RESEARCH NOTE

# COMPETITIVE URBAN LAND MARKETS AND THE PLANNING BILL 2025:

## ON AGILE LAND RELEASE AND THE DEFINITION OF SUFFICIENCY

FEBRUARY 2026

BENNO BLASCHKE

THE NEW ZEALAND INITIATIVE

www.nzinitiative.org.nz

## About the Author

**Dr Benno A. Blaschke** is a Research Fellow at The New Zealand Initiative with a broad portfolio of interests spanning urban development, infrastructure, local government, science policy, public institutions and regulatory reform. He has contributed to several of New Zealand's major reform programmes, including the Urban Growth Agenda, the Infrastructure Funding and Financing Act 2020, Three Waters reform, Resource Management reform, and the Science, Innovation and Technology system overhaul.

Benno's policy career was shaped public sector roles that explored the structural causes of housing unaffordability, including positions at The Treasury (urban planning and land markets), the Ministry of Housing and Urban Development (infrastructure financing), Local Government New Zealand (governance in alternative urban planning paradigms), and the Ministry of Business, Innovation and Employment (science and productivity).

## Acknowledgements

The author gratefully acknowledges **Chris Parker**, Director, Principal Economics Ltd, for his technical expertise in urban economics and his sustained contribution to the drafting language and conceptual integrity of the competitive urban land market framework presented in this paper; and **Eric Crampton**, Chief Economist, The New Zealand Initiative, for contributing policy approaches to agile land release and testing associated aspects of the drafting.

**Published February 2026 by**
The New Zealand Initiative
PO Box 10147
Wellington 6143
New Zealand
www.nzinitiative.org.nz



Research Note
ISSN 2816-0347

### About the New Zealand Initiative

The New Zealand Initiative is an independent public policy think tank supported by chief executives of major New Zealand businesses. We believe in evidence-based policy and are committed to developing policies that work for all New Zealanders.

Our mission is to help build a better, stronger New Zealand. We are taking the initiative to promote a prosperous, free and fair society with a competitive, open and dynamic economy. We develop and contribute bold ideas that will have a profound, positive, long-term impact.

## Table of Contents

# Competitive Urban Land Markets and the Planning Bill 2025

On Agile Land Release and the Definition of Sufficiency

## Executive Summary

The Planning Bill 2025, introduced to Parliament on 9 December 2025, represents the most significant reform of New Zealand's resource management framework since the Resource Management Act 1991. Among its stated objectives is the enablement of "competitive urban land markets", which signals a conceptual shift in how the planning system conceives of its relationship to housing supply and affordability. Yet a close reading of the Bill reveals a structural gap between aspiration and operative provisions. The Bill articulates competitive land markets as a goal but does not embed the mechanisms necessary to achieve them.

This note examines the Bill's treatment of land release, focusing on the concept of "development capacity" and its "sufficiency" for urban land market competition.[1] It finds that the current statutory framework preserves the conditions under which scarcity rents can persist, notwithstanding the Bill's reformist language.

This note recommends amendments to the Planning Bill and foreshadows national direction that addresses the structural deficiencies identified herein.

We propose a two-pronged approach: first, surgically revise the concept of "sufficient development capacity" to create a statutory hook for national direction to lean on; second, provide guidance on specific land release mechanisms to give effect to that purpose. **Annex A** operationalises this approach in comprehensive statutory language. **Annex B** identifies the minimum viable statutory hook.

On the first prong, we propose that the statutory concept of "sufficient development capacity" be replaced with "competitive urban land supply."[2] This is not an additional requirement layered onto sufficiency, but a replacement that performs the same systemic role: determining whether the planning system is enabling housing and business development using a market-structural rather than volumetric lens.

---

1 The Planning Bill uses the term "development capacity", which it has inherited from National Direction on Urban Development (NPS UD). The term "sufficient" has been used only in the NPS UD to qualify the quantum of development capacity supplied, being a measurable concept that can be modelled and informs planning decisions. Therefore, the concept "sufficient development capacity" as a whole is embedded in our planning system, which the Bill inherits. See New Zealand Government, "National Policy Statement on Urban Development (NPS UD)," Ministry for the Environment, 2020, Sections 3.2 (sufficient development capacity for housing) and 3.3 (sufficient development capacity for business land), https://environment.govt.nz/acts-and-regulations/national-policy-statements/national-policy-statement-urban-development/.

2 An alternative statutory-facing label for this concept could be "responsive" urban land supply as long as it is framed in the competitive logic outlined in subsections (j) and (k) in Annex A.

# Part One: The Theoretical Foundation

## What Is a Competitive Urban Land Market?

A competitive urban land market is one in which the price of urban land is determined by competition across multiple development opportunities, both within and beyond the existing city, such that the barrier to entry into the market is low enough to challenge the option value of holding out. In such a market, enough development options exist that landowners cannot extract excessive rents, because competition at the urban fringe and within established areas keeps prices grounded near the marginal opportunity cost of land.

The concept draws on the work of urban economists Alain Bertaud and Shlomo Angel, who have argued that housing affordability requires adequate land supply such that competition, not scarcity, sets land prices.[3] As Bertaud emphasises, "arbitrary limits on city expansion" inevitably drive up prices and reduce affordability. Both scholars contend that planners should focus on ensuring ample development capacity (including expanding urban boundaries when needed and allowing densification) rather than micromanaging each development through discretionary processes.

This theoretical framework rests on a critical distinction between three types of land rent. "Natural"[4] land rents arise from characteristics of the land independent of public investment (like natural sunlight or proximity to the beach). "Differential"[5] land rents arise from proximity to jobs, amenities, and transport infrastructure created by public investment; they reflect real value added and are economically efficient. "Extractive"[6] land rents, by contrast, arise when land supply is artificially restricted; they reflect scarcity pricing by landowners who hold scarce development rights. The former are benign; the extractive type of rents are the signature pathology of poorly designed planning systems.

When urban and rural land prices no longer match at the urban fringe (when a substantial price wedge opens between land inside and outside the urban boundary), factoring in the cost of infrastructure to service urban land, it signals that urban land prices have decoupled from their rural opportunity cost.[7] This decoupling is the hallmark of an uncompetitive land market, and it manifests in elevated house prices, reduced housing affordability, and the systematic transfer of wealth from renters and first-home buyers to established landowners.

---

3 Alain Bertaud, *Order without Design: How Markets Shape Cities* (MIT Press, 2019); Schlomo Angel, *Planet of Cities* (Lincoln Institute of Land Policy, 2012).

4 These should not be targeted by tax other than through a land-based rating framework of a council.

5 These cause price variations in land reflecting the amenities' net value to residents. If providing amenities is costly, and the benefits of those amenities exceed their cost of provision, landowners should be amenable to a dedicated rate that funds the works that provide the amenity.

6 Liberal planning rules avoid artificial scarcity (i.e. too little being built) caused by regulation. This also has distributional consequences. Such restrictions benefit owners with scarce rights at the expense of others.

7 Benno A. Blaschke et al., *A New Approach to Funding and Financing Our Cities: How We Supply Infrastructure Makes Housing Unaffordable*, Policy Paper no. 003 (University of Auckland, Economic Policy Centre, Urban and Spatial Economics Hub, 2021), 10–18, https://www.auckland.ac.nz/assets/business/about/our-research/research-institutes-and-centres/Economic-Policy-Centre--EPC-/USEPP003.pdf.

## The New Zealand Context

New Zealand's chronic housing affordability crisis has been extensively documented by the Productivity Commission, the Housing Technical Working Group, and successive government inquiries. The underlying diagnosis is now well established: restrictive planning rules, infrastructure constraints, and misaligned governance incentives have combined to create a persistent undersupply of housing relative to demand, with predictable effects on prices.

The Productivity Commission's 2017 *Better Urban Planning* report identified three powerful interests that restrict land supply: planners committed to compact city ideologies; infrastructure providers who favour incremental network expansion; and landowners at the urban fringe seeking maximum capital gains. Breaking this equilibrium, the Commission argued, would require not merely procedural reform but a fundamental reorientation of the planning system toward competitive land markets.[8]

The National Policy Statement on Urban Development Capacity (NPS-UDC) 2016,[9] and its successor the NPS on Urban Development (NPS-UD) 2020,[10] represented initial attempts to embed competitive logic into the planning system. These instruments required councils to provide "sufficient development capacity" and introduced the concept of a "competitiveness margin" (capacity beyond forecast demand intended to provide for competitive market conditions). Yet implementation proved uneven, and the instruments' reliance on council compliance without meaningful enforcement left the underlying structural constraints largely intact.

# Part Two: What the Planning Bill Does/Does Not Do

## The Bill's Stated Objectives

The Planning Bill 2025 articulates a set of high-level goals intended to guide all planning instruments and decision-making.[11] These include supporting economic growth, creating well-functioning urban and rural areas, and, critically, enabling competitive urban land markets by making land available for development to meet expected demand for housing and business.[12]

---

8 See Chapter 12, Section 1 dedicated to "Model 1: competitive markets for urban land and infrastructure" in the 2017 Productivity Commission Report. See The New Zealand Productivity Commission, *Better Urban Planning* (Wellington, NZ, 2017), 353–60, https://www.treasury.govt.nz/publications/better-urban-planning-productivity-commission-inquiry-material-2015-2017.

9 New Zealand Government, "National Policy Statement on Urban Development Capacity (NPS UDC)," Ministry for the Environment, 2016, https://environment.govt.nz/publications/national-policy-statement-on-urban-development-capacity-2016/.

10 New Zealand Government, "NPS UD."

11 Planning Bill, 235–1, Parliamentary Counsel Office: New Zealand Legislation (2025), https://www.legislation.govt.nz/bill/government/2025/0235/latest/LMS1035807.html.

12 See Part 2 (Foundations), Subsection 1 (Core provisions for decision making), Section 11 (Goals).

This language represents a material advancement over prior frameworks. For the first time, competitive land markets appear as an explicit statutory objective rather than merely a policy aspiration embedded in subordinate national direction. The Bill also narrows the effects regime, excluding from regulatory consideration matters such as retail distribution effects, trade competition, and internal building layouts. These are changes that, taken together, signal a shift away from the broad discretionary logic of the RMA.

## The Absence of Direct Land Release Mechanisms

Despite this reformist framing, the Bill does not contain a direct land release mechanism. There is no statutory trigger for releasing new land, no price-signal test for diagnosing scarcity, no automatic expansion or upzoning rule, and no enforceable obligation to provide additional greenfield options when market conditions warrant.

Instead, land release is addressed indirectly and weakly through four channels:

- objectives and purposes (which are aspirational rather than operative)
- regional spatial plans (which are strategic and discretionary)
- capacity obligations (which retain the logic of the NPS-UD but in softened form)
- national direction (which remains optional and future-dependent).

This structure allows decision-makers to acknowledge competitive land market objectives while continuing to ration land through sequencing, infrastructure gating, and spatial displacement. The Bill permits a council to plan for growth, to discuss competitive markets, and to model capacity, while still constraining actual land release to predictable, staged, infrastructure-contingent tranches. In short, the Bill enables planning *about* competitive land markets without requiring planning *for* them.

## The Provisions That Look Like Land Release But Are Not

Sections 93–98 of the Bill represent the most substantive provisions bearing on land release and deserve specific attention. These provisions have been characterised as "agile land release mechanisms," and it is true that they introduce genuine improvements over the Resource Management Act.

- **Sections 93–96** allow plans to be reviewed and amended in response to monitoring results and changed circumstances, reducing the procedural rigidity that made correcting plans under the RMA slow and politically intractable.

- **Sections 97–98** go further by creating a developer-initiated pathway for applying standardised plan provisions without triggering the full Schedule 3 plan-change process, and the Government's promised move toward layered, cumulative standardised zoning (through national direction to come) has real potential to increase development optionality if the zoning ladder is generous.

However, neither group of provisions constitutes land release in the sense required to sustain competitive urban land markets.

Sections 93–96 monitor plan performance against the plan's own objectives rather than against market-structural benchmarks, rely on council self-assessment rather than independent judgment, and produce discretionary rather than mandatory consequences.

Sections 97–98, while developer-initiated, require the developer to prove through costly and risky project delivery that upzoning is warranted, with the council retaining a qualitative "more appropriate" test over the outcome.

Both groups of provisions *place the full burden of proof on those seeking to develop, both in what must be proved and in who adjudicates, whereas the competitive framework splits the burden: the developer proves scarcity cheaply and objectively, after which the onus shifts to the regulator to justify restriction.* The Bill's approach is economically the inverse of what competitive land markets require. Under the competitive framework, the developer still bears the initial burden, but what must be proved is cheaper and objective (price evidence rather than project viability), who adjudicates is independent (a panel rather than the council that created the constraint), and once scarcity is confirmed, the burden shifts to the regulator to justify continued restriction. Furthermore, both remain gated on infrastructure readiness. The result is procedural agility within a rationed system, not competitive land release that creates a credible threat of entry.

The full analysis of sections 93–98, including a detailed comparison of the Bill's approach with the site-level and system-level mechanisms proposed in this paper, is set out in **Annex C**. The gap between what these provisions currently do and what agile land release requires is precisely the gap that the minimum viable statutory hook identified in **Annex B** is designed to close.

## The Problem of Policy Optionality

Because the Bill does not itself contain operative land release mechanisms, all meaningful land release must occur through national direction (secondary instruments issued by Ministers and officials). These could, in principle, include:

- mandatory greenfield release requirements
- price-triggered rezoning
- prohibitions on hard urban growth boundaries, and/or
- automatic expansion rules.

The difficulty is that none of these mechanisms are in the Bill itself. They are entirely discretionary, dependent on future Ministers, and vulnerable to being watered down, delayed, or revoked. National direction can be captured by bureaucratic conservatism or reversed by political cycles. Rights defined by policy are more easily rewritten than rights embedded in law.

In effect, the Bill says: "We could fix land release later." That is policy optionality, not institutional commitment. For a reform explicitly framed around competitive urban land markets, this represents a material structural weakness. The system becomes dependent on

the sustained political will of successive governments to maintain pro-competitive national direction. This reflects dependency that the historical record suggests is unreliable.

### The Missing Statutory Commitments

A closer examination of what the Bill does *not* say is revealing. The Planning Bill never states:

- land must be abundant rather than merely adequate
- councils must ensure multiple competing greenfield options
- land prices are a diagnostic signal of system failure
- failure to release land constitutes a regulatory failure, or
- scarcity rents are a harm the system must actively eliminate.

These absences are not neutral. They preserve a planning paradigm in which scarcity can persist while formal compliance is maintained. A council can satisfy every obligation in the Bill while still presiding over a housing market characterised by rising prices, declining affordability, and the systematic extraction of scarcity rents.

## Part Three: The Problem of "Sufficient Development Capacity"

### What Sufficiency Currently Means

The concept of "sufficient development capacity" is inherited from the NPS-UD and represents the primary mechanism through which the planning system is supposed to ensure adequate land supply. Under the current framework (and implicitly under the Bill) sufficiency is understood as capacity that is plan-enabled, infrastructure-ready, and forecast-aligned (i.e. "reasonably expected to be realised").[13] Councils demonstrate sufficiency by modelling demand projections and showing that zoned capacity exists to meet that demand, typically with a margin of 15-20 percent above forecast requirements.[14]

This definition has four properties that, taken together, render it inadequate for achieving competitive urban land markets.

First, it is forecast-led rather than market-led. Capacity is tied to bureaucratic projections of demand, not to market signals indicating whether supply is actually meeting that demand at affordable prices. A council can be technically compliant while presiding over rapidly escalating prices, because the sufficiency test does not reference prices at all. The Bill's framing of demand as "current and expected" reinforces this forecast-led logic. It empowers planners to determine, through their own projections, how much capacity the market requires, rather than allowing competitive market forces and land price signals to determine the supply of land and development capacity. Removing or reframing this qualification

[13] See Section 3.25 ("Housing Development Capacity Assessment") New Zealand Government, "NPS UD," 23.
[14] See Section 3.23 ("Competitiveness margin") New Zealand Government, "NPS UD," 22.

would be a necessary step toward a market-responsive rather than administratively rationed approach to land supply.

Second, it is satisfied at the margin rather than system wide. A small surplus of capacity above forecast demand is treated as sufficient, even if that capacity is tightly constrained in location, timing, or feasibility. The test does not ask whether the *structure* of the market is competitive, only whether a quantum of capacity exists on paper.

Third, it is compatible with sequencing.[15] Councils can stage-gate land release, providing capacity in predictable tranches tied to infrastructure budgets and political cycles. This approach reflects a *volumetric and command-style conception of land supply*, in which planners seek to forecast quantities in advance and ration entry over time. Predictability of this kind is antithetical to competitive pressure. Where the timing and location of land release are known in advance, the rational response for landowners is to delay development, a dynamic that fuels land banking and speculative holding rather than timely supply.[16]

Fourth, it ignores substitutability. A competitive market requires that buyers have genuine choices among multiple development options such that no single landowner or small group can exercise market power (because zoning has precluded options). The current sufficiency test counts hectares and dwellings; it does not ask whether those options are substitutes in any economically meaningful sense.

In sum, under the Bill (continuing the NPS-UD lineage), "sufficient development capacity" is implicitly understood as capacity that is:

- plan-enabled
- infrastructure-ready (in practice)
- forecast-aligned
- modelled over time

---

[15] At first glance, Subpart 2 of the Planning Bill ("Responsive planning"), particularly section 3.8 ("Unanticipated or out-of-sequence development"), appears designed to address the problem of sequencing. In practice, however, these provisions are reactive rather than rule-based, lack clear triggers, and remain framed in open-textured concepts such as "well-functioning urban environments". They also preserve wide discretion to rely on infrastructure timing and funding as reasons to resist development. As a result, the responsive planning provisions do not prevent councils from continuing to stage-gate land release or to ration entry through sequencing. By contrast, the statutory drafting proposed in this paper is designed to remove the ability to weaponise infrastructure constraints and abstract planning ideals to resist development where market signals indicate the need for additional supply. For discussion of the responsive planning provisions, see New Zealand Government, "NPS UD," 16–17.

[16] It is theoretically possible that staged land release is so abundant that it suppresses the value of holding out such that the quantum of available options generates real threat of entry, thereby generating the competitive tensions needed to compete away extractive rents. But this would require "abundant" not merely "sufficient" (just enough) land supply to meet expected demand. Its economic efficiency would also depend on: a) enabling significant intensification (to avoid pushing development out unnecessarily), which enables the formation of deeper labour markets to drive economic growth; and b) spatial planning that promotes an open framework for grid-like expansion of the city in multiples outward from the current city fringe (and secure land at current, not future prices to make urban expansion cost efficient). For further discussion of this, see Samuel Hughes, "Urban Expansion in the Age of Liberalism," Works in Progress Issue 22, January 2026, https://worksinprogress.co/issue/urban-expansion-in-the-age-of-liberalism/.

This definition allows councils to be compliant while:

- sequencing release over long horizons
- displacing capacity to low-value locations
- gating development on discretionary infrastructure decisions
- preserving scarcity in high-value, high-demand areas

What "sufficient" currently does not do:

- require competition at the margin
- require simultaneity or overlap of options
- require enablement in high-value locations
- treat price escalation as evidence of failure
- constrain the strategic use of displacement and delay

As a result, sufficiency is a volumetric concept, not a market-structure concept.

## Why Capacity Is Not Competition

The fundamental conceptual error is treating "sufficient development capacity" as a volumetric concept when it must be understood as a market-structure concept. Scarcity rents arise not only when capacity is absent in aggregate, but when credible alternatives are absent at the margin. A planning system can provide twenty years of "capacity" on paper while still presiding over persistent land banking, rising prices, and zero competitive pressure on incumbent landowners.

Judge Jackson's decision in Bunnings Ltd v Queenstown Lakes District Council is significant because it clarified the economic paradigm national direction attempted to introduce into our planning system through the *National Policy Statement of Urban Development Capacity (NPS UDC) 2016*.[17] Interpreting that national direction, Jackson J rejected a purely plan-led, volumetric approach to development capacity and gave effect to the NPS UDC's underlying logic that planning systems must respond to price signals, efficiency, and competition, rather than attempt to substitute for market processes through advance capacity modelling.

In explaining this shift, he contrasted traditional capacity forecasting with what he described as a command-economy approach, "close to the 'Soviet' model of setting aside X hectares for the production of pig iron."[1] Jackson held that councils must work with land price differentials and react to evidence of scarcity by enabling replacement capacity as land is taken up, rather than relying on static projections or sequenced release.

[17] Judge Jackson J. Environment Court, "Bunnings Ltd v Queenstown Lakes District Council NZEnvC 59," 2019, 51–54, https://www.waimakariri.govt.nz/__data/assets/pdf_file/0021/137820/EVIDENCE-11-FS63-LEGAL-5798483-Bunnings-Ltd-v-Queenstown-Lakes-District-Council-2019-NZEnvC-59.pdf, see Section 6.3 ("Conclusions under the NPS-UDC"), particularly paragraph 148.

In this way, the decision articulated the NPS UDC's latent economic logic: that planning should serve to maintain an open and competitive land market, rather than replace market process with centrally planned provision that is prone to scarcity under constrained entry.

However, because this market-responsive paradigm was carried only through subordinate national direction rather than primary legislation, with no hooks to lean off from, it remained vulnerable to erosion through subsequent plan-making and consenting practice.

The framework advanced in this paper seeks to entrench that same paradigm in statute by completing the shift away from volumetric sufficiency and command economy-style capacity modelling, and toward ongoing city-wide monitoring of urban land markets focused on competitive urban land supply: one that disciplines scarcity through substitutability, price response, and credible market entry, rather than administrative rationing.

The Planning Bill represents an opportunity to correct this deficiency by redefining sufficiency in *competitive rather than volumetric terms*. Without such redefinition, "sufficiency" will continue to operate as a test that can be formally satisfied even as scarcity persists in practice. More fundamentally, failing to make this shift risks *embedding in primary legislation a command-economy conception of urban land supply*, in which development is enabled according to advance quantity projections and administrative staging rather than ongoing market performance.

This would sit uneasily with the Bill's stated goal to enable competitive urban land markets. Redefining sufficiency in competitive terms is therefore not a technical refinement, but a necessary step to align the planning system's statutory architecture with a market-responsive economic paradigm.

# Part Four: Toward a Competitive Definition of Sufficiency

## The Core Re-conception

The concept of "sufficient development capacity" has so far been framed as a volumetric[18] question (how much land is enabled) when the real policy question is structural: whether the planning system creates effective competitive pressure in land markets.

A definition of sufficient development capacity consistent with competitive land markets must shift from measuring the quantum of enabled land to evaluating the competitive structure of the land market. Sufficiency should be understood as the condition in which planning rules create effective competitive pressure among landowners and developers such that scarcity rents cannot be extracted.

[18] Volumetric approaches also signal headline numbers to society that creates political controversy

Under this re-conception, sufficiency requires four conditions to be met simultaneously:

- **First, legal availability.** Development capacity must be legally enabled and available for immediate use, not contingent on future discretionary decisions, plan changes, or infrastructure commitments that may or may not materialise. Capacity that exists in strategy documents but cannot be activated without further approvals is not genuinely available.

- **Second, value-aligned location.** Capacity must be enabled both in peri-urban areas and in urban locations where development demand is strongest, particularly areas of high accessibility and market value. A planning system that enables development capacity primarily in locations that are not economically substitutable for high-demand land (whether because of distance, infrastructure gating, or limited scale) while constraining supply in high-demand areas, fails to provide genuine substitutable options. Such an approach displaces development geographically, misallocating growth away from where it is most valuable. The result is weaker agglomeration benefits, lower productivity, and higher economy-wide costs.[19]

- **Third, simultaneity.** Multiple development options must be enabled concurrently rather than sequentially. If councils sequence land release such that only one tranche is available at a time, they preserve scarcity even where aggregate capacity appears ample. Competition requires overlapping options at the margin, not a queue.

- **Fourth, credible threat of entry.** The system must materially reduce the expected return from delaying development by maintaining a credible threat of alternative supply. If landowners can profitably hold out because they know that no competing supply will emerge to undercut their position, the market is not competitive regardless of what capacity appears in planning documents.

In sum, a refined concept of "sufficient development capacity" must be understood not as the quantum of land enabled, but as the condition in which:

1. continuous, multi-front urban expansion provides the primary margin of price adjustment, anchoring land prices by creating credible, scalable alternatives to high-demand land;

2. development capacity is enabled in locations where demand is strongest, including high-accessibility, high-value urban locations, so that land can be put to its most productive use and agglomeration benefits are realised;

[19] This critique should not be read as opposing urban expansion. In competitive urban land markets, the primary margin of price adjustment is continuous, multi-front urban expansion, which anchors land prices and constrains scarcity rents. Intensification plays a distinct but complementary role: reducing the demand for expansion by allowing households and firms to locate where their willingness to pay exceeds costs, and by promoting agglomeration economies in production and consumption. Competitive urban land markets therefore require both expansion and intensification, operating simultaneously rather than as substitutes.

3. development opportunities across both intensification and expansion margins are economically substitutable and available concurrently, rather than being displaced to locations that do not discipline prices or compete effectively for demand; and

4. the expected return from delaying development is materially reduced, because credible alternative supply exists at scale, constraining scarcity rents and land banking behaviour.

## Draft Structure

These principles can be embedded in statute. Below is an overview of the draft structure to provide the necessary hook in legislation to ensure agile land release and the ongoing and proactive maintenance of competitive land markets. **Annex A** operationalises the draft structure in statutory language.

To this end, the concept of "sufficient development capacity" is replaced with "competitive urban land supply" in the Planning Act.

Broadly, land use starts from a presumption to build, constrained only by environmental limits[20] and reasonable neighbour impositions; when an independent economic assessment shows that land markets are no longer competitive, the law progressively tightens how impositions are applied and requires active measures to restore competition through release of land (out) and development capacity (up).

**BLOCK 1 — Default rules (always on)**

***Table 1.*** *Default rules: These clauses define the baseline: what landowners may do, and the only kinds of limits that apply in normal conditions, including where the burden of proof lies in establishing limits.*

| Clause | Short title | What it does (plain language) |
|---|---|---|
| **(a)** | Right to build (presumption) | Starts from a presumption that land can be developed and put to its best use, unless constrained by the hierarchy in (b). |
| **(b)** | Hierarchy of constraints | Sets the constitutional ordering: (1) environmental limits first (only relevant outside of the affected property), (2) neighbour and network congestion impositions second, (3) otherwise the market decides. |
| **(c)** | Reciprocity of impositions | Makes clear that impacts are reciprocal: blocking development imposes costs too, and both sides must be considered. |
| **(d)** | Infrastructure is not a veto | Treats infrastructure as a delivery and financing problem, not a reason to say "no", except for environmental limits (only relevant outside of the affected property). |

[20] Environmental limits in an urban context should only obtain to effects that impact land outside of the boundary of the land in question, and without permission of the owner of the affected land

| Clause | Short title | What it does (plain language) |
|---|---|---|
| **(e)** | Presumption from self-provision | Provides that willingness and ability to fund or deliver infrastructure prevents congestion from being treated as unreasonable. |
| **(f)** | Evidence and burden of proof | Requires that restrictions (incl. treating congestion as "unreasonable") be justified on evidence; places the onus on the decision-maker/regulator to demonstrate the constraint is necessary and cannot reasonably be managed via delivery/pricing/financing mechanisms. |
| **(g)** | Zoning baseline | Limits zoning to managing unreasonable neighbour impositions; prohibits zoning from rationing supply, intensity, or prices. |
| **(h)** | Zoning override [site level] | Enables land to be developed to its highest and best use as determined by market forces where sustained price differentials show zoning or development controls are binding. Provides developer-initiated right to automatic adjust of zoning. |
| **(i)** | Local enjoyment and wider prosperity | Acknowledges local amenity interests, but makes clear they cannot unduly constrain regional/national prosperity or competition. |

The mental model of this first block is: if environmental limits are respected and neighbour impositions are not unreasonable, the market decides how land is used.

**BLOCK 2 — Diagnosis (fact-finding only)**

***Table 2.*** *Diagnostic provisions: These clauses do not change outcomes; they establish whether the system is working*

| Clause | Short title | What it does (plain language) |
|---|---|---|
| **(j)** | Diagnose market failure | Establishes an independent expert panel (urban & land market economists) that determines whether land markets are competitive and confirms price-based evidence of constrained land supply at both site level (triggering automatic zoning adjustment under (h)) and system level (triggering constraint-relief and mandatory enablement under (m) and (p)). |
| **(k)** | What the panel must look at | Specifies the indicators the panel must assess: where supply is enabled, whether alternatives exist, and what prices are doing. |

**BLOCK 3 — Response when markets are not competitive**

***Table 3.*** *Responsive provisions: These clauses only switch on after a negative diagnosis under (i). This is the adaptive "lever"*

| Clause | Short title | What it does (plain language) |
|---|---|---|
| **(l)** | Resolution of conflicts: CLM priority over impositions | Resolves conflicts in favour of restoring competitive urban land supply where imposition decisions would otherwise preserve non-competitive conditions. |
| **(m)** | Direction: relieve constraints [response to (j)] | Tells decision-makers that, once markets are not competitive, they must apply the neighbour-imposition test in a way that *reduces*, not worsens, supply constraints on a system-wide basis. |
| **(n)** | What cannot block development [clarifying (m)] | Lists the kinds of impositions that may no longer be treated as "unreasonable" when markets are dysfunctional (character, sequencing, infrastructure timing, etc.). |
| **(o)** | Proportional application [how hard to apply (n)] | Allows proportionality: mild dysfunction → lighter application; severe or persistent dysfunction → stronger application. |
| **(p)** | What must be enabled [response to (j)] | Requires affirmative action at a system-wide level: intensification and/or expansion must be enabled to restore competition. |
| **(q)** | Reasonableness of infrastructure expectation | Defines when infrastructure is "reasonably capable of being delivered", ensuring absence of infrastructure within current funding envelopes is not used as a back-door veto. |

This overall structure embeds competitive logic in primary legislation, creating a statutory hook that national direction must give effect to. It makes scarcity rents a justiciable planning failure rather than an accepted outcome.

# Part Five: How Resistance Will Continue Under the Current Bill

## Compliance Without Competition

The Bill as drafted permits what might be termed "compliance without competition." Councils can satisfy their formal obligations while maintaining the conditions for scarcity. This occurs through several predictable pathways.

Councils will provide just-enough zoned capacity on paper, tightly sequence release to align with infrastructure budgets, and gate development on discretionary assessments of readiness. They will argue fiscal prudence under the Local Government Act, noting that

ratepayers cannot be expected to bear infrastructure costs for speculative development. All of this remains lawful under the Bill.

## The Infrastructure Veto

Because sufficiency is not defined competitively, infrastructure constraints will continue to operate as a de facto veto on development. Councils can acknowledge that capacity exists in principle while maintaining that it is not available in practice until infrastructure is funded, designed, and committed. This preserves scarcity through the back door.

Experience with the implementation of the NPS-UD has further demonstrated that even modelled "development capacity" is delivered only as a function of infrastructure supply.[21] In practice, Housing and Business Development Capacity Assessments (HBCAs) have tended to count as feasible only those development opportunities that councils consider serviceable within existing or committed infrastructure programmes. As a result, infrastructure funding and financing constraints are implicitly translated into restrictive planning outcomes: land may be notionally zoned or identified as developable, but is excluded from effective capacity calculations because the infrastructure required to support it is not funded.

The Planning Bill does not, of itself, address the infrastructure financing constraints that bind council decision-making. Without reform of the funding and financing toolkit (currently the subject of separate but closely related policy work) councils lack the means to service new development even where they might be willing to enable it. Planning permissions thus become stranded: they exist on paper but cannot be activated.

In this way, infrastructure constraints do not merely accompany restrictive planning rules; they *supersede them*, becoming the effective determinant of land release and reinforcing scarcity despite formal compliance with volumetric sufficiency requirements.

For these reasons, the statutory framework proposed in this paper deliberately reframes the role of infrastructure in land-use decision-making. Rather than treating the existence of infrastructure within current funding envelopes as a precondition to development, the drafting requires decision-makers to assess whether infrastructure is *reasonably expected to be delivered*. This is an important distinction. It recognises that the relevant policy question is not whether infrastructure is already funded or scheduled, but whether it is *capable of being delivered through feasible delivery and financing mechanisms*.

This approach reflects the practical lessons of NPS UD implementation. Where infrastructure availability is treated as a binary gate (present or absent) planning systems collapse back into administrative rationing, even where land is otherwise developable and demand is evident. By contrast, treating infrastructure as a delivery and financing problem shifts the focus to

[21] This is based on my work with council planning committees that coordinated the implementation of national direction under the NPS UD across local government. This work was triangulated through consultation with urban economists who developed the underlying economic model of the NPS UDC/NPS UD and supported councils with the technical challenges of capacity modelling and forecasting to determine development capacity to be provided by council district plans.

*how infrastructure can be provided*, rather than using its current absence as a reason to deny development outright.

The drafting is therefore designed to prevent infrastructure constraints from becoming a silent veto on land release. It does not relax environmental limits or infrastructure standards. Instead, it requires councils to engage with the full range of delivery and financing options available to them, including development levies, value capture, special purpose vehicles, and tools under the *Infrastructure Funding and Financing Act 2020*. Properly applied, these mechanisms allow infrastructure to be self-funding over time, supported by the future revenue streams generated by development, rather than constrained by existing balance-sheet capacity or annual budget cycles.

In this sense, the proposed statutory language aligns planning law with modern infrastructure finance practice. It enables the expansion of self-funded debt tied to growth, reduces reliance on upfront public funding, and ensures that the inability to finance infrastructure within current envelopes does not, by itself, justify the continued rationing of land. Treating infrastructure as a delivery and financing challenge (rather than a precondition) ensures that planning permissions are not stranded, and that land supply can respond to demand in a way that supports both competition and long-term fiscal sustainability.

## Political Insulation

By keeping land release embedded in spatial plans, justified by modelling, and framed as long-term strategy, the Bill allows councils to resist growth without ever openly opposing it. A council can participate in spatial planning processes, endorse competitive land market objectives, and still preside over a constrained market, because nothing in the Bill compels them to actually release land at the pace and in the locations the market requires.

## National Direction Risk

If land release is left solely to national instruments, the reform's durability becomes hostage to political and bureaucratic cycles. Future Ministers can soften requirements; officials can over-scope qualifying exceptions; courts will defer to planning judgment absent clear statutory tests. The history of the NPS UD suggests that even well-designed national direction erodes over time when it lacks firm statutory foundations.

# Part Six: Comparative Perspective

The following table summarises how the Planning Bill compares to the NPS-UD and to a system consistent with competitive land market principles across key dimensions.

***Table 4.*** *Comparison of the Planning Bill with the NPS UD and a CLM-consistent system*

| Dimension | Planning Bill (as drafted) | NPS-UD 2020 | CLM-consistent System |
|---|---|---|---|
| Core test | Capacity adequacy | Capacity plus limited competitiveness margin | Competitive pressure and credible threat of entry |
| Role of prices | Not referenced | Indirect, through feasibility assessments | Explicit diagnostic signal of system failure |
| Location of capacity | Discretionary | Mixed requirements | High-value locations and urban expansion enabled |
| Sequencing | Permitted and common | Often tolerated in practice | Constrained; concurrent options required |
| Greenfield options | Optional | Weakly required | Multiple competing options mandatory |
| Enforceability | Low | Medium, via courts | High, rules-based with automatic triggers |
| Infrastructure link | Gating mechanism | Readiness requirement | Automatic upzoning; confidence in delivery, not proof |

# Part Seven: Recommendations

## For the Primary Legislation

The most robust path to competitive land markets is amendment of the Planning Bill itself to redefine "sufficient development capacity" in competitive land-market terms. This would create a statutory anchor that constrains national direction and makes scarcity rents a justiciable planning failure. The draft structure provided in Part Four and statutory language in **Annex A** offer one approach; other formulations are possible provided they embed the core principles of legal availability, market value-aligned location, simultaneity, and credible threat of entry.

If the full framework in Annex A is judged too expansive for the current legislative vehicle, **Annex B** sets out a minimal but complete alternative: four statutory provisions that form the irreducible architecture of a self-enforcing competitive land market commitment: they define failure, assign an independent referee, require automatic relief, and close the infrastructure veto. These four elements represent the minimum necessary to make competitive land markets enforceable rather than aspirational.

Additionally, the Bill should include a mandatory duty on the Minister to issue national direction that specifies indicators of land market competitiveness and delegate to an independent expert panel to judge urban land market competitiveness. This will require local

authorities and the judicial system to enable additional capacity when those indicators show persistent scarcity.

## For National Direction

If legislative amendment proves impractical, national direction must do the heavy lifting. Effective national direction would need to:

- Define competitiveness indicators, including boundary price differentials and price-to-income ratios
- Require automatic upzoning or land release when indicators breach specified thresholds
- Prohibit the use of growth boundaries, sequencing rules, or infrastructure constraints in a manner that undermines competitive urban land markets
- Require that capacity be enabled in all locations that there is infrastructure capacity
- Require zoning for intensive development in high-demand locations when urban land prices are judged excessive by an independent panel of experts, with explicit tests to prevent displacement to lower-value areas
- Mandate concurrent rather than sequential release, with multiple competing development options available at all times

The difficulty is that national direction alone, without statutory foundation, remains vulnerable to the political and bureaucratic capture described above.

## For Spatial Planning

Spatial planning should be recast as a narrow, preparatory function focused on securing future infrastructure corridors and identifying no-go areas under environmental limits. It should not be used to sequence or gate land release, integrate infrastructure investment decisions, or set growth projections as binding constraints on zoning. The role of spatial planning is to prepare options, not to ration them. Refer to the New Zealand Initiative's submission on Going for Housing Growth: Pillar 1.[22]

[22] Benno Blaschke, *Submission on Going for Housing Growth (Pillar 1) Discussion Document: Freeing up Land for Urban Development*, Submission (The New Zealand Initiative, 2025), 4, 6, 16–25, https://www.nzinitiative.org.nz/reports-and-media/submissions/submission-going-for-housing-growth-pillar-1-freeing-up-land-for-urban-development/.

# Conclusion

The Planning Bill 2025 represents a genuine advance in embedding competitive land markets as a goal of the planning system. Yet the gap between aspiration and articulation and associated mechanisms remains substantial. Without operative provisions that compel timely, price-responsive, and geographically appropriate land release, the Bill risks reproducing the conditions under which scarcity has persisted but dressed now in the language of competition even though unchanged in institutional effect.

The key leverage point is the definition of "sufficient development capacity." If sufficiency remains as a volumetric concept (counting hectares and dwellings against forecast demand) councils will continue to comply while scarcity persists. The Bill frames demand as "current and expected," which empowers planners to replace competitive market forces and price signals in determining supply land and floor space with their own projections. If sufficiency is redefined as a market-structure concept (requiring competitive pressure, concurrent options, and credible threat of entry) the system gains the tools to achieve its stated objectives.

Redefining "sufficient" in terms of competitive land supply in the primary legislation would:

- Embed competitive logic in the Act, not just in policy
- Constrain future national direction, rather than leaving it unconstrained
- Prevent capacity dumping and strategic displacement
- Make scarcity rents a justiciable planning failure, not an accepted outcome, and
- Increase durability and credibility of policy settings across changes of ministers and of governments.

This does not mandate sprawl, abolish planning, or pre-empt environmental limits. It simply ensures that planning cannot preserve scarcity while claiming success.

This would be the necessary first step. Without this statutory hook, any land release mechanisms introduced through national direction will lack a firm legislative anchor and remain vulnerable to erosion.

The choice now before policymakers is whether to embed this understanding in primary law, where it will constrain all downstream instruments and survive political cycles, or to leave it completely to national direction, where it will be subject to the same erosion that has characterised previous reform attempts. The historical record suggests that the former path, while bolder, is the more durable.

**Annex B** demonstrates that this choice is not all-or-nothing. Even where the full framework in **Annex A** exceeds what the legislative process can accommodate, a minimal four-element hook can be embedded in the Bill at select committee without restructuring the legislation.

# Next steps

This note has focused on amending the Bill to create the statutory foundation for agile land release. Subsequent work would then be needed to design specific land release mechanisms for national direction, such as:

- anti-sequencing provisions (automatic expansion or leapfrogging rules)
- boundary price differential tests and price-triggered rezoning thresholds for land release and rapid recycling of land use for more intensive purposes
- mandatory greenfield release rules (some linked to infrastructure-readiness/IFF Act)
- land release triggered by competitive assembly of special purpose entities

Mechanisms explored should be consistent with the CLM logic embedded in the draft structure, expressed in terms of "competitive urban land supply", as proposed in **Annex A**.

# Annex A – Statutory Language

## Purpose

This Annex sets out model statutory language that gives effect to the policy logic of a planning system oriented toward competitive urban land markets.

## Scope and Policy Instrument

The provisions are intended to articulate, in a comprehensive and internally coherent manner, the principles, constraints, diagnostic mechanisms, and response levers required to sustain effective competition in urban land supply. In doing so, the Annex is deliberately more expansive than may ultimately be required in primary legislation.

Some elements of the framework may be more appropriately located in national direction, regulations, or other subordinate instruments, once the core statutory architecture is established.

The purpose of the Annex is therefore not to prescribe the precise legislative placement of each provision, but to fully spell out the logic of a competitive urban land market framework, so that decisions about what belongs in the Act and what may be given effect through national direction can be made transparently and deliberately.

## Policy Approach

The Model statutory language operationalises the draft structure in the body of this paper *to provide a statutory hook for agile land release and the proactive maintenance of competitive urban land markets*.

To this end, the concept of "sufficient development capacity" is replaced with "competitive urban land supply" in the Planning Act.

## Model Statutory Language

A Planning Act oriented toward competitive urban land markets might read, where the below headings that follow are subsections (a)–(p):

(a) ***Right to build [presumption]:*** *Land is presumed to be developable and capable of being put to its highest and best use, subject to the constraints set out in subsection (b).*

(b) ***Hierarchy of constraints on land use and development:*** *For the purposes of this Act, land use and development must:*

i. *comply with environmental limits and restrictions established under the Natural Environment Act; and*

ii. *subject to (i) be constrained only to the extent necessary to avoid unreasonable impositions on the enjoyment of land owned by others; provided that congestion of land transport or three waters utility networks is addressed, in the first instance, as a delivery, pricing, or financing matter under subsection (d), and may be treated as an unreasonable imposition only where it cannot reasonably addressed through those means; and*

iii. *For the purposes of paragraph (ii), congestion of land transport or three waters utility networks must not be treated as an unreasonable imposition unless the decision-maker demonstrates, based on evidence consistent with subsection (f), that such congestion cannot reasonably be addressed by application of subsection (d) and (q); and*

iv. *subject to (i)–(iii) be determined by market demand and competition, and must not be constrained on the basis that an alternative use would be preferable, more appropriate, or better aligned with planning objectives.*

(c) ***Reciprocity of impositions:*** *Impositions are reciprocal. An imposition must not be treated as unreasonable solely based on the cost imposed by a proposed use on neighbouring landowners, without also considering the cost imposed on the landowner by restricting or prohibiting the proposed use, including the loss of the opportunity to put the land to its best use. Where it is necessary to determine whether an imposition is unreasonable, preference must be given to the outcome that avoids or minimises the greater aggregate cost of imposition, having regard to both:*

i. *the impositions arising from the proposed use; and*

ii. *the impositions arising from forgone development, reduced intensity, or displaced land use.*

*In applying this subsection, regard must also be had to the sequencing of land uses over time, including the following:*

iii. *Where a person establishes a new use or development or materially intensifies an existing use in proximity to an existing lawful use that generates effects which are typical, foreseeable, and inherent to that use, those effects must not be treated as an unreasonable imposition to the extent that it is demonstrated, on the basis of evidence, that such effects were reasonably capable of being anticipated and materially reflected in the price paid for the land or development rights; and*

iv. *nothing in this subsection prevents the modification or cessation of an existing use where persons affected by that use voluntarily agree to compensate the owner of that use for the loss of value associated with such modification or cessation.*

(d) ***Infrastructure:*** *Infrastructure is to be treated as a delivery, pricing and financing problem, so that:*

i. *the pre-existence of infrastructure is not a precondition to development, but the reasonable expectation, consistent with this section and subsection (q), that infrastructure is capable of being delivered; and*
ii. *the absence of infrastructure within existing funding envelopes, capital budgets, or programmed investment plans does not, whether alone or in combination with other considerations, constitute an unreasonable imposition.*

(e) ***Presumption arising from infrastructure delivery:*** *Where an applicant demonstrates a willingness and ability to self-fund, deliver, or otherwise provide for the infrastructure required to service a proposed development, consistent with subsection (p), congestion effects must not be treated as unreasonable for the purposes of subsection (b)(iii), unless the decision-maker establishes that the proposal would breach subsection (b)(i) or create a public nuisance that cannot reasonably be addressed through application of subsection (d).*

(f) ***Evidence and burden of proof in relation to infrastructure delivery:*** *For the purposes of subsection (e), evidence that an applicant is willing and able to self-fund, deliver, or otherwise provide for the infrastructure required to service a proposed development, consistent with subsection (p), constitutes prima facie evidence that congestion effects can be addressed:*
i. *where such evidence is provided, the burden of proof shifts to the decision-maker, who must establish, based on evidence, that the proposal would breach subsection (b)(i) or create a residual public nuisance that cannot reasonably be internalised or mitigated through the application of subsection (d); and*
ii. *the decision-maker must not treat congestion effects as unreasonable solely by disputing the commercial, financial, or engineering judgments relied upon by the applicant, unless it demonstrates that those judgments are materially unsound.*

(g) ***Zoning [baseline function]:*** *The purpose of land use zoning is to facilitate the enjoyment of land and to regulate land use consistent with the hierarchy in subsection (b). Accordingly, zoning may regulate development only to the extent necessary to give effect to subsection (b)(ii), and must not be used to ration development capacity, impose intensity constraints unrelated to unreasonable impositions, or manage prices. For the avoidance of doubt:*
i. *land that may be developed consistently with subsection (b) may be developed at any intensity supported by market demand; and*
ii. *when land transport and waters network improvements enable more intensive use of an area of land consistent with subsections (a) and (b), then a commensurate higher intensity land use zone will apply;*[23]
iii. *zoning must not be applied in a manner that undermines subsection (b)(iv); and*
iv. *the Natural Environment Act, not authorities under this Act, will restrict land use in accordance with natural environmental limits.*

[23] Ensure the NEA has a similar provision to (g)(i) and (g)(ii): where interventions enable more intensive land use without compromising natural environmental limits, then restrictions on that land use is commensurably relieved.

(h) ***Standing entitlement based on price differentials [zoning override]:*** *Where a landowner or applicant provides observable market evidence that land subject to the zoning or development controls applying to a site is subject to a sustained and material price differential relative to land that permits a higher intensity or alternative use, and the independent expert panel confirms that the evidence satisfies subsection (j)(iii), the zoning applying to the site must be adjusted by operation of this Act, without requiring any subsequent application or approval, and subject only to the constraints set out in subsection (b) and subsections (d), (e), and (f). The adjustment takes effect as a plan change and operates in accordance with whichever of the following paragraphs the landowner or applicant elects to rely upon, provided the evidential requirements of the elected paragraph are satisfied:*

i. *in **adjacent equalisation (boundary extension)** circumstances, where the price differential reflects a constraint on development intensity or availability relative to adjacent land that permits intensity or urban use, whether an existing urban area or at the urban-rural boundary, the zoning applying to the site must be equalised with the zoning applying to that adjacent land, such that such that the full suite of development controls applying to the higher-intensity zone applies to the site, including through progressive outward adjustment of zone boundaries;*

ii. *in **urban leapfrog adjustment (non-adjacent, one-way)** circumstances, notwithstanding paragraph (i), where the price differential reflects a constraint on development capacity within the urban environment but the site is not adjacent to a higher-intensity zone, the zoning applying to the site must be adjusted to the zoning of the land relied upon as the comparator for the price differential, such that the full suite of development controls applying to that comparator zone applies to the site, provided that such adjustment occurs only from a lower to a higher intensity or alternative use and does not constrain the operation of paragraph (i);*

iii. *in **rural-to-urban leapfrog entry (greenfield backstop)** circumstances, notwithstanding paragraphs (i)–(ii), where the price differential reflects a constraint on the availability of urban land, land subject to rural zoning must be adjusted to the urban zoning of the land relied upon as the comparator for the price differential, such that the full suite of development controls applying to that urban zone applies to the site, net of the reasonable cost of providing development infrastructure, provided that such adjustment occurs only from rural to urban use; and*

iv. *in **non-contiguous development** circumstances, subject to this subsection, development authorised under this subsection can occur on a non-contiguous basis and must not be declined, constrained, or sequenced solely on the basis that the land is separated from existing urban development, existing urban zones, or existing development infrastructure; and*

v. *for the avoidance of doubt, an adjustment under this subsection adopts the comparator zone in full and is not limited to the specific development control or controls that generated the observed price differential; a partial adjustment that addresses only a subset of binding controls does not satisfy this subsection.*

(i) ***Balancing local enjoyment with wider prosperity:*** *In exercising functions under this Act, regard must be had to the relationship between the enjoyment of land at a local or neighbourhood level and the maintenance of regional and national prosperity. Land use regulation, including zoning, must recognise that while the enjoyment of land in one's residence and neighbourhood is a legitimate interest, it must be provided for in a manner that does not unduly constrain:*

- *i. the supply of land for housing and business use;*
- *ii. development intensity necessary to support labour market accessibility and economic productivity; or*
- *iii. effective competition in urban land markets, especially in peri-urban areas, to support housing affordability.*

(j) ***Assessment of land market and impositions [diagnostic]:*** *An independent expert panel, established by the Minister and comprising persons with appropriate expertise in economics, must assess, for the purposes of this Act*:

- *i. whether urban land supply is sufficient to sustain competitive urban land markets; and*
- *ii. the extent to which impositions on the enjoyment of land owned by others may reasonably be relied upon to constrain the best use of land, having regard to the state of competition in urban land markets; and*
- *iii. whether, based on evidence provided by a landowner or applicant, in relation to a particular site or area, a sustained and material price differential exists that indicates land supply is constrained by zoning or development controls.*

*The expert panel must confirm or decline to confirm whether the evidential threshold in paragraph (iii) is met within a prescribed period; if it fails to do so, the evidence is deemed confirmed for the purposes of subsection (h), and the assessment of the panel under paragraphs (i)–(iii) is determinative for the purposes of subsections (h) and (m), and does not of itself authorise or prohibit development except as expressly provided by those subsections, as follows:*

- *iv. as assessment under paragraph (iii) constitutes a micro-level judgment and gives effect to the standing right in subsection (h) for automatic zoning adjustment; and*
- *v. an assessment in paragraph (i) and (ii) constitutes a macro-level judgment and gives effect to the system response in subsection (m) for constraint-relief and mandatory enablement.*

(k) ***Matters the expert panel must consider in assessing urban land supply:*** *For the purposes of subsection (j), in assessing whether urban land supply is competitive, the independent expert panel must consider whether:*

- *i. development capacity is enabled in locations where development demand is strongest, including areas of high accessibility, amenity, productivity, and market value; and*
- *ii. development capacity is available in multiple, concurrent, and economically substitutable locations, including peri-urban areas, such that landowners and developers are subject to effective competitive pressure, including through non-contiguous (leapfrogging) development; and*

iii. *observed market outcomes, including sustained price differentials, scarcity rents, or other price-efficiency indicators, demonstrate that urban land markets are contestable in practice.*

(l) ***Resolution of conflicts between impositions and competitive urban land markets:*** *For the purposes of subsection (b)(ii), in assessing whether an imposition is unreasonable, decision-makers must give priority to the goal of establishing and sustaining competitive urban land markets, as reflected in the assessment under subsection (j). That priority must be applied by reference to:*

i. *the constraints on land use and development set out in subsection (b); and*
ii. *any assessment of competitive urban land supply undertaken by the independent expert panel under subsection (i).*

(m) ***Application of impositions where urban land markets are not competitive:*** *Where an assessment under subsection (j) identifies that competitive urban land markets are not being achieved, decision-makers must apply subsection (b)(ii) in a manner that alleviates, rather than reinforces, the constraints on land supply identified in that assessment.*

(n) ***Progressive constraint on reliance on impositions where land markets are not competitive:*** *Where subsection (m) applies, impositions on the enjoyment of land owned by others must not be treated as unreasonable to the extent that treating them as such would have the effect of:*

i. *preventing or materially constraining development intensity in locations where there is demonstrable market demand for development, including areas of high accessibility, amenity, productivity, or market value; or*
ii. *preventing or materially constraining the availability of development opportunities in multiple, concurrent, and relatively substitutable locations sufficient to maintain effective competitive pressure between landowners and developers; or*
iii. *preserving sustained price differentials or scarcity rents that indicate a lack of contestability in urban land markets; or*
iv. *relying on neighbourhood character, visual preference, or other subjective amenity considerations as a basis for restricting development that is otherwise within natural environmental limits; or*
v. *relying on the absence, sequencing, or timing of infrastructure where that infrastructure is reasonably capable of being delivered through one or more feasible mechanisms.*

(o) ***Proportional application:*** *The application of subsection (n) must be proportionate to the severity and persistence of land market dysfunction identified under subsection (j), and may distinguish between:*

i. *moderate constraints on competition; and*
ii. *severe or persistent constraints on competition.*

(p) ***Trigger upzoning and land release:*** *Where subsection (m) applies, land use regulation must, in addition to the baseline presumption in subsections (a)–(i), enable additional development capacity through one or more of the following mechanisms:*

i. ***urban intensification:*** *in high-value or high-accessibility locations where there is demonstrable demand for development;*

ii. ***urban expansion:*** *in multiple, concurrent, and relatively substitutable locations sufficient to materially reduce the market's expected return from delaying development.*

(q) ***Reasonableness of infrastructure expectation:*** *For the purposes of subsections (d)–(f) and (n)(v), infrastructure is "reasonably capable of being delivered" where:*

i. *the supplier has committed to fund provision through one or more feasible mechanisms, including developer provision, staged delivery, cost recovery, value capture, or alternative financing arrangements, consistent with subsection (e);*[24] *or*

ii. *the absence of infrastructure reflects an intentional or strategic decision to constrain development, including in higher-value or higher-demand locations, and (i) obtains.*

[24] This provision links to our recommended interaction between infrastructure finance reform, grounded in the institutional pathway to achieving elastic infrastructure supply, and the new Planning Act under RMA reform, as recommended here through agile land release mechanisms (mandatory greenfield release rules linked to infrastructure readiness). Our upcoming work on infrastructure finance reform recommends a statutory deeming provision: if an IFF levy is authorised (proving infrastructure will be funded), the land is deemed to have infrastructure capacity and presumed developable, subject to the same constraints outlined in subsection (b)(ii) presented here that sands in relation to subsection (g) and associated response measures to protect regional and national prosperities through the maintenance of competitive urban land markets. See forthcoming New Zealand Initiative Report, *Infrastructure Finance Reform: The Institutional Pathway Toward Elastic Infrastructure Supply,* Section 5.3 ("The Role of Planning Reform").

# Annex B – The Minimum Viable Statutory Hook

## Purpose

Annex A sets out the gold standard: a comprehensive statutory framework that embeds competitive urban land market logic throughout the Planning Act. That framework is internally coherent, legally robust, and designed to withstand the erosion that has undermined every previous attempt to make New Zealand's planning system responsive to land market dysfunction.

But comprehensive reform proposals carry a tactical risk. If decision-makers judge the full framework too complex or too disruptive to the legislative timeline or its existing architecture, the entire proposal may be set aside, not because the diagnosis is wrong, but because the remedy is perceived as indigestible. The result would be the worst outcome: a Planning Act that speaks the language of competitive land markets but lacks any operative mechanism to deliver them, and a reform opportunity lost for a generation.

This Annex therefore asks a different question: what is the least that could be changed in the primary legislation to create a meaningful statutory hook: one that constrains national direction, provides a basis for judicial accountability, and prevents the concept of "sufficient development capacity" from operating as a volumetric ceiling on ambition?

The answer is not a watered-down version of Annex A. It is a distinct, minimal intervention (four elements, no more and no less) designed to shift the centre of gravity of the statutory framework just enough that national direction can do the rest, and that future attempts to water down that national direction must contend with a legislative anchor that resists retreat.

## The Problem in Plain Terms

The Planning Bill, as introduced, does something genuinely new: it names competitive urban land markets as a goal of the planning system. That matters. But it then fails to define what competitive means in operative terms, and it inherits from the NPS-UD a concept of "sufficient development capacity" that has, in practice, allowed councils to declare compliance while presiding over some of the least affordable housing markets in the developed world.

The failure mode is not dramatic. No council will openly reject competitive land markets. Instead, the system will do what it has always done: model demand, zone a quantum of capacity that exceeds the forecast by a modest margin, sequence release to align with infrastructure budgets, and report compliance. Prices will continue to reflect scarcity. The planning system will continue to generate extractive rents. And the Act's stated objective (competitive urban land markets) will remain aspirational text, honoured in planning documents and ignored in market outcomes.

This is not a hypothetical. It is the lived experience of the NPS-UD, which introduced a competitiveness margin, required housing and business development capacity assessments,

and still failed to produce competitive conditions in any major urban land market in New Zealand. The reason is structural: a volumetric sufficiency test can always be formally satisfied while scarcity persists, because the test asks how much capacity exists on paper, not whether the market is actually competitive.

If the Planning Bill passes without addressing this structural deficiency, the most significant resource management reform in a generation will embed in primary legislation the very conception of land supply that has underwritten the housing crisis.

## Two Options

What follows are two options for statutory intervention. Both are designed to be compatible with the Bill's existing broad architecture. The first is the comprehensive framework set out in Annex A. The second is a minimal but complete statutory hook (four elements that form a closed enforcement architecture). Each is described in terms of what it does, why it matters, and what it risks.

### Option One: The Full Framework (Annex A)

Annex A replaces "sufficient development capacity" with "competitive urban land supply" and embeds a complete logic, from presumption to build, through diagnostic assessment, to mandatory response when markets are not competitive. This is the preferred approach. It makes scarcity rents a justiciable planning failure, constrains the infrastructure veto, and creates automatic adjustment mechanisms that do not depend on sustained political will.

The case for this option is durability. Every element of the framework reinforces the others: the right to build is disciplined by environmental limits and neighbour impositions; the diagnostic panel provides an evidence base; the response levers are proportionate and graduated. Remove any one element and the framework still functions, but less reliably.

The risk is that decision-makers judge the full framework too ambitious for the current legislative vehicle, either because it requires too many new provisions, or because it touches questions (infrastructure finance, zoning override, burden of proof) that are politically sensitive and may slow the Bill's passage.

### Option Two: The Minimal Viable Statutory Hook (Annex B)

If the full framework is not feasible within the current legislative timeline, the question becomes: what is the minimum set of provisions that must appear in primary legislation to make competitive land markets enforceable rather than aspirational?

The answer is four elements. They form a closed system: a normative trigger, an independent factfinder, automatic consequences at two scales, and a reframing of infrastructure that removes the standard escape hatch. Drop any one and the others can be neutralised. Add anything more and you are in Annex A territory. This is not a compromise; it is the irreducible architecture of a self-enforcing competitive land market commitment.

### ***Element 1:*** *Scarcity rents as regulatory failure*

The Planning Act must state that sustained scarcity rents (rents arising not from the inherent qualities of land or from public investment, but from the artificial restriction of development opportunities by planning rules) are evidence of a failure to realise competitive urban land markets and are inconsistent with the objectives of the planning system.

This is the normative anchor. Without it, scarcity can be tolerated, explained away, or reframed as an unfortunate but acceptable side effect of a system that is otherwise performing well. The entire history of the NPS-UD demonstrates this dynamic: councils acknowledged housing affordability as a concern while maintaining the planning conditions that produced it, because nothing in the statutory framework identified scarcity rents as a regulatory failure.

The proposition is simple but consequential. It converts prices from background information into a legal obligation. If scarcity rents are present and the planning system is demonstrably contributing to them, the system is failing, not in some aspirational sense, but in a manner that engages statutory duties and is amenable to judicial review.

This element does not, by itself, prescribe a remedy. It defines what counts as failure. Everything else follows from that definition.

### ***Element 2:*** *Independent monitoring and assessment*

There must be an independent expert function (a panel or body comprising persons with appropriate expertise in economics) responsible for two distinct assessments.

1. **At the system level**, the panel must assess whether urban land markets are competitive overall: whether development capacity is enabled in locations where demand is strongest, whether concurrent and substitutable options exist, and whether observed market outcomes are consistent with competitive conditions.

2. **At the site or boundary level**, the panel must confirm whether observed price differentials reflect zoning-induced scarcity rents, that is, whether the gap between the price of land under its current zoning and its price under a higher-intensity or alternative use is attributable to regulatory constraint rather than to inherent characteristics of the land or its infrastructure context. Any landowner or developer may bring evidence of such a differential to the panel for assessment; the panel must also retain the capacity to initiate assessments of its own motion where system-level monitoring under the preceding paragraph identifies areas of likely constraint.

The standing right to bring evidence is essential to the architecture: developers and landowners are best placed to identify where zoning is binding, and will do so where confirmation triggers regulatory relief. A system that relies solely on panel-initiated review will underdiagnose scarcity, because the information about where constraints bite most acutely is held by market participants, not by the panel itself.

This function must be independent of councils (who cannot be expected to diagnose their own regulatory failures), evidential rather than discretionary (grounded in observable market data, not planning judgment), and determinative for the legal consequences that follow (its findings must trigger obligations, not merely inform advice).

Without independent monitoring, either councils mark their own homework (with predictable results) or price signals remain contestable opinions that decision-makers can weigh against competing considerations and ultimately disregard. The monitoring function is what makes the normative trigger in Element 1 operational. A definition of failure without an independent referee to confirm when failure has occurred is a principle without enforcement.

### ***Element 3:*** *Automatic, proportional regulatory relief*

The Act must require that once scarcity rents are identified through the assessment in Element 2, the planning system responds, not at the discretion of councils or Ministers, but as a matter of legal obligation. The response must operate at two scales, reflecting the two levels of assessment:

1. **At the site level**, landowners or developers must have a standing to request a penel determination, and to trigger automatic regulatory relief when the independent panel confirms that local price differentials reflect zoning-induced scarcity. This means that where price evidence shows that zoning or development controls are binding (that is, where the market value of land under an alternative use materially exceeds its value under the current zoning, and that differential is attributable to regulatory constraint) the zoning must adjust. This is not a consent process. It is a standing entitlement, activated by evidence and confirmed by the independent panel, that operates as a plan change by operation of the Act.

2. **At the system level**, a finding that urban land markets are not competitive must trigger mandatory relaxation of constraints and the provision of additional development capacity, both through intensification in high-demand locations and expansion at the urban margin. The severity of the response must be proportional to the severity and persistence of the dysfunction: moderate constraints on competition warrant lighter intervention; severe or persistent scarcity warrants stronger measures, including mandatory concurrent release of multiple competing development options.

This is the enforcement mechanism. Without automatic consequences, monitoring is diagnostic but toothless, an elaborate exercise in confirming what everyone already knows while the system continues to generate the outcomes it has been told are failures. The standing right at site level and the mandatory response at system level are what convert the normative trigger and the diagnostic function into actual changes in land supply. Developers and property owners would have incentive to discover sites that are under-zoned because they would have the ability to trigger a change that zoning.

***Element 4:*** *Infrastructure as delivery problem, not precondition*

The Act must provide that development is not contingent on the pre-existence of infrastructure within current funding envelopes, but on whether infrastructure is reasonably expected to be delivered through feasible delivery, pricing, or financing mechanisms.

This element is necessary because, without it, every other hook can be neutralised. The lived experience of NPS-UD implementation demonstrates that infrastructure constraints have become the primary mechanism through which councils resist land release while maintaining formal compliance. A council can acknowledge that capacity exists, that prices signal scarcity, and that competitive conditions are not being met, and still decline to enable development on the basis that infrastructure is not funded, not scheduled, or not committed within current budgets.

The reframing is precise. It does not relax infrastructure standards or environmental limits. It does not require councils to fund infrastructure they cannot afford. What it does is shift the relevant question from "does infrastructure exist?" to "can infrastructure be delivered?" It requires decision-makers to engage with the full range of delivery and financing options available to them, including development levies, value capture, and the tools (special purpose vehicles) under the *Infrastructure Funding and Financing Act 2020*, before concluding that infrastructure constraints justify the continued rationing of land.

Without this reframing, infrastructure operates as a silent veto, a sequencing tool, and a way to preserve scarcity while appearing fiscally prudent. It is the standard escape hatch through which every previous competitive land market reform has been neutralised, and it must be closed in primary legislation if the other three elements are to function as intended.

## Why These Four Elements Form a Closed System

The four elements are not a list of desirable features. They are an architecture, and each element is load-bearing.

- **Without Element 1** (the normative trigger), scarcity has no legal significance. The system can observe rising prices, acknowledge extractive rents, and do nothing, because nothing in the Act says this constitutes failure.
- **Without Element 2** (independent monitoring), the trigger has no referee. Councils self-assess, courts defer to planning judgment, and the question of whether markets are competitive becomes a matter of contestable opinion rather than determinative finding.
- **Without Element 3** (automatic relief), monitoring produces reports but not outcomes. The system diagnoses failure, publishes findings, and waits for someone to act, which, in the absence of compulsion, may never happen, or may happen only in the form of incremental, discretionary adjustments that preserve the underlying conditions of scarcity.

- **Without Element 4** (infrastructure reframing), all three preceding elements can be bypassed through the infrastructure veto. A council can accept that scarcity rents exist, that the independent panel has confirmed market dysfunction, and that regulatory relief is legally required, and still resist land release on the basis that infrastructure is not available. Unless the Act forecloses this pathway, it will be used. The historical record leaves no room for doubt on this point.

This is what makes the four elements minimal: removing any one breaks the system. And it is what makes them viable: together, they create a self-enforcing architecture that does not depend on sustained political will, bureaucratic enthusiasm, or judicial creativity.

## What This Does Not Do

The minimal hook does not prescribe specific land release mechanisms. It does not mandate particular price thresholds, boundary differentials, or upzoning rules. It does not restructure spatial planning, redesign infrastructure finance, or reorganise council functions. All of that operational detail can and should be developed through national direction, and the body of this paper, together with Annex A, provides a comprehensive framework for doing so.

What the minimal hook does is ensure that national direction has a statutory anchor. It ensures that the test for competitive land markets is structural, not volumetric. It ensures that failure is defined, diagnosed independently, and met with automatic consequences. And it ensures that the most common mechanism for neutralising reform (the infrastructure veto) is foreclosed in primary legislation.

In other words, the minimal hook does not do the work of reform. It creates the conditions under which national direction can do that work and cannot easily be prevented from doing it.

## What Cannot Be Left to National Direction Alone

The case for statutory intervention rests on a simple observation: national direction, without a statutory anchor, erodes.

The NPS-UDC introduced the competitiveness margin in 2016. The NPS-UD refined it in 2020. Neither instrument achieved competitive conditions in any major New Zealand land market. The reasons are well documented in the body of this paper: councils interpreted sufficiency volumetrically, infrastructure constraints operated as a *de facto* veto, and the absence of price-based diagnostics meant that formal compliance coexisted with persistent scarcity.

More fundamentally, national direction is reversible. A future Minister can soften thresholds, expand exceptions, or revoke instruments entirely. Officials can scope qualifying criteria so broadly that the competitive logic is diluted. Courts defer to planning judgment where statutory tests are vague. None of this requires bad faith; it requires only the ordinary

operation of institutional incentives in a system where the primary legislation does not clearly commit to competitive outcomes.

Embedding even the minimal four-element hook in primary legislation changes the institutional dynamics, but is not immune to being diluted through national direction by a future Minister. But it does raise the cost of retreat. It provides a reference point for judicial review. And it signals to the planning system (councils, officials, the Environment Court) that competitive land markets are not a policy preference to be balanced against other considerations, but a structural requirement of the Act.

A principles-level commitment alone (a clause stating that the planning system must not generate extractive rents, without the monitoring, automatic relief, and infrastructure reframing that give the principle teeth) would be better than the status quo but substantially weaker than the four-element hook. Principles without enforcement mechanisms are read down. They inform interpretation at the margins but do not compel behaviour change. If the choice is between the four-element hook and a principles clause, the hook is materially superior. If even the hook proves infeasible, a principles clause is worth pursuing as a fallback, but with clear-eyed recognition that it will not, by itself, prevent the system from reproducing the conditions of scarcity.

## Recommendation

The gold standard is Option One: the full framework in **Annex A**, embedded in primary legislation. If the legislative vehicle cannot accommodate that framework, Option Two (the four-element minimal hook) in this Annex achieves the structural essentials with a fraction of the drafting burden. It defines failure, assigns an independent referee, forces automatic relief at site and system level, and closes the infrastructure escape hatch.

The minimal reform, compressed to a single sentence, is this: treat scarcity rents as regulatory failure, require independent confirmation, force automatic relief proportional to severity, and stop using (existing) infrastructure as a veto.

What cannot be accepted is the status quo: a Planning Act that names competitive land markets as a goal but provides no operative mechanism to diagnose when they are absent, no independent function to confirm when scarcity rents are present, no automatic consequence when the system fails, and no constraint on the use of infrastructure as a reason to deny development. That is not a reform. It is a restatement of the problem in more aspirational language.

# Annex C – Agile Land Release in the Planning Bill

## Sections 93–98: Adaptive Adjustment, Not Agile Land Release

Sections 93–98 of the Bill have been described as "agile land release mechanisms." This characterisation deserves careful examination, because the provisions do represent a genuine advance over the Resource Management Act, but the nature of that advance is narrower than the label suggests. Understanding what these sections do and do not achieve is essential to assessing whether the Bill, as drafted, can deliver on its stated objective of competitive urban land markets.

The provisions fall into two groups that serve different but related functions. Sections 93–96 are adaptive plan-adjustment provisions that operate at the system level: the planning system monitors its own performance and adjusts plans when they are shown to be inadequate. Sections 97–98 introduce a developer-initiated pathway for applying standardised plan provisions at the site level: a private applicant proves a development works and the plan is amended to reflect that outcome. Together they improve the planning system's responsiveness and reduce transaction costs relative to the RMA. But neither group constitutes land release in the sense required to sustain competitive urban land markets, and the reasons differ in instructive ways.

It is worth noting at the outset that the competitive urban land market framework advanced in this paper addresses the same two scales (site and system) through the same two modes (developer-initiated and institutionally-initiated). The difference is not in structure but in logic: who proves what, when, and with what consequences. We are not proposing a different architecture so much as the same architecture with the burden of proof reversed. Examining each group of provisions in turn, and comparing them with the corresponding element of the competitive framework, makes the nature of that reversal precise.

## Sections 93–96: Responsiveness Within a Rationed System

In functional terms, sections 93–96 enable spatial and regulatory plans to be reviewed, amended, or varied in response to monitoring results, evidence of insufficient capacity, or changed circumstances. They provide alternative pathways to the highly formalised plan change processes that characterised the RMA, and they reduce some of the procedural friction associated with correcting plans that are shown, after the fact, to have been mis-specified. These are real improvements. Under the RMA, correcting a plan that was constraining supply was slow, expensive, and often politically intractable. Sections 93–96 make the system less brittle.

But procedural agility within a rationed system is not the same as competitive land release. The distinction is fundamental, and collapsing it risks overstating the effect of these provisions.

Land release, in the sense required to sustain competitive urban land markets, is not primarily a procedural question. It is an economic one. The relevant test is not whether plans

can be amended more easily once problems are acknowledged, but whether the planning system creates a credible threat of entry when scarcity emerges. A credible threat of entry exists when rational landowners and developers believe that others can legally, financially, and practically enter the market if prices rise. It is this belief, not actual construction volumes or plan amendment speeds, that disciplines land prices and prevents scarcity rents from crystallising. A reliable mechanism to rapidly amend plans (adjust zoning) to enable entry can be an important part of forming those expectations. Prices provide evidence of those expectations.

Sections 93–96 do not create that threat. They fail on four dimensions that are each necessary for competitive land release:

1. **First: they monitor the wrong signals.** Sections 93–96 assess plan performance against the plan's own objectives, which is a volumetric, self-referential exercise. The relevant question is not whether the plan is performing as intended but whether the market is competitive.[25] Prices, land price differentials, and the availability of substitutable options move faster and reveal more than institutional review cycles. A framework that monitors market signals rather than plan compliance catches dysfunction earlier and rooted in observable facts, not because it is pre-emptive in any absolute sense, but because price signals are a higher-frequency, higher-fidelity source of information than administrative self-assessment.[26]

2. **Second: they rely on self-assessment rather than independent judgment.** Under sections 93–96, councils monitor their own plans and decide whether adjustment is warranted. This is asking the institution that created the constraint to diagnose its own failure. The institutional incentives run in the wrong direction: councils face political costs from acknowledging scarcity, fiscal costs from enabling growth they must service, and reputational costs from admitting that their plans were wrong. An independent panel with a statutory mandate to assess competitiveness has none of these incentives to delay or soften a finding.

3. **Third: consequences are discretionary, not mandatory.** Even where sections 93–96 identify insufficiency, the response is permissive: the plan may be amended through a discretionary process. No standing right arises, no automatic relief follows, and no timeline compels action. A negative finding authorises adjustment but does not require it. The lag between scarcity emerging and the system responding is therefore

---

[25] This first dimension is really two linked things: a) the Act does not define competitive land markets in operative terms. It states the objective but provides no statutory definition of what competitive means, no indicators, no benchmarks, and no test; b) "sufficient development capacity" remains the operative concept, and it is volumetric. Sections 93–96 therefore monitor plan performance against the plan's own objectives, because that is all the Act asks them to do, and they do not embed CLM logic into the Act's *modus operandi*.

[26] Price differentials and scarcity rents are observable facts. Plan performance against plan objectives is an interpretive judgment. A council can argue endlessly about whether its plan is "performing well" because the benchmark is its own intentions, which are qualitative, contestable, and shaped by the same institutional incentives that produced the constraint in the first place. A land price differential between adjacent zones is not a matter of interpretation. It either exists or it doesn't, and its magnitude is measurable.

not primarily a function of when the problem is observed; it is a function of whether and when the institution chooses to act. Under the competitive framework, a finding of market dysfunction triggers mandatory response, proportional to severity. The consequence is obligatory, not negotiable.

4. **Fourth, they remain embedded in the infrastructure gate.** Even where plans are amended under sections 93–96, development remains conditioned on infrastructure readiness, funding alignment, and sequencing decisions. The provisions do not decouple land release from the infrastructure constraints that, as discussed elsewhere in this paper, operate as the primary mechanism through which councils resist development while maintaining formal compliance. A plan adjustment that enables development on paper but remains gated on infrastructure that is not funded, not scheduled, and not committed within current council budgets does not release land. It announces an intention to release land at some future point, contingent on fiscal and political conditions that may or may not materialise.

The cumulative effect of these four limitations is that sections 93–96 improve the system's ability to repair itself once failure is observed, but they do not alter the fundamental logic of land rationing. They allow the rationing framework to adjust itself, but they do not remove the rationing function. From a market perspective, they operate as damage-limitation mechanisms within a managed-scarcity paradigm, not as competitive constraints that discipline land prices.

The following tables compare the substance and activation logic of sections 93–96 with the corresponding system-level mechanism under the competitive urban land market framework. Their differentiating logic is broadly:

- **The Bill's logic at system level:** If we notice a problem, we may adjust the plan.
- **The CLM logic at system level:** If markets are not competitive, the system must respond.

***Table 5.*** *Substance: What is being decided?*

| Dimension | Sections 93–96 | CLM system-level mechanism |
|---|---|---|
| Core question | Is the plan still adequate? | Are urban land markets competitive? |
| What counts as evidence | Monitoring results, changed circumstances, evidence of insufficient capacity | Price differentials, scarcity rents, absence of substitutable and concurrent options |
| What is being assessed | Plan performance against its own objectives (undefined) | Market structure against competitive benchmarks |
| Who judges | Council (self-assessment) | Independent expert panel (economists, independent of council) |

| Dimension | Sections 93–96 | CLM system-level mechanism |
|---|---|---|
| Standard of assessment | Capacity adequacy (volumetric) | Market competitiveness (structural) |
| Consequence of negative finding | Plan may be amended through discretionary process | Mandatory constraint-relief and provision of additional capacity up and out |
| Nature of the consequence | Permissive (adjustment is authorised) | Obligatory (adjustment is required) |
| Failure to act | No automatic consequence; system tolerates inaction | Regulatory failure with justiciable consequences |

***Table 6.*** *Activation: how and when does it operate?*

| Dimension | Sections 93–96 | CLM system-level mechanism |
|---|---|---|
| Who initiates | Council, through monitoring and review cycles | Independent panel, through ongoing market assessment |
| Trigger | Institutional recognition that plan is insufficient | Market evidence that competitive conditions are absent |
| Timing relative to scarcity | Reactive (after failure is observed and acknowledged) | Pre-emptive (monitoring is continuous; response is triggered before rents fully capitalise) |
| Speed of response | Dependent on plan variation process, even if expedited | Proportional response is mandatory once finding is made |
| Infrastructure dependency | Plan amendment still gated on infrastructure readiness and funding | Infrastructure reframed as delivery problem; absence within current envelopes is not a veto |
| Discretion at point of activation | High (council decides whether, when, and how to adjust) | Low (finding triggers mandatory response; severity determines proportionality) |
| Accountability for inaction | Weak (no automatic consequence for failing to adjust) | Strong (sustained scarcity rents are treated as regulatory failure) |
| Durability | Vulnerable to political and budgetary cycles | Anchored in statute; resistant to erosion through national direction |
| Scope of response | Negotiated, incremental, often limited to specific plan provisions | System-wide: intensification in high-demand areas and expansion at the urban margin |

## Sections 97–98: Developer-Initiated, But Friction in the Wrong Place

Sections 97–98 take a different approach. They allow a private applicant, whether developer or landowner, to apply for a planning consent that authorises a change to plan provisions, and if the consent is implemented, the territorial authority must amend its plan to apply the new standardised provisions without using the full plan change process (spelt out in Schedule 3). This is genuinely new. Under the RMA, plan change power sat almost entirely with councils, and private plan changes were slow, litigious, and discretionary. Sections 97–98 reduce transaction costs and help consolidate consent outcomes into durable zoning changes rather than one-off permissions.

The move toward layered, cumulative standardised zoning further strengthens the design ambition behind these provisions. If the Government delivers what it has signalled, a zoning template in which each successive zone retains all rights of the previous zone and adds additional development rights (modelling the Japanese approach), then applying a higher standardised zone genuinely increases development optionality. In design terms, this represents a real supply-side expansion rather than mere harmonisation, and it would be inaccurate to suggest that standardised provisions cannot increase capacity. They can, if the ladder is generous and cumulative.

However, the ability of these standardised provisions to perform the function required for competitive urban land markets depends not on their content alone, but on how and when they are activated. And it is here that sections 97–98 fall short, for a reason that is structurally different from the limitations of sections 93–96 but equally consequential.

The sequence under sections 97–98 works as follows: a developer must assemble land, finance a project, apply for a planning consent, resolve effects, infrastructure, and discretion, and only after the project succeeds can the zoning be lifted. Zoning change is therefore a consequence of successful development, not a precondition for it. This is a proof-by-construction model: the developer must demonstrate, through costly and risky project delivery, that additional development rights are warranted.

This imposes high transaction costs at precisely the wrong point in the process. Capital must be committed before certainty is achieved. Political and infrastructure risk must be internalised by the applicant. Only large, well-capitalised actors can bear these costs, which excludes smaller or marginal entrants. And each site is tested in isolation, which prevents the simultaneous entry across multiple locations that competitive pressure requires.

Moreover, the council retains a qualitative "more appropriate" test under section 98(2). Even where a higher standardised zone clearly allows more development and scarcity is evident, the territorial authority must still decide whether the new provisions would be "more appropriate for the area" than the existing operative provisions. That test is qualitative, contestable, and preserves discretion at the critical margin. The zoning ladder may exist, but the planner controls whether the developer may climb it.

The result is that even generous layered zones do not translate into a credible, pre-emptive threat of entry at scale. Optionality exists in design terms but remains constrained in practice

by the activation logic. The friction sits before entry, which is economically the inverse of what competitive land markets require.

The following tables compare the substance and activation logic of sections 97–98 with the corresponding site-level mechanism under the competitive urban land market framework. Their differentiating logic is broadly:

- **The Bill's logic at site level:** Prove it works, then we'll upzone.
- **The CLM logic at site level:** Prove scarcity, then rights expand automatically.

***Table 7.*** *Substance: What is being decided?*

| Dimension | Sections 97–98 | CLM site-level mechanism |
|---|---|---|
| Core question | Is this development appropriate for this site? | Is regulation creating scarcity rents at this site? |
| What counts as evidence | Successful delivery of a consented project | Observable price differential between current and higher-intensity zoning |
| What is being proved | That development works here | That restriction is unjustified here |
| Who bears the burden of proof | Developer (must prove project viability before conflicted adjudicator) | Developer (must prove price differential before independent panel); burden then shifts to regulator to justify continued restriction) |
| Outcome if threshold is met | Council may apply standardised zone, subject to "more appropriate" test | Zoning adjusts automatically to comparator zone, by operation of the Act |
| Nature of the outcome | Discretionary zoning change (council decides) | Standing entitlement (developer elects mechanism, panel confirms evidence) |
| Scope of adjustment | Limited to standardised provisions; may be partial | Full suite of comparator zone provisions; partial adjustment does not satisfy |

***Table 8.*** *Activation: how and when does it operate?*

| Dimension | Sections 97–98 | CLM site-level mechanism |
|---|---|---|
| Who initiates | Developer | Developer or landowner |
| Trigger | Successful planning consent, given effect to | Price differential evidence brought to independent panel |
| Timing relative to scarcity | Ex post (after capital deployed and project delivered) | Ex ante (before project-specific capital is committed) |

| Dimension | Sections 97–98 | CLM site-level mechanism |
|---|---|---|
| Cost of initiating | High (land assembly, project finance, consent process, construction) | Low (market evidence of price differential) |
| Role of council | Gatekeeper: decides whether provisions are "more appropriate" | None: panel confirms evidence; adjustment is automatic |
| Role of independent panel | None | Confirms or declines to confirm evidential threshold; if silent, evidence is deemed confirmed |
| Infrastructure dependency | Development conditioned on infrastructure readiness | Infrastructure treated as delivery and financing problem; not a precondition |
| Discretion at point of activation | High (qualitative "more appropriate" test) | Minimal (evidential threshold only) |
| Who can use it | Well-capitalised developers who can bear project risk | Any landowner or developer with price evidence |
| Scale effect | Site-by-site; no aggregation; no simultaneous entry | Any number of sites can be activated concurrently |
| Effect on threat of entry | Weak: entry requires project-specific proof | Strong: entry requires only price evidence |

It is worth noting a further asymmetry in the site-level comparison. Under sections 97–98, the developer initiates the process and the council decides the outcome. Under the competitive framework, the developer both initiates the process (by bringing price evidence) and elects which adjustment mechanism applies: adjacent equalisation, urban leapfrog, rural-to-urban entry, or non-contiguous development.

The panel's role is limited to confirming that the evidential threshold is met; it does not select the remedy. This additional layer of developer agency further lowers transaction costs and increases the credibility of entry, because a developer who can choose the mechanism best suited to their development opportunity faces less uncertainty about the outcome, and therefore less risk in initiating the process.

A system in which the applicant identifies the constraint and elects the relief, subject only to evidential confirmation, is categorically more accessible than one in which the applicant must prove a project works and then hope that the council agrees the zoning should follow.

## The Inversion: Where the Architecture Fails

The limitations of sections 93–98 can be understood through a single organising distinction: where the system places the burden of proof.

Under the Bill, the burden falls on those seeking to develop. Sections 93–96 require institutional recognition of failure before plans are adjusted. Sections 97–98 require developers to prove, through successful project delivery, that upzoning is warranted. In both cases, the default is restriction, and the onus falls on market participants to demonstrate that the restriction should be relaxed.

A planning system oriented toward competitive urban land markets would reverse this burden. The default would be that land may be developed, and the onus would fall on the regulator to demonstrate that restriction is justified. Market signals, including land price differentials, scarcity rents, and evidence that zoning is binding, would function not as inputs to discretionary assessment but as triggers for automatic regulatory relief. The cost of initiating change would fall on the system, not on the developer.

This is the distinction between proof-by-construction and proof-by-price. Proving a development works is expensive: it requires capital, risk, time, and project-specific engagement with the planning system. Proving that prices reflect scarcity is cheap: it requires monitoring, data, and an independent assessment function. A system that relies on the former will always under-supply entry, because the cost of demonstrating entitlement exceeds the cost of waiting. A system that relies on the latter creates credible threat of entry at low cost and at scale, because the diagnostic work is done by market signals, not by project-specific capital deployment.

At the site level, the developer initiates by demonstrating that a price differential exists, which is a low-cost, objective threshold. But once that threshold is met, the logic inverts. Requiring development to prove that zoning is appropriate is economically the inverse of what competitive land markets require. Competitive markets require zoning to prove that restriction is appropriate, and where it cannot, to yield.

***Table 9.*** *Summary of the inversion across both scales*

| | Bill's approach | CLM approach |
|---|---|---|
| **Default position – system level** | Restriction; development must be justified | Development; restriction must be justified |
| **Default position – site level** | Restriction; development must be justified throughout | Development presumed; developer proves scarcity exists (cheap); restriction must then be justified |
| **Burden of proof** | On developer throughout (prove project, then persuade council) | On developer initially (prove scarcity, cheaply); then shifts to regulator to justify restriction |

| | Bill's approach | CLM approach |
|---|---|---|
| **What triggers change** | Proof that development works (site) or institutional recognition of failure (system) | Proof that regulation creates scarcity (site) or evidence that markets are not competitive (system) |
| **Cost of triggering** | High (capital deployment, consent process, political negotiation) | Low (price evidence, independent confirmation) |
| **Nature of response** | Discretionary, negotiated, partial | Automatic, proportional, comprehensive |
| **Developer agency** | Initiates process; council decides outcome and scope | Initiates process, elects mechanism; panel confirms evidence only |
| **Infrastructure role** | Precondition (gate) | Delivery problem (not a veto) |
| **Who benefits from delay** | Incumbent landowners (option value preserved) | No one (threat of entry collapses option value) |
| **Competitive pressure** | Absent (entry is too costly and uncertain to discipline prices) | Present (credible threat of entry at low cost and at scale) |

## Implications for the Statutory Architecture

It is accurate to say that sections 93–98 introduce procedural agility relative to the RMA. They make the system less brittle, reduce the cost of correction, and create new developer-initiated pathways. These are genuine improvements that should not be understated.

But procedural agility within a system that places the burden of proof on developers, gates entry on discretionary consent, and conditions development on infrastructure readiness is not competitive land release. It is a more flexible version of the same rationing logic.

If policymakers treat sections 93–98 as sufficient to deliver competitive urban land markets, further reform may be deferred on the basis that the necessary mechanisms are already in place. The analysis in this paper suggests that conclusion would be mistaken. These provisions address a real problem, the rigidity of plan-led systems, but they do not address the deeper structural problem identified in Part Three: that the planning system defines sufficiency volumetrically rather than competitively and therefore permits formal compliance to coexist with persistent scarcity.

What would be required to convert the Bill's responsive planning provisions into genuine agile land release? At minimum, four things: scarcity rents would need to be treated as evidence of regulatory failure; an independent assessment function would need to confirm when scarcity is present; automatic regulatory relief would need to follow at both site and system level, proportional to severity; and infrastructure would need to be reframed as a delivery and financing problem rather than a precondition for development. These are precisely the four elements identified in Annex B as the minimum viable statutory hook for

competitive land markets. The gap between what sections 93–98 currently do and what agile land release requires is the gap that Annex B is designed to close.

# Annex D: Defining Competitive Urban Land Markets in the Planning Act

## Purpose

This annex sets out a proposed statutory definition of "competitive urban land market" for inclusion in the interpretation section of the Planning Act 2025, together with an interpretive provision that gives the definition operational content. It explains why both components are necessary and why the definition must be anchored in primary legislation rather than left to national direction.

## The problem: a concept without legal precedent

### Why definition matters

"Competitive urban land markets" is a new concept in New Zealand's legislative architecture. It has not previously been legally defined. While the term appears in the Government's Going for Housing Growth programme and has been referenced in ministerial speeches and Cabinet papers, it has no settled statutory meaning.

This matters because concepts that enter primary legislation without clear definition are interpreted not by reference to their economic origins or policy intent, but by reference to the framework of the statute itself. Courts, councils, and regulators will give the term whatever meaning the Act's text and structure support. If the definition is vague, aspirational, or delegated to subordinate instruments, it will be shaped by the very institutions whose behaviour it is intended to change.

### How the concept was lost in the NPS-UD

New Zealand has recent experience of this problem. The concept of competitive urban land markets was originally part of the policy development toward affordable, productive, and competitive urban cities. However, officials advancing that agenda lost the governance struggle against officials responsible for planning system stewardship that championed the status quo and consequently favoured a concept more consistent with existing planning logic.

The competitive land market framing was subsumed within "well-functioning urban environments" in the National Policy Statement on Urban Development.[27] It was not outranked by an alternative objective; it was absorbed into one, dissolved as a single ingredient in a multi-criteria concept that the planning system could satisfy without ever

[27] Ministry for the Environment and Ministry of Housing and Urban Development, "National Policy Statement on Urban Development 2020," Ministry for the Environment, 2022, 10–11, https://environment.govt.nz/acts-and-regulations/national-policy-statements/national-policy-statement-urban-development/, see Objective 1 and 2 as well as Policy 1.

delivering competitive market conditions. This opened the door to two distinct forms of degradation, the mechanisms of which are visible in the NPS-UD's own structure.

## The architecture of the NPS-UD makes CLM ineffectual

How the NPS-UD displaced CLM can be seen in the relationship between its objectives and policies. Objective 2 references competitive markets directly: "Planning decisions improve housing affordability by supporting competitive land and development markets." In isolation, this appears to embed the CLM concept.

But Objective 1 establishes the overarching frame: "well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future." It is Objective 1, not Objective 2, that organises the operative machinery of the instrument.

Policy 1 is where the real damage is done. It gives operative content to "well-functioning urban environments" by specifying six criteria that such environments must, as a minimum, satisfy. Competitive markets appears as just one criterion among six, at paragraph (d): well-functioning urban environments "support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets." This sits alongside criterion (e), which requires support for greenhouse gas emissions reductions, and criterion (f), which requires resilience to climate change.

Critically, while Policy 1 gives detailed operational explication to "well-functioning urban environments," it gives none to the competitive land market concept itself. The term receives no definition, no structural conditions, no failure test, and no interpretive provision specifying what competitive operation actually requires.

The result is that "well-functioning" has operative meaning and CLM does not. A council applying Policy 1 knows what well-functioning demands because the instrument tells it; it has no equivalent guidance on what competitive market conditions require, and so defaults to whatever interpretation is consistent with existing planning logic.

## Two forms of degradation

The absence of any operational definition for CLM within this architecture produced two distinct forms of degradation.

First, "well-functioning" was interpreted through the lens of planning adequacy: sufficient capacity to meet projected demand, assessed against modelled Housing and Business Assessment figures, and managed through staged or sequenced land release. That interpretation is consistent with the statutory text, which did not define the competitive market structure the original CLM concept was meant to describe. The result is a planning system that can claim compliance with the policy objective while scarcity rents persist.

Second, and perhaps more corrosively, "well-functioning" was colonised by objectives unrelated to urban market performance. Because competitive markets must be weighed

against emissions reduction and climate resilience within the same definitional frame, a council can argue it is pursuing well-functioning urban environments while actively constraining land supply for climate or compact-form reasons. The NPS-UD's own architecture treats those as co-equal elements of the same concept.

Emissions reduction, environmental quality standards, compact city form, and urban design aspirations were loaded into the concept until it became a vehicle for every policy goal the planning system wished to advance. Some formulations of "well-functioning" do include references to competitive land markets or affordability, but these sit alongside and are weighed against the full range of non-urban objectives.

The effect is that urban performance objectives (affordability, cheap and fast transport, freedom to locate, competitive land supply) are either reinterpreted to mean something other than their economic content, or made ineffectual by being ranked below what are in reality constraints on urban development rather than objectives of it.[28]

Emissions reduction illustrates both failure modes. It is clearly not an objective of urban performance. But it may not be a legitimate constraint on urban form either. The Emissions Trading Scheme already internalises the carbon externality through price. Where carbon is priced, households and firms face the cost of emissions in their location, transport, and building decisions. The planning system's role is then to anticipate how people will want to live as carbon prices rise, which is demand forecasting, not emissions planning. Layering planning constraints on urban form to separately pursue emissions reduction duplicates what the price mechanism already does, while restricting the land market competition that competitive urban land markets require.[29]

When constraints are treated as objectives, the system optimises for the constraint rather than the outcome. The planning system begins to pursue compact form, environmental amenity, or carbon reduction as ends in themselves, and urban performance (especially housing affordability and key urban objectives underpinning productivity) becomes subordinate or invisible.

---

[28] Bertaud explains the purpose of cities (i.e. deep labour markets) and the key objectives of planning for cities to increase and maintain productivity. He also clarifies the distinction between objectives and constraints and the serious costs getting the distinction wrong has for cities and societies. See Alain Bertaud, *Order without Design: How Markets Shape Cities* (MIT Press, 2019), 1, 27–29, 48–49.

[29] The distinction matters economically. If carbon is correctly priced through the ETS, then carbon-intensive location and transport choices are already more expensive. Consumers and developers internalise that cost in their decisions. Planning restrictions that additionally constrain urban expansion or mandate compact form to reduce emissions are double counting the externality. They impose a second cost (restricted land supply, reduced substitutability) on top of the first (the emissions price), without additional environmental benefit. The effect is to restrict competition in the land market for a purpose the price mechanism has already addressed. And if there are problems in the ETS resulting in carbon being underpriced relative to social cost, that deficiency cannot reasonably be remedied through town planning. At best, it would provide a small emissions benefit at tremendous cost to competitive urban land markets. At worst, it would provide no benefit at all as consumers shift to electric vehicles. Being fit-for-purpose in a world of higher carbon prices is a legitimate planning consideration; using urban form regulation to independently reduce emissions is not, because the instrument already exists and the planning overlay distorts the market without commensurate gain.

## How the NPS-UD allows planners not to deliver competitive land markets

The wording of Policy 1(d) compounds the problem. It does not require councils to "achieve" or "enable" competitive markets. It requires them to "support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets."

This is a mitigation framing, not an achievement obligation. The competitive operation of land markets is treated as something planning might harm and should try not to harm too much, rather than something the planning system is positively required to deliver. That is a weaker obligation than any of the other Policy 1 criteria.

The competitive land market concept was not outranked by well-functioning urban environments; it was subsumed within it as one ingredient among several, losing its independent normative force entirely.

## Not a one-off failure: the structural tendency of planning system stewards to subvert system change

This is not merely a drafting failure. It reflects a structural tendency in planning systems, and among the officials and planners who steward them, to absorb market-oriented concepts into non-market frameworks. Once absorbed, the stewards of the system, whose professional norms and institutional incentives are shaped by the existing paradigm, write national direction that is antithetical to the original policy intent. The concept is not merely diluted; it is actively repurposed.

This creates an additional challenge. When novel concepts like competitive urban land markets are proposed for inclusion in national direction, officials resist on the grounds that the concept is too significant for secondary law and should be in primary legislation. But if the opportunity to embed it in primary legislation has already passed, secondary law becomes the wrong vehicle for the policy intent, and the concept has no home. The result is that transformative ideas are excluded from primary legislation for lack of definition, excluded from national direction for being too significant, and ultimately excluded altogether.

## Why CLM must be defined in primary legislation

Because competitive urban land markets underpins the modus operandi of the new planning system, its definition and operative meaning must be in primary legislation. It cannot be left to the same national direction process that replaced it with "well-functioning urban environments" in the first instance.

Any concept that enters the statute without a clear, economically grounded definition will be redefined by the institutions that interpret it. Officials and planners will define it in terms that align with their existing objectives, methods, and professional norms, not the competitive market logic the concept was intended to embed.

And courts will interpret it not by reference to its economic origins or policy intent, but within the framework the Act itself provides. If the Act does not provide a framework that gives CLM clear and independent meaning, courts will read it through whatever other interpretive material the statute offers. If the broader Act follows established planning logic, CLM cannot prevail against that logic. It will be subsumed within, or interpreted consistently with, the paradigm it was designed to displace.

If "competitive urban land markets" follows the same path (entering the statute as an undefined aspiration, with its content left to national direction) the risk is that it too will be absorbed into the existing planning paradigm rather than transforming it.

### The method the NPS-UD got right, applied to the right concept

Ironically, the NPS-UD demonstrates exactly the right method for embedding a novel concept in law: define it at the objective level, then give it operational content through a detailed provision that specifies what the concept requires in practice. The NPS-UD did this for "well-functioning urban environments" but not for competitive land markets.

The definition and interpretive provision proposed in this Annex follow the same method, but apply it to the concept the NPS-UD left undefined.

## The proposed definition

The proposed definition has two tiers: a *core definition* suitable for the interpretation section, and an *interpretive provision* that specifies the structural conditions required for competitive conditions to hold.

### Core definition

> "Competitive urban land market" means a land market in which an abundant supply of developable urban land prevents urban land prices at the margin of urban expansion and urban intensification from materially and persistently exceeding the costs of bringing land from its next best alternative use into its urban use under competitive conditions.

This definition does several things simultaneously. It anchors the concept in observable price discipline rather than volumetric capacity. It requires abundance, a deliberate departure from the "sufficient" or "enough" language of previous instruments, which embeds forecast-based rationing rather than competitive entry. It is neutral between expansion and intensification, requiring contestability at both margins. And it ties the test to competitive conditions, a term with established economic meaning that the interpretive provision then specifies.

## Interpretive provision

For the purposes of this Act, competitive conditions require that:

(a) *Legal availability:* development capacity is legally enabled and available for immediate use, and is capable of being developed without reliance on projected demand, forecast uptake, further discretionary plan changes, sequencing decisions, or infrastructure commitments beyond those reasonably capable of being delivered;

(b) *Economic substitutability:* development opportunities are enabled in locations of high demand, or enabled by economically substitutable land for that high-demand, including both urban intensification and urban expansion;

(c) *Simultaneity:* multiple substitutable development opportunities are enabled concurrently rather than sequentially, such that supply is not rationed in staged or pre-determined tranches that hinder economic substitutability; and

(d) *Credible threat of entry:* alternative supply can enter the market at scale in a manner that minimises the option value of holding land out of development, thereby materially reducing the economic incentive to delay development,

such that the competitive conditions in paragraphs (a)–(d) are not met where sustained price differentials (urban land prices materially and persistently exceeding the opportunity cost of land in its next-best alternative use, whether rural or urban), other than those arising from regulatory measures necessary to internalise material externalities, persist due to regulatory constraint, or where market participants reasonably expect such differentials to re-emerge through discretionary regulatory action.

## Why the interpretive provision is necessary

The core definition alone, even with the word "abundant" and the price discipline anchor, can be gamed. New Zealand's planning history demonstrates that qualitative capacity claims are routinely used to assert compliance with housing supply objectives while scarcity rents persist. A council can point to zoned land, modelled capacity, or enabled intensification and claim abundance, even where that capacity is sequenced, infrastructure-gated, displaced to low-demand locations, or otherwise unavailable in practice.

The interpretive provision closes these known failure modes by specifying the structural conditions that competitive conditions require:

- **Legal availability** prevents phantom capacity. Development rights must exist now and be capable of activation without further discretionary approvals, forecast-based gating, or infrastructure commitments that function as a veto. This directly addresses the practice of enabling capacity on paper while deferring its practical availability through plan changes, sequencing decisions, or capital programming. It also embeds an anti-volumetric principle: capacity must be legally capable of being developed, but not limited to what is projected or expected to be developed. This rejects the forecast-led sufficiency model that has characterised previous instruments.

- **Economic substitutability** prevents capacity dumping. Supply must be enabled where people actually want to live, or in locations that are genuine economic substitutes for high-demand areas. Enabling capacity only in peripheral, low-accessibility, or low-amenity locations does not create competitive pressure on land prices in areas of genuine demand. This condition requires that both intensification and expansion are enabled as substitutable margins.

- **Simultaneity** prevents rationing through sequencing. Staged or tranched land release preserves scarcity by controlling the timing and volume of entry. This is one of the most common and least visible mechanisms by which planning systems maintain land price inflation while appearing to enable supply. The provision permits staging only where tranches are large enough that they do not hinder economic substitutability, acknowledging that some operational staging may be necessary for infrastructure coordination without allowing it to function as rationing.

- **Credible threat of entry** addresses the deepest structural condition for competitive markets: the option value of holding land out of development. In urban land markets, landowners face a choice between developing now and waiting. Where regulatory settings restrict future entry, waiting is rewarded. The option value of holding land rises, land banking becomes rational, and scarcity rents persist even where some development capacity exists. Competitive conditions require that alternative supply can enter at sufficient scale to minimise this option value, making delay economically irrational.

## The failure test and expectations anchor

The final clause of the interpretive provision does two critical pieces of work.

First, it establishes a failure test grounded in observable price signals. The competitive conditions in paragraphs (a)–(d) are deemed not to be met where sustained price differentials attributable to regulatory constraint persist. This means that structural compliance cannot be claimed on paper if price outcomes indicate scarcity. The test is outcome-based, not input-based. It explicitly excludes price differentials arising from regulatory measures necessary to internalise material externalities, so legitimate environmental or safety regulation is not counted as a competitive failure.

Second, it embeds an expectations anchor. Competitive conditions are also not met where market participants reasonably expect scarcity-inducing differentials to re-emerge through discretionary regulatory action. This addresses a well-documented feature of urban land markets: they tend naturally toward uncompetitive outcomes. Land is spatially fixed, entry is capital-intensive, infrastructure is path-dependent, and political economy favours incumbents who benefit from constraint. Because markets price expectations, not just current conditions, scarcity rents can persist even after reforms are announced if participants believe those reforms will be reversed. The expectations anchor requires that regulatory settings be structured so that market participants do not anticipate the reintroduction of scarcity through discretionary action.

## Why this must sit in primary legislation

There are three reasons the definition and interpretive provision should be in the Act itself rather than in national direction.

First, statutory definitions are interpreted by reference to the statute's own framework. If the definition is clear and structurally specified in primary legislation, courts will apply it as written. If the concept is left undefined or defined only in subordinate instruments, it will be interpreted through whatever lens the broader statute provides, which, in a planning act, will default to planning adequacy logic.

Second, national direction is vulnerable to dilution. Ministers change, priorities shift, and national policy statements are revised through processes that do not require parliamentary scrutiny. A concept as foundational as competitive urban land markets should not depend on the policy preferences of any particular government. Embedding it in primary legislation provides the institutional durability that the concept itself requires, consistent with the expectations anchor in the definition.

Third, the planning system's historical pattern is to absorb new concepts into existing paradigms rather than to transform practice. "Sustainable management," "well-functioning urban environments," and "sufficient development capacity" were each intended to drive meaningful change. Each was interpreted in ways that preserved existing planning logic, or, worse, was colonised by objectives (many actually constraints, but mislabelled and misapplied) unrelated to the concept's original purpose. If competitive urban land markets is to mean something different, if it is to genuinely shift the system from rationing to competition, it must be defined with enough precision that it cannot be quietly redefined into something compatible with the status quo, and it must be structurally resistant to the loading of unrelated objectives that would confuse constraints on urban development with the objectives of urban performance.

The proposed definition achieves this by combining an intuitive economic principle (abundant supply prevents prices from exceeding costs under competitive conditions) with a structurally specified interpretive provision that closes the known pathways through which the concept could be gamed, diluted, or reabsorbed into the planning adequacy paradigm it is designed to replace.

# References


Angel, Schlomo. *Planet of Cities*. Lincoln Institute of Land Policy, 2012.

Bertaud, Alain. *Order without Design: How Markets Shape Cities*. MIT Press, 2019.

Blaschke, Benno. *Submission on Going for Housing Growth (Pillar 1) Discussion Document: Freeing up Land for Urban Development*. Submission. https://www.nzinitiative.org.nz/reports-and-media/submissions/submission-going-for-housing-growth-pillar-1-freeing-up-land-for-urban-development/.

Blaschke, Benno A., Goeff Cooper, Eric Crampton, et al. *A New Approach to Funding and Financing Our Cities: How We Supply Infrastructure Makes Housing Unaffordable*. Policy Paper No. 003. University of Auckland, Economic Policy Centre, Urban and Spatial Economics Hub, 2021. https://www.auckland.ac.nz/assets/business/about/our-research/research-institutes-and-centres/Economic-Policy-Centre--EPC-/USEPP003.pdf.

Environment Court, Judge Jackson J. "Bunnings Ltd v Queenstown Lakes District Council NZEnvC 59." 2019. https://www.waimakariri.govt.nz/__data/assets/pdf_file/0021/137820/EVIDENCE-11-FS63-LEGAL-5798483-Bunnings-Ltd-v-Queenstown-Lakes-District-Council-2019-NZEnvC-59.pdf.

Hughes, Samuel. "Urban Expansion in the Age of Liberalism." Works in Progress Issue 22, January 2026. https://worksinprogress.co/issue/urban-expansion-in-the-age-of-liberalism/.

New Zealand Government. "National Policy Statement on Urban Development Capacity (NPS UDC)." Ministry for the Environment, 2016. https://environment.govt.nz/publications/national-policy-statement-on-urban-development-capacity-2016/.

New Zealand Government. "National Policy Statement on Urban Development (NPS UD)." Ministry for the Environment, 2020. https://environment.govt.nz/acts-and-regulations/national-policy-statements/national-policy-statement-urban-development/.

Planning Bill, 235–1, Parliamentary Counsel Office: New Zealand Legislation (2025). https://www.legislation.govt.nz/bill/government/2025/0235/latest/LMS1035807.html.

The New Zealand Productivity Commission. *Better Urban Planning*. Wellington, NZ, 2017. https://www.treasury.govt.nz/publications/better-urban-planning-productivity-commission-inquiry-material-2015-2017.