

## Variation 2

### Right of Reply: Matt Muspratt, Principal Policy Planner KCDC

6 August 2020

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#### Questions and information requests from the Panel:

1. Please provide a copy of the response from Ngāti Toa Rangātira on the draft variation.

Response: Please see **Attachment 1**.

2. Please provide of copy (if available) of response from Ngāti Raukawa on the draft variation.

Response: Please see the memo dated 1 August 2018 within **Attachment 1**. This memo confirms no response was received from Ngāti Raukawa.

3. Please provide a copy of the emails between the Council and Te Ātiawa which led to the development of proposed Policy 5.5A.

Response: Please see the emails between Emily Thomson (Senior Planner – KCDC) and Te Rangimārie Williams (Te Aki Ture and Consultancy – employed by Te Atiawa) within **Attachment 1**.

4. Was there a proposed Policy 5.5A before consultation with Iwi?

Response: Please see the emails referred to in paragraph 3 above (within **Attachment 1**). It appears there was no Policy 5.5A proposed prior to consultation with Iwi.

5. Please confirm the RPS objective and policy reference at paragraph 121 of the Section 42A report.

Response: Please see the summary table below paragraph 119 of the Section 42A report. RPS Objective 28 states:

*The cultural relationship of Maori with their ancestral lands, water, sites, wahi tapu and other taonga is maintained.*

Policy 49 of the RPS (in full) states:

*Recognising and providing for matters of significance to tāngata whenua – consideration.*

*When preparing a change, variation or review of a district or regional plan, the following matters shall be recognised and provided for:*

- (a) *The exercise of kaitiakitanga;*
- (b) *Mauri, particularly in relation to fresh and coastal waters;*
- (c) *Mahinga kai and areas of natural resource used for customary purposes;*  
*and*
- (d) *Places, sites and areas with significant spiritual or cultural historic heritage value to tanga whenua.*

Please see **Attachment 2** for Policy 49 including all explanatory text from the RPS.

**6. Please provide contours of the dunes in the Olde Beach area, and any references to Iwi values of these dunes in the correspondence between the Council and Iwi.**

Response: Please see **Attachment 3** for a contour map of the area showing the location of dunes.

I have not identified any specific references to Iwi values other than the discussion contained within **Attachment 1** regarding the drafting of Policy 5.5A.

**7. Consideration of submissions and evidence presented at the hearing**

1. The discussion below is in addition to the verbal right of reply I provided during the hearing. I have endeavoured not to replicate the content of my verbal right of reply in this written right of reply.
2. I have now considered all the submissions and evidence presented to the Panel during the hearing. To assist the Panel, I limit my discussion below to what I consider to be the key relevant submissions and evidence presented during the hearing.

***Site coverage and floor area ratio***

3. I found the evidence and discussion provided by Sarah Poff on the effect of differing site coverage and the floor area ratios to be very helpful. Having considered her evidence, I agree in order to best achieve the objectives of the variation (within the scope provided by submissions), a site coverage of 35% and a lower floor area ratio would be the most effective approach. However, as discussed in greater detail below, I consider there is no scope available from the submissions for the 0.4:1.0 floor area ratio recommended by Ms Poff. I therefore recommend a floor area of 0.5:1.0.

***Scope – floor area ratio of 0.4:1.0***

4. In my verbal right of reply, I requested more time to consider Submitter 1 - Andrew Hazleton's opinion on scope, and to seek legal advice if I felt I needed to in order to provide the Hearings Panel with a recommendation.
5. Upon further reflection and after having considered the written discussion on scope provided by the submitter during the hearing, I do not consider legal advice necessary in order to provide my final advice on this matter.

6. It is my experience having worked on resolving appeals on the PDP over the past 2.5 years, and other appeals over the course of my career, that scope needs to be clear. I have again reviewed all submissions on the variation and I remain of the view that those submissions do not provide scope for a 0.4:1.0 floor area ratio.
7. I note the Panel is not bound to my advice and therefore may take a different position on scope if it prefers the argument advanced by the submitter. Alternatively, the Panel may also request the Council to provide legal advice on the scope argument put forward by the submitter.
8. On this basis I have not changed the recommendation put to the Hearings Panel in the addendum with respect to site coverage (35%), however I do recommend changing the floor area ratio from 0.6:1.0 (as recommended in the addendum to my Section 42A report) to 0.5:1.0. I consider this lower floor area ratio would more effectively address the matters highlighted in the evidence of Sarah Poff.
9. My final recommended provisions are contained in **Attachment 5**.

#### **NPS-UD 2020**

10. I do not agree with Submitter 15 – John Valentine’s statement that the NPS-UD has been dismissed in the addendum. Mr Valentine’s submission does not appear to recognise the role of the required location-specific evaluative work necessary to determine which urban areas fall under each clause of NPS-UD Policy 3. As I state in the addendum to the Section 42A report, I consider the Olde Beach area will be deemed an ‘other location’ under Policy 3(d) of the NPS-UD. This means the area is unlikely to be subject to the significant intensification and height provisions for areas within a walkable catchment of a rapid transport stop of a city centre zone or metropolitan city centre zone. Following the Council’s analysis work required under the NPS-UD, the resulting plan change(s) will specify heights and densities for different locations. I note the Council has 2 years from 20 August 2020 to carry out this work.
11. In my opinion the provisions of the NPS-UD must be considered as a whole, and applied according to the level of data the Council has available at the time planning decisions are made. Such a holistic approach using robust and updated information will ensure planning decisions achieve the objectives of the NPS-UD. With this approach in mind, following the hearing I have sought further evidence on the demand for housing in the Olde Beach area in comparison to all other parts of Waikanae. I discuss my findings on housing demand in the Olde Beach area below.
12. In terms of demand for housing in the Olde Beach area, I stand by my analysis in the addendum as I have not found any evidence to suggest the Olde Beach area has a high demand for housing relative to other parts of Waikanae. To reach this position I have researched all subdivision resource consents approved in Waikanae over the past two years (**Attachment 4**).

13. For the variation to potentially be contrary to Policies 1, 3, and 6, I consider there would need to be evidence showing demand for additional housing in the Olde Beach area to be high- at the very least equal to, if not greater than other parts of Waikanae. My analysis of subdivisions that have generated capacity for additional housing over the past two years in the Olde Beach area and the wider Waikanae area shows:
- There have been 39 subdivision consents granted in the wider Waikanae area in the past two years creating a total of 111 additional lots available for additional dwellings;
  - There were three subdivision consents granted in the Olde Beach area in the past two years which resulted in no additional lots available for additional dwellings (see top three highlighted subdivision consents in **Attachment 4**).
14. Despite the presence of many relatively large allotments and small dwellings within the Olde Beach area, my research shows there have been no subdivisions granted in the area in the past two years that would provide additional housing capacity. This leads me to the conclusion the area does not have a high demand for additional housing relative to the wider Waikanae area, which over the same time period saw an increase in consented housing capacity via subdivision consents of 111 new allotments.
15. I consider these findings support the analysis and recommendations within the addendum to the Section 42A report. On this basis I do not make any changes to the advice I provide in the addendum.
16. Should the Panel take a different view to my opinion, I note there is a route available to the Panel that may still validate the variation. An alternative path is that a modification to the requirements of NPS-UD Policy 3(d) could be made with respect to heights and densities to accommodate a 'qualifying matter'. I note the 'qualifying matters' process provided by Policy 4 of the NPS-UD allows the Council to make area-specific exclusions or reductions in NPS-UD requirements for:
- any other matter that makes high density development as directed by Policy 3 inappropriate in an area, but only if the requirements of Clause 3.33(3) are met.*
17. My understanding of Clause 3.33(3) is that it specifies the requirements for a section 32 evaluation report to justify the reasons for not giving effect to the NPS-UD for specific sites and spatial areas. At this very early stage of giving effect to the NPS-UD (which does not come into force until 20 August 2020), I consider it is not inconceivable that a case could be made as a qualifying matter in the future that, due to their special character, some or all beach residential zones are not required to give effect to the intensification requirements of the NPS-UD.
18. Should the Panel determine this route is more appropriate than the route I outline and recommend in paragraphs 10-15 above, I note the Panel will need to prepare a section 32AA evaluation to satisfy the requirements of Clause 3.33(3) of the NPS-UD.

### **Applicability of the NPS-UD**

19. As I discussed in my verbal right of reply at the hearing, I did consider the same view expressed by Mr Hazleton's on the applicability of the NPS-UD when preparing the advice contained in the addendum to the Section 42A report. My views remain as stated in the addendum.

20. On this basis I do not have any amendments to the advice I provide in the addendum on this matter.

## **8. Final Recommended Provisions**

Please see **Attachment 5**.

## **9. Final Recommendations on Submissions and Further Submissions**

Please see **Attachment 6**.



Matt Muspratt  
**Principal Policy Planner**  
6 August 2020