

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

IN THE MATTER of the Resource Management
Act 1991

AND

IN THE MATTER of Stage 3 and 3b Proposed
District Plan

**MEMORANDUM OF COUNSEL REGARDING NATIONAL POLICY STATEMENT
ON URBAN CAPACITY 2020**

31 JULY 2020

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MAY IT PLEASE THE PANEL

1. The memorandum responds to the Panel’s directions to file an executive summary style statement of the position it will take on implementation of the new National Policy Statement on Urban Development 2020 (**NPS-UD**), with the detail of the Council position and any supporting evidence forming part of the Council’s written reply. A number of decisions will need to be made across Council as to implementation and timing of various work streams. This statement largely focuses on the NPS-UD as it is relevant to Stage 3 of the plan review process.
2. The NPS-UD was gazetted on 23 July 2020 and replaces the National Policy Statement on Urban Development Capacity 2016 (**NPS-UDC**). It takes effect from 20 August 2020, although the compliance timeframes for implementation are staggered and are dependent on which “tier” of urban environment a local authority has jurisdiction over. Queenstown Lakes District Council is a “Tier 2 local authority”.
3. The NPS-UD applies to planning decisions by the Council, including on its proposed district plan, that affect an “urban environment”.¹ Some land being considered in Stage 3 is not located within either the Queenstown or Wanaka urban environments, and therefore the NPS-UD is not relevant to the Panel’s recommendations.
4. While the NPS-UD replaces the NPS-UDC, it maintains and builds on many existing NPS-UDC policies. A notable change in the new NPS-UD is that Objective 1 and Policy 1 of the NPS-UD are focused on “well-functioning urban environments”, with the definition of well-functioning urban environments being located in Policy 1. The criteria in Policy 1 are cumulative. The NPS-UD expands on this approach through supporting more people living in, and more businesses and community services being located in, certain areas of urban environments,² requiring planning decisions to improve housing affordability by supporting competitive land and development markets,³ recognising that urban environments including their amenity values, develop and change over time,⁴ and requiring integration with infrastructure planning and funding decisions while also being responsive to proposals that would supply significant development capacity.⁵ The NPS-UD objectives also includes specific reference to climate change and the Treaty of Waitangi (te Tiriti o Waitangi).

1 Clause 1.3(1)(b) – Application.
2 Objective 3.
3 Objective 2.
4 Objective 4.
5 Objective 6.

5. The NPS-UD contains the same underlying approach as the NPS-UDC whereby the Council must provide at least sufficient development capacity to meet expected demand for housing and for business land over the short, medium and long terms – with similar requirements as to whether that capacity is plan-enabled, infrastructure-ready, and so on (we return to this in para 6.4 below).

6. A summary of the Council's position, as relevant to the Stage 3 hearings, is as follows:
 - 6.1 The Panel's Stage 3 recommendations (and the subsequent Council decision) will need to give effect to the NPS-UD, in particular its objectives and policies. Some implementation provisions may also be relevant and need to be given effect to. Certain objectives and policies will be more relevant for certain relief sought. If relevant, the Council will consider the new objectives and policies, and any relevant implementation provisions in its reply evidence. If any changes are required to Stage 3 provisions, Council will be constrained by the scope of submissions made on Stage 3.

 - 6.2 As outlined above, Policy 2 contains a similar requirement to the NPS-UDC: the council must, at all times, provide at least sufficient development capacity to meet demand for housing and business land over the short term, medium term, and long term. The 'at least' component is new but that is not considered to make any difference to the Council's position as to sufficient development capacity. The NPS-UD does not require the Council to complete a new Housing and Business Capacity Assessment (**HBA**) until July 2021 (in relation to housing) and 2024 (in relation to both housing and business land).

 - 6.3 Council's position is that the current Housing and Business Capacity Assessment (**HBCA**) prepared under the NPS-UDC and Ms Hampson's related evidence on sufficient development capacity for both housing and business land remain valid and can continue to be relied upon in Stage 3, enabling the Panel to accept Council's evidence and conclude that the district plan gives effect to Policy 2 of the new NPS-UD.

6.4 A lot of the key building blocks of Council's evidence in relation to the NPS-UDC remain valid under the NPS-UD, with the Council's current HDCA and BDCA already taking into account the key new concepts applicable to the NPS-UD 'sufficient development capacity' requirement in Policy 2, as well as the new HBA required to be completed in coming years. For example:

- (a) There is no difference in substance, in the definition of 'urban environment', and therefore there will continue to be two urban environments in the District, each made up of non-contiguous urban areas as relevant to the geography of the District and the functional relationships between those urban areas. Council notes it is not precluded from expanding the areas defined within the 'urban environment' in the future in order to extend the reach of HBA updates;
- (b) The only notable difference between the two in terms of the 'plan enabled' requirement is that the NPS-UD requires that short term capacity be zoned in an operative district plan (whereas the NPS-UDC required 'zoned' without reference to a plan). This is expected to make no change in substance to sufficiency of development capacity conclusions, as the relevant provisions in the PDP that affect development capacity in all residential and business zones (except for industrial zones) are substantially beyond appeal and in almost all situations can be treated as operative through section 87F of the RMA. Special Zones (except for Jacks Point, Millbrook and Waterfall Park) within the urban environment, which are significant contributors to housing capacity, have not yet been reviewed, and therefore their operative zone is already included in the HDCA. For the reviewed Special Zones, both Millbrook and Waterfall Park text is beyond appeal and treated as operative. The HDCA also took into account the operative version of Three Parks. For industrial land, being a Stage 3 topic, the BDCA 2020 ran two scenarios with the same general results for industrial development growth. One of those scenarios was based on the Stage 1 and 2 PDP zones, plus the ODP zones – and therefore considered capacity under the operative industrial zones for industrial zones including the Three Parks zone.
- (c) The 'infrastructure-ready' requirements for development capacity across the short, medium and long term remain similar in the NPS-UD;

- (d) The HDCA already addresses feasibility (commercially viable to a developer based on the current relationship between costs and revenue, or for the long term including any reasonable adjustment to that relationship) of the take-up of the development capacity, for example by significantly discounting the amount of infill capacity enabled by the plan;
- (e) The HDCA already addresses the NPS-UD requirement to assess whether the development capacity is “reasonably expected to be realised”. For example, the HDCA is already conservative in that it discounts capacity that was considered not reasonably likely to be taken up in the relevant short, medium or long term periods;
- (f) The same competitiveness margins as required in the NPS-UD (20% for short and medium term, and 15% for long term) are already provided in the HDCA through the NPS-UDC requirement to provide an additional margin of feasible development capacity over and above projected demand through PC1;
- (g) The HDCA already does more than the NPS-UD housing land requirement for development capacity to consider both location, and housing types, which is at a minimum, standalone and attached dwellings⁶;
- (h) The BDCA already addresses the NPS-UD business land requirement for development capacity to be suitable to meet the demands of different business sectors. At a minimum, the NPS-UD requires that the HBA distinguish between sectors that would use land zoned for commercial, retail or industrial uses. Again the BDCA already does that.

6.5 Clause 3.11(2) of the NPS-UD adds new matters that must be included in further evaluation reports prepared under section 32AA of the Act (as well as section 32 reports, but that is not relevant to Stage 3 at the present stage). This clause requires a further evaluation to:

- (a) Clearly identify the resource management issues being managed;

6 Clause 3.24(3).

- (b) Use evidence, particularly any relevant HBAs, about land and development markets, and the results of the monitoring required by the NPS-UD, to assess the impact of different regulatory and non-regulatory options for urban development and their contribution to:
 - (i) Achieving well-functioning urban environments; and
 - (ii) Meeting the requirements to provide at least sufficient development capacity.

6.6 Council will consider the relevance of clause 3.11(2) in the context of any recommended changes to the notified Stage 3 provisions in its reply evidence.

6.7 The Panel can proceed on the basis that all objectives, policies and rules purporting to require the provision of parking spaces (other than for accessibility parking) will be removed from the PDP. Council will provide an update in its right of reply as to the timing of that removal and what Stage 3 zone provisions this is relevant to.

6.8 Finally, the new NPS-UD requires, through clause 3.35, that Council ensure the objectives for every zone in an urban environment prescribe development outcomes intended for the zone over the life of the plan and beyond, and that the policies and rules are individually and cumulatively consistent with those development outcomes. Council will consider this in the right of reply, for Stage 3 urban zones. If any changes are required to Stage 3 provisions, Council will be constrained by the scope of submissions made on Stage 3.

7. Timeframes for the Council to implement various NPS-UD actions include:

Date	Matter	Position Council will take to implementation	Comment for Stage 3 hearings
20 August 2020	All objectives and policies apply	Implementation will be on-going and relevant to decision making made by Council's policy, consents and infrastructure teams (for example), but in relation to Stage 3 PDP hearings, Council will consider how the new objectives and policies are given effect to in their Stage 3 reply evidence.	Relevant to Panel recommendations, which will need to give effect to the objectives and policies of the NPS-UD (except for Policies 3 and 4 which do not apply).

Date	Matter	Position Council will take to implementation	Comment for Stage 3 hearings
By 31 July 2021	Complete the housing assessment aspect of the new HBA	In the following months, Council is undertaking an update to the existing HDCA for the purposes of the Spatial Plan. This update was intended to consider any impacts of Covid-19 for the purposes of the long-term spatial planning of the District. While not a new HBA, Council has confirmed the update to the existing HDCA will consider the NPS-UD and its requirements in relation to housing demand assessment. It is not known when this will be available.	For the reasons set out in para 6.4 above, the Panel can and should rely on the current evidence from Ms Hampson as to sufficiency of development capacity, and the acceptance from the Environment Court in Decision 2.2 that the Council is achieving its capacity obligations.
After 31 July 2021	Housing bottom lines ⁷ in district plan	This is required as soon as practicable after the HBA is made publicly available.	Not relevant to the PDP at this time.
By 20 February 2022	Minimum car parking requirements	Council will remove all minimum car parking requirements (objectives, policies and rules) from the PDP and ODP. The timing of this is not certain at this stage due to possible need for the removal to be aligned with the roll out of a residents parking permit system and other measures to manage the potential effects of this significant change.	An update as to timing for this removal as it relates to Stage 3 zones, will be given in the Council's right of reply.
By 20 August 2022	Intensification - enable heights and density of urban form commensurate with the greater of the relative demand for housing or business use in	Preliminary feedback from Council is this is likely to be a two-year project alongside on-going transport planning projects. This review will align with the Way to Go business case work and the New Zealand Upgrade Programme and it will take some time to determine the scope and scale of change required.	There may be submission points on height and density on Stage 3 zones in the urban environment that need to consider this policy. Council will consider in its right of reply.

Date	Matter	Position Council will take to implementation	Comment for Stage 3 hearings
	that location, or the level of accessibility from existing or planned active or public transport (Policy 5)		
In time to inform the 2024 LTP	Complete the HBA relating to both housing and business land	Council has made no decision at this time, as to when it might commence a new HBA in relation to business land.	For the reasons set out in para 6.4 above, the Panel should continue to rely on the current evidence from Ms Hampson as to sufficiency of development capacity for business land.
Every 6 years	Future Development Strategy (FDS)	A FDS is being prepared as part of the development of a Queenstown Lakes Spatial Plan. While the Council has only just received the new NPS-UD, Council's intention is to ensure that the Spatial Plan complies with the NPS-UD.	Relevant to Stage 3 hearings in that Council considers that long-term growth requirements should be considered through this Spatial Plan process.
After the FDS is created	Implementation Plan for the FDS – update annually	Will be prepared in due course.	Not relevant to Stage 3 hearings.

DATED this 31st day of July 2020



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