



PROGRESSIVE

SUBMISSION ON THE PRODUCTIVITY COMMISSION'S DRAFT REPORT ON BETTER URBAN PLANNING

1. EXECUTIVE SUMMARY

- 1.1 Given the potential impact that amendments to the planning framework in New Zealand will have on its business, Progressive regularly engages in any number of reform and planning processes. In the last year, this burden has been significant: Progressive has submitted on the Resource Legislation Amendment Bill ("**RLAB**") and presented to the Select Committee, as well as the Proposed National Policy Statement on Urban Development Capacity ("**NPS-UDC**"). We have also been closely involved in extensive plan review processes in Auckland, Christchurch, Hamilton, Hastings, Kāpiti and Dunedin. Such participation is costly and time consuming - but necessary, given the important role the planning framework plays in our operations.
- 1.2 However, Progressive wishes to convey its frustration with the myriad of reform and consultation processes currently underway, all which have the ability to affect the planning landscape in real and significant ways. Each consultation opportunity is conducted by a different agency, in what seems to be an uncoordinated way. While there are some common themes among them, each process seems to be attempting to solve issues in a slightly different manner, on a different time frame, and for different purposes. In addition to the time and cost in engaging, and the general sense of "consultation fatigue" experienced of late, the picture being painted through these various consultation / reform work streams is one of uncertainty, additional complexity, lack of coordination, and cost around the (re)development of New Zealand's planning system.
- 1.3 Those comments aside, Progressive takes the opportunity to comment on the Commission's Draft Report in this submission. For further details on the issues Progressive faces in participating in the planning framework in New Zealand, please see the **attached** submissions Progressive has recently made on the RLAB and the NPS-UDC.
- 1.4 Progressive supports a number of the findings in the Draft Report particularly regarding how various factors such as detailed controls on types and sizes of business, the centres-based approach, and barriers to recover costs of infrastructure are hampering much needed development.
- 1.5 As detailed in previous submissions, Progressive opposes the reduction in notification requirements as well as any recommendations which jeopardise the ability for parties who are genuinely affected by a resource consent application or plan change to participate in that application.
- 1.6 Progressive also endorses a focus on improving council capabilities so that council staff and elected officials have the ability to effectively implement the planning framework.

2. COMMENT ON DRAFT REPORT'S FINDINGS AND RECOMMENDATIONS

Unnecessary restrictions on business land

2.1 Progressive concurs with the Commission's findings that:¹

F7.4 A number of councils apply very detailed controls on the types and sizes of business that can operate in particular zones. These controls are unlikely to be ideal, not least because such rules can take a long time to change and inevitably lag developments on the ground.

F7.5 Council requirements on some developments to undergo urban design assessments are leading to poor exercises of regulatory discretion. Urban design criteria can lack clarity and precision, and design advice to resource consent applicants can lack perspective, consistency, or a sense of their cost or economic implications.

2.2 Progressive has unique and specific requirements for land that need to be met in order to be able to establish or redevelop a supermarket. Progressive requires large lot sizes at ground level to establish its supermarkets on. Such lot sizes are becoming increasingly difficult to find due to the restrictive zoning and planning rules in place. If district planning requirements are too prescriptive, this limits Progressive's ability to be able to establish or redevelop a supermarket.

2.3 In addition, Progressive has had continuing issues with unreasonable urban design requirements proposed by councils. Much like the examples identified at pages 170 and 171 of the Draft Report, Progressive has many examples of council urban designers delaying or preventing consenting of supermarkets due to often impractical design demands. Often the extensive urban design demands of the council are disproportionate to the context of the land and its proposed use. The often unreasonable weight councils place on urban design can cause substantial delays and cost in the development of a supermarket in communities where such a store is needed to support the residential and commercial development surrounding the site.

2.4 Councils should be required to provide for the functional and operational requirements of business activities and the need for outward expansion of certain business activities to meet demands of residential growth.² Providing this flexibility in their plans will promote greater investment in business development as it provides greater opportunities to develop business land in the most appropriate and effective way.

The negative impacts of the centres-based approach

2.5 Progressive agrees with the Commission's findings that:³

F7.2 Many local authorities in New Zealand discourage or prevent the development of commercial activity outside designated centres. Local and international experience with such policies suggests that they often fail to achieve their objectives and can act as barriers to competition and productivity growth.

F7.3 In trying to protect existing city and town centres, some New Zealand urban local authorities have sought to reduce retail and commercial competition from other locations.

2.6 In Progressive's experience, a centres-based approach to planning does not always provide the necessary development capacity for business land. For example, in order to

¹ Draft Report, pages 169 and 172, F7.4 and F7.5.

² Progressive's submission on the NPS-UDC, page 3.

³ Draft Report, pages 165 and 166, F7.2 and F7.3.

satisfy the demand for a supermarket, Progressive is currently going through an extensive plan change and resource consent process to establish a supermarket on the outskirts of Richmond, Nelson, on rurally zoned land. Progressive was interested in developing a site within the suburb of Richmond, but abandoned these efforts because of the prohibitive lot size and commercial viability of land zoned commercial within the suburb.⁴

- 2.7 The restrictive centres-based approach that councils often employ reduces the amount of business land able to be developed, thereby creating an unnecessary competition between potential developers of available commercial land. This creates an environment where, because there is not sufficient amount of business zoned land to develop in the urban area, developers have had to go to significant expense to amend the restrictive planning rules and zoning of the district plan in order to be able to establish business activities outside the currently identified urban area.

Provision for infrastructure

- 2.8 Lack of serviced land is a common obstacle for the development of business and residential land. Progressive agrees with the Commission's finding that "[f]inancial, legislative and political barriers are limiting the ability of local authorities to efficiently recover the costs of infrastructure".⁵ In response to question 10.3 of the Draft Report, Progressive considers that alternative funding systems for local authorities would improve the ability to provide infrastructure to accommodate growth.
- 2.9 As detailed in Progressive's submission on the NPS-UDC,⁶ when developing its Countdown store at Hobsonville, significant stormwater works were required to establish the supermarket. In order to progress development of the supermarket and satisfy increasing demand, Progressive paid upfront for the stormwater works to be constructed, rather than wait for the Council to carry out the works at some undetermined future time. Hobsonville Countdown is an example of why the planning system needs to provide sufficient flexibility for the provision of infrastructure to service residential and business development. While land identified for potential development may not currently be serviced by infrastructure, there may be situations where a developer is prepared to fund or construct the infrastructure in order to bring the development of that land forward.
- 2.10 The planning system in New Zealand needs to provide a wide range of effective funding mechanisms for infrastructure so there are various options available to local authorities, central government and developers to fund necessary infrastructure projects and allow for future growth.

Reduction in notification requirements

- 2.11 As detailed in Progressive's submission on the RLAB,⁷ Progressive considers there is no need to amend the current notification requirements under the RMA as subsequent to the 2009 amendments, they are operating effectively. The major risk with narrowing notification requirements is that parties who are affected and "should" be notified lose out on the opportunity to participate because the mechanisms are not in place for the council to appropriately identify the parties that are affected by a proposed plan change or resource consent. Any amendments to the current notification provisions of the RMA risk jeopardising the participatory foundation of the Act and will increase the risk that adverse effects are not appropriately considered and addressed when proposals are being considered by local authorities.

⁴ This is further elaborated on in Progressive's submission on the NPS-UDC, page 2.

⁵ Draft Report, page 256, F10.3.

⁶ Progressive's submission on the NPS-UDC, pages 6 and 7.

⁷ Progressive's submission on the RLAB, page 6.

Improvement of council capabilities

- 2.12 While Progressive considers that there may be merit in substantial reform of the planning system to separate urban land and natural resource management into different pieces of legislation, we consider there are other more effective remedies that could be implemented more expeditiously, at less cost and with less uncertainty.
- 2.13 In addition to the changes discussed above and in previous submissions, Progressive sees real benefit in any reforms focussing on improving council capabilities and giving local authorities greater guidance on how they carry out their functions under the current planning laws. Progressive considers that a significant cause of the current issues with the planning framework in New Zealand rests with the capability of councils to carry out their functions effectively and efficiently. Greater central government guidance (using the extant tools available in the RMA) to assist councils will bring about greater consistency and certainty for all participants.
- 2.14 The establishment of a centre of excellence or resource that councils could draw on to conduct real-options analysis in the development of land use plans⁸ is an example of one of the actions that central government could take in order to improve council capabilities.

3. MOVING FORWARD

- 3.1 Progressive would be willing to discuss the above submission points with the Commission and providing additional examples of its experience with how the current planning system operates.

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⁸ Draft Report, page 238, R9.2.

ATTACHMENT 1



SUBMISSION TO THE LOCAL GOVERNMENT AND ENVIRONMENT SELECT COMMITTEE ON THE RESOURCE LEGISLATION AMENDMENT BILL

1. SUMMARY

- 1.1 Progressive Enterprises Limited ("**Progressive**") welcomes the opportunity to make a submission on the Resource Legislation Amendment Bill ("**Bill**").
- 1.2 We support the stated intention of the Bill, which (as set out in the explanatory note) is to create a resource management system that achieves the sustainable management of natural and physical resources in an efficient and sustainable way. In particular, Progressive supports the objective of having more streamlined and focussed resource consent and plan change hearing processes. However, many of the proposed changes will not achieve the objectives of the reforms, or will have unintended consequences.
- 1.3 In particular, Progressive seeks amendments to:
- (a) Ensure there is effective public participation in the development of national policy statements and the national planning template.
 - (b) Avoid unintended consequences of some of the amendments seeking to streamline consenting and plan-making processes.
 - (c) Ensure there is appropriate Environment Court oversight for decision-making under the Resource Management Act 1991 ("**RMA**").
- 1.4 These matters and proposed amendments to the Bill are detailed below.

2. INTRODUCTION

Progressive: who we are

- 2.1 Progressive is one of New Zealand's leading supermarket operators and currently operates 183 supermarkets across New Zealand.
- 2.2 Progressive has an extensive history of participating in RMA proceedings, both as an applicant and a submitter. Progressive regularly works with councils in New Zealand when looking at new development and investment in its supermarkets. Progressive works with the councils' district plans to identify the best zoned opportunities for that development and investment. Ensuring that the RMA processes are efficient, fair and certain is vital to enable certainty in relation to development and investment.
- 2.3 As a result of Progressive's significant past and planned further investment in New Zealand, Progressive has a great interest in the Bill.

Supermarkets

- 2.4 Supermarkets serve an essential support function for domestic living, as well as providing an important economic function.

- 2.5 Supermarkets need to be appropriately provided for in planning documents. They need to be both enabled, in order to serve their important functions, and controlled, due to their size, high traffic generation and operational requirements. District plans provide guidance on suitable locations for supermarkets as well as controls on their nature and form. Regional plans often also trigger consent requirements.
- 2.6 Given the substantial reform proposed in the Bill, in particular with regard to the National Planning Template ("**NPT**"), the proposed changes will be integral to the continuing operation and development of Progressive's operations in New Zealand. A district plan's guidance function is particularly important to supermarkets because it provides signals to the market about potential supermarket locations and enables informed investment decisions to be made.
- 2.7 New supermarkets are provided for new or growing residential catchments. In the Auckland Region alone, it is estimated that at least 30 new supermarkets will be required over the next 30 years to serve the growing population.
- 2.8 Progressive takes a catchment driven approach to the development of new supermarkets, based on the potential catchment the supermarket will support, and works within the various regional and district planning frameworks to obtain consent for such development. However, the regional and district planning frameworks often do not fully recognise the need for business growth to occur alongside residential growth. This has often led to obstacles in obtaining consent, despite an obviously growing catchment and a corresponding need for a new supermarket.

3. PROVISIONS OF BILL SUPPORTED

- 3.1 As outlined above, Progressive supports the stated intention of the Bill, and in particular supports amendments which create more streamlined and focussed resource consent and plan change hearing processes.
- 3.2 Some aspects of the Bill achieve those outcomes and are specifically supported. These include:
- (a) **Procedural principles (clause 8, new section 18A):** Progressive supports the inclusion of this express requirement as it provides a useful touchstone for the expectation of good management of local authority processes under the RMA.
 - (b) **New "development capacity" function (clauses 11 and 12, new sections 30(1)(ba) and 31(1)(aa)):** Progressive supports the inclusion of these new regional and territorial council functions, and sees real benefit in requiring local authorities to ensure there is sufficient development capacity in relation to business and residential land.
 - (c) **Boundary activities (clause 121, new sections 87AAB to 87AAD):** Progressive supports these changes which seek to further streamline the consenting process (although concerns with other aspects of the consenting process are outlined below).
 - (d) **Limitations on consent conditions (clause 64, new section 108AA):** Progressive supports the amendment which seeks to expressly restrict council powers to impose conditions to those directly related to the effects of a proposal or to a relevant rule in a plan. Progressive supports this section and seeks it be retained as it has the potential to reduce unnecessary and unreasonable conditions which councils have in the past placed on resource consents for Progressive's supermarkets.

4. CHANGES SOUGHT TO BILL

Striking out submissions (clause 120, new section 41D)

- 4.1 As a frequent resource consent applicant, Progressive supports the new section 41D as it will narrow the scope of submissions and appeals and support the objective of having more streamlined and focused resource consent and plan change hearing processes.
- 4.2 However, as Progressive often takes on the role of a submitter on resource consents that directly impact on its operations it is concerned with the restriction in subsection (2)(b)(iv) to submissions being made on particular kinds of effects (where the consent authority is required, under related amendments to the notification sections of the Act, to specify the effects which were the reason for notification). This could preclude legitimate participation in hearing processes as Progressive is concerned with relying on a council's identification of the particular effects to provide scope for the right to submit. For example, plans often use a single effect as a consent trigger to enable consideration of the effects of the proposal as a whole. For example, many plans use traffic generation as a consent trigger for all effects regarding scale and intensity to be considered.
- 4.3 Progressive therefore seeks amendments to section 41D to clarify that the power to strike out in relation to effects raised is not tied to effects which were the reason for notification. Often, effects considered for the purposes of notification could be limited, or different to the effects to be considered in the substantive decision.
- 4.4 Progressive considers that the requirement to strike out submissions for being frivolous, vexatious, disclosing no reasonable or relevant case, or being an abuse of process should be mandatory, rather than discretionary. This will reduce time and cost for applicants, councils and other parties.

Relief sought

- 4.5 Progressive seeks the following amendments to section 41D:

41D Striking out submissions

- (1) An authority conducting a hearing on a matter described in section 39(1) ~~may~~ **must** direct that a submission or part of a submission be struck out if the authority is satisfied that at least 1 of the following applies to the submission or the part:
- it is frivolous or vexatious;
 - it discloses no reasonable or relevant case;
 - it would be an abuse of the hearing process to allow the submission or the part to be taken further.
- (2) ~~However, if~~ **The authority must direct that a submission or part of a submission be struck out if—**
- the submission is on an application for a resource consent, a review of a resource consent, or an application to change or cancel a condition of a resource consent; and
 - the authority is satisfied that at least 1 of the following applies to the submission or the part:
 - it does not have a sufficient factual basis;
 - it is not supported by any evidence;
 - it is supported only by evidence that purports to be independent expert evidence on a matter but that is prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert evidence on the matter;
 - it is unrelated to an activity's actual or likely adverse effects, ~~if those effects were the reason for notifying the application or review;~~ and
 - the authority considers that the direction would not materially compromise the authority's ability to fulfil its obligations under Part 2.
- (3) An authority—
- may make a direction under this section before, at, or after the hearing; and
 - must record its reasons for any direction made.

Restrictions on consultation process for NPS (clauses 30, 31 and 32, new sections 46A(2A), 48(1A) and 52(4))

- 4.6 The Bill proposes to enable the development of NPSs for a specific district or region or other part of New Zealand. If a proposed NPS is related to a specific district or region or other part of New Zealand, then new subsection 46A(2A) restricts the consultation process to only the public and iwi authorities within the specified area.
- 4.7 While Progressive accepts that there may be situations where NPSs should only apply to a localised area, they are national policy statements and given the status of a national instrument the requirement for nationwide consultation should be retained. On a more practical level, consultation confined to a specific area may fail to capture the views of those who do not presently have operations in that area but intend to establish there. This will restrict the opportunity for potential investors who are interested in carrying out development in a specified area having input on a proposed NPS.

Relief sought

- 4.8 Progressive seeks that sections 46A(2A), 48(1A) and 52(4) be deleted.

National planning template (clause 37, new section 58D)

- 4.9 Progressive sees benefits in a consistent/standardised structure or "template" for plans around New Zealand. In particular, there could be cost efficiencies in having a consistent planning framework. However, the prospect of detailed plan provisions being developed (and/or subsequently amended) by the Minister of the day with little scope for effective participation is concerning to Progressive.
- 4.10 Plans set a framework for the use and development of natural and physical resources, and reflect the community's expectations for that district or region. Progressive has concerns if that local role is supplanted by a central Government template. Accordingly, Progressive opposes the NPT including mandatory content for policy statements and plans.
- 4.11 If the proposed NPT mechanism is to be included, Progressive seeks improvements to this process such as a right for submitters to be heard. Progressive also seeks a requirement to consult with appropriate stakeholders on technical provisions in preparing the NPT (for example, if it were to include rules in relation to the definition of gross floor area or parking requirements).
- 4.12 Finally, Progressive considers that the proposed timeframes for councils to implement the NPT do not recognise the significant cost and efforts that stakeholders have invested in significant planning processes currently underway, such as the Proposed Auckland Unitary Plan and the Christchurch Replacement District Plan.

Relief sought

- 4.13 Progressive seeks the following changes:

58C Contents of national planning template

- (1) The national planning template may specify—
- (a) the structure and form of regional policy statements and plans:
 - (b) any of the matters specified in section 45A(2) and (4) (which applies as if the national planning template were a national policy statement):
 - (c) objectives, policies, methods (including rules), and other provisions that ~~must~~ ~~or~~ may be included in plans:
 - (d) objectives, policies, methods (but not rules), and other provisions that ~~must~~ ~~or~~ may be included in regional policy statements:

- (e) a time frame or time frames for councils to give effect to the whole or part of the national planning template, including different time frames for—
 - (i) different local authorities:
 - (ii) different parts of the national planning template:
- (f) if the national planning template specifies that a rule ~~must~~ or may be included in plans, whether the local authority must review a discharge, coastal, or water permit under section 130 to ensure compliance with the rule, if the local authority includes such a rule.

58D Preparation of national planning template

- (1) If the Minister determines to prepare a national planning template, the Minister must prepare it in accordance with this section and sections 58E to 58J.
- (2) In preparing or amending the national planning template, the Minister may have regard to—
 - (a) the matters set out in section 45(2)(a) to (h):
 - (b) whether it is desirable to have national consistency in relation to a resource management issue:
 - (c) any other matter that is relevant to the purpose of the national planning template.
- (3) Before approving the national planning template, the Minister must—
 - (a) consult with appropriate stakeholders and qualified experts on any technical provisions being proposed in the NPT; and
 - ~~(ab)~~ prepare a draft national planning template; and
 - ~~(bc)~~ prepare an evaluation report in accordance with section 32 and have particular regard to that report before deciding whether to publicly notify the draft; and
 - (ed) publicly notify the draft; and
 - ~~(de)~~ establish a process that—
 - (i) the Minister considers gives the public, local authorities, and iwi authorities adequate time and opportunity to ~~comment~~ make a submission and be heard on the draft; and
 - (ii) requires a report and recommendations to be made to the Minister on those comments.

[...]

58H Local authority recognition of national planning template

- (1) In this section and section 58J, document means—
 - (a) a regional policy statement; or
 - (b) a proposed regional policy statement; or
 - (c) a proposed plan; or
 - (d) a plan; or
 - (e) a variation.
- (2) A local authority must amend a document, if the national planning template directs so, to include specific provisions set out in the national planning template.
- (3) If subsection (2) applies, the local authority must—
 - (a) make the amendments to the document as directed and make any consequential amendments to any document that are necessary to avoid duplication or conflict with the directed amendments, without using any of the processes set out in Schedule 1; and
 - (b) make all amendments within the time specified in the national planning template or (in the absence of a specified time) within 1 year after the date of the notification in the Gazette of the approval of the national planning template; and
 - (c) give public notice of the amendments within 5 working days after making them.
- (4) A document is amended as from the date of the relevant public notice under subsection (3)(c).
- (5) A local authority must—
 - (a) make all other amendments to any document that are required to give effect to any provision in the national planning template that affects the document, using one of the processes set out in Schedule 1; and
 - (b) make all amendments within the time specified in the national planning template or (in the absence of a specified time) within ~~5~~10 years after the date of the notification in the Gazette of the approval of the national planning template, unless subsection (6) applies.
- (6) However, subsection (7) applies if an amendment relates to matters that are the subject of a proposed policy statement or plan that was notified under clause 5 or 48 of Schedule 1, but had not become operative before the approval of the national planning template.

- (7) If this subsection applies, the local authority—
 - (a) is not required to amend the document within the time specified in subsection (5)(b); but
 - (b) must make the amendments under subsection (5)(a) within the time specified in the template or (in the absence of a specified time) within 510 years after the date on which the proposed policy statement or plan becomes operative.
- (8) A local authority must also take any other action that is directed by the national planning template.
- (9) This section is subject to obligations placed on local authorities, or on any particular local authority, by or under any other Act that relates to the preparation or change of a policy statement or plan under this Act.

Deemed permitted activities (clause 122, new section 87BB)

- 4.14 This provision seeks to allow councils to issue a notice stating that a particular activity is a permitted activity where the consent requirement is due to a marginal or temporary non-compliance. Progressive opposes this provision. While the intent is supported, the drafting is uncertain and creates risks for applicants. In particular, the concept of "marginal or temporary non-compliance" is uncertain and could end up exposing development to judicial review risk.

Relief sought

- 4.15 Progressive seeks that section 87BB be deleted.

Notification of resource consents (clauses 125 - 128, sections 95 - 95E)

- 4.16 The Bill proposes substantial changes to the notification requirements under the RMA that essentially seek to reduce the chances of a resource consent application being either publicly or limited notified.
- 4.17 Progressive considers the current notification regime (as established by the comprehensive rewrite of the notification provisions in the 2009 amendments to the RMA) is operating effectively. Progressive does not consider that there is a need for further amendments to be made.
- 4.18 In addition, the complex and complicated notification provisions proposed in the Bill run the risk that the notification decision-making process will become more fraught for councils, particularly taking into account the reduced timeframes proposed in the Bill with new processes such as the fast-track applications. The restrictions on limited notification set out in the new sections 95D to 95E are also opposed by Progressive.
- 4.19 New subsections 95D(ca) and 95E(2)(c) give a consent authority discretion to disregard adverse effects which are "already taken into account by the objectives and policies of the plan". It is not appropriate to provide for an objectives and policies assessment at the notification stage, given that the focus of the notification enquiry should be principally on effects of the activity, and given the subjective nature of an objectives and policies assessment. Councils also already have the ability to restrict their discretion or control (or preclude notification altogether) at the planning stage through rules and in a manner that is more certain than including a subjective evaluation of objectives and policies into notification decisions.
- 4.20 New section 95DA specifies eligibility criteria to be considered an affected person for the purposes of limited notification. There is a serious risk that the restrictions proposed in section 95DA will result in situations where parties who are affected and "should" be notified, lose out on the opportunity to participate.

Relief sought

- 4.21 Progressive seeks that sections 95-95E be deleted, and the former sections 95-95E be reinstated.

Restriction on appeal rights (clause 135, new section 120(1A))

- 4.22 Amendments proposed to section 120 restrict appeal rights for certain activities including boundary activities and subdivision (unless non-complying).
- 4.23 In general, Progressive supports the intention of streamlining consenting processes. However, Progressive has two concerns with the provisions as currently framed.
- 4.24 The first concern is that the phrase "provision or matter" is ambiguous in the context of resource consent applications and should be replaced. Progressive has suggested wording that is more appropriate for the resource consent context.
- 4.25 In addition, Progressive seeks that provisions also be made for appeals to be lodged where a matter was not included in the submitter's submission, if the submitter could not reasonably have raised the matter in their submission, for example, if a proposal has materially changed after the submission period.

Relief sought

- 4.26 Progressive seeks the following amendments to section 120:

120 Right to appeal

(1A) However,—

- (a) there is no right of appeal under this section against the whole or any part of a decision of a consent authority referred to in subsection (1) to the extent that the decision relates to resource consent for:
- (i) a boundary activity; or
 - (ii) a subdivision, unless the subdivision is a non-complying activity; and
- (b) there is no right of appeal under this subsection against the whole or any part of a decision of a consent authority referred to in subsection (1) to the extent that the decision relates to resource consent for an activity that—
- (i) is a residential activity (being an activity associated with the construction, alteration, or use of a dwellinghouse on land that, under a district plan, is intended to be used solely or principally for residential purposes); and
 - (ii) is to occur on a single allotment; and
 - (iii) is a controlled, restricted-discretionary, or discretionary activity; and
- (c) a person described in subsection (1)(b) may appeal under this section only in respect of a ~~provision~~ resource consent condition, environmental effect, or other matter raised in the person's submission (excluding any part of the submission that is struck out under **section 41D**).

(1B) To avoid doubt, section (1A)(c) does not prevent a person described in subsection (1)(b) from appealing in respect of a part of the decision of a consent authority on an application for resource consent if the resource consent condition, environmental effect, or other matter to which the appeal relates could not reasonably have been raised in the person's submission.

Regulations to permit land use or prohibit certain types of rule (clause 105, new section 360D)

- 4.27 This change proposes to include additional powers for the Minister to make regulations. New section 360D duplicates a number of options for national direction which are already in place, and there is no demonstrable need for this additional power to reside with the Minister. While there may be some potential benefits, this provision does not appear to require consideration of potential adverse effects that could result from the establishment of certain land as residential.

- 4.28 As an alternative and less preferred position, if the provision is to be retained, amendments are required to provide additional safeguards around the process for the making of regulations. Importantly, this includes the ability for the public to make submissions and to be heard in relation to those submissions.

Relief sought

- 4.29 Progressive seeks that section 360D be deleted.
- 4.30 As a less preferred option, if section 360D is to be retained, then Progressive seeks as a minimum that section 360D is amended as follows:

360D Regulations that permit or prohibit certain rules

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations –
 - (a) to permit a specified land use;
 - (b) to prohibit a local authority from making specified rules or specified types of rules;
 - (c) to specify rules or types of rules that are overridden by the regulations and must be withdrawn;
 - (d) to prohibit or override specified rules or types of rules that meet the description in subsection (3)(b).
- (2) Regulations made under subsection (1)(a) may provide for a land use to be a permitted activity, but only for the purpose of avoiding restrictions on land use that are not reasonably required to achieve the purpose of the Act.
- (3) Regulations must not be made–
 - (a) under subsection (1)(b) or (c) unless, in the Minister's opinion, the rules would restrict land use for residential development in a way that is not reasonably required to achieve the purpose of the Act;
 - (b) under subsection (1)(d) unless, in the Minister's opinion, the rules would duplicate, overlap with, or deal with the same subject matter as is included in other legislation and that duplication, overlap, or repetition would be ~~undesirable~~ inconsistent with the purpose of the other legislation.

[...]
- (8) The Minister must not recommend the making of regulations under this section unless the Minister is of the opinion that it is necessary or desirable to do so, after the Minister has–
 - (a) notified the public, relevant local authorities, and relevant iwi authorities of the proposed regulations; and
 - (b) established a process that–
 - (i) the Minister considers gives the public, the relevant local authorities, and the relevant iwi authorities adequate time and opportunity to ~~comment~~ make a submission and be heard on the proposed regulations; and
 - (ii) requires a report and recommendation to be made to the Minister on the comments received under subparagraph (i); and
 - (c) publicly notified the report and recommendation.

Limited notification of plan changes (clause 108, Schedule 1 new clause 5A)

- 4.31 New clause 5A of Schedule 1 enables limited notification for plan changes if the local authority can identify all the persons directly affected by the proposed change.
- 4.32 Progressive supports this clause to the extent that there may be some discrete plan changes where limited notification is appropriate. However, notification to only "directly affected" persons risks submitters with genuine concerns being excluded from the process. Progressive seeks additional clarification as to which parties should be notified.
- 4.33 Limited notification should also be an option for private plan changes that are accepted by a local authority (not just for private plan changes which are "adopted", which is how the amendments are currently drafted).

Relief sought:

4.34 Progressive seeks the following amendments to clause 5A:

5A Option to give limited notification of proposed change

- (1) This clause applies to a proposed change to a policy statement or plan and a proposed private plan change that has been accepted by the local authority under clause 25(2)(b) of Schedule 1.
- (2) The local authority may give limited notification, but only if it is able to identify all the persons directly affected by the proposed change.
- (3) The local authority must serve limited notification on all persons identified as being directly affected by the proposed change.

[...]

- (11) For the purposes of this section, a local authority must identify a person as being directly affected by a proposed change if:
 - (a) the person is the owner or occupier of land to which the proposed change directly relates; or
 - (c) the person is affected by an effect of the proposed change which is minor or more than minor (but not less than minor).

Streamlined planning process (Clause 52, new section 80C; clause 108, new Part 5 of Schedule 1)

- 4.35 The streamlined planning process, if a council decides to use it, hands control of both the process and the substantive outcome to the Minister. It also reduces the normal protections on public participation in the plan-making process.
- 4.36 While conceivably this mechanism could be useful for confined and urgent issues (eg natural disasters), overall we consider it gives rise to fundamental concerns regarding access to justice.
- 4.37 While there may be some plan processes that require bespoke submission and hearing processes, these are rare (for example the Proposed Auckland Unitary Plan and Christchurch Replacement District Plan Processes). In those situations there has been specific legislation developed to cater to those specific circumstances. There is no clear justification for a general power to be provided to the Minister to depart from the normal plan development processes. This is reinforced by the removal of the safeguards that there will be effective participation provided both through the submission process itself and through Environment Court oversight.
- 4.38 Planning documents are critical to the operation of the RMA and development of these instruments needs to be given due consideration that is appropriate to the scale of the implications.
- 4.39 We also have significant concerns with the removal of the right to appeal in respect of a decision of the responsible Minister or local authority under the streamlined planning process. The Environment Court provides important oversight on council decision making, and Progressive has a large number of examples where appeals are resolved quickly and constructively at Environment Court level, or when a further hearing is necessary to achieve a better planning result on a difficult issue.

Relief sought

- 4.40 Progressive seeks that the new part 5 to Schedule 1 and new section 80C be deleted in their entirety.

5. FURTHER CHANGE

Streamlining of composite plan change and resource consent processes

- 5.1 A key objective of the Bill is to have more streamlined and focussed resource consent and plan change hearing processes.
- 5.2 One further change that could be incorporated into the Bill to streamline those processes is to better enable combined private plan change and resource consent applications to be made. Developers will often seek a private plan change to better enable a particular activity through a more enabling activity status. Currently, the applicant must wait until the plan change has been processed and determined before a resource consent application can be lodged which is able to rely on the improved activity status.
- 5.3 Progressive considers that it would be consistent with the objective of streamlining plan change and resource consent processes to amend the Schedule 1 process and section 87A to enable a streamlined concurrent plan change and resource consent hearing process in a similar manner to how concurrent aquaculture activity applications can be made under Part 4 of the RMA.

Relief sought

- 5.4 Progressive seeks that Schedule 1 and section 87A are amended to enable a streamlined concurrent plan change and resource consent hearing process to occur, with the applicant able to benefit from the changed activity status through the process (if approved).

6. OPPORTUNITY TO APPEAR

- 6.1 Progressive seeks the opportunity to appear at Select Committee hearings in support of this submission.

PROGRESSIVE ENTERPRISES LIMITED:

Date: 14 March 2016



Signature:

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ATTACHMENT 2



SUBMISSION TO THE MINISTRY FOR THE ENVIRONMENT ON THE PROPOSED NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT CAPACITY

1. EXECUTIVE SUMMARY

1.1 Progressive Enterprises Limited ("**Progressive**") welcomes the opportunity to comment on the Proposed National Policy Statement on Urban Development Capacity ("**NPS**").

1.2 Progressive supports the objective of the NPS to provide sufficient residential and business development capacity for the short, medium and long terms. However, Progressive is concerned that the NPS will not result in adequate provision of sufficient, developable business land.

1.3 The Consultation Document states:¹

In general, the property market for business land does not appear to have the same extent of problems as the housing market. In most areas and for most types of business, the land available appears to be broadly sufficient and prices do not seem to increase as rapidly as they do with housing. In some urban areas there is even a possibility of oversupply of some kinds of business land. This can lead to underfunded infrastructure and struggling town centres.

1.4 We do not agree. In our experience, if sufficient and developable land is not made available for business use, the development costs to establish a supermarket becomes prohibitive. In some circumstances, a council could say there is "sufficient" business land available in their district, but that land might be too small, held in single ownership, inappropriate for retail development, or not close enough to the relevant residential catchment.

1.5 The NPS must promote the development of developable business land for a range of business uses to ensure that the price of business land does not become even more restrictive to development than it already is. Progressive also seeks amendments to the NPS to ensure that business development is given equal acknowledgement to residential development; that a lack of infrastructure is not inappropriately used by local authorities as a reason to restrict business development; and that councils are required to consult with and take into account the views of the business sector.

1.6 These matters and proposed amendments are detailed below.

2. PROGRESSIVE ENTERPRISES: WHO WE ARE

2.1 Progressive is one of New Zealand's leading supermarket operators. We currently operate 184 supermarkets across New Zealand. In the last three years Progressive has invested \$500 million in new stores, with a further \$225 million planned investment in FY16. Progressive is the second largest private sector employer in New Zealand, employing approximately 18,500 people.

2.2 Supermarkets serve an essential support function for domestic living, as well as providing an important economic function. New supermarkets are established in new or

¹ National Policy Statement on Urban Development Capacity Consultation Document, page 23.

growing residential catchments. In Auckland alone, it is estimated that at least 30 new supermarkets will be required over the next 30 years to serve the growing population.

- 2.3 However, regional and district planning frameworks often do not properly recognise the need for business growth to occur alongside residential growth. Homes are enabled, but the essential support activities for those homes, like supermarkets, are not.
- 2.4 Providing national direction in the NPS is critical to ensure that these activities are appropriately provided for. Given Progressive's significant past and planned further investment in New Zealand, the contents of the NPS will be integral to the continuing operation and development of Progressive's operations in New Zealand.

3. NPS: AMENDMENTS SOUGHT

Provision for the development of business land for a range of business uses

Case study #1: Richmond, Nelson

Progressive wants to establish a supermarket in the suburb of Richmond, in Nelson. However, we have not been able to find a site to purchase in Richmond that is big enough to accommodate a supermarket. Progressive usually requires sites between 1-1.5ha to establish a supermarket and car park. Progressive considered accumulating a number of smaller sites to accommodate a supermarket, however the cost to do so became uneconomic.

In order to satisfy the demand for a supermarket, Progressive is currently going through an extensive plan change and resource consent process in order to establish a supermarket on the outskirts of Richmond on rurally zoned land. This is a prime example where, due to the prohibitive lot size and commercial viability of land zoned commercial in a suburb, Progressive has had to go to significant lengths in order to establish a supermarket outside of identified commercial zones in order to meet residential demand.

Case study #2: Auckland

For the last 12 years, Progressive has sought to establish a supermarket in a growing residential area of Auckland, identified by the Council as "village growth" in the relevant operative plan and "local centre" in the Proposed Auckland Unitary Plan. A small area of land has been zoned in that area for commercial uses, however, for over 12 years it has been held in single ownership. The owner of this small area of land has put the price of his land so high - knowing commercially zoned land in the vicinity is rare - that Progressive is unable to develop a business case for establishing a supermarket on the site. There is no other business zoned land in the centre.

- 3.1 Progressive supports the Business Land Assessment under policy PB1 which estimates "the demand for **different types and locations of floor area for the local business sectors**".
- 3.2 However, local authorities need to recognise that there may be land identified for the development of business activities, but the land may be inappropriate for development due to a range of issues including but not limited to lot size, prohibitive pricing due to single owners of commercial land, complex leasing structures, and proximity to residential demand.
- 3.3 Unlike housing, it is unrealistic to expect retail activities and many other commercial activities to "go up rather than out". Retail in particular often needs to be located on the

ground floor. This is particularly true of supermarkets given their operational requirements including ease of access for foot traffic, and sufficient car parking and loading bays. People demand easy access to supermarkets. It is therefore critical that the NPS takes into account the need for the functional and operational requirements of different business land and the need for outward expansion of certain business activities.

- 3.4 There needs to be greater direction in the NPS for local authorities to expressly provide for the functional and operational requirements of business activities and the need for outward expansion of certain business activities to meet demands of residential growth. Such an approach will provide flexibility to businesses as to what land they purchase and how they develop sites to meet the demand of the surrounding residential land. This greater flexibility will in turn lead to greater investment in business land.
- 3.5 To further address functional and operational issues faced by businesses in developing land, local authorities should be required, in carrying out their Business Land Assessments under policy PB1, to estimate demand for different types and locations of lot sizes in addition to floor area. This will assist in developing Business Land Assessments that more fully take into account the requirements of different business land and enable local authorities to have a better basis by which to determine how to provide for sufficient development capacity.
- 3.6 Amendments to the definition of demand and the additional bullet points proposed for Policy PA1 below will further assist in decision-makers providing for the functional and operational requirements of business land and ensure that demand for different locations of business land is not inappropriately restricted to being "within the urban area".
- 3.7 Progressive also considers there should be greater provision in policy PB5 as to the range of business indicators local authorities must monitor to ensure they are well-informed about the market's response to planning.
- 3.8 As illustrated in case study #2 above, in Progressive's experience, the development of supermarkets is often hampered because lots that are zoned for commercial use are all held by a single landowner. This gives the landowner a certain monopoly over an area which allows them to charge substantial amounts to lease or buy the land making the land commercially unviable to establish a supermarket on.
- 3.9 This illustrates the complex factors that must be taken into account when Progressive decides to establish a new supermarket in an area undergoing significant residential development. Such factors need to be monitored by local authorities as part of the range of indicators they are required to monitor under policy PB5. This will enable local authorities to have a better grasp over what the business sector requires to develop specific business activities on.
- 3.10 For further clarity, detailed guidance should be provided by the Ministry to local authorities on how to undertake the monitoring.

Relief sought

Amend the following definition:

Demand means:

In relation to residential development, the demand for residential dwellings within an urban area in the short, medium and long-terms, having particular

regard to:

- a) the total number of dwellings required to meet projected household growth;
- b) demand for different types of dwellings;
- c) the demand for different locations within the urban area; and
- d) the demand for different price points.

recognising that people will trade off (b), (c) and (d) to meet their own needs and preferences.

In relation to business land, the demand for floor area and lot sizes in the short, medium and long-terms, having particular regard to:

- a) the quantum of floor area to meet forecast growth in different sectors;
- b) the demands of both land extensive and intensive activities; ~~and~~
- c) the demand for different locations ~~within the urban area;~~ and
- d) the demand for different types and locations of lot sizes.

Insert the following bullet points in policy PA1:

- Providing for the functional and operational requirements of different business activities and development.
- Providing for the outward expansion of different business activities to meet the demands of residential growth.

Amend the second bullet point of policy PB1 as follows:

- A Business Land Assessment that estimates the demand for the different types and locations of floor area and lot size for the local business sectors, and the supply of development capacity to meet that demand, in the short, medium and long-terms.

Amend policy PB5 as follows:

PB5: To ensure that local authorities are well-informed about the market's response to planning, local authorities must monitor a range of indicators on a quarterly basis, or as frequently as possible, including:

- The relative affordability of housing, including the ratio of house price to income and the relative cost to rent;
- The increase in house prices and rents;
- The number of resource and building consents granted relative to the growth in population;
- Vacancy rates for business land;
- The increase in land value for business land;
- The number and type of lots available for different business activities;
- The number of lots available for business activities that are owned by a

single entity;

- The proximity of business land to current and future residential land;
- The ratio of the value of land between rural and urban zoned land; and
- The ratio of the value of improvements to the value of land within the urban area...

Provide detailed guidance on how local authorities should carry out the monitoring under policies PB1 to PB5, including local authorities specifically taking into account the different types of business land.

Equal acknowledgement of residential and business land

Case study #3: Beachlands, Auckland

In Beachlands, Auckland, the Council had rezoned a significant area as residential but zoned no suitable land as business to service it. Progressive had to seek a plan change (which was appealed to the Environment Court) to rezone 6ha to commercial from residential, to allow an entire town centre, including a supermarket, to be developed because the existing retail strip could not accommodate any of the growth needed to service the new residential area. This is despite the council providing for future urban growth in the area and the clear need for business activities to service the residential development.

The time and cost in seeking a private plan change to zone business land to support the growing residential population illustrates the obstacles to providing business land alongside residential land in order to maintain and develop efficient and effective urban areas. It also illustrates how councils can fail to adequately provide for business land to support the residential growth their district plans promote.

- 3.11 Progressive supports OA2 which calls on local authorities to provide sufficient residential and business capacity to meet demand.
- 3.12 However, residential capacity appears to be given far greater weight in the NPS than business capacity. For example, PD4, PD5, and PD6 solely relate to residential development capacity.
- 3.13 The provision of developable business land is a vital part of providing effective and efficient urban areas. Residential and business development need to be equally acknowledged in the NPS in order to ensure that local authorities do not simply focus on residential capacity at the cost of business land, which could significantly impact on the liveability of an area. This is particularly relevant in the context of supermarkets, which people expect convenient access to, given that food is a necessity item.
- 3.14 We recommend policies PD4, PD5, and PD6 are amended to achieve equal weighting of residential and business development throughout the NPS.

Relief sought

Amend policies PD4, PD5, and PD6 as follows:

PD4: In giving effect to policy PD1 with respect to residential and business development capacity local authorities should have particular regard to enabling capacity:

- In the locations that the Housing and Business Land Assessments, required under policy PB1, indicates are of highest demand; and
- That is feasible.

such that it maximises the contribution to meeting demand for residential and business development.

[...]

Regional councils must have amended their proposed and operative regional policy statement to give effect to policies PD5 to PD6 by:

- The end of 2018; or
- Earlier if the Housing and Business Land Assessments required under policy PB1 shows development capacity is insufficient to meet demand; or
- Within 12 months of becoming a High Growth Urban Area.

PD5: Regional councils must set minimum targets for the supply of sufficient residential and business development capacity that must be achieved, in accordance with its Housing and Business Land Assessments, and incorporate these into the relevant regional policy statement.

~~These~~ minimum targets for residential development capacity must specify:

- The total number of dwellings; and
- Different types of dwellings.

The minimum targets for business development capacity must specify:

- The total number of business lots (including the size of those lots); and
- Different types of business lots to provide for different types of productive economic activities.

[...]

PD6: A regional council's minimum targets set under policy PD5 must be set for the medium and long terms, and must be reviewed every three years. When a regional council's Housing and Business Assessments required under policy PB1 shows that the minimum targets set in the regional policy statement are insufficient to meet demand, regional councils must revise those minimum targets in accordance with policy PD5 and incorporate those targets into its regional policy statement in accordance with section 55(2A) of the Act without using the process in Schedule 1 of the Act.

[...]

Provision for infrastructure

Case study #4: Hobsonville, Auckland

In the case of the recently developed Countdown in Hobsonville, Auckland, the site required significant stormwater works to establish the supermarket. In order to progress

development of the supermarket and satisfy increasing demand, Progressive paid upfront for the stormwater works to be constructed, rather than wait for the Council to carry out the works at some undetermined future time.

- 3.15 Lack of serviced land is a common obstacle for the development of business and residential land. It is critical that local authorities work closely with infrastructure providers when providing sufficient development capacity, and we support the policies in the NPS which require local authorities to do so.
- 3.16 However, Progressive is concerned that the NPS as currently framed (and particularly policies PA1 and PB3) will allow local authorities to inappropriately use the lack of infrastructure as a reason to not provide business and residential land.
- 3.17 The Hobsonville Countdown is an example of why the NPS needs to provide sufficient flexibility for the provision of infrastructure to service residential and business development. While land identified for potential development may not currently be serviced by infrastructure, there may be situations where a developer is prepared to fund or construct the infrastructure in order to bring the development of that land forward. The NPS needs to be flexible enough to allow such options to be taken into account when local authorities and infrastructure providers are considering land to develop.
- 3.18 Progressive considers that the requirements within policies PA1 and PB3 for infrastructure to be considered are unnecessary and have the real potential to be inappropriately used by local authorities as a reason to not provide land for residential and business development.

Relief sought

Amend policy PA1 as follows.

By decision-makers:

- Providing for an urban form that maximises the potential for social and economic exchange within the urban area.
- Providing for the efficient use of resources, having particular regard to scarce urban land ~~and infrastructure.~~
- Enabling the competitive operation of land and development markets.

Amend policy PB3 as follows:

PB3: In carrying out the assessments required under policy PB1, local authorities must estimate the sufficiency of development capacity provided by its plans and proposed and operative regional policy statements, having particular regard to:

- The cumulative effect of all zoning, objectives, policies, rules and overlays in plans, and the effect this will have on opportunities for development being taken up.
- ~~The actual and likely availability of infrastructure.~~
- The current physical and commercial feasibility of development capacity.
- The likelihood of opportunities for development being taken up.

and must estimate the additional development capacity needed if any of these factors indicate that the supply of development capacity is not likely to meet demand in the short, medium or long-term.

Ensuring appropriate consultation

- 3.19 Policy PB4 requires local authorities when carrying out the Housing and Business Land Assessments to:
- ...consult with infrastructure providers, community and social housing providers, the property development sector and any other stakeholders as they see fit.
- 3.20 In addition, the second bullet point of policy PD9 requires local authorities, when developing a future land release and intensification strategy, to:
- [t]ake into account the views of infrastructure providers, land owners, the property development sector and any other stakeholders as they see fit.
- 3.21 No detail is provided in the NPS as to which key stakeholders would fall within "the property development sector". While supermarket operators could potentially be considered as part of the "any other stakeholder" provision, local authorities need only consult with those other stakeholders "as they see fit". This means there is no assurance in the NPS that the relevant local authority will consult with key stakeholders in the business sector in carrying out these critical assessments and developing the future land release and intensification strategy.
- 3.22 Business activities, such as supermarkets, provide critical support to local communities. Local authorities should be required to consult with the business sector in relation to assessments and strategies for the release of residential and business land to ensure that local communities are adequately serviced by the business sector, including supermarkets, and sufficient and appropriate land is provided for their development.
- 3.23 The business sector is a vital resource with extensive experience in developing/ redeveloping land and operating a wide spectrum of business activities. Consultation allows the business sector to inform local authorities as to the specific measures that need to be taken to meet business demand and the residential thresholds to meet at which they would consider establishing their business. Supermarket operators, like Progressive, have been developing and operating supermarkets across the country for decades and are the best placed stakeholders to provide such information to local authorities. They should be consulted.
- 3.24 Progressive also seeks clarification as to how consultation will take place in practice. In order to effectively implement policies PB4 and PD9, local authorities will need clear guidance from the Ministry as to how local authorities will identify appropriate stakeholders in the business sector to consult with.

Relief sought

Amend policy PB4 as follows:

PB4: In carrying out the assessments required under policy PB1, local authorities must consult with infrastructure providers, community and social housing providers, the property development sector, business sector, and any other stakeholders ~~as they see fit~~.

Amend the second bullet point of policy PD9 as follows:

- Consult with and ~~Take~~ into account the views of infrastructure providers, land owners, the property development sector, business sector, and any other stakeholders ~~as they see fit~~;

Provide detailed direction in a Ministry for the Environment guidance document on how local authorities should carry out consultation under policies PB4 and PD9, including a requirement that relevant key retailers are consulted when residential and business land could potentially require retail activities.

Ensuring monitoring assessments are published

- 3.25 Under PB1 and PB5 "[l]ocal authorities must have regard to the benefits of publishing" the Housing and Business Land Assessments and the results of local authorities monitoring of a range of indicators. Progressive considers that local authorities should be required to publish the assessments and monitoring under the NPS, rather than merely have regard to the benefits of publishing them.
- 3.26 Requiring the assessments and monitoring to be published places an appropriate check on the local authorities that they are effectively carrying out the objectives and policies of the NPS. If a local authority decides not to publish its assessments and monitoring, key stakeholders will struggle to determine whether appropriate monitoring is being undertaken by the local authorities and whether key indicators are being taken into account.
- 3.27 The assessments also provide critical information to the business and development sector as to potential future demand for business activities and allows them to forecast with greater clarity the business needs in the short, medium and long terms.

Relief sought

Amend the last sentence of PB1 as follows:

Local authorities must ~~have regard to the benefits of publishing~~ the assessments under policy PB1.

Amend the last sentence of policy PB5 as follows:

Local authorities must ~~have regard to the benefits of publishing~~ the results of its monitoring under policy PB5.

Definitions: "urban area"

- 3.28 The definition as currently provided will enable local authorities to discount rezoning developable greenfield land on the basis that the land does not have "urban characteristics" and a "moderate to high concentration of population".
- 3.29 In any case, Appendix A1 provides a detailed classification of urban areas. As such a definition of "urban area" is unnecessary and will lead to confusion as to what amounts to an urban area when this is already clearly identified in Appendix A1.

Relief sought

Delete the definition of "urban area".

PROGRESSIVE ENTERPRISES LIMITED:**Signature:**

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