IN THE MATTER	Resource Management Act 1991, Subpart 6 concerning an Intensification Streamlined Planning Process.
AND	
IN THE MATTER	of Plan Change 2, a Council-led Intensification Planning Instrument to change the Kāpiti Coast District Plan under the Resource Management Act 1991, Schedule 1 Subpart 6.

THE INDEPENDENT HEARING PANEL'S REPORT TO THE COUNCILLORS OF THE KĀPITI COAST DISTRICT COUNCIL ON PLAN CHANGE 2 UNDER RMA SCHEDULE 1, PART 6, CLAUSE 100

Dated: 20 June 2023

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Tēnā tātou me te kapinga o tēnei kaupapa. Otirā ngā kaikōrero katoa kua tukuna mai o koutou whakaaro hei tirohanga mo mātou. Kua tirohia, kua mutu, kua whakaritea. Oti atu a tātou kōrero - hui ē, tāiki ē.[1]

Section 1 – Executive Summary, Acknowledgements and Formal and Advisory Recommendations

Section 1.1 – Executive Summary

[1] The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 ("*RMEHS*") was enacted with bipartisan support by the New Zealand Parliament. The RMEHS directed territorial authorities to change their district plans so that much of the residentially zoned land in New Zealand had height and density standards to achieve medium density (3 x 3 storey units) on an average residential section ("*the MDRS*"). The RMEHS also directed the implementation of Policy 3 in the National Policy Statement on Urban Development ("*NPS-UD*"), requiring intensification within and around urban centres (and rapid transit stops) according to their place in the 'centres hierarchy' and commensurate with the level of commercial activity and community services in the case of lower order urban centres. These measures were to be performed on a tight timeframe using a new process called the Intensification Streamlined Planning Process.

[2] The RMEHS was an unparalleled descent by the House of Representatives into managing land use by requiring district plan rules operating at the cadastral scale to enable more intense development on residential land allowing only for limited exceptions called 'Qualifying Matters'. Conventionally, Parliament has set the broad strategic resource management framework with detailed planning to be performed by communities through local government. Community-generated plans lead to nuanced zones and overlays recognising local character and amenities. By contrast, RMEHS is a deliberately homogenising instrument intended to provide a development control palette that substantially enabled increased housing supply in residential areas, sweeping away past conceptions of residential amenities and local residential identity.

[1] Greetings as we wind up this hearing. In particular those of you who have contributed so constructively to the process that we have just gone through. We have reached a decision. Therefore thank you one and all.

[3] Irrespective of one's views about the sophistication and appropriateness of the RMEHS, a careful reading of the statutory enactment demonstrates a resolve by Parliament to require councils to implement its measures through a mandatory planning mechanism called an 'Intensification Planning Instrument' ("*IPI*"). A territorial authority's framing of an IPI was deliberately constrained by Subpart 6 of the RMA to ensure that territorial authorities were not side-tracked from the RMEHS's core aims, viz, enabling land owners to create housing units with far fewer restrictions than has been usual. Notably, the MDRS standards also provided relaxed rules for subdivision and development through non-notified procedures.

[4] Against that backdrop, the Kāpiti Coast District Council, as a Tier 1 territorial authority within the Wellington region, had to pause its plans to implement the NPS-UD, including rezoning greenfield land and direct its attention to implementing an IPI following the RMEHS. That required diversion of financial and human resources to this new task.

[5] The Council engaged Boffa Miskell to lead the planning and spatial analysis necessary to interrogate the implications of the application of the MDRS and the optimal implementation of Policy 3 of the NPS-UD to the circumstances of the Kāpiti Coast District.

[6] Inevitably, many submitters to PC2 identified significant concerns with the overall thrust of the RMEHS and its broad-brush approach to residential enablement against the backdrop of a coastal residential community and environment with distinctive coastal qualities and characteristics expressly acknowledged in the Operative Plan and highly valued by sections of the community.

[7] Many of the submitters' concerns were well made, and there was a note of irony about the recently operative District Plan recognising special character areas only several years before the RMEHS was conceived. However, the Operative Plan had also become somewhat dated by the time it was operative. Because Kāpiti Coast District through the construction of Transmission Gully, the implementation of the Kāpiti Expressway and the completion of rapid transport rail facilities to Waikanae had become more integrated with the Wellington region than ever. It is a district with a changing identity formed by major infrastructure provision, making it a much more viable contributor to Wellington's wider housing supply requirements.

[8] Our main findings are:

(a) The Council officers and consultants responsible for PC2 (the IPI) engaged positively and capably in the Schedule 1 (Part 6) process of fulfilling the statutory directions of the RMEHS. The consequence was that at the end of the process, many of the issues raised by submissions were resolved to the satisfaction of the submitters or not contested. We could, therefore, write a shorter report than would otherwise have been the case. The Panel has referenced the Council reports developed along the process where appropriate for adopting the Council's officers' and consultants' reasoning.

(b) The Council's processes met the principles of Te Tiriti o Waitangi in an exemplary way. The Council showed an excellent appreciation of the Treaty principles both in the design of the process and in the substantive content of the PC2 as notified and later modified in the reply report of Mr Banks, the planning consultant at Boffa Miskell with the primary responsibility for PC2. Procedural examples of recognition of the Treaty principles included the hearing of the Ngā Hapū o Ōtaki submission at the Raukāwa Marae. The Council also followed tikanga when receiving Te Ātiawa's submission on the Kārewarewa Urupā. Substantive recognition of Treaty principles included a co-designed set of new Plan provisions for papakāinga. Also, Mr Banks responded positively to information provided at the hearing at Raukāwa Marae by Ngā Hapū o Ōtaki concerning special historical patterns of development around the Raukāwa Marae, resulting in a new Ōtaki Takiwā Qualifying Matter.

(c) Several submitters challenged the Council's implementation of the RMEHS; however, these were the exception rather than the rule. Of particular note are the following:

(i) Kāinga Ora challenged the continued use of the urban zoning typologies in the Operative District Plan and suggested a hybrid model later adopted by Mr Banks in his reply. Kāinga Ora also sought greater height enablement around centres and rapid transport infrastructure. Mr Banks supported that change and

with some important qualifications, the Panel agreed with Kāinga Ora and Mr Banks' reply conclusions.

(ii) The Retirement Village Association and Ryman Healthcare promoted provisions to accommodate the increasing demand for retirement villages to meet the growing needs of an aging population as a distinct residential activity. The submissions were supported by a highly qualified team of experts, including experts who identified the trajectory of retirement village provision powerfully to meet special needs and the demographic 'tsunami' New Zealand and, indeed most of the Western world faces. The submitters' request was partially accommodated in Mr Banks' reply but not to the extent requested by the submitters. We found the arguments for the Retirement Village Association and Ryman Healthcare persuasive and have recommended the adoption of their proposed provisions.

(iii) Some submitters opposed the extent of PC2's enablement because they considered that PC 2 failed to address flood hazards adequately. We have addressed that in our decision. The Panel accepted the position of the Council that the existing flood hazard maps and related provisions in the Operative Plan are adequate and include appropriate allowance for climate change.

(d) A significant group of submitters opposed PC 2 because it undermines the special character of beach areas such as Waikanae Beach. We accept that this represents a loss of identity and character that is treasured. However, we do not consider their attributes including, comparatively low density, are in themselves are sufficiently qualifying to justify an exception to the MDRS. In this respect, we agree with the Council's assessment.

(e) There were several challenges to the sufficiency of the Council's qualifying matters concerning Nationally Significant Infrastructure. Most of these were addressed during the PC 2 process. We report on Transpower and KiwiRail's submissions.

(f) The most controversial qualifying matter was the Coastal Qualifying Matter Precinct. This qualifying matter is interim in its spatial extent using current Council analysis on the risks associated with coastal erosion over a 100-year planning horizon. Using that information to determine the size of the Coastal Qualifying Matter Precinct, the Council did not intend to foreclose future workstreams where coastal erosion hazard risks will be confronted using a collaborative planning process offering strong community engagement. The Panel considers that the Council's proposed interim measure is the most appropriate and efficient response to ensure that development relying on the MDRS does not occur in locations that, on the available evidence, may not be appropriate for more intensive development.

[9] The Panel had to address a distinctive and important subject concerning the land that the Panel refers to as the Kārewarewa Urupā Block in Waikanae. There is no doubt that the cultural values of the Kārewarewa Urupā Block are, for Te Ātiawa, significant and have endured irrespective of legal and development processes and changes following the acquisition of the land by the Waikanae Land Company in 1968. These values warrant recognition, and we have carefully evaluated the competing equities of the situation as part of our overall evaluation of the proportionality of the Council's recommended planning measures. We recommend retaining the Kārewarewa Urupā Block notation as a wāhi tapu in Schedule 9 of the Plan in the modified form recommended by Mr Banks in the Council's reply evidence.

[10] There were multiple rezoning requests piggybacking on PC2. The Council addressed the scope issue by applying a pragmatic set of criteria to these requests. In most cases, the Council did not recommend greenfield land for rezoning. A significant planning impediment arises for land, which should be developed under the guidance of a structure plan to ensure a high-functioning urban environment. Overall, we agree with the Council's recommendations around rezoning except for the following:

(a) The Mansell land at Otaihangā.

(b) Three properties formerly under the expressway designation at Rongomau Lane.

Section 1.2 – Appendices

[11] Attached are the following appendices:

(a) *Appendix 1* - A hyperlinked summary of the evidence received at the hearing, including links to the version of PC 2 recommended by Council officers and consultants in reply called PC 2 - (R2) with the file name PC2_CouncilReply_AndrewBanks_AppA_IPI_PCR2.

(b) *Appendix 2* - Plans showing the location of re-zoning requests.

Section 1.3 – Acknowledgements

[12] The Panel would like to acknowledge and thank the following people and entities:

(a) Tangata whenua for the gracious mihi whakatau at the start of the hearing, for hosting part of the hearing at Raukāwa marae, and for the important contributions of iwi experts to the hearing process. Tēnā rawa atu koutou katoa.

(b) The submitters for their constructive engagement and thoughtful submissions in the spirit of achieving the common good.

(c) Mr Banks and Ms Maxwell from Boffa Miskell for their constructive approach as consultants to the Council. Our procedural requirements expressed in Panel Minutes placed a heavy workload on the Council team to manage the submissions and to collate and coherently address them. That left the Panel free to focus on the main issues in contention during the hearing. We do not underestimate the effort required by the Council team; however, it was the most efficient way to conduct the process.

(d) The Panel also acknowledges Mr Banks' willingness to engage with submitters and positively reflect on their evidence and submissions. Mr Banks' reply showed an ability to self-reflect and engage with divergent views.

(e) Jason Holland, the manager at the Council, and the staff and consultants supporting him as administrators respected our independence and enabled us to perform our tasks seamlessly.

Section 1.4 – Formal Recommendations under Schedule 1, Part 6 Clause 100

[13] The Panel's formal recommendations are:

(a) Subject to the exceptions below, the Council should approve PC2 in the form identified as PC2(R2) attached to the Council reply evidence and in file name PC2_CouncilReply_AndrewBanks_AppA_IPI_PCR2 viewable from the link in Appendix 1.

(b) Despite (a), the Panel recommends the Council do the following with any necessary and minor consequential changes:

(i) **Allow** submission number 023 by the Mansell family by rezoning the land covered by the submission from Rural Lifestyle to General Residential Zone; and

(ii) **Allow** submission numbers 196 and 197 by Retirement Village Association and Ryman Healthcare (and consequentially Reject the change addressing these submissions in PC(R2)) by replacing the latter and:

(1) Including the provisions in Ms Williams' supplementary statement for the submitters at [16] as stand-alone provision for retirement villages in the General Residential Zone and High Density Residential Zone.

(2) Including a new policy, MRC-P7 – Housing in Centres as set out in Ms Williams' supplementary statement at [25], in the Metropolitan Centre Zone, Town Centre Zone, Local Centre Zone and Mixed Use Zone.

(iii) **Allow** submission number 123 by Ms Liakovskaia with the result that the land within 45 and 47 Rongomau Lane is rezoned to General Residential Zone.

(iv) **Allow** submission number 205 by Classic Developments Ltd applying only to 39 Rongomau Lane so that that land is rezoned to General Residential Zone.

(v) **Reject** the change to height and walkable catchment extensions proposed in PC(R2) for the new High-Density Residential Zone applying to the Raumati Beach Town Centre and keep those elements the same as in PC(R1).

Section 1.5 – Advisory Recommendations

[14] In this report section, the Panel sets out some advisory recommendations. These do not constitute formal statutory recommendations under the RMA. They are more like observations from the Panel because the Panel considers making those observations is helpful for the Council in the future performance of its resource management functions:

(a) The Panel accepts the advice of the Council's reporting planner, Mr Banks, that the Council's flood hazard maps and supporting provisions in the Operative District Plan are robust and allow more intensive rainfall from a warming climate. Recent events, however, reinforce that New Zealand is a pluvial country with powerful short vertical catchments. The Kāpiti Coast is no exception. The Kāpiti Coast has the added feature that its groundwater has hydraulic connectivity to and is affected by the sea level. The MDRS magnifies the risks because more residential infrastructure is potentially affected by flooding. Further, intensification will exacerbate water pooling in certain locations requiring further infrastructure. The Panel recommends that the Council continue to have a critical eye on managing flood hazard risk, including ensuring that it remains regularly informed about environmental changes affecting those risks.

(b) The Panel considers that the changes to Schedule 9 to support the values of the Kārewarewa Urupā Block should be adopted. However, it is evident from our decision that there are differing and respectable views about how PC2 as an IPI can address these matters. Given the significance of the values of the Kārewarewa Urupā Block, the Council may wish to consider preparing a supporting plan change following the usual Schedule 1 process to cover the risk that PC2 is later determined to be the incorrect vehicle to address those values.

(c) The Panel is somewhat sceptical that the MDRS will yield the additional household capacity by intensification that the Council currently projects. Greenfield development must be in the mix to meet the district's housing needs. We do not recommend the adoption of many rezoning requests. However, most submissions on re-zoning addressed in this report had very sensible ideas for greenfield development if properly planned using well-conceived structure plans to manage the opportunities and constraints the site presents. Excellent examples are the Waikanae East proposal and those covering the Otaihangā Block and land owned by Classic Developments Limited. The Panel's view is that PC2 will not meet the Council's required supply of land for housing is supported by the evidence of Kāinga Ora and also the following statement from Mr Foy on behalf of the Mansell family:

> *"9.6 As things stand, and in the absence of rezoning relatively large new greenfields areas for residential activities, KCDC would be reliant on a very significant uplift in residential capacity to occur as a result of MDRS and a move to higher density housing to meet its NPS-UD obligations. In my opinion, it will be very important that other avenues for providing additional residential capacity are also followed, so as to mitigate the risk that those MDRS changes are insufficient. One significant format for providing additional supply will be using new greenfields developments to bring supply online quickly, and in large quantities, rather than relying on small-scale infill by often unmotivated landowners to bridge the supply-demand gap."*

(d) Following from (c), some of the land highly suitable for future greenfield residential development could be developed less intensively, such as for

lifestyle blocks. If that occurred because progress on rezoning was slow, then opportunities to achieve a high-functioning urban environment under NPS-UD could be compromised. The Council should be mindful of this and consider funding further work to rezone greenfield land where feasible.

Section 2 – Overview of Panel's Process and the Panel's Reporting Framework

Section 2.1 – Statutory Context for PC2

[15] PC2 is an Intensification Planning Instrument or IPI that is subject to the direction in RMA, s 80F that states:

> *(1) The following territorial authorities must notify an IPI on or before 20 August 2022:*
>
> *(a) every tier 1 territorial authority:*
>
> *(b) a tier 2 territorial authority to which regulations made before 21 March 2022 under section 80I(1) apply.*
>
> *(2) The following territorial authorities must notify an IPI on or before the date specified in the applicable regulations:*
>
> *(a) a tier 2 territorial authority to which regulations made on or after 21 March 2022 under section 80I(1) apply:*
>
> *(b) a tier 3 territorial authority to which regulations made under section 80K(1) apply.*
>
> *(3) A territorial authority to which subsection (1) or (2) applies must prepare the IPI—*
>
> *(a) using the ISPP; and*
>
> *(b) in accordance with—*
>
> *(i) clause 95 of Schedule 1; and*
>
> *(ii) any requirements specified by the Minister in a direction made under section 80L.*

[16] An IPI, therefore, has the limitations contained in RMA, s80G that states:

> *IPIs*
>
> *(1) A specified territorial authority must not do any of the following:*
>
> *(a) notify more than 1 IPI:*
>
> *(b) use the IPI for any purpose other than the uses specified in section 80E:*

(c) withdraw the IPI.

ISPP

(2) A local authority must not use the ISPP except as permitted under section 80F(3).

[17] Mandatory requirements that an IPI must show are set out in s 80H, and that provision states:

(1) When a specified territorial authority notifies its IPI in accordance with section 80F(1) or (2), it must show in the instrument, for the purposes of sections 77M, 86B, and 86BA—

(a) which provisions incorporate—

(i) the density standards in Part 2 of Schedule 3A; and

(ii) the objectives and policies in clause 6 of Schedule 3A; and

(b) which provisions in the operative district plan and any proposed plan are replaced by—

(i) the density standards in Part 2 of Schedule 3A; and

(ii) the objectives and policies in clause 6 of Schedule 3A.

(2) The identification of a provision in an IPI as required in subsection (1)—

(a) does not form part of the IPI; and

(b) may be removed, without any further authority than this subsection, by the specified territorial authority once the IPI becomes operative.

[18] An IPI is defined in s 80E and s 80E states:

(1) In this Act, intensification planning instrument or IPI means a change to a district plan or a variation to a proposed district plan—

(a) that must—

(i) incorporate the MDRS; and

(ii) give effect to,—

(A) in the case of a tier 1 territorial authority, policies 3 and 4 of the NPS-UD; or

(B) in the case of a tier 2 territorial authority to which regulations made under section 80I(1) apply, policy 5 of the NPS-UD; or

(C) in the case of a tier 3 territorial authority to which regulations made under section 80K(1) apply, policy 5 of the NPS-UD; and

(b) that may also amend or include the following provisions:

(i) provisions relating to financial contributions, if the specified territorial authority chooses to amend its district plan under section 77T:

(ii) provisions to enable papakāinga housing in the district:

(iii) related provisions, including objectives, policies, rules, standards, and zones, that support or are consequential on—

(A) the MDRS; or

(B) policies 3, 4, and 5 of the NPS-UD, as applicable.

(2) In subsection (1)(b)(iii), related provisions also includes provisions that relate to any of the following, without limitation:

(a) district-wide matters:

(b) earthworks:

(c) fencing:

(d) infrastructure:

(e) qualifying matters identified in accordance with section 77I or 77O:

(f) storm water management (including permeability and hydraulic neutrality):

(g) subdivision of land.

[19] RMA, Schedule 3A contains permitted activity rules, special subdivision rules and a rule precluding notification requirements in certain circumstances. The standards in Schedule 3A, Part 2 govern building height, height in relation to boundary, set-backs, building coverage, outdoor living space, outlook space, windows to the street and landscaped area.

[20] Additionally, the MDRS includes the following objectives and policies in clause 6 that must be included in the District Plan as part of the IPI.

(1) A territorial authority must include the following objectives in its district plan:

Objective 1

(a) a well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future:

Objective 2

(b) a relevant residential zone provides for a variety of housing types and sizes that respond to—

(i) housing needs and demand; and

(ii) the neighbourhood's planned urban built character, including 3-storey buildings.

(2) A territorial authority must include the following policies in its district plan:

Policy 1

> *(a) enable a variety of housing types with a mix of densities within the zone, including 3-storey attached and detached dwellings, and low-rise apartments:*
>
> *Policy 2*
>
> *(b) apply the MDRS across all relevant residential zones in the district plan except in circumstances where a qualifying matter is relevant (including matters of significance such as historic heritage and the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga):*
>
> *Policy 3*
>
> *(c) encourage development to achieve attractive and safe streets and public open spaces, including by providing for passive surveillance:*
>
> *Policy 4*
>
> *(d) enable housing to be designed to meet the day-to-day needs of residents:*
>
> *Policy 5*
>
> *(e) provide for developments not meeting permitted activity status, while encouraging high-quality developments.*

Section 2.2 – PC2 was an iterative process.

[21] The development of a plan change is iterative. That term comes from the Latin verb *iter,* which means to journey. It describes a process of discovery when new information emerges or is revealed that requires reassessment or adjustment by the traveller or, in this context, the plan change proponent, i.e. the Council.

[22] The result is successive changes to the notified version of the plan change.

[23] Following the Panel's Minute, the PC2 version nomenclature the Panel uses is the following:

(a) PC(N) = the notified version of the plan change.

(b) PC(R1) = the recommended changes to the notified version by the Council officers following consideration of the submissions to PC2.

(c) PC(R2) = the changes to the notified version of PC2(N) and (R1) as a result of new information provided as a result of the hearing and recommended by Council officers.

(d) PC(C) = the version recommended by the Panel. The Panel has not made the changes but made recommendations which, if adopted form PC(C).

To the extent that they are not adopted, PC(C) is the outcome of decisions by the Council on the Panel's recommendations.

Section 2.3 – Context for PC2

[24] Kāpiti Coast District has experienced population growth for some time. The NPS-UD and its predecessors focused the Council's attention on increasing residential land supply. The Council developed the Te Tupu Pai (Growing Well) Strategy to provide local substance to the directions in the NPS-UD.

[25] Ms Maxwell provided context for that growth strategy in her reply at 23-24 as follows:

> *(23) Te Tupu Pai - Growing Well, is KCDC's growth strategy. It was published in March 2022 and establishes the vision and road map for ensuring sustainable development occurs across the Kāpiti Coast. It outlines how the District will grow over the next 30 years, with a mixture of intensification and greenfield development to be enabled. It outlines the priority areas (at the time of publication) for growth (prior to the MDRS implementation requirement), which the Council intends to investigate for future urban development but does not commit to the rezoning of any particular site within those areas.*
>
> *(24) Te Tupu Pai establishes categories for growth, which include high-priority greenfield growth areas, medium-priority greenfield growth areas and longer-term greenfield growth areas. These areas are spatially defined on the map included in the Strategy[2]. Te Tupu Pai also references a greenfield assessment report undertaken to examine opportunities and constraints associated with each potential growth area. This assessment is a technical document, which was commissioned to assist the prioritisation of areas. It is neither part of Te Tupu Pai nor is it an appendix to the document. It was included as an appendix to the Section 32 report (Appendix N) and was only included in relation to the areas proposed to be rezoned as part of PC2, not in relation to the Growth Strategy. Te Tupu Pai is not a Future Development Strategy (FDS) either, as was indicated by a submitter. A FDS is required by subpart 4 of Part 3 of the NPS-UD and is still being prepared for the Wellington Region.*

[26] The RMEHS 2021 somewhat overshadowed these workstreams and required a fresh assessment and framework to implement the required IPI. The preparatory analysis resulted in a report by Boffa Miskell underpinning of the notified PC2 called the Intensification Assessment Report ("*IAR*"). The report is attached as Appendix L to the s32 evaluation report.

[2] Te Tupu Pai - Growing Well, p 16.

[27] The IAR noted that the population of Kāpiti Coast was expected to increase by 32,000 by the year 2051 resulting in additional demand of 16,185 dwellings over the same period.[3] Figure 1 to the IAR summarises the potential scope for intensification around metropolitan centres, rapid transport stops and other lower-order centres.

[28] The IAR summarised the types of intensification prescribed by the MDRS and Policy 3 of the NPS-UD in the table below from page 5 of the IAR:

NPS Policy	**Type of Intensification**	**Applicable area**	**Interpretation of applicable area for Kāpiti District**
3(b)	Building height and density to reflect demand for housing and business use, and in all cases building heights of at least 6 storeys.	The Metropolitan Centre Zone.	The Metropolitan Centre Zone at Paraparaumu.
3(c)(i)	Building heights of at least 6 storeys.	Within at least a walkable catchment of existing and planned rapid transit stops.	The area within a walkable catchment of Paekākāriki, Paraparaumu and Waikanae stations.
3(c)(iii)	Building heights of at least 6 storeys.	Within at least a walkable catchment of the edge of the Metropolitan Centre Zone.	The area within a walkable catchment of the edge of the Metropolitan Centre Zone.
3(d)	Within and adjacent to neighbourhood centre zones, local centre zones and town centre zones (or equivalent) building heights and density of urban form commensurate with the level of commercial activities and community services.	Parts of the urban environment that are adjacent to neighbourhood, local and town centre zones.	The parts of the General Residential Zone that are within a walkable catchment of the Town Centre and Local Centre Zones.
MDRS	3 three-storey dwellings per site.	Relevant Residential Zone.	The General Residential Zone.

[3] Kāpiti Coast District Council and Greater Wellington Regional Council (2022) "*Kāpiti Coast District Council Regional Housing and Business Development Capacity Assessment*".

[29] The IAR summarised Boffa Miskell's (and the Council's) interpretation of the intensification provisions of the NPS-UD and MDRS in this way:

> ***3.1.3 Summary of interpretation of intensification policies***
>
> *On the basis of the analysis above, the approach to interpreting the intensification policies of the NPS-UD in the context of the Kāpiti Coast district is based primarily on appropriate heights and adjacency to centres being determined through each centre's position within the centres hierarchy. This is an appropriate approach for a district made up of several distributed urban areas that each rely on their own centre(s) to provide for current and future local commercial activities and community services. It also acknowledges the logic of the centres hierarchy established through the District Plan, and reinforces this hierarchy by providing that the planned level of intensification within and around each centre is consistent with its position within the centres hierarchy.*
>
> *In summary, in considering the NPS-UD, the MDRS and Te tupu pai together, the following approach has been taken to interpretation of the intensification policies of the NPS-UD:*

Area	**Interpretation of NPS-UD Intensification policy**		**Relevant NPS-UD policy**
	Height and density	**Walkable catchment**	
Within the Metropolitan Centre Zone	Enable buildings of up to 12-storeys.[4]		3(b)
Within a walkable catchment of the Metropolitan Centre Zone and Rapid Transit Stops	Enable 6-storey buildings.	800m	3(c)
Within the Town Centre Zone	Enable 6-storey buildings.		3(d)
Within a walkable catchment of the Town Centre Zone	Enable 6-storey buildings.	400m	3(d)
Within the Local Centre Zone	Enable 4-storey buildings.		3(d)
Within a walkable of the Local Centre Zone	Enable 4-storey buildings.	200m	3(d)
The General Restriction Zone	Enable 3-storey buildings.		MDRS

[4] 12-storeys within the Metropolitan Centre Zone is derived from the consultation document on the District Growth Strategy. This is consistent with policy 3(b), as it enables dwellings that are at least 6-storeys. Refer KCDC. (30 September 2021). *Growing Well: Community Consultation Document (Draft).*

Note: the application of the MDRS to the General Residential Zone is shown for comparison purposes.

[30] The result was an intensification study area illustrated in tabular form below from pages 8 and 9 of the IAR.

Ref. (note 1)	Location	Area description	Building heights to be enabled
Metropolitan centre zone			
UI-PA-5	Paraparaumu metropolitan centre and railway station	Approximate 800m walkable catchment from the Metropolitan Centre zone and the Paraparaumu railway station. Excludes the extents of the area that are located within Future Urban Study Areas PA-01, PA-02 and RB-01.	Up to 12 storeys within the Metropolitan Centre Zone. At least 6 storeys within an 800m walkable catchment of the Metropolitan Centre Zone.
Rapid transit stops			
UI-WA	Waikanae town centre and railway station	Approximate 400m walkable catchment from the Waikanae Town Centre zone and an approximate 800m walkable catchment from the Waikanae Railway Station	At least 6 storeys.
UI-PK	Paekākāriki local centre and railway station	Approximate 800m walkable catchment from the Paekākāriki railway station, and approximate 200m walkable catchment from the Paekākāriki local centre zone.	At least 6 storeys.
Town centres			
UI-ŌT-1	Ōtaki Main Street/Mill Road	Approximate 400m walkable catchment from the Ōtaki Main Street Town Centre Zone	Up to 6 storeys in the Town Centre Zone. Up to 4 storeys within a 400m walkable catchment of the Town Centre Zone.
UI-ŌT-2	Ōtaki railway station	Approximate 400m walkable catchment from the Ōtaki Railway Town Centre Zone	Up to 6 storeys in the Town Centre Zone. Up to 4 storeys within a 400m walkable catchment of the Town Centre Zone.
UI-PA-3	Paraparaumu Beach town centre	Approximate 400m walkable catchment from Paraparaumu Beach town centre zone.	Up to 6 storeys in the Town Centre Zone.

Ref. (note 1)	Location	Area description	Building heights to be enabled
			Up to 4 storeys within a 400m walkable catchment of the Town Centre Zone.
UI-RB	Raumati Beach town centre	Approximate 400m walkable catchment from the Raumati Beach town centre zone.	Up to 6 storeys in the Town Centre Zone. Up to 4 storeys within a 400m walkable catchment of the Town Centre Zone.
Local centres			
UI-WB	Waikanae Beach local centre	Approximate 200m walkable catchment from the Waikanae Beach Local Centre zone	Up to 4 storeys.
UI-PA-1	Kena Kena local centre	Approximate 200m walkable catchment from the Kena Kena local centre zone.	Up to 4 storeys.
UI-PA-2	Mazengarb local centre	Approximate 200m walkable catchment from the Mazengarb local centre zone.	Up to 4 storeys.
UI-PA-4	Meadows local centre	Approximate 200m walkable catchment from the Meadows precinct local centre zone. Excludes the extent to the north of Mazengarb Road, which is associated with Future Urban Study Area OH-01	UP to 4 storeys.
UI-RS	Raumati South local centre	Approximate 200m walkable catchment from the Raumati South local centre zone.	Up to 4 storeys.

Notes:

1. *Area reference numbers are for internal purposes only, and are used to identify each area within the Spatial Influences maps (refer Appendix 2).*
2. *Where parts of an area fall within a greenfield study area, then these have been excluded from the assessment. Refer to the separate report Boffa Miskell (2022), Kāpiti Urban Development Greenfield Assessment for further information on these areas.*
3. *"Building heights to be enabled" is a synthesis of policy 3 of the NPS-UD and the initial direction provided by the draft Kāpiti District Growth Strategy.*

[31] Following the intensification study, a qualitative and quantitative assessment was made for the purpose of establishing:

(a) The range of constraints and opportunities (including potential qualifying matters) associated with intensification of each area.

(b) Estimates of the theoretical dwelling capacity of each area based on the intensification scenario outlined in Te Tupu Pai and as directed by NPS-UD. Key spatial influences and constraints are summarised in the table below from page 12 of the IAR.

"The themes and their associated assessment criteria are identified in the assessment framework, and are broken down as follows:…"

Map theme	**Assessment criteria**
Urban environment	Urban form Local neighbourhoods Activity centres
Urban function	Residential development Business land Transport networks Infrastructure and servicing
Natural environment and landscape	Natural ecosystem values Water bodies Landscape and open space values Heritage Values
Hazards	Natural hazards and land risks
Land development constraints	Topography Land use compatibility Climate change (low-carbon futures)
Mana whenua	Mana whenua Iwi development

[32] The IAR did a detailed assessment of potential qualifying matters. The basic framework is set out in the table below.[5]

[5] The IAR used the term "potential qualifying matters" to recognise that it was not intended to provide a detailed statutory assessment of qualifying matters required by ss77J or 77P of the RMA. Rather it was intended as a scoping exercise for potential qualifying matters in areas where policies 3 and 4 of the NPS-UD apply (i.e. within the walkable catchments only). This is explained in the statement on page 22 of the IAR, which states:

Potential qualifying matter	NPS-UD implementation clause	Spatial reference
Natural character in the coastal environment	3.32(1)(a) (referring to RMA s6(a))	Areas of High or Outstanding Natural Character in the Coastal Environment (KCDC). The definition and extent of the coastal environment within the district is currently being reviewed, and KCDC have prepared a Natural Character Evaluation to support this.
Wetlands, lakes, rivers and their margins, and fresh water generally	3.32(1)(a) (referring to the RMA s6(a)), and 3.32(1)(b) (referring to the NPS Freshwater Management)	Significant Natural Wetlands (GWRC). Outstanding waterbodies (GWRC). Rivers, streams and drains (KCDC). Rivers and lakes (LINZ). Water collection areas (KCDC).
Outstanding natural features and landscapes	3.32(1)(a) (referring to RMA s6(b))	Outstanding natural features and landscapes (KCDC).
Significant indigenous vegetation and significant habitats of indigenous fauna	3.32(1)(a) (referring to RMA s6(c))	Key native ecosystems (GWRC). Indigenous biodiversity coastal (GWRC). Ecological sites (KCDC). Key indigenous trees (KCDC).
Relationship of Māori and their culture and their traditions with their ancestral lands,	3.32(1)(a) (referring to RMA s6(e))	Wāhi tapu sites (KCDC). Additional sites informed through engagement with Iwi.

This section outlines an initial potential scope of qualifying matters only, and is not intended to be a detailed statutory assessment of qualifying matters required for a section 32 report.

This recognises that:
The IAR does not provide an assessment of potential qualifying matters within the broader urban environment where the MDRS apply (but Policies 3 and 4 of the NPS-UD do not).
The IAR was principally developed prior to consultation on Draft PC2, so did not purport to address qualifying matters that may come about as a result of consultation on the Draft (the Marae Takiwā Precinct is an example of this).

The detailed assessment of qualifying matters required by ss77J and 77P of the RMA is contained in section 6.1 of the S32 Evaluation Report.

Potential qualifying matter	NPS-UD implementation clause	Spatial reference
waters, sites, wāhi tape and other taonga		
Historic heritage	3.32(1)(a) (referring to RMA s6(g))	Historic heritage area (KCDC). Historic heritage place (KCDC). Notable trees (KCDC). Geological sites (KCDC). Heritage listed sites (Heritage New Zealand).
Flood hazard	3.32(1)(a) (referring to RMA s6(h))	Flood hazard areas (KCDC).
Earthquake hazard	3.32(1)(a) (referring to RMA s6(h))	Fault avoidance areas (KCDC). High combined earthquake hazard (GWRC).
Areas potentially susceptible to coastal hazard	3.32(1)(a) (referring to RMA s6(h)); or 3.32(1)(b) (referring to the New Zealand Coastal Policy Statement)	Coastal hazard mapping (currently being prepared by KCDC).
Nationally significant infrastructure	3.32(1)(c)	State highway designation (KCDC). Rail corridor designation (KCDC). National grid lines (KCDC). High pressure gas network (KCDC).
Public open space	3.32(1)(d)	Open space zones (KCDC).
Designations	3.32(1)(e)	Designations (KCDC).
Business land for low density uses	3.32(1)(g)	Quarries (KCDC). The Mixed Use Precinct of the Airport Zone (KCDC). General industrial zone (KCDC).

[33] The IAR identified that the key intensification areas were Paraparaumu, Waikanae and Ōtaki. Section 6.1 of the report stated:

This assessment highlights that they key opportunities for intensification in the district are:

- *Paraparaumu Metropolitan centre (12,543 additional estimated dwellings, or 52% of total);*
- *Waikanae Town Centre (4,403 additional estimated dwellings, or 18% of total);*
- *The "twin" town centres at Ōtaki (3,264 additional estimated dwellings, or 13% of total)31.*

Combined, these areas are likely to provide a significant majority of the plan-enabled intensification opportunity that falls within the scope of this study (83% of total). As a set, they have the advantage of being geographically distributed across the district. Over time, this means that the potential benefits associated with intensification, including the ability for intensification to support existing and new commercial activities and community services in each of those areas, will also be distributed across the district. This pattern of development and intensification benefits may also improve the existing population's access to commercial activities and services in each of those areas.

In general, land within each of the intensification study areas is already subdivided and developed to some degree. However, both the Paraparaumu Metropolitan Centre and the areas around the twin centres at Ōtaki contains large blocks of unsubdivided and in some cases undeveloped land. This includes the Coastlands site, the undeveloped land within Paraparaumu metropolitan centre, and a number of large blocks of land in the northern half of Ōtaki. While which they are developed, and the timing of their development, will be dependent on the aspirations and timing of the land owners.

[34] Across the study areas the IAR concluded that intensification would increase dwelling capacity 24,210 dwellings as follows:

Area	**Enabled building heights**	**Estimated additional theoretical dwelling capacity**
Intensification in and around the Metropolitan Centre and Paraparaumu railway station	12 storeys within the Metropolitan Centre Zone. 6 storeys within the surrounding Mixed Use and General Residential Zones.	12,543 dwellings
Intensification around rapid transit stops at Waikanae and Paekākāriki	6 storeys within the Town/Local Centre Zone and surrounding General Residential Zones.	5,788 dwellings
Intensification around Town Centres	6 storeys within the Town Centre Zone. 4 storeys within the surrounding General Residential Zone.	4,904 dwellings
Intensification around Local Centres	4 storeys within the Local Centre Zone and surrounding General Residential Zone.	975 dwellings

	Total estimated additional dwelling capacity	**24,210 dwellings**

[35] In addition to the IAR further investigative work was carried out focusing on the following matters:[6]

(a) Coastal hazards as a potential qualifying matter.

(b) Infrastructure assessments.

(c) Marae Takiwa studies.

(d) Character assessments.

(e) Bulk and location analysis.

[36] The Council prepared a draft plan change and socialised that with the community following good planning practice.

Section 2.4 – Council's process before Panel's Hearing

[37] The Council notified PC2 on 18 August 2022 and the process from there is summarised in the following timeline.

Thursday 15 September 2022	Original deadline for the close of submissions
5pm, Tuesday 27 September 2022	Extended deadline for the close of submissions
Thursday 10 November 2022	Public notice inviting further submissions on PC2
5pm, Thursday 24 November 2022	Further submissions close

Section 2.5 – The Structure and Approach of the Panel's Report to meet Schedule 1, Part 6, Clause 100

[38] This report is arranged to fulfil the requirements of RMA, Schedule 1, Part 6, clause 100. That provision states:

[6] See also section 3.2 of the Section 32 Evaluation Report, which provides a summary of the research and analysis undertaken in preparing PC2.

(1) The independent hearings panel must provide its recommendations to a specified territorial authority in 1 or more written reports.

(2) Each report must—

(a) set out the panel's recommendations on the provisions of the IPI covered by the report; and

(b) identify any recommendations that are outside the scope of the submissions made in respect of those provisions; and

(c) set out the panel's recommendations on the matters raised in submissions made in respect of the provisions covered by the report; and

(d) state the panel's reasons for accepting or rejecting submissions; and

(e) include a further evaluation of the IPI undertaken in accordance with section 32AA (requirements for undertaking and publishing further evaluations).

(3) Each report may also include—

(a) matters relating to any alterations necessary to the IPI as a consequence of matters raised in submissions; and

(b) any other matter that the panel considers relevant to the IPI that arises from submissions or otherwise.

(4) In stating the panel's reasons for accepting or rejecting submissions in accordance with subclause (2)(d), each report may address the submissions by grouping them according to—

(a) the provisions of the IPI to which they relate; or

(b) the matters to which they relate.

(5) To avoid doubt, a panel is not required to make recommendations in a report that deal with each submission individually.

[39] This report addresses the main matters in contention at the hearing according to topics in sections rather than in response to individual submissions. That is consistent with RMA, Schedule Part 6, clause 100(4)(b).

[40] All recommendations are within scope.

[41] The Panel is not required to provide reasons according to the submission number. Indeed, it would make the report unduly long and complex. It would also be repetitive because many submissions were addressed in the primary report of the Council officers, and most submitters chose not to be heard on that outcome.

[42] Therefore, the reasons for the Panel's recommendations are:

(a) The reasons contained in the primary Council officer reports (including the itemised lists prepared by Mr Banks and Ms Maxwell in their primary evidence according to submission number) to the extent those reasons conform with our formal recommendations. In addition, the Panel's reasoning includes the supplementary reasons given in this report to the extent the reasoning pertains to the subject matter of the submission.

(b) For the Panel's recommendations that depart from the recommendations of the Council officers' reply and their PC(R2), our reasons rely on the reasons given in this report on the relevant subject matter.

[43] In fulfilling the requirement in RMA, Schedule 1, Part 6, clause 100(2)(e), our reasons for making the recommendations to Council to depart from PC(R2) and the Council's reply evidence is our reasoning set out in the relevant topic based sections of this report. Similarly, the reasoning in this report constitutes a further evaluation for the Panel's recommendations.

Section 3 – Challenges to PC2's Methods for Implementing ISP Requirements and challenges to the Extent of Enablement of Residential Activity (Both Under and Over Provisioning) in PC2

Section 3.1 – Overview

[44] Several submissions challenged the methods of PC 2 and the extent of enablement in significant ways. That included the Retirement Village Association, which sought special recognition of residential facilities for an ageing population, a fast-growing proportion of New Zealand's population. We address the main submissions in this category in this section of the Report.

Section 3.2 – Kāinga Ora

[45] Kāinga Ora's submission sought the enablement of greater levels of intensification through the provisions of PC2. Mr Banks summarised these in his reply:

(a) In relation to the Metropolitan Centre Zone:

(i) Increasing the enabled building height from 12-storeys to 15-storeys within the Metropolitan Centre Zone;

(ii) Increasing the enabled building height within a 400-metre walkable catchment of the Metropolitan Centre Zone from 6-storeys to 10-storeys. This would include the High Density Residential Zone and Mixed Use Zone 32 adjacent to the Metropolitan Centre Zone;

(b) In relation to the Town Centre Zones at Waikanae, Paraparaumu Beach and Raumati Beach:

(i) In relation to Waikanae, replacing Residential Intensification Precinct A (which enables 6-storey development) around the Town Centre Zone with a High Density Residential Zone (which enables also 6-storey development), but increase the size of the zone so that it covers an 800-metre walkable catchment from the Town Centre (as opposed to 400-metres);

(ii) In relation to Paraparaumu Beach and Raumati Beach, replacing Residential Intensification Precinct B (which enables 4-storey development) around each Town Centre with a High Density Residential Zone (which enables 6-storey development) applied to an 800-metre walkable catchment (as opposed to the 400-metre walkable catchment applied to Residential Intensification Precinct B);

(c) In relation to the Town Centre Zones at Ōtaki Main Street and Ōtaki Railway:

(i) Replacing Residential Intensification Precinct B (which enables 4-storey development) around each Town Centre with a High Density Residential Zone (which enables 6-storey development), but retaining the 400-metre walkable catchment (with some modifications); and

(ii) Expanding the size of the Ōtaki Main Street and Ōtaki Railway Town Centre Zones;

(d) In relation to the High Density Residential Zone generally:

(i) amending the enabled building height from 20 to 21 metres;

(ii) providing for a more enabling height in relation to boundary (HIRB) standard for development of 4 or more residential units, including:

- *A HIRB standard for the first 22 metres of a boundary back from the road frontage with a recession plane that inclines at an angle of 60° from a point 19 metres above the ground level at the boundary; and*

- *For all other boundaries, a recession plane that inclines at an angle of 60° from a point 8 metres above the ground level at the boundary;*

(iii) enabling commercial activities on the ground floor of apartment buildings as a restricted discretionary activity;

(e) Amendments to existing rules for home business activities in the General Residential and High Density Residential Zone;

(f) Expansion of limited notification preclusions to cover non-compliance with outdoor living space, outlook space, windows to street and landscape area density standards;

(g) Consequential amendments to objectives and policies to reflect the additional level of enablement requested;

(h) Amendments to the District Plan maps to give effect to the additional level of enablement requested. [7]

[46] Experts presenting evidence for Kāinga Ora outlined why they considered this increased level of enablement was appropriate. These are summarised in Mr Banks' reply:

a. In relation to urban economics, Mr Cullen's evidence generally identifies that the benefits to enabling greater levels of development include:

i. Increased competitiveness in land development markets;

ii. Improved centres performance;

iii. In relation to the Metropolitan Centre Zone, a greater ability to realise development capacity where future development may otherwise be constrained by existing land uses;

b. In relation to urban design and amenity, Mr Rae's evidence generally identifies that:

i. Increased levels of development sought to be enabled by Kāinga Ora provide for an appropriate urban form in relation to development in and around the district's centres;

ii. Potential effects on amenity associated with higher levels of development are appropriate, particularly in relation to the High Density Residential Zone where increased levels of build form should be anticipated in any case;

iii. The spatial application of the High Density Residential Zone sought by Kāinga Ora is appropriate from the perspective of walkability;

c. In relation to planning, Ms Williams' evidence generally identifies that:

i. In relation to the Metropolitan Centre Zone, the increased level of enablement requested by Kāinga Ora recognises the regional significance of the centre, and improves its consistency with the level of development enabled in relation to other Metropolitan Centres in the region;

[7] Para 137 Council Officer's Reply (Andrew Banks)

ii. In relation to Town Centre Zones, the increased level of enablement requested by Kāinga Ora recognises the additional significance placed on Town Centre Zones by the NPS-UD;

iii. The increased levels of enablement requested by Kāinga Ora support the development of a well-functioning urban environment (under objective 1 and policies 1, 2 and 3 of the NPS-UD) with intensification being focussed on areas directed by objective 3 of the NPS-UD.[8]

[47] In his reply Mr Banks said that he now changed his position on some of the matters raised by Kāinga Ora and the following outlines the matters of agreement:

(a) Increasing the building height enabled as a restricted discretionary activity in the Metropolitan Centre Zone from 12- to 15-storeys (resource consent would still be required, on the basis that the permitted activity height threshold remains at 6-storeys);

(b) Increasing the building height enabled in both the High Density Residential and Mixed Use Zones within a 400-metre walkable catchment of the Metropolitan Centre Zone from 6- to 10-storeys (resource consent would still be required on the basis that the permitted activity threshold for the number of residential units per site remains at 3);

(c) Expansion of the High Density Residential Zone around the Waikanae Town Centre Zone to include areas within an 800 metre walkable catchment of the Town Centre Zone (as opposed to a 400 metre walkable catchment);

(d) Application of a High Density Residential Zone in the manner sought by Kāinga Ora around the Town Centre Zones at Paraparaumu Beach and Raumati Beach[9]

Mr Banks did not agree with the increased enablement at Ōtaki Town Centre on the basis of his analysis below.

[48] He outlined his reasoning for supporting Kāinga Ora position and turned to Objective 3 of the NPS-UD to provide guidance in implementing Policy 3. Objective 3 states:

Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:

(a) the area is in or near a centre zone or other area with many employment opportunities

(b) the area is well-serviced by existing or planned public transport

[8] Para 139 Council Officer's Reply (Andrew Banks)
[9] Para 140 Council Officer's Reply (Andrew Banks)

> *(c) there is high demand for housing or for business land in the area, relative to other areas within the urban environment.*[10]

[49] In his view, it would be logical based on this, that centres that exhibited more than one of these qualities would be more suited to greater enablement. It follows that those centres that only exhibit one or less of these qualities would not be appropriate for greater intensification. To this end, Mr Banks provided a very helpful table with his assessment of the centres against the qualities outlined in Objective 3:

Areas within and around…	***Objective 3 qualities present in the area?***		
	(a) centre zone	***(b) well-serviced by existing/planned public transport***	***(c) demand***
Paraparaumu Metropolitan Centre	***Yes.*** *The Metropolitan Centre Zone is planned as the principal commercial centre and provides for the greatest level of commercial activities and community services.*	***Yes.*** *The area has access to a rapid transit service at Paraparaumu train station.*	***Partially.*** *Some demand for feasible apartment development is anticipated.*
Waikanae Town Centre	***Yes.*** *The Town Centre Zone provides the urban focus for commercial activities and community services for the surrounding urban community.*	***Yes.*** *The area has access to a rapid transit service at Waikanae train station.*	***Partially.*** *Some demand for feasible apartment development is anticipated.*
Paraparaumu Beach and Raumati Beach Town Centres	***Yes.*** *The Town Centre Zones provides the urban focus for commercial activities and community services for the surrounding urban community.*	***No.*** *The area does not have reasonable access to an existing or planned rapid transit service.*	***Yes.*** *The greatest demand for feasible apartment development is anticipated to be in the areas around Paraparaumu Beach and Raumati Beach.*

[10] NPS-UD Objective 3

Paraparaumu Beach and Raumati Beach Town Centres	***Yes.*** *The Town Centre Zones provides the urban focus for commercial activities and community services for the surrounding urban community.*	***No.*** *The area does not have reasonable access to an existing or planned rapid transit service.*	***Yes.*** *The greatest demand for feasible apartment development is anticipated to be in the areas around Paraparaumu Beach and Raumati Beach.*
Ōtaki Main Street and Ōtaki Railway Town Centres	***Yes.*** *The Town Centre Zones provides the urban focus for commercial activities and community services for the surrounding urban community.*	***No.*** *The area does not have reasonable access to an existing or planned rapid transit service.*	***No.*** *Demand for feasible development beyond the MDRS is not anticipated.*[11]

[50] The Panel partially agrees with Mr Banks' assessment of the Metropolitan Centre and Town Centres. However, we don't agree with his analysis concerning Raumati Beach Town Centre. In the table above Mr Banks states that the greatest demand for feasible apartment development is expected to be around Paraparaumu Beach and Raumati Beach. Referring to the report relied on by Mr Banks from Property Economics, Assessment of Kāpiti Residential Intensification Area Feasibilities, contained in Appendix M to the 32 Evaluation Report, there is significantly less (177) demand for apartments than Paraparaumu Beach (442). In comparison, the demand is less than at Paekakarirki (180)[12] and it is not suggested that this be further intensified. We, therefore, consider that there is less demand for growth around the centre in Raumati Beach Town Centre and do not support further enablement in this location. We do, however, agree that based on the evidence before us, there is reason to support an extension of the walkable catchment around the Town Centres and a new High-Density Residential Zone identified except for Ōtaki Main Street, Ōtaki Railway and Raumati Beach Town Centres.

[11] Para 143 Council Officer's Reply (Andrew Banks).
[12] Figure 5 Property Economics, Assessment of Kāpiti Residential Intensification Area Feasibilities, contained in Appendix M to the Section 32 Evaluation Report.

[51] In all other matters regarding the changes requested by Kaingā Ora, we agree with Mr Banks' recommendations. These are set out at paragraph (151) of his reply (with the exception of paragraph (151)(c)(i) as it relates to the Raumati Beach Town Centre)

[52] The Panel adopts Mr Banks' reasons for supporting or rejecting these requests by Kāinga Ora.

Section 3.3 – Retirement Village Association and Ryman Healthcare

Section 3.3.1 – Retirement Villages in General Residential Zone

[53] Ryman and RVA sought greater clarity in the provision for retirement villages in the context of providing for an ageing population and the MDRS.

[54] How retirement villages are provided for is outlined in the Council Officer's Planning Evidence.[13] They are not provided for in the GRZ as specific activities but are provided for as supported living accommodation. This activity is permitted for up to 6 residents and no more than one residential unit can be provided. Outside this, the activity is a Discretionary Activity.

[55] Mr Banks' main concern was with the effects potentially generated by the non-residential activities associated with retirement villages and considered that the discretionary activity status or non-complying for commercial activities is appropriate. We do not agree with this concern and the effects would not be of a scale to qualify as distributional effects potentially disabling centres . Therefore, further planning controls are not required.

[56] Mr Mitchell for Ryman and RVA and his colleague Ms Williams (who presented evidence at the hearing) considered that a suite of provisions can be developed that specifically and clearly provide for retirement villages. While they regard retirement villages as residential activities, they are aware that there are potentially effects from externalities of the activity and buildings but that these can be specifically controlled. It is their view that a planning framework can be 'designed' to be consistent with the provisions for four or more residential units as required by the NPS-UD and the

[13] 4.6.2 Council Officers' Planning Evidence. (Andrew Banks)

provisions of the MDRS. More clarity in the provision for the ageing population would result.

[57] To this end, Ms Williams proposed a standalone framework for retirement villages and this is outlined in her supplementary evidence.[14]

[58] The Panel considered this a clearer and more certain path in providing for retirement villages. The policy and rule framework proposed by Ms Williams recognises the potential effects of retirement village buildings.

[59] The definition of retirement villages includes the associated non-residential activities. Some of these are listed but also capture *other non-residential activities*.[15] Mr Banks' concerns regarding the potential effects of the non-residential activities associated with retirement villages may be addressed by framing the control of these effects as matters of discretion.

Section 3.3.2 – Retirement Villages in the Centres and Mixed-Use Zones

[60] Retirement villages are not specifically provided for in the Centres and Mixed Use Zones. Rather they are accommodated by bundling the activities that constitute them.

[61] Mr Banks' concern with allowing retirement villages in centres was that they could threaten the commercial viability of centres given their large site requirements.

[62] Ms Williams in her supplementary evidence, offered that retirement villages should have the same permitted activity standards as other activities in centres. In particular, retirement villages should have the same limitation on non-commercial activities at ground floor.

[63] Mr Banks agrees with Ms Williams that retirement villages could be treated in the same way as other permitted activities[16] and recommended new policy wording to reflect this.

[64] The Panel agree that it is entirely appropriate that retirement villages are permitted in centres and subject to the same permitted activity standards as other permitted

[14] Supplementary evidence of Nicola Marie Williams 6 April 2023.
[15] National Planning Standard of Retirement Villages.
[16] 8.2 Council Officer's Reply Evidence (Andrew Banks).

activities. Providing for retirement villages in centres enables wider location choice for the aging population.

Section 3.4 – Submitters Opposing Extent of Enablement based on flood hazard grounds

[65] Mr Duignan, a "retired economist", spoke on behalf of the Munro Duignan Trust and the Waikanae Beach Residents Society. Mr Duignan's criticism concerned the Council's limited economic lens for assessment of the costs and benefits of intensification in light of the major externalities that he claimed will inevitably arise from flood hazards affecting large and more intensively developed communities. Mr Duignan pointed to international research that demonstrates that the indirect losses ranged between 21% to 93% of direct losses.[17] He considered that the flood hazard risk was so significant that the Coastal Qualifying Matter Precinct should be extended to cover the entire coastal environment as defined in the District Plan as a proxy for the extent of flood hazards. Mr Duignan considered it puzzling that the Council was concerned with coastal hazard erosion when the more significant hazard was coastal flooding.

[66] We have addressed Mr Duignan's point in the Advisory Recommendations section of this report. We recognise flood hazard risks are important and should strongly inform urban planning. Mr Duignan is not an expert in the field of flood hazards and we are assured by Council officers that the flood hazard mapping undertaken as part of the Operative District Plan was a robust process.

Section 3.5 - Application of NPS-UD Policy 3

Interpretation of "commensurate with the level of commercial activities and community services"

[67] A number of submitters did not agree with the Council's application of Policy 3(d) of NPS-UD. Policy 3(d) states that Tier 1 Councils must enable:

> *"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"*

[17] Mr Duignan referenced [Hammond et al], Centre for Water Systems, University of Exeter, Exeter, UK 2015 and Penning-Rowsel and Parker (1987).

[68] Some submitters referred to the Ministry of Environment (MFE) guidelines[18] for interpretation concerning determining whether centres met these requirements. The Waikanae Beach local centre zone was cited as a small centre with three shops – a bakery, a dairy and a takeaway – and this did not meet the MFE guidelines. In particular, these three shops could not be said to consist of a range of services to meet the reasonable daily requirements of the community.

[69] In Mr Banks' reply, he said that relying on the MFE guidelines was incorrect as they were published in 2020 with the first version of the NPS-UD and before the Amendment Act, which changed policy 3(d). There is an important distinction here, and Mr Banks helpfully outlines this in his reply:

> a. *The original version of policy 3(d) as it appeared in the NPS-UD when it was gazetted is as follows:*
>
> *(d) in all other locations in the tier 1 urban environment, building heights and density of urban form commensurate with the greater of:*
>
> *(i) the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or*
>
> *(ii) relative demand for housing and business use in that location.*
>
> b. *The new version of policy 3(d) as it now appears in the NPS-UD is as follows:*
>
> *(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.*[19]

[70] The first version focuses on the accessibility of an area to services while the second version is focussed on the adjacency of the area to the centre. Mr Banks considered this is a fundamental difference as the planned level of activities must be

[18] Ministry for the Environment. (2020). *Understanding and implementing intensification provisions for the National Policy Statement on Urban Development*. See: https://environment.govt.nz/assets/Publications/Files/Understanding-and-implementing-intensification-provisions-for-NPS-UD.pdf

[19] Para 176 Council Officer's Reply (Andrew Banks)

considered in planning, not just the existing. The Panel agrees with this assessment as planning for the future is the basis of planning, particularly pertinent to the IPI.

[71] There is potential for these areas to grow and provide a wider range of services within the provision of the District Plan.

[72] In addition, in Mr Banks' opinion, as the MDRS had not been introduced when the MFE guidance was published, the new level of development had not been taken into account.

> *"I consider that the MDRS set the context for how policy 3(d) is interpreted, because the MDRS set the standard for the level of development that is considered to be appropriate in areas that are not adjacent to a centre zone. In other words, it sets the standard for the appropriate level of development in areas where policy 3(d) does not apply. Given that objective 3(a) of the NPS-UD seeks that more people live in parts of the urban environment that are in or near a centre zone, I consider that the application of policy 3(d) must mean enabling building heights or density that are more than the MDRS."*[20]

[73] While we agree with Mr Hazelton and Mr Tocker that the existing Waikanae Beach local centre does not currently provide an appropriate range of services for the residents of the area to rely on, the level of commercial services and the anticipated increase in development enabled by Policy 3(d) must be considered. We therefore agree with Mr Banks' recommendation.

Section 4 – Challenge to PC2's Failure to Provide for Special Character in the Kāpiti Coast Beach Areas

Section 4.1 – Overview

[74] A number of submitters sought the retention of the character of beach residential areas by classifying them as 'Beach Residential Qualifying Matter Precincts'. In addition, they sought the removal of Residential Intensification Precinct B from these precincts and the retention of the Operative District Plan provisions for Beach Residential Precincts.

[75] At the hearing, we heard from the following submitters:

[20] Para 182 Council Officer's Reply (Andrew Banks)

(a) Munro Duigan Trust (S106)

(b) Andrena and Bruce Patterson (S124)

(c) Waikanae Beach Residents' Society Inc (S105)

(d) John Tocker (S227)

(e) Andrew Hazelton (S074)

(f) Penelope Eames (S118)

[76] Submitters' concerns related to the potential change in character of residential beach areas arising from increased intensification. From a legal perspective Mr Hazelton questioned the Council's analysis of the character assessments that were completed as part of the section 32 report.

Section 4.2 – Evaluation

[77] Beach Residential Precincts are identified in the Operative District Plan, and the provisions relating to these restrict the level of development to retain the low-density character of the areas. These are now inconsistent with the MDRS and policy 3 of the NPS-UD. Mr Banks provided the following table in his reply[21] as a comparison between the existing provisions and the MDRS:

	Operative special character area provisions	**MDRS**
Building coverage	35% in the Beach Residential Precinct 40% in the Waikanae Garden Precinct	50%
Height	8 metres	11 – 12 metres
Height in relation to boundary	2.1 metres vertically + 45° recession plane	4 metres vertically + 60° recession plane
Setbacks	Front yard: 4.5 metres Side and rear yards: 3 metres	Front yard: 1.5 metres Side and rear yards: 1 metre

[21] Para 324 Council Officer's Reply. (Andrew Banks)

	Operative special character area provisions	**MDRS**
	Side and rear yards for accessory buildings: 1 metre	
Minimum allotment size	Paekākāriki: 950m² with an 18m minimum dimension Raumati: 700m² with an 18m minimum dimension Waikanae Beach: 550m² with an 18m minimum dimension Ōtaki Beach: 450m² minimum and 600m² average, with an 18m minimum dimension Waikanae Garden Precinct: 700m² with an 18m minimum dimension	No minimum allotment size (except a minimum vacant allotment size of 420m² with a 13m minimum dimension)

[78] In order for the existing provisions to be carried over, they would need to be considered as a qualifying matter. Mr Banks, in his evidence outlined the process under the RMA for establishing qualifying matters. Under the RMA, special character areas are not provided for in the list of matters set out in section 77I. The Act then requires them to be considered as "other" matters and they would need to be assessed again. In that regard, Mr Banks referred to the character assessments carried out as part of the Section 32 Evaluation Report. The Council had undertaken a further review of these in light of the direction of Policy 3 of the NPS-UD requiring intensification of residential areas.

[79] His summary of that assessment of the character of the areas is that for this to be provided for, the maintenance of low-density development would be necessary. This is inconsistent with the MDRS and the NPS-UD, which direct to increase density. Policy 6 of the NPS-UD addresses the potential changes that are anticipated and which should be expected:

> *"that the planned urban built form…may involve significant changes to an area, and those changes:*
> *(i) 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*

(ii) are not, of themselves an adverse effect"

[80] His conclusion is that as low density is the main characteristic sought to be maintained, this cannot meet the requirements of the RMA for it to be considered a qualifying matter. Specifically, S77L states:

> *A matter is not a qualifying matter …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… inappropriate in the area; and*
> *(b) Justifies why the characteristic makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD*

[81] While the Panel understands and appreciates the character of the beach residential areas, we agree with Mr Banks' interpretation of the RMA, the policy direction provided by the NPS -UD, and the planning standards imposed by the MDRS. The context of all these changes is a fundamental shift towards more intense built form and the consequential higher density of development in order to house more people in existing areas.

[82] Mr Banks acknowledged that other characteristics of these areas do not necessarily constrain development, and these are landform and vegetation. His recommendation is that retention of these values is considered where development breaches density standards. The existing policies relevant to these areas have been amended to address this. The Panel agrees with this recommendation so that these aspects of the character of the areas can be retained while still enabling intensification.

[83] At the hearing, Mr Hazelton submitted that Waikanae Beach should be excluded from the provisions as it has a population of less than 5000 at the 2018 census. (s 2 of the RMA excludes areas that have "….*a resident population of less than 5000, unless a local authority intends the area to become part of an urban environment…"* [22].)

[84] Mr Banks responded in his reply that the Council sought clarification of this clause as part of the preparation for PC2. The legal advice received was made available on the Council website. This opinion concluded that:

[22] Section 2 RMA

> *"…despite the definition of relevant residential zone using the words "unless a local authority intends the area to become part of an urban environment" (our emphasis), it would be consistent with the purpose of the Amendment Act to read this as including areas that are already part of an urban environment. Otherwise, the MDRS would need to be implemented in small areas that will be part of an urban environment in the future but not in small areas that are already part of an urban environment. We cannot see how that would have been the intention."* [23]

Mr Banks' interpretation of this, and with which the Panel agrees, is that Waikanae Beach is already part of an urban environment and ,therefore, is part of the area to which the MDRS is to apply.

[85] Mr Tocker also asserted that there would be little population growth in Waikanae Beach (228 people in the next 30 years) and therefore there was little point in increasing density. However, Mr Banks argued that this does not moderate the NPS-UD requirements and the Council's projected growth for Waikanae Beach is an additional 1,261 people by 2051.[24]

[86] The Panel is satisfied that the Council has delivered on the requirements of the NPS-UD and the application of the MDRS by firstly starting from the intent of these government directions. This is to step up the enablement of housing in urban areas and accept that the character of areas is subject to change to achieve its goal.

Section 5 – Challenge to Qualifying Matters Established by PC2 or PC2's Failure to Adequately Provide for Certain Qualifying Matters

Section 5.1 – Overview

[87] The Council received submissions on the treatment in PC 2 of qualifying matters governed by RMA, Subpart 6. Some submitters said the qualifying matters were too extensive, others said they were not extensive enough, while others suggested that the notified text inadequately addressed the qualifying matters. Some topics in this category are addressed in discrete sections of this report. The remainder is addressed in this section.

Section 5.2 – Nationally Significant Infrastructure

[23] Para 340 Council Officer's Reply Evidence (Andrew Banks)
[24] Para 342 Council Officer's Reply Evidence(Andrew Banks)

[88] The two main submitters in this class were Transpower and KiwiRail, each responsible for nationally significant infrastructure.

Section 5.2.1 – Transpower

[89] The definition in PC 2 of a qualifying matter area includes the national grid yard and the national grid subdivision corridor following RMA, s 77I and 77O

[90] Broadly speaking, Transpower supported the recognition of the national grid yard and the national grid subdivision corridor proposed by PC2. Transpower also sought a better-expressed objective that recognises that qualifying matters provide for nationally significant infrastructure and thus constrains development.

[91] Ms McLeod, a planner for Transpower, proposed amendments to District Objective DO-O3 Development Management, Policy UFD-Px Urban Build Form, Policy UFD-P1 Growth Management.

[92] Transpower also sought incidental changes to rezoning, but these issues fell away during the hearing. Concerning Objective DO-O3, Ms McLeod suggested amendment to Objective DO-O3 and, in particular, additional words after DO-O3(3) commencing "*while recognising that* ...".

[93] There were syntactical difficulties with the wording that Ms McLeod proposed.

[94] Mr Banks, in his reply, recommended acceptance of the relief requested by Transpower by incorporating the following text: "... *while accommodating identified qualifying matters that constrain development*." He also made consequential amendments to the explanatory text, UFD-Px and UFD-P1.

[95] Mr Banks' proposed wording received Ms McLeod's approval, and we agree with the changes.

Section 5.2.2 – KiwiRail

[96] KiwiRail sought four amendments to PC 2:

(a) A 5m building setback from boundaries adjoining a designation for rail corridor purposes.

(b) Amendment to noise rule NOISE-R14 to require noise-sensitive activities within 100m of the boundary of a designation for rail corridor purposes to comply with noise design standards set out in the rule.

(c) A new vibration rule and standards.

(d) Policy recognition for reverse sensitivity in relation to rail and other infrastructure in the General Residential Zone.

[97] Concerning (a) above, KiwiRail sought a 5m setback "to ensure that people can use and maintain their land and buildings safely without needing to extend out into the railway corridor"[25]. Their concern was not about the space needed to undertake work but rather the potential for accidents to occur that resulted in encroachment on the rail corridor and possible risk to the safety of its operation. Mr Brown giving evidence for KiwiRail, helpfully provided diagrams sourced from WorkSafe that demonstrated the space requirements for scaffolding for a 12m building and the paths that dropped objects would follow:

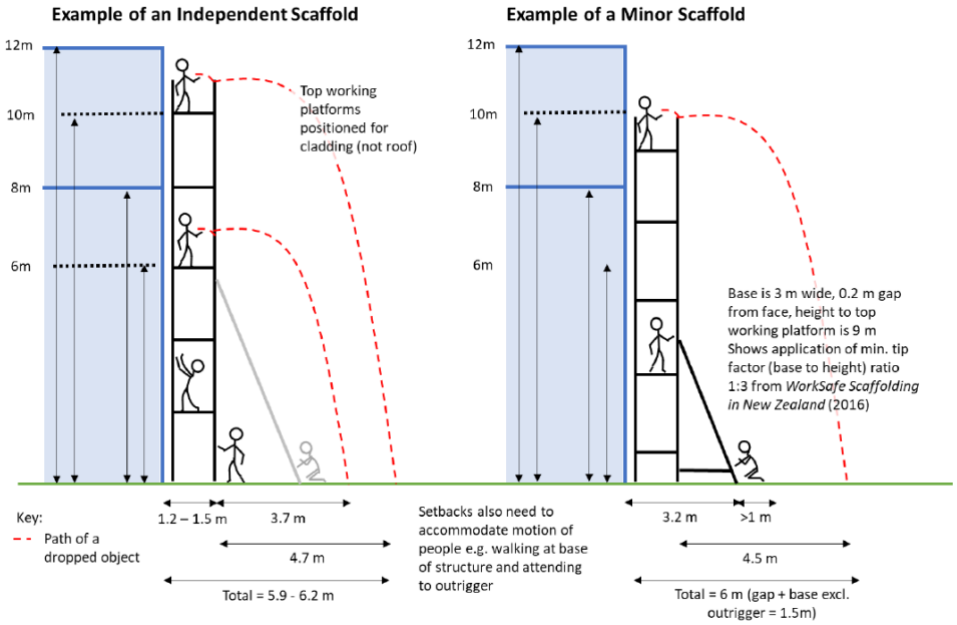


Figure 3: diagram from Mr Brown's evidence for KiwiRail, showing various scaffolding installations[26].

[98] Mr Banks considered that a HIRB standard would provide sufficient space for this setback rather than introduce a new standard. He calculated that this would require

[25] Para 256 Council Officer's Reply (Andrew Banks)
[26] Para 257 Council Officer's Reply(Andrew Banks)

a 4.6m setback from the boundary. While this is 0.4m less than sought by KiwiRail, Mr Banks considered that in keeping with good management of reverse sensitivity effects, KiwiRail could employ methods to minimise the risk. Examples that he gave include fencing, and monitoring of the rail corridor.

[99] The Panel agrees with Mr Banks' recommendation that the HIRB standard can be relied upon to address KiwiRail concerns and that consideration be given to the management of activities within the corridor.

[100] Concerning the amendment sought to the noise rule NOISE-R14, Mr Chiles, the acoustic expert for KiwiRail, explained that 100m is necessary (as opposed to 40m as specified in the Plan) as the noise level required by the standard can only be achieved at this distance without having to undertake additional measures to building design such as acoustic treatment. Mr Banks agreed that given the information provided by Mr Chiles, there is sufficient evidence to justify amending the rule.

[101] The Panel agrees with this recommendation.

[102] Thirdly, KiwiRail sough a "*new rule for indoor railway vibration to apply to buildings containing noise sensitive activities within 60m of the boundary of the designation.*"[27]

[103] In his reply, Mr Banks reiterated his concerns that there is a lack of certainty with this rule as to the design and building implications.

> *"I considered that it was unclear what the implications of compliance with the rule would be for the design, construction and feasibility of buildings subject to the standard, but that judging by requirement in the acceptable design solution tabled by KiwiRail that buildings would have "no rigid connection to the ground", a novel design approach would likely be required. At paragraph 309 (of main evidence) I concluded that the risk of incorporating a rule into the plan that may not be able to be reasonably complied with was high, because there is a high level of uncertainty about whether the standard proposed by KiwiRail can be reasonably and feasibly incorporated into the design, construction and ongoing maintenance of buildings"*[28]

[104] KiwiRail referenced a Norwegian standard and while this sets out the performance required, it does not provide requirements on how to comply, which leaves

[27] Para 271 Council Officer's Reply (Andrew Banks)
[28] Para 272 Council Officer's Reply. (Andrew Banks)

uncertainty. Mr Banks and the Panel agree that this is insufficient certainty for a standard as it contains too much risk for compliance and certainty for the plan user.

[105] The Panel considers that there is a lack of information that could be included in the Plan, including reference to a standard that lacks measurable details.

[106] In addition, the requirements of Clause 34 of Schedule 1 cannot be met. If the standard was to be included in the Plan, people are entitled to have a reasonable opportunity to comment on material proposed to be included and given the potential implications for design and building.

[107] The Panel adopts the reasons given by Mr Banks in his reply and does not support inclusion of a new rule for vibration as requested by KiwiRail.

[108] Fourthly, KiwiRail supported the request by the Fuel Companies to amend General Residential Zone policy GRZ-P10 to provide for the minimisation of reverse sensitivity effects on existing non-residential activities in the zone.

[109] Mr Banks replied that this is not necessary as policy INF-GEN-P2 (Reverse Sensitivity) located in the Infrastructure chapter, already provides for reverse sensitivity effects on infrastructure from subdivision, land use and development.

[110] The Panel agrees with Mr Banks' conclusion on this matter and adopts his reasoning.

Section 5.3 – Coastal Qualifying Matters

[111] The beleaguered planning issue of coastal hazards in Kāpiti Coast spans the first two decades of the 21st Century leading to raw grievances about fairness, scientific rigour and appropriate process amongst some community members.

[112] The coastal hazard lines in the notified version of the Operative Plan were removed due to earlier arguments. The Council later developed a distinct project for addressing coastal hazards called *Takutai Kāpiti Coastal Adaptation Project.* The concept was a more community-led process addressing the science of sea level rise ("*SLR*") and opportunities for adaptation. Deficiencies of previous processes include a lack of scientific peer review and contestable assumptions of the Shand Report, together with an

unintegrated approach to managing hazards which requires an eye to both adaptation and hazard management.

[113] The Panel considers the Takutai Kāpiti Coastal Adaptation Project should take its course, and the spatial extent of Coastal Qualifying Matter Precinct should not be treated as anything other than a placeholder.

[114] As part of the Takutai Kāpiti Coastal Adaptation Project, it was necessary for the Council to advance assessments of the following matters:

(a) The extent to which SLR will occur within a 100-year period and the extent of the impact on coastal margins following best practice. Without that, there was no information that the community could engage with or even contest. The product of that work is the Kāpiti Coast Coastal Hazards Susceptibility and Vulnerability Assessment Volume 2: Results (Jacobs 2022) ("*the Jacobs Assessment*").

(b) Identification of adaption areas to consider options for hazard management.

[115] The RMEHS was a side wind to the Takutai Kāpiti Coastal Adaptation Project. The Council was confronted with the unexpected reality that the MDRS would enable intensification on the coastal margin before the Takutai Project was complete. The MDRS, therefore, potentially opened the door to further development in locations facing coastal erosion in the long term. Confronted with this problem the Council used the Jacobs Assessment to identify the area (precinct) assessed as liable to erosion within the 100-year time frame and treated that land as being outside the operation of the new density and height standards that would otherwise apply under the MDRS. The MDRS would not apply through a new Coastal Qualifying Matter Precinct in that area.

[116] Several submitters disagreed with the Council's use of the Jacobs Assessment to create the Coastal Hazard Qualifying Matter. Mr Rush, an expert on reviewing climate science, gave evidence for Coastal Ratepayers United on the over-estimation of erosion hazard in the Jacobs Assessment.

[117] In summary, the submitters' claims were, with sub-para (a) borrowed from Mr Rush's evidence, the following:

(a) *The Jacobs Assessment was inaccurate for the following reasons:*

(i) *Applies the various planning documents conservatively to achieve its purposes, i.e. for present purposes, the inland extent of the coastal erosion line does not represent what is likely during the planning horizon.*

(ii) *Adopts RCP 8.5 and RCP 8.5H+ as its baseline for the spatial extent of the CQMP whereas such scenarios are regarded as no longer 'plausible'.*

(iii) *Assumes a need to assume Antarctic ice sheet instability when that is not likely over planning horizons.*

(iv) *Does not take account of more recent science about sea level and the known events of recurring land uplift on the Kāpiti Coast that reduce the rate of sea-level rise and defer the projected sea-level rise and consequent coastal erosion and potential inundation.*

(v) *Has used novel satellite data, with comparatively short-term measurements, that are not designed to measure either sea-level rise or vertical land movement, at the shoreline.*

(vi) *Has ignored the tide gauge data in its forecast, which is a tool designed to measure the sea-level rise and vertical land movement at the shoreline.*

(b) The PC2 process was another attempt by the Council to unfairly draw hazard lines against the agreed principles in the Takutai Kāpiti Coastal Adaptation Project.

(c) The Council should not have introduced the Coastal Hazard Qualifying Matter before the Takutai Kāpiti Coastal Adaptation Project was completed.

(d) If (c) does not apply, then the Council should to ensure the opportunities for coastal hazard adaptation are sufficiently broad do the following:

(i) Use the coastal adaption area; or

(ii) Use the entire coastal environment envelope within the Operative District Plan;

as areas which are within the Coastal Qualifying Matter Precinct.

[118] Mr Todd, a coastal geomorphologist, gave evidence for the Council and spoke to his evidence. He opined that the Jacobs Assessment was a reasonable assessment consistent with MfE guidelines and subject to a peer review.

[119] As seen above, some submitters proposed a different, more expansive coastal hazard precinct (for example, using the entire adaption area derived from the Takutai Kāpiti Coastal Adaptation Project) while also contending that the Jacobs Assessment was overly conservative. Their position, therefore, rested on the contradiction of seeking an enlarged qualifying area that required the Panel to make even more conservative assumptions about the extent of coastal erosion in the next 100 years than in the heavily critiqued Jacobs Assessment.

[120] The principles that the Panel applied to this matter were the following:

(a) Any Coastal Qualifying Matter Precinct and its aims must not run across the Takutai Kāpiti Coastal Adaptation Project.

(b) The Panel should not attempt through the PC2 process to reach conclusions about the appropriateness of the Jacobs Assessment or what hazards may arise by SLR over the 100-year timeframe because that would run against the principle (a) above.

(c) Qualifying matters are easier to remove than introduce and, in the meantime, it is necessary to address coastal hazards to ensure that development does not occur in places that could foreseeably be affected by coastal hazards based on present information until more comprehensive planning processes concerning those coastal hazards are completed.

[121] Applying those principles the Panel concluded as follows:

(a) The Jacobs Assessment is the best information available on the potential extent of coastal erosion in the next 100-year period. It has not been through a contestable quasi-judicial process through the Takutai Kāpiti Coastal Adaptation Project but was made available for public feedback.

Recognising the Jacobs Assessment's current value for use in PC2 does not foreclose legitimate and reasonable debate about the extent of coastal hazards. We do not clothe the Jacobs Assessment with any higher value than its present and contingent value as the best available information.

(b) Identifying the Coastal Qualifying Matter Precinct in the Plan is appropriate and reasonable, pending completion of other processes, including the Takutai Kāpiti Coastal Adaptation Project and any future plan change.

(c) To ensure there is no implicit bias created by introducing the Coastal Qualifying Matter Precinct at this stage to address the unexpected requirements of the RMEHS, PC2 should make it plain that the extent of the Coastal Qualifying Matter Precinct is provisional and subject to further processes.

[122] Mr Banks, in his reply, helpfully suggested amendments to the relevant policy to achieve the points in subparagraph (c) of the above paragraph. We agree with that solution.

Section 5.5 – Marae Takiwā Precinct

[123] In the Kāpiti Coast district, marae in urban areas have been exposed to substantial environmental change associated with town development for over a century.

[124] Potential enablement of development around those marae through an IPI could further disable the function of the marae and weaken the relationship of tangata whenua to these significant natural and physical resources.

[125] The Marae Takiwā Precinct was conceived as a new qualifying matter to limit the effects on the urban marae that would otherwise arise from development under the MDRS or Policy 3 of the NPS-UD.

[126] The concept was explained in the Council's s 32 analysis as follows at pages 165-166 of the s32 Evaluation Report:

1. *Tikanga and kawa associated with events that occur on a marae (for example, powhiri, karanga, and tangihanga) would be sensitive to overlooking by surrounding development;*
2. *Visibility from the marae towards key features in the landscape (for example, the Tararua range) is likely to be disrupted by surrounding development;*
3. *Surrounding development may have reverse sensitivity effects that impact on the cultural and traditional practices of the marae (for example, additional surrounding development is likely to be sensitive to the noise generated by a karanga, or the traffic generated by a tangihanga).*

Because intensification surrounding a marae may have adverse effects on the cultural and traditional practices associated with marae, it is appropriate to reduce the level of development otherwise required by the MDRS and NPS-UD in the area surrounding marae as a qualifying matter under s77I(a) and s77O(a) of the RMA.

The precinct covers the marae and the sites surrounding the marae. Within the precinct, the following are proposed to be provided for:

- *The existing permitted maximum building heights in the District Plan would be retained. The existing permitted maximum building heights are:*
  - *Within the General Residential Zone: 8 metres (2-storeys);*
  - *Within the Town Centre Zone: 12 metres (3-storeys).*
- *Where there are existing 'recession plane' controls at the boundary of the marae, these would be retained. Recession plane controls require taller development to be increasingly set-back from the boundary;*
- *The permitted number of dwellings per site in the General Residential Zone would be reduced to one per site. This would ensure that denser development triggers a resource consent process.*
- *Development that breaches any of these standards will require a resource consent. The rule will be worded to ensure that the owners and occupiers of the relevant marae are given consideration as an 'affected person'. This means that tangata whenua who are responsible for the marae would be notified of the resource consent application, and would have an opportunity to submit on the consent. In practice, this provision would encourage developers to talk to those responsible for the marae, and resolve any issues prior to submitting the resource consent application.*
- *In addition to considering tangata whenua who are responsible for the marae as an 'affected person', the District Plan would include policies that require decision-makers to have regard to the matters outlined above when considering resource consent applications for development within the precinct.*

This package of provisions would maintain the status quo permitted building heights provided for around marae, and provide for the recognition of tangata whenua who are responsible for the marae on resource consents for development proposing greater heights or densities on sites surrounding the marae.

The following provisions proposed by PC2 are relevant to the Marae Takiwā Precinct. Refer to the PC2 document for a description of these provisions:

Chapter	***Provision***

General Residential Zone	*GRZ-Px8, GRZ-Rx3, GRZ-Rx8*
Town Centre Zone	*TCZ-Px2, TCZ-R6, TCZ-Rx4*
District Plan Maps	*PRECx6 - Marae Takiwā Precinct (General Residential Zone*

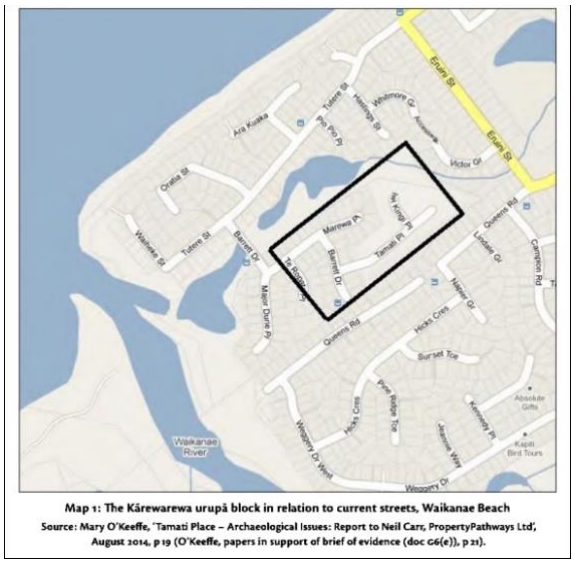
6.1.5 New qualifying matter: Marae Takiwā Precinct

Raukāwa marae, located in the General Residential Zone at Ōtaki and Whakarongotai marae, located in the Town Centre Zone at Waikanae are two marae located within urban environments that are otherwise subject to the MDRS and policy 3 of the NPS-UD. As part of engagement with iwi on the development of PC2, iwi identified that marae function as a living site of significance integral to the cultural and traditional life of tangata whenua. The purpose of the Marae Takiwā precinct is to recognise that the cultural and traditional practices that occur at marae are sensitive to the adverse effects that may result from increased heights and densities of development on sites adjacent to marae.

[127] The Panel agrees with the Council's thoughtful response on this topic. The Panel also agrees with the refinements suggested by Mr Banks in his reply evidence.

Section 6 – Kārewarewa Urupā

[128] Nestled in the residential community of Waikanae Beach is developed and bare residential zoned land adjacent to Waimanu Lagoon fed by a diverted Waimea Stream. Part of the area includes a 20-acre block once identified as "Ngarara West A14B1", shown in the map below, sourced from the archaeologist Mary O'Keefe ("*the Kārewarewa Urupā Block*"). The Kārewarewa Urupā Block was to be inalienable Māori land.



Map 1: The Kārewarewa urupā block in relation to current streets, Waikanae Beach
Source: Mary O'Keeffe, 'Tamati Place – Archaeological Issues: Report to Neil Carr, PropertyPathways Ltd', August 2014, p 19 (O'Keeffe, papers in support of brief of evidence (doc G6(e)), p 21).

[129] This land has a complex modern history that requires the Panel's consideration because in the notifed PC 2 the Council identified the Kārewarewa Urupā Block as wāhi tapu using Schedule 9 of the Plan.

[130] A kaumātua of Te Ātiawa, the late Paora Ropata, filed a claim in the Waitangi Tribunal (WAI 1945 Claim) about the Kārewarewa Urupā Block in 2008. He claimed that the 20-acre block was the Kārewarewa Urupā of great significance to Te Ātiawa. That claim came for an urgent hearing before the Waitangi Tribunal during the Tribunal's consideration of the Te Ātiawa/Ngāti Awa hearings in 2018-2019. The Tribunal issued the Kārewarewa Urupā Report (Wai 2200) 2020.

[131] The Waitangi Tribunal report is a significant work supported by detailed historical evidence. The Panel considered much of that evidence as part of its assessment of PC 2 and for the Panel's assessment of a submission from the landowner of the bare land, Waikanae Land Company Limited.

[132] Waikanae Land Company opposed scheduling its bare land within the Kārewarewa Urupā Block as wāhi tapu because PC 2 was not the correct vehicle to recognise the land as wāhi tapu. Waikanae Land Company also claimed that the archaeological evidence does not support such a spatially extensive and restrictive planning control; hence, the Council's response is disproportionate. The first point raises a jurisdictional question that has been addressed in a recent Environment Court decision.

[133] It is convenient to succinctly set out the relevant history and facts and deal with the jurisdictional question last.

[134] The Kārewarewa Urupā Block is now residentially zoned land partly developed. The bare land is still owned by Waikanae Land Company, the bulk of which has access from Tamati Place, a partially formed road. That bare land is gently rising and, at its northern boundary, provides elevated views across the Waikanae's relict foredunes near the Waikanae's River mouth.

[135] There is also a piece of land owned by Waikanae Land Company off Barrett Drive. In that location, there is a remnant sliver of the Kārewarewa Urupā Block that is an access strip to adjoining land owned by the Waikanae Land Company that is not within the Kārewarewa Urupā Block. The Environment Court has before it, by direct referral, an

application for subdivision and development of that portion of Waikanae Land Company's land off Barrett Drive. The Council, Heritage New Zealand and Te Ātiawa oppose the disturbance of the sliver of land within the Kārewarewa Urupā Block, which is crucial for access to the Waikanae Land Company's other land off Barrett Drive.

[136] In preparing PC 2, the Council wanted to ensure that any development potentially enabled by the MDRS did not adversely affect the cultural value of sites of significance to tangata whenua. During the Council analysis, the issue of the Kārewarewa Urupā emerged strongly. That is understandable, given the recently issued Waitangi Tribunal report. The MDRS potentially increased the development capacity of the residentially zoned bare land within the Kārewarewa Urupā Block, underscoring the urgency for the Council to progress management of the cultural values reposing in the land.

[137] In assessing the Kārewarewa Urupā Block's values, the Council considered the following sources of information in its RMA s 32 evaluation:

(a) The Waitangi Tribunal 2020 Kārewarewa Urupā Report.

(b) Engagement with iwi authorities (including Te Ātiawa ki Whakarongotai).

(c) Feedback from landowners (including Waikanae Land Company) and others on draft PC2 about the proposal to add Kārewarewa Urupā to Schedule 9 of the District Plan.

(d) The matters required to be considered concerning qualifying matters under RMA, s 77J(3).

[138] The Council formulated as part of its draft plan change for consultation a scheduling scheme for Kārewarewa Urupā to be included in Schedule 9 of the District Plan. The Council proposed scheduling the Kārewarewa Urupā as a wāhi tapu while recognising the difference between land already residentially developed and the Waikanae Land Company's bare land in the rule stream. The notified table showing this is below:

District Plan ID	**Name**	**Type**	**Iwi**	**Key access and view points**	**Wāhanga**
WTSx	Kārewarewa Urupā	Urupā	Āti Awa		Tahi

WTSx	Kārewarewa Urupā	Urupā	Āti Awa		Rua

[139] Te Ātiawa ki Whakarongotai also made a submission on PC2 requesting adjustments to the boundaries of Kārewarewa Urupā. The Council officers adopted these changes in their reply, so the Proposed Plan for scheduling is below.

[140] The PC 2 scheme for the Kārewarewa Urupā scheduling is, therefore, the following:

(a) By operation of the existing Plan provisions with the amended Schedule 9, the entire Kārewarewa Urupā Block is a qualifying matter; therefore, the Council may make the District Plan less enabling of development than otherwise required by the MDRS.

(b) For the Wāhanga Tahi portion of the Kārewarewa Urupā Block (the bare land within Kārewarewa Urupā), the provisions in rules restricting subdivision, earthworks and site development in Schedule 9 apply

supported by existing policies that recognise the values supporting the scheduling.

(c) Less restrictive earthworks and development provisions apply for land already developed within Wāhanga Rua. Nevertheless, there are controls on earthworks and development to enable culturally appropriate treatment of discoveries and to facilitate appropriate dialogue between Te Ātiawa and residents.

[141] The Council also consulted residents that own land within Wāhanga Rua, and there was little opposition when the Council explained how the provisions work. Mr Turver, an affected resident and former local government representative in the Wellington region, spoke to his submission on the Kārewarewa Urupā Block. He observed that the affected residential community were astounded and dismayed to find that their residences sat on such a historically important piece of land that was also an urupā. His view was that existing residents supported the controls and valued the opportunity to liaise with Te Ātiawa, particularly in the event of accidental discoveries. Te Ātiawa in their evidence, described past occasions when they had to assist residents at times because earthworks resulted in human remains being exposed.

[142] The Waitangi Tribunal report on the Kārewarewa Urupā is an enlightening document like so many of the Tribunal's reports. It is remarkable for the level of historical enquiry that supports the assessment.

[143] The Tribunal report's function is to report on breaches of Te Tiriti o Waitangi and with that lens, does not involve the existing landowner or purport to affect the landowners' interests. Nor does the Tribunal make a report with an eye to resolving planning issues affecting landowners of private land. Indeed, it is a Crown principle that Crown breaches do not give rise to obligations of landowners to remedy those breaches.[29]

[144] The Tribunal's enquiry considered whether the Crown agencies overseeing the interests of Te Atiawa concerning the Kārewarewa Urupā Block observed the Treaty

[29] Office of Treaty Settlements "*Ka tika* ā muri, *ka tika* ā mua, Healing the past, building a future", March 2015.

principles. These agencies included the Native Land Court, Heritage New Zealand and Crown surrogates such as the Māori Land Court, and the Horowhenua County Council.

[145] The starting point for the Tribunal's enquiry was an assessment of whether or not the Kārewarewa Urupā was indeed that urupā of great cultural significance to Te Ātiawa. Because that question necessarily brings into focus the enquiry as to whether or not Crown agencies had behaved in a way consistent with the principles of Te Tiriti o Waitangi.

[146] At s 1.2, page 7 the Waitangi Tribunal stated:

> *"In our view, the traditional, historical and archaeological evidence is clear that this block was an urupā. We have no doubts on that point. Although we have only provided a brief summary here, further historical and agroecological evidence is discussed in the following chapters. For the claimants, this urupā has great significance in cultural and spiritual terms".*

[147] The report notes that Mahina-a-Rangi Baker for Te Ātiawa gave evidence that:

> *"Te Kārewarewa Urupā is located within an old dune belt at the confluence of the Waikanae River and the old course of the Waimeha Stream (or Waimea depending on dialect), north of the Waikanae River and estuary, and east of the Waimeha Stream, and the coastal settlement of current day Waikanae Beach".*

[148] The Tribunal report on the significance of the Kārewarewa Urupā Block noted that Mere Pomare stated that it was on the north side of the Waikanae River and was a burial ground where her mother, the famous chieftainess Te Rauoterangi was buried.

[149] The Panel received a powerful presentation from Te Ātiawa at its hearing which did not attempt to address the breadth of evidence presented to the Tribunal. Quite properly, Te Ātiawa rested that argument on the report's conclusions and the supporting information presented to the Waitangi Tribunal that we were encouraged to consider.

[150] The Waikanae Land Company's first opportunity to address in a hearing the Waitangi Tribunal report and the appropriate planning controls arising from the Tribunal report was during our hearing. [30]

[30] WLC had the opportunity to provide feedback on the proposed inclusion of Kārewarewa Urupā when the Council consulted on draft PC2, and they did so. Their feedback was analysed and included in the S32 Evaluation Report. This is set out on pages 93 and 94 of Appendix B to the Section 32 Evaluation Report.

[151] The Waikanae Land Company contested the values attributable to the land because human remains are located in only a small area of the Kārewarewa Urupā Block. Mr Gibbs, a heritage management consultant, gave the expert basis for that view. It is useful to set out the executive summary of Mr Gibbs evidence.

> 13. *Plan Change 2 proposes a new wāhi tapu listing that encompasses an area formerly known as the 20-acre block (8.0936 hectares) which is claimed by Te Ātiawa ki Whakarongotai to be the Kārewarewa Urupā, a place where dead from the Battle of Kuititanga and known ancestors are said to be buried. Research undertaken for this assessment has revealed that part of the Stage 4B property (at the Barrett Drive end) was previously within the 20-acre area block boundary and all of the Stage 6 development falls within this boundary. This block was designated under the 1968 Horowhenua County District Scheme as "Māori Cemetery" with an underlying residential zoning, this designation having been removed on 10 August 1970 by the County Council on application of the WLC as purchaser from the Māori owners. The original 1896 cemetery designation by order of the Māori Land Court was to set aside a 10 acre area of land for a cemetery, but in 1919 a later Māori Land Court order changed the area to 20 acres. No documentation could be found to verify the reason for this increase.*
>
> 14. *I feel it is important to emphasise that, with regards to archaeology, very little is known about the 20-acre block apart from the burial site R26/456 discovered in 2000 in Stage 6 of a previous WLC development and a small midden (R26/88) with an inaccurate location recorded prior to the WLC initiating development in the area. No other human remains had been discovered during any previous subdivision developments of WLC land (including the development of 28 sections in the Barrett Drive, Marewa Place and Te Ropata Place areas and dedicated roadways being part of the land formerly designated "Maori Cemetery"), nor during the subsequent residential development works undertaken on the land between Stage 6 and the Stage 4B property.*
>
> 15. *Much has been written about the presence of dead from the Battle of Kuititanga within the 20 acre block but no evidence has been presented to support this, and historical research and the archaeological record does not support this. The analysis of the kōiwi (from R26/456) by Dr Tayles identified three individuals of Māori origin and six of European or indeterminate origin, many of which were children. This does not appear consistent with a burial ground of dead warriors from a battle and appears more representative of a burial context associated with an epidemic that took a number of young lives. Without detailed analysis of the kōiwi this is indeterminate and merely conjecture. Furthermore, the context of these burials does not conform to the descriptions or burials of the battle dead offered by the primary sources who attended the battlefield immediately after the event.*
>
> 16. *No archaeological site has been identified at Stage 4B and there is no persuasive evidence to suggest that any material exists, thus no archaeological values can be assessed. The only archaeological values identified on WLC property are attributed to the burial site R26/456 located within Stage 6 and even though this is a disturbed context – kōiwi in secondary deposition - the archaeological values of R26/456 are still high. However, these values cannot be universally applied across*

the whole 20 acre block, particularly in the absence of verified proof of extant burials beyond the known burial area and a lack of evidence of other in situ archaeological material.

17. *Geophysical surveys since undertaken on the uncompleted WLC Stage 6 development area indicate that some additional human remains could possibly exist in the area to the north of where the remains were uncovered in 2000, but that the area to the southwest of this (towards Stage 4B) is devoid of anomalies that could be interpreted as possible burials.*

18. *The rectilinear boundary represented in the plan change is not representative of the actual extent of burials as established by the accidental discovery of the kōiwi in Stage 6 and subsequent investigations and research. No explicit spatial extent is currently delineated for site R26/456; the extent simply inferred by the description of the nature of the finds which is recorded in the site record form as "at least nine individuals disturbed during trenching for services in a planned subdivision".*

19. *A greater spatial extent, to incorporate the area to the north of the known burial/reinterment site where the geophysical surveys indicate potential further burials are located, would truly represent what the archaeological record and research informs us about the area where high archaeological values can be attributed. This area can be protected through the creation of a reserve and would be a more appropriate extent for listing as a wāhi tapu in the proposed Plan Change".*

[152] Of course, the Kārewarewa Urupā Block's cultural and spiritual values are not confined to burial grounds or archaeological values. The area signifies a sacred space with the cultural memory of many events. For example, Te Ātiawa considers the Kārewarewa Urupā Block is a defined area marked by esteemed forebears and also to memorialise the historically important battle of Kūititangā. That occurred in the Waikanae district ending a period of conflict between Te Ātiawa/Ngāti Awa and Ngāti Raukāwa. Many of those who died were buried on land at the eastern confluence of the Waikanae and Waimeha Rivers. Other prominent ancestors were also buried there. For example, Te Waipunahau, the mother of Wi Parata.

[153] On the burial values, Waitangi Tribunal noted in s 1.2 the following:

> *"The historical evidence is that the first people buried at the site known as Kārewarewa was some of those who fell at Kūititanga. The custom of Christian burial was followed but gravesites were not marked. Ms Baker explained:*
>
> > *The area was then no longer appropriate for occupation or food cultivation and thus was abandoned and deemed waahi tapu. In the mid 19th century the site has been used as a urupā. Several significant tūpuna of Te Ātiawa are recorded as being buried there, as well as Pakeha that had some connections to Te Ātiawa. Te Kārewarewa is still regarded as an urupā and waahi tapu".*

[154] The Waitangi Tribunal found a continuous desecration of the Kārewarewa Urupā Block since the early 1960s, enabled by the failure of the Crown and its surrogates to protect the cultural and spiritual values pertaining to the Kārewarewa Urupā and its environs. The Crown made significant concessions about its failures.

[155] The Waikanae Land Company has been involved in land development in Waikanae since the 1960s. It went into receivership in the 1970s, and its development operations became dormant for decades. It is now out of receivership. As part of developing Waikanae as a beach settlement, it formed the Waimanu Lagoon by dredging using heavy machinery. Anecdotally, evidence of human remains were found during this process, but there is no formal record.

[156] Mr Rowe, who is a lawyer at the Palmerston North firm Fitzherbert Rowe, at all material times acted for Waikanae Land Company during the 1960s and onwards. He has had a long legal career in the Manawatū and was also a director of the Waikanae Land Company. He was, from time to time, involved in site visits to view the dredging of Waimanu Lagoon. He has no recollection of people discussing the topic of human remains through those site visits or communications with the company.

[157] Waikanae Land Company recommenced development between 1990 and 2000 while still in receivership. That resulted in further litigation and controversy. A narrative is set out in section 4.2.1 of the Tribunal report as follows:

> *Work began in 2000 to 'prepare the site and construct service trenches'[31] The trenches were dug along the centre of the two proposed roads, which were named Tamati Place and Wi Kingi Place (a short offshoot from Tamati Place).[32] During the course of this work, kōiwi were exposed on two separate occasions. The remains of at least nine individuals were found (some evidence says 11).[33]*
>
> *In brief, based on the accounts in the District Court and High Court cases about this incident, kōiwi were uncovered on 5 July 2000 as a result of the earthworks. Historic Places Trust staff decided that the situation should be dealt with on an emergency basis. This meant that the site would not be treated as an 'archaeological site' for the purposes of the Historic Places Act, so that the kiwi could be disturbed further by removing them for*

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[31] Mary O'Keeffe, 'Tamati Drive Subdivision, Waikanae: Archaeological Assessment', May 2001 (O'Keeffe, papers in support of brief of evidence (doc G6(a)), p50).
[32] Mary O'Keeffe, 'Tamati Place - Archaeological Issues' (O'Keeffe, papers in support of brief of evidence (doc G6(e)), p 6).
[33] Mahina-a-rangi Baker, 'Cultural Impact Assessment' (Mahina-a-rangi Baker, papers in support of brief of evidence (doc Fii(a)), p 595); Paora Ropata, brief of evidence (doc F1), p2i; *Higgins Contractor Ltd v. Historic Places Trust* High Court Wellington AP 10/02,30 April 2002 at [15]. (Woodley, papers in support of 'Local Government Issues' (doc A193(c)(iii)), p 99).

> *reinterment. Those working at the site were advised, however, that further work would need an authority from the trust and would also need to be monitored. A contentious point, however, was that some limited work was allowed to be completed but without enough specificity as to where. Susan Forbes, the archaeologist called to the site on 5 July 2000, advised contractors at that time of the existence of what appeared to be middens, which she said indicated the whole area was potentially an archaeological site. On 19 July 2000, a driver contacted Ms Forbes because further kōiwi had been found, at least 10 metres away from the original site of exposure. According to the contractors, the work underway at the time was necessary because pipe testing had showed leaks, and so - for safety purposes and to protect their materials - they had to complete some of the drainage work.*[34]
>
> *Paora Ropata told us that the people only found out what was going on from Susan Forbes through 'word of mouth' not from the developers, and 'there was a sense of anger and betrayal once the Iwi learned of the continuation of diggings'.*[35]
>
> *In 2001, the Historic Places Trust prosecuted Payne Sewell Ltd and Higgins Contractors Ltd for a breach of section 99 of the Historic Places Act 1993. The Kaunihera Kaumātua, a council of tribal elders, 'actively supported' the prosecution.*[36] *The District Court convicted the defendants for continuing to work on the site after 5 July 2000 because they had been 'put on notice by archaeologist Susan Forbes'.*[37] *Higgins Contractors were fined $15,000 and Payne Sewell Ltd were fined $20,000.*[38]
>
> *The High Court overturned this conviction on appeal, however, on the basis that the information laid against the contractors had failed to specify the correct date and place. The information laid against Payne Sewell and Higgins Contractors had specified Tamati Place, whereas the kōiwi had been exposed on Wi Kingi Place. The Historic Places Trust had argued that 'Tamati Place' was a single archaeological site but the court did not accept that argument. Also, the work which uncovered the kōiwi had occurred on 17-19 July, whereas the information charged that the offence occurred on 20 July (the day Ms Forbes was contacted and work was carried out with her to complete uncovering the kōiwi so that they could be removed). Further, the trust had allowed some work to continue without the need for an authority. The judge therefore found that the District Court had been mistaken in finding that the 'lack of authority from the Trust was made out'. For these two reasons, the High Court overturned the conviction.*[39]

[158] Mr Rowe, in support of Mr Gibbs' assessment about the extent of the values in the Kārewarewa Urupā Block, noted that if the site was the site of a significant battle one would expect to find muskets and other weapons during the course of land development.

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[34] *Historic Places Trust v. Higgins Contractor Ltd* District Court Porirua CRN 0091014593, 13 September 2001; *Higgins Contractor Ltd v Historic Places Trust* High Court Wellington ap 10/02,30 April 2002 (Woodley, papers in support of 'Local Government Issues' (doc A193(c)(iii)), PP80-109).
[35] Paora Ropata, brief of evidence (doc F1), pp 21-22.
[36] Paora Ropata, brief of evidence (doc F1), p 22.
[37] *Historic Places Trust v. Higgins Contractor Ltd* District Court Porirua CRN 0091014593, 13 September 2001 at [55] (Woodley, papers in support of 'Local Government Issues' (doc A193(c)(iii)), P95.
[38] *Higgins Contractor Ltd v. Historic Places Trust* High Court Wellington ap 10/02,30 April 2002.
[39] *Higgins Contractor Ltd v Historic Places Trust* High Court Wellington ap 10/02,30 April 2002 at [35]-[48] (Woodley, papers in support of' Local Government Issues' (doc A193(c)(iii)), pp 104-108).

[159] The Panel's findings on the values of the Kārewarewa Urupā are the following:

(a) The Kārewarewa Urupā Block values are historical, spiritual and cultural associated with the occupation of Te Ātiawa and events associated with that land. These are not solely burial values as an urupā but importantly include those values. That includes the remains of esteemed ancestors that engage the highest obligations for protection and care following Te Ātiawa's tikanga.

(b) The Kārewarewa Urupā Block was demarcated and deemed sacred by Te Ātiawa elders since at least 1839 onwards as wāhi tapu.

(c) Mr Gibbs identifies an area in the northeastern boundary as almost certainly containing human remains. This shows that it is possible to establish burial activity using modern imaging techniques. However, Mr Gibbs as an archaeologist is particularly interested in artefacts and, therefore, his enquiry is of limited scope and does not constitute a cultural/spiritual impact assessment.

(d) Mr Gibbs conceded that the imaging techniques used to assess the probability of human remains are not fail-safe. It would require development to establish definitively the presence or absence of human remains. Mary O' Keeffe made the same point in her archaeological report.

(e) The absence of battle armoury at Kārewarewa Urupā, referred to by Mr Rowe, does not give rise to an inference that it was not a site of Kūititanga battle. These items were valuable in their own right and likely to have been collected from the battlefield.

[160] It follows from our findings that human decency and the provisions of the RMA, Part 2, demand recognition and provision of these important cultural values in a meaningful and extensive way. Indeed, the Panel cannot see how good government, which requires the peaceful coexistence of peoples, can be secured other than by appropriate respect and recognition for culturally significant places like the Kārewarewa Urupā Block.

[161] The Tribunal report relates the ongoing consternation and protest associated with using the Kārewarewa Urupā Block for residential development purposes.

[162] Mr Paul Thomas, the Waikanae Land Company's planner, conceded when questioned that if the land were a greenfields block he would not recommend the Kārewarewa Urupā Block be zoned residential in light of the existing cultural values. He considered the issue only becomes more complex given the history since Waikanae Land Company's purchase giving rise to what Mr Thomas called 'residential development expectations'.

[163] We agree with Mr Thomas's assessment and that brings us to an evaluation of the proportionality of imposing restrictions on the subject land (private land), likely to inhibit residential development of the scheduled Wāhanga Tahi land recognising it is zoned residential and has been for decades.

[164] As noted, the Waitangi Tribunal undertook a detailed analysis of the history of administration of the Kārewarewa Urupā Block. It was assisted by a detailed historical analysis by Suzanne Woodley's[40] Porirua ki Manawatū Inquiry District: Local Government Issues report and report by the archaeologist Mary O'Keeffe.[41]

[165] The Tribunal report addressed the following key events:

(a) The designation of the Kārewarewa Urupā Block as a cemetery in the Horowhenua District Plan (s 3.2 of the Waitangi Tribunal report).

(b) The sale of the Kārewarewa Urupā Block in 1968-1969 to the Waikanae Land Company (s 2.5).

(c) The removal of the designation in 1970 by the Horowhenua County Council paved the way for land development in the Kārewarewa Urupā Block in accordance with the underlying zoning of residential.

[40] Suzanne Woodley, '*Porirua ki Manawatu Inquiry District: Local Government Issues Report'* June 2017 (doc A193) pp267-627.
[41] Mary O'Keeffe, Tamati Place – Archaeological Issues: '*Report to Neil Carr, Property Pathways Limited*' August 2014; and a brief of evidence by O'Keeffe to the Waitangi Tribunal.

[166] We do not intend to canvas in detail the historical narrative fully addressed in the Waitangi Tribunal report and amply supported by Woodley's 'Local Government Issues' (doc 193).

[167] As noted above, the Tribunal's assessment was done with an eye to potential failures by the Crown. Our lens is different. We must consider whether or not there are any competing considerations of what we generically describe as 'equitable' in nature that should influence the assessment of whether or not it is appropriate and proportional to require the subsisting cultural values to be recognised formally in the District Plan to the extent that development expectations will be significantly curtailed.

[168] More pointedly, the question is whether or not the Waikanae Land Company could have ever reasonably concluded that the cultural values recognised by the earlier 1960s designation were not values that applied to the land. If not, then there is less reason not to identify and protect the values now following the requirements of current legislation. Many landowners have had restrictions on use imposed for values recognised by contemporary legislation that did not apply previously. We address that matter below.

[169] The Waikanae Land Company became concerned about the designated cemetery status of the Kārewarewa Urupā Block during the purchase process. This is addressed in Section 3.3.4 of the Waitangi Tribunal report.

[170] At the time of the purchase, the Kārewarewa Urupā Block was identified as a Māori cemetery in a Horowhenua County District Scheme made under the Town and Country Plan Act 1953 and this was recorded by means of a designation. An extract from the District Scheme is below:

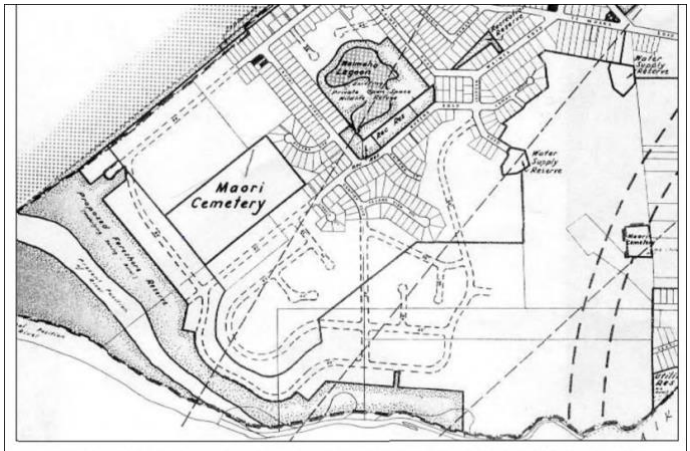


Figure 1: Horowhenua County district scheme map showing the 'Maori Cemetery' block
Source: Mary O'Keeffe, 'Tamati Place – Archaeological Issues: Report to Neil Carr, PropertyPathways Ltd', August 2014, p 18 (O'Keeffe, papers in support of brief of evidence (doc G6(e)), p 20).

[171] The Town and Country Plan Act 1953, Second Schedule, identified the matters that may be dealt with in District Schemes. Relevantly clause 3 states:

> *"The designation of reserves and proposed reserves for national, civic, cultural, and community's purposes for forestation and water catchment purposes, for recreation grounds, ornamental gardens, and children's playgrounds and for open space".*

[172] Following the purchase of the Kārewarewa Urupā Block, the Waikanae Land Company applied to the Horowhenua District County Council to remove the cemetery designation. The story is narrated in Chapter 3 of the Waitangi Tribunal report, and the following parts are relevant:

> ***3.3.4 The company tries to clarify the status of the land, 1969***
>
> *As noted in chapter 2, Mr Simpson had raised the issue of the 'Māori cemetery' at the meeting of assembled owners in December 1968: 'At first, it was thought that the cemetery was in this block, but he had since learnt that it was not.' From the evidence available to us, the Waikanae Land Company became concerned about this issue in August 1969, prior to purchasing the land from the Māori Trustee. The company's solicitors wrote to the Māori Land Court on 26 August 1969, inquiring about whether the block had been used as a 'Māori burial ground'.*
>
> *The deputy registrar responded on 11 September 1969, enclosing the court minutes from the 1919 partition hearing. He noted that the minutes described the purpose of the partition as 'cutting out a graveyard'. The land had not, however, been 'set apart as a Māori reservation for the purposes of a cemetery, nor have trustees been appointed at any time'. As a result, the block remained 'ordinary Māori freehold land'. The deputy registrar also referred to Mr Simpson's statement at the meeting of assembled owners (quoted in section 2.5.1). The company's solicitors were referred to Mr Simpson in case he might be able to 'enlarge on this statement'. The deputy registrar advised that the court's records 'do not disclose anything further about the actual use of this block as a Māori burial ground'.*

At the company's request, the deputy registrar sent an abbreviated letter on 23 September 1969. This second letter stated only that the minutes had referred to a 'graveyard' but that no action had been taken to set it aside as a Māori reservation. The land was simply 'ordinary Māori freehold land'. This more limited statement was later used in support of the company's case to change the Horowhenua district scheme (discussed later below).

Suzanne Woodley commented that the court officials failed to refer to the earlier minutes from 1896 and 1905. Nor did they 'suggest speaking to local Māori about the matter' or engage themselves with the owners or with Waikanae kaumātua and kuia. We agree that these were very important points.

In February 1970, however, the court deputy registrar responded to further requests for information and did inform the company of the 1896 partition request to cut off a 'cemetery', to be named A14A. The deputy registrar explained that this partition order was never completed because there was no survey. He did not mention the proceedings in 1905 to cut out the same land as an 'urupa', which the court had dismissed because the original orders simply needed to be completed. It appears that the company did not pass the information about the 1896 partition on, and there was no mention of it in the proceedings to change the district scheme (see below).

Ms Woodley added: 'There was also no record of any attempt to check valuation rolls or district planning maps which as noted above, recorded that the block was a cemetery'. This brings us to a crucial point: the company's attempt to remove the protection offered to the urupā block by its designation as 'Māori cemetery' in the district scheme.

3.3.5 Te Ātiawa / Ngāti Awa objections to removing the cemetery designation

The council received four written objections from Te Ātiawa / Ngāti Awa:

- *Te Aputa Kauri, the great-granddaughter of Wi Parata, stated in her objection form that the land was tapu, that she had ancestors buried in the 'cemetery', and that it was 'the resting place of many persons connected with the early history of Waikanae'. Mrs Kauri said that her objection would only be met by the land remaining a 'Māori Cemetery'.*
- *Sylvia Tamati lodged her objection on behalf of the marae trustees, stating that the block was the 'burial ground of my Tribal ancestors of "Te Ātiawa", Taranaki'. Mrs Tamati also said that her objection was lodged on behalf of her mother, Ngāwati Morehu, the 'beneficiaries' (that is, the former owners), and others who had relations buried in the 'cemetery'. She asked that a block of land be set aside for the 'interment of human remains unearthed on this block' in a casket. Further, Mrs Tamati noted that none of the other tribal burial grounds had been made reservations either or had had trustees appointed, and that action had only just been taken (in November 1969) to appoint trustees for Takamore.*
- *Jillian Simmonds objected that the block was 'tapu land' and that she had ancestors and relations buried there. She asked that the 'Burial Ground' be left as it was.*
- *Johnson Te Puni Tamati Thomas objected, stating: 'My ancestors fought, died and are buried in this cemetery and Tapu ground'. He added: 'Although this block of land was never registered as a cemetery reserve [meaning a Māori reservation], it was connected with the early history of Waikanae and the resting*

> *place of my ancestors'. Mr Thomas asked for land to be set aside for reburial. He also wanted to be notified of all arrangements so that a special church service could take place. Paora Ropata told us that Mr Thomas and other objectors were 'descendants of Unaiki Parata (my Great Great Grandmother)'.*

Although all of these objections were signed before the cut-off date of 6 April 1970, only Te Aputa Kauri's objection was received by the council in time. Because one valid objection had been received, the council then had to advertise for the filing of statements in support or opposition to the objection, and set a date to hear the objection. The objectors who filed too late were advised that they could support Mrs Kauri's objection if they chose.

The objection form included a category for how the objection could be met, and this had revealed a significant difference of views: two had sought for the urupā to retain its designation as a Māori cemetery and the other two had said that their objection could be met by the council setting aside a new piece of land for the reinterment of any human remains disturbed by the developers. Mrs Tamati felt strongly enough about that to file a statement in opposition to Te Aputa Kauri. In that statement, she argued that the development of the land represented progress and would benefit the whole of Waikanae. At present, however, the land was covered with gorse and other 'noxious weeds', and it had proven impossible to obtain funding or the cooperation of all the (former) owners to deal with that problem.

The Waikanae Land Company also registered its opposition to Mrs Kauri's objection. The company's position included three possible grounds:

- *the land could not be shown to be 'the burial place of any of the ancestors of the objector or of Maoris connected with the early history of Waikanae'; and/or*
- *the land was not a 'traditional Maori burial ground'; and/or*
- *it was in 'the public interest and the interests of good town planning that the designation be removed'.*

Following the receipt of these statements in opposition, Te Aputa Kauri's objection was heard by a special committee of three councillors on 25 May 1970. Mrs Kauri appeared in person at the hearing but was not represented by counsel. The company had the benefit of legal submissions on its behalf, in addition to which one of the directors gave evidence opposing Mrs Kauri's objection. Sylvia Tamati did not appear in person but her objection was read out (noting that this was confined to what should be done with the land now and was not an objection to the rest of Mrs Kauri's evidence).

Te Aputa Kauri told the committee that her opposition was driven by 'the deep feelings of emotion and sentiment which I have concerning our Maori heritage – feelings of respect and veneration which were first instilled in me as a child' by her parents and elders. She was not, however, optimistic that her objection would be successful, being aware that 'sentiment for the past will not stop progress', and that the committee was obliged to consider the public interest and 'good town planning'. Nonetheless, Mrs Kauri stated that her objection stood. If the council disallowed it then at 'the very least' she sought the reinterment of any human remains in 'a common grave on an adjacent piece of reserve land', and for a commemorative plaque to be erected.

William Lawrence, director of the Waikanae Land Company, gave evidence stating that:

- *he had inspected the ground and found two headstones as the only evidence that any burials had ever occurred;*
- *the Māori Land Court had advised that there was 'no Court record nor any knowledge on the part of the Court which would indicate that this block was a traditional Māori burial ground';*
- *the 1919 minutes indicated that the partition was to set aside land for a new graveyard, not an existing one, and the 23 September 1969 letter from the registrar confirmed this point and indicated that no attempt had been made to appoint trustees or establish a Māori reservation;*
- *the objector's belief that the block was the Kārewarewa burial ground was wrong, because Carkeek's book stated that the location of this burial ground was unknown;*
- *a meeting of assembled owners had unanimously resolved to have the land sold by the Māori Trustee; and*
- *there was nothing visible that suggested the land had any historic significance or should be left in its current state for that reason.*

The company's solicitors repeated all of these points but accepted that, if the land was a traditional burial ground, it could only be Kārewarewa. Nonetheless, the solicitors argued that the company's case did not turn on whether the land had been used for burials or not. Rather, even if it could be proven that there was a cemetery on the land, the key issue was whether leaving the block in its present state was an appropriate way of dealing with the land. In the company's submissions, its plans for development of the land were 'in the public interest' and in 'the interest of good town planning'. The company did give an assurance that it would 'honour and respect any remains which may be uncovered and arrange for them to be dealt with in the manner suggested by Mrs Kauri'. The company would not object if the council chose to make this a formal condition on their development of the land.

It is clear that a number of important matters were either not presented to the committee or not given sufficient weight:

- *No weight whatsoever was accorded to the traditional knowledge of local Māori.*
- *No reference was made to the minutes of 1896 or 1905, which made it clear that the owners had been trying to set the urupā block apart for a number of years, and had not decided in 1919 to cut out land for a new cemetery.*
- *The company director's search of the overgrown land for headstones was not a valid method for determining the site of a traditional urupā, although it demonstrated that some burials had occurred.*
- *Significant weight was placed on the point that the urupā had not been made a Māori Reservation since the 1919 partition. The Māori land titles system, however, made it difficult for a large number of owners, with many absent or owning tiny fractions, to deal with their land collectively (such as by agreeing to appoint trustees, establish a Māori Reservation, or clear a 20-acre block of 'noxious weeds').*
- *Significant weight was placed on the point that the owners had 'unanimously' voted to sell their land at a meeting of assembled owners. This was correct as far as it went – the 13 owners had voted either to sell directly or to appoint the Māori Trustee as agent to sell – and it is obvious why the owners' sale of the land for development was a crucial aspect of the case. But this argument took no account of the fact that, as the law allowed, only a small minority of owners had actually attended the meeting in 1969.*

> *Owners representing about 11 per cent of interests in the land had voted in favour of the resolution to vest it for sale. All other owners were disenfranchised and lost their land. Over and above the 77 legal owners, there were more tribal members who had interests under custom, as their tūpuna were buried in that land. We have already found that the statutory scheme that allowed the land to be sold in this way was in breach of the Treaty (see chapter 2).*

The committee reported back to the council in July 1970, recommending that the cemetery designation be lifted. Two reasons were given. First, the Māori owners had sold the land to a development company. Secondly, there was 'no certain evidence that it is an historical Maori Burial Ground', or that any burials had taken place since it was 'set apart for a future Maori Cemetery in 1919'. Undermining this reasoning, the committee added that there was nevertheless 'the possibility that human remains may be uncovered as development of the land proceeds'. This indicates that the committee accepted the company's main argument: even if the urupā existed, it was not in the public interest or the interests of good town planning to leave the land in its present state if it could be developed and turned into residential sections.

The committee's decision reflects the monocultural nature of the Town and Country Planning Act 1953. Suzanne Woodley commented in respect of the committee's decision:

> *It is of note that the legislation at the time did not provide for a role for tangata whenua in respect to the decision-making process concerning the change of designation. There was also no requirement at the time for local authorities to recognise, when preparing their district plans, 'the relationship of the Maori people and their culture and traditions with their ancestral land'. This was not introduced until 1977 as per section 3 of the Town and Country Planning Act.*

Claimant counsel submitted:

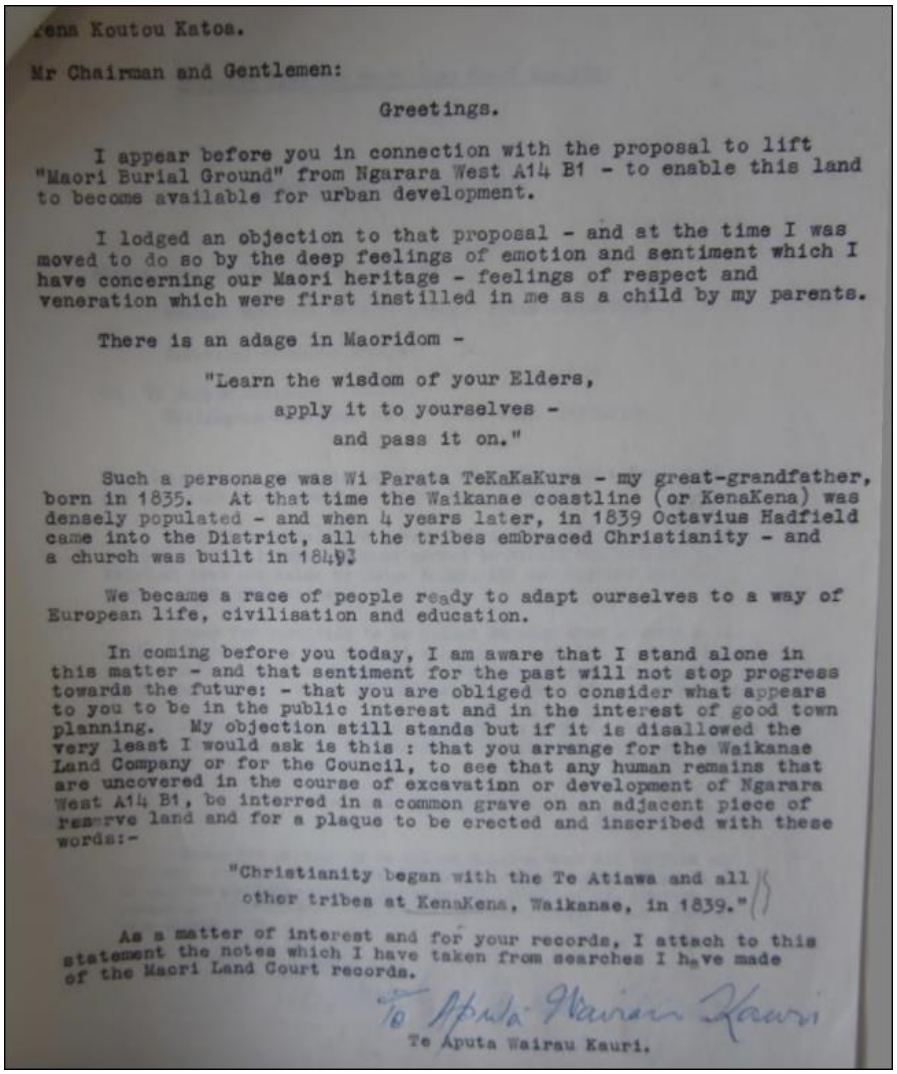
> *The failure to protect the Urupā from desecration is a number of errors documented by Suzanne Woodley. However, those errors have a single underlying cause: the failure of public bodies established by the Crown to respect the tino rangatiratanga of Te Atiawa. This is the thread that runs through the failure of Māori Land Court officials to properly advise on the designation of Ngārara West A14 as an urupā, the failure of the Horowhenua County Council or Kāpiti District Council to give weight to the evidence of Te Aputa Kauri, to the failure to consider the objections of other Māori.*

The claimants accepted that the Crown was not directly responsible for the committee's decision to prioritise residential development. But claimant counsel submitted that the Crown's legislative framework had not provided for partnerships in local government. As a result, iwi lacked 'real power in relation to decisions affecting their land'. (footnotes omitted)

[173] The Panel has reviewed the records from Woodley, Local Government Issue 193, notably those in Wai 2200, A193(c)(viii). Respectfully, the analysis of the Waitangi Tribunal is supported by that documentary record.

[174] While several submissions from Te Atiawa members opposed the uplifting of the designation, the only person appearing at the Horowhenua County Council hearing for

Te Ātiawa was a kuia called Te Aputa Wairau Kauri. It is worthwhile to include Ms Kauri's submission in full to the Council. It is below carefully typewritten:



Kena Koutou Katoa.

Mr Chairman and Gentlemen:

Greetings.

I appear before you in connection with the proposal to lift "Maori Burial Ground" from Ngarara West A14 B1 - to enable this land to become available for urban development.

I lodged an objection to that proposal - and at the time I was moved to do so by the deep feelings of emotion and sentiment which I have concerning our Maori heritage - feelings of respect and veneration which were first instilled in me as a child by my parents.

There is an adage in Maoridom -

"Learn the wisdom of your Elders,
apply it to yourselves -
and pass it on."

Such a personage was Wi Parata TeKaKaKura - my great-grandfather, born in 1835. At that time the Waikanae coastline (or KenaKena) was densely populated - and when 4 years later, in 1839 Octavius Hadfield came into the District, all the tribes embraced Christianity - and a church was built in 1849.

We became a race of people ready to adapt ourselves to a way of European life, civilisation and education.

In coming before you today, I am aware that I stand alone in this matter - and that sentiment for the past will not stop progress towards the future: - that you are obliged to consider what appears to you to be in the public interest and in the interest of good town planning. My objection still stands but if it is disallowed the very least I would ask is this : that you arrange for the Waikanae Land Company or for the Council, to see that any human remains that are uncovered in the course of excavatinn or development of Ngarara West A14 B1, be interred in a common grave on an adjacent piece of reserve land and for a plaque to be erected and inscribed with these words:-

"Christianity began with the Te Atiawa and all other tribes at KenaKena, Waikanae, in 1839."

As a matter of interest and for your records, I attach to this statement the notes which I have taken from searches I have made of the Maori Land Court records.

Te Aputa Wairau Kauri.

[175] Mr Rowe told the Panel that Ms Kauri presented as an impressive and thoughtful person, so he was moved to emphasise to the Council hearing the commitment of the Waikanae Land Company to ensure appropriate treatment of human remains uncovered during the course of development.

[176] Ms Kauri's submission seems to the Panel to be cleverly humble, subtle and pointed simultaneously. Ms Kauri emphasises that Te Ātiawa is a Christian iwi. That point was probably to underscore the Christian concept of the 'community of saints' and hence the equality of treatment that her interred forebears deserved in the same way as Europeans. Ms Kauri assumed her audience would consider it unthinkable to allow a

European Christian burial ground to be used for development. Ms Kauri's point was that the same should apply to the remains of Te Ātiawa ancestors.

[177] Also included in the Woodley record is the evidence of Mr Lawrence, a director of the Waikanae Land Company. The Waitangi Tribunal addressed the low quality of that evidence. It does not appear that Mr Lawrence had any qualifications or experience in ascertaining the true archaeological, cultural and spiritual significance of the Kārewarewa Urupā Block, yet he gave evidence on these matters. He viewed the designation as acting to enable a future cemetery. Inexplicably, Mr Lawrence did not identify the counter-evidence available from submitters and perform an analysis respecting that oral history.

[178] We conclude that the Waikanae Land Company could not reasonably have considered , as Mr Lawrence claimed, that the Kārewarewa Urupā Block was a future Māori cemetery because:

(a) The size of the Kārewarewa Urupā Block was far too large relative to the size of the existing Māori population, and there is no historical precedent for such a large over-allocation by Māori local authorities for Māori burial.

(b) It was not common for the local authorities to set aside public funds exclusively for a Māori cemetery.

(c) Māori owned the land as inalienable when designated, so there was no sense in which the designation could operate for future public work or as a 'gateway' to land purchase.

(d) It was noted in the Waikanae section of the Horowhenua County Council 1960's scheme attached to the Te Ātiawa cultural impact assessment that the land was a 'reserve' and not for a local purpose work. Interestingly, the watercolour map and legend is reminiscent of simpler times.

(e) Designations under the 1953 Act have different characteristics than under the RMA and allowed for designations to reserve land for cultural purposes.

[179] We also conclude that the Waikanae Land Company had credible evidence before it sought to uplift the designation that the land was culturally significant to Te Ātiawa as a burial ground and for other cultural reasons. Also, this information was readily discoverable as the submissions to the proposal to uplift the designation demonstrate that local Māori were aware of the situation. Waikanae Land Company decided that these values did not trump the desirability of using the land for its underlying zoned purpose of residential. It held the view that development best advanced the purpose of the 1953 Town and Country Planning Act.

[180] Based on our analysis, therefore, the situation the Waikanae Land Company finds itself in is one where it owns land that it did or should have known had special cultural value. These values are now in a statutory setting that is rather different than in the late 1960s and early 1970s when the designation was uplifted in light of the strong directions of RMA, Part 2. In this respect, the Waikanae Land Company is in a no worse situation than many other landowners where values exist within or on the land and through changing requirements of the law, those values justify more controls than in the past.

[181] In many ways, PC2 merely restores the resource management and legal situation to the one that applied when the land was purchased and sold, and, to that extent, PC 2 has a certain historical symmetry. Although, also it should be acknowledged that the PC2 regime is less restrictive than a designation. There are pathways for obtaining consent, albeit challenging ones.

[182] We now return to the jurisdictional issue. As noted, the Waikanae Land Company had a direct referral to the Environment Court for an application for subdivision of land off Barrett Drive requiring access along part of Wāhanga Tahi in that location.

[183] That proceeding confronted the fact that PC2 had notified a change to Schedule 9 to identify the access sliver as part of Wāhanga Tahi.

[184] Waikanae Land Company raised a preliminary jurisdictional issue as follows:

> *7. WLC will contend that the new wāhi tapu listing cannot be introduced under an IPI. There is a limited statutory power to introduce 'new qualifying matters': the power can only be used to make medium density residential standards (MDRS) 'less enabling of development'. WLC will submit the new wāhi tapu listing goes far beyond making MDRS less enabling. The listing disables the underlying residential*

zoning of the land. WLC will submit that the correct process for introducing a change of this sort would be a regular plan change, rather than an IPI

8. Given the Court's broad declaratory jurisdiction, WLC will seek a ruling that this aspect of PC2 exceeds Council's statutory power. WLC respectfully submits it is open to the Court to make a ruling of this sort within the context of the consent application; and furthermore that this is necessary, as it will determine whether the Court does or does not need to resolve the contested planning evidence described above. (If the Court concludes this aspect of PC2 exceeds Council's power, it will become unnecessary for the Court to determine which of Mr Thomas or Ms Rydon has correctly applied the heritage policies that are triggered by the PC2 listing.) (footnotes omitted)

[185] That contention is noted at [3] of a decision of the Environment Court in *Waikanae Land Company v. Heritage New Zealand Pouhere Taonga*.[42]

[186] The Environment Court found that the change to Schedule 9 was *ultra vires*.

[187] The Waikanae Land Company accepted that the Environment Court decision did not bind us and in any event could only apply to the affected sliver. However, we must consider the Court's reasoning carefully out of respect for the Environment Court and because the issue is important for all parties. The Panel was told the Council has appealed the decision to the High Court.

[188] The Environment Court reasoning is contained in paragraphs 19-32 (including footnotes) as follows:

[19] WLC contends that the Council had no statutory power to list the Site in Schedule 9 through the IPI process and that the appropriate way for it to do so was through the usual plan change processes contained in Schedule I RMA.

[20] To some extent the arguments advanced by the Council, Ātiawa and by WLC in response appeared to veer into the reasons for and merits of the listing as part of the Council's obligation under s 6(e) to recognise and provide for the relationship of Māori with the urupa. We do not address that issue. The Court has not yet heard any evidence in these proceedings but it seems to be fundamental that in order to list the Site in Schedule 9 the Council must first make a factual determination as to whether or not it falls within the urupa. Its opening position in that regard (as indicated by listing the Site in the Schedule through PC2) is that it does tie within the urupa but that position is subject to challenge by WLC. Who is right or wrong in that regard will be determined by the Council's PC2 hearing process with its factual determination unassailable through the usual appeal process to this Court. Exactly the same issue is of course before the Court in this direct referral. The

[42] *Waikanae Land Company v. Heritage New Zealand Pouhere Taonga* [2023] EnvC 056.

unsatisfactory consequences of the Court and the Council reaching different conclusions are abundantly apparent.

[21] Turning to the Council's statutory power to list the Site in Schedule 9 as part of the IPI process, we note that unsurprisingly there is no specific reference in the statutory provisions imported into the RMA by the EHAA directly addressing this issue. Whether or not the power exists must be gleaned by interpretation of the legislation. In undertaking that interpretation we consider that the draconian consequences of listing the Site in the Schedule on WLC's existing development rights (particularly those identified in para [17] above) when combined with the absence of any right of appeal on the Council's factual determination require there to be a very careful interpretation of the statutory provisions in light of their text and purpose.

[22] The purpose of the EHAA was to enable housing development in residential zones. However counter balancing that purpose is the EHAA also provides for the accommodation of qualifying matters which might make MDRS less enabling and those qualifying matters extend to s 6(e) matters. Further to that it is apparent that provisions inserted into RMA by the EHAA give very wide powers to territorial authorities undertaking the IPI process. They go so far as to enable territorial authorities to create new residential zones or amend existing residential zones.[43]

[23] As wide as territorial authorities' powers may seem to be in undertaking the IPI process it is apparent that they are not open ended. They are confined to the matters identified in a number of relevant provisions.

[24] We refer firstly in that regard to the definition of MDRS and density standards set out in paras [9] and [10] above. Those provisions identify and limit the matters which may be the subject of MDRS requirements introduced through the IPI process. Those are the nine matters either listed in the definition or identified in cls 10-18 of Schedule 3A.

[25] That finding is consistent with the provisions of s 771 cited in para [13] (above) which enable a territorial authority to "…make the ***MDRS and the relevant building height or density requirements****… less enabling…"*[44] *through the IPI process to accommodate qualifying matters. We consider that on its face the consequence of that provision is to require qualifying matters introduced through the IPI process to relate to the standards identified in the definition and cls 10-18 of Schedule 3A and to make those standards less enabling.*

[26] Those observations lead to consideration of the provisions of s 80E RMA which relevant provide:

> ***80E Meaning of intensification planning instrument***
>
> *(1) In this Act,* ***intensification planning instrument*** *or* ***IPI*** *means a change to a district plan or a variation to a proposed district plan-*
>
> *a. that must-*

[43] RMA, s 77G(4).
[44] Our emphasis.

i. incorporate the MDRS; and
ii. give effect to,-
(A) In the case of a tier 1 territorial authority, policies 3 and 4 of the NPS-UD; or

…

b. that may also amend or include the following provisions
…
iii. related provisions, including objectives, policies, rules, standards, and zones, that support or are consequential on-
(A) the MDRS; or
(B) policies 3, 4, and 5 of the NPS-UD as applicable.

*(2) In subsection (1)(b)(iii), **related provisions** also includes provisions that relate to any of the following, without limitation:*
a. district-wide matters:
b. earthworks:
c. fencing:
d. infrastructure:
e. qualifying matters identified in accordance with section 771 or 770:
f. storm water management (including permeability and hydraulic neutrality)"
g. subdivision of land.

[27] On their face these provisions are extremely wide. The Sites and Areas of Significance to Māori identified in Schedule 9 are both district-wide matters and qualifying matters identified in s 771(a). Section 80E(2) provides that provisions relating to those matters may be included… "without limitation". Notwithstanding that apparently unlimited descriptions, it appears to us that the term "without limitation" is used to identify matters which may fall within the related provisions category. The effect of prefacing s 80E(2) with the term without limitation is that related provisions may extend beyond the matters identified in ss 2(a)-(g) to include other matters as well as those identified.

[28] In our view however there is in fact an inherent limitation in the matters which fall within the related matters category that is apparent on reading s 80E(1)(b)(iii) set out in para [26] above.

[29] Section 80[E](1)(b)(iii)(B) is not relevant in this case. What is relevant is whether or not the change of permitted activity status identified in para 55 of the WLC's submissions[12] is a change in which supports or is consequential upon the MDRS. Mr Slyfield made the following submission in that regard:

> *71. Whether the new wāhi tapu listing may be said to be a "related provision" in that it is "consequential" on the MDRS is less obvious. Prior to notifying PC2, Council received legal advice that concluded it would "arguably be consequential" to an IPI to schedule a previously unscheduled wāhi tapu site in an area subject*

> *to the IPI. The advice considered that an inability to notify new wāhi tapu sites would be an "illogical outcome" on the basis of Parliament's "clear intentions" that such sites would be qualifying matters. Council appears to have adopted this advice.*
>
> *72. The issue with that approach is its apparent focus on whether a new wāhi tapu listing (and the operative rules that accompany such a listing) are "related to" that qualifying matters – that is, the focus is on the statutory language in the specific definition of "related provisions" in s 80E(2)(e). What that approach fails to do is refer back to the overarching gateway in s 80E(1)(b): that the related provision may only be included in an IPI if it is consequential on the MDRS.*
>
> *(original emphasis, footnotes omitted)*

> *[30] We concur with that submission. Inclusion of the Site in Schedule 9 does not support the MDRS. It actively precludes operation of the MDRS on the Site. Nor do we consider that inclusion of the Site in the Schedule is consequential on the MDRS which sets out to impose more permissive standards relating to the nine defined matters.*
>
> *[31] For the reasons we have endeavoured to articulate we find that the purpose of the IPI process inserted into RMA by the EHAA was to impose on Residential zoned land more permissive standards for permitted activities addressing the nine matters identified in the definition section and Schedule 3A. Changing the status of activities which are permitted on the Site in the manner identified in para 55 of WLC's submissions goes well beyond just making the MDRS and relevant building height or density requirements less enabling as contemplated by s 771. By including the Site in Schedule 9, PC2 "disenables" or removes the rights which WLC presently has under the District Plan to undertake various activities identified in para 55 as permitted activities at all, by changing the status of activities commonly associated with residential development from permitted to either restricted discretionary or non complying.*
>
> *[32] We find that amending the District Plan in the manner which the Council has purported to do is ultra vires. The Council is, of course, entitled to make a change to the District Plan to include the new Schedule 9, using the usual RMA Schedule 1 processes.*

[189] The jurisdictional issue came before the Court by an unusual route. There was no formal declaratory proceeding and, apparently, no detailed evidence before the Court concerning the significance of the Kārewarewa Urupā Block. The Panel notes this point because RMA, s 80E, as the Court acknowledged at [27], is wide, and the Court at [28] applied an "inherent" limitation. The interpretation exercise was, therefore, not straightforward and, to some extent, one of fact and degree. The Panel has reservations about whether an interpretation question, which is partly a matter of fact and degree, is

suitable as a preliminary question. We are reminded of the cautionary words of the Supreme Court in *Ngāti Awa v. Marlborough District Council*[45] at [5].

[190] The Panel respectfully disagrees with the analysis by the Environment Court on the jurisdictional question. The Panel accepts the Court's observation that the inclusion of the Wāhanga Tahi in Schedule 9 affecting the Waikanae Land Company's land not only operates to qualify the operation of the building height and density requirements of the MDRS but also other existing land use controls in a more restrictive way. The central question is whether or not that is authorised by an IPI. We also accept the Court's proposition that the key provision to consider is RMA, s 80E.

[191] The Panel disagrees with the analysis at [30] of the Environment Court decision because the Court appears to have assumed that the MDRS is simply the relevant building height and density requirements in Schedule 3A. That is not correct. The MDRS in Schedule 3A includes the objectives and policies in clause 6 already quoted in this decision. The core objective is Objective 1, which has the following goal: "*a well-functioning urban environment that enables all people and communities to provide for their social, economic and cultural wellbeing and for their health and safety, now and into the future*". A supporting policy is Policy 2, that states "*apply the MDRS across all relevant residential zones in the District Plan except in circumstances where a qualifying matter is relevant (including matters of significant such as historic heritage and relationship of Māori and their culture and traditions and ancestral lands, water, sites, wāhi tapu and other taonga*".

[192] It is evident from the above and the text of RMA, s 77I that cultural heritage values of significance to Māori can qualify in whole or in part the density and building height standards that form part of the MDRS. The wording of Policy 2 does not suggest the values it addresses are not relevant to achieving a well-functioning urban environment more generally under Objective 1.

[193] The key interpretation question then is whether or not an ISP can restrict existing development rights and still fall within the meaning of RMA, s 80E(b) as *related provisions*, including objectives, policies and rules, standards and zones that *support* or are *consequential on* the MDRS.

---

[45] *Attorney-General v. Ngāti Apa* [2003] 3 NZLR 641 at [5].

[194] The Panel considers that if a local territory authority analysing the appropriate content of an IPI establishes that there are qualifying matters of such significance that:

(a) The MDRS should not apply; and

(b) The tools available in the Plan that recognise those values and impose further restrictions on land use should be used and will also achieve Objective 1 MDRS together with the aim in (a);

then the provisions fulfilling aim (b) above can be characterised as *related provisions* that *support* or are *consequential* on the MDRS.

[195] Applying the analysis to another context is helpful. Consider the situation where a territorial authority examines whether or not the MDRS should apply to land subject to flood hazards. It becomes apparent to the territorial authority when examining recent flood hazard information that certain land not previously identified as flood-prone is not only unsuitable for greater density and height but is also unsuitable for existing levels of development. As a consequence, the Council considers further restrictions on development should apply. Consequently, in its IPI, the Council extends the existing flood hazard mapping tool in its Plan to apply to land identified as flood-prone. On the Environment Court's analysis, that would not be a supporting or consequential provision of the MDRS because it has the added effect of introducing more restrictive land use controls rather than simply disqualifying the MDRS. Even though the measure is necessary to achieve a safe and well-functioning urban environment under Objective 1 of the MDRS.

[196] It is apparent from the example above that the conclusion of the Environment Court unduly restricts sensible planning necessary to achieve Objective 1, and the 'inherent' limitation found in s 80E runs across the purpose and principles of the RMA in Part 2.

[197] We accept the proposition that further restrictions beyond those necessary to qualify the density and height requirements would not be a usual outcome of an IPI where the focus is on more enablement of housing supply. It is not appropriate for a territorial authority to use the IPI to introduce entirely new measures to restrict urban development outside an IPI's true scope and legitimate qualifying matters under RMA, Subpart 6.

However, incidental or consequential adjustments to the Plan provisions to support the overarching objectives and policies of the MDRS within a legitimate qualifying category are not in that class.

[198] The Panel does not take a hostile view about the scope of an IPI just because the usual procedures for appeal to the Environment Court do not apply. Increasingly, streamlined planning processes are becoming a feature of the RMA. There is no evidence that Parliament intended the interpretation of the legitimate scope of an IPI to be construed narrowly or introduce 'inherent' limitations manifestly against Part 2 and Objective 1. Indeed, the term "*supporting or consequential on*" is terminology that suggests an element of appropriate judgment. Hence the openness of the language in RMA, s 80E(1)(b) and (2).

[199] If the Environment Court decision is applied to its logical end, then the provisions authorised by RMA, s 80E(2) could not be more restrictive than existing provisions governing those matters in any way. Respectfully, we cannot understand how a territorial authority could sensibly implement the MDRS except in a way that ensures other or further requirements than in the existing Plan for earthworks, fencing, infrastructure, and stormwater management would be applied in the face of the enabled intensification. These potential new restrictions will then operate on any development, even if individual development does not take full advantage of the MDRS. The management regime operates across a new urban landscape of greater development potential, not just the site under construction.

[200] Respectfully, the line the Court drew using the 'inherent' limitation is unworkable and insensitive to context and the statutory scheme.

[201] The scheduling of the Wāhanga Tahi area under Schedule 9 will significantly impede the development of the bare land accessed from Tamati Place. The Waikanae Land Company prefers a process by which scheduling occurs in an ordinary way rather than through the IPI. One reason for that may be that the company can then take the opportunity to seek relief under RMA, s 85, which enables the Environment Court to make directions in respect of plan provisions that would render a land interest *incapable of reasonable use*. Because of the way the IPI process works, the normal appellate structure does not apply, and, therefore, the Environment Court is not seized of the matter in that way. It would trouble us if access to the Environment Court were unavailable outside

the IPI process because the Panel considers that a landowner is entitled to put that argument to the Environment Court.

[202] However, the Waikanae Land Company has options. The Waikanae Land Company can apply to change the Plan under clause 21 of Schedule 1. It would not be difficult considering the historical background and information already gleaned. In the meantime, the benefits of preserving the cultural values outweigh any inconvenience that might arise for the landowner.

[203] In conclusion, we support the provisions recommended by the Council as amended by the Council's reply evidence.

Section 7 – Rezoning Requests

Section 7.1 – Overview and Question of Scope

[204] The Council received submissions on PC2 seeking the rezoning of greenfield land. These areas are shown in the maps in Appendix 2 that formed an appendix to the evidence of the Council's planning officer, Ms Maxwell.

[205] Some of those requests related to land identified by the Council as part of a greenfield opportunities and constraints assessment implementing Te Tupu Pai and the NPS-UD. That assessment was included in the Council's notified s 32 analysis at Appendix N. That was so even though PC2 did not purport to evaluate greenfield options given the constrained nature of an IPI and the tight timeframes for developing PC2.

[206] Rezoning requests by way of submission must be within scope. Mr Conway, legal counsel for the Council, reminded us about the law on scope and, in particular, summarised the principles following recent case law as follows:

> *3.11 These tests were followed by the High Court in Motor Machinists Limited v Palmerston North City Council. In that case, the Court found that the first requirement above (being the 'dominant consideration') would be unlikely to be met it:*
>
> *(a) a submission raises matters that should have been addresses in the section 32 evaluation and report; or*

(b) a submission seeks a new management regime for a particular resource (such as a particular lot) when the plan change did not propose to alter the management regime in the operative plan.

3.12 Importantly, in Motor Machinists Limited, the Court found that these tests will not altogether exclude zoning extensions by submission. It found that "incidental or consequential" extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further section 32 analysis is required to inform affected persons of the comparative merits of that zoning change.

3.13 In Motor Machinists Limited, the Court ultimately found that the submissions was not 'on' the plan change because:

(a) the plan change concerned very limited rezoning of the 'ring road' and three adjoining roads, which MML's (the submitted) property was not located on:

(b) there was an extensive section 32 report, which did not address rezoning MML's property; and

(c) there had therefore been no consideration of the effects or rezoning MML's property.

[207] At [603] of her report, Ms Maxwell summarised the criteria for addressing scope for requests for rezoning in the following way:

(603) Sites proposed to be rezoned as part of PC(N), were identified using a set of criteria, which are outlined in section 5.2.3 of the Section 32 report. The criteria are:

- *The site is located next to an urban area that is connected to infrastructure services;*
- *The site has a relatively low degree of constraints (and any existing constraints can be managed through existing District Plan rules);*
- *The site is not sufficiently large or complex enough to require a 'structure planned' approach:*
- *The site would provide a notable contribution to plan-enabled housing supply, or where this is not the case, re-zoning is appropriate to regularise the area in the surrounding zoning pattern.*

[208] In response to submitters relying on Appendix N to the section 32 report as the basis for scope, Ms Maxwell said at [607]:

(607) Appendix N to the Section 32 Evaluation report assesses the general constraints and opportunities for future urban development in a range of areas across the district but makes no recommendations on zoning. It was commissioned in 2021 to inform KCDC's earlier process to develop the scope for a future greenfield plan

change and was undertaken prior to the Council being required to develop an IPI. Its use is limited to be referred to by Appendix V as a source of information for the areas proposed to be rezoned as General Residential Zone as part of the PC(N). Therefore, I consider that Appendix N should only be given very limited weighting in its consideration for sites not proposed to be rezoned by PC(N) because it makes no recommendations on these sites. Therefore, it would not have been clear to submitters on PC2 that these sites were being considered.

[209] It will be noted above that one of the criteria for scope is whether or not a structure plan is required. Ms Maxwell reinforced the importance of structure planning in her reply at [10]-[14] as follows:

(10) Several submitters requested their land be rezoned from a rural zone to General Residential Zone as part of PC2, without any other amendments to the Operative District Plan (ODP). In line with Council's own rezoning process, the requested rezonings were assessed against the criteria applied to rezoning decisions. Most of these sites did not meet one or more of the Council's criteria and were accordingly recommended to be refused on this basis. The key criterion not met in most cases was the need for a "structure plan" approach given the size or complexity of the site. I outline below the importance of completing a structure plan before enabling urban growth and development on greenfield land.

(11) A structure plan is an essential tool in enabling the rezoning of low density or undeveloped greenfield land. It provides an integrated approach to the management of complex environmental issues within a defined geographical boundary. It identified the opportunities available and constraints of the area, including:

- *Areas of cultural significant*
- *Ecological features*
- *Waterways and waterbodies*
- *Landscape features*
- *Transport connectivity*
- *Natural hazards*
- *Open space and recreation opportunities*
- *Infrastructure provision*
- *Location of centres*
- *Reverse sensitivity risks*

(12) A structure plan ensures the co-ordinated staging of development, compatible patterns, and intensities of development across land parcels in different land ownership and connection with existing areas of development. It ensures infrastructure and service provision supports the development of land. Structure

plans also provide certainty to developers, key stakeholders and the wider public regarding the layout, character, and costs of development in an area identified for urban growth. Structure plans are generally a good method for promoting cohesive development and enabling new urban development to meet urban design outcomes, regardless of current market conditions, and provide a longer-term view for growth and development.

(13) A structure plan must be embedded in a district plan, as without statutory weighting in place, it is unlikely to be fully implemented as market conditions and landowners change over time. Once a structure plan is embedded in a district plan, it also forms part of the District's strategic vision, as it illustrated an area of urban expansion.

(14) To develop and implement a structure plan, the following steps are considered best practice:

- *Scoping and project planning – which includes boundary definition, a desktop review of existing information, opportunities and constraints analysis, defining structure plan outcomes, identification of iwi partners and stakeholders, and confirming the method of implementation. This step includes commissioning technical investigations to support the formal development of a structure plan.*

- *Iwi partnership – which is essential in the development of a structure plan and provides a significant opportunity to recognise and provide for the relationship of Māori with their ancestral land, waters, sites, wāhi tapu and other taonga*

. *This includes the recognition and provision for Māori values in a structure plan, and the identification and protection of areas of cultural significance.*

- *Stakeholder and community engagement – based on stakeholders identified earlier and the size and extent of issues in a structure plan, engagement with stakeholder groups and the wider community will be undertaken, to allow local experience to inform the structure plan.*

- *Structure plan development and report – developed based on feedback from iwi, key stakeholders, the community, and technical specialist reports. Maps are created to support the spatial layout of the structure plan area.*

- *Implementation – following the completion of the structure report and mapping, it is typically implemented through a plan change process which included updating district plan provisions to incorporate the structure plan, notification of the proposed change, a submission and further submission period, followed by a hearing and then a final decision.*

Section 7.2 – Waikanae East (SO87)

[210] The Kāpiti Coast Urban Development Greenfield Assessment (Boffa Miskell 2022) identified an area in Waikanae East (WA-04) as a potential area for development, as shown in the figure below:

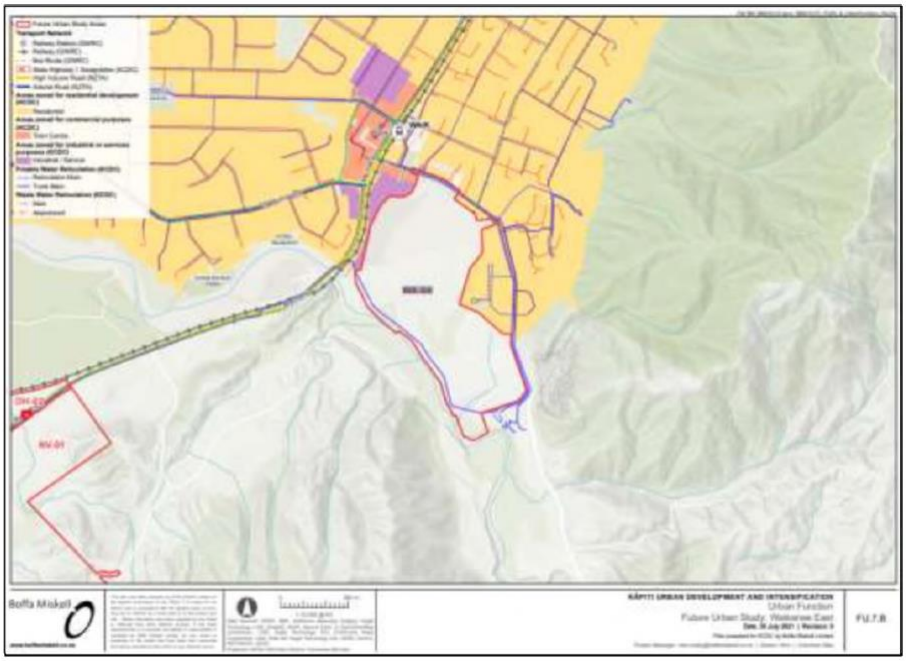


Figure 2: Extent of WA-04 (Section 32 Evaluation Report Part 1: Appendix N, Spatial Influences and Constraints Mapping – Urban Function Pg 51)

[211] The spatial influences and constraints mapping identifies the location of the land adjacent to the Waikanae River, which has a range of cultural values for Te Ātiawa over the relevant reach.

[212] A landowner collective called the Waikanae East Submitters (submission S087 and further submission S087.FS.1) seeks rezoning land containing 40.45 hectares, also referred to as *Waikanae East*.

[213] But for certain industrial-zoned land, all of the land within Waikanae East is within the cadastral boundaries of WA-04 in the Boffa Miskell, Kāpiti Coast Urban Development Greenfields Assessment Parts 1 and 2 (2022).

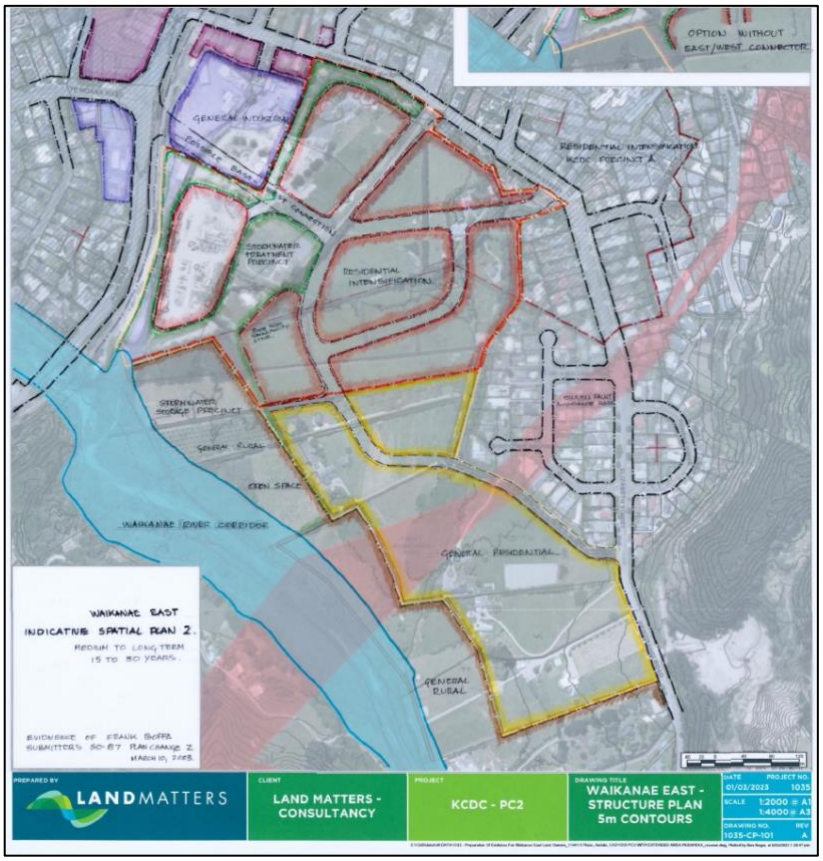
[214] The Waikanae East submitters presented the following evidence:

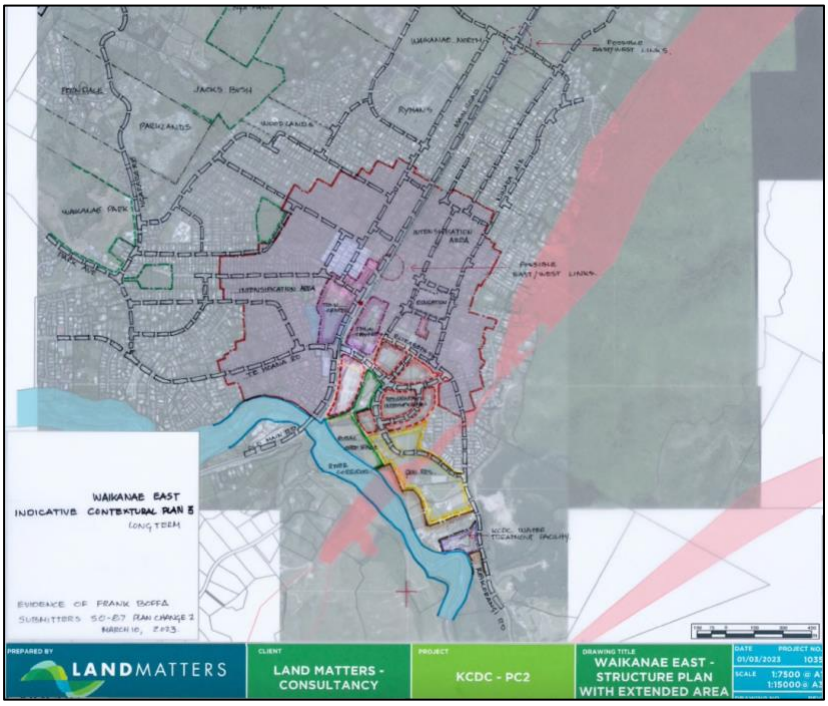
(a) Evidence from Dr Frank Boffa about the suitability of the land for intensification, including a potential structure plan to maximise high-quality urban form;

(b) Evidence from Harriet Fraser on transportation about the long-term ability of the Council to accommodate Waikanae East with transport infrastructure changes; and

(c) Ms Carter provided planning evidence, including an assessment of whether or not the land should be rezoned, applying the criteria employed by the Council as set out in [26] onwards of her evidence

[215] The following two figures are different scales prepared by Dr Boffa showing a structure plan for development in Waikanae East:





[216] Ms Fraser identified that there were significant constraints in the transport network at present, leading to poor levels of service at peak times. Notably the lack of additional vehicle capacity across the railway line.

[217] Ms Fraser identified potential solutions for these at [8.3] – [8.8] of her evidence as follows:

> *"8.3 There are a number of potential infrastructure solutions to provide additional capacity across the railway line. One option would be to construct an additional or replacement at grade level crossing to the north of the existing station in a location where the crossing would not need to be closed as trains travel between Wellington and Waikanae. There would likely be a signalised intersection where the new crossing link connects with Old SH1. Based on my earlier calculations I would expect a left turn out to have weekday morning peak hour capacity of around 900 vehicles.*
>
> *8.4 If a grade separated link were to be provided under the railway, this would most logically be located to the south of the existing crossing as the ground level starts to fall towards the river. In my view it would be most efficient to connect directly into Te Moana Road. I note that Kiwirail will have requirements regarding clearances, and ground levels for an underpass would need to consider flood risk along with tie-in with adjacent property frontages as a result of changes to the road levels. There would be the potential to increase the stop line capacity with separate turning lanes for each of the left turn into Old SH1, through into Te Moana Road and right turn onto Old SH1 towards the town centre. Based on an assumed potential arrival*

flow of around 1,500vph from Waikanae East and around 65% of the cycle time being allocated to traffic exiting Waikanae East, a capacity of around 1,000vph might be achieved.

8.5 If a grade separated link were provided over the railway line, I consider that this would most likely occur towards the north and likely tie in with roading associated with the ongoing development of Waikanae North. In this location it might be possible to provide a crossing that would not be constrained by adjacent intersections, unlike the previous options described. It should however be noted that the main travel desire lines are to and from the south (Paraparaumu and Wellington) and therefore a crossing in this location can only be expected to accommodate part of the demands. An overpass with a single westbound lane across the railway that is not constrained by adjacent intersections could be expected to have a capacity of around 1,500vph.

8.6 Towards the end of the 30-year period there will be a need to provide significant additional travel capacity across the railway line. Given that it is likely that there would be additional train services per hour across the crossing along with longer trains within this timeframe, with an associated reduction in vehicle capacity across the existing crossing, I consider that there are two longer term options. Both would involve the existing at-grade crossing being relocated to the north of the train station such that the crossing is only affected by the less frequent longer distance passenger and freight trains. The benefits of the relocation of the at-grade level crossing will be reduced if frequent rail services start running through to Ōtaki. The difference between the two options is that one would include an underpass approximately aligned with Te Moana Road and the other an overpass connecting in with Waikanae North.

8.7 Around the 10-year timeframe it then makes sense to provide for the relocation of the existing crossing further to the north.

8.8 There are also non-roading measures that could help delay the need for infrastructure interventions, these include:

(a) Working with the Ministry of Education to use school zoning and locations of primary schools to minimise the likelihood of children living on the opposite side of the railway to the school they attend;

(b) Minimising non-residential activity on the eastern side of the railway that does not serve the immediate needs of residents on the eastern side; and

(c) Improved bus services into and out of Waikanae East."

[218] Ms Carter evaluated her client's submissions in accordance with higher order policy and the criteria applied by the Council for rezoning. On the need for a structure plan, Ms Carter said at [105]:

"[105] There has been a number of references to 'structure plans' and the lack of a structure plan to support the rezoning of Waikanae East. A structure plan that is

embedded in the District Plan such as the 'Waikanae North Development Area' structure plan, is an ineffective method to achieve the purpose of the NPS-UD. Structure plans are problematic in that they can often reflect a utopian situation based on a point of time, that is not responsive to a market once the plan change has become operative. Waikanae North is a case in point whereby the underlying structure plan has been extensively ignored in favour of new consented developments. What is left at Waikanae North are lots with inappropriate and illegible zoning and where development is constrained by conditions of consent. A much more effective process is the IPI process where land is zoned General Residential but where activity status is constrained in areas where there are qualifying matters. This enables site specific planning to occur taking into account those qualifying matters. This is the approach favoured for Waikanae East."

[219] In conclusion, Ms Carter said at [108]:

> *"[108] In my opinion the proposed rezoning of this land, including the Industrial zoned land, achieves the objectives of the NPS-UD and contributes to the necessary development capacity required for the Waikanae urban area within the medium term. Waikanae and Ōtaki have been identified in Council reports as the area where most of the future residential development is likely to take place on the basis that it has greater opportunities for greenfield development. Without the contribution of land within Waikanae East, I do not consider there will be sufficient plan-enabled housing that will be infrastructure ready, feasible that will be realised for residential development in the Waikanae urban area by the medium term."*

[220] Concerning the interests of Te Ātiawa, Ms Carter noted at [125] the following:

> *"[125] While Atiawa have not opposed the proposal to rezone the land, they are seeking further work be undertaken to ensure that Te Mana o te Wai is provided for throughout the site; and that access to special sites is maintained; and to understand the potential cumulative flooding impacts from increased residential development including to downstream communities. Atiawa considers that a structure planning process that is developed through a 'future urban development' plan change (i.e. schedule 1 process) is more appropriate for this site. Atiawa would look to ensure that any recommendations from the Whaitua Kāpiti and Takutai Kāpiti projects would inform this plan change process."*

[221] Ms Carter also undertook preliminary flood hazard assessment, stormwater treatment, geotechnical analysis and reticulation modelling. Many of those matters were not within her expertise, but we acknowledge her significant experience in the locality.

[222] In her reply, Ms Maxwell for the Council said at [33] – [35] the following:

> *"(33) The submitter requested their site be rezoned to General Residential Zone. As indicated in my original recommendation, the site is sufficiently large or complex enough to require a structure planned approach. The submitter proposed an*

indicative structure plan as part of their request, but only to inform how the area might be developed and are not seeking its inclusion in the District Plan. While the structure plan they proposed has merit, without its inclusion in the District Plan, there is no guarantee the outcomes it seeks will be achieved through a straight rezone to General Residential. While the current landowners may have every intention to develop in this pattern, there is no requirement under the General Residential Zone alone to follow this approach. A structure plan embedded in the District Plan would be the only way to ensure the development outcomes set out in the submission would be achieved.

(34) Also raised at the hearing was the question of whether development without a structure plan would foreclose options, particularly with respect to additional vehicle crossing points over the railway line. While these may be retained through a subdivision consent, if development is staged these may not be considered comprehensively across the site. Improved access across the railway line for the Waikanae East area is a key strategic issue. It was noted that the existing Elizabeth Street intersection is already at capacity during peak times and rezoning the site would add to existing capacity issues.

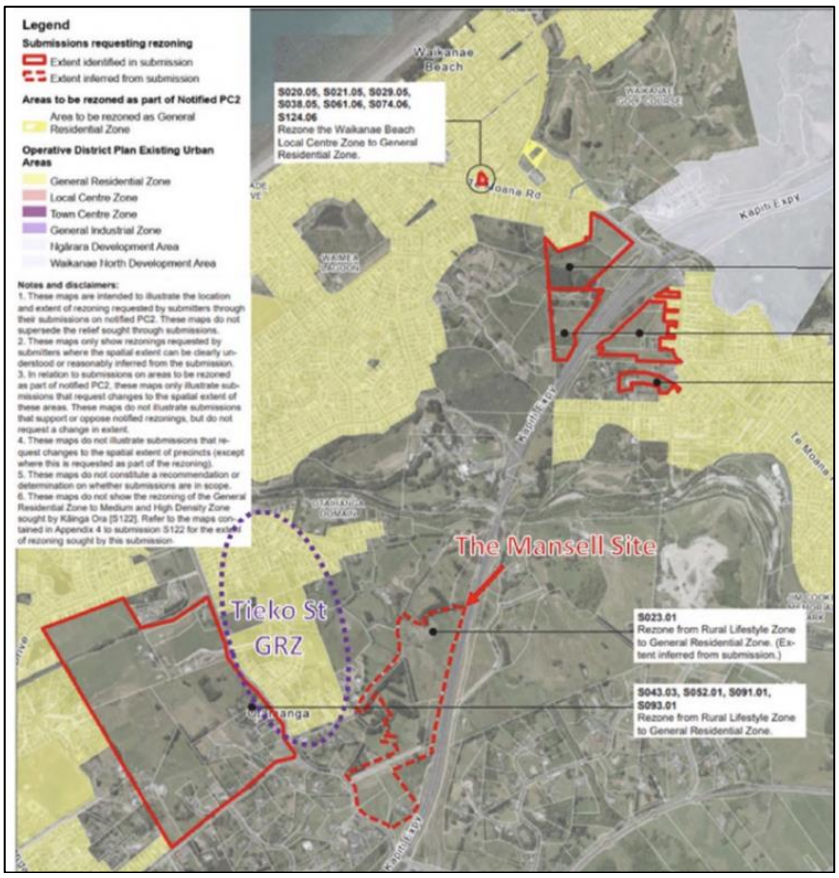
(35) Further to this, Ātiawa have also expressed their preference for the site to be structure planned. They have indicated their interest in being involved in its drafting to ensure that Te Mana o te Wai is provided for throughout the site, to understand how their cultural landscapes will be impacted (including the access to special sites and ability to undertake cultural practices), how Te Ao Turoa will be provided for (including understanding the potential cumulative flooding impacts from increased residential development) and potential impacts to their taonga fish species. They do not consider it appropriate for these matters to be addressed at the consenting stage."

[223] The Panel considers that the Waikanae East concept, as presented by Dr Boffa, has much to commend it. It is the type of intensification next to a strategic transport hub that is likely to secure the best urban outcomes for the community. However, as is evident from the discussion above, many matters need to be considered and addressed by the Council. For example, planning for infrastructure provision to accommodate additional transport demand across a range of modalities. Furthermore, Dr Boffa's approach can only work through a structure plan. This presents an immediate impediment to simply rezoning the land without that structure plan. Plan Change 2 is not the place to address these issues, requiring a more detailed engagement process with the community and affected landowners.

Section 7.3 – Mansell Property (SO23)

[224] Parts of Otaihangā were identified in the the Kāpiti Coast Urban Development Greenfield Assessment (Boffa Miskell, 2022)as scoring highly for future residential development. The submitters M R Mansell, R P Mansell and A J Mansell ("*the Mansells*")

own one of those greenfield blocks, contained within one of the areas identified by the Council in *Te Tupu Pai*, comprising approximately 18 hectares of land at Otaihangā (48 and 58 Tieko Street, 141, 139 and 147 and 155 Otaihangā Road). The land forms part of the old Mansell family farm that was severed for the development of the Kāpiti expressway. The Mansells seek to rezone their land from General Residential zone and to have the MDRS provisions applied as part of PC2. The figure below shows the Mansell land (identified in the figure as the "Mansell site").



[225] The Mansell land abuts the urban environment of the Otaihangā residential zone, and the farm is now uneconomic for farming, having been severed by the Expressway.

[226] The Mansells engaged an urban design landscape expert, Mr Compton-Moen, who estimated the site could accommodate 372 new dwellings if rezoned to General Residential while ensuring that the stormwater, ecological, natural wetlands and habitat for lizards can still be provided for.

[227] On 2 December 2022, the Mansells obtained resource consent from the Council to develop their land into 46 residential lifestyle lots on 2 December 2022.

[228] That consent was appealed.

[229] Ms Tancock, at [1.6] of her legal submissions, summarised the reasons for the zoning request as follows:

> *(a) The land has been identified by KCDC as being within a larger area intended for urban development in the medium term.*
>
> *(b) Their site adjoins the existing urban environment (**Otaihangā GRZ**) meaning it is in an ideal and logical location for further urban growth in Otaihangā – the consent reinforces this transition from rural to more intensive residential.*
>
> *(c) Development of the site will achieve a compact and efficient urban form with excellent connectivity - it is well serviced by car and pedestrian/shared path/cycleways and is within cycling distance from amenities.*
>
> *(d) The site is well serviced by existing infrastructure –can be connected to power, internet, sewer, reticulated water, wastewater. These networks have sufficient capacity to service more intensive residential development of the site.*
>
> *(e) The Mansells have worked closely with Atiawa ki Whakarongotai as manu whenua of the site and cultural impact assessment and archaeological assessments were completed as part of the bulk earthworks approval from Heritage New Zealand Pouhehre Taongā. Atiawa supported the subdivision application (and their further submission on PPC2 supports the Mansells' rezoning request).*
>
> *(f) Unlike other rezoning requests, this site has very recently been through a robust district and regional consent process. The characteristics of the site are well understood. That included peer 4 review of technical assessments and the evidence tested by the hearing panel. The district and regional consents obtained for the site for 46 dwellings mean that the suitability for residential development has already been confirmed. The Panel can place significant weight and have a high degree of confidence in those assessments.*
>
> *(g) From a hazards perspective, the necessary assessments have confirmed the site is in a sensible location for GRZ; there are no flooding or ponding issues, no waterways, the land is not highly productive land, it is geotechnically suitable for residential development and is not subject to liquification risk and can be developed to ensure hydraulic neutrality.*
>
> *(h) The mature Kanuka stands and four natural wetlands have been assessed and delineated and accommodated in detail design.*
>
> *(i) The Mansells' experts have also considered further assessment of the site's suitability for increased residential intensification as part of PPC2, in light of the Panel's Minute 1. All have determined that, in their expert view, there are no barriers to rezoning the site GRZ that cannot be resolved at detail design phase, they have considered the costs and benefits of doing so, and confirmed that the proposed GRZ/MDRS provisions could be applied to the site without amendment.*

> *(j) If rezoned, the land could be developed at higher density, more efficiently, in line with its intended (medium term) zoning. This would add significant development capacity and contribute to the well- functioning urban environment.*

[230] The Council and the Mansell family agree that the rezoning application is within scope. The Council, in its first report, opposed the rezoning, including because it was not supported by infrastructure and also required a structure plan. The first point fell away when it was established that there is Three Waters infrastructure and roading available to service the Mansell land. Mr Martell for the Mansells reiterated in his evidence that the land could be serviced easily.

[231] Mr Foy is an independent consultant with expertise in the form and function of urban economies. His statement for the Mansells analysed the appropriateness of rezoning the Mansell land considering the following matters:

(a) Kāpiti growth trends;

(b) The Kāpiti Coast urban environment; and

(c) Direction for a well-functioning urban environment in policy 6 NPS-UD.

[232] Overall, Mr Foy concluded that the Mansell site is a good opportunity for greenfield development that should not be passed at this juncture because less optimal land utilisation occurs by implementing the recent resource consent.

[233] Ms Fraser provided transportation evidence to demonstrate that the Mansell land is well connected to the road network and can comfortably support the increased traffic generated by residential activity if residential rezoning occurred.

[234] Mr Wylie described the capacity of the land for site development based on existing geotechnical assessments.

[235] Mr Goldwater from Wildlands described the natural values of the site relative to the existing pattern of the proposed development as shown in the figure below:

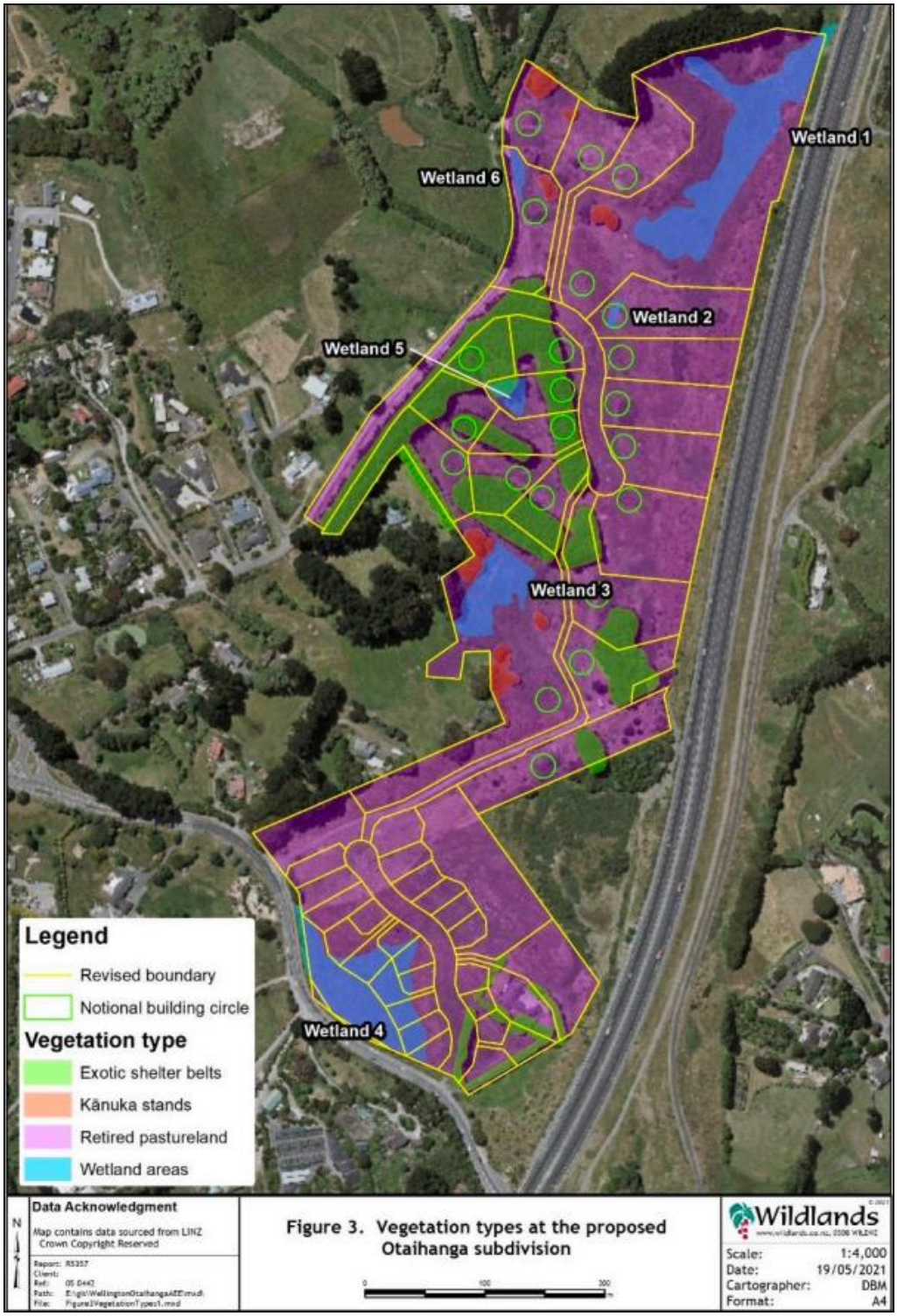


Figure 3. Vegetation types at the proposed Otaihanga subdivision

[236] Mr Hansen, the planning witness for the Mansells, undertook a full s 32AA evaluation of the proposed rezoning. He noted that the sites' values had been thoroughly interrogated as part of the existing resource consent process. A range of regional and district rules would trigger the need to protect the site's important natural values.

[237] Mr Hansen then addressed the criteria the Council used to demonstrate that the site warranted rezoning even on those Council-chosen criteria. The Panel's summary of that analysis follows.

Criteria 1: "They are located next to an urban area that is connected to infrastructure services"

[238] Mr Hansen noted that the idea of what is *next to* is open to inconsistent application. In planning terms, Mr Hansen said the site is next to the residential zone. Further, it was adjacent to the existing residential zone as many sites identified by the Council as suitable for rezoning.

Criteria 2: "They have a relatively low degree of constraints (and any existing constraints can be managed through District Plan Rules)

[239] The Council accepts that this criterion can be met.

Criteria 3: "They are not sufficiently large or complex enough to require a "structure planned" approach

[240] The Council officers considered that a structure-planned approach was required but did not describe what opportunities or constraints would need to be managed through a structure plan. Mr Hansen criticised a site area assessment as the basis for assessing whether or not a structure plan is required. He described that approach as an *arbitrary determination*. He said relevantly:

> *"I agree that a structure planned approach is required for the wider Otaihangā OH-01 area as it is divided by the Kāpiti expressway and has a number of constraints (as assessed in the s 32 evaluation report Appendix N (it could be addressed through a structure plan). However, I do not agree the size of the Mansell site requires a structure planned approach as a precursor to zoning as any constraints in the site are well known and assessed and would not negate the ability to prepare a structure plan for the wider Otaihangā OH-01 area in the future if this was desirable."*

[241] Mr Hansen also noted the commissioners for the resource consent application (RM 210147) agreed with that view.

Criteria 4: "They would have to provide a notable contribution to plan-enabled housing supply, or where this is not the case, re-zoning is appropriate to regularise the area in the surrounding zoning pattern."

[242] The Council accepted that rezoning the Mansell site would provide a notable contribution to housing supply.

[243] Ms Morris, an adjoining lifestyle block owner, opposed the rezoning because there was a loss of lifestyle character and it would affect the amenities that the area's currently open and undeveloped character provide.

[244] The Panel considers that the Mansell site should be rezoned General Residential Zone for the following reasons:

(a) The land is a good 'strategic fit' for greenfield residential development that make a notable contribution to housing supply;

(b) The rezoning would increase the land's development intensity and hence reduce the likelihood that the landowners will pursue the existing development consent. Development following the existing consent would be a suboptimal use of the land, which is a finite land resource suited to more intense residential development.

(c) District and regional rules adequately address the existing and important natural values of the site, and hence their values will be protected in the course of development;

(d) The economics of development and the operation of economic incentives will secure a well-designed comprehensively-planned development over a relatively discrete pocket of land;

(e) No material internal opportunities risk being foreclosed by the absence of a structure plan. There are equally no constraints or opportunities that development of the land will foreclose to enable coherent and appropriate development on adjoining land, if and when it is rezoned;

[245] Rezoning the land will trigger consideration of residential rezonings in the immediate locality and provide opportunities for integration of these in a way that best serves the Council's need to provide greenfield land in the medium term.

Section 7.4 – Otaihangā Block (SO43)

[246] A large block of bare land in the centre of Otaihangā along Ratanui and Otaihangā Roads comprises approximately 52 hectares. Presently, the land is zoned Rural Lifestyle Zone that enables development down to minimum lot areas of 4,000m^2.

[247] Surrounding the site are residential dwellings to the north and west, and Paraparaumu College is located 400m to the west of the site.

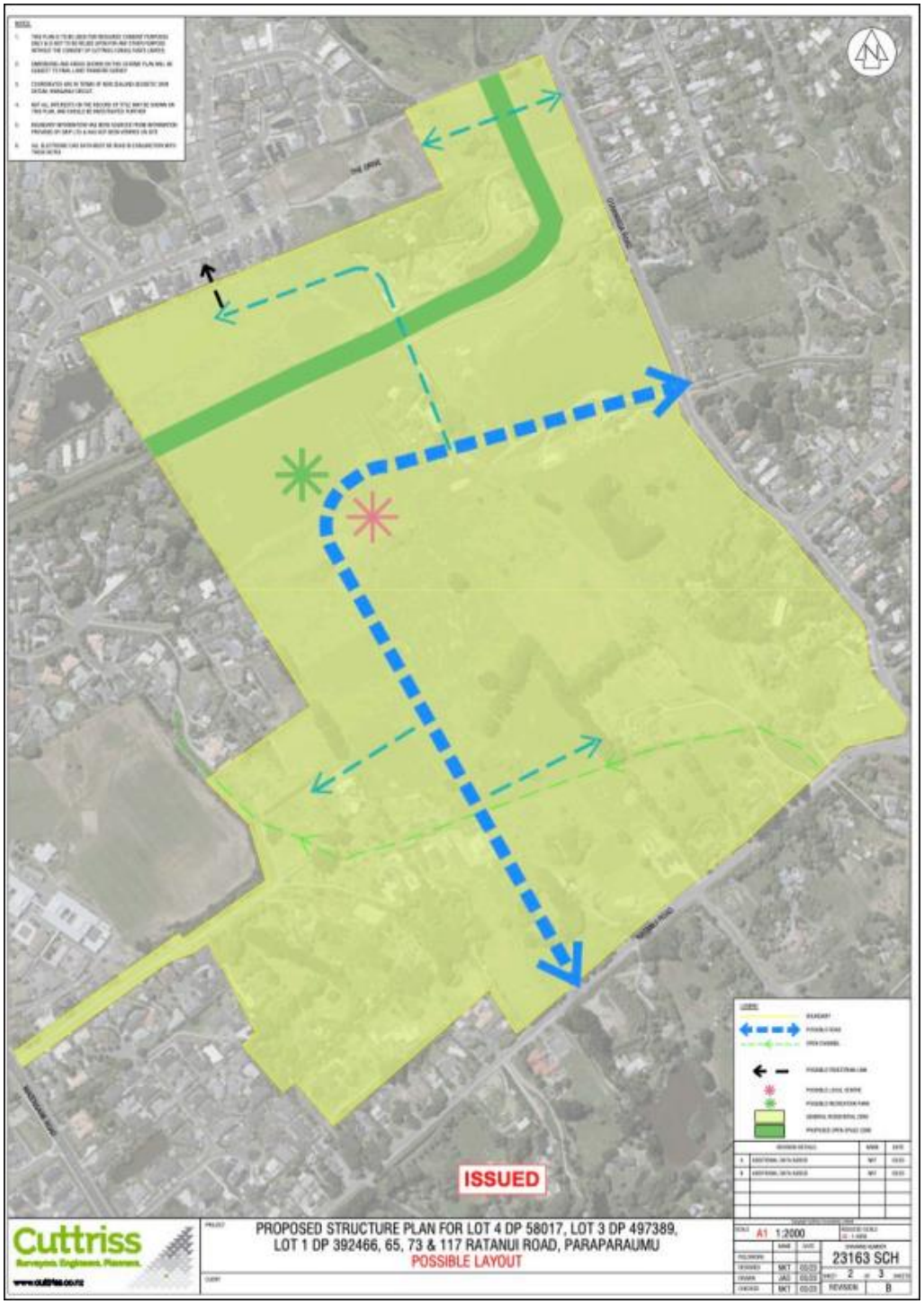
[248] The Mazengarb Stream flows through the northernmost reach of the site, and an open channel stormwater drain flows through the southern reaches of the site. A potential wetland exists on the eastern boundary within the 54 Otaihangā Road property.

[249] The submitter seeks rezoning of the Otaihangā Block (SO43). Mr Elliott Thornton, a planner, represented the submitter.

[250] The site is located within a greenfield growth area in the Te Tupu Pai Growth Strategy and identified in Appendix N to the RMA s 32 report for PC2. Mr Thornton noted that the site has good access to infrastructure and public transport.

[251] The site's northern portion is mapped as Land Use Capability (LUC) 3. However, as Mr Thornton noted, the National Policy Statement for Highly Productive Land does not apply to land identified for urban growth within the next ten years.

[252] Mr Thornton acknowledged that the land would need to be managed by a structure plan, and he included in his evidence a concept structure plan in the figure below. That structure plan had little supporting analysis.



[253] In a very indicative way, this structure plan indicates a potential location for open space provision and a local town centre zone.

[254] The Panel agrees with Mr Thornton that the site represents an excellent candidate for future residential development. However, given its strategic location and potential functional importance in supporting a range of services alongside residential, the site's opportunities and constraints must be interrogated thoroughly by a comprehensive

structure planning process. Mr Thornton's structure plan falls well short of what is required. Further, best practice requires that the structure plans are socialised with the community and are formed with the community's input. That has not been possible through the PC2 process.

[255] Therefore, we agree with Ms Maxwell that the site requires structure planning in accordance with sound planning practice before rezoning.

Section 7.5 – Classic Developments Limited (S205)

[256] Classic Developments submitted (S205) to rezone a block of land on Poplar Avenue, Raumati. The block contains four titles as follows:

Legal description	**Title**	**Area (hectares)**
Section 2 SO 508397	798191	5.0509
Sections 1 & 2 SO 537569	905967 and 905968	17.675
Sections 29-30 & 36 SO 505426	840307	12.0730
Section 37 SO 505426	843525	3.0665

[257] The submitter also sought the rezoning of 39 Rongomau Lane.

[258] The land is sandwiched between residentially-zoned land to the east and west. Approximately 19 hectares of the subject land is currently zoned, General Rural Zone.

[259] Reflecting the site's complex terrain, patterns of vegetation and peatland vestiges, the site currently contains a mix of General Residential Zone, General Rural Zone and Open Space zoning.

[260] Within the site is an ecological site *K131-Raumati South Peatlands.* The narrative description of this ecological value is as follows:

> *"Kanuka dominated habitat on dune systems is rare in Foxton ED. A small area of nationally rare habitat (wetland). Relatively large area of kanuka-gorse scrub although it is highly fragmented and exotic species are common. Bush falcon (threatened-nationally vulnerable reported)."*

[261] The submitter's planner, Bryce Holmes, pointed out that any development would be required to consider and address the matters in the NPS-FM and NES-F together with GWRC's PNRP. Therefore, adequate protections are already in place to manage the interface between residential development and the wetland.

[262] Applying the criteria used by the Council, Mr Holmes considered the site was suitable for rezoning because:

(a) It is located next to the urban area and connected to infrastructure services.

(b) The site has a relatively low degree of constraints.

(c) The site is not sufficiently large or complex to require a structure planned approach.

(d) The rezoning would make a notable contribution to plan-enabled housing supply.

[263] We agree with Ms Maxwell that a structure plan is desirable and, therefore, the Panel does not support the rezoning through PC 2 except for the rezoning of 39 Rongomau Lane. The latter recommendation is for the same reasons as in Section 7.6 and was only rejected initially because of the Expressway designation, and that issue has fallen away.

Section 7.6 – 45-47 Rongomau Lane (SO 123)

[264] Ms Liakovskaia made a submission proposing the rezoning of 45 and 47 Rongomau Lane to General Residential Zone because it is no longer rural being adjacent to the expressway and no longer required for a designation. Nominally, Waka Kotahi's designation remains on the land, but this is only because administrative delays have stalled the process of uplifting the designation. Ms Liakovskaia wishes to take full advantage of the enablement produced by MDRS.

[265] In reply, Ms Maxwell for the Council stated:

> *"(31) The submitter outlined that the expressway designation on-site is no longer required given that they purchased the land off the Crown, and the expressway is complete – therefore, it is appropriate for their land to be rezoned. Following the hearing, the*

submitter provided written correspondence with Waka Kotahi, outlining why the designation remains. None of the reasons provided seemed to relate to the subject sites, but rather some outstanding conditions and the fact that not all properties have been disposed by the Crown. It was also noted that written consent was required from Waka Kotahi in relation to any proposed development within the designation. I can confirm that this was the only matter which prevented the rezoning of the sites. If the Panel do not consider this to be a development-limiting issue, it is open to them to recommend rezoning these sites.

(32) It should also be noted that reverse sensitivity effects in relation to the expressway are addressed through existing District Plan provisions (specifically NOISE-R14)."

[266] Correspondence from Waka Kotahi confirms the designation does not represent an impediment to re-zoning.

[267] The Panel considers that the land should be rezoned and thus agrees with Ms Liakovskaia.

Section 7.7 – 157 Field Way, Waikanae Beach (S168)

[268] Brian Ranford and Michelle Curtis through their registered trusts own an impressive property at 157 Field Way. That land is contained in Computer Freehold Register Identifier WN59A/182 and comprises 1.449 hectares. Access to the land is from Field Way, a local road hosting a standard residential development pattern for Waikanae Beach. The submitters seek to rezone an undeveloped portion of their land with direct frontage to Field Way to create four sections A – D with access from Field Way and the existing access strip.

[269] Development in that form would represent a coherent extension of the pattern of residential development already enjoying access from Field Way. Development of this nature would also represent a significant incursion into a historical dividing line between residential use and rural use with associated differentiation in natural landscape and character.

[270] The request was treated as in scope following an assessment in the Planning Evidence Report on p 245.

[271] The Council's planning report at p 252 noted that the application did not meet one of the criteria for rezoning. Namely, it would not significantly contribute to plan-enabled housing or regularise with surrounding zoning. It was also noted that the site is

outside the Waikanae Northern Urban Edge and there was an insufficient planning justification for altering that line. Ms Maxwell, at [39] of her statement said:

> *"(39) The submitter requested part of their site be rezoned to General Residential Zone from General Rural Zone. Under the assessment process for rezoning, it did not meet all criteria due to the fact it does not provide a notable contribution to plan enabled housing. This was not the primary issue preventing its rezoning however. The site is also outside the urban area and is beyond the Waikanae North Urban Edge (WNUE). The WNUE is a strategic policy in the District Plan which defines the 'edge' of the urban area. The edge exists to manage the spread of urban development, and the Strategy requires that new urban development for residential activities should maintain the integrity of this boundary. The WNUE was not proposed to be amended through PC2. Therefore, I deem it inappropriate to rezone 157 Field Way prior to a wider strategic assessment of the location of the WNUE, and whether it should be extended to include further urban development. The location of/need for the WNUE is a strategic matter that would be more appropriately reviewed as part a future plan change (for example, it could be considered for inclusion in the future urban development plan change)."*

[272] Mr Rainford and Ms Curtis made the following points in their submission:

> *"6.2.1 Historically most of that part of Our Property we desire to be rezoned from rural to urban was already zoned urban during our ownership of our Property, before KCDC changed that part zoning to rural. A return as to part urban is returning to the status quo.*
>
> *6.2.2 If green belting the northern extremities of Waikanae urban areas by virtue of rural block designations was relevant in 2001 it is not relevant now, some 20 years later, as is evidenced by the urban encroachment of subdivided sections occurring north of our Property in Peka Peka. Further greenfield development in this area will advance that urban encroachment.*
>
> *6.2.3 It should be noted we are not requesting a complete rezoning of all of Our Property from rural to urban but essentially just that portion abutting Fieldway.*
>
> *6.2.4 The proposed subdivision of part of Our Property abutting Fieldway is merely a continuation of the existing urban environment all around Our Property in the…"*

[273] We consider the submitter's points have merit but PC2 is not the right vehicle to address the wider strategic issues of altering the WNUE.

Section 7.8 – 11 and 15 Te Rauparaha Street, Street, Ōtaki (S 156 and 254)

[274] Nancy Huang's family own a small block used as a market garden opposite St Mary's Catholic Church on Te Rauparaha Street. It is bisected by a stream, with the market

gardening occurring on the true left bank. It is bounded to the north by the Mangāpouri Stream, which is a small spring-fed tributary of the Waitohu Stream.

[275] West of Ms Huang's family's land is the land of Mr Richards which is pastoral land that abuts relict foredunes immediately adjacent to the Te Wanangā O Raukāwa Ōtaki Campus and the Te Kura Kaupapa, Māori o Te Rito.

[276] Mr Richards regards his land as uneconomic, and Ms Huang considers that her family is in the same position. The land is not particularly easy to grow on and not of sufficient size to operate as a market garden. The submitters argue that because of the proximity of the lane to Ōtaki township, it should be considered for rezoning.

[277] Mr Pirie, representing Mr Richards and Ms Huang, is a surveyor and claimed there were few constraints were operating on land development that could not be overcome.

[278] Mr Pirie also claimed that the submitters' land was identified as a Priority 3 greenfield area in the Council's greenfield re-zoning assessment as part of the Te Tupu Pai project.

[279] In her reply statement at [40], Ms Maxwell for the Council stated:

> *"(40) The submitters requested their site be rezoned to General Residential Zone. I considered these submissions to be out of scope for the reasons outlined in my planning evidence-in-chief. At the hearing, the submitter referenced Te Tupu Pai and stated that their site was identified as a "priority 3 greenfield area" as part of their reasoning. This category does not exist in Te Tupu Pai. Te Tupu Pai in fact identifies no growth area in that location. The site is identified in Appendix N as part of a "priority 3 potential growth area" which means "The area is an unlikely candidate for long term urban development, on the basis that there are numerous and significant constraints that are unlikely to be overcome". As discussed in paragraphs 22-24, Appendix N is not part of Te Tupu Pai."*

[280] The Panel considers that opportunities and constraints for this site would require a full investigation, including consideration of flood hazards, cultural values, and stream margin values and be planned in accordance with good practice structure planning. Significant constraints have meant that the Kāpiti Coast Urban Development Greenfield Assessment (Boffa Miskell 2022) does not identify the site as a particularly good candidate for residential development.

[281] We recommend the Council decline the submission by Mr Richards and Ms Huang.

Section 8 – Application of MDRS and Policy 3 to Ōtaki

Section 8.1 – Overview

[282] It is only since the local government reorganisation in 1989 that Ōtaki has become under the umbrella of Kāpiti Coast District Council and hence the Greater Wellington Region. For much of its history, Ōtaki was within the Manawatū province and the territory of the Horowhenua District Council. Its character is distinctive because of the strong tangata whenua associations that have now blossomed with strong indigenous institutions in Ōtaki Township. Unlike Waikanae, it has no rail link that qualifies as a rapid transit facility. It is on the periphery of the Greater Wellington Region, and because of the history and Ōtaki's development pattern, the MDRS application to Ōtaki is somewhat idiosyncratic.

[283] The two commercial platforms of Ōtaki are the Ōtaki Township on Main Street and the shopping precinct adjacent to Ōtaki Railway and formerly adjacent to State Highway 1. Because both areas have Town Centre Zones, the Council applied Policy 3 in accordance with the methodology described in Section 2.

[284] A key matter of contention concerning Ōtaki Township concerned the submission of Ngā Hapū o Ōtaki on the following issues:

(a) The extent to which Policy 3 enablement impacted t Raukāwa Marae on Main Street.

(b) The extent to which the application of the MDRS to the residential zone around the township was appropriate in light of the historical patterns of development in Ōtaki and the unique associations of tangata whenua to that land for use as papakaingā.

[285] It is those matters of contention that the Panel addresses in the following section.

Section 8.2 – Should there be an extended qualifying matter applying to the Ōtaki Township to recognise tangata whenua values?

[286] To the trained eye, it is plain that historical patterns of land subdivision supporting Māori ownership around Raukāwa Marae and the Ōtaki township churches still operate. The current urban context is somewhat of a palimpsest.

[287] Ngā Hapū o Ōtaki contended that applying Residential Intensification Precinct B to the Ōtaki Township town centre zone and the MDRS to the residential zone in the environment surrounding Raukāwa Marae inappropriately failed to recognise the historical patterns of development important to tangata whenua. Further, Ngā Hapū o Ōtaki also considered that the speed of the IPI process was procedurally unfair and in breach of the principles of the Treaty of Waitangi.

[288] The Ngā Hapū o Ōtaki submission was principally presented by Ngā Aroha Spinks, Denise Hapeta and Kirsten Hapeta.

[289] One of the Panel members had a little knowledge of the history of the Ōtaki Township, and that enabled us to interrogate more fully the underlying concerns of Ngā Hapū o Ōtaki.

[290] The Panel has considered a range of historical materials, but a key research item is Woodley (Wai 2200) – Ōtaki Alienation Draft Report.[46]

[291] Ōtaki Township has a rich history where an underlying theme is the attempts by Ngāti Raukāwa to provide papakaingā for its community centred on the marae and the local churches to maintain a strong community and cultural continuity. These aspirations remain. Chapter 7 of the Woodley (Wai 2200) Report neatly sets out the history as follows:

> *7.1 Introduction*
>
> *The project brief for this report asks for a history of the development of Ōtaki township, including hapū aspirations for self-determination, the desire to establish a township for hapū and the importance of religion reflected in the establishment of different churches in the town. This includes hapū housing and settlements such as Pukekaraka. Also to be addressed is the use of the 'parish housing development model' and how this worked or failed to work for*

[46] Woodley "The Purchase of Ōtaki Maori Land and the Development of Ōtaki Township 1840-2023" "A report prepared for the Porirua ki Manawatū Inquiry" (Wai 2200) and the commissioned by the Crown Forestry Rental Trust.

Ōtaki Māori. The project brief notes that this model promoted the establishment of a large number of small blocks in the immediate vicinity of the church.

Such a history has proved difficult to compile. While the establishment of the township has been discussed by local historians, in other reports prepared for this inquiry and is documented in investigation of title hearings recorded in Native Land Court minute books and newspaper accounts, the ongoing development of the township and the extent to which hapū aspirations were realised has not been covered to any great extent elsewhere and there are relatively few primary sources that can assist.

Little has been discovered in nineteenth and twentieth century government records about Māori aspirations for the township or the parish housing development model. Later records of the Court, the Department of Māori Affairs, the Aotea and Ikaroa Māori Land Board and Ōtaki Borough Council barely mention the original intention for the land or discuss ways of supporting Māori to live at Ōtaki least of all around Raukāwa Marae on Mill Road or Tainui Marae on Convent Road at Pukekaraka. The only exception is the encouragement by Hema Hakaraia, a borough councillor and to a lesser extent the Department of Māori Affairs who supported some housing initiatives in the 1940s and 1950s in the township.

What can be provided, however is an examination of key areas which limited opportunities for Māori to live on Māori land in the township and at Pukekaraka around their marae and churches. These are the ongoing purchase of township sections and at Pukekaraka which began to escalate in the 1890s, the population shift at Ōtaki by 1920 from a Māori dominated town to one populated predominately by Pākehā, the introduction of local government to the area and the resulting vesting of most of the remaining Ōtaki sections in the Ikaroa Māori Land Boardto administer in 1929, and the Europeanisation of both Ōtaki sections and Pukekaraka blocks in the late 1960s and early 1970s. Limited housing development opportunities was also a factor.

This chapter begins with details of how the township was established in the 1840s and how the sections were allocated, followed by a discussion on the building of the churches at Ōtaki township (Rangiatea) and at Pukekaraka (St Mary's) and their proximity to the Māori population and their respective Marae. This is followed by a discussion of the investigation of title by the Native Land Court and the pattern of alienation in the Ōtaki township and the Pukekaraka block including its 'Europeanisaton'. This is followed by a discussion of the shift in the population from predominantly Māori to predominantly Pākehā, the impact of local authorities and the housing initiatives in the 1950s in these areas. The chapter concludes with a discussion as to the utilisation and alienation of land around Raukāwa and Tainui Marae in 2023.

7.2 The establishment of Ōtaki township, 1840's

In the 1840s, Ngāti Raukāwa's base at Rangiuru located at the mouth of the Ōtaki River (in the Taumanuka block) was largely moved to the township of Ōtaki where individual ¼ acre sections had been allocated to individuals and groups within Ngāti Raukāwa.

Local historian Jan Harris and Anderson, Green and Chase in their report for this inquiry have discussed the establishment of a village at Ōtaki. They state that it is 'not entirely clear who first suggested the idea of building at village at Ōtaki – whether it was Bishop Octavius Hadfield, an Anglican missionary based at Ōtaki since late 1839, Governor Grey, or Māori themselves'. They note that Ngāti Raukāwa raangtira Matene Te

Whiwhi, when first giving evidence to the Native Land Court with respect to Ōtaki township in 1867, said that it was suggested to him by the Bishop of Auckland. Tamihana Te Rauparaha, 'suggested that much of the initiative was his and Matene's' and that they had both asked Thomas Bernard Collinson of the Royal Engineers to plan it. Collinson met with Matene Te Whiwhi and Te Rauparaha in Auckland in 1846 and thought it was the missionaries that had 'influenced the two young rangiātira'. 'Indeed, the township was briefly known by the name of Hadfield town' and was at times referred to by this name in some nineteenth century government records (for example the map below calls the township Hadfield).[47]

Anderson, Green and Chase state that Governor Grey:

> *… endorsed the project and actively facilitated it. The concept fitted well with his views on the advantages of the small village as a basis for Māori social organisation and with his "civilising agenda.*[48]

The historian's all record that Collinson assisted with its planning and in the words of the New Zealand Spectator, laid the town out on a '"regular plan, with streets on the principle of an English village and a square reserved at the end of the principal street on which the native village church will raise a spire"'.[49] *This referred to the site of the Rangiatea church which was built in 1851.*

The idea of establishing a village or town for Ngāti Raukāwa was supported by Ngāti Raukāwa. Te Matene Te Whiwhi described at a Court hearing how the land was allocated. He said that the village was divided into ¼ acre sections and surveyed by Mr Fitzgerald who the government sent at their request. He said that each person who it was considered had rights 'had been allocated different allotments as 'individuals or as representatives or as both of their special hapū'. Te Rauparaha explained that all Ōtaki Māori had agreed to the lay out of the township and that the allocations were approved by a 'committee of chiefs' under the oversight of Samuel Williams. Sections were also set aside for a school and courthouse.[50]

The following map shows the boundaries of the township as sketched in 1880 which include the church missionary land, the Ōtaki block (or Ōtaki A), and sections 25-30 (or Te Awamate) on Te Rauparaha Street to the west; the Waerengā block to the south (from what is now called Iti Street) and the Haruatai Stream (and Makuratawhiti and Haruatai blocks) to the east and north-east. The Mangapouri block (as opposed to the Mangapouri Market Reserve) was the northern most section with the Pukekaraka, Waitohu and Titokitoki blocks to the east of the river. It shows too, the site of the Rangiatea Church and the Mangapouri Market Reserve (both on Te Rauparaha Street).

From this map, about 162 township sections are shown as well as Ōtaki (or Ōtaki A) on the western side of Te Rauparaha Street and Manapouri Market Reserve. Ōtaki

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[47] Jan Harris, J., 'The Town of Ōtaki', *Ōtaki Historical Society Journal 31*, 2009, p. 4; Anderson, Green and Chase, (Wai 2200, #A201), pp. 95-96

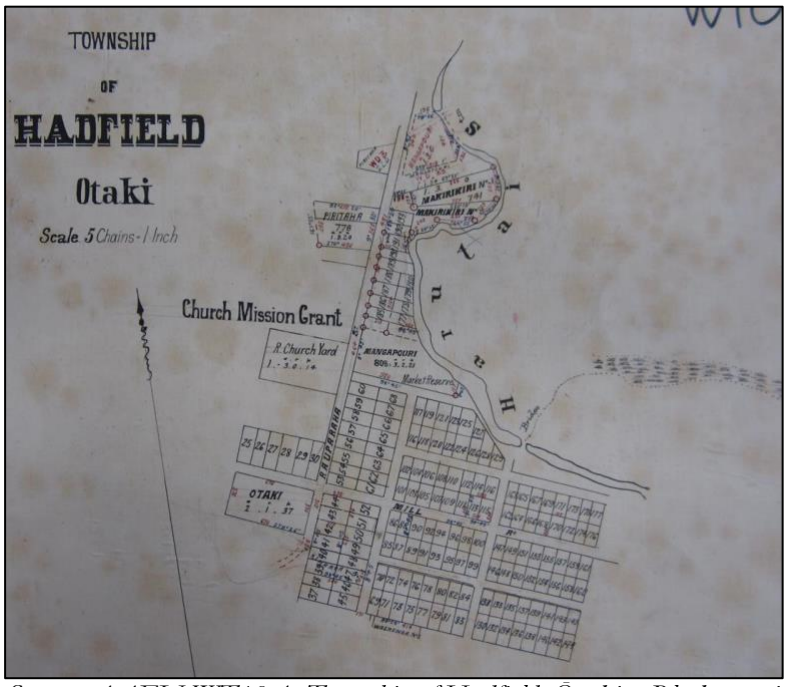
[48] Anderson, Green and Chase, (Wai 2200, #A201), p. 96.

[49] *New Zealand Spectator*, 17 February 1847, p. 2 as quoted by Jan Harris, p. 4 and Anderson, Green and Chase, (Wai 2200, #A201), pp. 3, 96.

[50] Anderson, Green and Chase, (Wai 2200, #A201), p. 96. They record that Te Rauparaha listed the committee as: Kiharoa Te Ao, Te Kingi, Hanita Te Ra Waraki, Mohi Te Wharewhiti, Hukiki, Matene Te Whiwhi, Hakaraia, Karanama, Pairoroku, Te Mahia, Te Mahauariki and Te Whatanui as well as himself who he described as Ngāti Raukāwa and Ngāti Toa.

township sections 181, 182, 183 and 184 are not shown but all, part from section 183, have been identified in later maps. Of note is that sections 39, 40, 41, 42, 47 and 48 were also known as Kiharoa 2; sections 37, 38, 45 & 46 were sometimes known as Kiharoa 1 and were later called section 45A; sections 180, 181, 188 and 189 were also called Piritaha 5 and sections 192 & 193 appear to have been part of the Makirikiri 2 block:

Ōtaki Township, sketch of initial layout of sections, 1880



Source: AAFV WT10A, Township of Hadfield, Ōtaki – Blocks, sections, place names, public gardens, bush – scale 5 chains: 1 inch – Drawing, C.F. Gieson, 1880 (R22824372), Archives New Zealand, Wellington.

[292] Concerning changes affecting Ngāti Raukāwa, Woodley observed the operations in the Native Land Court and also a population shift. Thus at section 7.4 Ms Woodley stated:

One of the factors that is likely to have affected the ability of Ngāti Raukāwa to fully maintain Ōtaki as a papakāinga for Ngāti Raukāwa was the population shift at Ōtaki whereby Pākehā gradually outnumbered Māori.

Estimates give the Māori population of Ōtaki as 664 in 1850. However, this was likely to be wider than the township itself. In 1876, Ōtaki Pā was awarded to 'all of Raukāwa' and the list comprises 346 names. It is likely, however, to have included names of those who did not live at Ōtaki as the population in 1878 at Ōtaki, according to the government census, was 194 which together with the 54 people identified as living at Pukekaraka made a total of 248. The Māori population at Ōtaki did not increase by much as by 1918, there were approximately 276 Māori living in the Ōtaki town board area (which included both Ōtaki township and Pukekaraka). This was 25 per cent of the total population of Ōtaki. By 1927, there were an estimated 300 Māori living in the borough which included blocks such as Haruatai and Makuratawhiti

> *around the township sections as well as the beach area.[51] While the Māori population stayed relatively steady, the Pākehā population began to grow. As noted above, in 1864, there were 12 Pākehā families recorded as living in the township so probably less than 50 people. By 1901, the number of inhabitants had increased to 272 which was similar to Māori. By 1918, there were over 800 Pākehā and within another ten years it was 1200. This meant that by 1929, Māori made up 20 per cent of the inhabitants of the town.[52]*
>
> *This population shift coincided with increased purchase of township sections. By 1930, around 61 per cent of the township sections had been purchased.*

[293] Woodley observed in section 7.5 page 232 and 233 as follows:

> *Increasingly, Māori sold land in the township because they lived away from Ōtaki, were in debt and/or did not have the finances to develop the sections, some of which were undeveloped. In the 1920s, the Ikaroa Māori Land Board confirmed the purchase of Ōtaki township section 50. The sections sole improvements consisted of fencing and it was covered in weeds. The owner lived at Katihiku and had received no revenue from the land. He also appeared to not have the financial resources to develop the section. He said he was 'quite satisfied' with the purchase and that he wanted the money to look after himself.[53] Similarly, in the 1944, Ōtaki township section 44 was purchased because the owners could not secure finance to replace the existing buildings which were being demolished. If they could not re-build, however, they could not lease the land. The purchase by Pākehā who could afford to build on the land was considered in the best interests of the owners and the borough by both the Court and the Ōtaki Borough Council.*

[294] The Woodley Report then continues the narrative across the 20th Century.

[295] The Woodley Report's overarching conclusion at 7.10 at page 238 is the following:

> *This alienation of township sections and the area around Pukekaraka gradually reduced the amount of Māori land in these areas which in turn, limited opportunities for Māori to live on Māori land in the township. This, together with the population shift in Ōtaki, the introduction of local authorities to the area as well as limited opportunities for housing development meant Ngāti Raukāwa were unable to foster Ōtaki as a papakāinga in the same way as was envisaged in the 1840s.*

[296] In light of the history described above it is understandable that Ngā Hapū o Ōtaki harbour the concern that the enabling aspects of the MDRS and NPS-UD Policy could:

(a) Further undermine the central role of the Raukāwa Marae for their community.

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[51] Census of the Maori Population, 1878, AJHR 1878, G2; Woodley, (Wai 2200, #A193), pp. 303-304.
[52] Woodley, (Wai 2200, #A193), pp. 303.
[53] Ikaroa Maori Land Board Minute Book 9, 22 February 1921, p. 297.

(b) Detract from the benefits of the papakāinga provisions of PC 2 intended to facilitate long held aspirations by Ngāti Raukāwa that spawned earlier land subdivision.

[297] Mr Banks, the reporting planner for the Council, further consulted with Ngā Hapū o Ōtaki following the formal hearing to prepare his reply. As a result of that further work he proposes an expanded Ōtaki Takiwa Precinct shown in Appendix G to the Council's reply (PC 2_CouncilReply_AndrewBanks_appa_ipi_pcr2).

[298] Supporting his conclusions, Mr Banks stated at [29] of his reply:

> *In my opinion, the network of places that surround the Ōtaki Main Street town centre contribute to a well-functioning urban environment that enables tangata whenua to express their cultural traditions and norms. I therefore consider that the broader network of places described by Ngā Hapū o Ōtaki, and the area circumscribed by them, together constitute a 'living site of significance' which I consider should be provided for as a qualifying matter under sections 77I(a) and 77O(a) of the RMA (as a matter necessary to recognise and provide for section 6(e) of the RMA)*

[299] We agree with Mr Banks' assessment and support the overall thrust of the Ngā Hapū o Ōtaki submission.

[300] Consequently, we do not agree with Kāinga Ora's proposed re-zonings in the Ōtaki Township.

Section 9 – Conclusion

[301] In conclusion, Councillors will see from reading this report that the Panel arrived at more or less the same destination as Mr Banks' and Ms Maxwell's reply evidence except for some notable exceptions. That is not surprising since we travelled the same journey. The Panel confidently concludes that the outcome it recommends fulfils the statutory requirements, serves the community's interests within the legal framework, and is based on the preponderance of the evidence.

Hei kona ra John Maassen (Chairperson) and Rauru Kirikiri (Independent Commissioner) - Jane Black (Independent Commissioner).

John Maassen
Chairperson

pp. Rauru Kirikiri

Rauru Kirikiri [54]
Independent Commissioner

Jane Black.

Jane Black
Independent Commissioner

[54] Mr Kirikiri was unavailable to sign the report but endorsed a mature draft of the report by email. Therefore, the Chairperson has signed on behalf of Mr Kirikiri

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- S122 Kainga Ora – Legal Submissions 22-03-2023
- S196 and S197 – Retirement Villages Association and Ryman Healthcare Ltd – Legal submissions 15.03.2023
- S196 and S197 – RVA and Ryman – Nicola Williams – Supplementary Statement 6-04-2023
- S218 – Coastal Ratepayers United – Legal submission 17.03.2023

Submitter statements

- S023 – Mansell – Statement to the PC2 Hearing Panel. 24-04-2023
- S045 – John Le Harivel – Housing intensification Power Point John Le Harivel Architect v2[PPSX 94 KB]
- S053 – Waka Kotahi – Statement for Tabling
- S105 – Waikanae Beach Residents Society – Statement 21-03-2023
- S112 – Ministry of Education – Tabled Letter
- S160 and S160.FS.1–3 – Nancy Gomez – Submitter Statement 10.03.2023
- S202 and S202.FS.1 – Leith Consulting Ltd – Submitter Statement 10.03.2023
- S209 – Vince Erik Osborne – Marie Payne Submitter Statement 10.03.2023
- S227.FS.1 – John Tocker – Submitter Statement 10.03.2023
- S67 - Manly Flats - Photos in support of submission
- S105 and S106 - Waikanae Beach Residents Society and Munro Duignan Trust - Economic impacts extreme events jul04 NZIER
- S105 and S106 - Waikanae Beach Residents Society and Munro Duignan Trust - Hammond et al
- S130 - Chris Turver - Statement 21-03-2023
- S186 - Ian and Jean Gunn - Statement 23-03-2023
- S105 - Waikanae Beach Residents Society - Summary of Oral Submission by Pat Duignan 21-03-2023
- S105 - Waikanae Beach Residents Society - Pat Duignan OIA request to the Ministry for the Environment - Ref 507603 OIAD-285
- S160 and S160.FS.1-3 – Nancy Gomez – Submitter Presentation[PPTX 4.29 MB]

- S168 - Brian Ranford and Michelle Curtis - Video in support of submission[MOV 10.56 MB] (**Note:** clicking this link will download the file to your computer for viewing)
- S198 - Helen Ridley - Submitter Statement 31-03-2023
- S252.FS.1 - Low Carbon Kāpiti - Submitter Statement 29-03-2023

Memoranda of Counsel

- S20, S38, S61 and S74 – Andrew Hazelton – Memorandum of Counsel
- S94 – KiwiRail – Memo of Counsel 20-03-2023
- S104 - Waikanae Land Company - Memorandum of Counsel 16-03-2023
- S104 – Waikanae Land Company – Memorandum of Counsel 27-03-2023
- S196 and S197 – Ryman and the RVA – Memorandum of counsel 27-03-2023
- S196 and S197 – Ryman and the RVA – Memorandum of Counsel 28-03-2023
- S196 and S197 – Ryman and the RVA – Memorandum of Counsel 6-04-2023

Withdrawal of submission

- S259.FS.1 - Campbell & Susan Ross Trust - Withdrawal of Submission

Additional documents

- Ministry for the Environment Departmental Report on the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill
- Select Committee Report 2021 - Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill

Council reply

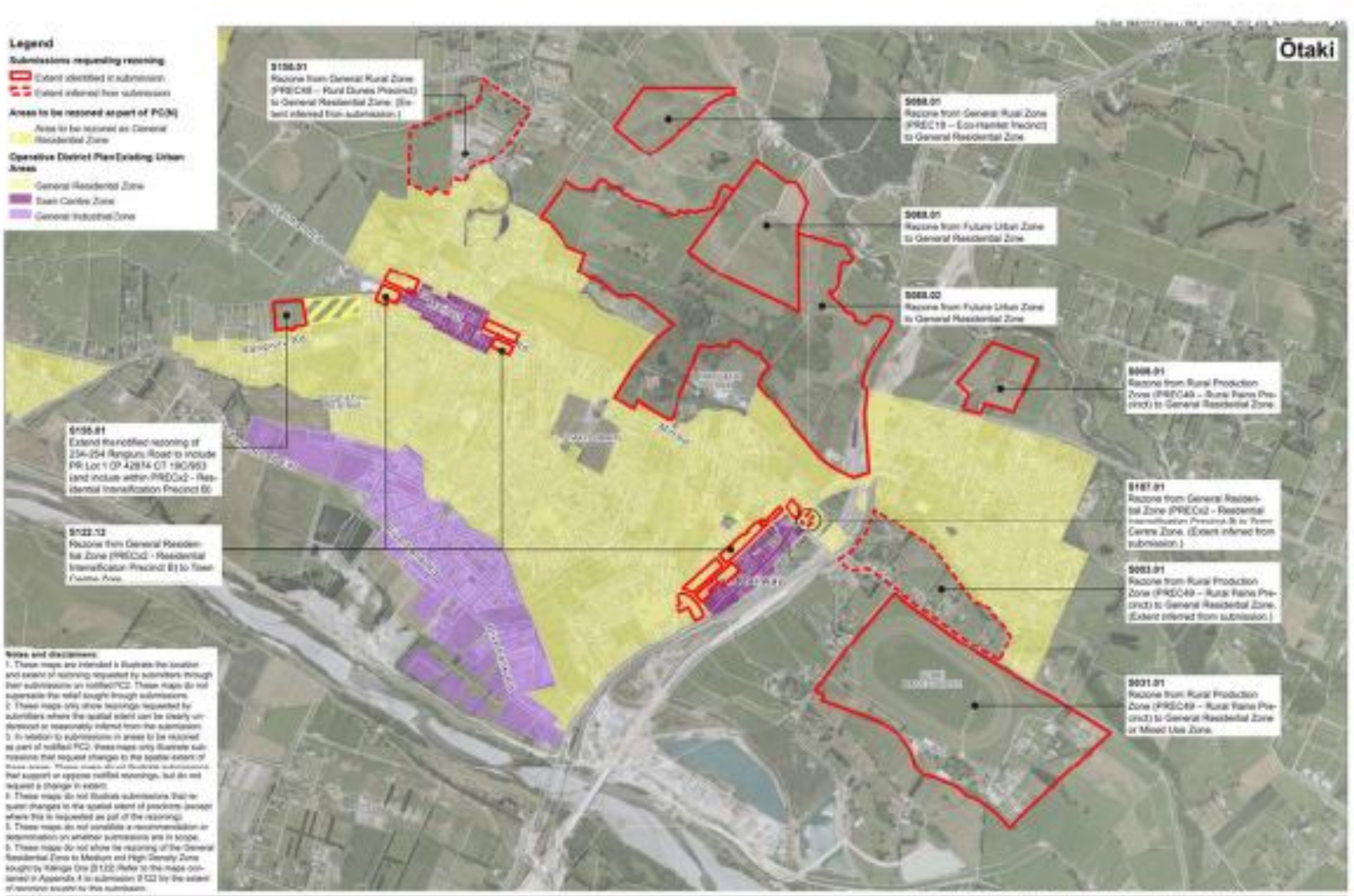
- Council legal reply
- Council reply Andrew Banks
- Council reply Andrew Banks Appendix A
- Council reply Katie Maxwell
- Ngā Hapū o Ōtaki supplied Waitangi Tribunal documents
- Woodley Ōtaki Progress Report No2 28 March 2023
- Woodley Ōtaki alienation draft report 28 March 2023
- Woodley Ōtaki alienation final report 9 May 2023
- PC(R2) Council Officer Reply Version Web-map

Appendix 2 - Plans showing the location of re-zoning requests

Plan Change 2
Council Officers' Planning Evidence

Appendix F

Maps showing submissions that request rezoning


Legend
Submissions requesting rezoning
Extent identified in submission
Extent inferred from submissions
Areas to be rezoned as part of PC(N)
Areas to be rezoned as General Residential Zone
Operative District Plan Existing Urban Areas
General Residential Zone
Town Centre Zone
General Industrial Zone
Ōtaki
S156.01
Rezone from General Rural Zone (PREC18 – Rural Dunes Precinct) to General Residential Zone. (Extent inferred from submission.)
S088.01
Rezone from General Rural Zone (PREC19 – Eco-Hamlet Precinct) to General Residential Zone
S088.01
Rezone from Future Urban Zone to General Residential Zone
S088.02
Rezone from Future Urban Zone to General Residential Zone
S098.01
Rezone from Rural Production Zone (PREC49 – Rural Rains Precinct) to General Residential Zone
S155.01
Extend the notified rezoning of 234-254 Rangiuru Road to include PR Lot 1 DP 42814 OT 19C/953 and include within PREC42 - Residential Intensification Precinct B)
S187.01
Rezone from General Residential Zone (PREC42 – Residential Intensification Precinct B) to Town Centre Zone. (Extent inferred from submission.)
S122.12
Rezone from General Residential Zone (PREC42 - Residential Intensification Precinct B) to Town Centre Zone
S093.01
Rezone from Rural Production Zone (PREC49 – Rural Rains Precinct) to General Residential Zone. (Extent inferred from submission.)
S031.01
Rezone from Rural Production Zone (PREC49 – Rural Rains Precinct) to General Residential Zone or Mixed Use Zone.
Notes and disclaimers:
1. These maps are intended to illustrate the location and extent of rezoning requested by submitters through their submissions on notified PC2. These maps do not supersede the relief sought through submissions.
2. These maps only show rezonings requested by submitters where the spatial extent can be clearly understood or reasonably inferred from the submission.
3. In relation to submissions in areas to be rezoned as part of notified PC2, these maps only illustrate submissions that request changes to the spatial extent of those areas. These maps do not illustrate submissions that support or oppose notified rezonings, but do not request a change in extent.
4. These maps do not illustrate submissions that request changes to the spatial extent of provisions (except where this is requested as part of the rezoning).
5. These maps do not constitute a recommendation or determination on whether submissions are in scope.
6. These maps do not show the rezoning of the General Residential Zone to Medium and High Density Zone sought by Kāinga Ora (S122) Refer to the maps contained in Appendix A to submission S122 for the extent of rezoning sought by this submission.
Boffa Miskell
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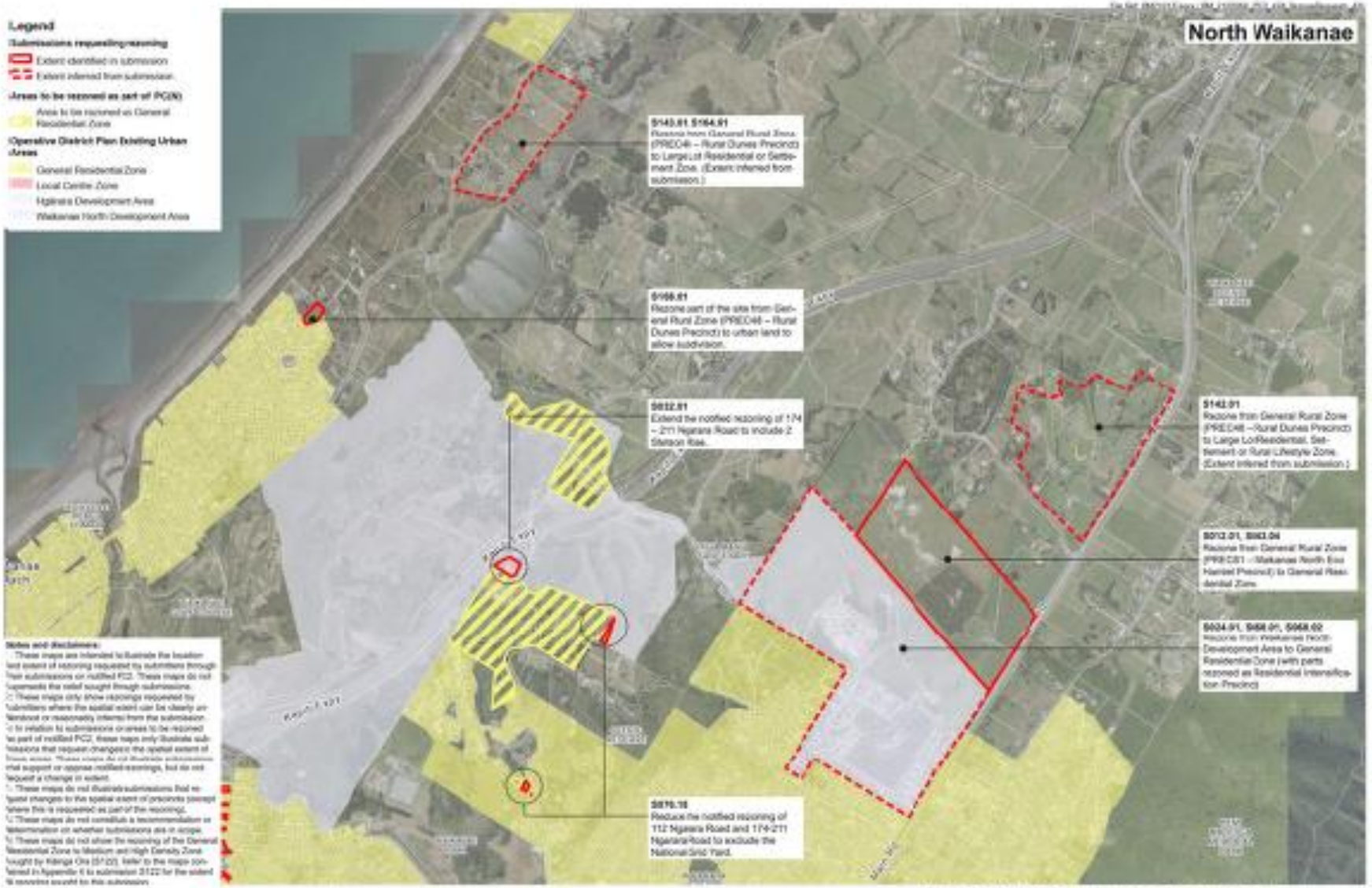
1:10,000 @ A0
KAPITI COAST DISTRICT PLAN CHANGE 2 - INTENSIFICATION
Submissions Requesting Rezoning
Date: 24 February 2023 | Revision: 1
Plan prepared for Kāpiti Coast District Council by Boffa Miskell Limited
Map 1


North Waikanae
Legend
Submissions requesting rezoning
Extent identified in submission
Extent inferred from submission
Areas to be rezoned as part of PC2(N)
Area to be rezoned as General Residential Zone
Operative District Plan Existing Urban Areas
General Residential Zone
Local Centre Zone
Ngārara Development Area
Waikanae North Development Area
S143.01 S164.01
Rezone from General Rural Zone (PREC48 – Rural Dunes Precinct) to Large Lot Residential or Settlement Zone. (Extent inferred from submission.)
S168.01
Rezone part of the site from General Rural Zone (PREC48 – Rural Dunes Precinct) to urban land to allow subdivision.
S032.01
Extend the notified rezoning of 174 – 211 Ngārara Road to include 2 Stetson Rise.
S142.01
Rezone from General Rural Zone (PREC48 –Rural Dunes Precinct) to Large LotResidential, Settlement or Rural Lifestyle Zone. (Extent inferred from submission.)
S012.01, S063.06
Rezone from General Rural Zone (PREC51 – Waikanae North Environmental Precinct) to General Residential Zone
S024.01, S058.01, S068.02
Rezone from Waikanae North Development Area to General Residential Zone (with parts rezoned as Residential Intensification Precinct)
S070.16
Reduce the notified rezoning of 112 Ngārara Road and 174-211 NgararaRoad to exclude the National Grid Yard.
Notes and disclaimers:
These maps are intended to illustrate the location and extent of rezoning requested by submitters through their submissions on notified PC2. These maps do not supersede the relief sought through submissions.
These maps only show rezonings requested by submitters where the spatial extent can be clearly ascertained or reasonably inferred from the submission in relation to submissions or areas to be rezoned as part of notified PC2, these maps only illustrate submissions that request changes to the spatial extent of
that support or oppose notified rezonings, but do not request a change in extent.
These maps do not illustrate submissions that request changes to the spatial extent of precincts (except where this is requested as part of the rezoning).
These maps do not constitute a recommendation or determination on whether submissions are in scope.
These maps do not show the rezoning of the General Residential Zone to Medium- and High Density Zone sought by Ngārara Ora (S123), refer to the maps contained in Appendix 4 to submission 2122 for the extent of rezoning sought by this submission.
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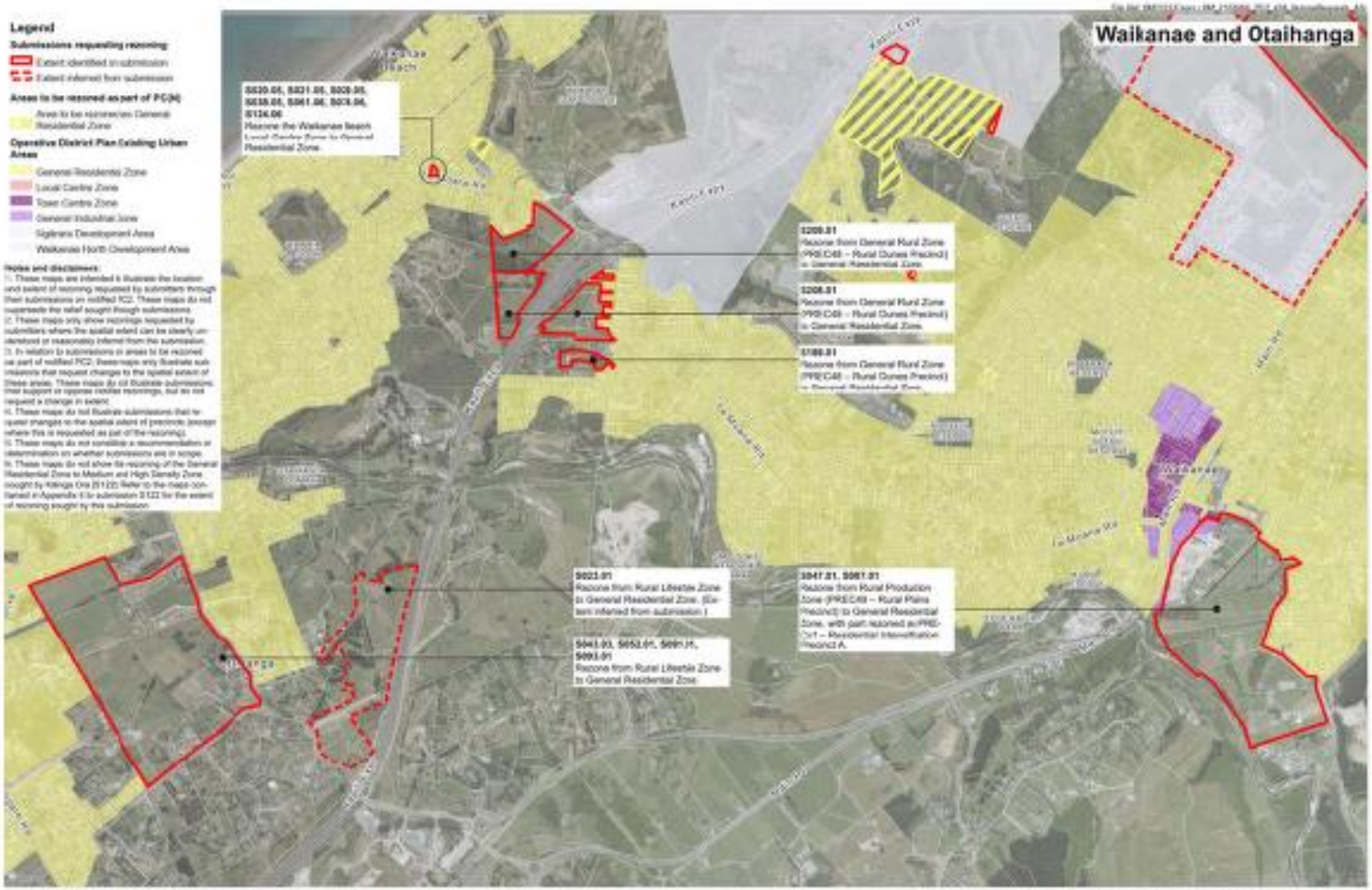
Data Sources: Esri, Maxar, Earthstar Geographics, and the GIS User Community
KAPITI COAST DISTRICT PLAN CHANGE 2 - INTENSIFICATION
Submissions Requesting Rezoning
Date: 24 February 2023 | Revision: 1
Plan prepared by Boffa Miskell Limited
Map 2



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KAPITI COAST DISTRICT PLAN CHANGE 3 - INTENSIFICATION

Submissions Requesting Rezoning

Date: 28 February 2023 | Revision: 1

Plan prepared for Kāpiti Coast District Council by Boffa Miskell Limited

Map 3


North Paraparaumu
Legend
Submissions requesting rezoning
Extent identified in submission
Extent inferred from submission
Areas to be rezoned as part of PC2I
Area to be rezoned as General Residential Zone
Operative District Plan Existing Urban Areas
General Residential Zone
Local Centre Zone
Mixed Use Zone
Town Centre Zone
Metropolitan Centre Zone
General Industrial Zone
Airport Zone
Hospital Zone
S122.19
Rezone the Waikanae Local Centre Zone to General Residential Zone.
S018.02
Rezone the Paraparaumu Beach Town Centre Zone to Local Centre Zone. (Extent inferred from submission.)
Notes and disclaimers:
1. These maps are intended to illustrate the location and extent of rezoning requested by submitters through their submissions on notified PC2. These maps do not supersede the relief sought through submissions.
2. These maps only show rezonings requested by submitters where the spatial extent can be clearly understood or reasonably inferred from the submission.
3. In relation to submissions on areas to be rezoned as part of notified PC2, these maps only illustrate submissions that request changes to the spatial extent of these areas. These maps do not illustrate submissions that support or oppose notified rezonings, but do not request a change in extent.
4. These maps do not illustrate submissions that request changes to the spatial extent of rezonings (except where this is requested as part of the rezoning).
5. These maps do not constitute a recommendation or determination on whether submissions are in scope.
6. These maps do not show the rezoning of the General Residential Zone to Medium and High Density Zone sought by Kāinga Ora [S122]. Refer to the maps contained in Appendix 4 to submission S122 for the extent of rezoning sought by this submission.
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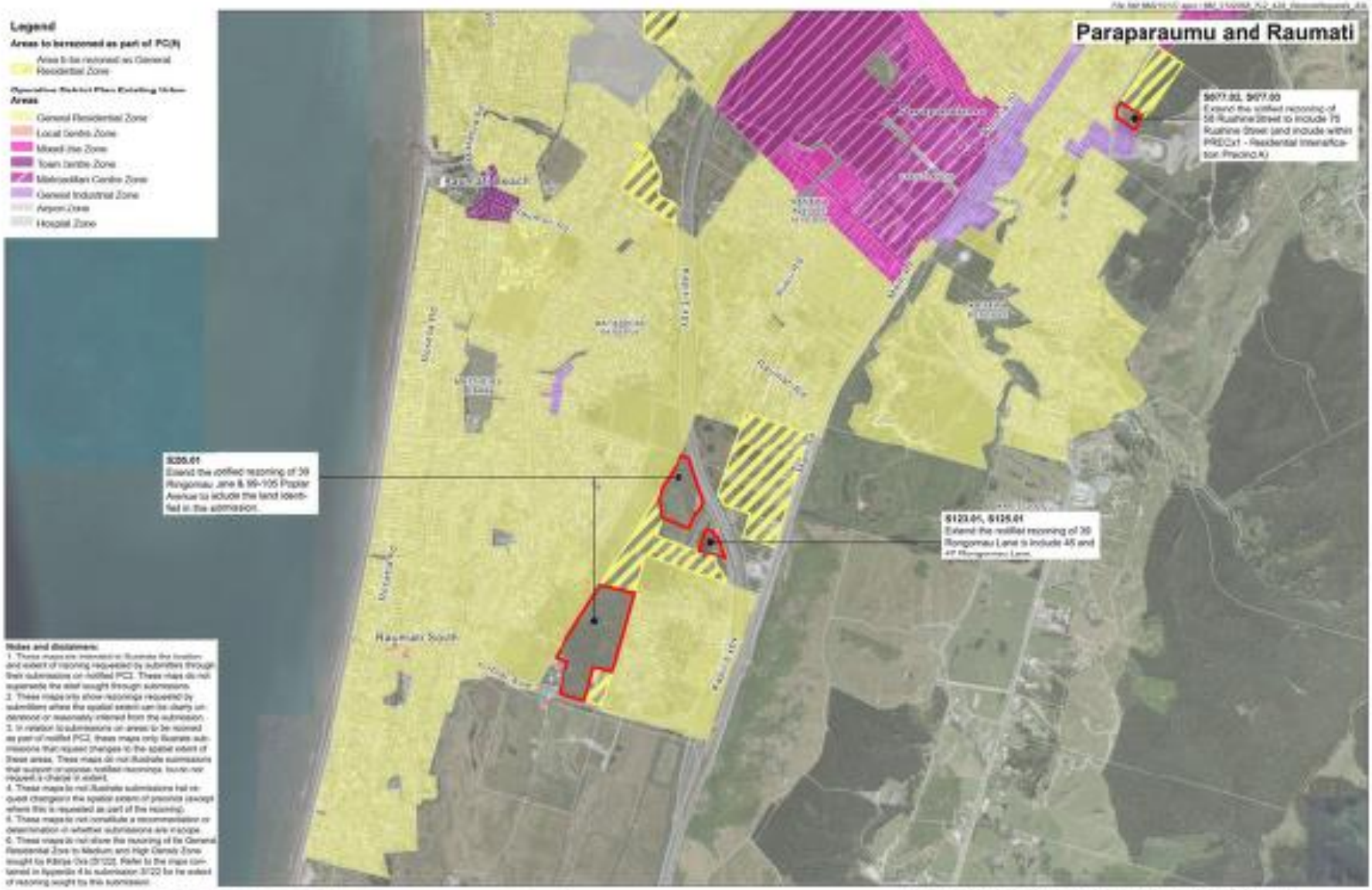
KAPITI COAST DISTRICT PLAN CHANGE 2 - INTENSIFICATION
Submissions Requesting Rezoning
Date: 28 February 2023 | Revision: 1
Plan prepared for Kāpiti Coast District Council by Boffa Miskell Limited
Map 4


Paraparaumu and Raumati
Legend
Areas to be rezoned as part of PC(3)
Area S-6a rezoned as General Residential Zone
Operative District Plan Existing Urban Areas
General Residential Zone
Local Centre Zone
Mixed Use Zone
Town Centre Zone
Metropolitan Centre Zone
General Industrial Zone
Airport Zone
Hospital Zone
S77.03, S77.03
Extend the notified rezoning of 58 Rushine Street to include 76 Rushine Street (and include within PREC21 - Residential Intensification Precinct A)
S120.01
Extend the notified rezoning of 39 Rangiomau Lane & 99-105 Poplar Avenue to include the land identified in the submission.
S123.01, S125.01
Extend the notified rezoning of 30 Rangiomau Lane to include 45 and 47 Rangiomau Lane
Raumati South
Notes and disclaimers:
1. These maps are intended to illustrate the location and extent of rezoning requested by submitters through their submissions on notified PC3. These maps do not supersede the relief sought through submissions.
2. These maps only show rezonings requested by submitters where the spatial extent can be clearly understood or reasonably inferred from the submission.
3. In relation to submissions on areas to be rezoned as part of notified PC3, these maps only illustrate submissions that request changes to the spatial extent of these areas. These maps do not illustrate submissions that support or oppose notified rezonings, but do not request a change in extent.
4. These maps to not illustrate submissions that request changes to the spatial extent of precincts (except where this is requested as part of the rezoning).
5. These maps to not constitute a recommendation or determination on whether submissions are in scope.
6. These maps do not show the rezoning of the General Residential Zone to Medium and High Density Zone sought by Kāinga Ora (S122). Refer to the maps contained in Appendix 4 to submission 3/122 for the extent of rezoning sought by this submission.
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KAPITI COAST DISTRICT PLAN CHANGE 3 - INTENSIFICATION
Submissions Requesting Rezoning
Date: 24 February 2023 | Revision: 1
Plan prepared by Kāpiti Coast District Council & Boffa Miskell Limited
Map 5


Paekākāriki
Legend
Submissions requesting rezoning
Extent informed from submission
Areas to be rezoned as part of PC3
Area to be rezoned as General Residential Zone
Operative District Plan Existing Urban Areas
General Residential Zone
Local Centre Zone
S136.01
Rezone from General Rural Zone (PREC48 – Rural Dunes Precinct) to a zone that allows subdivision
(Extent informed from submission)
Notes and disclaimers:
1. These maps are intended to illustrate the location and extent of rezoning requested by submitters through their submissions on notified PC3. These maps do not supersede the relief sought through submissions.
2. These maps only show rezonings requested by submitters where the spatial extent can be clearly ascertained or reasonably inferred from the submission.
3. In relation to submissions on areas to be rezoned as part of notified PC3, these maps only illustrate submissions that request changes to the spatial extent of these areas. These maps do not illustrate submissions that support or oppose notified rezonings, but do not request a change in extent.
4. These maps do not illustrate submissions that request changes to the spatial extent or precinct (except where this is requested as part of the rezoning).
5. These maps do not constitute a recommendation or determination on whether submissions are in scope.
6. These maps do not show the rezoning of the General Residential Zone to Medium and High Density Zone sought by Kāinga Ora (S122). Refer to the maps contained in Appendix 4 to submission S122 for the extent of rezoning sought by this submission.
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KAPITI COAST DISTRICT PLAN CHANGE 3 - INTENSIFICATION
Submissions Requesting Rezoning
Date: 24 February 2023 | Revision: 1
Plan prepared for Kāpiti Coast District Council by Boffa Miskell Limited
Map 6