

11 August 2023

**LEGAL ADVICE**

Central Otago District Council  
1 Dunorling Street  
**ALEXANDRA**

Attention: Ann Rogers

Dear Ann

**NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT 2020 AND PLAN CHANGE 19 (Our Ref: 285978)**

1. We refer to your email of 3 August 2023, advising that the Panel hearing submissions on Plan Change 19 has requested legal advice on the following:
  - a. It is necessary as part of the PC19 process for the Hearings Panel to be able to determine if Central Otago contains an urban environment and therefore considered Tier 3 urban environment to which the NPS-UD; or is this a matter which the Council itself must determine?
  - b. Although no specific time span is included in the definition of "urban environment" in the NPS-UD, in terms of reaching the threshold of 10,000 that would make the Cromwell a Tier 3 TA, a legal submissions by Chris Fowler on behalf Jones Family Trust and Searell Family Trust (#82), expressed a view that the timeframes covered in the NPS-UD of up to 30 years should be applied as indicated. The panel is seeking an understanding if this is something mandated or a matter that Council can determine?
2. We address each of these questions below.

*Is it for the Hearings Panel or the Council to determine whether CODC contains an urban environment and is a Tier 3 local authority?*
3. The National Policy Statement on Urban Development 2020 ("NPS-UD") applies to all local authorities that have all or part of an urban environment within their district or region (that is, tier 1 – 3 local authorities) and to planning decisions by any local authority that affect an urban environment<sup>1</sup>. A planning decision includes a decision on a district plan or proposed district plan<sup>2</sup>.
4. Pursuant to section 75(3)(a) of the Resource Management Act 1991 ("the RMA") a district plan must give effect to any national policy statement.
5. We have reviewed the s42A report prepared in respect of PC 19, which addresses the NPS-UD at Part 9. That report states:

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<sup>1</sup> NPS-UD at Clause 1.3(1)

<sup>2</sup> Including any change to a district plan.  
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*“The s32 Report notes that the National Policy Statement on Urban Development 2020 (NPS-UD) only applies to local authorities that have all or part of an “urban environment” within their district or region. It states that:*

*The definition of an “urban environment” means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that is, or is intended to be, part of a housing and labour market of at least 10,000 people. This currently does not apply within the District, while noting that over the horizon covered by the spatial plans, Cromwell is expected to reach this threshold. The approach taken within PC19 is to align the Residential Zones chapter as much as possible within the NPS-UD so that the provisions are future proofed, while noting that the provisions are not strictly required to give effect to the NPS-UD.”*

6. While the Council is the proponent of PC19 and has prepared PC19 on the basis of its interpretation of urban environment, it is for the Hearings Panel to make the ultimate determination on the matter. It is the Hearings Panel<sup>3</sup> who must determine whether the requirements of section 75(3)(a) are met in making recommendations on submissions, which in turn means determining to what extent, if any, the NPS-UD applies to PC19. We also observe that in the event of any appeal, a determination on the matter would likewise be made by the Environment Court.

*What time frame should be applied to “intended to be” in the definition of urban environment*

7. There is no “mandated” time frame within which the 10,000 people threshold is to be reached. We note the author of the s42A report expresses the opinion that while Cromwell is expected to reach the threshold of an ‘urban environment’ over the life of the Spatial Plan, this is not *currently* the case, nor is it expected to occur over the life of the district plan provisions introduced by PC19<sup>4</sup>. She considers “intended to be” should be interpreted in that context.
8. We note the s42A report attaches e-mail correspondence with the Ministry of Housing and Urban Development (“MHUD”) on the issue of whether CODC is a Tier 3 local authority, however we do not consider this determinative of the issue.
9. In the context of CODC and Cromwell in particular, the timeframe to reach the 10,000 threshold was considered by the expert consenting panel in the Wooing Tree Estate Project, under the COVID-19 Recovery (Fast-Track Consenting) Act 2020 (“FTA”)<sup>5</sup>.
10. The decision of that panel records:

*The Panel accepts Brookfield’s advice as to the proper interpretation of “intended to be”. We find with reference to CODC’s letter of 16 August 2021 that the Cromwell ward as a whole could not be properly characterised as “predominantly urban in character” – but Cromwell township itself and areas adjacent to the township that have been identified for future urban growth would be properly characterised in that manner.<sup>6</sup>*

11. The Brookfield advice was to the effect that:

*The NPS-UD provides clear direction that local authorities must assess and provide sufficient development capacity to meet demand, including demand in the **long-term**. It would be*

<sup>3</sup> Acting with delegated authority on behalf of CODC as the relevant the local authority

<sup>4</sup> Citing the most recent growth projections which predict that Cromwell will not reach a usually resident population of 10,000 until around 2040.

<sup>5</sup> From paragraph [299]

<sup>6</sup> At paragraph [308]

*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. (emphasis added)*

12. The NPS-UD contains a definition of short term (3 years), short-medium term (within the next 10 years), medium term (between 3- 10 years) and long term (10-30 years). While the Wooing Tree decision is not binding on the Panel hearing PC19, the Wooing Tree Panel held that the area of land comprising Cromwell township and adjacent areas identified for future urban growth were an urban environment. The Panel agreed that various provisions of the NPS-UD supported its interpretation that when assessing whether an area is part of a labour and housing market of at least 10,000 people it would be consistent to apply a long term approach. For example;

**Objective 6:** Local authority decisions on urban development that affect urban environments are:

- (a) Integrated with infrastructure planning and funding decisions;
- (b) Strategic over the medium term and long term; and
- (c) Responsive, particularly in relation to proposals that would supply significant development capacity.

**Policy 2:** Tier 1, 2, and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term<sup>7</sup>

13. From these provisions, it is clear that the NPS-UD is intended to apply over a time period in excess of the life of a district plan and out to 30 years. We agree with the observations of the Wooing Tree Panel that it would be consistent and logical for the definition of urban environment to be informed by this time span.
14. With respect to the author of the s42A report, the lifespan of a District Plan appears of little relevance to the question of when the threshold 10,000 capacity is intended to be reached. This is particularly so given the focus in the NPS-UD on evidence based decision making and a requirement to provide for capacity over the long term. We also note the comment in the s42A report that<sup>8</sup>:

*PC19 is also based on Spatial Plans which have been prepared to respond to anticipated demand over a 30-year period, which in turn have been informed by growth projections prepared by Rationale. PC19 is therefore based on robust and recent information.*

<sup>7</sup> Clauses 3.2 and 3.10 were also cited and refer to development capacity over the short, medium and long term.

<sup>8</sup> At paragraph 28  
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15. This acknowledgement, and the place of the spatial plans underpinning PC19 support the interpretation advanced above of applying, as a mandatory criterion, a 30 year long term analysis to determine whether land is an urban environment.

Yours faithfully  
**MACTODD LAWYERS**



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