

Section 42A report overview:

CHAPTER 5 Living Environment

1.0 Introduction

- 1.1 This report considers submissions regarding the provisions of Chapter 5 Living Environment. The scope of the report relates to submissions received on Chapter 5 matters, including key related definitions in Chapter 1, Chapter 5 appendices, and key provisions on the plan maps.
- 1.2 There were many submissions and further submissions received on Chapter 5. The submissions received were diverse and sought a range of outcomes; including for example: support for many provisions, as well as a range of amendments to related definitions, policies, rule provisions including the activity status of specific activities, and corrections of inaccuracies and the removal of duplicated provisions). Chapter 5 is also subject to a number of consequential amendments arising from submissions to the whole of the PDP and other chapters. I have noted consequential amendments in the amended text of Section 4 of my report, to the extent possible at the time of writing my report.
- 1.3 In introducing this report I also note that, a Section 42A hearings report was prepared for Chapter 5 in mid-2013, following the close of submissions and further submissions on the PDP. Chapter 5 was scheduled to be the first chapter to be heard by the then appointed PDP hearings commissioners. However, this was prior to Council commissioning two independent reviews of the PDP in October 2013 in response to the public concern expressed about many aspects of the plan. As a result of the modified PDP process adopted by Council following the review recommendations, the previous Section 42A report prepared for Chapter 5 has been revisited and revised (i.e. superseded). From a process perspective, the previous s42A report and previous submitter meetings, the recommendations of the independent review, and the submitter engagement undertaken as part of the SEV process, have been considered and are reflected in the new Section 42A report as I consider appropriate.

2.0 Report Structure

- 2.1 The first two sections of my Section 42A report (Sections 1 and 2) provide an introduction to the report, its scope and key submission issues, and outline the key statutory and other relevant considerations.
- 2.2 Section 3 identifies the matters raised by submissions, provides an assessment of submission issues, my recommendations to accept, accept in part, or reject each submission point (including further submissions), and outlines any recommended amendments to the PDP as a result of the submissions.

- 2.3 The submissions analysis (and recommendations) in Section 3 is structured around eleven main topic areas, being:
- General/whole of Chapter 5 matters
 - Definitions
 - Policies (excluding specific topics)
 - Rules and standards (excluding specific topics)
 - Subdivision
 - Waikanae North Development Zone
 - Ngarara Zone
 - Removal/re-siting/demolition of buildings
 - Waikanae Beach submissions
 - Matters related to Appendices (excluding specific topics)
 - Matters related to Plan Maps including Rezoning Requests.
- 2.4 For efficiency, and in accordance with Clause 10(3) of Schedule 1 to the RMA, the evaluation of submissions under each topic area has been undertaken on both an issues and provisions-based approach, as opposed to a submission by submission approach.
- 2.5 Section 4 of the report contains a marked up version of the amendments recommended to the Chapter 5 provisions, as well as amendments to specific Definitions in Chapter 1, Chapter 5 appendices, and the plan maps. It also outlines the provisions recommended to be relocated from Chapter 5 to a new Chapter “2A – District-Wide Policies”, intended to follow Chapter 2 (Objectives).
- 2.6 Section 5 of my report contains a summary table of all the submissions (including further submissions) and the recommendations in relation to each submission point considered as part of the report.
- 2.7 The report also has several appendices which contain specific information and expert advice relevant to the assessment and recommendations of submissions made on Chapter 5.

3.0 Relationship to PDP Chapters

- 3.1 Chapter 5 (Living Environment) contains provisions that apply to the PDP’s four residential (or “living”) zones: the Residential Zone; Beach Residential Zone; Waikanae North Development Zone; and Ngarara Zone.
- 3.2 Chapter 5, and therefore my report, has relationships with multiple other PDP chapters, particularly those with provisions which apply across zones, eg, Chapters 1 (Introduction & Interpretation), 2 (Objectives), 3 (Natural Environment), 4 (Coastal Environment), 9 (Natural Hazards), 10 (Historic Heritage), 11 (Infrastructure) and 12 (General Provisions). These chapters all have provisions which could be relevant to any subdivision for land use activity proposed within the four living zones. My report

highlights these relationships where relevant to the submission issue analysis and recommendations.

- 3.3 Chapter 5 implements multiple objectives in Chapter 2, for example: 2.1 – Tāngata Whenua, 2.3 – Development management, 2.11 – Character and amenity values, 2.12 – Housing choice, and 2.19 – Urban Design. My report references key objectives where they are relevant to the assessment of submissions and my recommendations.
- 3.4 There are also a number of PDP appendices relevant to the Chapter 5 provisions – particularly the Chapter 5 specific appendices, but also those with a more general application across the plan, eg Appendix 3.1 Development Incentives.
- 3.5 The report highlights a number of consequential amendments I have recommended to Chapter 5 as a result of amendments recommended in other Section 42A reports. These amendments are varied and can relate to plan-wide issues (such as the deletion of policy explanations and summary rule tables), or are to help ensure consistency of policies, rules and standards between PDP chapters. I have identified these changes in the comments boxes in the amended text provided in Section 4 of my report.
- 3.6 I also note that since my report was prepared, the Chapter 4 (Coastal Environment) report writer has advised of several additional submission points coded to Chapter 4, that are similar in nature to the submissions I have considered on Chapter 5 requesting that the Te Horo coastal yard setbacks, as provided for in the operative District Plan, be reinstated within the PDP provisions. Sections 3.3.1 ‘General concerns about Chapter 5 provisions’ and Section 3.6.8 ‘Rule 5A.1.8’ (particularly pages 214-215) of my s42A report address this matter and recommends its reinstatement into the PDP. However, for completeness, I would like to note that the Chapter 4 submissions requesting this same/similar relief include:
- 582 – S Chetwin
 - 586 – F & C Wafer
 - 637 – S J Baird
 - 638 – P Murray
 - 641 – B & M Scott
 - 669 – M Williams
 - 762 – L Johnston
 - 769 – D Church & M Veneer.

4.0 Key submission topics / issues

- 4.1 As already mentioned, a significant number of submissions were received on Chapter 5, spanning a range of different matters and in relation to numerous Chapter 5 provisions.
- 4.2 Without derogating from the details of the submissions, which are addressed in Section 3 of my report, I consider the following to be key submission topics / issues:

- The general approach to managing urban growth in the District, including provision for new residential development;
- The use of the “Living Environment” concept (as opposed to “Living Zones”), and the mix of District-wide policies and Living Zone specific policies within Chapter 5;
- The workability and alignment of key defined terms in Chapter 1 with the Chapter 5 policies and rules;
- The workability of Chapter 5 policies and rules whilst ensuring their alignment with the over-arching objectives in Chapter 2, and their integration with other PDP provisions;
- The workability of the permitted activity rule provisions for residential activities in the Living Zones, including:
 - The default permitted activity rule provisions and the clarity of standards that apply to all permitted activities;
 - The permitted activity provisions for new buildings and structures, including setbacks, yards, height, coverage, outdoor living areas, fences etc;
 - The provisions (including policies and rules) for activities such as minor flats and home occupations;
- The provisions for non-residential activities in the Living Zones;
- The rules for managing subdivision in the Living Zones, including activity status, minimum and average lot sizes, other standards, and the provisions for specific precincts within the Living Zones;
- The identification of specific special character areas and the application of a new Beach Residential Zone to these areas in order to help maintain character and amenity values. This includes the extent of the zone as it applies to specific coastal settlements (for example, the Otaki Beach area), as well as the workability of the policies, rules and the special character guidelines in Appendix 5.2;
- The zoning of the Waikanae Beach area;
- The provisions (including policies and rules) for the removal, relocation and re-siting of buildings in the Living Zones;
- The provisions, particularly rules, for managing specific residential development areas, particularly within the Waikanae North and Ngarara Zones.

5.0 Matters resolved & still to be resolved

- 5.1 I note that as part of the work undertaken in 2013 in response to submissions received on Chapter 5, a number of meetings were held with submitters. The notes and actions from these meetings have been considered as part of my Section 42A report preparation. There have also been a number of planner drop-in sessions and submitter meetings held as part of the more recent Submitter Engagement process during which Chapter 5 submission issues have been discussed and clarified. A number of amendments have been recommended in the Section 42A report in response to submissions and submitter meetings, and these are reflected in the recommendations in my report. There are however no specific agreements as provided for under clause 8AA of the RMA that I am aware of that relate to Chapter 5.
- 5.2 I note that **Submitter 451 (R Crozier and J Allin)** strongly supports the recommendation in my s42A report to reintroduce the coastal yard standards from the operative District Plan for the Residential Zone at Te Horo, Peka Peka Beach and Waikanae Beach.
- 5.3 **Submitter 457 NZ Transport Agency** has advised that the relief the Transport Agency seeks in terms of transport issues can be appropriately captured in Chapter 12, and accordingly withdraws its submissions on Policy 5.2 'Future Urban Structure Plan Areas' (Submissions 457.22 and 457.23). The submitter has also advised that in terms of their submission points on Policy 5.29 'Ngarara Zone structure plan' (Submissions 457.25 and 457.24), that they have no objections with my assessment and recommendations in Section 3.9.2 (pages 306-308) of the Section 42A report.
- 5.4 **Submitter 441 Greater Wellington Regional Council** has advised that they support the recommendations in my report in response to their submissions on Policies 5.1, 5.4, 5.5, 5.10, 5.18, 5.19 and 5.28, and request that the recommendations be accepted as they support the purpose and principles of the RMA and give effect to the RPS, specifically policies 6, 10, 29 and 30. In their submission, Submitter 441 raised concerns about how stormwater management is addressed in the PDP, including situations where the permeable surface permitted activity in the Chapter 5 rules is breached. The submitter has advised that they are satisfied that all residential activities, in addition to meeting the permitted activity standards in Chapter 5, would also have to comply with the permitted activity standards in Chapter 11 Infrastructure, including those regarding stormwater systems providing for hydraulic neutrality. The submitter therefore advises that they support the recommendations on this matter in paragraph 831 of the Section 42A report.
- 5.5 However, Submitter 441 has advised that they do not agree with the recommendations in my report in response to their submission point (Submission 441.22) regarding rule complexity. In particular, they expressed concern that the rule structure is unclear what status an activity would be if it breached a permitted activity standard. In my report (paragraph 816) I state that "the activity status that will result from a breach under Rule 5A.1 will depend on the standard breached. Some standards (where breached) require consent as a controlled activity, others default to discretionary or non-complying. Given the potential complexity of trying to describe this for all activities, I

do not consider it appropriate to further illustrate this under Rule 5A.1 (or 5A.3).” Although I acknowledge the submitter’s concern, which is related to the structure of the rule tables across the PDP, I have not changed my opinion on the matter and as a result have not recommended any additional amendments.

- 5.6 I note that **Submitter 451 (FS 29) Rob Crozier and Joan Allin** presented evidence and submissions to the General/Plan-Wide hearing which is relevant to the whole of the PDP and that the submitter specifically requested it be considered for each hearing. I would like to note that I have considered the evidence as it relates to Chapter 5 and provide comment as follows.
- 5.7 The submitter reiterates a number of issues outlined in their submissions concerning the whole of the PDP, such as: its structure and complexity, poor drafting and lack of attention to detail, defined terms and the use of italics, use of clear and consistent language, use of appropriate default rules and legally valid provisions. I note that in response to the submissions made by Submitter 451 – both on specific Chapter 5 provisions, but also on these wider plan matters, that I have recommended a number of amendments in response to the concerns expressed. These include for example:
- replacing references to “Living Environment” to “Living Zones”
 - the relocation of the District-wide policies in Chapter 5 into a recommended new chapter “2A”, which follows Chapter 2 Objectives (and which is intended to also contain District-wide policies relocated from other chapters)
 - multiple amendments to policies, rules and defined terms to improve clarity and consistency
 - amendments to the wording at the beginning of the permitted activity rules (5A.0 and 5A.1) to make it clearer that all relevant standards in all chapters need to be met in order to be a permitted activity
 - clarifications to the permitted activity rules and standards, including changing some permitted activities back into standards.
- 5.8 The range of amendments I have recommended to Chapter 5 in response to Submitter 451 are discussed in my s42A report and are identified in the amended PDP text in Section 4 of my report. I note that since the SEV was made available in June 2015, I have further considered submissions on Chapter 5 and have recommended further amendments and refinements, some of which help further address some of Submitter 451’s concerns.
- 5.9 I note that in paragraphs 127 and 128 of their evidence statement, Submitter 451 supports many of the above changes (as they were reflected in the SEV) however in their opinion, many of the changes do not go far enough, for example, the amendments recommended to the introductory part of the rule table (5A.0 and the heading of 5A.1) to further clarify that there are also standards in other chapters which will also need to be met in order for an activity to be permitted.
- 5.10 I acknowledge the submitter’s ongoing concerns regarding the PDP’s different structure from the operative District Plan and the challenges this presents plan users in, for example, identifying all the relevant standards applying to an activity across the

plan chapters. As noted above, in response to the submission concerns, I have recommended several amendments to the front end of the permitted activity rule tables in Chapter 5. Submitter 451 has suggested adding a more detailed list of the possible relevant provisions in other chapters, possibly to the beginning of the rule tables. In my opinion further consideration could be given to this matter, which is related to assisting plan navigation, however, it is very much a cross-plan issue. As a result, I have not recommended any further changes to Chapter 5 in relation to this matter as part of this response. However, I note that the matter could be considered by the integration hearing the Panel has indicated it will hold at the conclusion of the 'chapter' hearings.

- 5.11 Submitter 451 also raises a number of issues in terms of the definitions of key terms and their usage in the PDP provisions, including within Chapter 5. For example, "site", "lot", "property", "boundary". Section 3.4 of my report addresses submissions on defined terms that have been specifically allocated to the Chapter 5 hearing. I have however noted in the introduction to this section of my report (paragraph 163) that there are a range of other defined terms that have relevance to the Chapter 5 provisions and which submitters have made comments on. However, because key terms often have relevance across multiple other chapters of the PDP, many terms will be dealt with in the Chapter 1 s42A hearings report. Examples include terms such as, 'building', 'site', 'property', 'boundary', 'development', 'height envelope' etc.
- 5.12 Nevertheless, as part of my s42 report I have accepted that some refinements would help facilitate a clearer understanding of definitions and/or the provisions to which defined terms relate, and I have therefore recommended a number of amendments to key terms and their usage within Chapter 5 to assist clarity and implementation of provisions (for example, the use of terms such as 'site', 'lot' and 'property'). I do however acknowledge there could be further consequential changes to Chapter 5 as a result of other s42A reports and hearings, including that for Chapter 1 which will provide an opportunity for a comprehensive 'mop up' of defined terms.
- 5.13 On page 48 of their evidence, Submitter 451 highlights that the drafting of the standards in terms of the permitted activity rule for home occupations between Chapters 5 (Living) and 7 (Rural) are strikingly different. I acknowledge that there are some differences in the wording of the standards, however I do not necessarily consider this to be problematic given one rule relates to home occupation activities in residential areas and one to rural areas. I also note that as a result of submissions on the Chapter 5 rule (5A.1.12) I have recommended significant amendments to the standards in order to respond to submission concerns in regards to home occupation activities within residential areas.
- 5.14 Submitter 451 has also identified (page 48) that in terms of the permitted activity building height provisions for residential zones, there is no garage exemption, as there is in the current operative District Plan, and as also appears in the PDP's permitted activity rules for the Working and Rural zones. The lack of such an exemption for the Living Zones is deliberate, primarily because in a residential zone a height-in-relation-to-boundary encroachment has the potential to adversely affect people more significantly due to residential densities and how close dwellings and outdoor living areas could potentially be to the encroachment. Such an encroachment could result in

a “no more than minor” or “more than minor” effect on an adjoining property, which would deem the owner to be affected or potentially affected. I have not therefore recommended any further amendments in response to this matter as part of this response.

- 5.15 Submitter 451 raises concerns in relation to the permitted activity fence rule 5A.1.2, particularly in relation to the recommended inclusion of “walls” into the rule, but also in relation to the permeability requirements contained in the rule. I consider the purpose of this rule is to provide for boundary fences as permitted activities, provided they comply with the standards. Firstly, in response to the range of submissions received on this rule, I have recommended significant amendments to the rule (as well as amendments to the policies and the special character design guide in Appendix 5.2) as part of my s42A report. The key changes include simplifying the rule, removing the visual permeability requirements, and amending the height requirements to allow higher fence heights (similar to the operative Plan’s fence provisions). These amendments are discussed in the Rules section of my s42A report (Section 3.6.3, pages 171-176).
- 5.16 In relation to the report’s recommendation to include “walls” within the scope of the rule, I have discussed this matter on page 174 (paragraph 874) of my s42A report. Specifically, I have recommended the inclusion of ‘walls’ in the rule, recognising that the definition of ‘building’ exempts both fences and walls that are less than 2 metres in height (i.e. fences and walls less than 2m would not be considered as buildings and therefore not subject to the rules/standards for buildings). I consider that it is the intent of the permitted activity fence rule to apply to both fences and walls constructed on property boundaries which are not categorised as buildings. The amendment would provide certainty for property owners regarding the status of walls erected on boundaries, as well as fences. However, in terms of scope, I acknowledge that I have proposed it as a consequential amendment in response to the general relief sought by Submission 451.9 Rob Crozier & Joan Allin relating to the definition of ‘building’ and the manner in which the term is used in the permitted activity rules, and Submission 451.5 which requests (amongst other things) that the PDP is revised so that provisions are drafted using clear and consistent language, appropriate provisions are included, ill-considered provisions are removed, default rules are appropriate, provisions are drafted so that unintended consequences will not occur.
- 5.17 However, Submitter 451 has raised a specific objection in their evidence (page 68) to using their submission to provide scope for this amendment because they oppose this rule. However, I have not been able to find any specific objection to this rule (Rule 5A.1.2) in their submission or further submission. After further consideration of this matter, my preference is to retain the recommended amendment to include “walls” in this rule (for the reasons outlined in my s42A report). Without the amendment, walls erected on a boundary (as an alternative to a fence) that are up to 2m in height would be a permitted activity and not subject to any controls, and in front boundary situations or any boundary which adjoins an Open Space Zone, esplanade or access strip, could be 20cm higher than a fence.

- 5.18 Submitter 451 has also noted that they object to the references within the permitted activity rules/standards related to coverage, height envelope and yards to the term “lot”. I note that in response to submissions on Chapter 5 (from this submitter, as well as others), I have recommended a number of amendments to the Chapter 5 provisions as part of my s42A report to try and address submission issues and increase the clarity of the provisions and their implementation. However, I acknowledge that the amendments may still not fully address the submitter’s concerns in terms of their particular property. As a general principle, I consider tying the standards for coverage, height and yards to the term “lot” to be clear, and appropriate for the majority of situations. However, I do acknowledge that potential issues could arise in situations like the submitters where they own two adjoining lots and have built one house across them and therefore use the two lots as one ‘unit’. In my s42A report I have recommended amendments, where I consider it appropriate in terms of clarity and accuracy, to either delete unnecessary references to problematic terms, or to replace terms such as “lot” with a more appropriate reference, eg. ‘site’, ‘property’, etc. At this stage I am not recommending any further amendments, however the use of key terms is an issue I will consider further during the hearing, including the suggestion by Submitter 451 (in paragraph 535 of their evidence statement) to include a specific reference in the plan provisions to provide clarity for situations such as theirs.
- 5.19 For the General/Plan-wide hearing, **Submitter 473 Southcombe Architects** provided a statement of evidence which primarily concerned matters related to Chapter 5 (Living Environment). I would like to note that I have reviewed this evidence and make the following comments.
- 5.20 Firstly, in relation to the Submitter 473’s introductory point in his evidence expressing concern about the lack of problem identification with the existing policy and rules, or analysis of the context for change, I consider that the Section 32 report prepared for Chapter 5 provides an explanation of the key issues and justification for the approach taken. It explains for example, the range of challenges faced, key statutory considerations including the RMA, National Policy Statements (including the NZCPS), the RPS and Proposed RPS, the key operative District Plan provisions. It also highlights the relevance of a number of other plans and strategies, including the Council’s Development Management Strategy, the Subdivision and Development Principles and Requirements, and the results of work completed on for example, special character areas, medium density housing, housing choice and affordability etc.
- 5.21 The development of the Chapter 5 provisions also considered the local outcomes statements developed for specific communities under the LGA, implementation issues communicated by the Council’s resource consents and compliance teams in regards to the operative DP, as well as the significant amount of public engagement undertaken as part of the District Plan Review which commenced in 2008. I have also provided further explanation of plan provisions within the Section 42A report where relevant.
- 5.22 In terms of the submitter’s evidence on specific Chapter 5 provisions, I note that as a result of the submissions received on the policy provisions identified (including the submission by Submitter 473), and taking into account advice from Mr Ian Munro (Council’s urban design expert for PDP matters), I have recommended significant

amendments as part of my s42A report which have addressed, or at least addressed in part, many of the concerns raised by the Submitter 473. I comment as follows on the specific issues raised in the evidence:

- **Policy 5.7 Residential buildings**
 - The submitter objects to clauses 'b', 'd' and 'f' and seeks their deletion;
 - The s42A report recommends multiple wording amendments to Policy 5.7, including 'b', 'd' and 'f' which I consider provide part relief for the submitter's concerns;
 - I have not recommended any further amendments to the policy as part of this response;

- **Policy 5.10 Medium density housing**
 - The submitter objects to clause 'c' and seeks to change the words "an assessment matter" to "a reference", and also objects to the reference to "best practice" in the policy explanation;
 - The s42A report recommends wording amendments to Policy 5.10, however I do not consider the submitter's alternative wording to be appropriate – I consider it appropriate for the Medium Density Housing Guide (Appendix 5.1) to be referred to as an assessment tool;
 - I acknowledge the submitter's point re: the use of the words "best practice" in the explanation; however I note that the explanation is recommended for deletion as a result of the plan-wide s42A report recommendations;

- **Beach Residential Zone description**
 - The submitter objects to the Zone description and submits that it needs to be more accurate or it will become a basis to prevent diversity that is essential to the special character of the area;
 - The submitter also seeks the removal of Rangioru (Otaki Beach South) from the special character area/Beach Residential Zone;
 - The s42A report notes that the zone descriptions are non-statutory parts of the plan, intended to guide plan use and interpretation. I have recommended wording amendments to the Zone description to simplify, reduce its length and make it easier to understand, however I do not think it appropriate for the Zone description to specifically describe each area within the Zone – more descriptive information is contained in the special character guidelines in Appendix 5.2 (and in the character assessment reports prepared for each area which have helped inform the PDP provisions);
 - The s42A report also recommends retaining Rangioru (Otaki Beach South) within the Beach Residential Zone, for the reasons outlined in Section 3.13.6 of my report (specifically paragraphs 1771-1783);

- **Policy 5.11 Residential activities**
 - The submitter objects to clause 'c' and seeks a wording modification as it assumes a consistent local identity at the expense of diversity of the built environment;

- The s42A report recommends a wording amendment to clause 'c' in response to the submitter's concerns which instead focuses the emphasis on new built development relating to local identity, character values and the density of the surrounding residential environment;
- **Policy 5.15 Residential streetscape**
 - The submitter objects to this policy and requests its removal, or modification to remove clauses 'a', 'e', 'g' and 'h';
 - The s42A report recommends multiple wording amendments to the policy in response to the submitters and other concerns – this includes deletion of clause 'a' which requires low and or visually permeable fences (in order to provide consistency with recommended amendments to the permitted activity fence rule); and amendments to clauses 'g' and 'h';
- **Policy 5.20 Private outdoor living courts**
 - The submitter objects to clauses 'e' and 'g', and seeks to delete 'e';
 - The s42A report recommends multiple wording amendments to the policy, including the deletion of 'g', and amendments to 'e' which provide part relief for the submitter's concerns;
- **Policy 5.21 Minor flats**
 - The submitter objects to clause 'a' and seeks its deletion;
 - The s42A report recommends a wording amendment to clause 'a' to insert the words "where practicable" after the words "located behind the primary residential building" – this amendment softens the policy but retains the preference for locating minor flats behind primary residential buildings in order to minimise adverse visual effects;
 - I do however acknowledge the concerns expressed by the submitter and I am open to considering this submission issue further, and whether any further amendment to clause 'a' is appropriate;
- **Policy 5.22 Accessory buildings**
 - The submitter objects to clause 'b' and suggests rewording it to remove the reference to 'dominating' buildings;
 - The s42A report recommends a wording amendment to clause 'b' but retains the reference to "not dominating" the (primary) residential building;
 - I have not recommended any further amendment to this clause as part of this response;
- **Policy 5.23 Special character areas**
 - The submitter objects to the introduction of this policy and seeks its removal, or its modification to remove Rangiora (Otaki Beach South) from its scope;

- The s42A recommends retaining the policy and the Beach Residential Zone at Otaki Beach which includes Rangiuuru (Otaki Beach South) – this matter is addressed in Section 3.5.19 of the s42A report;
- **Policy 5.24 Beach Residential Zone**
 - The submitter opposes the introduction of beach residential special character areas – considers this to be an erosion of existing property rights, and the effects of it when combined with coastal hazard protection areas are particularly punitive. The submitter seeks to delete clauses ‘a’, ‘b’, ‘d’ and ‘e’;
 - I also note that in relation to the reference to coastal hazard protection areas – these provisions have been withdrawn from the PDP;
 - I note that the submitter did not raise any specific points in relation to the clauses within Policy 5.24 in their submission;
 - The s42A recommends retaining Policy 5.24.

5.23 **Submitter 227 V J Limited** has advised in the evidence provided by Mr Ben Addington (from Landlink) that they support the changes recommended in the s42A report to the Waikanae North Development Zone precinct plan and Plan Map 07A, as they are consistent with the submissions made by V J Limited (227) and Waikanae North Limited (286). However, whilst the submitter agrees with these changes, they seek further amendments to the precinct plan boundaries as mapped in order to rectify what they refer to as precinct boundary “discrepancies”, which have resulted from development that has been consented and approved since the private plan change for the Zone was made operative and which has not followed the original precinct plan design.

5.24 In terms of these additional precinct boundary amendments, in my opinion they go beyond the resource consents that are specifically mentioned in the submission (they are more recent); however, I consider that most of the further changes sought do reflect the general submission relief sought by the submitters, i.e. that the precinct plan for the Zone reflects approved and partially implemented resource consents. I consider that the amendments sought to the multiple lots around the perimeter of the Zone which are currently shown as having a split zoning of part Precinct 2 (Perimeter) and part Precinct 4 (Village), to make them all lie within the Precinct 2 area, to be appropriate. I agree with Mr Addington in paragraph 50 of his evidence that the intention of the Precinct 2 area around the edge of the Waikanae North Development Zone, was to avoid, remedy and mitigate adverse effects on existing neighbouring properties through the application of Precinct 2’s lower development limits. In my view the amendments also more effective and efficient in terms of supporting implementation of the Zone provisions; a split zoning for the affected lots would also likely be problematic for the owners of the lots. I would therefore support a further amendment to the precinct plan boundaries to make the affected lots all fall within Precinct 2. Similarly, I agree with Mr Addington’s statement in paragraph 48 in terms of the small area of Precinct 3 (Open Space) currently identified on Lot 23 and would support an amendment to make the entire site Precinct 2.

- 5.25 However, at this stage, I do not agree with the further amendment sought to Lot 17 DP 478686 to change the area identified by Mr Addington from Precinct 5 (Multi-unit) to Precinct 4 (Village). I consider this is a more substantive amendment and is a significant departure from the zoning (and hence type of development anticipated) for this particular area under the approved plan change provisions.
- 5.26 **Submitter 263 (FS125) Maypole Environmental Ltd's** evidence reiterates many of the concerns raised in their submission regarding the PDP's provisions for the Ngarara Zone and the differences in these provisions when compared to the operative District Plan. Their preference is for the PDP to include the Ngarara Zone provisions as a complete, stand-alone package within the plan (without amendment from the operative District Plan), rather than as part of the Chapter 5 provisions and subject to the relevant objectives, policies and rules of the plan (as in the notified PDP).
- 5.27 The submissions received on the Ngarara Zone provisions of Chapter 5 (including Maypole's submission) are addressed in the Ngarara Zone section of my s42A report – Section 3.9 (starting on page 305).
- 5.28 Firstly, I note that Submitter 263 supports the recommendation in my s42A report to retain the two Ngarara Zone-specific appendices (Appendices 5.7 and 5.8) as notified.
- 5.29 However, the submitter raises a number of concerns about the Ngarara Zone provisions provided for in Chapter 5 – both in terms of structure and content – as compared to the operative Plan provisions. I provide the following comments in response.
- Private Plan Change 80, which created the Ngarara Zone and precinct, was set up with a structure which mirrored the structure of the operative District Plan, in order to aid the addition of the Zone into the plan. For this reason, existing operative Plan standards for native vegetation, natural hazards, and heritage for example, were replicated as part of the Ngarara Zone provisions.
 - The structure of the PDP, with cross referencing to relevant provisions in other areas of the plan, is considered to be more efficient and effective than the operative Plan, as for example, there is only one set of provisions relating to natural features, natural hazards, and other district-wide issues.
 - The submitter requests that the operative District Plan provisions be retained as a whole for this Zone within the PDP. However, I note that many of the natural hazards, heritage (eg waahi tapu) and natural environment (eg trees and ecological sites) provisions will undergo significant changes through the PDP hearings processes. These new provisions will represent the most appropriate provisions for these topics, and will be superior to the provisions of the operative Plan. I therefore consider it inappropriate to retain the operative Ngarara Zone provisions, as requested.
 - In terms of development of the zone, the Ngarara Zone has a two-step planning process with the development of a Neighbourhood Development Plan

(NDP) (as a discretionary activity), followed by subsequent subdivision and development of the NDP area as a permitted or controlled activity. This two-step approach has been carried over into the PDP from the operative Plan.

- The NDP sets out the development density, infrastructure and layout of the development area. It also includes a design guide for the particular neighbourhood area, which is based on the principles set out in the structure plan and zone principles (as contained in the Ngarara Zone-specific appendices – Appendices 5.7 and 5.8).
- The development of the NDP is the Council's and community's opportunity to consider all of the issues related to the eventual development of the Ngarara Zone land. The discretionary activity consent application for an NDP may be notified if there are considered to be off-site effects. Development that is consistent with an approved NDP is enabled through a permitted activity status (or controlled status in terms of subdivision, or any non-residential activity, retail or commercial activity not specified as a permitted activity).
- I consider the PDP approach for the Ngarara Zone to be the most appropriate for managing this specific (and significant) urban growth area. I also consider the approach to be more efficient and effective than the operative Plan, and to involve significantly less duplication and unnecessary repetition. I consider that the PDP reflects the Ngarara Zone rule framework from the operative Plan in an appropriate manner, whilst also recognising that some management approaches and planning practice have moved on since the private plan change.
- Whilst I acknowledge the significance of the Ngarara Zone area, the comprehensive structure plan undertaken for it as part of the private plan change process, and the unique way in which subdivision, land use and development are to be undertaken in the Zone, I do not support the submitter's request for a complete stand-alone section within the PDP for the Zone. The Ngarara Zone is identified as a specific zone within Chapter 5, with zone-specific provisions, as well as cross-references to other plan provisions as relevant, and I consider this to be appropriate.
- In terms of the submitter's request that activities in the Ngarara Zone not be subject to any other rules or standards in other chapters of the PDP, I consider it appropriate for all of the provisions of the PDP to be applied, in their most up to date form, at the stage of developing an NDP for a specific area; and then once an NDP is approved¹, for only the Ngarara Zone specific provisions to apply. As part of my s42A report I have recommended a wording change to Rule 5A.0 to this effect. The exemption means that any activity that is in accordance with an approved NDP shall take precedence over any more stringent rule elsewhere in the Plan that might otherwise trigger the need for a

¹ Only one NDP for the Ngarara Zone has so far been approved.

further resource consent. I do not support Mr Hanson's alternative wording suggestion for Rule 5C.0 in paragraph 97 of his evidence.

- I acknowledge Mr Hanson's comments in his evidence (paragraph 90) concerning the Ngarara Zone description and my recommendation to delete paragraphs 4 and 5. He considers these paragraphs pivotal as they introduce the Structure Plan and Neighbourhood Development Plan approach. My recommendation to delete these paragraphs was in response to plan-wide submissions seeking to reduce the length of the PDP. I do not have any objection to recommending the reinstatement of these particular paragraphs to the zone description text, so I have recommended that they be retained as part of this response. However, I still consider it appropriate for the explanation under Policy 5.29 Ngarara Zone to be deleted, which is consistent with the plan-wide recommendations to delete policy explanations across the plan.
- Mr Hanson also suggests (paragraph 85(c) of his evidence) that the explanation to the Ngarara Zone rules contained in Section D.11.1 of the operative Plan (which explains how the rule framework works in the Zone) is critical to ensure clarity and intent when implementing the rule provisions. I will consider this matter further during the hearing, and whether or not further additions to the PDP provisions could provide additional guidance for plan users. However, I do not consider the extent/amount of wording as is provided in Section D.11.1 is necessary for the purposes of the PDP.

5.30 **Submitter 485 Frank & Vicki Boffa** raise an objection to the recommendation in my report to reject their submission which requests a minimum subdivision standard of 500m² for any additional lots in the Manu Grove Low Density Precinct (instead of the minimum 6,000m² lot size provided in the notified PDP). I have considered the statement provided by the submitter and comment as follows.

5.31 As the submitter notes, the PDP has rezoned the Manu Grove area from Rural Zone to a low density residential precinct. A zone change from rural to urban was specifically requested for the area by the submitter during the District Plan Review process.

5.32 The Manu Grove Low Density Precinct is one of four low density housing precincts identified in the PDP. These areas all provide for very low density residential development due to their special values, characteristics and constraints. The zone description (Section 5.2 of Chapter 5) describes the Manu Grove Low Density Precinct as a low density precinct which provides a transition to the rural area north of Waikanae township; it is an area which includes large existing lots characterised by mature vegetation, ecological sites and relatively low built intensity.

5.33 The properties within the Manu Grove Low Density Precinct currently have an average lot size of approx. 1.07 hectares (10,700m²). The lots are subject to significant flood storage and ponding hazards (which I will outline in further detail shortly), and the Nga Manu Bush (Ecological Site K133) ecological site covers an extensive portion of the Precinct. The Manu Grove precinct borders, to the north and west, the Nga Manu

Nature Reserve, and the low density portion of the Waikanae North Development Zone – Precinct 1 (Preserve) and Precinct 3 (Open space).

- 5.34 I understand the reasoning for the zone change for this area in the PDP was to better recognise and provide for the specific characteristics of the Manu Grove area. A rural zoning was considered inappropriate as the lots within the area are serviced with water and other urban services; they are also unsuitable for farming or horticulture due to the extensive ecological site present. A standard residential zoning (with associated rules and standards) was also considered inappropriate, particularly because of the extensive ecological site areas and flood hazards present. Therefore, a special low density precinct (with supporting rules and standards) was applied over the residential zoning to ensure future subdivision and development is consistent with the area's special characteristics. This is consistent with Policy 5.5 Residential Density, clause f) which states that especially low densities will be applied in Low Density Housing precinct areas as transitions between rural and urban environments.
- 5.35 Whilst I acknowledge the submitter's concerns in regards to the relatively large minimum lot size proposed for the precinct area by the PDP, I also consider there to be significant natural hazard (flooding) and natural feature (ecological site: K133 Nga Manu Bush) constraints affecting the two specific properties identified by the submitter (19 and 29 Manu Grove), and indeed the whole of the Manu Grove Low Density Precinct. I have attached a map (Attachment 1 to this response) for the Panel's reference which shows the extent of these constraints. Very few of the 12 sites within the precinct appear to offer much of an opportunity for further subdivision and development.
- 5.36 Given the significant extent of these constraints across the precinct area, I maintain my opinion that it would be inappropriate to amend the subdivision standards as requested to enable subdivision down to much smaller lots – i.e., a 500m² minimum and a 1,000m² average. I consider this would be inconsistent with the actual development potential of the area, and could create an inappropriate landowner expectation that a number of additional lots could be created in this area. It would also be inconsistent with the policies in Chapter 9 (Hazards), eg. Policies 9.10, 9.11 and 9.12, in terms of limiting subdivision and development in areas subject to flood hazard risks (particularly high risk areas such as flood storage areas), and ensuring any newly created lots have flood and erosion-free building sites; and the policies in Chapter 3 (Natural environment), eg. Policies 3.3 and 3.7, which seek to protect ecological sites from inappropriate subdivision and development, and avoid the further fragmentation of these sites.
- 5.37 The map in Attachment 1 shows there are potentially significant Section 106 issues which would need to be considered in detail as part of a subdivision application. An applicant would need to demonstrate that these hazards can be overcome to a sufficient level to satisfy the RMA. This may be possible in some (or all) of the blue coloured ponding areas (depending on the flood depth and mitigation proposed), but it would be unlikely with respect to the flood storage areas (the orange coloured areas). Flood storage areas provide flood water storage either during or after a flood event, and they include land that has been identified as flood prone where loss of storage due

to mitigating measures, or filling, will cause flooding elsewhere. Any proposal for development of these areas (including filling) will need to provide compensatory storage below set ponding levels. Where flood storage areas also sit within the ecological site, it is possible that filling would also result in adverse ecological effects which would need to be considered. I would not recommend any change to the provisions in the absence of detailed flood hazard (and possible mitigation) modelling. I consider this level of assessment would best be undertaken on a case-by-case basis through the consenting process, rather than raising landowner expectations through amending the subdivision standards to allow smaller lot sizes, which may never be realised due to the significant constraints.

5.38 **Submitter 155 Mr D Jessup** presented evidence at the General/Plan-wide hearing that raised several matters relevant to the provisions in Chapter 5. The submitter commented in particular that the rules and standards for Living Zones have detailed prescriptions for the design of residential buildings. For example a residential building that fronts a street must have a main pedestrian ‘front door’ accessed from the street, and garages shall be recessed a minimum 1 metre behind the front façade of a residential buildings and set back a minimum 5.5 metres from any front boundary. The submitter provided this as an example of the extensive catalogue of unreasonable and undesirable rules and standards in the plan, and is of the opinion that whilst there have been a number of revisions and changes, much more pruning and patching is needed.

5.39 Firstly, I would like to re-iterate, that in response to the submissions received on Chapter 5, I have recommended a significant number of amendments to the chapter’s provisions to improve and clarify provisions, and remove unnecessary, or what I consider to be inappropriate, provisions. In terms of the submitter’s comments about front doors accessed from the street and garage setbacks, these are standards in the restricted discretionary rule which provides for Medium Density Housing development. The submitter’s concerns are addressed in paragraphs 1184-1187 of my s42A report. I consider that the nature of Medium Density Housing development including its higher development density and multi-storey building typology requires clear rules and standards, with a higher level of control than standard lower density residential development, in order to ensure adverse effects can be appropriately avoided, remedied or mitigated. I therefore maintain the opinion in my report that these standards are reasonable requirements for medium density housing developments and are consistent with established principles of good urban design and consistent with CPTED (Crime Prevention Through Environmental Design) principles. I have therefore not recommended any further amendments as a result of this evidence.

6.0 Issues I would like to draw to the Panel’s attention

6.1 Eleven submitters made submissions seeking that the “Waikanae ‘Olde’ Beach Area” be identified as a special character area with the Beach Residential Zone provisions of the PDP applied (rather than the general Residential Zone provisions). In my s42A report I have grouped Waikanae Beach-themed submissions together and considered them within Section 3.11 of the report. I note that in my assessment of the submissions, and taking into account advice provided by Council’s urban design

expert, Mr Ian Munro, I have come to a different opinion than that expressed in the previous Section 42A report prepared in August 2013. As a result, I have not recommended any amendments in response to the submissions. I have explained the reasons for my opinion in the s42A report, but in summary my opinion reflects several key concerns including:

- The proposal to rezone the area to Beach Residential affects approximately 368 properties, an area much wider than the properties of the eleven submitters;
- The proposal to rezone the area to Beach Residential was not part of the notified PDP, therefore many property owners within the identified area may be unaware of the proposed change and the implications in terms of the land use and subdivision controls applying to their properties. I consider this raises issues of natural justice that could be considered to run counter to the intent of the RMA.
- A Waikanae Beach ‘community futures’ process is currently underway which seeks to identify a vision for the future of Waikanae Beach. This is likely to include aspirations in terms of future urban development, land use and zoning for the area which are key to the consideration District Plan provisions. The ‘community futures’ process will enable the 11 submitters, and the many other affected property owners within the identified area to participate in the formulation of potential future district plan provisions. I consider it to be good planning practice for such higher-level strategic planning and community consultation processes to inform more detailed land use planning and any associated District Plan provisions.
- Rejecting the submission requests to rezone the area would enable more detailed research and analysis to be undertaken for the area (eg, in terms of character assessment, and commercial development appropriateness and capacity), which alongside the community futures consultation process, would help inform whether any changes to the District Plan provisions are appropriate.

6.2 I note that in response to a number of submissions, including Submitter 451, which concern Rule 5A.1.1 – the default ‘catch-all’ permitted activity rule for the Residential and Beach Residential Zones – I have recommended an amendment to add the word “residential” into the rule wording (refer paragraphs 843-851 of the s42A report). This change effectively limits the scope of the permitted activity default rule to “residential activities” (a defined term) that can meet all the relevant permitted activities, rather than “any activity” (as was notified). I have noted in my report that whilst in I think in practice it would be difficult for non-residential activities to meet the standards and therefore be permitted activities, it could be possible, and this could have the effect of permitting activities that may not be appropriate within the Residential and Beach Residential Zones. Under the amended provisions, any non-residential activity not otherwise provided for, would be a discretionary activity (under Rule 5A.4.1). I do however acknowledge that this is a noteworthy change from the operative District

Plan, which refers to “any activity” which meets the permitted activity standards as being a permitted activity in the Residential Zone.

7.0 Areas in which evidence has led me to recommend further changes

- 7.1 I have reviewed the evidence provided by submitters in advance of the hearings today, and I have the following comments to make.
- 7.2 As I have outlined, the evidence provided by **Submitter 227 V J Limited** has led me to support some further minor amendments to the Waikanae North Development Zone precinct plan boundaries – mainly to better align the zoning of lots in Precinct 2 (the Perimeter) with consented subdivision applications and roading layouts. However, the amendments I support are of a slightly lesser degree than that sought by the submitter in their evidence.
- 7.3 In response to **Submitter 263 Maypole Environmental Ltd**, I also consider that paragraphs 4 and 5 of the Ngarara Zone description that are recommended for deletion in my s42A report could be reinstated. I therefore recommend a further amendment to this effect.
- 7.4 At this stage I am not recommending any further changes to my report, however I maintain an open mind as I hear submissions during the course of this hearing.
- 7.5 Thank you Mr Chair and members of the Panel.

Sherilyn Hinton

23 May 2016

