

In the Matter of

**The Resource Management Act 1991,
Subpart 6 concerning Intensification
Streamlined Planning Process.**

And

**Plan Change 2, Kapiti Coast District
Council, under Schedule 1 Part 6 of
that Act.**

Legal submissions on PC 2 on behalf of Mical Treadwell, Stuart Dickson,
Tim Whitely and myself, others to be advised in due course

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kcdc 2 legal subs

SUBMISSIONS ON PC2

Background

1. These submissions are on behalf of Mical Treadwell, Stuart Dickson, Time Whitely, myself and I anticipate others, including Waikanae Beach Resident's Society Incorporated - to be advised in due course.

Relief Sought

2. Reference is made to the submissions filed for the relief sought and as set out at the end of these submissions.

Legal Submissions

3. PC 2 is subject to all the requirements of the Act (RMA), not just NPUS-UD.
4. The Council has put the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 and the associated NPUS-UD on a pedestal and held them up as being a requirement that *must* be implemented across the district save for one small (and imperfectly formed) qualifying precinct associated with potential but “extremely unlikely” coastal erosion.
5. The Council has completely abrogated its responsibilities in terms of section 6 (a) of the RMA and Policies 3 (precautionary approach to natural character) 6(i) (set backs to protect natural character), 13 (Preservation of natural character) of the NZCPS. It has not assessed whether the proposed intensification is *appropriate* (that is not *inappropriate* as identified in Policy 13) in the coastal environment, nor whether the proposed intensification immediately adjoining the coastal strip which it has identified in the District Plan as having “high” natural character will protect that natural character.
6. It is submitted that this blanket approach is flawed, and without evidential foundation in many respects, and that the Commissioners should recommend:
 - (a) The continuation of existing beach residential precincts as a qualifying matter, without an intensification overlay as set out in NPS-UD.
 - (b) A qualifying matter precinct associated with infrastructure, or lack thereof, which addresses infrastructure matters and coastal hazards.

- (c) While noting that the position can be reviewed in a further plan change taking into account the Council's obligations under the NZCPS, which the Council has not yet met, and NPS-UD.
7. These three broad matters are addressed in turn, followed by more specific submissions that relate just to Waikanae Beach.

Beach Residential Precincts

Section 32 Report Section 6.1.6

8. Council's s32 report addresses qualifying precincts.
9. Existing beach residential precincts are an "other matter" for the purpose of section 77L(j). This in turn refers to section 77L:

A matter is not a qualifying matter under section 77L(j) in relation to an area unless the evaluation report referred to in section 32 also—

- (a) identifies the specific characteristic that makes the level of development provided by the MDRS (as specified in Schedule 3A or as provided for by policy 3) inappropriate in the area; and
- (b) justifies why that characteristic makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD; and
- (c) includes a site-specific analysis that—
- (i) identifies the site to which the matter relates; and
- (ii) evaluates the specific characteristic on a site-specific basis to determine the geographic area where intensification needs to be compatible with the specific matter; and
- (iii) evaluates an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 while managing the specific characteristics.
10. Council's Section 32 Report sets out its argument in relation to Beach Residential Precincts.
11. Section 6.1.6 (Page 168 onwards):
- during the preparation of PC2, particular consideration was given to two potential 'other qualifying matters', being:
- Special character areas;

- Areas not connected to the reticulated wastewater network.

Both matters are not specifically prescribed as qualifying matters under s77I and s77O of the RMA. Rather, the Council has assessed whether they are qualifying matters in accordance with s77I(j) or s77O(j) of the RMA (“other” qualifying matters). “Other” qualifying matters are required to meet additional requirements outlined under s77L and s77R of the RMA:

[sets out s77L]

After due consideration, both matters were determined not to meet the definition of a qualifying matter. While not required by the RMA, the following sections provide an outline of the consideration given to these matters.

...

the Council commissioned an update of the existing character assessments that informed the development of the Beach Residential Precinct and commissioned a character assessment of the Waikanae Garden Precinct (which had been previously established without any prior character assessment)⁷⁴.

[sets out a summary of the findings of these reports]

Based on the findings of these assessments, the Council gave consideration as to whether the special character areas would meet the requirements of s77L of the RMA. While each special character area seeks different character outcomes, a key common feature of all special character areas is that they seek to maintain existing character through policies that promote low density development, and rules that restrict development density. This is evident in the existing policies and rules and confirmed by the assessments of each area.

The thrust of the objectives of the MDRS and the NPS-UD is that more people are enabled to live in, and more businesses and community services to be located in, New Zealand’s urban environments. To achieve this, the objectives and policies of the NPS-UD seek that urban environments are able develop and change over time. In areas where low-density development is a defining feature of the character of the area, this means that character and amenity values will change over time as the density of development increases. This change in character is provided for by the by the objectives and policies of the NPS-UD. In particular:

- Objective 4 seeks that urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities and future generations;

- Policy 6(b) requires that, in making planning decisions that affect urban environments, decision-makers have particular regard to the fact that the planned urban built form provided for by the District Plan may involve significant changes to an area, and those changes:
 - o may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and
 - o are not, of themselves, an adverse effect.

Therefore, in light of the objectives of the NPS-UD and the national significance of urban development, it is not considered appropriate to provide for special character areas that seek to maintain existing character and amenity values through low-density development, as this is considered to be inconsistent with the objectives (and policies) of the NPS-UD.

On this basis, it is considered that the special character areas contained in the District Plan do not meet the definition of an ‘other qualifying matter’ under s771(j) of the RMA, as the justification required by s77L(b) of the RMA is not met.

PC2 therefore does not propose to provide for special character areas as a qualifying matter. Instead, PC2 proposes to apply the MDRS and policy 3 of the NPS-UD to these areas (as required by s77G(1) and (2) of the RMA), and to delete the rules that provide for low-density development in these areas⁷⁵. However, the evidence does note that there are a range of other characteristics associated with these areas that are not, of themselves, low-density built form, but that are nevertheless of value to each area. In particular, these characteristics relate to landform and established vegetation. While the MDRS and policy 3 of the NPS-UD must be applied to the existing special character areas, based on the evidence it is still considered relevant that where development breaches the density standards required by the MDRS and policy 3 of the NPS-UD, development is required to give consideration to these characteristics. On this basis, the existing policies associated with these areas have been amended to require this, while ensuring that the policies are consistent with the objectives and policies of the NPS-UD (see policies GRZ-P4, GRZ-P5 and GRZ-P6).

⁷⁴ Refer to the character assessments contained in Appendix H, Appendix I, Appendix J, Appendix K, and Appendix L.

⁷⁵ The exception to this is where existing special character areas are located within the Coastal Qualifying Matter Precinct. As discussed in section 6.1.3, the purpose of the Coastal Qualifying Matter Precinct is to maintain the status quo level of development enabled by the provisions of the operative District Plan in this area, in order to ensure

that while coastal hazard provisions are being determined through the Takutai Kāpiti/coastal environment Plan Change process, PC2 does not reduce the degree to which the District Plan gives effect to policy 25 of the New Zealand Coastal Policy Statement 2010. On this basis, it is considered appropriate that the activity standards for development in the special character areas are retained, where they are located within the Coastal Qualifying Matter Precinct. It is anticipated that this will be reviewed as part of the Takutai Kāpiti/coastal environment Plan Change process.

Infrastructure and Coastal Hazards

12. A qualifying precinct related to a *lack* of infrastructure is discussed in the Section 32 report at Section 6.1.6 (Page 171 onwards):
13. This notes that Paekākāriki, Peka Peka Beach and Te Horo do not have mains waste water treatment and disposal. It goes on to say:

Given the strong focus of the NPS-UD on providing for infrastructure, it was considered that in order to treat a lack of infrastructure as a qualifying matter, a strong evidential foundation would be required to demonstrate that providing infrastructure to an area would lead to an absurd or illogical outcome. In other words, providing infrastructure to an area would need to be demonstrated to be a fanciful proposition.

On this basis, the Council commissioned a high-level feasibility study into the provision of reticulated wastewater infrastructure to the urban environments at Paekākāriki, Peka Peka Beach and Te Horo Beach⁷⁶. This feasibility study found that while it may be costly to provide reticulated wastewater infrastructure to these areas, and while there may be practical challenges that would need to be overcome through the planning and implementation process, there are nevertheless a range of options that could be pursued to provide for reticulated wastewater infrastructure to these areas.

14. Aside from beach residential precincts, this was the only other consideration given to a qualifying precinct under 77I(j).
15. The management of natural hazards is, of course, a matter of national importance under s6(h).
16. The section 32 report does note that *Flood hazard category areas* are an existing qualifying matter under s77K and s77Q of the Act (page 150) and then notes

Coastal inundation risk is managed by proxy through the existing flood hazard provisions of the District Plan. There is a reasonable correlation between the areas in the urban environment identified as susceptible to coastal inundation in the Jacobs' assessment, and the flood hazard category areas in the District Plan⁶⁴. In addition to this, the flood hazard provisions of the District Plan are dynamic in that the 1% AEP flood event is to be determined using the best available information (which includes site-specific modelling). On this basis, for

the purposes of PC2 this hazard is considered to be appropriately managed by existing District Plan provisions. However, a review of the District Plan's flood hazard provisions is planned as part of the future flood risk/stormwater management Plan Change⁶⁵.

⁶⁴ Within urban zoned areas, 76% of the area identified as being potentially susceptible to coastal inundation hazard under the 1.65m RSLR scenario is already contained within flood hazard category areas identified in the District Plan.

⁶⁵ The Council is presently updating its district-wide flood hazard model in preparation for this Plan Change. This includes updating the model to reflect the best available information on coastal inundation hazard and the current and future effects of climate change.

17. Council's approach is highlighted at section 2.2.3 of the s32 Report (page 28) in relation to the NPS for Freshwater Management 2020. Council identifies that use and development of land created by PC 2 may a range of effects of catchments and then says:

Provisions in the District Plan that managing these effects that will continue to apply to new development enabled by PC2 include:

- Water demand management provisions such as the requirement for new development to provide rainwater tanks and the promotion of greywater re-use systems;
- Hydraulic neutrality provisions for subdivision and associated development in the Residential and Working Zones;
- Hydraulic neutrality and water sensitive urban design provisions embedded in the Land Development Minimum Requirements, April 2022 (which is a permitted activity standard);
- Impervious surface restrictions for development in the General Residential Zone;
- Flood hazard provisions that restrict development in relation to flood hazard areas, including within river corridors, stream corridors, overflow paths, residual overflow paths, ponding areas, residual ponding areas, shallow surface flow areas, flood storage areas and fill control areas;
- Provisions that manage the design and construction of on-site wastewater treatment and disposal systems embedded in the Land Development Minimum Requirements, April 2022 (which is a permitted activity standard);
- Requirements for buildings and structures to be set back from waterbodies.

Some of these provisions have the effect of making the requirements of the MDRS or Policy 3 of the NPS-UD less enabling of development,

and where this is the case, PC2 provides for these as an existing qualifying matter.

...

Some of these provisions have the effect of making the requirements of the MDRS or Policy 3 of the NPS-UD less enabling of development, and where this is the case, PC2 provides for these as an existing qualifying matter.

18. The Council's approach to section 6 (h) of the RMA (*the management of significant risks from natural hazards*) and the NZCPS is to identify only coastal erosion as a qualifying matter and in terms of Policy 24 and 25 says:

In addition to this, there are a range of other hazards within the coastal environment that are managed through existing District Plan provisions. PC2 proposes to provide for these as existing qualifying matters.

19. The s32 report then refers to section 6.1.3 (page 152):

The purpose of the Coastal Qualifying Matter Precinct is to identify the area where it is not considered appropriate to enable the level of development otherwise required by the Medium Density Residential Standards (MDRS) and policy 3 of the NPS-UD until the management of coastal hazards is addressed through a future coastal environment plan change.

20. And continues describing the future processes that the Council will go through before stating:

In this context, the purpose of the Coastal Qualifying Matter Precinct is to maintain the status quo level of development enabled by the provisions of the operative District Plan in the relevant area, to ensure that the management of coastal hazards can be appropriately addressed through the future coastal environment plan change process, while avoiding intensification in areas that may need to be subsequently reversed as part of this process. This approach is consistent with policy 3 of the NZCPS which requires the Council to adopt a precautionary approach to use and management of coastal resources potentially vulnerable to effects from climate change so that avoidable social and economic loss and harm to communities does not occur. Further to this:

- The precinct is intended as an interim measure and it is expected that the purpose, extent and provisions associated with the precinct will be reviewed as part of the future coastal environment plan change process. This may include providing for more or less development to occur within the area covered by the precinct.

- The precinct is not intended to restrict development to less than what is permitted by the rules of the operative District Plan (although the precinct does not preclude such an approach being considered as part of a future coastal environment plan change process);
- The precinct is not intended to prejudice or predetermine the range of planning options to manage coastal hazard risk that may be considered during the Takutai Kāpiti and subsequent plan change process. It is also not intended to predetermine the spatial extent of these options (particularly in relation to the range of scenarios included within the Kāpiti Coast Coastal Hazards Susceptibility and Vulnerability Assessment, see discussion below).

Submissions on the Approach to Qualifying Areas

21. PC 2 has been applied like a blanket over the District - with one very narrow qualifying matter being a very small area associated with potential coastal erosion. (Although the s 32 report notes that some of the areas in this CQMP are unlikely to be subject to coastal erosion.) At the same time the Council has failed to include flooding and ponding areas as a CQMP.
22. Qualifying matters have not been investigated or reported upon sufficiently. Council's section 32 report and evidence in this regard is lacking.
23. As a consequence of the Council's single minded approach to implementing NPS-UD it does two things:
 - (a) It has failed to properly analyse a rationale for maintaining beach residential precincts - and certainly has not taken a holistic overview of the impact and effects of PC 2 on these areas.
 - (b) It simply "kicks the can down the road" on coastal hazards and the coastal environment and says that it can address these later by maintaining that the status quo of existing District Plan provisions.

Failure of Analysis on Beach Residential Precincts.

24. In terms of beach residential precincts these are, of course, already identified in the District Plan. There are only 4 of them.
25. The beach residential areas were evaluated on their merits and inserted into the District Plan on the basis of the planning process contemplated by the Act.

26. On the evidence there is **no dispute** that these matters are worthy of their status in the District Plan. This is supported by the further reports commissioned by the Council (s32 Report Appendices H, I, J and K).
27. So the **only** thing that makes them unworthy of being a qualifying matter is Council's interpretation of NPS-UD - as identified in Council's s32 Report.
28. There is no argument as the Council notes that *the thrust of the objectives of the MDRS and the NPS-UD is that more people are enabled to live in, and more businesses and community services to be located in, New Zealand's urban environments.* This is simply a high level summary of what the NPS seeks.
29. Next the Council relies on Objective 4 citing *urban environments, including their amenity values, develop and change over time* and Policy 6(b) and holds this up as a rationale for the statement that:

Therefore, in light of the objectives of the NPS-UD and the national significance of urban development, it is not considered appropriate to provide for special character areas that seek to maintain existing character and amenity values through low-density development, as this is considered to be inconsistent with the objectives (and policies) of the NPS-UD.
30. All the Council has done is to cite one objective and one policy from NPS-UD to justify the areas currently zoned beach residential precinct being rezoned to general residential and having the intensification provisions apply to those areas which it had previously accept as being of sufficient value to be a special character area.
31. That is no analysis at all, or at best, it is paper thin.
32. What the Council has not done is a section 77L analysis.
33. Yet the Council know the *specific characteristic* that makes these 4 beach residential precincts character zones. They are in the Council's existing district plan!¹. Given the Council's lack of analyses it is absurd that the s32 report contains the conclusion:

¹ All 4 Beach Residential Precinct areas were supported by comprehensive landscape assessments by Urban Perspective, and certainly support by the community, and the Council as evidenced by the Council Sponsored document ***Choosing Futures The Community's Vision for the Kapiti Coast District Community Outcomes:***

Outcome 1.2: [continues in footnote on page 10]

The key focal points, such as the beaches, Kapiti Island, the Tararua Ranges, Otaki Forks are managed in a way that welcomes visitors but protects the essential qualities for which they are valued.

Outcome 2

the justification required by s77L(b) of the RMA is not met.

34. How can the Council conclude that the justification required by s77L(b) is not met when it has not done that exercise?
35. There is no specific analysis of what might make intensification inappropriate in the area, though it is to be noted that:
- 35.1 The further reports commissioned by Council from Urban Perspectives/Boffa Miskell conclude these character areas *will be impacted* by PC 2. Each of the Beach Residential Precinct Updating Reports commissioned on the 4 areas confirm (page 1):

The increased density provisions have the potential to impact on some of the essential local character attributes associated with each precinct.

- 35.2 For Paekākāriki (page 5):

The character value/significance of the existing landform and vegetation pattern of tall trees and other mature vegetation makes the precinct as a whole generally sensitive to change and especially sensitive to any increased level of intensification. This is most critical for the parts of the precinct where the character of the landform is most pronounced and intact. These most sensitive parts, marked on the annotated 'hill shade' map (Appendix 1/Map 2), cover most of the precinct.

- 35.3 For Raumati South

The landscape significance of the existing landform and the largely intact historic subdivision pattern and associated small-scale/low-density built form (the precinct's primary attributes) makes the entire precinct sensitive to any increased level of intensification. The parts of the precinct which are most sensitive to change in relation to landform are marked on the annotated 'hill shade' map (Appendix 1: Map 2).

- 35.4 For Waikanae Beach:

The role, nature and character of each of Kapiti Coast's towns, villages, local and special areas, is respected and retained, and shapes the future form and quality of the District.

Numerous references under Outcome 2 of beach character.

From Commissioners decision on **Variation 2** - proposed and notified by the Council:

3.77 The majority of submitters, with the exception of Mr Valentine, supported a greater restriction on larger, bulkier dwellings. These submitters clearly demonstrated to us their belief that larger, bulkier dwellings are incongruous with the character and identity of the Waikanae Beach neighbourhood proposed to be rezoned. Ms Poff's expert landscape evidence supports this belief, and we wish to recognise this.

The landscape significance of the existing landform and the largely intact historic subdivision pattern and associated small-scale/low-density built form (the precinct's primary attributes) makes the entire precinct sensitive to any increased level of intensification. The parts of the precinct which are most sensitive to change in relation to landform are marked on the annotated 'hill shade' map (Appendix 1: Map 2).

35.5 For Otaki:

The parts of the landform identified as most sensitive to change, are indicated on the on the annotated 'hill-shade' map, Appendix 1/Map 2). These include most of the northern part of the sea-front sub-precinct, regardless of its relatively shallow slope profile, and most of the inland sub-precinct.

35.6 Then, there is a section in each of these reports stating that further investigation could be considered for a range of matters including to *establish in more detail the significance/sensitivity* of contributory sites across the precinct or those that fall outside the most prominent/intact landforms as well as other aspects of the precincts.

36. From the s32 Report, Appendix L Urban Development Intensification Assessment by Boffa Miskell:

The general thrust of the special character areas in the district plan is to ensure that new development maintains, amongst other things, the low-density, low scale character of each area. This could be seen as contrary to the intensification policies, as well as other objectives and policies, of the NPS-UD. In order for rules that limit density in special character areas to continue to apply, these would need to be justified as an "other" qualifying matter under clause 3.32(h) of the NPS-UD.

37. Clause 3.32(h) largely mirrors section 77I.

38. However the Council has not done this exercise, despite it recognising these existing character areas in its District Plan, despite the additional reports of Urban Perspectives/Boffa Miskell recognising this character, and despite that these additional reports suggest the possibility of further study.

39. It is entirely reasonable that as a finite resource, and something that gives these particular areas of the Kapiti Coast a distinct identity these areas could be afforded relief from the intensification provisions of NPS-UD. It is the Kapiti Coast District Council for a reason.

40. The Council makes no attempt to determine or justify whether the beach residential precincts *make the level of development provided by the*

MDRS inappropriate in the area while acknowledging the national significance of urban development.

41. Rather all the Council has done is to say “Objective 4, Policy 6(b) - that trumps any assessment”.
42. If the Council’s approach were correct then there would be *no* prospect of *any* qualifying matters under section 77I(j) and that cannot be correct. The ability for areas with special character values to be included as a qualifying matter was clearly signalled by the Environment Committee in its report on the Amendment Bill:

Other matters that make higher density inappropriate

Proposed new section 77I specifies further requirements about the application of section 77G(h) for “other matters”. That section relates to any other matter that makes higher density as provided for by the MDRS inappropriate in an area. We recommend amending section 77I to make it clear that qualifying matters could be used to modify the relevant building height or density requirements under policy 3(c) and (d) of the NPS-UD.

We note that the bill would not alter existing historic heritage protections. Historic heritage is a matter of national importance under section 6 of the RMA, and so would be considered a qualifying matter under new sections 77G(a) and 77L(a). Where it can be justified, there is also scope in the bill for retention of special character that does not meet the definition of historical heritage as an “other matter”.

[underlining added]

43. This is further reinforced by the MfE’s publication The Ministry for the Environment’s publication *Understanding and Implementing Intensification Provisions for the National Policy Statement on Urban Development* at 6.6.2 (page 43 of that document):

Some examples of what might be anticipated to be raised as an ‘other matter’ include:

- special character
- viewshafts
- less significant hazard risk, that is not covered by s6 of the RMA.

44. It is also supported by the fact that under s77G it is open to a District Council to exclude *entire areas* from NPS-UD where the population is less than 5,000. So if the population of an area of a beach residential precinct is under 5,000 there is a clear route and mandate for it to be excluded from NPS-UD - and is entirely consistent with the ability to exclude beach

residential precincts from such areas if intensification was to proceed in the overall area. Further submissions on that are at the end of this submission.

45. If the Council prefers its own advice over that of the Ministry it has not made that available for scrutiny.
46. Nor should the Council be allowed a fall back position of arguing that somehow “submitters cannot rely on the Council’s failure to do a 771 assessment as a reason for including existing beach residential precincts as a qualifying matter”. The matter is squarely before the Commissioners on the basis of the evidence of the district plan zonings, and the further reports of Urban Perspective/Boffa Miskell - and noting any absence of evidence of a contrary view.
47. The Council’s position is all the more unsustainable by virtue of its position on the beach residential precincts in the plan change. While stating that MDRS provisions *must* apply, it then expressly acknowledges the significance of the beach residential precincts by stating that special consideration needs to be given to the beach residential characteristics and introduces amended policies GRZ-P4, GRZ-P5 and GRZ-P6² which apply to anything over NPS-UD permitted levels of intensification. That acknowledges the significance of beach residential character, but does nothing to preserve that character given that the intensification provisions of NPS-UD, and the permitted baseline arguments that will introduce, will already have destroyed it. As noted by Council’s own reports these environments are sensitive.
48. It might also be thought that some sort of weighing exercise in terms of benefits and effects might have been carried out by the Council as to whether there beach residential precincts should be a qualifying matter in light of section 77L(b) and (c) and Objective 1 of the NPS-UD

New Zealand has 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.

49. The Council has produced a report by Boffa Miskell detailing possible Urban Intensification yield (s32 Report Appendix L). Part 2, Appendix 3A of this report contains some figures on the potential yield for new dwellings if PC-2 is adopted³:

² See page 31 to 32 of the IPI

³ A figure cannot be found for Otaki beach residential precinct.

- (a) Paekakariki local centre and railway station: theoretical dwellings 1311 (residential zones only), 1385 (residential and mixed use zones);
 - (b) Raumati South local centre: theoretical dwellings 139 (residential zones only), 149 (residential and mixed use zones);
 - (c) Waikanae Beach local centre: theoretical dwellings 404 (residential zones only), 408 (residential and mixed use zones);
50. What we do not have are any figures from the Council of the numbers of dwellings that theoretically might be created by including NPS-UD intensification proposals within beach residential precincts and advice on what that is as a percentage of the entire yield anticipated by PC 2.
51. So we have to interpolate:
- 51.1 If we were to use, say 500 dwellings as a nominal figure for Otaki, the total from the Boffa Miskell report is in the order of less than a *theoretical* 2,500 dwellings. Adding a margin to this of say, 1000 dwellings to account for areas zoned beach residential but not identified in the Boffa Miskell study would give a total theoretical number of dwellings in beach residential precincts of 3,500.
- 51.2 Boffa Miskell identify the *sub total* of 24,210 dwellings in its Urban Intensification Report (s32 report Appendix L - page 3) - but this is a subtotal because it is just the total of intensification around Metropolitan Centres, Rapid Transit Stops, Town Centres and Local Centres. It does not include the entire urban area set for intensification.
- 51.3 The Property Economics report (PC32, Appendix M, page 10) also analyses yield and determines a total *theoretical yield* from PC 2 of 76,636 dwellings and that analysis appears to include the entire residential area.
- 51.4 With this in mind it is plausible to suggest that the percentage of dwellings to make up the *theoretical* total would be something less than 5% in beach residential precinct areas (3500/76500).
52. This begs the question: is it really worth losing the current beach residential precincts, a finite resource and one promoted by KCDC itself right up until this PC2, for the sake of a 3% theoretical yield?
53. This raises other critical but unanswered questions:
- Where is the calculation of what likely demand for houses is over the planning horizon?
 - To what extent could this demand be met by under the existing District Plan provisions? (including greenfield development)?

- What is the resulting shortfall which needs to be met by intensification?
54. If these figures are a bit rough and ready they have had to be extrapolated from Council's own documents, and of course, it would have been preferable if the Council had done this analysis of beach residential precincts under section 77L(b) and (c).
 55. In summary therefore the submission is that the beach residential precincts should be excluded from the intensification provisions of NPS-UD as a qualifying matter.

Failure to Address Coastal Hazards Satisfactorily

56. The Council notes in footnote 75 of the s32 report in section 6.1.3 (above) that the *activity standards for development in the special character areas are retained, where they are located within the Coastal Qualifying Matter Precinct*. That of course is the proposed erosion precinct. The Council says that this will be reviewed as part of *the Takutai Kāpiti/coastal environment Plan Change process*.
57. Of course, what if the Council is wrong about its conclusions on *only erosion* being a qualifying matter. What if inundation is found to be an appropriate qualifying matter through the Takutai Kāpiti/coastal environment Plan Change process?
58. Of course one consequence will be that the Genie will be well and truly out of the bottle.
59. Contrary to the statement in the s32 report a precautionary approach has not been adopted to identifying coastal hazards or flooding hazards so that they do not have to be reversed later. There is every prospect of the outcome of a future plan process concerning Takutai Kāpiti and subsequent coastal environment plan change process requiring that intensification as currently contemplated by PC-2 would need to be wound back. Indeed, if one looks at the 50 and 100 year hazard lines which were in the proposed District Plan, but which were then withdrawn, the areas covered were significantly more extensive than what is now proposed in terms of the CQPM.
60. The Council calls no witnesses to discuss natural hazards within the coastal zone other than erosion. How can you be satisfied in terms of section 6(h) and policy 24 of the NZCPS?

Natural Hazards as a Qualifying Matter

61. Issues such as water and wastewater supply, stormwater management and wastewater constraints should be qualifying matters.

62. There is no witness evidence from the Council on the capacity of its water, stormwater or wastewater network to address the proposed level of development. In particular it has not excluded areas shown on its District Plan as flooding and ponding areas from the intensification provisions.
63. There is no witness evidence of existing capacity constraints and the effect that intensification in these areas. The Council acknowledges that Paekākāriki is on septic tanks. Issues could include decreased network resilience, integrity and water pressure for the water supply network and increased frequency, volume and number of wastewater overflows for the wastewater network. For the stormwater networks increased lack of permeability, increased run off, greater prospect of flooding and ponding, and greater risk of economic loss as a consequence.
64. As discussed by Mr Milne in his submissions for CRU the Council has not carried out a risk assessment in terms of coastal or other natural hazards. It has not ensured the: *management of significant risks from natural hazards* (s 6 (h)). Instead, it proposes increasing those risks by permitting intensification in areas which its own District Plan and Regional Council documents show as being subject to significant hazards.
65. There is no witness evidence as to how existing capacity constraints are planned to be addressed through future investment and the delivery of projects or how intensification that occurs ahead of those projects coming online may exacerbate the existing constraints.
66. Counsel's position is that it is appropriate to include qualifying matters that address natural hazards/infrastructure constraints issues that need to be addressed in a comprehensive manner.
67. Despite this acknowledgement, the Council has simply failed to do this. The folly of that approach has been illustrated by recent events. **In 10, 20, or 50 years time will we all be asking how this Council could possibly have allowed intensification of development in areas it has already identified as hazard prone and in other (coastal) areas which it subsequently ...a few years later...identified as subject to coastal hazards?**

How does PC-2 address coastal hazards, and is this sufficient?

68. The only evidence the Council provides is on erosion.
69. As understood, the Council considers that flooding is addressed by the provision of detailed rules relating to Existing Qualifying Matters in section 21 of the IP (page 169). An example is NH-FLOOD-R which provides for development in a flood storage or fill control area as a Controlled Activity provided that certain standards are met. These are to achieve hydraulic

neutrality, to provide hydraulic modelling to test consequences, and to construct buildings above the 1% AEP flood event level.

70. There are many more rules that address what can be done in a Flood Zone (which includes all manner of rivers, flow paths, ponding areas, and storage areas) provided standards are met.
71. The problem with this approach is it encourages a scramble for the resource. At some point, if it has not been reached already, it is inevitable that a tipping point will be reached and no further development will be sustainable due to the increasing site coverage combined with the lack of stormwater infrastructure. It does not encourage coherent and sensible planning.
72. Further, it assumes that Council's modelling is accurate. Again, what happens if Takutai Kāpiti/coastal environment Plan Change process identifies far more likely constraints than the Council currently provides for? How does it wind back PC 2 in such circumstances?
73. There is an obvious inconsistency in approach. The CQMP is based on the Jacobs reports and includes allowance for sea level rise and coastal erosion which the s 32 reports acknowledges to be unlikely or extremely unlikely in some areas. (See the legal submissions and evidence for CRU).
74. The Council is proposing a highly precautionary approach in relation to coastal erosion which goes beyond both section 6(h) and NZCPS policy 24. In contrast, in relation to flood hazards it is relying on existing controlled activity provisions based on the 1% AEP flood event level. You do not require an expert witness to appreciate the folly of relying on current hazard predictions which have not been adjusted for climate change - as the residents of Hawkes Bay and Gisborne Districts would tell you. What was a 1% AEP flood event level when the District Plan was proposed will not be a 1% event now, let alone in 50 or 100 years time.
75. In future years, what will residents be saying about the wisdom of the Council allowing intensification in areas which it should reasonably and foreseeably have anticipated as being at risk of coastal erosion, coastal inundation, flooding, or ponding? The Panel can either pretend nothing will change as the Council has, or it can step up and take a sensible and precautionary approach.

Cumulative Issues

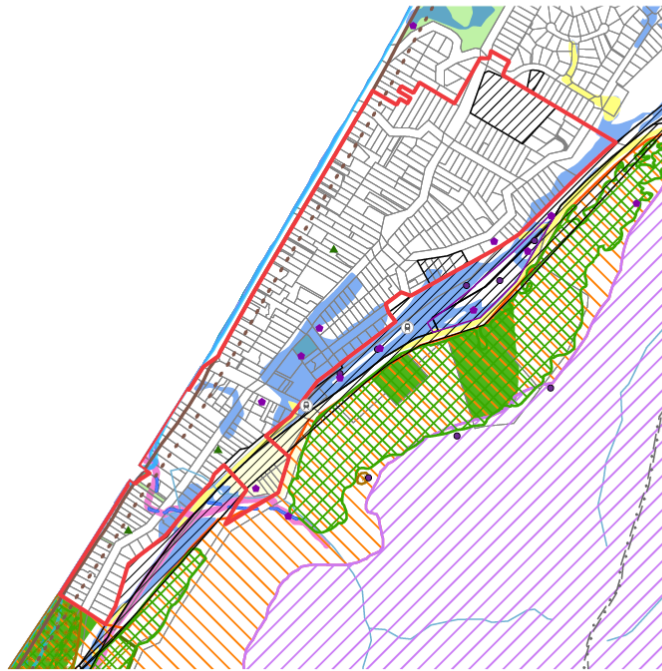
76. Boffa Miskell mapped potential constraints from the District Plan for both Paekakariki and Waikanae Beach beach residential precincts⁴.

⁴ Counsel cannot locate this having been done for Otaki or Raumati South.

77. Page 12 Appendix L Part 2

PAEKAKARIKI LOCAL CENTRE AND RAILWAY STATION

POTENTIAL QUALIFYING MATTERS

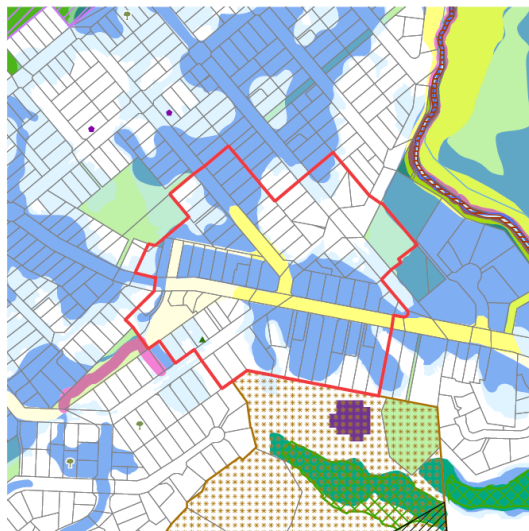


Note: this drawing highlights potential "qualifying matters" that may apply to each area, based on existing mapping. This is a scoping exercise only. These have not been used to reduce height or density as a part of this assessment. Refer to the covering report for discussion on potential qualifying matters.

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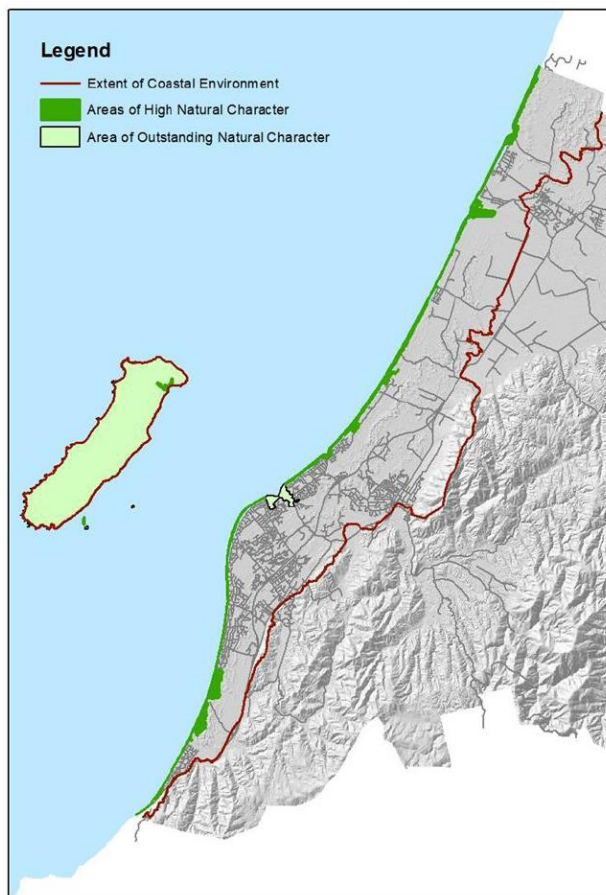
WAIKANAE BEACH LOCAL CENTRE

POTENTIAL QUALIFYING MATTERS



Note: this drawing highlights potential "qualifying matters" that may apply to each area, based on existing mapping. This is a scoping exercise only. These have not been used to reduce height or density as a part of this assessment. Refer to the covering report for discussion on potential qualifying matters.

78. Although the legend lists as a constraint in each *Special Amenity Landscapes* the purple hatching showing these is missing - or I cannot see it, or it shown by something else. Regardless the point is that these constraints overlay the beach residential precincts.
79. In the case of both Paekākāriki and Waikanae Beach flooding issues are readily apparent in areas. At Waikanae in particular this is apparent. Where there is an overland flow path right through and past the Te Moana Local Centre (the yellow fork).
80. There are in addition overlays from the Regional Council for storm surge and Tsunami.
81. Recently the Government released its report *Vulnerable Communities Exposed to Flood Hazard*⁵ which identified the entire coast from Waikanae to Paekākāriki as vulnerable and subject to flood hazard.
82. Then there is the possibility of height controls interfering with the outstanding and high value landscapes. These are currently mapped in the District Plan. Page 8 of the Coastal Environment Section contains



⁵ <https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases/%24file/Vulnerable-Communities-Exposed-to-Flooding-Report-2022.pdf>

this Figure 1 showing Areas of *high natural character*, areas of outstanding *natural character* and the extent of the coastal environment. All beach residential precincts are adjacent to areas of *high natural character*.

83. In Appendix G of the s32 Report, Paekākāriki character assessment the introduction notes:

An assessment of the natural character of the Kapiti coastal environment was recently completed for Kapiti Coast District Council and GWRC (Boffa Miskell 2021). In this study the inland extent of the coastal environment was defined and mapped, and an assessment made as to the extent to which the natural elements, patterns and processes exist, and the level of human modification. Natural character aspects have been described then rated in terms of the degree of physical modification alongside experiential aspects that exist because of the levels of modification remaining apparent. The findings of this assessment, which is broadscale and district-wide, have been reviewed as part of these current more detailed precinct character investigations.

84. This report by Boffa Miskel undertaken in 2021 has not been produced by the Council in support of PC 2. However it foreshadows work on the assessment of landscape qualities associated with the coastal environment and signals at least the potential for outstanding and high natural character areas to be revisited.

85. As noted in submission:

*The Council's existing controls on building height, location and density provide protection from inappropriate development. Those controls and the objectives and policies which they serve should remain in place in **and adjacent to** all areas of high natural character rather than being supplanted by the carte blanche approach of the MDRS.*

86. There is no current assessment on this matter. Yet this is a critical point. **How can the Council fulfil its obligations in terms of section 6 (a) and the NZCPS when it has not assessed the extent to which the proposed intensification will be appropriate or inappropriate immediately adjacent to areas it has accepted as having high natural character - which is essentially all along the Kapiti Coast?**

87. By way of example, the Council proposes to permit 6 story development immediately adjacent to an area of high natural character at the southern end of Manly Street and to allow 3 storey development for much of the rest of the **adjacent area**. Where is the assessment of the impact of that on natural character? There is no evidential basis on which you can conclude that this is appropriate development of the coastal environment which protects natural character.

88. All of these matters, of course, are germane to the application of various policies in the NZCPS including 24, 25, 6, 7 and 14.
89. Also relevant is Objective 8 of NPS-UD itself (and repeated in Policy 1(f)) and which states New Zealand's urban environments should be:
- Resilient to the current and future effects of climate change.*
90. And Policy 6(e) which requires when making planning decisions that affect urban environments, decision makers should have regard to:
- the likely current and future effects of climate change.*
91. In the case of low lying beach residential settlements issues of character simply cannot be divorced from the likely effects of coastal hazards and climate change.

Unintended Consequences

92. One consequence of PC 2 will be the establishment of a permitted baseline for consenting development to be measured against what is permissible under NPS-UD.
93. It is readily foreseeable that rather than promote intensification of the sought NPS-UD seeks (greater number of dwellings *not* greater size of dwellings) it will do the opposite and encourage larger footprint single dwellings.
94. Such intensification would impact the character of beach residential zones, and with none of the benefits NPS-UD was designed to bring.
95. The failure to adopt a precautionary approach to the matters of natural character preservation, natural hazards and climate change will, in my submission, simply result in haphazard development and will represent a negligence or at least a policy failure by the Council. You should ensure that is not allowed to happen.

Te Moana Local Zone

96. PC 2 promotes the Te Moana Local Zone as an area of increased intensification (4 stories v 3) on the basis of it zoning as a local centre.
97. The Te Moana local centre zone is small scale (a dairy, chip shop and bakery) and low rise; its character is assimilated into the adjacent beach residential zone.
98. Policy 3(d) of NPS-UD states:
- ... district plans enable:*

(d) *within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and densities of urban form commensurate with the level of commercial activity and community services.*

99. It cannot, by any stretch of the imagination, be the case that a dairy, a bakery and a chip shop represents a *level of commercial activity and community services* that justifies a 400m walkable catchment at 4 stories instead of 3. It is nonsense. (I understand that Mr Milne has made a similar submission in relation to Kena Kena. There may well be other areas which have been wrongly included.)
100. Again the Ministry for the Environment's publication *Understanding and implanting intensification provisions for the National Policy Statement on Urban Development* (page 35):

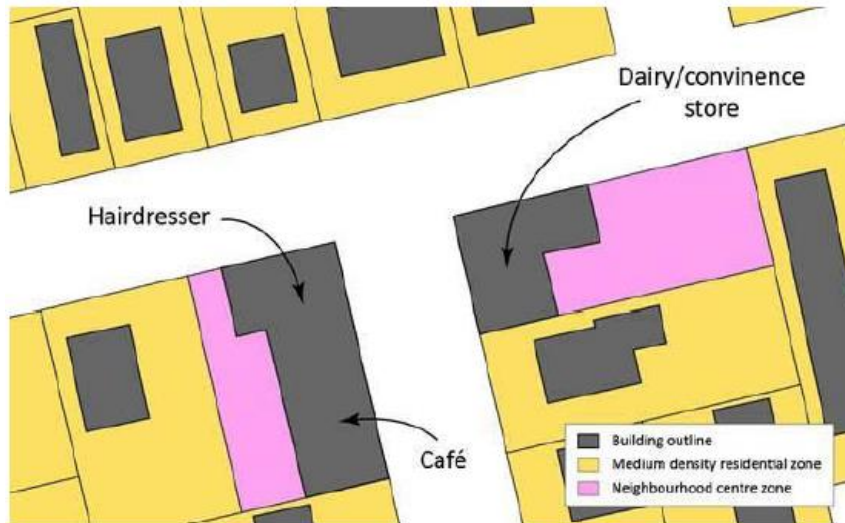
6.5.1 A 'range' of commercial activities and community services

Commercial activities include those that serve the needs of the community (eg, shops) and provide people with employment. Community services include health care, education (including universities and tertiary training institutes), cultural activities (eg, museums, galleries, churches) and land or venues for sport and recreation.

A 'range' of services should be thought of as a variety of commercial and community services that serve the needs of the catchment when implementing this policy. For example, a doctor and/or pharmacy, school and/or kindergarten and a café and shops would be considered as providing a range of services. The locations that provide a range of activities and services are likely to be places that are easily accessible to a wide range of people. These locations will often be commercial centres within urban areas, ranging in size from smaller local or town centres through to larger metropolitan centres or even city centres (in the case of tier 2 and tier 3 urban environments).

This also means a small set of neighbourhood shops, for example with amenities such as a dairy, hairdresser and butcher, would not likely be considered to be providing a range of services. An example of neighbourhood shops that would not be considered to provide a range of services is shown in Figure 12 below.

Figure 12: Example of neighbourhood shops that do not provide a 'range of services'



101. In the case of Te Moana local centre there is not a “range of services”. All are food/convenience outlets - the dairy recently adding an enticing range of take away chicken.
102. Further, the Te Moana local centre does not even come close to the example that is provided by MfE as *not* likely be considered as providing a range of services.
103. Quite simply the Council has, once again, put NPS-UD on a pedestal. It has in effect said: “it’s a local centre, therefore it justifies greater intensification” without any analysis of what is actually there or in its immediate surrounds.
104. To this end there is no consideration of the fact that the much larger 4 Square store, the Long Beach Pub and Front Room Restaurant on Tutere Street are more significant commercial concerns and all are able to continue operations without a Local Centre Zoning.
105. There is no consideration of the foreshadowed local centre zone at Ngarara which the District Plan indicates will have an extensive commercial zone and that this will dwarf anything at Te Moana.
106. Finally, Te Moana local centre is located in an over land flow path (yellow on the plan above).

77G of the Act

107. Section 77G

- (1) Every relevant residential zone of a specified territorial authority must have the MDRS incorporated into that zone.
- (2) Every residential zone in an urban environment of a specified territorial authority must give effect to policy 3 or policy 5, as the case requires, in that zone.

108. Relevant Residential Zone is defined in the Act as

- (a) means all residential zones; but
- (b) does not include—
 - (i) a large lot residential zone:
 - (ii) an area predominantly urban in character that the 2018 census recorded as having a resident population of less than 5,000, unless a local authority intends the area to become part of an urban environment:

...

109. There are communities within KCDC that in the 2018 census recorded a resident population of less than 5,000. This includes areas where beach residential precincts are located. MfE advice on the exclusion (and annexed to these submissions) specifically referred to Peka Peka at the time this amendment was introduced (Peka Peka does not have a beach residential precinct, but the illustration serves to show that it is simply the size of the population as measured by the census is the factor that governs whether s77G can apply or not.

110. The Council has ignored this provision. It could have used it to ensure that NPS-UD was the “can that was kicked down the road”, so that it could prioritise the work on coastal hazards and the coastal environment. Indeed that was my specific submission on the draft version of PC 2, which was of course rejected.

111. The point is that the Council should not complain if Commissioners now find that, actually, the Council has not given appropriate consideration canvassed by the range of these submissions, and by other submitters.

Relief Sought

112. Delete the current CQMP and replace it with a CQMP based on Section 6(a) whether that is the landward boundary of the Coastal Environment as shown in the district plan, or the adaptation zones as published by KCDC⁶ or something lesser but within jurisdiction such as the boundary created by the now SH1; pending any further plan change by the Council.
113. If the Coastal Hazards CQMP is allowed based on coastal erosion then introduce consistent QMPs to address overland flow paths, flood hazards and ponding.
114. Further, or alternatively, that existing Beach Residential Precincts become Beach Residential Qualifying Matter Precincts under PC2 and that accordingly:
 - (a) Residential Intensification Precinct B PREC_{x2} be removed from all Beach Residential Qualifying Matter Precincts; and
 - (b) All existing Beach Residential Precinct plan provisions continue to apply to the Beach Residential Qualifying Matter Precincts.
115. Further, or alternatively, that such larger Beach Residential Qualifying Matter Precinct be adopted based on a full landscape assessment of the coastal environment.
116. Further, or alternatively, in relation to Local Centre Zones:
 - (a) That the Local Centre Zone at Ngarara be specifically identified on the District Plan Maps and that Residential Intensification Precinct B PREC_{x2} be applied to a relevant walkable catchment at that Local Centre.
 - (b) That the Local Centre Zone at Te Moana be re zoned general residential (but allowing for continued operation of established businesses under existing use and/or existing resource consent as exists with the Waikanae Beach 4 Square and The Long Beach and Front Room cafes) alternatively that Residential Intensification Precinct B be limited to the actual Local Centre Zone or such smaller zone to the East of the Waikanae Beach Residential Precinct, or otherwise as the IHP determines.

⁶ Noting however that CRU seeks to amend its relief in this regard.

117. Such other consequential amendments to other Local Centre Zones as are required to give effect to a Beach Residential Qualifying Matter Precinct or enlarged Coastal Qualifying Matter Precinct.
118. Such further or other consequential relief as is required to give effect to the submissions above.

Dated this 16th day of March 2023



Andrew Hazelton



Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development



Ministry for the
Environment
Manatū Mō Te Taiao

Info request

Further advice on the ability to exclude smaller settlements

For: Environment Committee

Date: 1 December 2021

Security level: In Confidence

Purpose

1. This note provides further information on options for exempting smaller settlements from having to apply to the Medium Density Residential Standards (MDRS).

Advice

2. As outlined in the departmental report, the Bill currently requires the MDRS to be applied to residential zones in “urban environments”. This definition would be difficult to implement. Councils would be required to determine the extent of their urban environment based on two factors – whether an area of land is or is intended to be predominantly urban in character and is or is intended to be part of a housing a labour market of at least 10,000 people.
3. As a result, we recommended clarifying that all residential areas in a tier 1 territorial authority are in scope. This will include all residential zones across tier 1 districts, including many small towns.

Options to exclude smaller settlements

4. The Environment Committee has asked for options for excluding smaller settlements from application of the MDRS.

Current mechanism available to councils

5. The Bill enables councils to exclude smaller settlements from applying the MDRS through the intensification streamlined planning process (ISPP). They will be able to re-zone small and rural settlements as large lot residential¹ or settlement zones².

¹ Large lot residential zones are described in the National Planning Standards as areas used predominantly for residential activities and buildings such as detached houses on lots larger than other residential zones, and where there are particular landscape characteristics, physical limitations or other constraints to more intensive development.

² Settlement zones are described in the National Planning Standards as areas used predominantly for a cluster of residential, commercial, light industrial and/or community activities that are located in rural areas or coastal environments.

The Bill could use a definition to exclude smaller settlements

6. If the Committee would like to go further than the current mechanism, it could include a provision in the Bill that would enable councils to exclude towns with a population lower than 5000 at the 2018 census and offshore islands.
7. Our preference is for this provision to be directive (i.e. all towns and islands would be excluded by default) as it is less ambiguous for councils and less open to challenge. However, it could also be discretionary (i.e. councils retain the ability to determine whether MDRS is applied to a town or island) if more flexibility was desirable.
8. We consider this approach would:
 - a. apply the MDRS to all medium sized towns and major satellite towns as intended by the policy
 - b. ensure the right locations are included by default, and give councils the ability to exclude areas that are not integrated into major housing and labour markets
 - c. recognise some areas have less capacity to accommodate growth
 - d. provide an unambiguous definition and make implementation as straightforward as possible for councils.
9. Annex 1 provides a non-exhaustive list of towns that would and would not be captured by this change.

A qualifying matter could also be used to exclude smaller settlements

10. As set out in our advice on managing infrastructure impacts, another option would be to add an additional qualifying matter to the Bill to enable councils to not apply the MDRS in remote and/or coastal residential areas where growth is not reasonably expected.
11. This qualifying matter could capture smaller, more remote towns in tier 1 council areas that are not integrated into major housing and labour markets – for example, places like Akaroa, Raglan and Te Horo. These smaller towns are also less likely to have capacity in existing infrastructure networks (particularly three waters) to accommodate growth.
12. An additional qualifying matter would permanently restrict intensification in these areas, unless they were rezoned under a further plan change, so would need to be tightly scoped. We are confident that could be achieved through the specific wording of the qualifying matter, for example where there is no reticulated waste water. Depending on the scope, it may also be possible to reduce the evidential requirements, limiting the work required by councils to exempt relevant areas.

Annex 1: Impact of a 5000-person population and offshore island threshold (non-exhaustive)

	Included (above 5000)	Could be excluded (below 5000)
Auckland	Waiuku (9510), Beachlands-Pine Harbour (6,480)	Muriwai (1300), Patumāhoe Village (1220), Wellsford (2,030), Kumeū (3,580), Helensville (2910), Walk worth (5,820), Clarks Beach (1,490), Waiheke Island (offshore island)
Waipā	Cambridge (19,300), Te Awamatu (12,550)	Pirongia (1,250), Kihikihi (2900), Karapiro Village (310), Ngāhinapōuri (200), Ōhaupō (610), Rukuhia (170)
Waikato	Tuakau (5,210) Ngāruawāhia (7,300), Huntly (8,290)	Te Kauwhata (2,170), Pōkeno (2,800), Raglan (3,390), Whatawhata (310), Te Kōwhai (500), Horotiu (650), Taupiri (510), Meremere (580), Port Waikato (540)
Western Bay of Plenty	Te Puke (9,180),	Ōmokoroa (3,320), Paengaroa (820)
Christchurch		Lyttelton (3,100), Akaroa (770)
Selwyn	Lincoln (6,840), Rolleston (18,400)	West Melton (2,210), Darfield (2,830), Kirwee (1,000)
Waimakariri	Rangiora (18,400), Kaiapoi (12,200)	Oxford (2,280)
Kāpiti	Paraparaumu (29,500)	Paekākāriki (1,800), Te Horo Beach (340)