the NPS-UD may provide assistance in understanding what this means. Having regard to the wider context of the NPS-UD we observe that:
 - a. Objective 6 of the NPS-UD requires that local authority decisions that affect urban environments are "*strategic over the medium term and long term*" and objective 4 states that "*New Zealand's urban environments, including their amenity values,*

² Section 12(2) of the FTA.

³ Section 12(2)(b) of the FTA.

⁴ Section 5(2) of the Interpretation Act 1999; *Powell v Dunedin City Council* [2004] 3 NZLR 721 (CA) at [35].

develop and change over time in response to the diverse and changing needs of people, communities and future generations”.

- b. Policy 2 of the NPS-UD expressly provides for development capacity to be assessed and provided for over the short term (within 3 years), medium term (3-10 years) and long term (10-30 years).⁵
 - c. Clause 3.10(1) provides that every local authority “...*must assess the demand for housing and for business land in urban environments, and the development capacity that is sufficient (as described in clauses 3.2 and 3.3) to meet that demand in its region or district in the short term, medium term, and long term*”.
 - d. This obligation ties in with clause 3.2, which requires tier 1, 2 and 3 local authorities to provide sufficient development capacity to meet expected demand for housing in the short term, medium term and long term.
 - e. One of the criteria for sufficient development capacity is that it must be plan-enabled.⁶ In the short term this is defined by reference to residential or business zoning in an operative district plan, in the medium term by residential or business zoning in a proposed district plan, and in the long term, by “...*land identified by the local authority for future urban use or urban intensification in an FDS or, if the local authority is not required to have an FDS, any other relevant plan or strategy*”.⁷
11. The NPS-UD provides clear direction that local authorities must assess and provide sufficient development capacity to meet demand, not just in the short and medium term, but also in the long term i.e. in 10-30 year’s time. We consider that it would be consistent with this approach to apply the same timeframes when assessing whether an area is part of a labour and housing market of at least 10,000 people.
12. We note with reference to clause 3.4 of the NPS-UD, that provision for development capacity in the long-term is provided with reference to other relevant plans or strategies. In this regard, we consider that, in considering whether there is an intention that an area be part of a housing and labour market of at least 10,000 persons, such an intention could be assessed with reference to projected growth in plans adopted by Council. In the present case, this would include the Framework Plan, and also Council’s Long-term Plan 2021-2031 (LTP) published on 1 July 2021.
13. Applying the above to the criteria for an “urban environment” in clause 1.4 of the NPS-UD in the present context, we observe:
- a. The Cromwell township itself fits the first criterion of being predominantly urban in character. This would reasonably extend to areas adjacent to the township that have been identified for future urban growth, either in an operative or proposed district plan, or in the longer term, in the Framework Plan. We understand that in the present case, the relevant land has been identified as future medium-high

⁵ See for example, policy 2 of the NPS-UD. The relevant time periods are defined in clause 1.4 of the NPS-UD.

⁶ Clause 3.2(2) of the NPS-UD.

⁷ Clause 3.4 of the NPS-UD.

density residential land in the Framework Plan.⁸ Accordingly, the Cromwell township, including future urban areas such as the subject land, meet the first requirement for classification as an urban environment under the NPS-UD.

- b. We agree with the applicant's assessment that whether the Cromwell township (as described above) is part of a housing and labour market of at least 10,000 people can be approached in two ways:
- i. Focusing on a more concentrated area within and around Cromwell. In this regard, we agree with the applicant that in contrast to the approach under the former NPS-UDC, the NPS-UD does not focus on the population (or intended population) of a concentrated settlement, but rather on the functional housing and labour market of which the relevant urban area is a part.⁹ Applying this approach, it would be acceptable to consider for the purposes of the second criterion, the projected population growth, not just the urban centre of Cromwell, but also a wider area around Cromwell that forms part of the same housing and labour market. In this regard, we observe that the population projections in the Framework Plan indicate that the population of the Cromwell ward will exceed 10,000 by 2038, and that by 2048 it will be approximately 12,150.¹⁰ We note that updated growth projections in the LTP suggest that the 2020 peak population of the Cromwell ward¹¹ may already exceed 10,000,¹² and that by 2050 the usual resident population is expected to be 15,350, with a peak population of 27,173.¹³ These projections indicate that even with a narrower focus on the Cromwell ward, Cromwell could already form, or be on the cusp of forming, part of a housing and labour market of at least 10,000 people, and that projections indicate an intention that it will exceed this level within the 10-30 long term timeframe provided for in the NPS-UD.
 - ii. Treating Cromwell as part of the Queenstown/Wanaka labour and housing market. We agree with the applicant's view that the definition of an urban environment in the NPS-UD does not limit the assessment to a single concentrated settlement, nor does it limit the focus solely to one district. To the extent that Cromwell may be considered to be a feeder settlement to the wider Queenstown and Wanaka housing and labour market, it may be arguable that Cromwell already forms part of a housing and labour market of at least 10,000 people.
14. In summary, we consider that Cromwell (and adjacent areas identified for future urban zoning) would fall within the meaning of an "urban environment" under the NPS-UD because:

⁸ Framework Plan, page 39. Wooing Tree AEE, paragraph 1.8.

⁹ As discussed at paragraph 28 of Simpson Grierson's letter of 5 July 2021.

¹⁰ Framework Plan at 2.4.

¹¹ Which encompasses, in addition to the main urban centre of Cromwell, the settlements of Bannockburn, Pisa Moorings, Lowburn and Tarras.

¹² Table 8.3.1 in the LTP at page 102 indicates that the usual resident population in the Cromwell ward in 2020 was 9,036 and the peak population was 17,375.

¹³ Table 8.3.1 at page 102 of the LTP.

- a. Cromwell township (and adjacent areas identified for future urban zoning) is predominantly urban in character; and
 - b. It is arguable, either with reference to the Queenstown/Wanaka labour and housing market, or even potentially with a narrower focus on the Cromwell ward (based on the LTP peak population figures), that the Cromwell township already forms part of a housing and labour market of at least 10,000 people. However, even on a more conservative approach to the relevant housing and labour market, it is clear from projected population growth in plans adopted by Council (both the Framework Plan and the LTP) that the usual resident population of the Cromwell ward will exceed 10,000 within the long-term period of 10-30 years identified in the NPS-UD. Accordingly, even if Cromwell is not presently part of a labour and housing market of at least 10,000 people, it is certainly “intended to be” within the long term timeframe identified in the NPS-UD.
15. For these reasons, we consider that it would be appropriate for the Panel to have regard to the NPS-UD as a relevant national policy statement pursuant to clause 31(c) of Schedule 6 of the FTA, on the basis that the relevant area forms part of a tier 3 urban environment as defined in clause 1.4 of the NPS-UD.

Yours faithfully
BROOKFIELDS



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5 July 2021

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For: Sean Haynes

Request for information - Wooving Tree Estate resource consent application under COVID-19 Recovery (Fast-track Consenting) Act 2020 (CRFCA) (Application)

Introduction

1. We refer to the request for further information in relation to the above Application, which was issued by the EPA on 21 June 2021. You have asked us, as Wooving Tree Property Development LP (**WTPD**)'s legal advisors, to provide a legal opinion on questions 2(c), 4, 10, 16 and 19.
2. We understand that this opinion will be provided directly to the EPA as part of WTPD's response to the request for information.

Question 2(c): "No complaints" covenants

3. WTPD has been asked for an explanation as to the rationale for, and efficacy of, no complaints covenants in terms of the *avoid remedy and mitigate* approach promoted by Part 2 of the RMA.
4. No complaints covenants are a commonly used tool to address reverse sensitivity effects. The mostly widely cited definition of reverse sensitivity is from *Auckland Regional Council v Auckland City Council* where the Environment Court stated that reverse sensitivity:¹

refers to the effects of the existence of sensitive activities on other activities in their vicinity, particularly by leading to restraints in carrying on of those other activities.

5. In *Affco New Zealand v Napier City Council* the Court adopted a description of the concept of reverse sensitivity as:²

the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for that land. The "sensitivity" is this: if the new use is permitted, the established use may be required to restrict its operations or mitigate its effects so as to not adversely affect the new activity.

¹ *Auckland Regional Council v Auckland City Council* [1997] NZRMA 205 (NZEnvC) at 206.

² *Affco New Zealand Ltd v Napier City Council* NZEnvC W082/2004, 4 November 2004 at [29].
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6. In the case of this Application, no complaints covenants will be registered over the titles for much of the Wooing Tree Estate, to address the potential for reverse sensitivity effects on the orchards on the other side of Stage Highway 6. The conditions show the extent of the area to which this requirement relates and a copy of the covenant is attached to the Application at Attachment S. Under the covenant the future residents covenant not to:
- (a) carry out any activity on their land that unreasonably restricts or interferes with “farming” on the benefitted land; or
 - (b) make any objection (including bringing legal proceedings, making complaints and objecting to building and resource consents) to the use of any of the benefitted land for farming, or object to noise arising from “farming” on that land.
7. “Farming” is defined to include the growing and harvesting of fruits or products and includes a range of listed activities including the operation of orchard sprayers with associated noise, the use of helicopters, operation of wind machines and the running of irrigation and frost fighting pumps and engines.
8. The rationale of this covenant is not to “avoid, remedy or mitigate” any adverse effects of the orchard operations on the future residents of the Wooing Tree Estate. Its purpose is to avoid potential adverse effects *on the orchard operations*³.
9. Any adverse effects *on the future residents* from the orchard operations will be avoided, remedied and mitigated by other measures. First, in relation to air quality effects, we refer to the assessment carried out by PDP which is being provided as part of WTPD’s response to the request for information. This concludes that:
- (a) dust discharges from the established horticultural fruit tree blocks and a vineyard to the west of the Wooing Tree Estate are expected to be negligible;
 - (b) the effects of smoke discharges will be avoided because the operators are already required by the relevant good practice guidance to avoid or minimise the risk of smoke in the vicinity of State Highway 6;
 - (c) odour sources are expected to be negligible; and
 - (d) effects from the application of agrichemicals will be addressed by the retention of the buffer around the perimeter of the Wooing Tree Estate boundary. While the width of the buffer will be reduced as a result of this application, a minimum separation distance between residents and the orchard operations of 40m will be retained. This exceeds the minimum buffer distance set out in the applicable standard⁴.
10. Similarly, in their report that was prepared as part of this further information response, WTPD’s expert noise consultant Marshall Day Acoustics concludes that the condition framework and subdivision layout are adequate to address noise effects from surrounding rural land uses. In particular they note in their assessment that the noise attenuation requirements in the conditions which are intended to deal with the state highway noise will also be effective in addressing the noise from the orchards’ frost fans. The noise attenuation conditions proposed by WTPD are set out in condition 47.

3 Derek Nolan and Kristen Gunnell Reverse sensitivity and “no complaints” covenants (2007) 7 BRMB 50 at 54.

4 New Zealand Standard, Management of Agrichemicals (NZS 8409:2004)

11. WTPD has also been asked to confirm the effects basis for the limit of coverage of the “no complaints” covenant within the site.
12. We understand that the area over which the covenants are required to be registered replicate the area for which the previous landowner agreed to impose covenants as part of the settlement reached in relation to Plan Change 12 to the Central Otago District Plan. WTPD is proposing to register covenants over the same area to be consistent with the terms of that agreement. We understand that the area extends approximately 160m from the benefitted land. PDP has confirmed the appropriateness of the area to address reverse sensitive effects from an air quality perspective.
13. In light of the above, our opinion is that the use of no complaints covenants is a lawfully accepted method to avoid reverse sensitivity effects and is appropriate in this context. The effects on the residents from the orchard operations will also be avoided, remedied and mitigated by the measures described above.

Question 4: Urban Design Guidelines

14. The Panel has asked what reliance it can and/or should place on the Wooing Tree Design Guidelines to achieve the outcomes proposed in the Application, given that they are not imposed through conditions of consent. The Design Guidelines were developed by WTPD’s consultant urban designers Baxter Design and the 10 September 2020 version was provided at Attachment L to the Application. An updated version (25 June 2021) is being provided as part of the response to this information request (at Attachment V).
15. The sale and purchase agreements for the individual lots will also include a requirement that purchasers shall not commence construction of any building or any landscaping on any lot without having first obtained the written approval of WTPD to the plans and specifications of that building and/or landscaping. The terms of sale will require the registration of a covenant to this effect.
16. WTPD now proposes an additional condition of consent that will require the registration of a covenant on the title for each residential lot stating that any building constructed on the lot must comply with the Design Guidelines and is subject to the design approval process as set out in the guidelines.
17. Given that compliance with the Design Guidelines will be secured by both a contractual arrangement and a consent condition requiring a covenant, in our opinion the Panel can, and should, rely on the outcomes that will be secured by the Design Guidelines. These guidelines will ensure the development of a high quality estate reflecting a Central Otago style, materiality and colour palette. Attachment W to the response to the response to this information request includes imagery of houses along the proposed road 5 that comply with the Design Guidelines and demonstrate the high amenity outcomes that will be achieved. As noted in the Application the Wooing Tree Estate will have positive effects on the built character of Cromwell and less than minor landscape effects.

Questions 10 and 19: Relevance of National Policy Statement on Urban Development (NPS UD)

18. At question 10 of the request for future information WTPD has been asked for confirmation as to whether the NPS-UD is a relevant and applicable document pursuant to Schedule 6, clause 31(1)(c) of the CRFCA.
19. The NPS-UD came into force in August 2020. It applies to planning decisions by any local authority that affect an urban environment⁵.
20. “Planning decisions” are defined to include decisions on resource consents. Pursuant to section 12(2)(b) a resource consent granted under the CRFCA has the same force and effect as if it were granted under the RMA. We consider that the Panel’s decision constitutes a “planning decision” for the purposes of the NPS-UD.
21. What is less clear is whether Cromwell is an “urban environment”. The NPS-UD definition is:
- urban environment means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:
 - (a) is, or is intended to be, predominantly urban in character; and
 - (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people
22. Cromwell’s population is currently less than 10,000 people⁶. It is for that reason that Mr Duthie has reached the conclusion in the Application that there are no relevant national policy statements. The Panel has asked for confirmation of this position.
23. When the definition of “urban environment” is examined, our view is that Cromwell could be considered to fall under the definition for two reasons.
24. The first reason is on the basis of growth projections for Cromwell. The Cromwell Spatial Framework – Spatial Plan (**Framework Plan**) forecasts that the population will reach 10,900 by 2038⁷. We note that the urban environment definition refers to an area that is, or *is intended to be*, part of a housing and labour market of at least 10,000 people. The Panel has asked for comment on the implication or effect of the terminology “intended to be”, and whether it enables or requires the Panel to apply the NPS-UD given that Cromwell’s population is expected to exceed 10,000. It also asks whether the anticipated timing for crossing the 10,000 person threshold is relevant.
25. We have not been able to locate any commentary as to what is meant by “intended to be” and why this terminology was included in the definition. We note that the National Policy Statement on Urban Development Capacity 2016 (**NPS-UDC**), which was replaced by the NPS-UD, also used the phrase “intended to” in its definition of “urban environment”⁸ (although the trigger was different, as discussed below), but we are not aware of any commentary on its meaning in that context either.
26. We consider that on its plain and ordinary meaning, the best interpretation of “intended to be” is that it refers to the intention of the relevant local authority, as set out in its strategic growth policy documents. In Cromwell’s case that would be the Framework Plan, which forecasts that Cromwell will meet the 10,000 threshold by 2038 – some 19 years from the date of the document (May 2019). This is within the timeframes the NPS-

5 National Policy Statement on Urban Development 2020, 1.3(1)(b).

6 According to the 2018 Census the total population for the three relevant areas forming the Cromwell Ward - Cromwell East, Cromwell West and the surrounding rural catchment, the Lindis-Nevis Valleys, was 8,001.

7 Cromwell Spatial Framework - Stage 1 Spatial Plan at [2.4]

8 The definition of “Urban environment” in the NPS-UDC was “an area of land containing, or **intended to** contain, a concentrated settlement of 10,000 people or more and any associated business land, irrespective of local authority or statistical boundaries”.

UD anticipates for implementation – “long term” is defined as between 10-30 years. In our opinion, the reference in the Framework Plan to Cromwell’s predicted growth is sufficient to indicate that the Central Otago District Council (**CODC**) has a specific “intention” for Cromwell’s population to grow to this level within the timeframes anticipated in the NPS-UD.

27. On balance, we consider that Cromwell’s forecasted long term population growth is enough to establish that Cromwell is “intended to be” a housing and labour market of at least 10,000 people in its own right and so meets the definition of “urban environment”.
28. We have also considered whether Cromwell could fall within the definition of an urban environment because it forms *part* of the Queenstown and Wanaka housing and labour markets. The Economic Assessment provided with the Application notes that many households who work in either Wanaka or Queenstown are choosing to rent or purchase dwellings in Cromwell and commute. 13% of Cromwell’s population leaves Cromwell each day for work/school, with more than half travelling to Wanaka and Queenstown⁹. The change to the reference to “housing and labour market” in the definition, from the earlier definition in the NPS-UDC which referred to a “concentrated settlement” appears to be a deliberate attempt to broaden the number and extent of urban areas captured by the NPS-UD, to include groupings of smaller urban areas and settlements that operate as a functional housing or labour market of the necessary scale.
29. We consider that this further strengthens the argument that Cromwell is an “urban environment”, forming part of a housing and labour market of more than 10,000 people, and so the NPS-UD is a relevant national policy statement for the purposes of section 31(1)(c).
30. As noted by the Expert Consenting Panel in its decision on the Comprehensive Care Retirement Village in Kohimarama, Auckland (a referred project under the CRFCA), if the NPS-UD applies then what the Panel is required to do is consider the relevant NPSUD objectives and policies applicable at the present time, rather than speculate on the outcome of future plan change processes undertaken to implement the NPS-UD¹⁰. The Application included, for completeness, an assessment of the Wooing Tree Estate against the relevant objectives and policies¹¹. It concludes that this Application is consistent with the NPS-UD and will advance a number of its objectives and policies. In particular, Mr Duthie demonstrates how the project will contribute to a well-functioning urban environment for the purposes of Policy 1.
31. We note that the comments provided by the CODC include additional commentary on population growth that appears to cast doubt on the population forecasts within the Framework Plan. The comments also note that Cromwell “may not” be an urban environment. This commentary is being reviewed by WTPD’s technical experts and further comments will be provided on this issue in accordance with the timeframes under the CRFCA.

9 Wooing Tree Fast Track Consent Application Economic Assessment, Market Economics, 29 October 2020 at [2.1.1]

10 Final decision of Expert Consenting Panel on application under CRFCA at [249].

11 Planning Report, Attachment A to Application, at [15.3].

Question 16: Consideration of the Framework Plan

32. The Application asks the Panel to consider the Framework Plan as a matter that is “relevant and reasonably necessary to determine the consent application” pursuant to clause 31(1)(d) of the Sixth Schedule.
33. The Framework Plan was completed as part of a masterplanning exercise being undertaken by the CODC (Cromwell “Eye to the Future Masterplan”). It was informed by consultation and engagement with the Cromwell community and other stakeholders and was adopted by the Cromwell Local Board in June 2019. The EPA has asked a number of questions regarding the relevance of the Framework Plan.
34. The first is whether a non-statutory strategic framework plan may be considered pursuant to clause 31(1)(d). In our opinion this document is both “relevant” and “reasonably necessary”. The Framework Plan assists in identifying the types of changes necessary to strategically position Cromwell within the wider Central Otago region over the next 30 years. It is described as an indicative plan of Cromwell based on a strategic vision to assist in guiding and coordinating infrastructure, services and investment. One of its stated intended uses is to “inform decision-making within both the public and private sector”. In our view this document provides valuable guidance as to where additional growth should be accommodated in Cromwell. It is directly relevant to the decision the Panel needs to make.
35. While there is no case law under the CRFCA as of yet, we consider that decisions relating to the equivalent provision in the Resource Management Act 1991 (**RMA**) are analogous. A consent authority may, under section 104(1)(c) of the RMA, have regard to management plans developed by the local authority which relate to the resource in question¹²: for example, the Environment Court has held that the Wellington Waterfront Framework, a non-statutory document that set out the vision and matters to guide the development of the Wellington waterfront, was a relevant and reasonably necessary document for deciding an application for consent for a project in that location¹³.
36. We note that in the recent comments on the Application provided by the CODC, the CODC’s consultant planner agrees that the Framework Plan is a relevant document for the purposes of clause 31(1)(d).
37. The second question we have been asked is whether the Minister’s decision not to specify the Framework Plan as a relevant matter under section 19(f) has any implications for the Panel in the context of clause 31(1)(d).
38. We do not consider that it does. The decision that that Minister was required to make under section 19 was whether the Wooing Tree Estate would help to achieve the purpose of the CRFCA. That is a different decision than the decision that is now before the Panel. It is open to the Panel to determine, in the context of its decision whether to grant consent to the Application under clause 31, that the Framework Plan is a relevant and reasonably necessary document.
39. Finally, we have been asked whether any issues as to weight arise in considering the Framework Plan.
40. The weight to be assigned to the Framework Plan is a matter for the Panel to determine. We agree with the Panel’s summary of some of the relevant considerations as to weight to be applied to a growth strategy in the RMA context. As we have noted above, we

¹² *Goodall v Queenstown Lakes D C W105/95* (PT).

¹³ *Re Site 10 Redevelopment Limited Partnership* [2015] NZEnvC 173 at [121].

consider that the case law under section 104(1)(c) is analogous. We acknowledge that the Framework Plan is not a RMA document and has not yet been incorporated into the Central Otago District Plan. Notwithstanding that, it has been the subject of extensive stakeholder and wider community engagement¹⁴ and is the key strategic policy document intended to guide planning decisions in Cromwell. The Environment Court has given weight to similar documents when deciding consent applications under the RMA¹⁵ and we consider that the Panel should do so here.

Yours faithfully
SIMPSON GRIERSON



Bill Loutit/Sarah Mitchell
Partner/Senior Associate

14 Information about this process, including survey results, is available on the CODC website at <https://www.codc.govt.nz/your-council/project-updates/cromwellyetothefuture>

15 Such as the development being considered in the *Site 10* decision, which was a direct referral application under s 87G of the RMA.