**SUBMISSION TO THE PRODUCTIVITY COMMISSION ON THE DRAFT REPORT ON BETTER URBAN PLANNING**

## 1. EXECUTIVE SUMMARY

1.1 Fulton Hogan welcomes the opportunity to comment on the Productivity Commission's Draft Report on Better Urban Planning ("**Draft Report**").

1.2 Effective and efficient urban planning is critical to Fulton Hogan's business. A successful urban planning framework in New Zealand needs to enable sufficient development capacity, including in relation to business land, and in particular industrial land. Industrial activities are a critical part of providing effective and efficient urban areas. If residential development is encouraged and enabled without managing how that development can co-locate with established industrial activities or industrial zoned land, this will hamper the development of effective and efficient urban areas that enable people and communities to provide for their social, economic and cultural wellbeing.

1.3 A successful urban planning framework should:

(a) effectively recognise and manage reverse sensitivity effects;

(b) provide robust notification and appeal rights to enable affected parties to be involved in planning processes near them, including in their effects areas (eg within noise or odour boundaries); and

(c) encourage long-term spatial planning by councils.

1.4 We also consider that there is more which could be done by central government to help improve council capability, and give local authorities greater guidance on carrying out their functions under current planning laws.

1.5 Fulton Hogan views the existing Resource Management Act 1991 ("**RMA**") framework as functional, and representative of a logical and coherent approach to what are essential questions around enabling and providing for democratic local decision-making, providing for community needs and wellbeing, and allocating scarce resource while protecting the environment. It is important that the RMA framework is not unduly tampered with by poorly considered legislative intervention.

1.6 Fulton Hogan has submitted on other policy and legislative initiatives this year, including the Resource Legislation Amendment Bill 2015 ("**Bill**"), and the Proposed National Policy Statement on Urban Development Capacity ("**NPS**"). Fulton Hogan's submissions on the Bill and NPS are **attached**. Such participation is expensive and time-consuming, but necessary, given the important role the planning framework plays in infrastructure operators' investment decisions, commercial viability, and ability to contribute to better urban outcomes for communities.

## 2. WHO WE ARE

2.1 Fulton Hogan is a New Zealand civil contracting company that has been operating since 1933. Fulton Hogan specialises in civil construction, particularly (but not limited to) road construction and maintenance, quarrying, and asphalt production. Fulton Hogan's civil contracting and construction operations operate throughout New Zealand, Australia and the South Pacific. Employing over 6,000 people, Fulton Hogan remains privately owned, having approximately 35% employee ownership.

2.1 Fulton Hogan's operations include:

(a) 32 quarry sites across New Zealand (including both hard rock and gravel quarries) and river gravel extraction in the South Island.

(b) Asphalt plants and bitumen plants as well as regional and branch depots around the country.

(c) Supporting the creation of infrastructure required to facilitate growth in residential development, including installation of water and wastewater infrastructure, construction and maintenance of bridge structures, rail construction and maintenance, airport runway construction and maintenance, ports hardstand areas, irrigation infrastructure, and precast / pre-stressed concrete fabrication amongst other things.

(d) Residential and industrial land development including a number of substantial residential developments in both Auckland and Christchurch.

2.2 Fulton Hogan's experience is that industrial activities have specific requirements for appropriate land, and the location and size of lots for industrial activities are critical in identifying suitable sites for development or redevelopment. Other factors relevant to the location of Fulton Hogan's operations include the need for access to infrastructure like bulk gas and transport networks, and sufficient separation from other sensitive uses like residential activities.

2.3 Our quarries can only be located where the suitable mineral resource is located and do not have the luxury of site selection. These activities cannot be placed just anywhere. It is imperative that a better future urban planning system adequately recognises and enables the location, size, scale and other functional and operational requirements of industry, including quarries and other bulk infrastructure.

## 3. COMMENT ON DRAFT REPORT

### Managing reverse sensitivity effects

3.1 The Draft Report states that "negative spillover effects" are a key problem that urban planning targets,[1] and that land use regulation should "avoid prescriptive requirements, except where these are necessary to manage significant negative externalities"[2]. However, the Draft Report does not provide any findings or recommendations in relation to how that should occur, and fails to adequately address reverse sensitivity effects, or the need to protect established activities from the objections of new, sensitive, land uses located nearby. Rather, it suggests that a future planning system could, for example, encourage "broader zones that allow more uses."

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1 Draft Report, pages 38 to 40.

2 Draft Report, page 160.

3.2 Reverse sensitivity effects are directly relevant in the context of enabling the development of "urban" or residential land. While Fulton Hogan supports the need to provide sufficient development capacity for residential land, this development capacity must be provided in suitable locations that does not restrict or constrain established industrial activities. Enabling "broader zones" in district plans will only increase the likelihood of conflict of "spillover effects".

3.3 Fulton Hogan's quarries and asphalt plants are examples of industrial businesses that would be too expensive to move, and are affected by reverse sensitivity effects, for example Fulton Hogan's long-established asphalt plant at Reliable Way, Mount Wellington, Auckland. Despite being zoned on industrial land, Fulton Hogan has been required to invest extensive time and effort (including in renewing an air discharge consent and involvement in the Proposed Auckland Unitary Plan process) to protect the plant's operations from reverse sensitivity effects from the ever increasing pressure of residential activities in close proximity to the site.

3.4 The residential activities had been established as non-complying activities on marginal land near to Fulton Hogan's asphalt plant. Those same residential activities then attempted to restrict Fulton Hogan's operations at the site through submitting on Fulton Hogan's air discharge application. The decision of the Hearing Commissioners on the application concluded:[3]

> Our overall finding in relation to the existing environment is that there is **a valid expectation that industrial activities, such as those that have existed on the Fulton Hogan site since 1986, are appropriately located in terms of the zoning** that has been applied under the Operative District Plan. In relation to the expectations of those submitters, who own and/or occupy residential properties on land currently zoned Business 4, **we cannot ignore the lawfully established Fulton Hogan activities**. The existing environment, regardless of zoning, consists of industrial and residential activities and the merits of consent being sought needs to be assessed in terms of the relevant provisions of the RMA and the regional and district planning documents.

3.5 The RMA currently provides the tools to manage reverse sensitivity effects, but many councils seem unwilling or unable to proactively plan around existing land uses which create effects that "spillover" onto neighbouring land.

3.6 We consider that the Commission's final report must carefully address reverse sensitivity effects, and recommend that councils better manage the effects of "urban" development on existing industrial uses. National guidance on reverse sensitivity issues may also assist.

**Need for robust notification processes and consultation**

3.7 Fulton Hogan relies on notification requirements to protect its operations from reverse sensitivity effects. Of concern, the Draft Report makes a number of recommendations which would erode current notification requirements, including:

(a) narrowing appeal rights;

(b) limiting consultation requirements; and

(c) enabling "responsive rezoning", in which land use controls can be set in anticipation of predetermined and objective triggers and activated once those triggers are reached without going through the Schedule 1 process.

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[3] Decision of the Hearing Commissioners in relation to Fulton Hogan's application to discharge contaminants into the air, 9 September 2014 at paragraph 43.

3.8 If adopted, these recommendations would result in situations where those affected are not given an opportunity to participate. The proposed changes will create a significant risk that operators like Fulton Hogan would not be notified or able to participate in many applications that might affect them, if they are not "adjacent" or otherwise qualifying under the proposed provisions for consideration as potentially affected.

3.9 Reducing the notification of resource consent applications leads to poor planning outcomes further downstream. Industrial operators like Fulton Hogan are best placed to inform local authorities on the functional and operational requirements of industrial activities and the commercial viability of establishing them. Consultation enables the business sector to provide such information to local authorities about business demand and their specific requirements for land in order to make development commercially feasible.

3.10 Fulton Hogan considers that the current notification regime (as established by the 2009 amendments to the RMA) is generally operating effectively. Fulton Hogan does not see any need for further legislative reform of these provisions. Significant changes to notification rights in particular will only increase complexity and uncertainty.

**Spatial Planning**

3.11 Spatial planning, while not mandatory, is an option open to councils to consolidate future planning and give clear guidance on future development. The Draft Report recognises that the supply of infrastructure in the future could be improved by making spatial plans a mandatory part of the planning hierarchy, to help provide greater security over the future supply of development capacity.

3.12 Fulton Hogan considers there is merit in making spatial plans a mandatory part of the planning hierarchy. Taking such an approach encourages central government, councils, infrastructure providers, and key stakeholders to collaborate early on to consider how future growth will occur and will provide much needed certainty to the business sector that its investment in growth will be supported by adequate infrastructure.

3.13 Fulton Hogan also endorses the Draft Report recommendation that urban planning systems that effectively support growth must ensure a sufficient supply of development capacity to meet demand; and appropriately align land use rules with the supply of infrastructure.

3.14 To support this recommendation, Fulton Hogan considers there needs to be greater direction for local authorities to expressly provide for the functional and operational requirements of different business activities and the need for outward expansion of these activities to meet demands of residential growth, along with the need for reverse sensitivity effects to be managed. Such an approach will provide flexibility to industrial operators as to what land they purchase and how they develop sites to meet the demand of residential and business land. This greater flexibility will in turn lead to greater investment in industrial land.

**Improving council capabilities and central government guidance**

3.15 Fulton Hogan supports promoting a co-ordinated approach between local authorities and infrastructure providers to planning decisions, integrated land use and infrastructure planning, and responsive planning processes. This can be achieved within the current RMA framework, but issues of implementation and administration of the RMA are worthy of further consideration.

3.16 Fulton Hogan also sees real benefit in focussing on improving council capabilities and giving local authorities greater guidance on how they carry out their functions under the current planning laws. Fulton Hogan considers that a significant cause of issues with

the application of the planning framework in New Zealand rests with the capability of councils to carry out their functions effectively and efficiently. Greater central government guidance (for example by establishing a centre of excellence or resource that councils could draw on to conduct real options analysis in the development of land use plans) to assist councils will bring about greater consistency and certainty for all participants.

**FULTON HOGAN LIMITED:**

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

## 1. SUMMARY

1.1 Fulton Hogan Limited ("**Fulton Hogan**") welcomes the opportunity to make a submission on the Resource Legislation Amendment Bill ("**Bill**").

1.2 We support the stated intention of the Bill to create a resource management system that achieves the sustainable management of natural and physical resources in an efficient and sustainable way. However, many of the proposed changes will not achieve the objectives of the reforms, or will have unintended consequences.

1.3 In particular, Fulton Hogan seeks amendments to:

(a) Ensure reverse sensitivity effects are effectively managed.

(b) Ensure there is effective public participation in the development of national policy statements and the national planning template.

(c) Avoid unintended consequences of some of the amendments seeking to streamline consenting and plan-making processes.

(d) Ensure there is appropriate Environment Court oversight for decision-making under the Resource Management Act 1991 ("**RMA**").

(e) Provide greater investment certainty through requiring longer terms as a starting point for new consents.

1.4 These matters and proposed amendments to the Bill are detailed below.

## 2. INTRODUCTION TO FULTON HOGAN

2.1 Fulton Hogan is a New Zealand civil contracting company that has been operating since 1933. Fulton Hogan specialises in civil construction, particularly (but not limited to) road construction and maintenance and asphalt surfacing. Fulton Hogan's civil contracting and construction operations operate throughout New Zealand, Australia and the South Pacific. Employing over 5,500 people, Fulton Hogan remains privately owned, having approximately 35% employee ownership.

2.2 Fulton Hogan has an extensive history of participating in RMA proceedings, both as an applicant and a submitter. Fulton Hogan regularly works with councils when looking at new development and investment in its operations. Ensuring that RMA processes are efficient, fair and certain is vital to enable certainty in relation to development and investment.

2.3 Fulton Hogan has made significant investment in its business and operations in New Zealand, and has a considerable interest in ensuring the resource management framework supports that existing investment and creates a positive environment for ongoing future investment.

## 3. PROPOSED AMENDMENTS

### Reversal of subdivision presumption (clause 115, section 11(1A))

3.1 New subsection 11(1A) reverses the subdivision presumption so that a person may subdivide if the subdivision does not contravene a plan or National Environmental Standard.

3.2 Fulton Hogan supports the reversal of subdivision presumption provided that the changes sought elsewhere in this submission regarding council functions, notification requirements and appeal rights are made.

### New "development capacity" function (clauses 11, 12, new sections 30(1)(ba) and 31(1)(aa))

3.3 New sections 30(1)(ba) and 31(1)(aa) establish new functions for councils that focus on ensuring that there is sufficient development capacity in relation to business and residential land.

3.4 Fulton Hogan supports the inclusion of these new regional and territorial council functions, provided amendments are made to recognise the need to ensure development capacity for industrial land and to protect activities such as quarries from reverse sensitivity effects.

3.5 Reverse sensitivity is a well-recognised concept that is relevant in the consideration of the actual or potential effects of a proposed activity. It has been variously defined, but essentially refers to the vulnerability of an established activity (such as significant infrastructure or industry) to objection from new, sensitive, land uses located nearby. As a result, the established use may be required to restrict or constrain its operations or may even be forced to relocate due to the presence of the new sensitive activity.

3.6 Reverse sensitivity issues will become more acute as cities like Auckland, Christchurch and other main centres – as well as the smaller towns across the country – grow and intensify. Fulton Hogan is concerned that the definition of “development capacity” does not appropriately address reverse sensitivity effects, which may result in sensitive land uses being enabled in proximity to Fulton Hogan's operations.

3.7 A key tool that could be used in relation to this issue, as well as other parts of the RMA discussed later in this submission, is to introduce the concept of an "effects area". Across New Zealand, district plans commonly use tools such as air noise boundaries or contours to control the interface between significant industry such as quarries with more sensitive land uses. They are critical tools to ensure that sensitive land uses do not establish in close proximity to regionally important activities, such as quarries, which can in turn be constrained due to the proximity of those sensitive land uses.

3.8 In order to address these concerns, Fulton Hogan proposes an express acknowledgement of "effects areas" (and a corresponding definition), to recognise that the effects from activities such as quarries cannot be internalised and that many planning documents expressly recognise that through the use of methods such as noise contours or other setbacks. Fulton Hogan also seeks that councils are expressly required to manage reverse sensitivity effects.

*Relief sought*

3.9 Fulton Hogan seeks the following amendments to sections 30 and 31:

> **30 Functions of regional councils under this Act**
> (1)...

(ba): the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in relation to the supply of residential, ~~and~~ business, and industrial land, and associated infrastructure, to meet the expected long-term demands of the region:

[...]

(5) In this section and section 31, development capacity~~, in relation to residential and business land,~~ means the capacity of the land for development, taking into account the following factors:

(a) the zoning of the land; and

(b) the provision of adequate infrastructure, existing or likely to exist, to support the development of the land, having regard to—

(i) the relevant proposed and operative policy statements and plans for the region; and

(ii) the relevant proposed and operative plans for the district; and

(iii) any relevant management plans and strategies prepared under other Acts; and

(c) the rules and methods in the operative plans that govern the capacity of the land for development including any effects area; and

(d) other constraints on the development of the land, including natural and physical constraints; and

(e) the need to manage reverse sensitivity effects.

**31 Functions of territorial authorities under this Act**

(1) [...]

(aa) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in ~~respect~~ relation to the supply of residential, ~~and~~ business, and industrial land, and associated infrastructure to meet the expected long-term demands of the district:

(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—

(i) the avoidance or mitigation of natural hazards; and

(ii) *(Repealed)*.

(iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:

(iii) the maintenance of indigenous biological diversity:

(iv) managing reverse sensitivity effects.

3.10 Fulton Hogan also seeks to include a corresponding definition of "effects area" in section 2 as follows:

> **effects area** means an odour or noise buffer, noise control boundary or other effects overlay identified in an operative or proposed district plan.

**Removal of council function of preventing or mitigating adverse effects of hazardous substances (clauses 11, 12, 109, sections 30(1)(c)(v), 30(1)(d)(v), 31(1)(b)(ii), and clauses 6(1)(c) and 7(1)(f)) Schedule 4)**

3.11 Clauses 11 and 12 of the Bill remove the functions from territorial and regional authorities regarding the prevention or mitigation of adverse effects of the storage, use, disposal or transportation of hazardous substances. In addition, clause 109 of the Bill proposes changes to clause (7)(1)(f) of Schedule 4, which would mean that assessments of environmental effects would not need to address risks of the use of hazardous substances.

3.12 Fulton Hogan supports the removal of council functions regarding hazardous substances as this removes duplication between council functions under the RMA and the specific provisions of the Hazardous Substances and New Organisms Act 1996 ("**HSNO**") and provides greater efficiencies in managing hazardous substances by reducing unnecessary regulatory cost and delay.

3.13 Councils will of course still be entitled to consider effects associated with hazardous substances (for example in assessing a full discretionary consent application, or in ensuring neighbouring land uses are compatible or there are reasonable setbacks

provided from sensitive activities), but the amendment should avoid councils from having to descend into the minutiae of controls that are already provided in the HSNO regime.

*Relief sought*

3.14 Fulton Hogan seeks that amendments to sections 30(1)(c)(v), 30(1)(d)(v), 31(1)(b)(ii), and clauses 6(1)(c) and 7(1)(f)) of Schedule 4 be retained.

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

3.15 New section 41D establishes a requirement to strike out submissions (or part of a submission) if one or more specified circumstances exist.

3.16 As a frequent applicant for resource consents, Fulton Hogan 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.

3.17 Fulton Hogan supports the intent behind the requirement to strike out submissions for being frivolous, vexatious, disclosing no reasonable or relevant case, or being an abuse of process as being mandatory, rather than discretionary. This will reduce time and cost for applicants, councils and other parties. The rights of objection or appeal in respect of such decisions to strike out need to be carefully considered, as they can contribute to delays and a distraction of resources and energy, if the right balance is not stuck.

3.18 Fulton Hogan has significant experience as a responsible submitter on resource consents that directly impact on its operations, so 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 RMA, to specify the effects which were the reason for notification). This could preclude legitimate participation in hearing processes as Fulton Hogan 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 (such as traffic generation) as a consent trigger to enable consideration of the effects of the proposal as a whole.

*Relief sought*

3.19 Fulton Hogan seeks that consideration be given to the concerns it raises above, and the following amendments:

> **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:
>
> (a) it is frivolous or vexatious:
>
> (b) it discloses no reasonable or relevant case:
>
> (c) it would be an abuse of the hearing process to allow the submission or the part to be taken further.
>
> (2) ~~However, t~~The authority must direct that a submission or part of a submission be struck out if—
>
> (a) 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
>
> (b) the authority is satisfied that at least 1 of the following applies to the submission or the part:
>
> (i) it does not have a sufficient factual basis:
>
> ~~(ii) it is not supported by any evidence:~~
>
> (ii~~i~~) 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:

(iii~~v~~) 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

(c) the authority considers that the direction would not materially compromise the authority's ability to fulfil its obligations under Part 2.

(3) An authority—

(a) may make a direction under this section before, at, or after the hearing; and

(b) must record its reasons for any direction made.

(4) A person whose submission is struck out, in whole or in part, has a right of objection under section 357.

**Restrictions on consultation process for NPS and combined process for NPS and NES (clauses 29, 30, 31, 32, and 34 new sections 45A, 46A(2A), 48(1A), 52(4), and 55A)**

3.20 The Bill proposes to enable the development of NPSs for a specific district or region or other part of New Zealand. Fulton Hogan supports this provision as it will allow region-specific issues to be effectively addressed through national direction. However, under new subsection 46A(2A), if a proposed NPS is related to a specific district or region or other part of New Zealand, then the consultation process is restricted to only the public and iwi authorities within the specified area.

3.21 While Fulton Hogan 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.

3.22 Clause 34 of the Bill proposes a new section 55A which allows the Minister to prepare an NPS and NES using a combined process. Fulton Hogan supports this new provision as it will provide for greater efficiencies and lead to greater consistency in national direction.

*Relief sought*

3.23 Fulton Hogan seeks that sections 46A(2A), 48(1A) and 52(4) be deleted and sections 45A and 55A be retained.

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

3.24 New section 58D specifies the process to be followed for the preparation of the NPT.

3.25 Fulton Hogan sees benefits in a consistent/standardised structure or "template" for plans around New Zealand. However the prospect of detailed plan provisions being developed (and/or subsequently amended) by the Minister of the day, potentially with little scope for effective participation, gives rise to concerns for Fulton Hogan.

3.26 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. Fulton Hogan has concerns if that local role is supplanted by a central Government template, at least without appropriate participation.

3.27 If the proposed NPT mechanism is to be included, Fulton Hogan seeks improvements to this process such as a right for submitters to be heard. Fulton Hogan also seeks a requirement to consult with appropriate stakeholders on technical provisions in preparing the NPT (for example, if it were to include rules regarding noise limits).

*Relief sought*

3.28 Fulton Hogan seeks that section 58D is amended as follows:

> **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
> (~~a~~b) prepare a draft national planning template; and
> (~~b~~c) 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
> (~~c~~d) publicly notify the draft; and
> (~~d~~e) 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.
> [...]

**Boundary activities (clauses 121 and 122, new sections 87AAB, 87BA and 87AAD):**

3.29 Clauses 121 and 122 of the Bill provide for boundary activities which are approved by neighbours to be permitted activities. Fulton Hogan supports these changes as they will assist in further streamlining the consenting process.

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

3.30 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. Fulton Hogan considers that this change should be removed, or if it is retained, amendments are made to the 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. Accordingly, Fulton Hogan's preference is for the clause to be deleted.

3.31 If it is to be retained, Fulton Hogan seeks that an applicant's agreement is required for a notice to be issued, and a right of objection should be clearly provided (as it is not clear whether the existing objection rights extend to cover a council's decision not to issue a notice).

*Relief sought*

3.32 Fulton Hogan seeks that new section 87BB be deleted.

3.33 As an alternative and less preferred option, if section 87BB is retained, Fulton Hogan seeks the following amendments to sections 87BB and 357A:

> **87BB Activities meeting certain requirements are permitted activities**
> (1) An activity is a permitted activity if—

(a) the activity would be a permitted activity except for a marginal or temporary non-compliance with requirements, conditions, and permissions specified in this Act, regulations (including any national environmental standard), a plan, or a proposed plan; and
(b) any adverse environmental effects of the activity are no different in character, intensity, or scale than they would be in the absence of the marginal or temporary non-compliance referred to in paragraph (a); and
(c) any adverse effects of the activity on a person are less than minor; and
(d) the consent authority, in its discretion, decides to notify the person proposing to undertake the activity that the activity is a permitted activity.

(2) A consent authority may, with the agreement of the person proposing to undertake the activity, give a notice under subsection (1)(d)—
(a) after receiving an application for a resource consent for the activity; or
(b) on its own initiative~~.~~; or
(c) upon request of the person proposing to undertake the activity.

(3) The notice must be in writing and must include—
(a) a description of the activity; and
(b) details of the site at which the activity is to occur; and
(c) the consent authority's reasons for considering that the activity meets the criteria in subsection (1)(a) to (c), and the information relied on by the consent authority in making that decision.

(4) If a person has submitted an application for a resource consent for an activity that is a permitted activity under this section, the application need not be further processed, considered, or decided and must be returned to the applicant.

(5) Where a person makes a request under subsection 2(c), the consent authority must provide the person with notice of its decision whether or not to issue a notice.

...

**357A Right of objection to consent authority against certain decisions or requirements**

(1) There is a right of objection to a consent authority,—
(a) in respect of a decision of that authority, for any person who has made an application under—
(i) section 124(2) (which relates to the exercise of a resource consent while applying for a new resource consent):
(ii) section 125(1A)(b) (which relates to the lapsing of consents):
(iii) section 126(2)(b) (which relates to the cancellation of consents):
(iv) section 139 (which relates to certificates of compliance):
(v) section 139A (which relates to existing use certificates):
(b) [Repealed]
(c) [Repealed]
(d) in respect of an application or a submission that a consent authority declines to process or to consider, as provided for by section 99(8), for the person who made the application or submission:
(e) in respect of a decision of the authority under section 87E(5) to (6A), for a person who made a request under section 87D:
(f) in respect of the consent authority's decision on an application or review described in subsections (2) to (5), for an applicant or consent holder, if—
(i) the application or review was notified; and
(ii) either no submissions were received or any submissions received were withdrawn:
(g) in respect of the consent authority's decision on an application or review described in subsections (2) to (5), for an applicant or consent holder, if the application or review was not notified.
(h) in respect of the consent authority's decision to refuse to issue a notice under section 87BB(5).

(2) Subsection (1)(f) and (g) apply to an application made under section 88 for a resource consent. However, they do not apply if the consent authority refuses to grant the resource consent under sections 104B and 104C. They do apply if an officer of the consent authority exercising delegated authority under section 34A refuses to grant the resource consent under sections 104B and 104C.

(3) Subsection (1)(f) and (g) apply to an application made under section 127 for a change or cancellation of a condition of a resource consent.

(4) Subsection (1)(f) and (g) apply to a review of the conditions of a resource consent under sections 128 to 132.

(5) Subsection (1)(f) and (g) apply to an application made under section 221 to vary or cancel a condition specified in a consent notice.

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

3.34 The Bill proposes substantial changes to the notification requirements under the RMA that essentially reduce the chances of a resource consent application being either publicly or limited notified.

3.35 Fulton Hogan considers that the current notification regime (as established by the 2009 amendments to the RMA) is generally operating effectively. Fulton Hogan does not see any need for further legislative reform of these provisions. If there is an issue with the current practice, it remains in council's being unnecessarily risk adverse (and notifying when the statutory test and intention is not actually met), or, in council's failing to adopt robust procedures which expose applications that do qualify for non-notification to challenge.

3.36 If changes are to be made, Fulton Hogan seeks to ensure that significant activities such as quarries that could be affected by reverse sensitivity effects are appropriately notified of consents for sensitive activities in proximity to their assets and operations. The proposed changes appear to create a significant risk that operators like Fulton Hogan would not be notified and able to participate in many applications that might affect them, if they are not "adjacent" or otherwise qualifying under the proposed provisions for consideration as potentially affected.

3.37 In our experience, local authorities are often ill-equipped to understand and consider the effects of sensitive activities like residential development on Fulton Hogan's operations, and often struggle to make good notification decisions. They will struggle even more with the complex changes to notification that the Bill is proposing.

3.38 The restrictions on limited notification set out in the new sections 95D to 95E are also opposed by Fulton Hogan. 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 objective 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 as to activity status and in a manner that is more certain than including an evaluation of objectives and policies into notification decisions.

3.39 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. If this provision is retained, the class of persons who are considered affected should include the owners of an operation such as a quarry which has or is associated with an "effects area" near the proposed activity.

*Relief sought*

3.40 Fulton Hogan seeks that sections 95-95E be deleted, and the former sections 95-95E be reinstated.

3.41 As a less preferred option, if the provisions are retained Fulton Hogan seeks that the table in section 95DA(4)(b) be amended to include the following new row:

| **Activity for which consent is sought** | **Persons eligible to be considered affected** |
|---|---|
| Any activity, other than a non-complying | The owner of an operation which has or is |

activity, that is to occur on land that is subject to an effects area associated with an effects area

**Requirement to consider offsetting measures (clause 62, new subsection 104(1)(ab))**

3.42 Fulton Hogan supports this new provision requiring offsetting measures to be considered in determining an application for consent. However, in addition to providing clarity that offsetting is to be assessed under section 104, it is also important that offsetting is able to be considered when considering the effects of a proposal for the purposes of section 104D. Under the RMA in its current form, offsetting cannot be considered when assessing the adverse effects of a proposal for the purposes of section 104D(1)(a).

*Relief sought*

3.43 Fulton Hogan seeks that new subsection 104(1)(ab) be retained and section 104D be amended as follows:

> **104D Particular restrictions for non-complying activities**
> (1) Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—
> (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies, and after allowing for any effect to which section 104(1)(ab) applies) will be minor or less than minor.

**Limitations on consent conditions (clause 64, new section 108AA):**

3.44 New section 108AA 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. Fulton Hogan 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 Fulton Hogan's operations.

*Relief sought*

3.45 Fulton Hogan seeks that new subsection 108AA be retained.

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

3.46 Amendments proposed to section 120 restrict appeal rights for certain activities including boundary activities and subdivision (unless non-complying).

3.47 In considering applications for resource consent, particularly for subdivision or for new sensitive activities, it is critical that effects on activities such as quarries are considered and that reverse sensitivity effects are also considered. In practice, these effects can often be overlooked by councils (who are often ill-equipped to comprehensively understand and consider the effects of sensitive activities on Fulton Hogan's operations) in deciding whether to grant consent. It is critical that rights be retained for appeals to be brought on reverse sensitivity grounds for inappropriate proposals in order to adequately protect these significant operations.

3.48 In addition, the phrase "provision or matter" is ambiguous in the context of resource consent applications and should be replaced. Fulton Hogan has suggested wording that is more appropriate for the resource consent context.

3.49 Fulton Hogan also seeks that provisions are 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*

3.50 Fulton Hogan 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 unless the boundary activity is in an effects area; or

(ii) a subdivision, unless the subdivision is a non-complying activity or unless the subdivision is in an effects area; 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

(iv) is outside an effects area; 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.

**Objections to be heard by a hearings commissioner, on request (clause 144, new section 357AB)**

3.51 New section 357AB allows an applicant for a resource consent who has a right of objection to certain decisions or requirements of the consent authority under section 357A(1)(f) or (g) to have the objection considered by a hearings commissioner. Fulton Hogan supports this amendment as it will enable greater consideration to be given to an objection to a consent authority's decision by a hearings commissioner that is appropriately independent from the consent authority that is making the decision or imposing the requirement.

*Relief sought*

3.52 Fulton Hogan seeks that new subsection 357AB be retained.

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

3.53 New section 360D allows new regulations to be made to permit land use or prohibit certain types of rules.

3.54 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. Accordingly, Fulton Hogan opposes this amendment.

3.55 As an alternative and less preferred position, if the provision is to be retained, amendments are required to provide additional procedural safeguards, in particular a requirement for the public to have a right to submit and be heard on any proposed new regulation.

*Relief sought*

3.56 Fulton Hogan seeks that section 360D be deleted.

3.57 As an alternative and less preferred option, Fulton Hogan seeks 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.

**Regulations to preclude public and limited notification and set eligibility criteria for limited notification (clause 151, new section 360G)**

3.58 New section 360G allows regulations to be made precluding public and limited notification and setting eligibility criteria for limited notification.

3.59 Fulton Hogan opposes section 360G as this power is also created through section 77D in relation to plan provisions, and the corresponding NES provisions. As such, it is not clear why an additional power needs to be provided to the Minister in this regard, particularly given that there is reduced public input required through the section 360G process.

*Relief sought*

3.60 Fulton Hogan seeks that section 360G be deleted.

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

3.61 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.

3.62 Fulton Hogan supports the intent of 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. Fulton Hogan seeks amendments to this provision to clarify which parties should be notified. In particular, where a plan change relates to an area within a quarry noise contour, it is entirely appropriate that the quarry operator is notified as a directly affected person. Changes are sought to clause 5A to make this clear.

3.63 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:*

3.64 Fulton Hogan 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.
(4) A notice given under this clause must state—
    (a) where the proposed change may be inspected; and
    (b) that only the persons given limited notification under this clause may make a submission on the proposed change; and
    (c) the process for participating in the consideration of the proposed change; and
    (d) the closing date for submissions; and
    (e) the address for service of the local authority.
(5) The local authority may provide any further information relating to a proposed change that it thinks fit.
(6) The closing date for submissions must be at least 20 working days after limited notification is given under this clause.
(7) If limited notification is given, the consent authority may adopt, as an earlier closing date, the last day on which the consent authority receives, from all the directly affected persons, a submission, or written notice that no submission is to be made.
(8) The local authority must provide a copy of the proposed change, without charge, to—
    (a) the Minister for the Environment; and
    (b) for a change to a regional coastal plan, the Minister of Conservation and the Director-General of Conservation; and
    (c) for a change to a district plan, the regional council and adjacent local authorities; and
    (d) for a change to a policy statement or regional plan, the constituent territorial authorities and adjacent regional councils; and
    (e) tangata whenua of the area, through iwi authorities.
(9) If limited notification is given in relation to a proposed change under this clause, the local authority must make the change publicly available in the central public library of the relevant district or region, and may also make it available in any other place considered appropriate.
(10) The obligations on the local authority under subclause (4) are in addition to those under section 35 (which relates to the keeping of records).
(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

(b) the person is the owner of an operation that has or is associated with an effects area over land to which the proposed change directly relates; or
(c) the person is affected by an effect of the proposed change that is minor or more than minor (but not less than minor); or
d) the person is the owner of infrastructure that serves or passes through, over or under the land to which the proposed change directly relates.

**Collaborative planning process (clause 108, new Part 4 of Schedule 1)**

3.65 New clause 38 of Schedule 1 sets out the notification of planning process to be adopted and new clause 40 sets out the process for appointment of the collaborative group.

3.66 It is critical that there be a transparent process for the selection of the collaborative group. Amendments are proposed to introduce a requirement for the council to give notice that it wishes to establish a collaborative group and to request expressions of interest. Those expressions of interest must then be considered in selecting the collaborative group.

3.67 In addition, given the RMA's forward-looking and intergenerational focus, it is important to enable prospective investors in an area to be able to be involved in a collaborative group process.

3.68 New clause 41 of Schedule 1 sets out what the terms of reference for the collaborative group must contain. Fulton Hogan supports clause 41, but considers an amendment is required to provide a long stop date for changes to the terms of reference for the collaborative group to ensure the terms of reference can only be amended before the collaborative group reports to the local authority under clause 43.

3.69 An appeal by way of rehearing process for decisions made under the collaborative planning track is established under new clauses 58 to 61 of Schedule 1. The "rehearing" model is new to RMA processes, and the guidance on this process provided in the new section 277A is relatively limited.

3.70 Fulton Hogan has some real access to justice concerns with this restricted appeal right. There are a number of potential scenarios in which it is entirely appropriate for full appeal rights to be provided. For example:

(a) The collaborative group may reach full consensus on an issue, however, if the review panel (and council) disagrees with the collaborative group, there is no full right of appeal.

(b) The collaborative group may not reach agreement on one or more issues. This is most likely to occur in relation to complex issues such as reverse sensitivity effects. There will therefore be no consensus position against which the review panel and council can assess consistency. On issues where the collaborative group have not been able to reach consensus, it is more important that provisions be made for judicial oversight in order for them to be fully and appropriately considered.

3.71 The reduced appeal rights under the collaborative planning track run the substantial and serious risk that often complex reverse sensitivity effects are not taken into account under a proposed policy statement or plan or change to a policy statement or plan.

3.72 Fulton Hogan supports new clause 52(2) of Schedule 1, which clarifies that members of the collaborative group may make a submission to the review panel on the proposed policy statement or plan. It is critical this ability is retained to ensure that a party's individual concerns can still be considered by the review panel, while still encouraging parties to participate in the collaborative group process.

*Relief sought*

3.73 Fulton Hogan seeks that new clauses 38, 40, and 41(4) of Schedule 1 be amended as detailed below, clauses 58 to 61 of Schedule 1 be deleted and replaced with the proposed clauses 58 and 59 detailed below, and new clause 52(2) be retained.

**38 Notification of planning process to be adopted**

(1) A local authority must give public notice of its decision made under **clause 37**, stating—
  (a) the extent of the area that will be subject to the proposed policy statement or plan; ~~and~~
  (b) where the decision and reasons for the decision of the local authority may be inspected~~.~~; and
  (c) that it intends to establish a collaborative group under clause 40, and calling for expressions of interest for the membership of that group.

(2) If a local authority gives notice that it intends to use the collaborative planning process to prepare a policy statement or plan, it is not permitted to withdraw from that process at any stage and progress the preparation of a policy statement or plan under any of the other processes in this schedule.

(3) However, subclause (2) does not apply if—
  (a) a local authority has been unable to appoint a collaborative group in accordance with clause 40; or
  (b) a collaborative group has breached its terms of reference and the local authority has followed the process specified for dispute resolution in the terms of reference, but the dispute is not resolved.

...

**40 Appointments**

(1) In establishing a collaborative group, a local authority must consider any expressions of interest received in response to its notice under clause 38, and appoint—
  (a) at least 1 person chosen by iwi authorities to represent the views of tangata whenua; and
  (b) in the case of a regional policy statement or plan (other than one prepared by a unitary authority), at least 1 person to represent the views of territorial authorities within the relevant area; and
  (c) in the case of a regional coastal plan, 1 person chosen by any customary marine title holder to represent the views of any customary marine title groups within the relevant area; and
  (d) other persons who, in the opinion of the local authority:
    (i) have the knowledge, experience, and skills (including skills in collaboration) that are relevant to the resource management issues to be considered by the group, and
    (ii) will assist in ensuring that the membership of the group complies with subclause 5.

(2) A local authority may appoint as many persons as it considers appropriate, having regard to—
  (a) the scale and significance of the resource management issues to be dealt with; and
  (b) the need to comply with subclauses (4) and (5).

(3) A local authority must not appoint persons who are employees or officers of any local authority within the relevant area.

(4) However, the collaborative group may include 1, but not more than 1, elected member from—
  (a) the local authority that is using the collaborative planning process to prepare or change a policy statement or plan; or
  (b) in the case of a combined instrument under section 80, each local authority that is using the collaborative planning process to prepare or change a policy statement or plan.

(5) The appointments made under this clause must result in a collaborative group whose membership, collectively, reflects a balanced range of the community's interests, values, and investments (including prospective investments) in the relevant area as they relate to the resource management issues to be considered by the group.

(6) The Local Government Official Information and Meetings Act 1987 applies to a collaborative group established under this Part as if it were a committee of the local authority under the Local Government Act 2002.

...

**41 Terms of reference for collaborative group** [...]

(4) A local authority may, at any time after consulting a collaborative group and before the collaborative group reports to the local authority under Clause 43, amend the terms of reference that apply to the group.

...

**58 Right to appeal**

(1) The following groups and persons may appeal to the Environment Court in respect of a decision under clause 54(1):
  (a) a collaborative group that provided, in relation to the provision or matter that is the subject of the appeal,—
    (i) comments to a local authority under clause 50(2)(b):
    (ii) information to a panel under clause 52:
  (b) an iwi authority that provided comments to a local authority under clause 50(2)(b), but only in relation to a provision or matter on which it provided those comments:
  (c) a person who made a submission to the local authority under clause 6 or 8 (as applied by clause 49), but only in relation to a provision or matter on which the person made a submission.

**59 Procedural matters**

(1) A notice of appeal under clause 58 must,—
  (a) not later than 30 working days after a local authority publicly notifies a decision under clause 56,—
    (i) be lodged with the Environment Court in the prescribed form; and
    (ii) be served on the local authority whose decision is the subject of the appeal; and
  (b) if the notice of appeal relates to the coastal marine area, be served on the Minister of Conservation not later than 5 working days after the notice of appeal is lodged with the Environment Court.

(2) Parts 11 and 11A of this Act apply to appeals under clauses 58.

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

3.74 The streamlined planning process, if a council decides to use it, hands control of both the process and the substantive outcome to the Minister.

3.75 While conceivably this mechanism could be useful for confined and urgent issues (eg natural disasters), overall Fulton Hogan considers it gives rise to fundamental concerns regarding access to justice.

3.76 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.

3.77 Planning documents provide critical elements of the regulatory framework and development of these regulatory instruments needs to be given due consideration that is appropriate to the scale of the implications.

3.78 The ability for Fulton Hogan to participate in any planning process that could affect its operations and the surrounding communities they support is critical to ensure that they function efficiently and effectively. Any reverse sensitivity effects that arise from planning instruments developed under the streamlined planning process could not only

affect the successful functioning of Fulton Hogan's operations but the communities and regions they support.

3.79 Fulton Hogan also has 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 represents a healthy "check" on council decision making, and Fulton Hogan has a number of examples where appeals are resolved quickly and constructively, or when a further hearing is necessary to achieve a better planning result on a difficult issue (particularly competing use of resources - where collaboration can only go so far).

*Relief sought*

3.80 Fulton Hogan seeks that the new Part 5 to Schedule 1 (and new section 80C) is deleted in its entirety.

## 4. OTHER AMENDMENTS SOUGHT

### Greater protection from reverse sensitivity effects

4.1 In addition to the various changes sought above in order to address the reverse sensitivity issue, in Fulton Hogan's view, it would greatly assist if "reverse sensitivity" were clearly referred to as a relevant effect under the RMA. That would make it clear to those developing plans or considering resource consent applications that reverse sensitivity effects need to be considered.

4.2 Fulton Hogan seeks that specific reference be made to "reverse sensitivity" as a category of effect in the section 3 definition of "effects". While it has been accepted as an effect in case law, having it explicitly referred to will be a significant practical advantage (just as, for example, having effects of "low probability but high potential impact" specifically identified is often relied on).

*Relief sought*

4.3 Fulton Hogan seeks the following amendment to section 3:

**3 Meaning of effect**
In this Act, unless the context otherwise requires, the term effect includes—
(a) any positive or adverse effect; and
(b) any temporary or permanent effect; and
(c) any past, present, or future effect; and
(d) any reverse sensitivity effect; and
(~~d~~e) any cumulative effect which arises over time or in combination with other effects—regardless of the scale, intensity, duration, or frequency of the effect, and also includes—
(~~e~~f) any potential effect of high probability; and
(~~f~~g) any potential effect of low probability which has a high potential impact.

### Term of consent

4.4 Whilst no changes have been proposed in the Bill, Fulton Hogan considers that amendments to section 123, which relate to the duration of consent, should be made to ensure the significant investment in projects is supported by a greater certainty of a longer term consent being granted.

4.5 Term of consents is a continuing issue for Fulton Hogan and is often a key issue in resource consent applications for its operations. Given the significant investment Fulton Hogan makes in its operations, including Fulton Hogan's quarries, and the long-term

lifespan of the sites, it is critical that Fulton Hogan secures long term consents to provide investment certainty.

4.6 Such an amendment would also be consistent with the increased duration of consent for aquaculture activities that was enacted in 2011.

*Relief sought*

4.7 Fulton Hogan requests the following changes to section 123 of the Act:

**123 Duration of consent**

(1) Except as provided in section 123A or 125,—

(a) The period for which a coastal permit for a reclamation, or a land use consent in respect of a reclamation that would otherwise contravene section 13, is granted is unlimited, unless otherwise specified in the consent:

(b) Subject to paragraph (c), the period for which any other land use consent, or a subdivision consent, is granted is unlimited, unless otherwise specified in the consent:

(c) The period for which any other coastal permit, or any other land use consent to do something that would otherwise contravene section 13, is granted is such period, not exceeding 35 years, as is specified in the consent and if no such period is specified, is 5 years from the date of commencement of the consent under section 116:

(d) The period for which any other resource consent is granted is the period (not exceeding 35 years from the date of granting) specified in the consent and, if no such period is specified, is 5 years from the date of commencement of the consent under section 116:

(2) The periods specified under subsection (1)(c)-(d) must be not less than 20 years from the date of commencement of the consent under section 116 unless—

(a) the applicant has requested a shorter period; or

(b) a shorter period is required because:

(i) special circumstances exist in relation to the application; and

(ii) the adverse effects arising from those special circumstances cannot be avoided, remedied or mitigated through consent conditions; or

(c) a national environmental standard provides a different minimum term for the consent.

## 5. OPPORTUNITY TO APPEAR

5.1 Fulton Hogan seeks the opportunity to appear at Select Committee hearings in support of this submission.

**FULTON HOGAN LIMITED:**

**Date**: 29 March 2016

**Signature:** _____

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

## 1. EXECUTIVE SUMMARY

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

1.2 Fulton Hogan supports the objectives of the NPS to provide sufficient residential and business development capacity for the short, medium and long terms. However, Fulton Hogan considers that the NPS needs to be more directive, to ensure sufficient development capacity is enabled, including in relation to business land and in particular industrial land.

1.3 In addition, Fulton Hogan seeks amendments to ensure:

(a) reverse sensitivity effects are recognised and effectively managed;

(b) business land is given due consideration, and the unique needs of the various types of business land (such as industrial, and particularly those industrial land uses that have some unavoidable offsite effects) are well understood and these types of land uses are provided for;

(c) councils are clearly directed to consult with key stakeholders; and

(d) councils do not exclude affected parties from participating in planning processes.

1.4 Given implementing the NPS will be a complex process, Fulton Hogan strongly supports the creation of a technical working group that includes industrial operators along with local authorities, infrastructure providers, and developers, to develop guidance material on how the NPS should be given effect to.

1.5 Fulton Hogan is grateful for the opportunity to submit on the NPS and would welcome any opportunity to speak to the Ministry about this submission in more detail. Fulton Hogan has also filed a submission on the NPS in relation to its residential land development portfolio. That submission should be read in conjunction with this submission.

1.6 Proposed amendments to the NPS are detailed below.

## 2. WHO WE ARE

2.1 Fulton Hogan is a New Zealand civil contracting company that has been operating since 1933. Fulton Hogan specialises in civil construction, particularly (but not limited to) road construction and maintenance and asphalt surfacing. Fulton Hogan's civil contracting and construction operations operate throughout New Zealand, Australia and the South

Pacific. Employing over 5,500 people, Fulton Hogan remains privately owned, having approximately 35% employee ownership.

2.1 Fulton Hogan's extensive operations include:

(a) 32 quarry sites across New Zealand (including both hard rock and gravel quarries) and river gravel extraction in the South Island.

(b) Asphalt plants and bitumen plants as well as regional and branch depots around the country.

(c) Supporting the creation of infrastructure required to support growth in residential development, including installation of water and waste water infrastructure, construction and maintenance of bridge structures, rail construction and maintenance, airport runway construction and maintenance, ports hardstand areas, irrigation infrastructure, and precast / pre-stressed concrete fabrication amongst other things.

(d) Residential and industrial land development including a number of substantial residential developments in both Auckland and Christchurch.

2.2 Given Fulton Hogan's extensive involvement in industrial, infrastructure and residential activities, and the role it takes in planning and consenting processes throughout New Zealand, it is well positioned to comment on the NPS.

## 3. AMENDMENTS SOUGHT

### Ensuring reverse sensitivity effects are effectively managed

3.1 It is vital that an NPS on urban development capacity effectively manages reverse sensitivity effects on industrial activities. Unfortunately, the objectives and policies of the NPS are silent on this critical issue.

3.2 Reverse sensitivity effects go hand in hand with the development of residential land. As such, any NPS promoting and encouraging the development of residential land must address reverse sensitivity effects. While Fulton Hogan supports the need to provide sufficient development capacity for residential land, this development capacity must be provided in suitable locations that does not restrict or constrain established industrial activities.

3.3 The Consultation Document identifies the difficulty that industrial operators face in protecting their activities from reverse sensitivity effects[1], yet the NPS provides no way of addressing this concern.

3.4 A useful example of "industrial businesses that would be expensive to move"[2] and are affected by reverse sensitivity effects is Fulton Hogan's long-established asphalt plant at Reliable Way, Mount Wellington, Auckland. Despite being zoned on industrial land, Fulton Hogan has been required to invest extensive time and effort (including in renewing an air discharge consent and involvement in the Proposed Auckland Unitary Plan process) to protect the plant's operations from reverse sensitivity effects from the ever increasing pressure of residential activities in close proximity to the site. The residential activities had been established as non-complying activities on marginal land near to Fulton Hogan's asphalt plant. Those same residential activities then attempted to restrict Fulton Hogan's operations at the site through submitting on Fulton Hogan's air

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1 National Policy Statement on Urban Development Capacity, pages 23 and 24.
2 National Policy Statement on Urban Development Capacity, pages 23 and 24.

discharge application. The decision of the Hearing Commissioners on the application concluded:[3]

> Our overall finding in relation to the existing environment is that there is **a valid expectation that industrial activities, such as those that have existed on the Fulton Hogan site since 1986, are appropriately located in terms of the zoning** that has been applied under the Operative District Plan. In relation to the expectations of those submitters, who own and/or occupy residential properties on land currently zoned Business 4, **we cannot ignore the lawfully established Fulton Hogan activities**. The existing environment, regardless of zoning, consists of industrial and residential activities and the merits of consent being sought needs to be assessed in terms of the relevant provisions of the RMA and the regional and district planning documents.

3.5 Objective OA1 states:

> To support effective and efficient urban areas that enable people and communities to provide for their social, economic and cultural wellbeing.

3.6 Industrial activities are a critical part of providing effective and efficient urban areas. If residential development is encouraged and enabled without managing how that development can occur near established industrial activities or industrial zoned land, then Objective OA1 will not be met.

3.7 The amendments Fulton Hogan proposes below ensure that reverse sensitivity effects are managed, while providing sufficient development capacity for residential and business demand.

***Relief sought***

Amend the definition of "development capacity" as follows:

> **Development capacity** means in relation to residential and business land, the capacity of land for urban development to meet demand, taking into account the following factors:
>
> - the zoning, objectives, policies, rules and overlays that apply to the land; and
> - the provision of adequate infrastructure, existing or likely to exist, to support the development of the land, having regard to—
>   - the relevant proposed and operative regional policy statements, regional plans and district plans; ~~and~~
>   - any relevant management plans and strategies prepared under other Acts~~.~~; and
> - the need to manage reverse sensitivity effects.

Amend policy PA3 as follows:

> When considering the effects of urban development, decision-makers must:
>
> - Recognise and provide for the contribution that urban development will make to the ability for people and communities and future generations to provide for their social, economic and cultural wellbeing.

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[3] Decision of the Hearing Commissioners in relation to Fulton Hogan's application to discharge contaminants into the air, 9 September 2014 at paragraph 43.

- Provide sufficient development capacity, whilst maximising the positive effects of development, and minimising the adverse effects of development, including potential reverse sensitivity effects.

- Have particular regard to the positive effects of urban development at a national, regional and district scale, as well as its local effects.

**Better recognition of business development capacity**

3.8 Fulton Hogan supports objective OA2 to provide sufficient residential and business development capacity to meet demand. However, residential development is given greater weight in the NPS over business development. For example, policies PD4, PD5, and PD6 solely relate to residential development capacity and provide minimum targets for the total number and different types of dwellings.

3.9 Fulton Hogan's industrial activities are fundamental to the residential and other business development that the NPS promotes, as well as the required infrastructure to support it. Enabling residential growth by setting the minimum targets for dwellings without corresponding provisions to enable business growth has the potential to lead to undersupply of business land, including industrial land. If residential development is enabled without industrial development capacity being provided, Objective OA1 will not be met.

3.10 Giving equal (better) acknowledgement to both residential and business development in the NPS will also be in line with the seven objectives of the NPS, which do not include any bias towards residential development.

3.11 We recommend policies PD4, PD5, and PD6 are amended to better acknowledge 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.
>
> [...]

**Functional and operational requirements of "business" land**

3.12 The reasonably broad definition of "business land" in the NPS rightly acknowledges that "business land" includes industrial land along with other business activities.

3.13 There are a range of unique factors to consider before developing land for industrial activities. Unlike housing, it is unrealistic to expect industrial activities to "go up rather than out".

3.14 Fulton Hogan's experience is that industrial activities have specific requirements for appropriate land, and the location and size of lots for industrial activities are critical in identifying suitable sites for development or redevelopment. Large lots suitable for industrial activities are difficult to find. Other factors relevant to the location of Fulton Hogan's operations, especially its asphalt plants, include the need for:

(a) a central location with good access to motorways to reduce costs and delays in trying to navigate across Auckland's congested road networks;

(b) asphalt mix to arrive at site at a suitable temperature;

(c) access to bulk gas supply; and

(d) sufficient separation from existing other sensitive uses (given that asphalt plants cannot completely internalise all effects).

3.15 Further, quarries can only be located where the suitable mineral resource is located and do not have the luxury of site selection. In other words, quarries and asphalt plants cannot be placed just anywhere.

3.16 Fulton Hogan therefore 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**".

3.17 However, there needs to be greater direction in the NPS for local authorities to expressly provide for the functional and operational requirements of different business activities and the need for outward expansion of these activities to meet demands of residential growth, along with the need for reverse sensitivity effects to be managed. Such an approach will provide flexibility to industrial operators as to what land they purchase and how they develop sites to meet the demand of residential and business land. This greater flexibility will in turn lead to greater investment in industrial land.

3.18 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 PB1, to estimate demand for different types and locations of lot sizes in addition to floor area. This will result in Business Land Assessments that more fully take into account the requirements of different business types and enable local authorities to have a better basis on which to determine how to provide for sufficient development capacity.

3.19 Amendments to the definition of "demand" and the additional bullet points proposed for PA1 below will further assist in decision-makers providing for the functional and operational requirements of industrial and business land and ensure that demand for different locations of business land is not inappropriately restricted to being "within the urban area".

3.20 There should also be greater provision in 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.

3.21 Detailed guidance should also 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 <u>lot sizes</u> 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 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 PB1 to PB5, including local authorities specifically taking into account the different types of business land.

**Provision of infrastructure**

3.22 Fulton Hogan supports policies PC1-PC3 which promote a co-ordinated approach between local authorities and infrastructure providers to planning decisions, integrated land use and infrastructure planning, and responsive planning processes.

3.23 Lack of infrastructure is a common obstacle for the development of business and residential land. It is important that local authorities work closely with infrastructure providers when providing sufficient development capacity.

3.24 However, we query how such coordination will take place in practice. In order to effectively implement policies PC1-PC3, local authorities will need clear guidance from the Ministry as to how local authorities and infrastructure providers will "work together" to ensure coordinated land use planning and infrastructure provision.

***Relief sought***

Provide detailed direction in a Ministry guidance document on how local authorities should implement policies PC1-PC3 and the coordinated approach with infrastructure, including guidance on:

(a) which infrastructure operators should be consulted in certain circumstances;

(b) how consultation will take place and in what capacity; and

(c) how to address disagreements between local authorities and infrastructure providers on data and projections used in the development of the Housing and Business Land Assessments.

**Ensuring appropriate consultation**

3.25 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.

3.26 The second bullet point of 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.

3.27 While business and industrial 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.

3.28 Business and industrial activities provide critical support to local communities. Local authorities should be required to consult with and take into account the views of 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, and sufficient and appropriate land is provided for their development.

3.29 Industrial operators like Fulton Hogan are best placed to inform local authorities on the functional and operational requirements of industrial activities and the commercial viability of establishing them. Consultation enables the business sector to provide such information to local authorities about business demand and their specific requirements for land to make development commercially feasible. It is therefore critical local authorities consult with them in the implementation of the NPS.

3.30 Fulton Hogan 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 ~~T~~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 industrial activities are consulted when residential and business land could potentially cause reverse sensitivity effects.

**Responsive planning**

3.31 Policy PD2 requires local authorities to consider all options available to it under the RMA to enable sufficient development capacity to meet residential and business demand, including changes to:

(a) provisions in plans and regional policy statements regarding the notification of applications for resource consent; and

(b) existing overlays, or the introduction of overlays which enable development.

3.32 The changes local authorities make to the notification provisions of their district plans and regional policy statements in order to enable sufficient development capacity run the serious risk that situations will arise where parties who are affected lose out on the opportunity to participate. While local authorities have the ability to amend the notification provisions of their plans and regional policy statements, Fulton Hogan does not consider such powers should be encouraged in the NPS as a way to address issues of development capacity as it could lead to outcomes which inappropriately limit public participation.

3.33 Fulton Hogan relies heavily on the notification requirements in plans to protect its operations from reverse sensitivity effects. Fulton Hogan needs to stay vigilant to applications for consent to establish activities like residential dwellings that could potentially be affected by its operations. Fulton Hogan's ability to be involved in these resource consent applications could be significantly curtailed if changes are made to plans that reduce the notification of resource consent applications.

3.34 In addition, the promotion in the NPS of amendments to existing overlays and introduction of new overlays in order to enable sufficient development capacity is of concern to Fulton Hogan. Fulton Hogan, along with many other industrial operators, has had extensive involvement in the development of regional and district plans (like the Proposed Unitary Plan in Auckland) in order to protect its current operations and provide capacity for development of future operations. The potential for local authorities like Auckland Council to further amend plans in the short term in relation to overlays creates

unnecessary investment uncertainty and has the potential to undermine the significant amount of work parties have undertaken to develop these plans.

3.35 An NPS which does not take into account reverse sensitivity effects and promotes limiting notification, or changes to overlays, will only exacerbate the growing issue that Fulton Hogan has in trying to protect its operations from reverse sensitivity effects. It will also encourage people to live in areas which are not suitable for residential uses.

3.36 Fulton Hogan also has reservations regarding references to "customer focused" consenting processes in policies PD2 and PD3. This is an ambiguous term which could be misinterpreted by local authorities. A more appropriate term is "efficient".

***Relief sought***

Amend policy PD2 as follows:

> A local authority must consider all options available to it under the Act to enable sufficient development capacity to meet residential and business demand, including but not limited to:
>
> - Changes to plans and regional policy statements, including changes to:
>
>  - Objectives, policies and rules, zoning and the application of those in both existing urban and undeveloped areas;
>
>  - Activity status; and
>
>  - ~~Provisions about the notification of applications for resource consent;~~
>
>  - ~~Existing overlays, or the introduction of overlays which enable development; and~~
>
>  - Make them simpler to interpret.
>
> - Consenting processes that are efficient~~customer focused~~ and coordinated within the local authority; and
>
> - In granting consent, the conditions of consent imposed.

Amend policy PD3 as follows:

> Local authorities must consider the following responses:
>
> - In the short term, further enable development through efficient~~customer focused~~ consenting processes and, where appropriate, amending the relevant plans.
>
> - In the medium term, amending the relevant plans and policy statements to provide more development capacity.
>
> - In the long term, providing a broad indication of the location, timing and sequencing of development capacity in order to demonstrate that it will be sufficient.

**Ensuring monitoring assessments are published**

3.37 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. Fulton Hogan 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.

3.38 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.

3.39 The assessments also provide critical information to the industrial, business and development sector as to potential future demand for activities and allows them to forecast with greater clarity the community's needs in the short, medium and long terms.

***Relief sought***

Amend the last sentence of policy PB1 as follows:

> Local authorities must ~~have regard to the benefits of~~ publish~~ing~~ the assessments under policy PB1.

Amend the last sentence of policy PB5 as follows:

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

**Definitions**

3.40 Appendix A1 of the NPS 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.

3.41 We are also concerned that 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".

***Relief Sought***

Delete the definition of urban area.

**FULTON HOGAN LIMITED:**

**Signature:** 

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**Date:** 15 July 2016

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