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

Plan Change 2
Council Officer's Reply Evidence

Author: Andrew Banks

Dated: 28 April 2023

Contents

Appendices

1.0 Introduction

(1) My full name is Andrew Peter Banks. I am employed as a Planner at Boffa Miskell Limited based in Wellington. I have been engaged to provide planning evidence on behalf of the Kāpiti Coast District Council (the Council) in respect of matters raised in submissions on Plan Change 2 (PC2) to the Operative Kapiti Coast District Plan.

(2) I have prepared this reply on behalf of the Council in respect of matters raised at the hearing.

(3) My qualifications and experience are set out in section 2.4 of the Council Officers' Planning Evidence Report[1].

(4) I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023.

(5) I have read the evidence, legal submissions and tabled statements provided by submitters to the Independent Hearings Panel (IHP).

1.1 Scope of reply

(6) The scope of this reply relates to the matters for which I gave evidence in the Council Officers' Planning Evidence report. For matters related to rezoning, refer to the separate reply prepared by Ms Katie Maxwell on behalf of the Council.

(7) In summary, the main matters addressed by this reply include the following:

- Matters raised by tangata whenua at the hearing;
- Kārewarewa urupā;
- District Objectives and Urban Form and Development policies;
- The residential zoning framework;
- Giving effect to Policy 3 of the NPS-UD;
- Design guides;
- Retirement villages;
- The rail corridor;
- The Coastal Qualifying Matter Precinct;
- Flood hazard and tsunami hazard;
- Beach residential precincts;
- Other matters.

[1] See: https://www.kapiticoast.govt.nz/media/vxmgkhkv/pc2_planningevidence_report-3.pdf

1.2 Summary of recommended amendments to PC2

(8) My recommended amendments to PC2 in response to matters raised at the hearing are set out in the Council Officers' Reply Version of PC2 (PC(R2)). This is contained in Appendix A to this written reply. PC(R2) is a tracked changes version of PC(R1), which was the Council recommended amendments to notified PC2 (PC(N)) included in the Council Officers' Planning Evidence to the Panel prior to the hearing.

(9) In summary, I recommend the following amendments to PC2 in this written reply:

(a) A larger qualifying matter area within and around the Ōtaki Main Street town centre, identified as the "Ōtaki Takiwā Precinct", in response to matters raised by Ngā Hapū o Ōtaki (see para (37) of this reply);

(b) Expansion of the Marae Takiwā Precinct around Whakarongotai marae to incorporate Ruakōhatu urupā and provide for additional development restrictions on sites adjoining the marae, in response to matters raised by Te Ātiawa ki Whakarongotai (see paras (50) to (52) of this reply);

(c) Further amendments to the papakāinga provisions in response to matters raised by Te Ātiawa ki Whakarongotai and A.R.T. (see para (70) of this reply);

(d) Adjustment of the south-western boundary of the *wāhanga rua* extent of the Kārewarewa urupā listing, in response to matters raised by Te Ātiawa ki Whakarongotai (see para (105) of this reply);

(e) Amendments to District Objective DO-O3 and Urban Form and Development policies UFD-Px and UFD-P1 to better recognise qualifying matters, in response to matters raised by Transpower (see para (122) of this reply);

(f) Adjustments to the residential zone framework in response to matters raised by Kāinga Ora, including:

(i) Incorporating a High Density Residential Zone into the District Plan that generally replaces areas identified in PC(N) as Residential Intensification Precinct A (see para (133) of this reply);

(ii) Replacing Residential Intensification Precinct B in the General Residential Zone with a height variation control area (see para (134) of this reply);

(g) Amendments to enable greater levels of development in certain areas as part of giving effect to policy 3 of the NPS-UD in response to matters raised by Kāinga Ora (see para (151) of this reply), including:

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

(ii) Enabling a 10-storey building height within a 400-metre walkable catchment of the Metropolitan Centre Zone;

(iii) Adjustments to the extent of the High Density Residential Zone around the Waikanae Town Centre;

(iv) Replacement of Residential Intensification Precinct B around the Paraparaumu Beach and Raumati Beach Town Centre Zones with a High Density Residential Zone applied within an 800-metre walkable catchment of the Town Centre Zone;

(v) Application of a more lenient height in relation to boundary standard in the High Density Residential Zone (but not to the extent requested by Kāinga Ora);

(vi) Adjustment of the enabled building height in the High Density Residential Zone from 20-metres to 21-metres;

(vii) Provision for small scale commercial activities on the ground floor of apartment buildings in the High Density Residential Zone;

(viii) Improvements to the ability to undertake home business and home craft occupations in the General and High Density Residential Zones;

(ix) Application of limited notification preclusions to non-compliance with outdoor living space, outlook space, windows to street and landscape area standards;

(h) In relation to the Design Guides, amendments to wording in policies and matters of discretion to replace the term "consistent with" with "fulfils the intent of", or wording of a similar effect, in response to matters raised by Kāinga Ora (see para (198) of this reply);

(i) Amendments to several individual guidelines in the Residential and Centres Design Guides (see para (205) of this reply);

(j) In response to matters raised by Ryman and the Retirement Villages Association:

(i) Amendments to the policy for supported living and older persons accommodation in the General and High Density Residential Zones to better recognise retirement villages (see para (227) of this reply);

(ii) Amendments to policies for mixed use activities in the Centres and Mixed Use Zones to better recognise the provision of housing for people of all ages in these zones (see para (237) of this reply);

(k) Amendment to rule NOISE-R14 in response to matters raised by KiwiRail, so that the standards for noise sensitive activities under that rule apply within 100 metres of the boundary of a designation for rail corridor purposes (see para (268) of this reply);

(l) Amendments to the provisions associated with the Coastal Qualifying Matter Precinct to emphasise their intended interim nature (at para (313) of this reply);

(m) Amendments to improve interpretation of the definition of *noise sensitive activity* and rule NOISE-R14 in response to matters raised by the Fuel Companies (at para (358) of this reply);

(n) Rationalisation of several matters of discretion under the restricted discretionary activity rules in the Centres and Mixed Use Zones, in response to matters raised by Leith Consulting (at para (362) of this reply).

2.0 Matters raised by tangata whenua

Submitters: Te Ātiawa ki Whakarongotai [S100], Te Rūnanga o Toa Rangatira on behalf of Ngāti Toa Rangatira [S169], Ngā Hapū o Ōtaki [S203], A.R.T. [S210].

2.1 Iwi participation

(10) As set out by A.R.T. [S210] in their submission on PC2[2], and again at the hearing, iwi consider that they have been unable to meaningfully participate in several aspects of the plan change. I acknowledged this at paragraphs 103 to 105 of the Council Officers' Planning Evidence, noting that I consider this to be a regrettable outcome of the statutory constraints placed on the Council by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act (the 'Amendment Act'), as well as the time constraints placed on the Council by central government.

(11) I also acknowledged at paragraphs 106 and 107 of the Council Officers' Planning Evidence the request that the Council takes time to work together with iwi to review several aspects of the District Plan, but that, in my opinion, the constraints associated with the ISPP did not provide sufficient latitude for these matters to be addressed through PC2, but that the Council would welcome further discussion with iwi on these matters outside PC2.

(12) I note that the Council's current Long-term Plan provides for the development four further Council initiated changes to the District Plan[3]. These include:

(a) **A mana whenua plan change.** The scope of this plan change is currently being developed with tangata whenua. This is likely to involve a review of the Sites and Areas of Significance to Māori chapter of the District Plan, and associated provisions throughout the plan.

(b) **A coastal plan change.** The scope of this plan change is currently being developed in coordination with the Takutai Kāpiti coastal adaptation project. This will include reviewing the coastal hazard provisions within the District Plan. Other aspects of the Coastal Environment chapter may also be reviewed, including the extent of the coastal environment and areas identified as having natural character in the coastal environment.

(c) **A flood risk plan change.** The scope of this plan change is currently being developed alongside work to update the Council's flood hazard and stormwater network models.

[2] S210, pp.2-3.
[3] *Long-term Plan 2021-41*, p.254. See: https://www.kapiticoast.govt.nz/media/55xjajvw/long-term-plan-2021-41-part-one.pdf

(d) **A future urban development plan change.** The scope of this plan change is intended to be developed after decisions have been made on PC2. The focus of this plan change may include consideration of future greenfield development, as well as other strategic matters relevant to the future urban development of the District.

(13) I consider that these future changes to the District Plan provides opportunity for iwi and the Council to work together on many of the matters raised by iwi in their submissions on PC2.

(14) In addition to this, at paragraph 108 of the Council Officers' Planning Evidence, I noted several future work programmes being planned or progressed by the Council outside of its District Planning functions, noting that these too provide opportunity for tangata whenua and Council to work meaningfully together on an ongoing basis on the planning for future urban development.

(15) Given the concerns raised by iwi at the hearing about the ability for the District's infrastructure to support future population growth, I consider that iwi participation in the development of the next Long-term Plan (in 2024) will be particularly important. The Long-term Plan incorporates the District's Infrastructure Strategy (which sets out the plans for future infrastructure development) and the Development Contributions Policy (which sets out how new development will contribute to the funding of infrastructure). Because the Long-term Plan is the Council's principal vehicle for the planning and funding of infrastructure development, I consider it important that iwi concerns about infrastructure are expressed and considered as part of the development of the Long-term Plan. I expressed this to iwi at the hui on 6 April, and I noted that the Council will be required to engage with iwi[4] on the development of the next Long-term Plan.

2.2 Hui following the hearing

(16) After the hearing (and as suggested by the Panel) a hui was held on the afternoon of Thursday 6 April at Raukawa Marae between representatives of Ngā Hapū o Ōtaki (Denise Hapeta and Aroha Spinks), Te Ātiawa ki Whakarongotai (Claire Gibb) and I (on behalf of the Council), to discuss in further detail matters raised by tangata whenua at the hearing[5]. The following matters were discussed:

- The location and values associated with several places of significance within and around the Ōtaki Main Street town centre;
- Issues related to the Marae Takiwā Precinct around Whakarongotai Marae, including the relationship between the marae and Ruakōhatu urupā, and development on sites surrounding the marae;

[4] Section 81 of the Local Government Act 2002 requires the Council to engage with Māori as part of any consultation process, including the consultation required to develop the Long-term Plan.
[5] I note that Te Rūnanga o Toa Rangatira were also invited to attend, however owing to the tight timeframes and the Easter break, they were understandably unable to do so.

- Infrastructure planning, and whether infrastructure capacity is a qualifying matter;
- Flood hazards and stormwater constrains, including the function of the operative District Plan flood hazard provisions as an existing qualifying matter;
- Restrictions related to papakāinga development.

(17) As a result of matters raised by tangata whenua at the hearing, and the further discussions held at the hui, I have changed my position on the following matters:

(a) Providing for an expanded qualifying matter area in and around the Ōtaki Main Street town centre;

(b) Expanding the Marae Takiwā Precinct at Whakarongotai Marae to incorporate the area around Ruakōhatu Urupā, and providing additional development restrictions in relation to sites surrounding the marae;

(c) Reviewing some of the remaining restrictions in relation to papakāinga development.

(18) I address these matters in the following sections.

(19) At the hui, I also indicated that tangata whenua may wish to provide their own written comments back to the Panel, and I understand that they will be doing so.

2.3 Further information requested by the Panel

(20) At paragraph [5] of the Panel's third minute, the Panel requested the following information:

> *We also request that in the Council's reply, it provides in consultation with Ngā Hapū o Ōtaki a copy of any useful Waitangi Tribunal reports explaining the patterns of residential land allocation around Ngāti Raukawa Marae and environs as part of the Tribunal's research.*

(21) I have consulted with Ngā Hapū o Ōtaki on this matter, and they have identified the following sources of information for the Panel's consideration:

Document	Source
Woodley, Susanne. (2023). *Porirua ki Manawatū Inquiry District: The purchase of Ōtaki Māori land and the development of the Ōtaki township 1840s-2023 (DRAFT)*. Please note that this report is in draft form. It is the preference of Ngā Hapū o Ōtaki that the final version of the report is referred to, but the ability for the Panel to consider the final version will depend on	Refer separate document (Woodley_Otaki alienation draft report_28 March 2023.pdf).

Document	Source
the timing of its release. The final version of this report is due in May, and once this is made available it will be passed on to the Panel for their consideration.	
Woodley, Susanne. (2023). *Progress Report No 2 Porirua ki Manawatū Inquiry: Ōtaki blocks alienation and township development report.*	Refer separate document (Woodley Ōtaki Progress Report No 2_28 March 2023.pdf).
Woodley, Susanne. (2017). *Porirua ki Manawatū Inquiry District: Local Government Issues Report.* Refer specifically to Chapter 8: Ōtaki Local Government (pp.302-449).	https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_130807342/Wai%202200%2C%20A193.pdf
Various Waitangi Tribunal Inquiry Documents supplied by Ngā Hapū o Ōtaki.	Refer separate document (NgāHapūoŌtakiSuppliedWaitangiTribunalDocuments.pdf).
Otaki Yesterday (periodical), Issue 3, December 2022. Refer particularly to the following articles: • "Rikiville: Growing up on Mill Road" (p.19) • "Lost Land: The shrinking of Rikiville" (p.25). I note that this is not part of the Waitangi Tribunal's research, however Ngā Hapū o Ōtaki wished me to make the Panel aware of this document.	This document is available in the public libraries at Ōtaki, Waikanae and Paraparaumu. See catalogue reference: https://kapiti.spydus.co.nz/cgi-bin/spydus.exe/ENQ/WPAC/ISSENQ?SETLVL=&ISX=280103

(22) In passing this information, Ngā Hapū o Ōtaki wished me to convey to the Panel that any research reports for the Waitangi Tribunal only cover what the researcher is able to gather and report on in the short timeframes they are given, and do not necessary tell the whole story, especially from the perspective of tangata whenua.

2.4 Tangata whenua/mana whenua values as a qualifying matter at Ōtaki

Submitters: Ngā Hapū o Ōtaki [S203]

(23) At the hearing, Denise Hapeta, Kirsten Hapeta and Aroha Spinks described the range of matters that contribute to the significance of Ōtaki for Ngā Hapū o Ōtaki. The matters described included the state of the wider environment prior to the development of the area into a township (including forests and extensive wetlands and waterways), the role of tangata

whenua in the post migration development of the township, and more recently the development of educational institutions and the normalisation of tikanga and te reo Māori within Ōtaki. This environment was described as valued, but also fragile and sensitive to the effects of intensification.

(24) At the hearing, some emphasis was placed on the value of a set of places of significance to tangata whenua which surround the Ōtaki Main Street Town Centre Zone (the Town Centre zone on the western side of Ōtaki). These places include:

(a) Raukawa marae;

(b) Te Wānanga o Raukawa campus, on the blocks of land to the west of Te Rauparaha Street;

(c) Rangiatea church and Mūtikotiko urupā, on Te Rauparaha Street;

(d) Several kohanga reo and kura kaupapa Māori located in the area around Te Rauparaha Street;

(e) A traditional papakāinga area to the south of the Town Centre Zone, around Rangatira, Iti, Aotaki and Matene Streets. As described, this area includes multigenerational housing which in some cases has been with tangata whenua for five generations. There are also several blocks of land held under Te Ture Whenua Māori Act 1993 in this area.

(25) These areas were described further by Ms Hapeta at the hui on 6 April, which enabled me to come to a better understanding of the areas of significance, and the sensitivities of these areas to the level of development otherwise enabled by PC(N). Figure 1 below shows the location of these places within the broader context of the area around the Ōtaki Main Street Town Centre Zone.

(26) PC(N) provided for a Marae Takiwā Precinct around Raukawa Marae. The purpose of the precinct is to recognise the importance of the marae to tangata whenua by including provisions within the District Plan that mitigate the potential adverse effects of intensification on the cultural values and tikanga Māori associated with the marae, including by limiting the level of development enabled around the marae to the level provided for by the operative District Plan (which is two-storeys in the General Residential Zone and three-storeys in the Town Centre Zone). In justifying the Precinct as a matter necessary to provide for section 6(e) of the RMA, the Section 32 Evaluation describes the marae as "a living site of significance integral to the cultural and traditional life of tangata whenua"[6].

(27) However, as I understand it from the matters raised by Ngā Hapū o Ōtaki at the hearing, Raukawa marae does not function in isolation, but rather it is part of a network of places of

[6] *Section 32 Evaluation Report*, pp.166.

significance located around the town centre (as described at (24) above) that function together as a cohesive whole. In other words, it is not just the marae that functions as "a living site of significance integral to the cultural and traditional life of tangata whenua", but it is also the broader network of places around the town centre that function as a living site of significance.

(28) As I understand it, it is this network of places that contributes to the distinctive tangata whenua values on which the development of the town is based, and which are given expression through, for example, the normalisation of tikanga and te reo Māori within the town, and its incorporation into the town's built form (I consider the ongoing development at Te Wānanga o Raukawa to be one example of this). The area, and the tangata whenua values associated with it, were described at the hearing as being nationally significant. There is also a notable spatial relationship between each of these places – they surround the town centre and traversing the town centre is a necessary part of passing between these places. Ngā Hapu o Ōtaki described at the hearing how they consider that the entire area within which this network of places is located (including the town centre) between them, is sensitive to the effects of surrounding intensification in a similar manner to that of Raukawa marae.

(29) 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).

(30) I consider that the sensitivity of these places to the effects of more intensive residential development on surrounding sites, as described by Ngā Hapū o Ōtaki, are similar to the sensitivities that were managed by the Marae Takiwā Precinct proposed by PC(N). In particular, these sensitivities include overlooking, further obstruction of views towards maunga and reverse sensitivity effects.

(31) Further to this, an overarching sensitivity identified by Ngā Hapū o Ōtaki is whether the level of redevelopment of the area otherwise enabled by PC2 would have broader adverse effects on the cultural values and tikanga Māori associated with the ongoing use and development of the area by tangata whenua. The effects of redevelopment in and around the traditional papakāinga area was cited as an example of this, where concern was raised about the extent to which this would lead to tangata whenua, who have resided in these areas for generations, having to relocate away from these areas. As I understand it, this would have adverse flow-on effects for tikanga at Raukawa marae, which relies on tangata whenua who live close to manage its day-to-day use.

(32) To provide for the network of places of significance around the town centre as a qualifying matter, I consider that it is appropriate to qualify the MDRS and Policy 3 of the NPS-UD by applying the restrictions provided for under the notified Marae Takiwā Precinct over the wider area identified in the blue outline in Figure 1. This means that permitted building heights in the wider area would be 8 metres (2-storeys) in the General Residential Zone, and 12 metres (3-storeys) in the Town Centre Zone). This is the same as the building heights permitted under the operative District Plan in these areas.

(33) In addition to this, I consider it necessary to change the name of the precinct to recognise that the precinct provides for a broad range of places beyond Raukawa marae. I consider the "Ōtaki Takiwā Precinct" to be a suitable alternative name (and I note that this was discussed at the hui on 6 April).

(34) The spatial extent that I recommend for this area is based on discussions with Ngā Hapū o Ōtaki at the hui on 6 April, and circumscribes the network of places described at paragraph (24) above. The extent of the area follows some natural or logical boundaries, which include:

(a) The block boundaries to the south of the traditional papakāinga area along Iti Street;

(b) The eastern edge of the Makuratawhiti urupā, which is located to the east of Raukawa Marae;

(c) The Maungapouri stream to the north-east of the area;

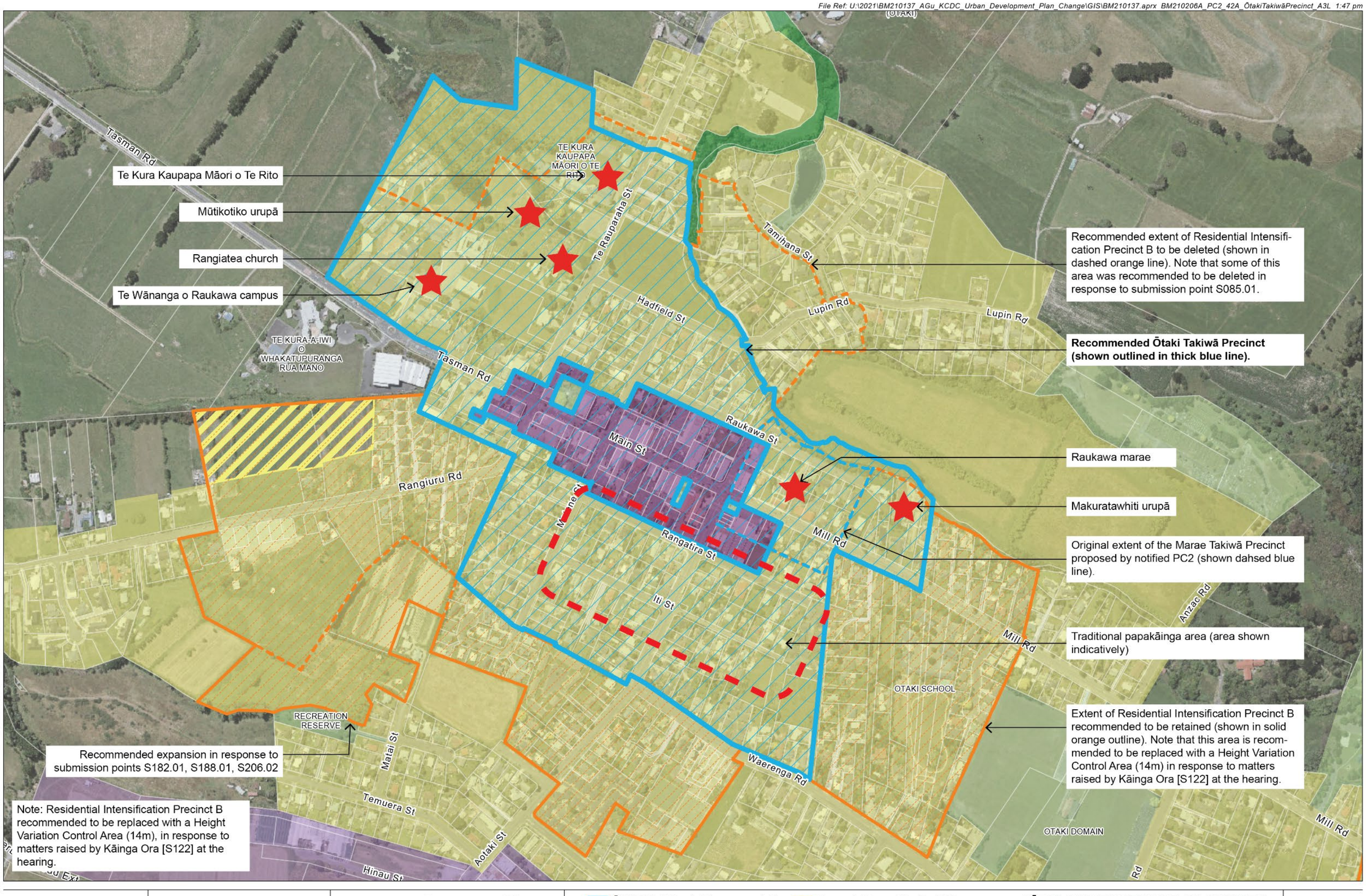
(d) The northern and eastern edges of the Church Mission Grant lands between Te Rauparaha Street and Tasman Road. This takes in Te Kura Kaupapa Māori o Te Rito in the north along Te Rauparaha Street and Te Wānanga o Raukawa to the west along Tasman Road.

(35) I note that this leaves a small area of Residential Intensification Precinct B located on Lupin Road, between Maungapouri stream and Tamihana Street. As a result of providing for a larger qualifying matter area around the town centre, I consider that this small portion of Residential Intensification Precinct B no longer logically contributes in a meaningful way towards giving effect to policy 3(d) of the NPS-UD, on the basis that it is a marginally sized area that, as a result of the larger qualifying matter area is no longer functionally adjacent to the town centre zone. I therefore consider that it is appropriate to remove this portion of Residential Intensification Precinct B[7] as a consequential amendment.

(36) Further, given the expanded size of the Ōtaki Takiwā Precinct, I consider that a consequential amendment to the permitted activity rule for papakāinga (GRZ-Rx4) is necessary to ensure

[7] Note that, as set out in section 5.0 of this reply, I also recommend that Residential Intensification Precinct B is replaced with a 14-metre height variation control area. This does not alter the level of development enabled in this area.

that the permitted height standard for papakāinga development is consistent with that of the precinct.



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Projection: NZGD 2000 New Zealand Transverse Mercator

LEGEND

- Ōtaki Takiwā Precinct (recommended)
- Marae Takiwā Precinct (originally proposed by notified PC2)
- Height Variation Control Area (14m) (recommended - see note)
- Residential Intensification Precinct B (originally proposed by notified PC2)
- Rezone to General Residential Zone
- General Residential Zone
- Town Centre Zone
- General Industrial Zone
- Natural Open Space Zone
- Open Space Zone

KĀPITI COAST DISTRICT PLAN CHANGE 2

Ōtaki Takiwā Precinct

Date: 14 April 2023 | Revision: 0

Plan prepared for Kāpiti Coast District Council by Boffa Miskell Limited

Fig. 1

Recommendations

(37) For the reasons set out above, I therefore consider that it is appropriate to amend the Marae Takiwā Precinct proposed by PC(N) at Ōtaki to better recognise and provide for the places and areas of significance to Ngā Hapū o Ōtaki in and around the Ōtaki Main Street Town Centre Zone, as a qualifying matter. This includes:

(a) Amending the name of the precinct to the "Ōtaki Takiwā Precinct", to recognise that it provides for a broader range of places beyond the marae (see amendments 4.20, 4.31, 6.7, 6.16 and 19.2 of PC(R2));

(b) Providing two new policies to manage subdivision, use and development within the Precinct, recognising that the precinct is different to Whakarongotai Takiwā Precinct (discussed in the next section). These policies are provided for as GRZ-Px9 in the General Residential Zone (see amendment 4.6A under PC(R2) and as TCZ-Px3 in the Town Centre Zone (see amendment 6.6A under PC(R2)).

(c) Amending the introductions to the General Residential and Town Centre Zone chapters to describe the Ōtaki Takiwā Precinct (see amendments 4.1 and 6.1 under PC(R2);

(d) Amending the spatial extent of the precinct to cover the General Residential Zone and Town Centre Zone within the blue outlined area identified in Figure 1.

(e) Consequentially amending the spatial extent of the height variation control area (formerly Residential Intensification Precinct B) to remove the isolated area located along Lupin Road, between the Maungapouri Stream and Tamihana Street;

(f) Consequentially amend the permitted activity rules for papakāinga in the General Residential Zone (GRZ-Rx4) to ensure that papakāinga are subject to the same height standard as the broader precinct (see amendment 4.25 under PC(R2)).

Section 32AA evaluation

(38) I consider that the recommended amendments are a more appropriate way to achieve the objectives of PC2 and the purpose of the RMA than the notified provisions, because they recognise that the wider area around the Ōtaki Main Street Town Centre Zone, including the places described in paragraph (24), constitute a broader area of significance to tangata whenua that is sensitive to the effects of intensification. I consider that amending the provisions and spatial extent of the notified Marae Takiwā Precinct (which would be renamed the Ōtaki Takiwā Precinct) to cover this wider area is an appropriate method of recognising and providing for section 6(e) of the RMA in relation to this area. On this basis, it is appropriate

to qualify the application of the MDRS and policy 3 of the NPS-UD in this area as a qualifying matter.

(39) I also consider that providing for this area as a qualifying matter better gives effect to the following objectives and policies of the NPS-UD:

(a) Objective 1, because the Precinct provides for the social and cultural wellbeing of tangata whenua at Ōtaki;

(b) Objective 5, because providing for the Precinct takes into account the principles of the Treaty of Waitangi;

(c) Policy 1, because the Precinct recognises that the cultural and traditional practices and values that exist in and around the Ōtaki Main Street Town Centre contribute to a well-functioning urban environment that enables tangata whenua to express their cultural traditions and norms;

(d) Policy 9(b), because the Precinct takes into account the values and aspirations of hapū and iwi for urban development.

(40) Expanding the Ōtaki Takiwā Precinct is a qualifying matter under sections under sections 77I(a) and 77O(a) of the RMA. I have therefore set out the information required for qualifying matters under sections 77J(3) and 77P(3) of the RMA in the Section 32AA evaluation below:

(a) **Justification for the qualifying matter (sections 77J(3)(a) and 77P(3)(a)).** I consider that the recommended amendments to the spatial extent of the precinct and the provisions associated with it are a qualifying matter under sections 77I(a) and 77O(a) of the RMA because the amendments provide for the relationship between tangata whenua and their culture and traditions with their ancestral land and sites, and are therefore necessary to accommodate a matter of national importance that decision makers are required to recognise and provide for under section 6(e) of the RMA.

(b) **Impact on development capacity (sections 77J(3)(b) and 77P(3)(b)).** I note that the recommended size of the precinct is 43.4 hectares, which is approximately 16 times the size of the precinct included in PC(N) (which was 2.7 hectares). Given that the provisions that restrict development are similar to those associated with PC(N), on a pro-rata basis I estimate that impact of providing for the qualifying matter on theoretical plan-enabled residential development capacity could be around 3,120 dwellings[8]. Given that PC(N) provides for theoretical plan-enabled development capacity in the

[8] I note that this is a pro-rata estimate based on the change in size of the precinct, and not a modelled estimate. I also note that this number does not account for potential impact on commercial development capacity within the Ōtaki Main Street Town Centre Zone. Commercial development capacity in the first three floors of buildings within the Town Centre Zone will not be impacted by the qualifying matter precinct, because development up to 3-storeys within the Town Centre Zone is still enabled under the provisions of the precinct. Commercial development capacity between 3- and 6-storeys will be impacted, because this level of development is not enabled under the provisions of the precinct.

range of 51,625 to 177,383[9] residential units across the district, I consider that providing for a larger qualifying matter area at Ōtaki would have a low to moderate (but not significant) impact on total theoretical development capacity (in the range of 1.8% to 6% of total theoretical capacity).

(c) **Costs and broader impacts (sections 77J(3)(c) and 77P(3)(c)).** I consider that the expansion of the precinct is likely to have the following costs:

- Reduced theoretical plan-enabled development capacity for housing, commercial activities and community services within and around the Ōtaki Main Street Town Centre Zone;
- Economic opportunity costs associated with development potential that would otherwise be enabled without the precinct provisions in place;
- Increased requirements (including associated costs) for resource consents for development within the larger precinct area;
- Increased consultation/engagement burden on Ngā Hapū o Ōtaki in relation to proposed development within the area.

Notwithstanding these costs, I consider that the expansion of the precinct will also provide for the following broader positive impacts:

- The provisions of the precinct are likely to have a positive impact on the ability for tangata whenua to continue to practice their cultural norms and traditions in Ōtaki;
- The provisions of the precinct are likely to improve the ability for Ngā Hapū o Ōtaki to contribute to decision making on urban development within Ōtaki.

On this basis I consider that the potential costs imposed by the precinct are reasonable and justifiable in light of the broader positive impacts associated with the precinct.

2.5 Marae Takiwā Precinct at Whakarongotai Marae

Submitters: Te Ātiawa ki Whakarongotai [S100]

(41) At the hearing, Dr Mahina-a-rangi Baker set out two matters in relation to the Marae Takiwā Precinct proposed by PC(N) around the Whakarongotai Marae:

(a) That the Marae Takiwā Precinct should be expanded to incorporate the area around Ruakōhatu urupā (located on Pehi Kupa Street, to the east of Main Road and the railway line);

[9] *Section 32 Evaluation Report,* pp.83-85.

(b) That the car parking area adjacent to Whakarongotai marae should have a height limit no greater than the existing level of development (in other words, a height limit of 0 metres).

Expansion of the Marae Takiwā Precinct

(42) For context, the purpose and function of the Marae Takiwā Precinct proposed by PC(N) is explained at section 6.1.5 of the Section 32 Evaluation Report (which I do not repeat here)[10].

(43) As set out by Dr Baker there is an intrinsic relationship between Whakarongotai Marae and Ruakōhatu urupā. Ruakōhatu urupā is a wāhi tapu site (identified in Schedule 9 of the District Plan as WTS0316A) located approximately 200 metres to the east of the marae. As I understand it, there are often processions from Whakarongotai Marae eastwards down Frater Lane, across Main Road, the railway line and Elizabeth Street to Ruakōhatu urupā to inter tūpāpaku as part of the tikanga associated with tangihanga. On this basis it is clear to me that the tikanga and kawa associated with Whakarongotai marae is not spatially limited to the marae site, but also includes Ruakōhatu urupā, and that Ruakōhatu and the area between it and Whakarongotai would also be sensitive to the effects of intensification (particularly overlooking and obstruction of views towards the maunga to the south and east).

(44) I therefore consider that it is appropriate to extend the Whakarongotai Marae Takiwā Precinct to cover the area surrounding Ruakōhatu. I consider an appropriate extension to be that shown in the blue outline in Figure 2 below. I note that the proposed extension of the precinct was discussed at the hui on Thursday 6 April.

[10] *Section 32 Evaluation Report*, pp.164-169.

MOTUITI SCENIC RESERVE

Ngaio Rd

Marae Ln

Aputa Pl

Main Rd

Pehi Kupa St

Hira St

Waikanae

WAIKANAE SCHOOL

Recommended Whakarongotai Takiwā Precinct (shown outlined in thick blue line).

Iti Grv

Koromiko Rd

Marae Ln

Pehi Kupa St

Seddon St

Ruakōhatu urupā

Whakarongotai marae

Original extent of the Marae Takiwā Precinct proposed by notified PC2 (shown dahsed blue line).

Elizabeth St

Main Rd

Koromiko Gln

Koromiko Rd

Anne St

Te Moana Rd

Karu Cres

Elizabeth St

Note: Residential Intensification Precinct A recommended to be replaced with a High Density Residential Zone, in response to matters raised by Kāinga Ora [S122] at the hearing.

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Projection: NZGD 2000 New Zealand Transverse Mercator

LEGEND

- Whakarongotai Takiwā Precinct (recommended)
- Marae Takiwā Precinct (originally proposed by notified PC2)
- High Density Residential Zone (see note)
- Rezone to General Residential Zone
- General Residential Zone
- Town Centre Zone
- General Industrial Zone
- Natural Open Space Zone
- Open Space Zone

KĀPITI COAST DISTRICT PLAN CHANGE 2

Whakarongotai Takiwā Precinct

Date: 14 April 2023 | Revision: 0

Plan prepared for Kāpiti Coast District Council by Boffa Miskell Limited

Fig. 2

Development restrictions on carpark areas adjacent to Whakarongotai Marae

(45) Te Ātiawa ki Whakarongotai sought through their submissions that development on land surrounding Whakarongotai Marae owned by the Council be restricted to the current developed height (under submission points 100.53 and 100.56). In relation to the carpark areas both to the north and south of the marae[11], this would effectively create a height limit of 0 metres. I note that the provisions of the Marae Takiwā Precinct limit development to 12 metres in height (three storeys) in the Town Centre Zone. In the Council Officers' Planning Evidence, I recommended that the relief sought be rejected, on the basis that I did not consider that the ownership of the land (in this case, either the Council or the Greater Wellington Regional Council) would justify a more restrictive approach to managing the effects of building height on the marae.

(46) At the hearing, Dr Baker set out in further detail the concerns held by Te Ātiawa ki Whakarongotai particularly in relation to the potential for future development on the large park and ride car park to the south, which is owned by the Greater Wellington Regional Council. These concerns include:

(a) The potential for development to overlook the marae;

(b) The potential obstruction of views towards Kapakapanui;

(c) The significance of the adjacent land to Te Ātiawa ki Whakarongotai. Dr Baker noted that the adjacent land had been held by tangata whenua prior to being rezoned as town centre zone and subsequently alienated in the 1960s for the development of the town centre. The land was the former Parata homestead[12].

(47) I acknowledge the concerns raised by Dr Baker, and that the adjacent land is of significance to Te Ātiawa ki Whakarongotai. However, in light of the purpose of PC2, which in this case is to give effect to the increased levels of height and density in the Town Centre Zone required by policy 3 of the NPS-UD, I do not consider that setting a 0-metre height limit on land surrounding the marae is justified.

(48) Notwithstanding this, I consider that it would be appropriate to introduce a height in relation to boundary standard restricting the height of development adjacent to the marae. I consider that this would address issues related overlooking of the marae and the potential obstruction of views of surrounding maunga, by requiring taller development on surrounding sites to be set back from the marae boundary. I consider that the operative General Residential Zone height

[11] The smaller car park area to the north of the marae is owned by the Kāpiti Coast District Council. The larger car park area to the south of the marae is owned by the Greater Wellington Regional Council, which operates it as a 'park and ride' facility for the Waikanae train station.
[12] Section 9.2 of the Waitangi Tribunal's *Waikanae* report provides detailed discussion on the history of the development of the Waikanae Town Centre and the land around Whakarongotai Marae. Waitangi Tribunal (2022). *Waikanae.* See: https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_192315563/Waikanae%20W.pdf

in relation to boundary standard would be an appropriate standard in relation to Whakarongotai marae (and this is consistent with the standard used for the Raukawa Marae Takiwā Precinct proposed as part of PC(N)). This standard sets a height in relation to boundary envelope which inclines at a 45-degree angle away from the boundary, at a point 2.1 metres above the ground level at the boundary. This would result in a 12-metre-tall building being set back just under 10 metres from the marae boundary.

(49) I note that the height in relation to boundary standard is a somewhat crude tool in relation to mitigating obstruction of views. Depending on where development occurs on adjacent sites, the height in relation to boundary standard may not be effective at avoiding the obstruction of views from the marae atea towards surrounding maunga. An alternative approach would be to provide for a view shaft within the District Plan, however this requires precise evidence that sets out the spatial extent of the view shaft, and the point(s) from where it is to be measured. In the absence of any specific evidence setting out what would be an appropriate view shaft, I consider the height in relation to boundary standard to be an appropriate method. In any case, to the extent that it encourages development to be located away from the marae, I consider that it will reduce the likelihood that new development would obstruct views towards surrounding maunga, at least compared to the provisions of the operative District Plan (which do not provide for a height in relation to boundary control around the marae).

Recommendations

(50) In response to matters raised at the hearing by Te Ātiawa ki Whakarongotai, for the reasons stated above I recommend:

(a) That boundary of the Whakarongotai Marae Takiwā Precinct is adjusted to incorporate Ruakōhatu urupā as set out in the blue line contained in Figure 2 (refer to Appendix F of PC(R2));

(b) That the name of the precinct is amended from the Marae Takiwā Precinct to the Whakarongotai Takiwā Precinct, to better recognise that the precinct does not just provide for Whakarongotai marae, but also recognises the relationship between the marae and Ruakōhatu urupā (see amendments 4.20, 4.31, 6.7, 6.16 and 19.2 of PC(R2));

(c) That policies HRZ-Px7 and TCZ-Px2 are amended to better recognise the relationship between the marae and Ruakōhatu urupā (refer to amendments 4.6 and 6.6 of PC(R2)).

(51) I note that the Whakarongotai Takiwā Precinct is located within the area covered by Residential Intensification Precinct A, which Kāinga Ora has requested become the High Density Residential Zone (see discussion under section 5.0 below). This means that the provisions associated with the precinct need to be 'rehoused' into that chapter. I note that the

purpose, function and effectiveness of the provisions is not altered by their 'rehousing' into the High Density Residential Zone chapter. The following provisions in the High Density Residential Zone chapter (contained in section 4A of PC(R2)) are relevant to the Whakarongotai Takiwā Precinct:

(a) HRZ-Px7 (policy for the Whakarongotai Takiwā Precinct);

(b) HRZ-Rx7 (permitted activity rule for development in the Whakarongotai Takiwā Precinct);

(c) HRZ-Rx17 (restricted discretionary activity rule for development in the Whakarongotai Takiwā Precinct).

(52) In relation to restricting development on sites surrounding Whakarongotai Marae, for the reasons stated above I recommend applying a height in relation to boundary standard within the Town Centre Zone to apply on sites that adjoin Whakarongotai Marae. This is achieved by amending standard 3 under rule TCZ-R6 (refer to amendment 6.7 of PC(R2)).

Section 32AA evaluation

(53) I consider that the recommended amendments are a more appropriate way to achieve the objectives of PC2 and the purpose of the RMA than the notified provisions, because:

(a) In relation to the expansion of the Precinct, this better recognises that Ruakōhatu urupā is intrinsically related to Whakarongotai marae, and that the urupā and the space between the urupā and the marae will be sensitive to the effects of intensification.

(b) In relation to the application of a height in relation to boundary standard around Whakarongotai marae, this assists with managing the effects of surrounding development on the marae, in particular overlooking of the marae and the potential obstruction of views of maunga from the marae.

(54) I consider that both amendments better recognise and provide for section 6(e) of the RMA.

(55) As outlined in section 6.1.5 of the Section 32 Evaluation Report, the Marae Takiwā Precinct is a qualifying matter under sections 77I(a) and 77O(a) of the RMA[13]. I therefore consider that expanding the precinct to incorporate the area around Ruakōhatu Urupā and introducing a height in relation to boundary standard around Whakarongotai Marae are also qualifying matters. In relation to the information required for qualifying matters under sections 77J(3) and 77P(3) of the RMA, I note the following:

[13] *Section 32 Evaluation Report,* pp. pp.164-165.

(a) **Justification for the qualifying matter (sections 77J(3)(a) and 77P(3)(a)).** I consider that the adjustment to the precinct boundary and the introduction of a height in relation to boundary standard around Whakarongotai marae is a qualifying matter under section 77I(a) of the RMA because it is necessary to accommodate a matter of national importance that decision makers are required to recognise and provide for under section 6(e) of the RMA.

(b) **Impact on development capacity (sections 77J(3)(b) and 77P(3)(b)).** In relation to the extension relation to the adjustment of the precinct boundary, I note that the amended size of the precinct is approximately twice the size of the precinct included in notified PC(N). The notified precinct was estimated to reduce theoretical plan enabled development capacity by 217 dwellings. On this basis, doubling the size of the precinct is likely to double the impact of the precinct on theoretical development capacity[14]. Given that PC(N) provides for theoretical plan-enabled development capacity in the range of 51,625 to 177,383[15] residential units, I continue to consider that increasing the size of the precinct will have a minimal impact on overall development capacity. In relation to the application of a height in relation to boundary standard around Whakarongotai Marae, I consider that this will have a negligible impact on development capacity, as this only affects development capacity within 10 metres of the marae boundary, which in any case could be provided for in other parts of these sites (away from the marae boundary).

(c) **Costs and broader impacts (sections 77J(3)(c) and 77P(3)(c)).** I consider that the costs and broader impacts of expanding the Precinct and to applying a height in relation to boundary standard around the marae to be substantially similar to those identified in the Section 32 Evaluation Report[16], and for conciseness I do repeat these here.

2.6 Papakāinga provisions

(56) One of the submission points advanced by iwi was a request to enable papakāinga development in the Metropolitan Centre, Local Centre and Mixed Use zones (this is in addition to the Town Centre, General Residential and rural zones, where papakāinga are enabled as part of PC(N)). At the hearing, it appeared that iwi may not have been aware that I had recommended in the Council Officers' Planning Evidence that these requests be accepted, and that papakāinga be enabled in these zones[17]. This is understandable, given the volume of evidence tabled for the hearing and the timeframes which were available to consider the

[14] This is a conservative assumption, as much of the expanded area of the precinct includes road space that is unlikely to be developed for residential purposes.
[15] *Section 32 Evaluation Report,* pp.83-85.
[16] *Section 32 Evaluation Report,* pp.167-168.
[17] Due to the size of local centre zones, in order to maintain their functionality, I recommended that a standard be applied in relation to papakāinga in the Local Centre Zone requiring residential activity to be located above the ground floor. See paragraph 206 of my evidence.

evidence. My recommendations to extend the application of the papakāinga provisions to these zones is set out in section 4.3 of the Council Officers' Planning Evidence.

(57) At the hearing (and at the subsequent hui on 6 April), Ms Gibb (for Te Ātiawa ki Whakarongotai [S100]) raised several further points in relation to the papakāinga provisions. I address these matters in the following sections.

Setbacks in centres zones

(58) Consistent with submission point 100.33, Ms Gibb considers that the requirement for a papakāinga development in centres zones to maintain a 4-metre setback from the General Residential Zone boundary is onerous and unnecessary in the context of a papakāinga development.

(59) I agree with Ms Gibb. By definition, papakāinga are likely to be predominantly residential in nature, and in this context I consider that a 4-metre setback from the General Residential Zone boundary is unnecessary for papakāinga the centres zones. On this basis, I consider that the setback requirement should be deleted.

Restrictions on visibility of papakāinga from the inland edge of the beach in rural zones

(60) As set out in submission point 100.30, Te Ātiawa have requested that the requirement in rural zones that development within 500 metres of the inland edge of a beach shall not be visible from the beach[18] should not apply to papakāinga. Ms Gibb identified that this does not recognise the relationship of tangata whenua with their waters (in this case, coastal waters).

(61) This standard appears to be in place to provide for visual amenity and the maintenance of natural character within the coastal environment (rather than management of coastal hazards). 500 metres is a significant potential setback, and I agree with Ms Gibb that this would limit the ability for papakāinga to be developed in a manner that provides for the relationship between tangata whenua and the coastal waters (which is in my view a section 6(e) matter). I therefore consider that this restriction should be removed in relation to papakāinga development.

Community facilities as part of a papakāinga

(62) As set out in submission point 100.23, Te Ātiawa ki Whakarongotai sought all references to papakāinga be removed from the community facilities chapter of the District Plan. At the hui on 6 April, Ms Gibb and Ms Hapeta expanded on this further. As pointed out by Ms Gibb, *community facilities* (as defined in the District Plan and the National Planning Standards)

[18] See for example standard 3 under rule GRUZ-R3.

means "the use of land and buildings by members of the community…". Concern was raised that providing for community facilities as part of a papakāinga would imply that facilities within a papakāinga must be able to be accessed by members of the community at large. As pointed out by Ms Gibb and Ms Hapeta, papakāinga are for tangata whenua, not the community at large. This does not preclude tangata whenua from offering manaakitanga to the community by inviting them into social facilities that may be included within a papakāinga, but this would be at the discretion of tangata whenua and should not be a requirement implied by District Plan provisions.

(63) The original intent of the amendments to refer to papakāinga within the Community Facilities chapter in PC(N) was to ensure that *community facilities* (as defined in the District Plan) were enabled as part of a papakāinga. However, I now have a better understanding of the concerns raised by Te Ātiawa ki Whakarongotai about the potential unintended consequences of this. It is clear to me now that it is not intended that papakāinga include *community facilities* that are for the use of the wider community. Rather, it is intended that papakāinga may include social facilities that are for the use of the papakāinga community. I do not consider it is necessary to include references to papakāinga in the Community Facilities chapter to achieve this. The definition of papakāinga provides for ancillary social activities, so social facilities as part of a papakāinga can be achieved under the papakāinga definition in any case.

(64) On this basis, I agree with Te Ātiawa ki Whakarongotai that references to papakāinga within the Community Facilities chapter should be removed.

Papakāinga in the Marae Takiwā Precinct

(65) At the hui on 6 April, Ms Gibb noted that part of the intention behind submission point S100.33 was to ensure that papakāinga were enabled as part of the Marae Takiwā Precinct located within the Town Centre Zone. Ms Gibb noted that the rules associated with the Marae Takiwā Precinct expressly exclude papakāinga.

(66) I agree that the rules are unclear. It is intended that papakāinga are enabled within the Marae Takiwā Precinct, but that these would be enabled under the papakāinga rules. The purpose of excluding papakāinga from the Marae Takiwā Precinct rules is to ensure that they are not subject to the same restrictions as other development within the precinct (except for building height, which I have addressed at paragraph (36) above). To provide greater certainty, I recommend some amendments to the Whakarongotai and Ōtaki Takiwā Precincts to clarify that papakāinga within these precincts are subject to the rules that enable papakāinga.

Setback of intensive farming from land held under Te Ture Whenua Māori Act 1993

(67) Consistent with submission point S100.29, Ms Gibb reiterated the desire that the definition of sensitive activity be amended to include land held under Te Ture Whenua Māori Act 1993. This would provide for standards that require intensive farming activities in rural zones to be set back 300 metres from sensitive activities to also apply to land held under Te Ture Whenua Māori Act 1993. As I understand it, the intention of this is to protect potential future papakāinga development from the establishment of intensive farming activities in the meantime.

(68) While I acknowledge the concerns raised by Te Ātiawa ki Whakarongotai in this regard, I continue to consider it inappropriate to define land held under Te Ture Whenua Māori Act 1993 as a sensitive activity for the following reasons:

(a) The form of land ownership (in this case land held under Te Ture Whenua Māori Act 1993) is not itself an activity (and therefore not a sensitive activity).

(b) If land held under Te Ture Whenua Māori Act 1993 were defined as a sensitive activity, I consider this would lead to uncertainty amongst resource users as to where intensive farming activities are restricted. This is because the existence of land held under Te Ture Whenua Māori Act 1993 is not administered under the District Plan (or the RMA), but rather by the Māori Land Court. I also consider this would lead to an undesirable situation where restrictions on land use in the District Plan may effectively change at any time (and without an RMA process) based on decisions of the Māori Land Court to classify land as being held under Te Ture Whenua Māori Act 1993.

(69) I therefore do not consider that land held under Te Ture Whenua Māori Act 1993 should be defined as a sensitive activity.

Recommendations

(70) For the reasons set out above, I recommend the following amendments in relation to the papakāinga provisions:

(a) That the requirement to set back papakāinga development in the centres zones by 4-metres from the General Residential Zone is removed (see amendments 5.11, 6.9, 7.11 and 8.10 of PC(R2));

(b) That standards requiring that papakāinga development within 500 metres of the inland edge of a beach shall are not visible from the beach be removed (see amendments 11.3, 12.2, 13.2 and 14.3 of PC(R2));

(c) That references to papakāinga within the Community Facilities chapter are removed (see amendments 16.7, 16.8, 16.9 and 16.10 of PC(R2));

(d) Rules for development in the Marae Takiwā Precinct (GRZ-Rx3, GRZ-Rx8 and TCZ-Rx4) are amended to clarify that papakāinga are provided for within the precinct under the papakāinga rules (see amendments 4.20, 4.31 and 6.16 of PC(R2)).

Section 32AA evaluation

(71) I consider that the recommended amendments are a more appropriate way to achieve the objectives of PC2 and the purpose of the RMA than the notified provisions, because:

(a) They better recognise and provide for section 6(e) of the RMA by removing unnecessary or onerous restrictions on papakāinga development, or avoiding unintended consequences that may detract from section 6(e) of the RMA;

(b) They clarify and improve the interpretation of the papakāinga provisions.

3.0 Kārewarewa Urupā

Submitters: Te Ātiawa ki Whakarongotai [S100], Waikanae Land Company [S104], ART [S210].

3.1 The *vires* issue

(72) In relation to the *vires* issue, I refer the Panel to Mr Conway's legal submissions for the Council and his written reply for the Council. I will not repeat this here, suffice it to say that my own position on this matter, as set out at paragraphs 585 and 586 of the Council Officers' Planning Evidence, remains unchanged.

(73) I note that the Council has lodged an appeal to the High Court against the decision of the Environment Court in *Waikanae Land Company Limited v Heritage New Zealand Pouhere Taonga* [2023] NZEnvC 056. The decision is being appealed in its entirety.

3.2 Evidence

(74) There was much discussion at the hearing about the evidence of archaeological values, the evidence of cultural values and the relationship between the two. In the following paragraphs, respond to this from a planning perspective.

(75) As I understand it, the position advanced by the Waikanae Land Company ('WLC') is that there is insufficient physical archaeological evidence of the presence of kōiwi to justify scheduling the former Ngarara West A14B1 block as a wāhi tapu site. This is set out in the evidence of Mr Gibb, the archaeologist for the Waikanae Land Company, who describes the various forms of archaeological investigation that have occurred on the stage 6 land (the large undeveloped portion of the land accessed from Tamati Drive) over the years.

(76) Overall, the position advanced by WLC appears to be that cultural values must be verified by evidence of tangible archaeological values. This argument is summarised at paragraph 13 of WLC's legal submissions on the merits of the listing, which states that "if kōiwi are not present then the site cannot have high cultural value as an urupā".

(77) WLC refer to the 'rule of reason' approach described by the Environment Court[19] as supporting this position. At paragraph 17 of their legal submissions, WLC cites the 'rule of reason' approach as follows:

> *That "rule of reason" approach if applied by the Environment Court, to intrinsic and other values and traditions, means that the Court can decide issues raising*

[19] *Ngāti Hokopu Ki Hokowhitu v Whakatane District Council* (2002) 9 ELRNZ 111 (EnvC) at [53].

beliefs about those values and traditions by listening to, reading and examining (amongst other things):

- *Whether the values correlate with physical features of the world (places, people);*
- *People's explanations of their values and their traditions;*
- *Whether there is external evidence (e.g. Māori Land Court Minutes) or corroborating information (e.g. waiata or whakatauki) about the values. By 'externa;' we mean before they became important for a particular issue and (potentially) changed by the value holders;*
- *The internal consistency of peoples' explanations (whether there are contradictions);*
- *The coherence of those values with others;*
- *How widely the beliefs are expressed and held.*

(Emphasis taken from WLC's legal submissions).

(78) In my opinion, the WLC's contention that cultural values must be verified by evidence of archaeological values cannot be correct. The 'rule of reason' approach is not a conjunctive list of information sources that must all be provided for in order to arrive at a position on cultural values. Rather, I consider that it is an approach that enables decision makers to take into account a broad range of sources of information when considering issues related to cultural values. Further, I consider that the emphasis placed on parts of the rule of reason approach by WLC, as set out in their legal submission, is selective and amounts to a privileging of tangible physical evidence over other sources of information which I do not consider can be inferred from the approach set out by the Court. I consider that the approach suggested by WLC would arbitrarily discount the evidence of cultural values presented by tangata whenua.

(79) It is my view that evidence of archaeological values and evidence of cultural values must be considered alongside each other, rather than one limiting the other. I consider that this view is supported not only by the rule of reason approach, but also by the definition of *historic heritage* in section 2 of the RMA, which considers "archaeological qualities" and "archaeological sites" as distinct matters from "cultural qualities" and "sites of significance to Māori" (including wāhi tapu).

(80) Turning to cultural values, as set out by Dr Baker for Te Ātiawa ki Whakarongotai at the hearing (and without wishing to paraphrase her), as I understand it:

(a) the whole site was consecrated as an urupā by Te Ātiawa (and this occurred before the urban development of the area);

(b) it is a place that is associated with significant events in the history of the tangata whenua of the Kāpiti Coast district; and

(c) it is a place where tūpuna rest (acknowledging that that rest has been disturbed by the development works that have been allowed to occur on the site since the 1970s)[20].

(81) I also consider that there is little uncertainty about the fact that there will be adverse effects on tangata whenua from the disturbance of the site that would occur as a result of its further development. In Dr Baker's words, further development will cause "cultural effects of the highest order of severity".

(82) In addition to this, Dr Baker also described potential adverse cultural and spiritual effects on future generations who would come to live on the urupā as a result of the level of development provided for by the MDRS. As described by Dr Baker, the occurrence of these effects are demonstrated by the work undertaken by Te Ātiawa kaumatua with residents on and around the already developed part of the urupā, who are called on to undertake blessings and exercise other forms of tikanga in relation to the site.

(83) In my opinion, it is clear from the evidence presented by tangata whenua at the hearing and the findings set out in the Waitangi Tribunal's *Kārewarewa Urupā Report* that the entire extent of the former Ngarara West A14B1 block is of cultural and spiritual significance to tangata whenua. I do not consider that this is refuted or limited by the archaeological evidence. It is also clear that development of the site to the level enabled by the MDRS will result in significant actual or potential adverse effects on tangata whenua, as well as future generations who would come to live on the site were it to be developed to the level enabled by the MDRS.

(84) I therefore consider that that it is demonstrated that the site is of significance to tangata whenua such that the Council must recognise and provide for it within the District Plan as a matter of national importance under section 6(e) of the RMA. I do not consider that there was any evidence provided at the hearing that would cause me to reconsider the conclusions arrived at by the Section 32 Evaluation Report in this regard.

[20] In addition to being described by Dr Baker at the hearing, these matters are also set out in her brief of evidence to the Waitangi Tribunal in relation to Kārewarewa Urupā. Refer: Baker, Mahina-a-Rangi. (22 January 2019). *Brief of Evidence (doc F11)*, pp.45-59. See: https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_145908543/Wai%202200%2C%20F11.pdf
Further to this, these matters are also described in the 2015 Cultural Impact Assessment prepared in relation to the potential development of the undeveloped portion of the site, which was also presented to the Waitangi Tribunal.
Refer: Baker, Mahina-a-Rangi. (2015). *Cultural Impact Assessment: Te Kārewarewa Urupā.* See "Document R": https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_145888339/Wai%202200%2C%20F11(a).pdf

3.3 Response to matters raised in the WLC planning evidence

(85) I also wish to respond to several matters raised in the evidence of Mr Thomas, the planning expert for the WLC, in relation to the section 32 evaluation.

Provisions associated with *wāhanga tahi* and *wāhanga rua*

(86) At paragraph 16 and 19 of his evidence, Mr Thomas describes some of the standards and rules that apply in respect of the *wāhanga tahi* component of the scheduling. With respect to earthworks standards, the description outlined by Mr Thomas is not correct. For clarification, I will set out the provisions relevant to both the *wāhanga tahi* and *wāhanga rua* listings below.

(87) Mr Thomas is correct that the key policy in relation to places and areas of significance to Māori contained in Schedule 9 is SASM-P1, which states that:

> *Waahi tapu and other places and areas significant to Māori and their surroundings will be protected from inappropriate subdivision, development, land disturbance, earthworks or change in land use, which may affect the physical features and non-physical values of the place or area.*
>
> *The Council will work in partnership with the relevant iwi authority for the ongoing and long term management and protection of waahi tapu. Relevant iwi authorities will be consulted on all resource consent applications affecting waahi tapu and other places and areas significant to Māori identified in the Schedule of Sites and Areas of Significance to Māori (Schedule 9).*

(88) The following table summarises the relevant rules and standards for earthworks/land disturbance, buildings and subdivision within *wāhanga tahi* and *wāhanga rua* sites identified in Schedule 9:

Activity	*Wāhanga tahi*	*Wāhanga Rua*
Earthworks/ land disturbance	**Permitted activities [see SASM-R2]** Land disturbance/earthworks subject to the following standards: • it being for fencing the perimeter of the area; • following the accidental discovery protocol set out in HH-Table 1.	**Permitted activities [see SASM-R3]** Land disturbance/earthworks, subject to the following standards: • not exceeding 10m^3 per calendar year; • following the accidental discovery protocol set out in HH-Table 1.
	Restricted discretionary activities [see SASM-R10]	**Restricted discretionary activities [see SASM-R11]**

Activity	*Wāhanga tahi*	*Wāhanga Rua*
	Land disturbance/earthworks that does not comply with permitted activity standards, subject to following the accidental discovery protocol set out in HH-Table 1.	Land disturbance/earthworks that does not comply with permitted activity standards, subject to following the accidental discovery protocol set out in HH-Table 1.
Buildings and structures	**Permitted activities [see SASM-R2]** Fencing along the perimeter of the area, subject to following the accidental discovery protocol set out in HH-Table 1.	**Permitted activities [see SASM-R3]** Additions and alterations to existing buildings, and new buildings ancillary to lawfully established uses, subject to the following standards: • buildings must not include basements or in-ground swimming pools; • following the accidental discovery protocol set out in HH-Table 1.
	Restricted discretionary activities [see SASM-R10] Additions and alterations to lawfully established buildings (excluding minor buildings), subject to an accidental discovery protocol.	**Restricted discretionary activities [see SASM-R11]** Additions and alterations to lawfully established buildings and new buildings which do not comply with permitted activity standards.
	Non-complying activities [see SASM-R18] New buildings.	
Subdivision	**Restricted discretionary activity [see SUB-DW-R10]** Subdivision of any land or site containing a site identified in Schedule 9, subject to the following standard: • The feature identified in Schedule 9 must be contained within one allotment, or where the feature is contained within more than one allotment the number of allotments containing the feature will not be increased.	

Use of restrictive overlays

(89) At paragraph 23 of his evidence, Mr Thomas states that overlays influence how land may be developed, rather than preventing all development. He goes on to state that "to apply a General Residential Zone, and then an overlay over yet to be developed land that effectively

prevents any form of development is poor practice and does not stand scrutiny in section 32 terms" (at paragraph 26).

(90) As set out in the table above, the *wāhanga tahi* overlay proposed by PC(N), which applies to the land owned by the Waikanae Land Company, provides for new buildings as a non-complying activity (under rule SASM-R18), earthworks as a non-complying activity (under rule SASM-R16), and subdivision as a restricted discretionary activity (under rule SUB-DW-R10). While I disagree that these provisions "prevent all development" (because they do still provide a consent pathway) I agree that, combined with the relevant policy SASM-P1, these provisions are restrictive of further development.

(91) However, I also note that the use an overlay that applies this level of restriction on development is not unusual in the General Residential Zone. A notable example of a similar overlay is the high-risk flood hazard overlay (which includes mapped flood hazards such as overflow paths and stream corridors)[21]. There is approximately 110 hectares of this overlay located within the General Residential Zone (compared with the 4.1 hectares proposed to be scheduled as wāhanga tahi in relation to Kārewarewa urupā). The provisions associated with the high-risk flood hazard overlay are functionally similar to the wāhanga tahi overlay provisions proposed in this case. In the high-risk flood hazard overlay, new buildings are a non-complying activity (under rule NH-FLOOD-R16) and subdivision is a discretionary or non-complying activity (under rules SUB-DW-R16, R17, R19 and R20).

(92) I consider that restrictive overlays are a necessary and appropriate planning tool because matters such as significant cultural values, flood hazards, and a variety of other values which I have not touched on here do not neatly conform to zone boundaries. I therefore disagree with Mr Thomas that the use of such overlays is poor planning practice.

Section 32 evaluation for Kārewarewa Urupā

(93) I also disagree with Mr Thomas that the fact that the site is zoned General Residential Zone means that the application of a restrictive overlay "does not stand scrutiny in section 32 terms". The fact that the site is in the General Residential Zone was a core consideration of the evaluation of options for Kārewarewa urupā set out in section 8.3.3 of the Section 32 Evaluation Report[22]. This is because in considering how to incorporates the MDRS into the General Residential Zone the Council must also consider how to recognise and provide for the urupā as a matter of national importance under sections 6(e) and 6(f) of the RMA as a qualifying matter.

[21] The operative District Plan flood hazard provisions are discussed further at section 11.0 of this reply.
[22] Refer to pages 225 to 232 of the Section 32 Evaluation Report for the evaluation of options associated with recognising and providing for Kārewarewa Urupā.

(94) The Section 32 Evaluation Report evaluated three options for the site[23]:

(a) Option 1: The proposed approach. Recognise and provide for Kārewarewa Urupā as a wāhi tapu site by adding the site to Schedule 9 of the District Plan.

(b) Option 2: Apply the MDRS to the area, but do not recognise or provide for Kārewarewa Urupā in Schedule 9 of the District Plan as a wāhi tapu site.

(c) Option 3: Take Kārewarewa Urupā into account through providing for lower density development provisions at the site, rather than recognising it as a wāhi tapu site in Schedule 9.

(95) Option 2 considered applying the MDRS to the underlying zone without recognising and providing for Kārewarewa urupā as a qualifying matter. While the evaluation of this option recognised the social and economic benefits of enabling the MDRS at the site, it also recognised that "enabling the level of subdivision and development provided for by the MDRS is likely to result in significant adverse impacts on the relationship of Te Ātiawa ki Whakarongotai with their ancestral land and wāhi tapu"[24]. Put another way, the fact that the site is zoned General Residential Zone (which must incorporate the MDRS) heightens the need for the site to be recognised in some form in the District Plan, in order to avoid significant adverse impacts on tangata whenua.

(96) Given the evaluation of option 2, the appropriateness of the Schedule 9 overlay was tested through the evaluation of option 3. Option 3 recognises Kārewarewa urupā as a qualifying matter by providing for a lower density of development to occur as a permitted activity on the site (for example, by maintaining the status quo level of development provided for by the operative District Plan) rather than recognising and providing for it as a site of significance in Schedule 9 of the District Plan. This is a somewhat compromised option on the basis that it provides for reduced economic and social benefits (in terms of reduced enablement of housing development capacity), while still enabling a level of development that would be likely to have significant adverse impacts on tangata whenua (because the site would not be recognised as a site of significance to tangata whenua in the District Plan). In other words, the social and economic benefits compared to option 2 are reduced, but the costs in terms of adverse effects on tangata whenua remain similar. This is a poor outcome in terms of overall efficiency and effectiveness.

(97) It is in the context of these two alternatives that the scheduling of Kārewarewa Urupā in Schedule 9 of the District Plan (option 1) is identified in the Section 32 Evaluation as being the most appropriate approach. The evaluation of this option acknowledges that "while the provisions impose costs on landowners, they will provide for significant benefits to current and

[23] *Section 32 Evaluation Report,* p.225.
[24] *Section 32 Evaluation Report,* p.230.

future generations by protecting the cultural and heritage values associated with the site from inappropriate land disturbance and development, and by recognising the relationship between Te Ātiawa ki Whakarongotai and their ancestral land and wāhi tapu"[25]. The evaluation concludes that this is the most appropriate option, in part because it is the only option that satisfies higher order planning documents (including the RPS and NPS-UD) while also providing for the Council to fulfil its obligations under sections 6, 7 and 8 of the RMA.

(98) At paragraph 47 of his evidence, Mr Thomas proposes two further options for evaluation:

(a) Designate and acquire as reserve the areas of reinterred koiwi and potential other koiwi identified and ensure that any future development provides for management of that reserve by iwi. Apply the MDRS to the remaining area as required by the Amendment Act.

(b) The option above, but exclude the MDRS on a similar basis to the Coastal Qualifying Matter given that there remains a small risk of disturbing other archaeological material (i.e. middens) through higher density development.

(99) I consider that neither of these alternatives are more appropriate than the options evaluated in the Section 32 Evaluation report. As noted at paragraphs (80) and (81) above, Dr Baker for Te Ātiawa described how the entire site was consecrated by Te Ātiawa as an urupā, and that further development would have "cultural effects of the highest order of severity". In my opinion, the alternatives proposed by Mr Thomas focus exclusively on identified archaeological values, and do not recognise or provide for the cultural and spiritual values ascribed to the site by tangata whenua.

(100) In any case, I do not consider that the Coastal Qualifying Matter Precinct approach is appropriate in relation to Kārewarewa urupā. The Coastal Qualifying Matter Precinct approach acknowledges that there is currently insufficient information about appropriate methods for the management of coastal hazards to apply a more restrictive approach than the status quo in that area. In relation to Kārewarewa urupā on the other hand, I consider that there is certain and sufficient information about the existence of cultural values and appropriate methods for managing effects on cultural values for the *wāhanga tahi* provisions of the Sites and Areas of Significance to Māori chapter to be applied as an overlay.

(101) Returning to the matter of section 32 practice, I do not consider that it is poor practice to apply a restrictive overlay to a site on the basis that it is located in the General Residential Zone. On the contrary, as has been demonstrated by the section 32 evaluation, it is an appropriate approach precisely because the site is located in a zone that must incorporate the MDRS. Faced with the statutory requirement to incorporate the MDRS into the General Residential Zone, the Council was required to give consideration as to whether this new zone framework

[25] *Section 32 Evaluation Report,* p.228.

(including all of the requirements for objectives, policies, rules and standards set out in Schedule 3A to the RMA) would be appropriate at Kārewarewa urupā. After evaluating a range of alternatives, the Council concluded that the most appropriate approach to incorporating the MDRS into the General Residential Zone while also recognising and providing for the significance of Kārewarewa Urupā to tangata whenua was to incorporate Kārewarewa urupā into Schedule 9 of the District Plan as a qualifying matter.

(102) While I appreciate that Mr Thomas has offered alternative approaches for consideration (which I have discussed above), I do not consider that the matters raised by Mr Thomas in his evidence, or in any other evidence provided by WLC, would cause me to reconsider the conclusion arrived at by the section 32 evaluation in relation to recognising and providing for Kārewarewa urupā as a site of significance to tangata whenua.

3.4 Adjustment to the south-western boundary of the Wāhanga Rua extent

(103) Under submission point S100.50, Te Ātiawa ki Whakarongotai requested that the boundary of the wāhanga tahi listing (identified in the District Plan maps as WTSx1) in the south-west corner of Kārewarewa Urupā be adjusted to better align with the original boundary of Ngārara West A14B1 (which they identified in their submission). I addressed this request at paragraphs 589 to 591 of the Council Officers' Planning Evidence, recommending that this request be accepted.

(104) At the hearing Dr Baker requested that the Panel consider making a commensurate adjustment to the boundary of the wāhanga rua component of the listing (identified in the District Plan maps as WTSx2) so that its south-western boundary also better aligns with the original boundary of Ngārara West A14B1[26]. The extent of this adjustment is set out in Figure 3 below. The additional area added to WTSx2 as a result of this adjustment is approximately 2,280m^2.

Recommendations

(105) Should the Panel wish to consider this request, for the same reasons as set out in paragraph 590 of the Council Officers' Planning Evidence, I recommend that the south-western boundary of the wāhanga rua component of the listing (identified as WTSx2) be adjusted as set out in Figure 3 below.

[26] I note that the Panel is empowered to make recommendations on matters raised at the hearing under clause 99(2) of Schedule 1 to the RMA.

Section 32AA evaluation

(106) I consider that the recommended amendment is a more appropriate way to achieve the objectives of PC2 and the purpose of the RMA than the notified provisions, because it recognises and provides for an area Ātiawa ki Whakarongotai (as kaitiaki) have identified as being part of the Kārewarewa Urupā but which would otherwise be unmanaged in the absence of being recognised as such. I consider that this more appropriately gives effect to policy 49 of the Regional Policy Statement and Objective 5 and policy 9(b) of the NPS-UD, and more appropriately recognises and provides for the relationship between Te Ātiawa ki Whakarongotai and their ancestral land and wāhi tapu under section 6(e) of the RMA.

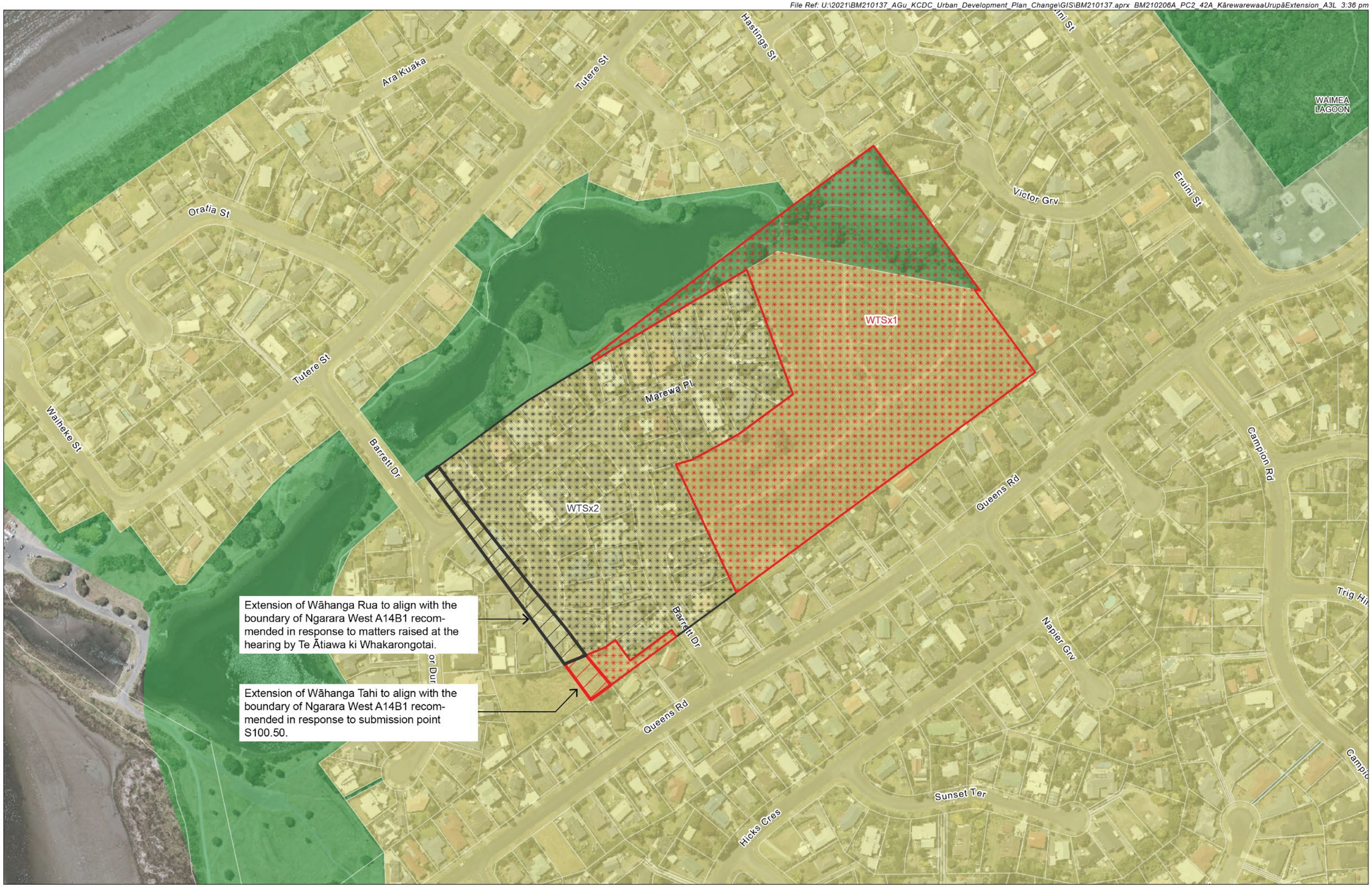
(107) As outlined in section 6.1.4 of the Section 32 Evaluation Report, incorporating Kārewarewa Urupā into Schedule 9 of the District Plan is a qualifying matter under section 77I(a) of the RMA[27]. I therefore consider that amending the south-western boundary of WTSx2 is also qualifying matter. In relation to the information required for qualifying matters under section 77J(3) of the RMA:

(a) **Justification for the qualifying matter (sections 77J(3)(a)).** I consider that the adjustment to the boundary is a qualifying matter under section 77I(a) of the RMA because it is necessary to accommodate a matter of national importance that decision makers are required to recognise and provide for under section 6(e) of the RMA;

(b) **Impact on development capacity (sections 77J(3)(b)).** Using the methodology outlined in the Section 32 Evaluation Report, the adjustment to the boundary would result in a foregone plan-enabled residential development capacity of 9 dwellings[28]. I therefore consider that the adjustment will have a negligible impact on the provision of development capacity.

(c) **Costs and broader impacts (sections 77J(3)(c)).** In relation to the assessment of the costs and broader impacts of the adjustment to the boundary, I consider that due to the scale of additional area provided for by the adjustment, the evaluation of costs and broader impacts outlined in section 8.3.3 of the Section 32 Evaluation Report continues to apply.

[27] Section 32 Evaluation Report, pp.159-164.
[28] This figure is based on a pro-rata extension of the foregone residential development capacity identified in the Section 32 Evaluation Report for the wāhanga tahi extent of the listing proposed by notified PC2. See: *Section 32 Evaluation Report*, p.163.



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Projection: NZGD 2000 New Zealand Transverse Mercator

LEGEND

- General Residential Zone
- Natural Open Space Zone
- Open Space Zone
- Proposed Wāhi Tapu: WTSx1
- Proposed Wāhi Tapu: WTSx2

Recommendation

- Extend WTSx1
- Extend WTSx2

KĀPITI COAST DISTRICT PLAN CHANGE 2

Kārewarewa Urupā Schedule 9 Extensions

Date: 14 April 2023 | Revision: 0

Plan prepared for Kāpiti Coast District Council by Boffa Miskell Limited

Fig. 3

4.0 District Objectives and Urban Form and Development Policies

4.1 Consolidated urban form approach in DO-O3, UFD-P1, and UFD-P4

Submitters: Mansell [S023]

(108) At paragraphs 11.34 and 11.35 of his evidence on behalf of the Mansell submission [S023], Mr Hansen sets out his position that the consolidated urban form approach set out under district objective DO-O3, and Urban Form and Development policies UFD-P1 and UFD-P4 is dated and not consistent with the NPS-UD, and that focussing on consolidated urban form within existing urban areas is contrary to higher order planning documents. The relief sought in Mr Hansen's evidence is to amend these provisions as set out in the original submission (and Mr Hansen provided updated provisions to the Panel in a memo dated 20 April 2023).

(109) In response to this, I note that the NPS-UD (or the operative or proposed RPS) does not direct the Council to expand its urban environment. It is correct that where the Council has not provided for sufficient development capacity under Policy 2 of the NPS-UD, to the extent that this is a result of the District Plan, the Council must change its plan to increase development capacity[29]. However, with the exception of objective 3 and policy 3 (which relate to intensification in certain parts of the urban environment), the NPS-UD is agnostic on how the Council must amend the plan to achieve this, and it is open to the Council to consider a range of urban form options, including enabling greater levels of development in existing urban areas, or amending the plan to rezone rural areas for urban development, or a combination of both. It certainly does not direct the Council to expand its urban environment to achieve sufficient development capacity. I therefore disagree that a focus on consolidated urban form is inconsistent with the NPS-UD.

(110) My analysis is similar in relation to policy 55 of the proposed RPS. While policy 55 is proposed to be amended to "provide for appropriate urban expansion", the policy does not direct the Council to expand its urban environment. Rather, it sets out a range of matters to have regard to when considering urban development beyond the region's urban areas.

(111) In any case, I do not consider that DO-O3, UFD-P1 and UFD-P4 exclude the possibility of expanding the urban environment. DO-O3 provides for "the development of new urban areas where these can be efficiently services and integrated with existing townships". In response to the submitter's primary submission point S023.06, I recommended in the Council Officers' Planning Evidence that UFD-P1 be amended to the following: "New urban development for residential activities for residential activities will only be located within existing urban areas, identified growth areas, and areas that can be efficiently serviced and integrated with existing

[29] See clause 3.7(1)(b) of the NPS-UD.

urban areas…". In relation to UDF-P4, my recommended amendments to this policy as part of the Council Officers' Planning Evidence mean that it is agnostic on urban form.

(112) I therefore consider that the relief sought by Mr Hansen on behalf of the Mansell submission [S023] in relation to DO-O3, UFD-P1 and UFD-P4 is not necessary because:

(a) I do not consider the provisions to be contrary to higher order planning documents, including the NPS-UD or the proposed RPS; and

(b) In any case, I consider that DO-O3 and UFD-P1 already provide for the expansion of urban areas, where appropriate.

4.2 Consideration of amenity values in DO-O3, UFD-P3, and UFD-P11

Submitters: Mansell [S023]

(113) In paragraphs 11.37, 11.41 and 11.43 of his evidence, Mr Hansen considers that the requirements in DO-O3(6), UFD-P3 and UFD-P11(2) to have regard to amenity values in certain circumstances is inconsistent with policy 6(b) of the NPS-UD.

(114) Policy 6(b) of the NPS-UD is as follows:

> *When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:*
>
> *…*
>
> *(b) that the planned urban built form in those RMA planning documents 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*
>
> *…*

(115) In response to the matters raised by Mr Hansen, I do not consider that policy 6(b) of the NPS-UD directs Councils to disregard effects on amenity values. Rather, what it directs Council to do is:

(a) Not consider *changes* to an area as an adverse effect (as set out under policy 6(b)(ii)); and

(b) When considering effects on amenity values that may result from those changes, consider these effects in a particular light (as set out under policy 6(b)(i)).

(116) The amendments proposed under PC(R1) to DO-O3(6), UFD-P3 and UFD-P11(2) have been drafted to avoid a focus on maintaining or protecting existing amenity values (which I consider would frustrate both objective 4 and policy 6(b) of the NPS-UD), while still requiring effects on amenity values to be given genuine consideration (which in any case would be guided by policy 6(b)). I therefore consider that the provisions, as amended by PC(R1), are consistent with policy 6(b), and that the relief sought by Mr Hansen on behalf of the Mansell submission [S023] in relation to DO-O3(6), UFD-P3 and UFD-P11(2) is not necessary.

4.3 Consideration of *identified qualifying matters* in DO-O3, UFD-Px and UFD-P1

Submitters: Transpower [S076]

(117) At paragraphs 21 through 26 of her planning evidence on behalf of Transpower [S076], Ms McLeod sets out why amendments which I recommended in PC(R1) to the text of DO-O3(3) in relation to identified qualifying matters is not considered to be appropriate. In summary, Ms McLeod considers that the recommended text invites the management of identified qualifying matters to be relitigated through resource consent decision making, because it implies that development is enabled in areas where there is an identified qualifying matter. Depending on the planning regime for managing the qualifying matter, this may not be the case in all circumstances. At paragraph 26 of her evidence, Ms McLeod sought alternative wording as relief.

(118) In addition to this, at paragraphs 28 through 40 of her evidence, Ms McLeod sought similar text be incorporated into DO-O3 (explanatory text), UFD-Px and UFD-P1, for similar reasons.

(119) I agree with Ms McLeod, and consider the relief sought by her to be more appropriate than the recommended text set out in PC(R1) for the reasons set out in her evidence.

(120) At the hearing, there was discussion between Ms McLeod, the Panel and I on appropriate syntax for the wording to give effect to the relief sought by Ms McLeod. The following wording was determined to be appropriate: "… while accommodating *identified qualifying matters* that constrain development".

(121) I consider the reference to *identified qualifying matters* is necessary to ensure that the provision is connected to the proposed District Plan definition of *identified qualifying matters*. This definition provides certainty for plan users by setting out all of the qualifying matters that have been incorporated into the District Plan. It also avoids the risk that the existence of a qualifying matter can be relitigated through resource consent decision making.

Recommendations

(122) For the reasons set out above, I recommend that the relief requested by Transpower is accepted by incorporating the text "… while accommodating *identified qualifying matters* that constrain development" (or similar wording) into the following provisions:

(a) DO-O3(3) (refer to amendment 1.2 of PC(R2));

(b) DO-O3 explanatory text (refer to amendment 1.3 of PC(R2));

(c) UFD-Px (refer to amendment 2.1 of PC(R2));

(d) UFD-P1 (refer to amendment 2.2 of PC(R2)).

Section 32AA evaluation

(123) I consider that the recommended amendments are a more appropriate way to achieve the objectives of PC2 and the purpose of the RMA than the notified provisions, for the reasons set out by Ms McLeod at paragraph 27 of her evidence. Specifically, the amendments

(a) remove expression that inappropriately borrows from section 77I of the RMA;

(b) better aligns with the provisions that embed qualifying matters in the IPI;

(c) better gives effect to, and achieves the outcomes sought in, the relevant provisions of the NPSET and NPS-UD.

5.0 Residential Zoning Framework

Submitters: Kāinga Ora [S122], Ryman & RVA [S196 and S197]

(124) The zoning framework proposed by PC(N) amends the operative General Residential Zone to incorporate the MDRS. It uses two "Residential Intensification Precincts" to give effect to policy 3 of the NPS-UD within the General Residential Zone. Specifically, Residential Intensification Precinct A gives effect to policy 3(c) of the NPS-UD, and Residential Intensification Precinct B gives effect to policy 3(d) of the NPS-UD. Section 8.3.4 of the Section 32 Report[30] describes how this approach gives effect to the National Planning Standards, while also being an efficient means of incorporating the MDRS and giving effect to policy 3 of the NPS-UD in the General Residential Zone.

(125) In her evidence for the hearing, Ms Williams, the planning expert for Kāinga Ora, describes her view that the zoning framework proposed by PC(N) does not provide for adequate clarity as to the planned outcome for the residential environment in areas where greater intensification is to be enabled (at paragraphs 5.6 and 5.7 of her evidence). It is also difficult to discern in the e-Plan where high-density development is intended (at paragraph 5.9). Ms Williams considers that a High Density Residential Zone (HRZ) is an appropriate zone where the District Plan seeks to enable buildings of at least 6 storeys (at paragraph 5.16).

(126) In addition to this, Ms Williams also considers that use of specific controls (such as a height variation control) is more efficient than precincts to achieve height increases in specified locations (at paragraph 5.20 of her evidence).

(127) I agree with Ms Williams on both points, for the reasons set out in her evidence. I therefore recommend that PC2 is amended to include a High Density Residential Zone in the areas of the General Residential Zone where PC2 intends to provide for buildings of 6-storeys or greater. I also recommend replacing Residential Intensification Precincts with height variation control overlays, where this is relevant.

(128) I have drafted a High Density Residential Zone chapter and incorporated this into PC(R2) (see section 4A of PC(R2)). In doing this, I have considered the High Density Residential Zone proposed by Kāinga Ora in the evidence of Ms Williams (the updated version provided by Ms Williams to the Panel on 14 April 2023). While I have copied the majority of the provisions proposed by Kāinga Ora across into PC(R2), I have not copied all provisions across, as there are several that I disagree with for substantive reasons. In summary, the differences between the HRZ chapter requested by Kāinga Ora and the chapter that I recommend in PC(R2) are as follows[31]:

[30] *Section 32 Evaluation Report,* p.233.
[31] Note all reference to provision numbers are references to numbers identified in the Kāinga Ora evidence. The provisions contained in the recommended HRZ chapter in PC(R2) have been consecutively renumbered.

(a) I have not included DO-Ox2 in the HRZ chapter, because I consider that it is only relevant to the General Residential Zone chapter. In its place, DO-Ox3 is included as the relevant objective.

(b) I have not included the amendments to DO-O11 sought by Kāinga Ora (see discussion in section 6.2.1 below).

(c) I recommend combining policies HRZ-P6 with HRZ-P8, while retaining the reference to the Residential Design Guide (which I discuss in section 7.1 below). This is because I consider that, on the basis that references to the Design Guides are retained, there would otherwise be unnecessary duplication between the two policies;

(d) I have recommended amended wording to clause 3 of HRZ-Px11 (Residential Streetscape), to coordinate with amendments recommended to rule TR-R3 (see section 16.13 of PC(R2), in response to submission point S202.10).

(e) In relation to HRZ-P14 (Supported Living and Older Persons Accommodation), I have amended this policy to include the additional wording for retirement villages in response to matters raised by Ryman and the RVA (see para (227) of this reply).

(f) I have included the same general permitted activity standards under rule HRZ-Rx1 as are contained in rule GRZ-R1. I consider these standards are a necessary as part of the general structure of the District Plan.

(g) Under rule HRZ-Rx4, consistent with rule GRZ-R4 in the General Residential Zone I consider it necessary to also refer to compliance with the standards for buildings set out under rule HRZ-Rx6 or HRZ-Rx7.

(h) In relation to the *buildings* and *structures* rule sought by Kāinga Ora (identified in Ms Williams' evidence as rule HRZ-Rx1 and in the chapter which I am recommending as rule HRZ-Rx6):

    (i) I have added references the *height measurement criteria* under standard 2, to ensure ancillary roof items such as lift-over runs, aerials and chimneys are not included in the height measurement;

    (ii) I have not recommended adopting the 19 metre + 60° recession place requested by Kāinga Ora under standard 3, but I have recommended adopting the 8 metre + 60° recession place requested (see discussion in section 6.2.4 below);

    (iii) Under standard 3 I have also recommended applying the MDRS height in relation to boundary standard to boundaries with a designation for rail corridor purposes (see discussion in section 9.1 below);

(i) I have re-housed rule GRZ-R9 into the HRZ chapter as rule HRZ-Rx9, because the site for which this rule is relevant is located in an area that would be part of the HRZ;

(j) I consider that discretionary activity rule HRZ-11 sought by Kāinga Ora is not necessary in the High Density Residential Zone, as this only applies to buildings and structures which breach permitted activity standards in the Coastal Qualifying Matter Precinct (which is not located in the zone);

(k) I do not recommend replacing the matter of discretion that refers to the Residential Design Guide under the restricted discretionary activity rule for 4 or more dwellings per site (identified in Ms Williams' evidence as rule HRZ-Rx5 and in the chapter which I am recommending as rule HRZ-Rx15) with the matters of discretion requested by Kāinga Ora, on the basis that I continue to consider that it is appropriate to incorporate the Design Guides into the District Plan (which I discuss in section 7.1 below);

(l) In relation to the new restricted discretionary activity rule (identified in Ms Williams' evidence as rule HRZ-Rx10 and in the chapter which I am recommending as rule HRZ-Rx18):

(i) I have amended standard (1) to clarify that an apartment building is a building that contains 4 or more residential units;

(ii) I have amended standard (2) to clarify that the gross floor area limit on commercial activities is to apply to the *subject site*.

(129) Incorporating an HRZ into the District Plan requires several consequential amendments to other provisions in the plan. I set these out in my recommendations below.

(130) Incorporating an HRZ into the District Plan also obviates the need for Residential Intensification Precinct A in the General Residential Zone (as these areas become the HRZ). I therefore recommend that this precinct is deleted from the General Residential Zone.

(131) Likewise, the use of a height variation control overlay obviates the need for Residential Intensification Precinct B in the General Residential Zone. I therefore recommend that this precinct is also deleted from the General Residential Zone.

(132) Overall, I consider that these changes to the zone framework will result in a District Plan that is more legible to all plan users, and therefore is more effective at giving effect to Policy 3 of the NPS-UD.

Recommendations

(133) For the reasons set out above, I recommend incorporating a High Density Residential Zone in to the District Plan, as set out in section 4A of PC(R2). This also requires the following consequential amendments:

(a) Amendments to District Objective DO-Ox3 (see section 1.10 of PC(R2));

(b) Rehousing of the Whakarongotai Takiwā Precinct from the General Residential Zone chapter to the High Density Residential Zone chapter, under policy HRZ-Px7 and rules HRZ-Rx7 and HRZ-Rx16 (see sections 4.6 and 4A.1 of PC(R2));

(c) Rehousing of rule GRZ-R9 into the High Density Residential Zone chapter as rule HRZ-Rx9 (see sections 4.23 and 4A1 of PC(R2));

(d) Consequential amendments to several provisions to refer to the amended definition of *residential zones* (which incorporates the High Density Residential Zone). This includes amendments to the following provisions:

(i) UFD-P1 (see section 2.2 of PC(R1));

(ii) GRZ-R14 (see section 4.32 of PC(R2));

(e) Consequential amendments to the following provisions to refer to the High Density Residential Zone:

(i) UFD-P13 (see section 2.8 of PC(R2));

(ii) The introduction to the PK – Papakāinga chapter (see section 3.1 of PC(R2));

(iii) The introduction to the GRZ – General Residential Zone chapter (see section 4.1 of PC(R2));

(iv) SUB-DW-Rx1 (see section 10.1 of PC(R2));

(v) SUB-RES-Rx1 (see section 10.6 of PC(R2));

(vi) SUB-RES-R30 (see section 10.10 of PC(R2));

(vii) Definition of *identified qualifying matter area* (see section 20.11 of PC(R2));

(viii) Definition of *relevant residential zone* (see section 20.12 of PC(R2));

(ix) Definition of *residential zone* (see section 20. of PC(R2));

(x) ECO-R7 (see section 21.8 of PC(R2));

(f) Consequential amendments to standards (1) and (2) under rule SUB-RES-Rx1 and table SUB-RES-Table x1 to refer to the relevant rules in the High Density Residential Zone chapter (see sections 10.6 and 10.13 of PC(R2)).

(g) Amendments to the District Plan Maps to rezone the following areas of the General Residential Zone as High Density Residential Zone (see section 19.1A of PC(R2));

(i) The area within a walkable catchment of the Paraparaumu Metropolitan Centre Zone and train station;

(ii) The area within a walkable catchment of the Paekākāriki train station;

(iii) The area adjacent to the Raumati Beach Town Centre Zone;

(iv) The area adjacent to the Paraparaumu Beach Town Centre Zone;

(v) The area within a walkable catchment of the Waikanae train station and Town Centre Zone.

(134) For the reasons set out above, I also recommend replacing the Residential Intensification Precinct B in the General Residential Zone with a height variation control area. This involves the following amendments:

(a) Amendments to District Objective DO-Ox3 (see section 1.10 of PC(R2));

(b) Amendments to General Residential Zone chapter, including:

(i) Removal of references to the Residential Intensification Precincts from the zone introduction (see section 4.1 of PC(R2));

(ii) Amendments to policy GRZ-Px6 (see section 4.4 of PC(R2));

(iii) Amendments to standard (2) under rule GRZ-Rx1 to incorporate the 14-metre height variation control area;

(iv) Deleting rule GRZ-Rx2 (see section 4.19 of PC(R2));

(c) Removal of cross references to rule GRZ-Rx2 in the following provisions:

(i) GRZ-R4 (see section 4.16 of PC(R2));

(ii) GRZ-Rx1 (see section 4.18 of PC(R2));

(iii) GRZ-R7 (see section 4.21 of PC(R2));

(iv) GRZ-R8 (see section 4.22 of PC(R2));

(v) GRZ-R10 (see section 4.24 of PC(R2));

(vi) GRZ-Rx4 (see section 4.25 of PC(R2));

(vii) GRZ-R11 (see section 4.26 of PC(R2));

(viii) GRZ-Rx5 (see section 4.28 of PC(R2));

(ix) GRZ-R14 (see section 4.32 of PC(R2));

(x) SUB-RES-Rx1 (see section 10.6 of PC(R2));

(xi) SUB-RES-Table x1 (see section 10.13 of PC(R2)).

(d) Consequential amendments to UFD-P13 (see section 2.8 of PC(R2)).

(e) Amendments to the District Plan Maps to replace Residential Intensification Precinct B with a Height Variation Control Area (14 metres) (see section 19.2A of PC(R2));

Section 32AA evaluation

(135) I consider that the recommended amendments are a more appropriate way to achieve the objectives of PC2 and the purpose of the RMA than the notified provisions, because:

(a) The use of an HRZ supports the District Plan to give effect to Policy 3 of the NPS-UD by clearly indicating the areas where higher density residential development is intended to occur;

(b) The use of a HRZ for an area where high density residential development is the intended outcome is more consistent with the zone descriptions set out in standard 8 of the National Planning Standards.

6.0 Giving effect to Policy 3 of the NPS-UD

6.1 Greater levels of enablement sought by Kāinga Ora

Submitters: Kāinga Ora [S122]

(136) In their evidence, Kāinga Ora request that PC2 be amended to enable greater levels of development. The details of the amendments requested are set out in Ms Williams' planning evidence for Kāinga Ora (with a final version of the requested amendments tabled in a memo dated 14 April 2023). I note that the amendments requested in Kāinga Ora's evidence are somewhat moderated from those requested in their submission on PC2, however at paragraph 1.6 of her evidence, Ms Williams states that the relief sough in Kāinga Ora's evidence represents the full set of relief sought in relation to PC(N). Kāinga Ora's evidence also includes a significantly greater degree of explanation and justification for the relief sought compared to the information contained in their primary submission. This has enabled me to reconsider my position.

(137) The additional levels of enablement requested by Kāinga Ora in their evidence can be summarised as follows:

(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

[32] Enabling a consistent increase in building height in the Mixed Use Zone adjacent to the Metropolitan Centre Zone was a matter raised by Mr Rae at the hearing.

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.

(138) In response to their primary submission seeking additional levels of enablement to that proposed by PC(N), I initially recommended in the Council Officers' Planning Evidence that

these requests be rejected largely on the basis that I did not consider them to be justified (at least based on the information contained in the submission).

(139) However, I acknowledge that the additional levels of enablement requested by through their evidence (which is moderated from their primary submission) is supported by the evidence provided by their planning, urban economics and urban design experts to the Panel at the hearing. In summary, the general justification set out by the experts includes[33]:

(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;

[33] I note this is my own summary of what is quite extensive evidence and is not intended to represent or replace a full reading of that evidence.

(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.

(140) Based on the evidence presented by Kāinga Ora at the hearing, I have changed my position on several matters raised by Kāinga Ora. In summary, I agree that it is appropriate to enable greater levels of development in relation to the following matters:

(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 (but not at Ōtaki, which I discuss below).

(141) I have arrived at this position by considering objective 3 of the NPS-UD alongside the evidence presented by Kāinga Ora. I consider that objective 3 is the principle guiding objective that must be considered when considering how to give effect to policy 3 of the NPS-UD (which is the purpose of PC2). Objective 3 states that:

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

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

(142) Objective 3 sets out the qualities of an urban environment that justify enabling more people to live in, or more businesses and community services to be located in, those parts of the urban environment where those qualities are present. In my opinion, the reference to "one or more of the following" (my emphasis) in the chapeau of the objective means that, in achieving objective 3, it would be logical to enable greater levels of development in parts of the urban environment that exhibit more than one of these qualities, when compared to those areas that exhibit just one of these qualities. Further, areas where more than one of the qualities set out under objective 3 exist are likely to include (or are planned to provide for) many of the attributes of a well-functioning urban environment set out by Mr Rae at paragraph 7.4 of his evidence, and the co-location of these attributes, as Mr Rae puts it "provides greater scope or opportunity for density to be realised in the best locations".

(143) In relation to the areas where Kāinga Ora seek to enable greater levels of development than those proposed by PC(N), the following table sets out my analysis in relation to objective 3:

Areas within and around…	**Objective 3 qualities present in the area?**		
	(a) centre zone[34]	**(b) well-serviced**[35] **by existing/planned public transport**	**(c) demand**[36]
Paraparaumu Metropolitan Centre	**Yes.** The Metropolitan Centre Zone is planned as the principle 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	**Yes.** The Town Centre Zones provides the urban focus for commercial activities	**No.** The area does not have reasonable access to an existing	**Yes.** The greatest demand for feasible apartment development is

[34] My analysis of this matter is based on the zoning of the area and the planned function of each zone as set out in District Objective DO-O16.
[35] Note that, in relation to giving effect to Policy 3 of the NPS-UD I have considered access to an existing or planned rapid transit service as a proxy for "well-serviced by existing or planned public transport", on the basis that this is consistent with the focus of policy 3 of the NPS-UD on rapid transit services.
[36] My analysis of this matter is principally derived from Property Economics (2022). *Assessment of Kāpiti Coast Residential Intensification Area Feasibilities*, contained in Appendix M to the Section 32 Evaluation Report. See: https://www.kapiticoast.govt.nz/media/ssjisyp1/pc2_s32_appendixm_intensfeasibilityassessment.pdf

Areas within and around…	Objective 3 qualities present in the area?		
	(a) centre zone[34]	(b) well-serviced[35] by existing/planned public transport	(c) demand[36]
Beach Town Centres	and community services for the surrounding urban community.	or planned rapid transit service.	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.

(144) Taking into account objective 3 of the NPS-UD alongside the evidence present by Kāinga Ora, I consider that the additional levels of enablement requested by Kāinga Ora at Paraparaumu Metropolitan Centre, Waikanae Town Centre, Paraparaumu Beach Town Centre and Raumati Beach Town Centre are justified on the basis that these are all areas where more than one of the qualities set out in objective 3 are present. I therefore consider that the additional levels of enablement sought by Kāinga Ora in these areas supports the District Plan to achieve objective 3 of the NPS-UD, and therefore also supports giving effect to Policy 3 of the NPS-UD. The same cannot be said for the areas in and around Town Centres at Ōtaki, which I address further in section 6.2.1 below.

(145) I acknowledge that this will lead to a situation where the District Plan would enable a greater level of development than signalled in *Te tupu pai*, the District Growth Strategy. However, I consider this to be appropriate on the basis that it is supported by Objective 3 of the NPS-UD. Because the requirement to *give effect to* the NPS-UD[37] has greater statutory weight than the requirement to *have regard to* Te tupu pai[38], I consider it appropriate that the District Plan provide for a greater level of development than otherwise signalled by Te tupu pai, where this is consistent with the requirement to give effect to the NPS-UD.

(146) In relation to the more enabling HIRB standard in the High Density Residential Zone requested by Kāinga Ora, I agree with the evidence of Mr Rae and Ms Williams that a greater level of built form should be anticipated and enabled in the High Density Residential Zone when compared to the General Residential Zone, and that this should be reflected through a more enabling HIRB standard. However, while I consider that an 8-metre vertical + 60° recession plane standard requested by Kāinga Ora is appropriate in this regard, I do not consider that a

[37] Section 75(3) of the RMA.
[38] Section 74(2)(a)(i) of the RMA.

19 metre vertical + 60° recession plane standard is appropriate. I discuss this further in section 6.2.4 below. I also note that this amendment requires consequential amendment to the height in relation to boundary standards within the Centres, Mixed Use and Hospital Zones, to ensure that these standards are commensurate with the adjacent High Density Residential Zone.

(147) In relation to the building heights provided for within the High Density Residential Zone, I agree that it is appropriate for the height limit to be increased from 20 metres to 21 meters (consistent with the 21-metre height limit already provided for in the Town Centre Zone). The original reason for the 1 metre difference was to recognise the higher ground floor height associated with commercial activities in the Town Centre Zone, however I consider this difference adds unnecessary complexity to the plan provisions, and the additional meter is unlikely to lead to additional perceptible adverse effects (when compared to 20 metres).

(148) In relation to provision for home business activities in the General Residential Zone and High Density Residential Zone, I agree with Ms Williams that the standards for these activities need to be amended to recognise that the MDRS and policy 3 of the NPS-UD anticipate multiple residential units to occur on a site, and that the home business activity standards should apply to each residential unit, rather than each site.

(149) In relation to enabling commercial activities as a restricted discretionary activity on the ground floor of apartment buildings, I agree that there will be benefits to this as set out at paragraph 8.11 of Ms Williams' evidence. I also agree with Ms Williams that providing a consent pathway for small scale commercial activities in the High Density Residential Zone in the manner requested by Kāinga Ora would not be contrary to District Objective DO-O16 or the policies in the Business Activities chapter (particularly BA-P2), on the basis that Mr Cullen has provided evidence that the 200m^2 threshold is "a small enough figure to be an incidental activity and not threaten the viability of commercial centres". On this basis, I recommend that the High Density Residential Zone chapter include a rule for commercial activities as a restricted discretionary activity, as sought by Kāinga Ora.

(150) In relation to the expansion of limited notification preclusions to cover non-compliance with the outdoor living space, outlook space, windows to street and landscape area standards, I agree with Ms Williams (at paragraph 8.4 of her evidence) that these relate to on-site amenity and breaches of these standards are unlikely to have an adverse effect on adjoining sites. I therefore consider it appropriate that limited notification is precluded for non-compliance with these standards.

Recommendations

(151) For the reasons set out above, I recommend the following amendments:

(a) In relation to the Paraparaumu Metropolitan Centre:

(i) The building height enabled in the Metropolitan Centre Zone as a restricted discretionary activity under rule MRZ-R13 is increased from 40 metres (12-storeys) to 53 metres (15-storeys) (see section 5.8 of PC(R2));

(ii) Consequential amendment to Metropolitan Centre Zone policy MCZ-P8 to reflect that 15-storey buildings are enabled in the zone (see section 5.4 of PC(R2));

(iii) Application of the High Density Residential Zone around the Metropolitan Centre Zone (including a height variation control area to enable 10-storey development within a 400-metre walkable catchment of the Metropolitan Centre Zone), within the area identified as "High Density Residential" in sheets 4 and 5 of the maps contained within Attachment E to Mr Rae's evidence (see sections 4A.1, 19.1A, 19.2A and Appendix G of PC(R2));

(iv) The building height enabled in the Mixed Use Zone adjacent to Metropolitan Centre Zone is also amended to enable 10-storey development, on the basis that it is located within the same 400-metre walkable catchment as height variation control area in the High Density Residential Zone (see sections 8.4 and 8.9[39] of PC(R2));

(b) In relation to the Waikanae Town Centre:

(i) Adjustment of the High Density Residential Zone around the Waikanae Town Centre Zone to include the additional area identified as "High Density Residential" in sheet 11 of the maps contained within Attachment E to Mr Rae's evidence (see sections 4A.1, 19.1A and Appendix G of PC(R2));

(c) In relation to the Paraparaumu Beach and Raumati Beach Town Centres:

(i) Application of the High Density Residential Zone around the Waikanae Town Centre Zone within the area identified as "High Density Residential" in sheets 3, 6 and 7 of the maps contained within Attachment E to Mr Rae's evidence (see sections 4A.1, 19.1A and Appendix G of PC(R2));

(d) Consequential amendments to the following provisions in the District Objectives and Urban Form and Development chapters:

(i) DO-Ox3 (see section 1.9 of PC(R2));

(ii) DO-O16 (see section 1.14 of PC(R2));

[39] Note that this includes a consequential amendment the restricted discretionary activity standard for building height to ensure that the enabled building height in the Ihakara Street West, Ihakara Street East and Kapiti Road precincts of the Mixed Use Zone (which is adjacent to the Metropolitan Centre Zone) is distinguished from the Paraparaumu North Gateway precinct (which is not).

(iii) UFD-Px (see section 2.1 of PC(R2));

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

(i) The application of a 21-metre permitted building height under standard (2) of rule HRZ-Rx6 (see section 4A.1 of PC(R2));

(ii) The application of a height in relation to boundary standard with an 8-metre vertical measurement at the boundary and a 60° recession plane, under standard (3) of rule HRZ-Rx6 (see section 4A.1 of PC(R2));

(iii) That a restricted discretionary activity rule for small scale commercial activities on the ground floor of apartment buildings be included under rule HRZ-Rx18 (see section 4A.1 of PC(R2));

(f) Consequential amendments to the following height in relation to boundary provisions in the Centres, Mixed Use and Hospital zones:

(i) Standard (2) under rule MCZ-R7 (see section 5.6 of PC(R2));

(ii) Standard (2) under rule TCZ-R6 (see section 6.7 of PC(R2));

(iii) Standard (2) under rule LCZ-R6 (see section 7.7 of PC(R2));

(iv) Standard (2) under rule MUZ-R6 (see section 8.5 of PC(R2));

(v) Standard (2) under rule HOSZ-R6 (see section 9.1 of PC(R2));

(g) In relation to home businesses and home craft occupations in the General Residential and High Density Residential Zones, I recommend that the standards under rules GRZ-R10 and HRZ-Rx10 apply on a per residential unit basis, than on a per site basis (see sections 4.24 and 4A.1 of PC(R2));

(h) In relation to limited notification preclusions in the General Residential and High Density Residential Zones, I recommend that limited notification of resource consent applications for non-compliance with the outdoor living space, outlook space, windows to street and landscape area standards is precluded under rules GRZ-Rx5 and HRZ-Rx14 (see sections 4.28 and 4A.1 of PC(R2)).

Section 32AA evaluation

(152) I consider that the recommended amendments are a more appropriate way to achieve the objectives of PC2 and the purpose of the RMA than the notified provisions, for the following reasons:

(a) The reasons set out by Ms Williams in the section 32AA evaluations contained in Tables 2, 3, 5 and 9 in Appendix B of her evidence (which, for conciseness, I do not repeat here);

(b) In addition to this, consider that the increased level of enablement recommended above better provides for the District Plan to give effect to objective 3 and policy 3 of the NPS-UD, by enabling greater opportunities for more people to live in, and more businesses and community services to be located in, parts of the urban environment where more than one of the qualities set out under objective 3 of the NPS-UD are present.

6.2 Disagreement with the greater levels of enablement requested by Kāinga Ora

Submitters: Kāinga Ora [S122]

(153) In the following sections I set out the parts of the additional enablement requested by Kāinga Ora in their evidence (and discussed in section above) that I disagree with, and do not recommend to the Panel. As a result, PC(R2) does not incorporate these matters.

6.2.1 Ōtaki

(154) As set out above, Kāinga Ora have sought through their evidence that additional levels of development be enabled at Ōtaki, including:

(a) 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

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

(155) I do not consider that it is appropriate to enable the greater levels of development requested by Kāinga Ora in Ōtaki, on the basis that I do not consider that the additional level of development requested by Kāinga Ora is supported by objective 3 of the NPS-UD. I consider that PC(N) already gives effect to policy 3 of the NPS-UD at Ōtaki, and I only consider that it would be appropriate to provide for the additional levels of development requested by Kāinga Ora in areas where more than one of the qualities set out in Objective 3 are present.

(156) However, as set out in the table at paragraph (143) only one of the qualities set out under objective 3 applies at Ōtaki, namely (a), proximity to centres zones or other places of employment. In relation to the other two qualities under objective 3 (which I do not consider are present at Ōtaki), I note the following:

(a) In relation to objective 3(b), there is no rapid transit service, either existing or planned in the Regional Land Transport Plan at Ōtaki. While I acknowledge that Kāinga Ora consider that Ōtaki railway station may become a rapid transit stop in the future, until the extension of a rapid transit service to Ōtaki is incorporated into the Regional Land Transport Plan, I consider that such a position remains speculative. In my view, it is premature to rely on a potential future rapid transit service as a justification for greater levels of intensification in Ōtaki than those proposed by PC(N), when that service is yet to be planned.

(b) In relation to objective 3(c), I note that on the evidence contained in the Section 32 Evaluation Report[40], there appears (at least at this time) to be no demand for feasible development beyond that enabled by the MDRS in Ōtaki.

(157) If, in the future, the Regional Land Transport Plan is amended to provide for a rapid transit service to Ōtaki, then the Council will be obliged to prepare a future change to the District Plan to give effect to policy 3(c) of the NPS-UD at Ōtaki[41]. At such a time, it may be appropriate to reconsider whether the additional levels of enablement sought by Kāinga Ora are necessary or appropriate at Ōtaki taking into account a range of factors including whether being serviced by a rapid transit service also changes the market demand for different types of housing (such as apartment development) at Ōtaki, alongside tangata whenua aspirations for how policy 3(c) of the NPS-UD might be given effect to at Ōtaki.

(158) However, until such time as a rapid transit service is planned for Ōtaki, I consider it premature to provide for the greater levels of enablement requested by Kāinga Ora at Ōtaki. In my view, the additional level of enablement is not supported by objective 3 of the NPS-UD and as such I do not recommend that PC2 is amended to provide for this at Ōtaki. I continue to consider that, in the context of objective 3, the level of development generally enabled by PC(N) at Ōtaki[42] is appropriate to give effect to policy 3(d) of the NPS-UD (which is the only part of policy 3 that is relevant to Ōtaki at this time).

6.2.2 Amendments to District Objective DO-O11 (Character and Amenity Values)

(159) I have considered the amendments requested by Kāinga Ora to District Objective DO-O11 (Character and Amenity Values) and do not consider that these amendments are necessary to incorporate the MDRS or give effect to policy 3 of the NPS-UD. In my view, the amendments

[40] Property Economics (2022). *Assessment of Kāpiti Coast Residential Intensification Area Feasibilities*, contained in Appendix M to the Section 32 Evaluation Report.
See: https://www.kapiticoast.govt.nz/media/ssjisyp1/pc2_s32_appendixm_intensfeasibilityassessment.pdf
[41] Currently, only policy 3(d) of the NPS-UD applies at Ōtaki, in relation to the two Town Centre zones. However, if a rapid transit service to Ōtaki were to be provided for in the Regional Land Transport Plan, then Ōtaki railway station would meet the definition of a *rapid transit stop* under the NPS-UD, and policy 3(c), which requires the District Plan to enable building heights of at least 6-storeys within a walkable catchment of a rapid transit stop, will apply. Under the NPS-UD, the definition of *planned* in relation to an existing or planned rapid transit service means "planned in a regional land transport plan prepared and approved under the Land Transport Management Act 2003",
[42] Notwithstanding that I have recommended a larger qualifying matter area apply in relation to the Ōtaki Main Street Town Centre Zone, as discussed in section 2.3 above.

to the objective set out in PC(N) provide an appropriate balance between recognising the "unique character and amenity values of the District's distinct communities", while also providing for character and amenity values to change over time in response to the diverse and changing needs of people, communities and future generations. It is this second part of the objective's chapeau that ensures that the objective does not run contrary to objective 4 of the NPS-UD and does not frustrate decision makers from giving effect to policy 6(b) of the NPS-UD. Further, the reference to "distinct communities" as opposed to "urban environments" in the objective (as set out under PC(N) is deliberate. The objective recognises that the District's communities occupy both rural and urban environments, that the character and amenity value outcomes sought by the objective apply to both.

(160) For these reasons, I do not recommend amending the objective in the manner requested by Kāinga Ora in their evidence.

(161) However, I do consider that Kāinga Ora's request to replace the phrase "so that residents and visitors enjoy" at the end of the chapeau with "resulting in", is a useful amendment as it provides for a clearer and more objective approach to interpreting the outcomes sought by the objective. On this basis, I have included in my recommendations in the section above that this amendment is incorporated into the objective (as identified in section 1.14 of PC(R2)).

6.2.3 Policy direction for anticipated building heights

(162) District Objective DO-Ox3 and policies UFD-Px, GRZ-Px6, HRZ-Px6, MCZ-P8, TCZ-P6, LCZ-P6 and MUZ-P7 specify the building heights that are enabled in each of the areas within the District where policy 3 of the NPS-UD applies. To ensure that it is clear that a range of building heights are enabled in these areas, the provisions use the term "up to" in relation to those building heights. For example, under policy TCZ-P6, "buildings up to 6-storeys" are enabled. This means that buildings up to and including 6-storeys are enabled, but buildings greater than 6-storeys are not.

(163) In their evidence (as well as in their primary submission) Kāinga Ora request that the term "up to" in each of these provisions is replaced with the term "at least". I acknowledge that policies 3(b) and 3(c) in the NPS-UD both use the term "at least" when specifying the building heights that district plans must enable in certain areas. However, it does not follow that this same term must be used in the District Plan when describing, through objectives and policies, the planned built form of an area. Where policies 3(b) and (c) of the NPS-UD require the District Plan to enable building heights of at least 6-storeys in a particular area (for example), it does not require all heights above 6 storeys to be enabled in that area. Rather, it provides discretion for the Council to enable an appropriate building height in that area, so long as it is at least 6-storeys. A district plan that enables building heights up to and including 6-storeys achieves this requirement.

(164) I consider that replacing the term "up to" with the "at least" in the district plan provisions would be detrimental to the interpretation and application of these provisions for the following reasons:

(a) It would undermine certainty about what the planned built form sought to be achieved in each of the relevant areas is. For example, if the district plan policy for a particular area is that buildings of "at least" 6-storeys are enabled, then any building height above 6-storeys is enabled. This provides no certainty to plan users or decision makers as to what building height is sought to be achieved in a particular area.

(b) I am concerned that the provisions would be interpreted as meaning that buildings that are less than the specified building height are not enabled (in other words, that the provisions are interpreted as seeking a minimum building height be achieved). Were this interpretation to be applied to decision making, it could lead to a counterproductive outcome for enabling development capacity and providing for housing variety and choice if otherwise feasible development was not granted a consent on the basis that it was not "at least" the height specified in the relevant area.

(165) On this basis, I do not consider that it is appropriate to amend the objectives and policies set out above to replace the term "up to" with "at least" in relation to specifying appropriate building heights.

6.2.4 Height in relation to boundary standard in the High Density Residential Zone

(166) In relation to the height in relation to boundary (HIRB) standard requested by Kāinga Ora, I agree with Ms Williams (at paragraph 7.2 of her evidence) that a more enabling HIRB standard is appropriate for an area where higher density apartment development is the intended outcome.

(167) However, I am concerned about the potential impacts of the "19m + 60°" HIRB standard (a recession plane that inclines at an angle of 60° from a point 19 metres above the ground level at the boundary) requested by Kāinga Ora, which would apply to the first 22 metres of a side boundary back from the road boundary. As demonstrated by Mr Rae (in drawing SK09 in attachment D of his evidence), such a standard would effectively enable several 6-storey (or even 7-storey) apartment buildings to be located adjacent to each other, separated by only a 2-metre gap (comprised of the 1 metre setback between each building and the boundary between them). While I accept that there may be benefits to such an enabling HIRB standard (as set out by Mr Rae in paragraph 5.16 of his evidence) I remain concerned about the following potential impacts of such an enabling standard:

(a) While the standard encourages buildings to occupy the street edge, it may also lead a situation where the street space is effectively enclosed by a wall of buildings (I consider

this is demonstrated by the rendering included. I am concerned that this could lead to a street space that is visually and physically disconnected from the wider environment due to a lack of spaces between buildings. In my opinion, this would be detrimental to the quality of the street environment.

(b) The standard would enable tall, thin spaces (2 metres wide) to be developed between buildings. I consider that these spaces, due to their dimensions, are unlikely to be overlooked or used for any practical, on-site amenity or landscape purpose and are likely to become, for lack of a better term, a wasted space. I consider that such spaces are likely to lead to adverse effects on the adjacent street space and surrounding residential environment. I also consider that such spaces would be contrary to crime prevention through environmental design (CPTED) principles.

(c) The standard does not encourage or incentivise amalgamating smaller sites to create larger sites of a sufficient size to achieve more desirable design outcomes for higher density development (including sufficient on-site space for access, servicing, on site communal open space and outlook from residential units).

(168) On this basis, I consider that the 19m + 60° HIRB standard is not appropriate for the High Density Residential Zone, but I do consider that the 8m + 60° HIRB standard requested by Kāinga Ora for the remainder of boundaries is an appropriate standard. This standard would provide for 21-metre-tall buildings to be set back approximately 7.5 metres from the boundary. In my opinion, such a standard is sufficient to address the issues that I have raised above, while also providing enabling a greater level of development to occur in the zone. On this basis, I have recommended that 8m + 60° HIRB standard apply in the High Density Residential Zone.

(169) I note that I have recommended that the more enabling standard not apply at the boundary of a designation for rail corridor purposes (and instead that the MDRS standard apply) based on the matters raised by KiwiRail (which I discuss further in section 9.1). In this case, I have recommended that the MDRS height in relation to boundary standard apply.

6.2.5 Minimum vacant allotment size

(170) In the Council Officers' Planning Evidence, I recommended that a minimum vacant allotment size of 420m^2 apply to vacant lot subdivision, with a minimum shape factor of 13 metres. This size and shape factor was based on what I consider would be required to accommodate three residential units (which is what is permitted by the MDRS).

(171) Kāinga Ora have sought removal of the minimum vacant allotment size, and replacement with an 8 metre by 15 metre shape factor based on architectural testing. At paragraph 12.3 of her evidence, Ms Williams considers that the anticipated outcome of the Amendment Act is that

any minimum lot size or shape requirements are based on accommodating a single typical dwelling (rather than three).

(172) I disagree that the intent of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the Amendment Act) is to require that any minimum vacant allotment size or shape requirements are based on providing for a single dwelling. Under clause 7 of Schedule 3A to the RMA, subdivision provisions must be consistent with the level of development permitted by the MDRS, and the MDRS permit three dwellings per site, not one. In my opinion, the risk of basing the minimum vacant allotment size on a single dwelling is that this would enable applicants to establish an inappropriate permitted baseline through a vacant lot subdivision consent. I therefore continue to consider that the minimum vacant allotment size recommended in PC(R1) is appropriate, and I do not recommend the alternative sought by Kāinga Ora.

(173) In any case, if an applicant wishes to avoid the vacant lot subdivision size requirements, under proposed provision SUB-RES-Table x1 there are options available to them, including applying for land use consent for dwellings concurrently with subdivision consent.

6.3 Policy 3(d) – interpretation of "commensurate with the level of commercial activities and community services"

Submitters: Nancy Gomez [S160], Andrena and Bruce Patterson [S124], Andrew Hazelton [S074]

(174) At the hearing, several submitters referred the Ministry for the Environment's (MfE) guideline *Understanding and implementing intensification provisions for the National Policy Statement on Urban Development*[43] to critique the application of policy 3(d) of the NPS-UD in relation to certain local centre zones. Specifically, it was argued that local centre zones such as the Waikanae Beach local centre zone do not contain a sufficient range of existing commercial activities or community services to justify any increases in building height under policy 3(d), and that this position is supported by the MfE guidance (referring specifically to section 6.5.1 of the guidance).

(175) With respect, I consider that MfE's guidance is of little value in interpreting policy 3(d) of the NPS-UD. I note that the guidance was published in September 2020, alongside the first version of the NPS-UD, and does not account for the Amendment Act (nor was it updated to account for this). This is material for two reasons:

[43] 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

(a) The Amendment Act substantially changed policy 3(d) of the NPS-UD. The guidance is based on implementing the superseded version of policy 3(d), and does not account for the new version of policy 3(d) that the Council must give effect to;

(b) The guidance does not consider the MDRS and its relationship to the new version of policy 3(d).

(176) I note the two versions of policy 3(d) (the original and the current operative versions) are as follows:

(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.

(177) The original version of the policy focussed on the accessibility an area to a range of commercial activities and community services (without reference to zones). This required an analysis of commercial activities and community services across the urban environment (regardless of zone), alongside and analysis of accessibility to these activities and services. The lack of reference to zones in the policy necessitated an analysis that focussed on existing established activities and services, wherever they are located in the urban environment.

(178) The new version of policy 3(d) is specifically focussed on the adjacency of an area to town, local and neighbourhood centre zones. The focus of the new policy on centres zones is a fundamental difference which, in my opinion, requires that the planned level of commercial activities and community services must be considered, not just the existing level. This approach is consistent with the generally understood planning principle that environments (in this case, the centres zones under consideration) include not only those activities that exist

now, but also activities that are permitted to occur in the future. In relation to the Local Centre Zone, regardless of how much activity exists in the zone now, the permitted future environment provided for by the zone includes:

(a) Commercial activities and community services throughout the zone;

(b) Buildings with up to 100% site coverage and development of up to 3-storeys (12 metres) to accommodate these activities (with 4-stories being enabled as a restricted-discretionary activity).

(179) This enables local centre zones to be treated in a consistent manner with regard to the level of development that is planned to occur within them, regardless of the variations in the degree to which existing activities have established themselves within each zone at the present day.

(180) I consider that interpreting policy 3(d) in relation to the planned level of commercial activities and community services in a centres zone is logical in a planning context, as it avoids an otherwise circular argument against giving effect to policy 3(d). It cannot be right that a low degree of existing activity in a centre zone is a justification for not giving effect to policy 3(d), given that enabling increased development on sites around a centre zone would support the development of more activity in the centre zone itself (thereby assisting the District Plan to achieve the zone's planned outcome).

(181) Given its focus on the original version of policy 3(d), I do not consider that the MfE guidance appropriately considers how to interpret the new version of policy 3(d), which I have explained above. This is demonstrated by the reference in the guidance to an example of a *neighbourhood centre zone* that does not provide for a range of existing commercial activities and community services, whereas the new version of policy 3(d) (which the guidance does not consider) expressly includes neighbourhood centre zones.

(182) Further to this, as noted above, the MfE guidance on policy 3(d) does not account for the MDRS. 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.

(183) In summary, I consider that the MfE guidance in relation to policy 3(d) should be given little weight, and I consider that it is appropriate to interpret policy 3(d) by considering:

(a) The planned level of commercial activities and community services in a centre zone (not just existing activities);

(b) That giving effect to policy 3(d) must mean providing for a level of development that is greater than the MDRS.

(184) In relation to the application of policy 3(d) around local centre zones, PC(N) proposes to amend the MDRS within an approximate 200 metre walkable catchment of each centre zone to enable 4-storey development. I consider this to be an appropriate enablement of additional building height that gives effect to policy 3(d) on the basis of the planned level of commercial activities and community services in the local centre zone.

7.0 Design Guides

7.1 Urban design policies as an alternative to urban design guides

Submitters: Kāinga Ora [S122]

(185) PC(N) proposed to replace several existing design guides that are appended to the operative District Plan with a new Residential Design Guide (to apply in the General (and now High Density) Residential Zones and a new Centres Design Guide (to apply in the Centres and Mixed Use Zones).

(186) Design guides are often described as being either "statutory" or "non-statutory". Put simply, a statutory design guide is one that sits within the District Plan, and which is referred to through relevant policies and rules. In the case of PC(N), the design guides are proposed to be "statutory" because:

(a) They are included in the District Plan as an appendix (which means that their content is subject to Schedule 1 of the RMA);

(b) They are referenced in relevant zone policies, which require them to be considered in certain circumstances (see for example policy GRZ-Px6, under section 4.4 of PC(R2));

(c) They are provided for as a matter of discretion in relevant development rules (see for example rule GRZ-Rx6, under section 4.29 of PC(R2)). In this way, they function as assessment criteria for assessing the development proposal against the relevant policy.

(187) A "non-statutory" design guide is a design guide that sits outside of the District Plan and is not referenced by any District Plan provisions. Such a guide may be maintained by Council for educative purposes but would have no formal role in the interpretation or administration of the District Plan (such as in assessing resource consent applications). While it may referred to by applicants or decision-makers on an ad-hoc basis, it could not be relied upon as part of interpretation or implementation of the District Plan, as it would not be referred to in the provisions of the plan.

(188) Kāinga Ora's primary submission (and their evidence tabled for the hearing) sought that the Design Guides be removed from the District Plan. In her evidence for the hearing, Ms Williams set out her position (at paragraph 11.3) that while she supports the use of guidance, it is inappropriate for the District Plan to require *consistency* with the Design Guides. While it was not expressly stated, I infer (from the matters raised by Kāinga Ora in their original submission) that this is because the guidelines should not be read as rules or standards to be complied with (and the term *consistency* suggests a degree of rigidity that would be more appropriate for a standard, rather than a guideline).

(189) Instead of guidelines, Ms Williams considers that it would be more appropriate for the design outcomes to be expressed directly in District Plan policies and reflected through matters of discretion in the relevant development activity rules. Ms Williams' evidence includes policies that Kāinga Ora consider to be appropriate in lieu of the design guides (refer to Kāinga Ora's proposed policies GRZ-Px6, HRZ-Px6, MCZ-P8, TCZ-P6, LCZ-P6 and MUZ-P7) and matters of discretion in lieu of the design guides (refer to Kāinga Ora's proposed matters of discretion (2) and (3) under rule GRZ-Rx6, (1) and (2) under HRZ-Rx6, (1) and (7) under rule MCZ-R13, (1) and (7) under rule TCZ-R11, (1) and (8) under rule LCZ-R12, and (1) and (9) under rule MUZ-R13)).

(190) I have set out at paragraphs 385 to 396 of the Council Officers' Planning Evidence why I consider the incorporation of design guides into the District Plan, as proposed by PC(N), to be appropriate. My position on this remains unchanged, but I elaborate on the matters raised by Kāinga Ora at the hearing in the following paragraphs.

(191) The overarching policy objective that the Design Guides are responding to is encourage "high-quality" development as part of achieving a well-functioning urban environment[44]. This policy objective is nebulous, and its interpretation is subject to an understanding of what "high quality development" means, as well as an understanding of how the factors that contribute to high quality development are appropriately incorporated into a specific development proposal, having regard to the activity being proposed, the site, its context and the planned built form of the zone. Whether or not any given development that does not meet permitted activity standards is "high-quality" will be arguable, and subject to case-by-case assessment through the resource consent process.

(192) I accept the possibility that such an assessment could take place in the absence of the Design Guides by giving consideration to the matters set out in the policies proposed by Kāinga Ora. However, I consider that this would be less efficient and effective than undertaking an assessment against the Design Guides proposed by PC(N). This is principally because the policies proposed by Kāinga Ora introduce a range of urban design concepts into the District Plan that are, in my opinion, unclear and difficult to interpret without some form of illustration or guidance. This makes it difficult for applicants or decision makers to assess whether the policies have in fact been achieved.

(193) To take one example, clause (8) of policy GRZ-Px6 sought by Kāinga Ora seeks to "achieve quality, legible, safe and efficient circulation". The concepts contained in this clause are not explained, and likely to be unknown to many District Plan users who do not have urban design expertise. On the other hand, in relation to the Design Guides proposed by PC(N), a similar outcome in relation to accessibility is tangibly expressed through a series of guidelines on

[44] MDRS policy 5 seeks to encourage high-quality development, and MDRS objective 1 seeks to achieve a well-functioning urban environment. See clauses 6(1)(a) and 6(2)(e) of Schedule 3A to the RMA.

pages 7 and 8 of the Residential Design Guide (under the heading "Access and Bicycle Parking"), which set out in words the matters to be considered to achieve this outcome in practice, alongside illustrations that aid interpretation.

(194) I consider that this demonstrates the key benefit of statutory design guides. They provide clarity about how otherwise nebulous urban design concepts can be achieved in practice. This is a benefit to all District Plan users, as it provides greater certainty to both applicants and decision-makers as to what is expected by the provisions of the District Plan, which in turn provides for a more efficient assessment of resource consent applications. In the absence of statutory Design Guides, I consider that there is little certainty about how the concepts set out in Kāinga Ora's proposed policies will be interpreted in practice. This will likely lead to a greater complexity in plan interpretation and administration with increased reliance on experts to interpret these concepts on a case-by-case basis, which I consider would be inefficient for both applicants and the Council.[45]

(195) I acknowledge the issues raised by Ms Williams at paragraph 11.10 of her evidence, that statutory design guides can be problematic where they are at cross purposes with the development standards set out in the plan. I agree that this would be an issue where guidelines are drafted in such a way as they are interpreted as standards (rather than matters to be considered), and where they are drafted in a manner that is not consistent with the development standards of the underlying zone. In response to this, I note that the Design Guides proposed as part of PC(N) have been drafted with specific consideration of the level of development required to be enabled by the MDRS and policy 3 of the NPS-UD. I consider that none of the guidelines contained within the Design Guides are inconsistent with any of the development standards for the zones where they apply. In addition to this, the verbiage used in relation to each guideline ensures that they must be read as matters to be considered, rather than standards to be complied with. On this basis, I consider that the concerns raised by Ms Williams at paragraph 11.10 will not eventuate in relation to the design guides proposed by PC(N).

(196) I therefore continue to consider that the most appropriate approach to achieving the policy objective of encouraging high-quality development as part of achieving a well-functioning urban environment is to continue to incorporate the Design Guides into the District Plan as proposed by PC(N).

(197) Notwithstanding this, I agree with the alternative relief sought by Kāinga Ora at paragraph 11.12 of Ms Williams' evidence. There are various mentions across the relevant policies and matters of discretion about development being *consistent* with the design guides, and Ms

[45] While it was argued that the Design Guides could "sit outside" the District Plan and be used as a guide to interpret urban design concepts (such as those proposed by Kāinga Ora) within District Plan policies, I do not agree that this is a valid approach. If the Design Guides are to be used to interpret the provisions of the District Plan, then I consider that the guides must sit within the District Plan (as proposed by PC(N)). This ensures that the District Plan can be interpreted in its own right, without reference to a document that sits outside the plan (and which is not subject to Schedule 1).

Williams states that such a direction is inappropriate because "terms such as "consistent" have the effect of reducing the intended flexibility of the guide to one that is more akin to a compliance criterion". I agree with Ms Williams on this matter. The guidelines are to be read as considerations, not standards. On this basis, I recommend that all references to "consistent with" in policies that relate to the Design Guides are replaced with "fulfils the intent of" (which is the phrase suggested by Ms Williams at paragraph 11.12 of her evidence). In relation to matters of discretion that refer to the design guides, I consider that the phrase "the relevant matters contain in" the design guides is appropriate, as it provides (through use of the term relevant) for the level of flexibility intended by the policies.

Recommendations

(198) For the reasons set out above, I recommend that the alternative relief requested by Kāinga Ora at paragraph 11.12 of Ms Williams' evidence is accepted, and that the following policies and matters of discretion which relate to the Design Guides are amended to replace the phrase "consistent with" with "fulfils the intent of" (for policies) and "the relevant matters in" (for matters of discretion):

(a) In the General Residential Zone:

  (i) Policy GRZ-Px6 (see section 4.4 of PC(R2));

  (ii) Matter of discretion (1) under rule GRZ-Rx6 (see section 4.29 of PC(R2));

(b) In the High Density Residential Zone:

  (i) Policy HRZ-Px6 (see section 4A.1 of PC(R2));

  (ii) Matter of discretion (1) under rule HRZ-Rx6 (see section 4A.1 of PC(R2));

(c) In the Metropolitan Centre Zone:

  (i) Policy MCZ-P8 (see section 5.4 of PC(R2));

  (ii) Matter of discretion (4) under rule MCZ-R13 (see section 5.8 of PC(R2));

  (iii) Matter of discretion (2) under rule MCZ-R14 (see section 5.9 of PC(R2));

(d) In the Town Centre Zone:

  (i) Policy TCZ-P6 (see section 6.4 of PC(R2));

  (ii) Matter of discretion (3) under rule TCZ-R10 (see section 6.10 of PC(R2));

  (iii) Matter of discretion (4) under rule TCZ-R11 (see section 6.10 of PC(R2));

(iv) Matter of discretion (9) under rule TCZ-R13 (see section 6.13 of PC(R2));

(e) In the Local Centre Zone:

(i) Policy LCZ-P6 (see section 7.5 of PC(R2));

(ii) Matter of discretion (4) under rule LCZ-R12 (see section 7.8 of PC(R2));

(f) In the Mixed Use Zone:

(i) Policy MUZ-P7 (see section 8.4 of PC(R2));

(ii) Matter of control (2) under rule MUZ-R9 (see section 8.6 of PC(R2));

(iii) Matter of discretion (2) under rule MUZ-R11 (see section 8.7 of PC(R2));

(iv) Matter of discretion (9) under rule MUZ-R12 (see section 8.8 of PC(R2));

(v) Matter of discretion (4) under rule MUZ-R13 (see section 8.9 of PC(R2));

(g) In the Hospital Zone:

(i) Matter of discretion (4) under rule HOSZ-R8 (see section 9.2 of PC(R2));

(ii) Matter of discretion (9) under rule HOSZ-R9 (see section 9.3 of PC(R2));

(h) In the Subdivision in Working Zones chapter:

(i) Matter of control (7) under rule SUB-WORK-R36 (see section 10.14 of PC(R2));

(ii) Matter of control (7) under rule SUB-WORK-R37 (see section 10.15 of PC(R2));

(iii) Matter of control (7) under rule SUB-WORK-R39 (see section 10.16 of PC(R2));

(iv) Matter of discretion (7) under rule SUB-WORK-R40 (see section 10.17 of PC(R2));

(v) Matter of discretion (7) under rule SUB-WORK-R41 (see section 10.18 of PC(R2));

(vi) Matter of discretion (7) under rule SUB-WORK-R42 (see section 10.19 of PC(R2));

(vii) Matter of discretion (7) under rule SUB-WORK-R43 (see section 10.20 of PC(R2));

(viii) Matter of discretion (7) under rule SUB-WORK-R44 (see section 10.21 of PC(R2)).

Section 32AA evaluation

(199) I consider that the recommended amendments are a more appropriate way to achieve the objectives of PC2 and the purpose of the RMA than the notified provisions, because they improve the interpretation of the policies and matters of discretion associated with the Design Guides by ensuring that the wording of these provisions accurately reflects the intended purpose and function of the Design Guides within the District Plan.

7.2 Specific amendments to design guides

(200) In the Council Officers' Planning Evidence, I had recommended removing guideline 1 and part of guideline 15 of the Residential Design Guide, as well as parts of guideline 19 and 33 of the Centres Design Guide in response to submission points 115.01, 115.04 and 115.05 from Templeton Kāpiti Limited. The principal reason for recommending these amendments was efficiency, as I considered that these matters were addressed in other guidelines within the Design Guides.

(201) At the hearing, Commissioner Black questioned whether the removal of these guidelines would impact on the integrated outcome sought by the guidelines. In particular, guidelines 1 and 15 of the Residential Design Guide and guideline 15 of the Centres Design Guide sought integration between the design of buildings and the street network by encouraging dwellings to be oriented towards the street (be it the public street or an internal street network). Guideline 33 of the Centres Design Guide sought that the design of physical elements that define public space as part of a development is integrated with adjacent building design.

(202) In making the recommendations to remove these guidelines as part of the Council Officers' Planning Evidence, I had not considered that their removal would impact on the integrative focus of the Design Guides. I consider that their removal would reduce the effectiveness of the Design Guides as it relates to integration of building design with the street network and public realm. On this basis, I recommend that these guidelines are reinstated.

(203) In relation to guideline 33 of the Centres Design Guide, I have recommended reinstating the guideline, but with different wording to the original guideline, to ensure that the focus of the guideline is on integrating the design of public space with the design of adjacent buildings, while responding to the local context. I have removed the reference to uniqueness, as I consider this adds unnecessary complexity to the guideline and may detract from its principal focus. I have also recommended replacing the words "are compatible with" with "relate to" to describe the intended design relationship between elements that define public space and adjacent buildings. I consider that the words "are compatible with" are inappropriate, as it sets

up a subservient relationship where public space elements would be expected to "follow" the design of an adjacent building (rather than be integrated with it in an appropriate manner). I consider this amendment addresses in part the concerns raised by Templeton Kāpiti in their original submission S115.05.

(204) On this basis, I recommend the following wording for guideline 33 of the Centres Design Guide (tracked changes shown from the notified version of the Design Guide):

> *33. When designing outdoor public space, use design elements (e.g. shapes, patterns, structures) that ~~are compatible with~~ relate to the design of adjacent buildings ~~to create spaces that are unique~~ and respond to their local context.*

Recommendations

(205) For the reasons set out above, I recommend that:

(a) Guidelines 1 and 15 of the Residential Design Guide and guideline 15 of the Centres Design Guide are reinstated;

(b) Guideline 33 of the Centres Design Guide is partially reinstated, but with amended wording as set out above.

Section 32AA evaluation

(206) I consider that the recommended amendments are a more appropriate way to achieve the objectives of PC2 and the purpose of the RMA than the notified provisions, because they provide for the Design Guides to better encourage integration between building design and the street and public open space, which I consider will contribute to a well-functioning urban environment consistent with policy 1 of the NPS-UD.

7.3 Tangata whenua values and the Design Guides

(207) In their original submissions and again at the hearing, Te Ātiawa ki Whakarongotai [S100], Te Rūnanga o Toa Rangatira [S163], Ngā Hapū o Ōtaki [S203] and A.R.T. [S210] all expressed concern that the Design Guides did not take into account tangata whenua values. I note that iwi have identified that design guides are an opportunity to incorporate or give expression to tangata whenua "kaupapa (values) and huanga (vision)"[46], and to provide for tangata whenua to "see themselves reflected in the district, not just in papakāinga.

[46] S100, p.26.

(208) I recognise the merits of this concern and have addressed it in relation to PC2 at paragraphs 188 to 196 of the Council Officers' Planning Evidence. I elaborate further on this in the following paragraphs.

(209) I agree that there would be benefits to providing for some form of design guidance that incorporated tangata whenua values. I consider that such an approach would contribute towards achieving a well-functioning urban environment, as contemplated by objective 1 and policy 1 of the NPS-UD.

(210) However, as set out at paragraph 190 of the Council Officers' Planning Evidence, I consider that sufficient time and resource would be required in order for the Council and iwi to work together to achieve such an outcome. In particular, I consider that there are several matters that may need to be addressed as part of any future work in this area, to ensure that the desired outcome (that the urban environment reflects tangata whenua kaupapa and huanga) is achieved. These matters include:

(a) Determining the appropriate mechanism for incorporating tangata whenua values into District Plan design guidance. This may include consideration of whether it is appropriate to incorporate these matters into the Design Guides that are being proposed by PC2, or whether separate specific guidance is necessary (or a combination of both).

(b) Consideration as to whether any guidance needs to be place-based, to reflect the unique values that may be held by tangata whenua in different parts of the district.

(c) Consideration as to whether design guidance that relates to tangata whenua values can be appropriately interpreted by District Plan users without requiring users to seek the advice with tangata whenua. If it is necessary for District Plan users to seek the advice of tangata whenua in order to appropriately interpret the guidance, it may also be necessary to consider whether tangata whenua are appropriately resourced to provide that advice.

(d) Consideration of appropriate safeguards to ensure that design guidance that relates to tangata whenua values is applied in a manner that avoids mis-appropriation of those values. Mechanisms such as a design review panel that incorporated tangata whenua representatives, as raised by iwi in their submissions, could be one method to address this. Another mechanism could include an ability for Council officers processing resource consents to seek the advice of tangata whenua. Consideration may also need to be given as to the circumstances where such measures would be necessary (in other words, would such measures apply to all development subject to such design guidance, or just developments over a particular size threshold).

(211) For these reasons, I consider that incorporating tangata whenua values into District Plan design guidance is a matter that requires careful consideration, and appropriate time and resourcing to both develop the guidance and then establish mechanisms to ensure that any guidance that is developed achieves the outcomes sought by tangata whenua. I do not consider that this can be reasonably achieved as part of this ISPP. In addition to this, because of the potential resourcing implications, incorporating and implementing tangata whenua design guidance as part of the District Plan may also require consideration of appropriate resourcing through the Long-Term Plan. Notwithstanding this, I consider that there is merit in the Council and tangata whenua continuing to work together on matters related to tangata whenua design guidance as part of future work on the District Plan (and other Council strategies and plans, including the Long-term Plan, where this is necessary and appropriate).

8.0 Retirement Villages

Submitters: Ryman and RVA [S196 & S197]

(212) In responding to the matters raised by the Ryman and the Retirement Villages Association (RVA), I note that I have reviewed and considered the supplementary evidence provided by Ms Nicola Williams, the planning expert for Ryman and the RVA, dated 6 April 2023.

(213) I note that I have addressed retirement villages at section 4.6.2 of the Council Officers' Planning Evidence. Except where noted below, the conclusions that I have reached in that section of my evidence remain unchanged.

8.1 Retirement villages in the General Residential Zone

(214) In their primary submission, and again in their evidence at the hearing, Ryman and RVA sought what I consider to be a highly enabling regime for retirement villages in the General Residential Zone, which would include:

(a) The addition of a retirement village policy, or amendment of policy GRZ-P16 to better provide for retirement villages;

(b) A new permitted activity rule for retirement villages (not subject to any standards);

(c) Modifications to permitted activity rule GRZ-Rx1 to provide for 'retirement units';

(d) A new restricted discretionary activity rule for retirement villages that breach permitted activity standards for buildings.

(215) At paragraphs 13 to 16 of her supplementary evidence, Ms Williams sets out an alternative approach which, as I understand it, seeks the following (as set out at paragraph 16 of Ms Williams' evidence):

(a) The objective and policy amendments requested by the submitters in their primary submission are replaced with a stand-alone objective and policy for retirement villages;

(b) The restricted discretionary activity rule for retirement villages sought in the primary submission is replaced with a new restricted discretionary activity rule, with new matters of discretion.

(216) Ms Williams notes at paragraph 17 of her evidence that as an alternative to this approach, policy GRZ-P16 (Supported Living and Older Persons Accommodation) could be amended to provide for a similar outcome, although her preference is the stand-alone provisions set out at paragraph 16 of her evidence.

(217) In responding to the evidence provided by Ryman and the RVA (including the supplementary evidence), I wish to return to my principal concern with enabling retirement villages in the General Residential Zone in the manner sought by Ryman and the RVA (which I set out at paragraphs 338 to 343 of the Council Officers' Planning Evidence). As stated at paragraph 343, my position was that:

> *the nature and scale of effects associated with the non-residential activities that would be enabled as part of a retirement village is uncertain and potentially open ended. Because of this uncertainty, and in light of the objectives and policies that seek to appropriately manage the effects associated with non-residential activities in the General Residential Zone, I do not consider that providing specifically for retirement villages as a permitted or restricted activity in the terms sought by the RVA… is appropriate.*

(218) Mr Mitchell (the planning expert who filed evidence for the hearing on behalf of Ryman and RVA) considers that retirement villages are residential activities, and that my concerns with respect to non-residential activities are misplaced. Notwithstanding Mr Mitchell's evidence, I continue to consider that *retirement villages* are not the same as *residential activities*[47]. Both are defined differently in the National Planning Standards. There is certainly an overlap in the definitions: retirement villages include "land and buildings for peoples' living accommodation" (which is the definition of residential activity). However as set out in the definition of retirement villages, they "may also include any of the following for residents within the complex: recreation, leisure, supported residential care, welfare and medical facilities (inclusive of hospital care) and other non-residential activities" (my emphasis added).

(219) The fact that non-residential activities are regularly incorporated into retirement villages is demonstrated by the evidence of Ms Owens (at paragraph 48 of her evidence) and Mr Brown (and paragraph 31 of his evidence), both of whom describe how retirement villages generally include on-site facilities such as pools, gyms, theatres, libraries, bars and restaurants, communal sitting areas, bowling greens and landscaped grounds.

(220) Whether or not retirement villages as a whole are a considered to be a residential activity is somewhat beside the point. The point is that non-residential activities that would be enabled as part of a retirement village under the regime sought by Ryman and RVA are likely to have effects that are not residential in nature, and which are not anticipated in the zone. Effects could include:

(a) Noise effects associated with non-residential activities in a residential zone (for example, effects associated with bars or restaurants);

[47] I note that both Mr Mitchell (at paragraph 49 of his evidence) and Mr Hinchey (counsel for Ryman and RVA, at paragraphs 57 to 59 of his legal submissions) reference two prior decisions of the courts to support this argument. I consider that these cases are of limited relevancy, because neither considered the National Planning Standards definition of retirement villages.

(b) Nuisance effects associated with the hours of operation of non-residential activities;

(c) Adverse effects on the viability of commercial activities within centres zones (where that demand for those activities is satisfied through on-site facilities);

(d) Reverse sensitivity effects, particularly as it relates to higher density residential development that is otherwise encouraged by the General Residential Zone provisions (for example, amenities such as communal sitting areas and bowling greens may not wish to be overlooked or overshadowed by adjacent higher density residential development).

(221) I don't disagree that the establishment of non-residential activities, as envisaged by the National Planning Standards definition of retirement villages and as described by Ms Owens, Mr Brown and Professor Kerse are an important part of a well-functioning retirement village. I also note that both Ms Owens and Mr Brown allude to the fact that some of the effects associated with non-residential activities within a retirement village can be managed through the layout of the village, including through locating facilities in a central building, and that these facilities would not be available to the public.

(222) However, this is not what is being sought by Ryman and RVA. Apart from policies and matters of discretion associated with building bulk and location, the regime sought by Ryman and the RVA includes no standards or matters of discretion that provide for any degree of control over the effects associated with non-residential activities established within a retirement village. For example, the following matters would not be controlled by the District Plan under the regime sought by Ryman and the RVA:

(a) The location of non-residential activities within a retirement village is not controlled (for example, under the regime sought, it would be permitted to locate a restaurant or bar in a retirement village adjacent to the boundary of the village).

(b) Hours of operation for non-residential activities in a retirement village are not controlled (I consider this would be a particular issue where those activities are located near to the boundary).

(c) Noise effects are not controlled. On the basis that Ryman and RVA consider that retirement villages as a whole are a residential activity, the noise limits set out under rule NOISE-R1 would not apply.

(d) There is no control over the size or quantity of commercial activities (such as bars or restaurants) that could be established within a retirement village in order to mitigate any actual or potential effect of these activities on the viability of commercial activities in the district's centres. While these activities must be "for the residents", there is control on also making these activities available to the public.

(223) Apart from building bulk and location, the regime sought by Ryman and RVA seeks no standards in relation to any actual or potential effects associated with non-residential activities established as part of a retirement village and does not seek any matters of discretion that would enable the Council to consider these effects through a resource consent process. I consider that there is no planning or other evidence (such as economic evidence) to support a retirement village regime in the General Residential Zone that provides no control over the effects associated with non-residential activities established as part of a retirement village[48]. Further, I do not consider that there is sufficient evidence to demonstrate what would be appropriate standards or matters of discretion in this regard, such that I do not consider that I can advise the Panel on this.

(224) I therefore continue to consider (as I set out at paragraphs 338 to 343 of the Council Officers' Planning Evidence) that the regime for retirement villages sought by Ryman and RVA in the General Residential Zone (including the alternative approach suggested by Ms Williams in her supplementary evidence) is not appropriate in light of the objectives and policies that seek to appropriately manage the effects associated with non-residential activities in the zone[49].

(225) Notwithstanding this, I have considered whether retirement villages should be better recognised at a policy level within the zone. I consider it is appropriate to amend policy GRZ-P16 to better recognise retirement villages as a method of providing housing for older persons. In this regard, I consider it appropriate to amend the policy to incorporate several of the matters set out under the retirement village specific policy sought by Ryman and the RVA (described at paragraph 8 of Ms Williams' supplementary evidence). Specifically I recommend:

(a) Amending the policy to include retirement villages in the list of forms of accommodation for older persons that are provided for under the policy (this includes consequential amendments to add the term "older persons accommodation" after references to "supported living accommodation" to ensure that retirement villages are not interpreted as a subset of "supported living accommodation".

(b) Amending the list of principles to include the recognition of functional and operational needs of older persons accommodation (as set out in clause (2)(b) of the policy sought by Ryman and the RVA, at paragraph 8 of Ms Williams' supplementary evidence).

(226) I consider that these amendments to GRZ-P16 will generally provide for the matters set out in the policy for retirement villages sought by Ryman and the RVA, with the exception of clause (2)(a) of the policy sought by Ryman and the RVA, at paragraph 8 of Ms Williams'

[48] In contrast to this, I note that Kāinga Ora have sought (and I have recommended) a limited amount of commercial activity be provided for in the High Density Residential Zone, subject to standards related to the location, size and hours of operation (amongst other matters), and appropriate matters of discretion. This request was supported by planning and economic evidence provided by Kāinga Ora that set out why this is considered appropriate.
[49] At footnote 139 of the Council Officers' Planning Evidence, I referred to objectives DO-O3 and DO-O15, and policies BA-P2 and GRZ-P19.

supplementary evidence. In this regard, I consider it appropriate that the density of retirement villages is assessed with respect to the planned built character of the zone.

Recommendations

(227) For the reasons set out above, I recommend that General Residential Zone policy GRZ-P16 (see section 4.37 of PC(R2)) is amended to:

(a) Recognise retirement villages as a form of accommodation for older persons (this includes consequential amendments to add the term "older persons accommodation" after references to "supported living accommodation" to ensure that retirement villages are not interpreted as a subset of "supported living accommodation");

(b) Recognise the functional and operational needs of accommodation for older persons, including that it may have a unique layout and internal amenity needs to cater for the requirements of residents as they age.

(228) I also recommend that the same amendments are applied to the equivalent policy in the High Density Residential Zone (see policy HRZ-Px13, under section 4A.1 of PC(R2)).

Section 32AA evaluation

(229) I consider that the recommended amendments are a more appropriate way to achieve the objectives of PC2 and the purpose of the RMA than the notified provisions, because they provide appropriate recognition of the housing needs of older persons in a manner that is consistent with the policies of the NPS-UD and MDRS that promote housing variety and choice, while ensuring that effects associated with non-residential activities associated with retirement villages in the residential zones can continue to be assessed through appropriate resource consent processes.

8.2 Retirement villages in the Centres and Mixed Use Zones

(230) The issues with respect to retirement villages in the Centres and Mixed Use Zones are very different to those in the General Residential Zone. Non-residential activities, including social and community services and commercial activities are provided for in these zones. As set out paragraph 346 of the Council Officers' Planning Evidence, I considered that a key issue with retirement villages in these zones is that they would establish in such a manner that the zone would no longer function as a centre for commercial activities or community services.

(231) A key provision in each of these zones that seeks to avoid this outcome is the restriction on residential activities located at the ground floor, as set out under the permitted activity rule for residential activities (see for example, rule TCZ-R5 in the Town Centre Zone). At the hearing,

the issue was narrowed down to whether or not this same provision should apply to retirement villages, and as I understand it, Ryman and the RVA consider that this standard should also apply to retirement villages (and this is reaffirmed by Ms Williams at paragraph 21 of her supplementary evidence).

(232) An additional issue was whether commercial activities and community services within a retirement village in a centres zone would be available to the public (given that the definition or *retirement villages* requires them to be "for the residents").

(233) I agree that the development of retirement villages that are consistent with the planned density of the centres zones, and which ensure that the ground floor is retained for commercial activities or community services available to the public, is a desirable outcome, in the same way any form of higher density residential development in a centre zone would be desirable.

(234) Given that it appears that Ryman and the RVA are seeking that retirement villages be provided for in a manner that aligns with the permitted activity standards already set out for other forms of development within the zone (and I note that the underlying zone provisions do not limit the number of residential units developed on any given site), I do not consider that it is necessary to provide for a separate permitted activity and restricted discretionary activity rule for retirement villages. This is because (somewhat unusually for Tier 1 district plans), the Centres and Mixed Use Zones in the Kapiti Coast District Plan operate under a permissive presumption[50]. This is codified under the permitted activity rules for each zone, which state that any activity that is not specified as a permitted, controlled, restricted discretionary, discretionary or non-complying activity is a permitted activity, so long as it complies with all permitted activity standards in the zone (see for example rule TCZ-R2 in the Town Centre Zone). Non-compliance with permitted activity standards is a restricted discretionary activity (see for example rule TCZ-R9 in the Town Centre Zone).

(235) In other words, under the operative provisions of the Centres and Mixed Use Zones (as well as those proposed by PC2), retirement villages will be a permitted activity where they comply with the zone's permitted activity standards, and will be a restricted discretionary activity where they do not. Given that this is the activity status sought by Ryman and the RVA in these zones, I do not consider that it is necessary to provide for additional rules for retirement villages to achieve an outcome that is already provided for by the operative zone rules.

(236) In relation to policy recognition for residential development within the centres and mixed use zones, I agree with Ms Williams that the existing policy related to mixed use activity is relatively unclear. Given that a range of non-residential activities are already provided for through the zone, I agree that it is appropriate that this policy is amended to focus on residential activities. On this basis, I consider that the alternative policy wording set out in paragraph 25 of Ms

[50] In other words, the default activity status is for activities not otherwise listed is permitted. Compare this to the proposed Porirua City or Wellington City District Plans, where the default activity status is discretionary.

Williams' supplementary evidence is generally appropriate, although I consider it is necessary to incorporate the following amendments to the wording requested by Ms Williams:

(a) I consider it necessary to include a clause that retains reference to the "viability and vitality of the centre" contained within the operative policy (to ensure that the policy is consistent with objective DO-O16);

(b) I consider it necessary to include a clause to the effect that the commercial activities or community services are provided for on the ground floor of development (consistent with the permitted activity standard for residential development in centres zones);

(c) I also have omitted the phrase "including the aging population" after the phrase "accessible to people of all ages" because I consider the former phrase is inherent in the latter.

Recommendations

(237) For the reasons set out above, I recommend that policies MCZ-P7, TCZ-P5, LCZ-P5 and MUZ-P6 are amended to better recognise the development of medium and high density residential development (see sections 5.3, 6.3, 7.4 and 8.3 of PC(R2)).

Section 32AA evaluation

(238) I consider that the recommended amendments are a more appropriate way to achieve the objectives of PC2 and the purpose of the RMA than the notified provisions, because they better provide for mixed use residential development to occur in the centres and mixed use zones in a manner that is consistent with objectives 1 and 3 and policy 1 of the NPS-UD, while also ensuring that residential development that does occur supports the use and function of centres zones as places for the public to access a range of commercial activities and community services.

8.3 Retirement villages and financial contributions provisions

(239) Ryman and the RVA raised concerns around the financial contributions provisions proposed by PC(N). This was principally addressed by the evidence of Mr Akehurst, the economics expert on behalf of the submitters. As I understand it, the key concerns raised by Mr Akehurst relate to:

(a) That the provisions do not contain a method of directly calculating the quantum of financial contributions that a development might generate, and that in the absence of this Council officers would default to the method of calculation set out in the

Development Contributions Policy for retirement villages (at paragraphs 30 to 32 of his evidence).

(b) Double dipping (or the taking of financial contributions and development contributions for the same development and purpose) (at paragraph 51 of his evidence).

(240) Prior to responding to these concerns, I consider it important to set the context by describing the existing situation in relation to development contributions and financial contributions, and the issue that the amendments to the financial contributions proposed under PC(N) seek to address.

The existing regime

(241) The Council principally collects funding for the development of infrastructure through development contributions under the Local Government Act 2002. Development contributions for new development are calculated in accordance with the Council's Development Contributions Policy[51].

(242) In addition to this, the Council collects funding for reserves through financial contributions under the Resource Management Act. This is provided for under the operative provisions in the District Plan's Financial Contributions chapter. Specifically, policy FC-P1 and rules FC-R1, FC-R2, FC-R3, FC-R4 and FC-Table 1 in the operative District Plan set out the method for calculating financial contributions for reserves.

(243) The financial contributions proposed by PC(N) do not change this existing regime.

Financial contributions provisions contained in PC(N)

(244) The financial contributions provisions in PC(N) are not intended to displace the existing regime of development contributions and financial contributions described above. Rather, the purpose of the provisions is to fill two specific gaps in the current regime. Specifically, the purpose of the provisions contained in PC2 (which are set out in section 15 of PC(R2)) is to:

(a) Enable financial contributions to be taken for the purposes of offsetting or compensation; and

(b) Provide for the taking of financial contributions for infrastructure, in unforeseen circumstances where the Development Contributions Policy does not apply.

[51] Refer to the Council's *Development Contributions Policy 2021*.
See: https://www.kapiticoast.govt.nz/media/qusjrj1e/development-contributions-policy-2021.pdf

(245) In relation to this last point, examples of circumstances where the Development Contributions Policy may not apply include:

(a) Development that may require new or novel infrastructure that is simply not anticipated by the Development Contributions Policy;

(b) Circumstances where Crown development is exempt from paying Development Contributions under the Local Government Act;

(c) Instances where it would be appropriate to include financial contributions as part of measures associated with offsetting or compensation for adverse effects.

(246) To achieve this purpose, PC(N) proposes to add several new provisions to the financial contributions chapter of the District Plan (these are set out in section 15 of PC(R2)). This includes:

(a) Some minor amendments to the introduction of the chapter, to clarify the purpose of financial contributions and its relationship to development contributions (set out in section 15.1 of PC(R2));

(b) An additional policy providing for the ability to take financial contributions for the purposes of offsetting or compensation (set out in section 15.2 of PC(R2));

(c) A series of general rules for the taking of financial contributions (set out under section 15.3 of PC(R2)). In relation to these general rules, the purpose of these rules is to:

(i) Set out general requirements for the payment of financial contributions (under rule FC-R6);

(ii) Set out how the level of financial contributions will be determined in the circumstances (under rule FC-R7 and table FC-Table x2); and

(iii) Set out how credits and refunds will be managed (under rule FC-R8);

(d) I note that in relation to proposed rules FC-R7 and FC-R8, these rules exclude reserves, because the operative financial contributions provisions related to reserves already set out how the level of contribution will be determined for reserves.

(247) By setting out how the level of financial contributions will be determined, and when the financial contributions will be required, these amendments also ensure that the financial contributions provisions align with the requirements for financial contributions set out under section 77E and section 108 of the RMA.

(248) I also note that the general rules for the taking of financial contributions proposed by PC2 are modelled on those contained in chapter 24 (financial contributions) of the operative Hamilton City District Plan.

Concerns raised by Mr Akehurst

(249) In relation to the concerns raised by Mr Akehurst about the method of determining the level of financial contributions (set out at paragraphs 30 to 32 of his evidence), I consider that the proposed rules which set out how financial contributions are to be determined are appropriate for their intended purpose. The provisions allow for a case-by-case assessment of the level of contributions that would be appropriate, taking into account a range of factors (which are set out under table FC-Table x2). A case-by-case assessment, rather than a prescriptive formula (as appears to be promoted by Mr Akehurst), is appropriate because the rules provide for determination of financial contributions in circumstances where the Development Contributions Policy does not otherwise apply. In my opinion, it is not reasonable to expect that a prescriptive formula could be used to calculate appropriate contributions in these circumstances because the unforeseen nature of the requirement cannot be determined in advance of the resource consent application. Rather, I consider that a case-by-case assessment with reference to a set of considerations that are prescribed in the District Plan rules is an appropriate approach.

(250) In relation to Mr Akehurst's concerns that Council officers will default to the 0.6RUE (residential unit equivalent) calculation set out in the Development Contributions Policy (as set out at paragraphs 40 to 49 of his evidence), I do not consider that there is much likelihood that this would occur in practice. If contributions for infrastructure in relation to retirement village development can be determined with reference to the Development Contributions Policy, then it would be the Development Contributions Policy that would apply, and not the financial contributions provisions in the District Plan.

(251) In any case, if there were an instance where the Council attempted to use the methods set out under the Development Contributions Policy to calculate financial contributions, I consider this would be able to be readily challenged on the basis that it is not consistent with the rules for determining the level of financial contribution set out in the District Plan (which require a case-by-case assessment, and do not reference the method set out in the Development Contributions Policy).

(252) In relation to Mr Akehurst's concerns about double dipping, I also consider that there is a low likelihood that this would occur in practice, because double dipping is expressly precluded under section 200(1)(a) of the Local Government Act 2002. It is also precluded by standard (2) of rule FC-R5 proposed by PC2.

(253) In any case, if an applicant considered that double dipping had occurred, then there are multiple mechanisms available to the applicant to challenge this, including:

(a) The right to reconsider the requirement for a development contribution under section 199A of the Local Government Act 2002; or

(b) The right to object to the assessed amount of development contributions under section 199C of the Local Government Act 2002; and/or

(c) An appeal to the Environment Court on the level of financial contribution determined as part of a resource consent.

(254) I do not consider that any amendments to the financial contributions provisions proposed by PC2 are necessary in response to the matters raised by Mr Akehurst.

9.0 The rail corridor

Submitters: KiwiRail [S094]

9.1 Setback from the rail designation

(255) KiwiRail have sought through their primary submission and again through their evidence to the Panel that buildings be set back by 5 metres from the boundary of a designation for rail corridor purposes "to ensure that people can use and maintain their land and buildings safely without needing to extend out into the railway corridor"[52]. In my paragraphs 298 to 301 of the Council Officers' Planning Evidence I set out the reasons that I did not consider this restriction to be justified as being appropriate, given the widespread application of the restriction across the district would constitute a significant overall restriction on development.

(256) In summary, in the Council Officers' Planning Evidence it was my view that the amount of physical space required to maintain a building adjacent to the rail corridor would be the same as along any private boundary. Based on an assumption that KiwiRail has control over access to its rail corridor I did not consider that the 5-metre setback was not justified as KiwiRail could simply not let people access its property. In my opinion, no building owner, occupier or developer has the right to assume that they can access adjacent private property (be it the rail corridor or otherwise) to undertake maintenance. If a particular building requires a certain amount of adjacent space in order to provide for its maintenance, then this is a matter that should be addressed through the design of the building and arrangement of the site. I do not consider that it is appropriate for maintenance space requirements to be regulated through the District Plan (which in any case cannot reasonably be expected to anticipate all maintenance scenarios).

(257) However, during the course of the hearing, it became clear that the key issue was not the space necessary to undertake the maintenance activity itself, but the adverse effects on the safety use and operation of the railway corridor if maintenance activities were to accidentally encroach on the rail corridor. I agree with KiwiRail that this is an issue that should be given consideration. This was illustrated by the supplementary evidence of Mr Brown, who provided corporate evidence for KiwiRail, who supplied diagrams from WorkSafe that showed the amount of space necessary to safely erect a scaffold for a 12-metre-tall building, as well as the paths that a dropped object would take if it were to accidentally fall from the scaffold (I have reproduced this diagram below):

[52] S094, para 14(b).

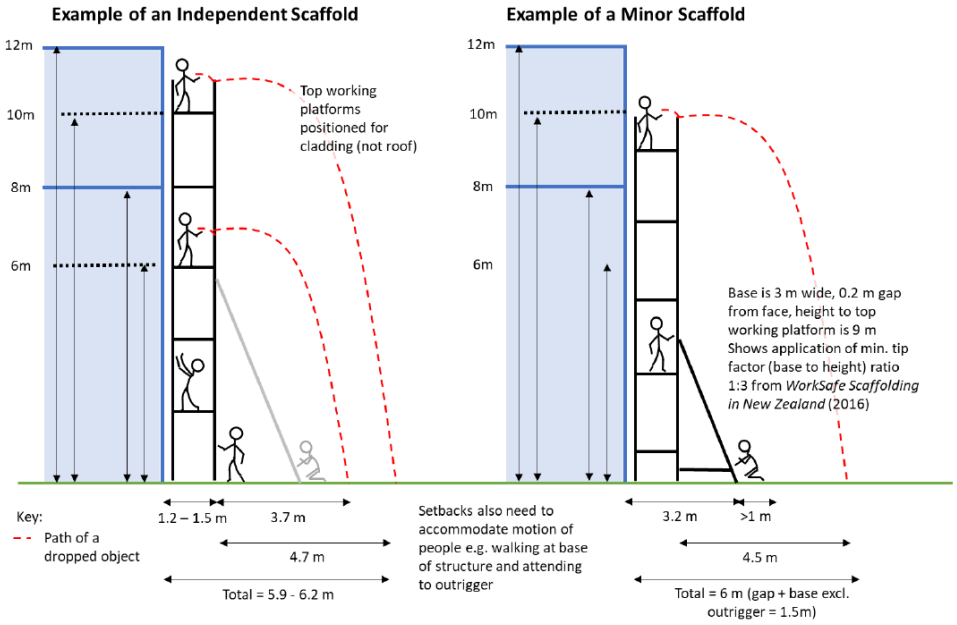

Figure 3: diagram from Mr Brown's evidence for KiwiRail, showing various scaffolding installations.

(258) At the hearing, I set out my view that given that, based on the scenarios supplied by Mr Brown, the risk to the safety of the rail corridor appears to be related to the height of buildings adjacent to the corridor. On this basis, I consider a blanket 5 metre setback is an unnecessarily blunt restriction to effectively manage the issue. Rather, in my opinion, a height in relation to boundary standard would be a more appropriate tool.

(259) At the hearing I then set out my opinion that the MDRS height in relation to boundary standard is already sufficient to manage the issue. Under this standard, a 12-metre tall building would be required to be set back approximately 4.6 metres from the boundary. This enables sufficient distance to install at least one of the safe scaffold options identified by KiwiRail. Ms Heppelthwaite, in her supplementary evidence to the Panel, provided a useful diagram that shows the relationship between the MDRS height in relation to boundary standard and various building heights. I have reproduced this below (although I disagree that a balcony can be provided for in the location shown in the diagram, as it would encroach on the 1 metre setback that is also required by the MDRS).

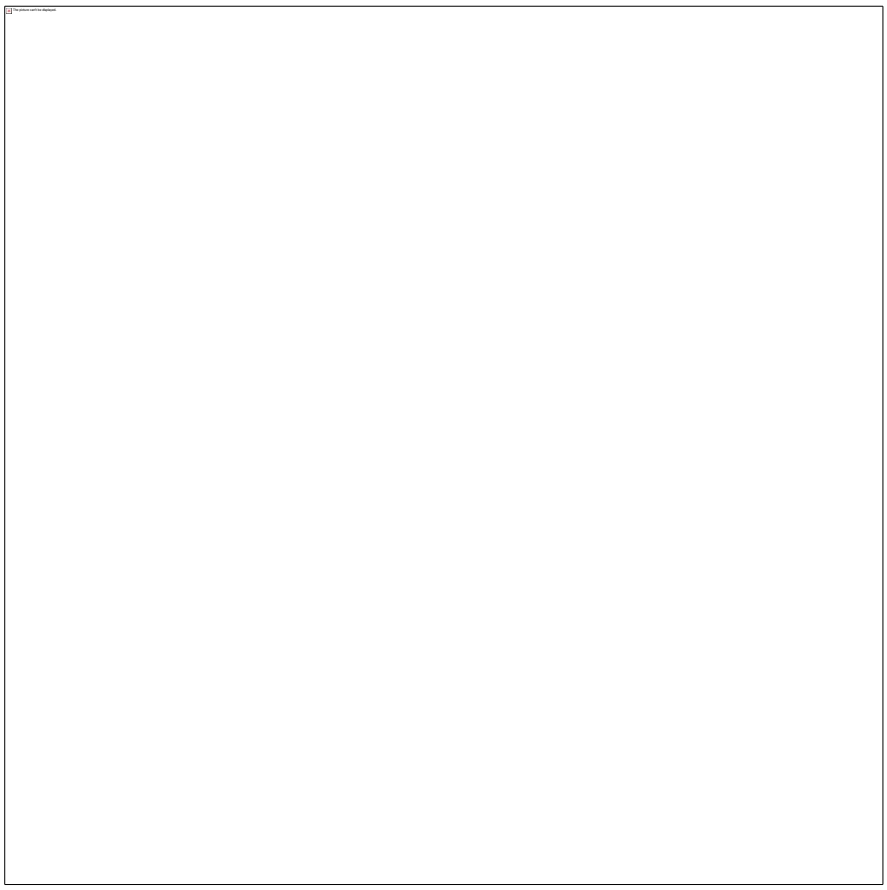

Figure 4: diagram from Ms Heppelthwaite's supplementary evidence for KiwiRail, showing the MDRS height in relation to boundary standard in relation to several different building heights.

(260) I also note that in instances where the height in relation to boundary standard is breached, it is likely that KiwiRail would be notified as an affected person under section 95E of the RMA, in which case the effects on the safety of the rail corridor would be considered as part of any resource consent application.

(261) In my opinion, this demonstrates that the MDRS height in relation to boundary standard is an appropriate method to address the issue of accidental encroachment of maintenance activities on the rail corridor. I acknowledge that the MDRS standard provides for 0.4m less than the setback sought by KiwiRail, and that this would leave some residual risk at the boundary. However, a key principle of managing reverse sensitivity effects is that the effects of an activity (in this case the safety of the rail corridor) should be internalised unless it is shown that it is not reasonable do so. In this case, the question is whether the operational and safety risks associated with accidental or illegal encroachment on the rail corridor can (or indeed should) be managed within the designation, or at its boundary, including through methods such as:

(a) Arrangement of activities within the designation to minimise or mitigate safety or operational risks near the edge of the designation;

(b) Minimising the risk of accidental or illegal encroachment on the corridor at the boundary, for example through appropriate fence or barrier design;

(c) Monitoring of the rail corridor, particularly in urban areas.

(262) I do not consider that it has been demonstrated that managing residual safety and operational risks within or at the boundary of the rail corridor designation is unreasonable. On this basis, I do not consider that the 5-metre setback requested by KiwiRail is demonstrated to be an appropriate method of managing this issue, particularly in light of the fact that the MDRS height in relation to boundary standard appears to manage the significant majority of the issue.

(263) I therefore do not recommend that the 5-metre setback requested by KiwiRail is accepted, and instead recommend that the MDRS height in relation to boundary standard applies at the boundary to the rail corridor designation.

(264) I note that I have recommended a more lenient height in relation to boundary standard in the High Density Residential Zone in response to matters raised by Kāinga Ora. However, as part of this, I have also recommended that the MDRS height in relation to boundary standard continue to apply in relation to the boundary of the rail corridor designation.

9.2 Amendment to noise rule NOISE-R14

(265) Rule NOISE-R14 requires new noise sensitive activities within 40 metres of the boundary of a designation for rail corridor purposes to comply with specified noise design standards set out in the rule. KiwiRail have sought through their primary submission and again through their evidence to the Panel that the rule be amended to apply within 100 metres of the designation boundary.

(266) At paragraph 6.5 of his evidence, Mr Chiles, the acoustic expert for KiwiRail explains that the extension to 100 metres is necessary because the noise performance standard set out under the rule (55 dB $L_{Aeq(1h)}$) is only likely to be achieved without the additional building design measures required under the rule at a distance of 100 metres or more from the designation boundary.

(267) On the basis of Mr Chiles' evidence, I consider that there is certain and sufficient information about this matter to justify the extended application of the rule in the manner requested by KiwiRail.

Recommendations

(268) For the reasons set out above, I recommend that standard (1) of rule NOISE-R14 is amended to apply to noise sensitive activities located within 100 metres of the boundary of a designation for rail corridor purposes (see section 16.14 of PC(R2)).

Section 32AA evaluation

(269) Ms Heppelthwaite, the planning expert for KiwiRail, provides a section 32AA evaluation for the both the noise and vibration controls sought by KiwiRail in Attachment C of her evidence.

(270) In relation to the amendment to noise control only, I consider that the recommended amendments are a more appropriate way to achieve the objectives of PC2 and the purpose of the RMA than the notified provisions for the same reasons as set out by Ms Heppelthwaite in the section 32AA evaluation contained in Appendix C of her evidence.

9.3 New vibration rule and standards

(271) KiwiRail have sought, through their primary submission and again through their evidence to the Panel to introduce a new rule for indoor railway vibration, to apply to buildings containing noise sensitive activities within 60 metres of the boundary of the designation.

(272) I set out my concerns with this request at paragraphs 306 to 309 of the Council Officers' Planning Evidence and recommended that it would not be appropriate to include this rule in PC2. In particular, 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 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.

(273) KiwiRail provided some information about the vibration design standard in their evidence. The standard that KiwiRail wish to incorporate into the District Plan derives its meaning from Class C of Norwegian Standard 8176 2017 (NS8176:2017), which KiwiRail provided to the Panel as supplementary information. This standard is a performance and measurement standard, in that it sets out the performance to be achieved by a building's design, and then how this is to be verified through measurement. NS8176:2017 does not specify how compliance with the Class C requirement is to be achieved – this is to be determined by an acoustic expert in the course of the building's design (certification of which is to be provided to the Council by the acoustic expert, presumably when a building consent is lodged).

(274) I do not consider that KiwiRail have provided sufficient information about the likely costs of the rule that they are seeking, and the impact that this is likely to have on the design, construction and feasibility of buildings that would be subject to the standard. In response to my question (at paragraph 306(d) of the Council Officers' Planning Evidence) about whether the standard would lead to unreasonable design, construction or maintenance costs, Mr

Chiles notes at paragraph 7.2(d) of his evidence that this extends beyond his technical expertise, although he notes at paragraph 7.2(c) of his evidence that that while more common internationally, in his experience mitigation of railway vibration isolation through building design is rare in New Zealand.

(275) Given the scale and significance of the widespread application of the rule, I consider some form of quantification is required, such as by identifying what measures would be required to comply with the standard for typical building typologies anticipated in the zone, and how much these measures would be estimated to add the costs to design and construct a typical building. In the absence of information about the practical implications of compliance with the standard, it is difficult to evaluate whether the costs imposed by the standards are appropriate in relation to the benefits.

(276) It therefore remains my concern that there is a high degree of uncertainty associated with the rule sought by KiwiRail. It continues to be my view that there is insufficient information about the costs imposed by the rule, and whether or not these costs are reasonable in terms of managing the reverse sensitivity effects associated with rail vibration.

(277) In addition to this, based on Mr Chiles' evidence it is clear to me that the rule sought by KiwiRail, and particularly the requirement to achieve a vibration level not exceeding 0.3mm/s $v_{w,95}$, derives its meaning by reference to NS8176:2017.

(278) While I appreciate that Mr Chiles states (at paragraph 7.2(b) of his evidence) that it should be clear to experts making assessments under the rule what the measurement means, I consider that it should be clear from the rule itself what the measurement means. If a rule managing noise or vibration refers to a specific measurement, and that measurement derives its meaning from a technical standard, then I consider that the standard (or at least the relevant part of it) must be incorporated as a document by reference into the plan. This ensures that the rule can be effectively administered and avoids disputes (including amongst experts) about the meaning of the measurement and how it is to be undertaken. This is consistent with the requirements for other noise and vibration measurement standards set out under standard 15 of the National Planning Standards[53]. On this basis, if the rule sought by KiwiRail is to be incorporated into the plan, I consider that it must refer to NS8176:2017, and that this must be document incorporated by reference into the District Plan.

(279) This leads to a further concern (which I described at footnote 131 on page 115 of the Council Officers' Planning Evidence and again at the hearing), that I consider that it would be inappropriate to incorporate reference to NS8176:2017 into the plan by way of a submission, as the requirements of clause 34 of Schedule 1 to the RMA will not have been met. In particular, clause 34 requires that the Council make the document (in this case, NS publicly

[53] Ministry for the Environment. (2019). *National Planning Standards,* p.66.
See: https://environment.govt.nz/publications/national-planning-standards/

available for inspection, allow reasonable opportunity for persons to comment on the proposal to incorporate the material by reference, and consider any comments they make, prior to notifying a plan change to incorporate that document into the plan. I consider this would be particularly important in this case, where requirements to comply with the standard are likely to be of interest to land and building owners and the development community.

(280) Because the requirements of clause 34 have not been met, I do not consider it appropriate to incorporate the standard by reference into District Plan. Combined with my position that I consider it necessary to refer to NS8176:2017 as part of the rule, I do not consider it appropriate to incorporate the rule into the plan as part of PC2.

(281) For the reasons set out above, and for the reasons set out at paragraphs 306 to 309 of the Council Officers' Planning Evidence, I continue to consider that the rule sought by KiwiRail in relation to rail vibration has not been demonstrated to be an appropriate rule to incorporate into the plan through PC2. I therefore recommend that the vibration rule requested by KiwiRail is not incorporated into the plan.

9.4 Policy recognition for reverse sensitivity in relation to rail and other infrastructure the General Residential Zone

Submitters: KiwiRail [S094]

(282) At paragraphs 10.0 to 10.2 of her evidence, Ms Heppelthwaite supports the request by the Fuel Companies to amend General Residential Zone policy GRZ-P10 (Residential Amenity) to provide for the minimisation of reverse sensitivity effects on existing non-residential activities in the zone. This is consistent with KiwiRail's further submission point S114.06.FS01, which supports the primary submission of the Fuel Companies (submission point S114.06) on this matter.

(283) In the Council Officers' Planning Evidence, I recommended that the Panel not accept this request on the basis that the operative District Plan sets out how it intends to manage reverse sensitivity effects in the General Residential Zone under policy GRZ-P8 (Reverse Sensitivity), and that it would be inappropriate to duplicate or broaden this under GRZ-P10.

(284) In response, Ms Heppelthwaite notes in paragraph 10.2 of her evidence that the amendment requested by the Fuel Companies broadens the consideration of reverse sensitivity effects to include all existing non-residential activities, including rail and other infrastructure.

(285) However, in response to this, I note that policy recognition for reverse sensitivity effects on rail and other infrastructure is already provided for as a district-wide policy within the Infrastructure chapter, under policy INF-GEN-P2 (Reverse Sensitivity). This policy provides that reverse sensitivity effects on infrastructure (including rail infrastructure) from subdivision,

land use and development will be avoided, as far as reasonably practicable, through a range of methods set out under the policy.

(286) I therefore consider that it is not necessary to amend GRZ-P10 in the manner requested by KiwiRail through its further submission and evidence, on the basis that the management of reverse sensitivity effects on rail and other infrastructure in the General Residential Zone is already provided for under policy INF-GEN-P2.

10.0 Coastal Qualifying Matter Precinct

10.1 Purpose of and justification for the Coastal Qualifying Matter Precinct

Submitters: CRU [S219], Quentin Poole [S050], Philip Milne [S064], Waikanae Beach Residents' Society Incorporated [S105]

(287) At the hearing, the Panel posed three questions to the Council in relation to the purpose of and justification for the Coastal Qualifying Matter Precinct. I provided an oral response to this series of questions at the hearing, but for completeness wish to record a written response to these questions, which I set out in the following paragraphs.

(288) Notwithstanding my response to these questions, I consider that the statutory requirements under sections 77J(3) and 77P(3) of the RMA in relation to the Coastal Qualifying Matter Precinct are met by the information provided under section 6.1.3 of the Section 32 Evaluation Report[54]. I also note that I have addressed the purpose of and justification for the Coastal Qualifying Matter Precinct under section 4.11.1 of the Council Officers' Planning Evidence.

10.1.1 Question 1: is the precinct implementing policies 24 and 25 of the NZCPS, or section 6(h) of the RMA?

(289) I consider that the Coastal Qualifying Matter Precinct is necessary as part of implementing policies 24 and 25 of the New Zealand Coastal Policy Statement 2010 (NZCPS). This means that the precinct is a qualifying matter under sections 77I(b) and 77O(b) of the RMA[55].

10.1.2 Question 2: if it is the NZCPS, does the Jacobs Assessment have regard to matters (a) to (h) under policy 24(1)?

(290) The answer to this question is yes. I note that Mr Todd, the coastal science expert for the Council and the technical lead of the team that prepared the Jacobs Assessment, sets out at paragraphs 13 to 27 of his evidence the range of matters that were given consideration as part of the methodology for preparing the assessment. This includes (at paragraph 14) matters (a) to (h) under policy 24(1) of the NZCPS.

10.1.3 Question 3: if yes, is the precinct necessary to give effect to policy 25?

(291) The answer to this question is yes, for the reasons which I set out below.

(292) Policy 25 of the NZCPS requires:

[54] *Section 32 Evaluation Report*, pp.153-159.
[55] *Section 32 Evaluation Report*, pp.154.

> *In areas potentially affected by coastal hazards over at least the next 100 years:*
>
> *(a) avoid increasing the risk of social, environmental and economic harm from coastal hazards;*
>
> *(b) avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards; …*

(293) I consider that the application of the MDRS or policy 3 of the NPS-UD in an area potentially affected by a coastal hazard, without that hazard being appropriately managed through provisions in the District Plan, would be contrary to policy 25 of the NZCPS, as it would increase the risks set out under (a) and (b) of policy 25.

(294) A key issue with respect to the operative District Plan is that it does not contain provisions that appropriately manage coastal erosion hazard. The potential for areas to be affected by this hazard is set out in the Jacobs Assessment. The Council, alongside tangata whenua and the community, are presently undertaking a coastal adaptation project (known as Takutai Kāpiti) to identify a range of methods for adapting to coastal hazards and other changes in the coastal environment across the district. This includes the preparation of a future coastal environment plan change to give effect to those adaptation outcomes identified as part of Takutai Kāpiti that require implementation in the District Plan. This would include appropriate provisions to manage coastal erosion hazards in a manner that gives effect to policy 25 of the NZCPS.

(295) However, in the absence of these provisions, in order to give effect to policy 25 of the NZCPS as part of PC2, it is necessary to maintain the status quo level of development provided for by the provisions of the operative District Plan in the area identified as being potentially affected by coastal erosion hazard. This is achieved through the provisions of the Coastal Qualifying Matter Precinct. This ensures that the District Plan does not increase the exposure of residential development otherwise enabled by the MDRS or policy 3 of the NPS-UD, in the absence of coastal hazard provisions designed to manage that risk.

(296) The Coastal Qualifying Matter Precinct also ensures that the task of developing appropriate methods to manage coastal hazard risk in this area is not made more difficult by enabling greater levels of development to occur, and which may need to be subsequently reversed as a part of the implementation of these methods. In this sense, the Coastal Qualifying Matter Precinct assists the Takutai Kāpiti coastal adaptation project, by not foreclosing options available to it, or making those options more difficult or costly to implement.

10.1.4 Other matters raised by submitters

Meaning of "potentially affected" in policy 25 of the NZCPS

(297) At the hearing, the meaning of "potentially affected" in policy 25 of the NZCPS was discussed. CRU and Mr Milne (who provided the legal submissions for CRU) considered that the scenario in the Jacobs Assessment use to define the spatial extent of the precinct did not represent an area "potentially affected". At paragraph 86 of his evidence, Mr Rush (the expert called on by CRU) appears to suggest that a "most likely" scenario is required to be used.

(298) It is correct that the scenario from the Jacobs Assessment on which the Coastal Qualifying Matter Precinct is based represents a "potential future shoreline position" that is described in the Section 32 Evaluation Report as "highly unlikely"[56]. Indeed, it is the most landward of all potential future shoreline positions modelled in the Jacobs Assessment, although I note that the Jacobs Assessment more accurately describes the likelihood of this scenario as "a 'very unlikely' scenario, being the position that there is a 10% probability of the future shoreline being in this position"[57].

(299) The Department of Conservation's 2017 guidance note on implementing the coastal hazard provisions of the NZCPS[58] provides useful guidance on interpreting the term "potentially affected". The guidance notes that the High Court considered the meaning of "potentially" in *Weir v Kapiti Coast District Council* [2013] NZHC 3522, noting that "a worst case scenario objectively identified and evidentially based, must, by definition, be a reasonable possibility"[59]. The guidance then provides some direction on how this could be interpreted in relation to coastal erosion hazard, stating that a "'very unlikely' or around 5% probability of being exceeded over the chosen (e.g. 100-year) planning timeframe is more relevant for determining areas that will be 'potentially affected' by ongoing and more permanent coastal erosion"[60]. I consider that the scenario from the Jacobs Assessment used by PC(N) is consistent with this guidance.

(300) I disagree with CRU that a "most likely" scenario is required to be used when identifying areas potentially affected by coastal erosion hazard. Rather, I consider that the scenario from the Jacobs Assessment used by PC(N) is an appropriate means of identifying the area that is potentially affected by coastal erosion hazard, noting that this is consistent with the Department of Conservation guidance on interpreting the meaning of "potentially affected".

[56] *Section 32 Evaluation Report*, pp.155.
[57] Jacobs (2022). *Kāpiti Coast Coastal Hazards Susceptibility and Vulnerability Assessment Volume 2: Results*, p.27. See: https://www.kapiticoast.govt.nz/media/pwynpxj1/coastal-hazard-technical-assessment-technical-report-volume-2-report.pdf
[58] Department of Conservation. (2017). *NZCPS Guidance Note: Coastal Hazards*. See: https://www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/guidance/policy-24-to-27.pdf
[59] Department of Conservation. (2017). *NZCPS Guidance Note: Coastal Hazards*, p.16.
[60] Department of Conservation. (2017). *NZCPS Guidance Note: Coastal Hazards*, pp.18-19.

(301) I also note that, as set out at paragraphs 484 and 485 of the Council Officers' Planning Evidence, the sea level rise scenario on which the projected future shoreline position used by PC2 is based is consistent with the recommendations set out in the National Adaptation Plan.

Level of assessment required for the Coastal Qualifying Matter Precinct

(302) At paragraph 36 of his legal submissions for CRU, Mr Milne considers that the Jacobs Assessment "does not provide the requisite level of site-specific analysis to determine the spatial extent of the propose [Coastal Qualifying Matter Precinct]". At paragraphs 37 and 38, Mr Milne considers that clause 3.33 of the NPS-UD (more specifically, clause 3.33(3), which he quotes at paragraph 35) requires the Council to undertake a "site-specific analysis" in order to provide for the Coastal Qualifying Matter Precinct as a qualifying matter.

(303) I note that clause 3.33(3) of the NPS-UD is replicated in the qualifying matter provisions of the RMA under sections 77L and 77R.

(304) I disagree with Mr Milne that the requirement to undertake a site-specific analysis, as set out under sections 77L and 77R of the RMA and clause 3.33(3) of the NPS-UD is relevant to the Coastal Qualifying Matter Precinct. The information and evaluation requirements set out under these provisions are only relevant to 'other' qualifying matters under sections 77I(j) and 77O(j) of the RMA or clause 3.32(1)(h) of the NPS-UD. As set out above, the Coastal Qualifying Matter Precinct is not an 'other' qualifying matter. Rather, the precinct is a qualifying matter under sections 77I(b) and 77O(b) of the RMA, and clause 3.32(1)(b) of the NPS-UD (a matter required in order to give effect to the NZCPS). This means that the requirements under sections 77L and 77R of the RMA and clause 3.33(3) of the NPS-UD (such as the requirement to undertake a site-specific analysis) do not apply in relation to the Coastal Qualifying Matter Precinct.

(305) Rather, the information requirements in relation to the Coastal Qualifying Matter Precinct are set out under sections 77J(3), and 77P(3) of the RMA, and clause 3.33(2) of the NPS-UD. In relation to spatial information requirements for the Coastal Qualifying Matter Precinct, these are set out under sections 77J(3)(a)(i) and 77P(3)(a)(i), and clause 3.33(2)(a)(i) of the NPS-UD. This does not require a site-specific analysis, rather it requires that the Council demonstrate why it considers that the area is subject to a qualifying matter. I consider that the Section 32 Evaluation Report (and specifically section 6.1.3 of the report) adequately addresses this requirement with reference to the Jacobs Assessment[61].

[61] *Section 32 Evaluation Report*, pp.153-159. Note that the information required by sections 77J(3)(a) and 77P(3)(a) of the RMA in relation to identifying why the Council considers that the area is subject to a qualifying matter is set out on pages 154-156 of the Section 32 Evaluation Report.

10.2 Refinement of Coastal Qualifying Matter Precinct provisions

Submitters: CRU [S219], Paul Dunmore [S179]

(306) At the hearing, concern was expressed by several submitters that the provisions related to the Coastal Qualifying Matter Precinct did not clearly set out the intended interim nature of the precinct.

(307) The introduction text to the General Residential Zone, proposed by PC(N), describes that the precinct is intended as an interim measure:

> *The purpose of this precinct is to identify the area within which the level of subdivision and development otherwise required by the Medium Density Residential Standards and policy 3 of the NPS-UD will not be enabled until the management of coastal hazards is addressed through a future coastal environment plan change. The precinct and the provisions associated with it will be reviewed as part of this future plan change process.* (Emphasis added).

(308) I note that the final sentence of this text was added to the provision in response to CRU's submission on draft PC2 in 2022.

(309) Notwithstanding this description, I have considered whether the provisions associated with the precinct should be amended to strengthen its interim nature. In this regard, I have considered:

(a) The name of the precinct;

(b) Whether it would be appropriate for the precinct provisions to incorporate a time-based "sunset clause";

(c) Whether the provisions themselves can be otherwise strengthened to emphasise their interim nature.

(310) In relation to the name of the precinct, I already consider this to be an appropriately anodyne name for the precinct. The name deliberately avoids the use of the term "hazard", to recognise that the precinct is an interim measure and not a provision intended to manage coastal hazards in an enduring manner. I have considered whether it would be appropriate to add the term "interim" to the name of the precinct, and while I consider that this would be consistent with its purpose, I also consider that it would add unnecessary complexity to the name. I therefore consider that the name of the precinct proposed by PC(N) continues to be appropriate, and I do not recommend that it is changed.

(311) In relation to a "sunset clause", I do not consider that it would be appropriate to incorporate a time-based removal of the precinct into the District Plan. This is in part because I do not

consider that the precinct could be automatically removed at a future date without due consideration of the appropriate amendments to the plan that would be necessary to remove the precinct provisions. As such, I consider that a Schedule 1 process would be necessary to remove the provisions from the plan at a future date. In any case, I do not consider that it would be appropriate to remove the precinct provisions simply on the basis that a certain amount of time had passed if coastal hazard provisions had not also been incorporated into the plan. I consider this would be contrary to policy 25 of the NZCPS.

(312) Notwithstanding this, I consider it is appropriate to amend the provisions to reinforce their event-based nature (the event being the future plan change that incorporates coastal hazard management provisions). As noted above, the introductory text to the General Residential Zone chapter states that "the precinct and the provisions associated with it will be reviewed as part of [the future coastal environment plan change]" (emphasis added). I consider that it is appropriate to replace the term "reviewed" with "removed". To reinforce this, I also consider that it is appropriate to add this statement as an advice note to all policies associated with the precinct. I consider that these amendments would appropriately reinforce the event-based interim nature of the precinct and provide greater certainty to District Plan users about the intended removal of the precinct as part of a future planning process.

Recommendations

(313) For the reasons set out above, I recommend that:

(a) The introductory text to the General Residential, Local Centre and Town Centre zone chapters is amended to replace the term "reviewed" with "removed" in the final sentence that describes the purpose of the Coastal Qualifying Matter Precinct (refer sections 4.1, 6.1 and 7.1 of PC(R2));

(b) An advice note is added to policies GRZ-Px7, TCZ-Px1 and LCZ-Px1 (refer sections 4.5, 6.5 and 7.6 of PC(R2)). I recommend that the advice note states the following

The Coastal Qualifying Matter Precinct will be removed when provisions to manage coastal hazards are incorporated into the District Plan as part of a future coastal environment plan change.

Section 32AA evaluation

(314) I consider that the recommended amendments are a more appropriate way to achieve the objectives of PC2 and the purpose of the RMA than the notified provisions, because they improve interpretation of the District Plan by providing greater certainty about the interim nature of the precinct and its future removal of the part of the future coastal environment plan change process.

11.0 Flood hazard and tsunami hazard

11.1 Operative District Plan flood hazard provisions

Submitters: Waikanae Beach Residents' Society Inc [S105], Glen Wiggs [S098], Ian and Jean Gunn [S186]

(315) At the hearing, several submitters expressed concern that flood hazards had not been given consideration.

(316) I disagree with this. PC(N) provides for the operative District Plan flood hazard provisions to apply as an existing qualifying matter[62]. At paragraphs 420 to 427 of the Council Officers' Planning Evidence, I set out in detail how the existing flood hazard provisions operate, which for conciseness I do not repeat here.

(317) At the hearing, the Panel requested further information from the Council in relation to the flood hazard provisions. I provided an oral response to these questions, but for completeness, I record my response here:

(a) In relation to whether the operative flood hazard provisions are consistent with the relevant policies of the operative and proposed RPS, I consider that they are. The relevant operative policies in the RPS are policies 29 and 51. Policy 29 requires inappropriate subdivision and development to be avoided in areas subject to high natural hazard risk, and this is strengthened in the proposed RPS to require the use of a risk-based approach that considers a 100-year planning horizon. Policy 51 (both the existing and proposed policy) identifies that the 1% AEP (1:100 year) flood level is the appropriate flood level to plan for, and that in these areas, floor levels of habitable buildings are located above this level. I consider that the operative District Plan flood hazard provisions give effect to these requirements.

(b) In relation to whether the operative flood hazard provisions consider the potential impacts of climate change, I note that the operative District Plan states that "flood hazard categories are mapped using the 1% AEP flood modelling scenario. The extents and categories consider projected climate change and precautionary freeboard to minimise risks"[63]. In terms of the impacts of climate change, I understand that the operative District Plan flood hazard maps account for the following impacts:

(i) 0.8 metre sea level rise;

(ii) 16% increase in rainfall.

[62] Refer to section 6.1.1 of the *Section 32 Evaluation Report*.
[63] Refer policy NH-FLOOD-P8 in the operative District Plan.

(c) The Panel also asked for information on the areas of flood hazard identified within the General Residential Zone compared to the total mapped area of flood hazard in the District. Noting that the flood hazard mapping in the operative District Plan does not cover the entire district and focusses in particular on the District's urban areas, I set out this information in the following table:

Flood hazard category (from the Operative District Plan)	Area (in hectares) across the District	Area (in hectares) in the General Residential Zone
High hazard flood areas[64]		
River Corridor	787	0
Stream Corridor	330	31
Overflow Path	523	43
Residual Overflow Path	170	36
Other flood hazard areas		
Ponding Area	2,578	597
Residual Ponding Area	148	71
Shallow Surface Flow	63	60
Fill Control Area	13	13
Flood Storage Area	305	42
Total	**4,917**	**893**

(318) At the hearing, the relationship between the operative District Plan flood hazard provisions and the requirements of policy 25 of the NZCPS. I consider that the operative District Plan flood hazard provisions are consistent with policy 25 for several reasons, including:

(a) The provisions were incorporated into the District Plan after the NZCPS became operative, so it is reasonable to presume that they give effect to policy 25;

(b) In addition to this, the provisions are consistent with relevant existing and proposed policies in the RPS that relate to natural hazards (as set out above), which must also give effect to policy 25 of the NZCPS;

(c) In any case, they provide for a risk-based approach to managing development in relation to flood hazards which I consider is consistent with the requirement to avoid

[64] As set out in policy NH-FLOOD-P12 in the operative District Plan.

increasing risk in relation to natural hazards in the coastal environment, as set out in policy 25 of the NZCPS.

11.2 Operative District Plan approach to tsunami hazard

Submitters: Brian Carter [S117], Penny Eames [S118], McLean Street Apartments [S018], Ian and Jean Gunn [S186]

(319) At the hearing, several submitters also expressed concerns about tsunami hazard.

(320) In response to this, I note that the operative District Plan sets out a clear position on how the Council intends to manage tsunami hazard in relation to land use planning. This is set out in policy NH-EQ-P18 in the operative District Plan, which states:

> *Residents will be warned to evacuate high risk areas prior to an anticipated distant source tsunami event and recommended to self evacuate in the event of a local earthquake. There will be no regulatory controls placed on development in high risk areas for tsunami in this Plan.*[65]

(321) The rationale for this approach is explained in the introduction to the NH-EQ – Earthquake Hazards section of the Natural Hazards chapter in the operative District Plan, which states:

> *The District is considered to have a very low level risk from a damaging or catastrophic tsunami. The Kāpiti Coast has the lowest risk in the Wellington Region of a major or catastrophic tsunami, with earthquakes near the Solomon Islands posing the highest degree of risk. The risk for the Kāpiti Coast has been modelled using a distant Pacific sourced 500 year event which results in a wave height of 2.5 – 3 metres. This has been included in tsunami evacuation areas which are not part of this Plan.*
>
> *While tsunami is acknowledged as a natural hazard for the District, the Council has not adopted District Plan regulations to control the hazard or risk specifically with a tsunami event. The method considered most appropriate for reducing the impact of this hazard is an early warning system and the civil defence plans for emergency response procedures. The provision of information by the civil defence emergency management office also assists community awareness and preparedness.*[66]

(322) Based on the approach to tsunami hazard set out in the operative District Plan, I do not consider that there is a sufficient basis to provide for tsunami hazard as a qualifying matter as part of PC2.

[65] Policy NH-EQ-P18 in the operative District Plan.
[66] Introduction to the NH-EQ – Earthquake Hazards section of the NH – Natural Hazards chapter in the operative District Plan.

12.0 Beach Residential Precincts

12.1 Is the special character of the Beach Residential Precincts a qualifying matter?

Submitters: Waikanae Beach Residents' Society Inc [S105], John Tocker [S227], Andrew Hazelton [S074]

(323) The operative District Plan provides for five special character areas, being Beach Residential Precincts at Paekākāriki, Raumati Beach, Waikanae Beach and Ōtaki Beach, and the Waikanae Garden Precinct. The district plan provisions associated with these precincts generally seek to "protect" or "retain" the existing character of these areas by, amongst other things, restricting development density and seeking that existing character and amenity values are maintained or retained.

(324) For reference, the difference between the MDRS density standards and the operative provisions related to character areas are summarised in the following table:

	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 Side and rear yards for accessory buildings: 1 metre	Front yard: 1.5 metres Side and rear yards: 1 metre
Minimum allotment size	Paekākāriki: 950m^2 with an 18m minimum dimension Raumati: 700m^2 with an 18m minimum dimension Waikanae Beach: 550m^2 with an 18m minimum dimension Ōtaki Beach: 450m^2 minimum and 600m^2 average, with an 18m minimum dimension	No minimum allotment size (except a minimum vacant allotment size of 420m^2 with a 13m minimum dimension)

	Operative special character area provisions	MDRS
	Waikanae Garden Precinct: 700m^2 with an 18m minimum dimension	

(325) The operative provisions associated with these precincts are inconsistent with the MDRS and policy 3 of the NPS-UD. This means that, were they to be provided for, consideration would need to be given as to whether they are a qualifying matter. In relation to the list of qualifying matters set out under sections 77I and 77O of the RMA, the special character areas in Kāpiti do not relate to any of the matters set out at (a) to (i) of these sections. This means that if they were to be considered as a qualifying matter, they would need to be considered as an "other" qualifying matter under sections 77I(j) or 77O(j) of the RMA.

(326) In preparing its IPI, the Council had the ability to consider whether existing District Plan provisions that are contrary to the requirement to incorporate the MDRS or give effect to policy 3 of the NPS-UD could be 'carried over' as "existing qualifying matters". The ability for the Council to do this is set out in sections 77K and 77Q of the RMA, and indeed the Council provided for several matters as "existing qualifying matters" under these provisions[67]. However, the definition of *existing qualifying matter* under sections 77K(3) and 77Q(3) of the RMA does not include "other" qualifying matters under sections 77I(j) or 77O(j) of the RMA. This means that the special character areas could not be considered as an existing qualifying matter, and the Council was required to consider them afresh in light of the requirement to incorporate the MDRS and give effect to Policy 3 of the NPS-UD.

(327) In addition to the ordinary information and evaluation requirements for qualifying matters (set out under sections 77J(3) and 77P(3) of the RMA), for any of the "other" matter to be considered as a qualifying matter, it must also meet all of the requirements set out under sections 77L or 77R of the RMA.

(328) The consideration given to whether it was appropriate to provide for the special character areas as an "other" qualifying matter is summarised on pages 170 to 172 of the Section 32 Evaluation Report. As part of this, the existing character assessments associated with these areas were reviewed and updated to confirm the characteristics that each area sought to provide for, alongside an analysis of the potential impact of the application of the MDRS (and policy 3 of the NPS-UD, where relevant) on these characteristics[68]. Based on the findings of these assessments, the Section 32 Evaluation Report also considered whether the identified characteristics "make [the level of development required by the MDRS or policy 3 of the NPS-UD] inappropriate in light of the national significance of urban development and the objectives

[67] See section 6.1.1 of the *Section 32 Evaluation Report.*
[68] These assessments are contained in appendices G to K of the *Section 32 Evaluation Report*.

of the NPS-UD". This was a necessary consideration, because, in order for an "other" qualifying matter to be provided for, it must be justified in these terms, as required by sections 77L(b) and 77R(b) of the RMA.

(329) One of the key findings of the character assessments is that while each precinct seeks to maintain or retain a unique mix of character outcomes, a common character outcome sought across all precincts is to maintain a low density of development, and that the principal mechanism for maintaining or retaining existing character is through rules that restrict development density[69]. In considering this alongside the relevant provisions of the NPS-UD, the Section 32 Report stated that "the objectives and policies of the NPS-UD seek that urban environments are able develop and change over time. In areas where low-density development is a defining feature of the character of the area, this means that character and amenity values will change over time as the density of development increases"[70]. Objective 4 and policy 6(b) of the NPS-UD are referenced in the Section 32 Evaluation Report to support this statement.

(330) The Section 32 Report then stated that: "in light of the objectives of the NPS-UD and the national significance of urban development, it is not considered appropriate to provide for special character areas that seek to maintain existing character and amenity values through low-density development, as this is considered to be inconsistent with the objectives (and policies) of the NPS-UD" (emphasis added). On this basis, the special character areas would not meet the definition of an "other" qualifying matter because the justification required by sections 77L(b) and 77R(b) of the RMA is not met.

(331) Notwithstanding this, recognising that these areas do exhibit other characteristics (besides low density built form) PC(N) proposes an approach that requires consideration of these characteristics through policies, where development breaches permitted activity standards. This approach is described in the Section 32 Evaluation report:

> *However, the evidence does note that there are a range of other characteristics associated with these areas that are not, of themselves, low-density built form, but that are nevertheless of value to each area. In particular, these characteristics relate to landform and established vegetation. While the MDRS and policy 3 of the NPS-UD must be applied to the existing special character areas, based on the evidence it is still considered relevant that where development breaches the density standards required by the MDRS and policy 3 of the NPS-UD, development is required to give consideration to these characteristics. On this basis, the existing policies associated with these areas have been amended to require this, while ensuring that the policies are*

[69] *Section 32 Evaluation Report*, p.172.
[70] *Section 32 Evaluation Report*, p.172.

consistent with the objectives and policies of the NPS-UD (see policies GRZ-P4, GRZ-P5 and GRZ-P6).[71]

(332) At the hearing, some submitters suggested that the special character areas in the Kāpiti Coast District Plan should be able to be provided for as an "other" qualifying matter on the basis that other Tier 1 territorial authorities are providing for special character areas as part of their IPIs. In response to this, I submit that the concept of a special character area is not a homogenous one. As the name suggests, special character areas will be unique to the characteristics that define them. This means that it does not automatically follow that because another Tier 1 territorial authority may provide for their special character areas in an IPI, the same would apply to the special character areas in the Kāpiti Coast District. As instructed by sections 77L and 77R of the RMA, each special character area must be assessed on its own merits, "in light of the national significance of urban development and the objectives of the NPS-UD".

(333) I am not familiar with the details associated the special character areas across all Tier 1 IPIs, or the justifications for them contained within their Section 32 Evaluation reports. However, as an example, I note that the Proposed Wellington City District Plan provides for "character precincts" in its Medium Density Residential Zone. These precincts appear to be focussed on matters related to streetscape character and heritage character (particularly in relation to pre-1930's buildings)[72]. The rules for buildings in these precincts do not limit density to less than the MDRS, rather they provide for a consent process that enables matters related to character to be considered[73]. I consider that such a special character area which is focussed on matters such as streetscape and heritage character (and which does not seek to limit the MDRS density standards) is conceptually very different to the special character areas in the operative Kāpiti Coast District Plan, which focus on maintaining an existing low-density character by providing for low-density development. On this basis, it does not follow that because a particular kind of special character area provided for by another Tier 1 territorial authority may be able to be justified, that the special character areas in the operative Kāpiti Coast District Plan, which have a different purpose and a focus on low-density built form, would be justified. If a special character area is to be provided for as an "other" qualifying matter, it needs to be considered on its own merits in relation to the requirements set out under sections 77L and 77R of the RMA.

(334) At the hearing, some submitters also considered that the Council was required to undertake the analysis set out under sections 77L and 77R of the RMA, and that in the event, the analysis that it undertook in this regard was cursory[74]. To be clear, providing for "other" qualifying matters is not a mandatory requirement, it is a discretionary ability under sections 77I or 77O of the RMA. In any case, the analysis requirements set out under sections 77L and 77R of

[71] *Section 32 Evaluation Report*, p.172.
[72] See policies MRZ-PREC01-P1, P2, P3, P4, P5 and P6 in the Medium Density Residential Zone chapter of the *Wellington City Proposed District Plan*.
[73] See rule MRZ-PREC01-R5 in the Medium Density Residential Zone chapter of the *Wellington City Proposed District Plan*.
[74] See paragraph 31 of the legal submissions of Andrew Hazelton [S074].

the RMA are only mandatory in instances where the Council seeks to provide for an "other" qualifying matter. In other words, the requirement to undertake an analysis under sections 77L or 77R flows from the decision to provide for an "other" qualifying matter under sections 77I(j) or 77O(j) of the RMA (not the other way around).

(335) Notwithstanding this, prior to providing for an "other" qualifying matter, it makes sense to consider whether the matter in question can achieve the requirements set out in sections 77L or 77R of the RMA. The information contained in the Section 32 Evaluation[75] shows that due consideration was given to whether it would be appropriate to provide for the special character areas in the operative District Plan as an "other" qualifying matter, by giving consideration to whether it would pass all of the requirements set out in sections 77L and 77R of the RMA. It concluded that, in relation to 77L(b) and 77R(b), these areas would not be justified, in particular because they seek to maintain a low-density built environment. I do not consider that this conclusion was arrived at based on a cursory analysis. Rather, I consider that this was arrived at after analysis of the characteristics that each special character area seeks to provide for, the mechanisms used by the operative District Plan to provide for these characteristics, and how the MDRS are likely to change the character in these areas, as set out in the character assessments appended to the Section 32 Evaluation Report and summarised at pages 150 to 152 of the Section 32 Evaluation Report.

(336) In summary, after due consideration of the special character areas contained in the Operative District Plan, the Council concluded that it would not be appropriate to provide for these areas as an "other" qualifying matter. I agree with this conclusion, and do not consider that any matters raised by submitters, or any other evidence provided by submitters, would cause me to reconsider this conclusion.

12.2 Excluding Waikanae Beach from the MDRS based on population

Submitters: Andrew Hazelton [S074], John Tocker [S227]

(337) At the hearing, Mr Hazelton [S074] considered that Waikanae Beach should be excluded from the MDRS on the basis that the area had a population of less than 5,000 at the 2018 census[76] (Waikanae Beach had a population of 3,360[77]).

[75] *Section 32 Evaluation Report,* pp.170-172.
[76] See paragraph 44 of the legal submissions of Andrew Hazelton [S074]. I note that Mr Hazelton refers excluding "entire areas from the NPS-UD", however this is not what is provided for under the RMA. Rather, the definition of *relevant residential zones* in section 2 of the RMA provides for a Council to exclude (under section (b)(ii) of the definition) certain areas from incorporating the MDRS.
[77] Refer to the population projection chart contained in Appendix G to the Council Officers' Planning Evidence report. See: https://www.kapiticoast.govt.nz/media/o33meyyc/pc2_planningevidence_appg_populationforecast.pdf

(338) The RMA provides for an ability to exclude certain areas with a population of less than 5,000 at the 2018 census from the application of the MDRS. This is provided by the following exclusion to the definition of *relevant residential zone* set out in section 2 of the RMA:

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

(339) This exclusion contains a qualifier, which I have underlined in the definition above. The definition of *urban environment* used in the qualifier is the same as the definition of *urban environment* set out in the NPS-UD[78].

(340) During the preparation of PC2, the Council sought advice on the interpretation of this exclusion, and the qualifier contained within it[79]. This advice was made available to submitters on the Council website during the PC2 submission period. In relation to this qualifier, the advice noted that:

> *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.*[80]

[78] Refer to section 5.2.1 of the *Section 32 Evaluation Report* (pp.13-138) for a description of how the term *urban environment* has been interpreted in the Kāpiti Coast context.
[79] Simpson Grierson. (2022). *What does the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 enable?* See: https://www.kapiticoast.govt.nz/media/5ecevqnl/21-02-22-advice-letter-implementing-the-enabling-housing-amendment-act.pdf
[80] Simpson Grierson. (2022). *What does the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 enable?* At para 83, p.19.

(341) In the case of the General Residential Zone at Waikanae Beach, for the reasons set out in section 5.2.1 of the Section 32 Evaluation Report, it is already part of an urban environment. I therefore do not consider that it can be excluded from the MDRS, because I do not consider that the exclusion set out under section (b)(ii) of the definition of *relevant residential zone* applies.

(342) On matters related to the population of Waikanae Beach, at the hearing Mr Tocker [S227] considered that there would be limited utility in providing for increased levels of development at Waikanae Beach on the basis that the population of the area would grow by only 228 people over the next 30 years. Notwithstanding that the MDRS and policy 3 of the NPS-UD must be given effect to regardless of population growth projections, I have reviewed the Council's growth projections and note that in fact the population of Waikanae Beach is estimated to increase by 1,261 people out to 2051 (which is an increase of approximately 38% from the 2018 census)[81].

12.3 Natural character in the coastal environment

Submitters: Andrew Hazelton [S074]

(343) At the hearing, Mr Hazelton [S074] expressed concern that the impacts of the application of the MDRS and policy 3 of the NPS-UD on the natural character of the coastal environment had not been considered. Mr Hazelton also expressed this concern in his primary submission (see submission point S074.01).

(344) I have addressed this at paragraphs 524 to 533 of the Council Officers' Planning Evidence. In my evidence, I recommended amendments to PC(N) to provide for the areas mapped in the operative District Plan as having high or outstanding natural character in the coastal environment as a qualifying matter. As part of this, I recommended that the rules that restrict development in the parts of these areas also apply in the General Residential Zone, to the extent that the areas overlap the General Residential Zone. This means that buildings or earthworks in these areas will be a discretionary activity. These recommendations are incorporated into section 16.12 of PC(R1) and PC(R2).

(345) As I understand it, Mr Hazelton seeks that restrictions on development would also apply to areas adjacent to (but outside of) the areas mapped as having high or outstanding natural character, citing the precautionary approach set out under policy 3 of the NZCPS[82]. I do not consider that there is sufficient evidence to identify a qualifying matter adjacent to the areas mapped as having high or outstanding natural character for several reasons:

[81] Refer to the population projection chart contained in Appendix G to the Council Officers' Planning Evidence report. See: https://www.kapiticoast.govt.nz/media/o33meyyc/pc2_planningevidence_appg_populationforecast.pdf
[82] See paragraph 5 of the legal submissions of Andrew Hazelton [S074].

(a) Taking into the consideration that the areas themselves are protected from inappropriate development, and that the size and location of these areas have already been determined through a prior planning process which must have considered the possibility of development on adjacent sites in the General Residential Zone, I do not consider (nor is there evidence to suggest) that development adjacent to (but outside of) these areas to the level required by the MDRS or policy 3 of the NPS-UD would have effects that are potentially significantly adverse, such that policy 3 of the NZCPS would apply[83];

(b) In any case, I do not consider that there is sufficient evidence to define an appropriate qualifying matter area in this regard, as required by sections 77J(3)(a) or 77P(3)(a) of the RMA.

(346) I consider that my recommendations, as set out at paragraphs 524 to 533 of the Council Officers' Planning Evidence, in relation to providing for areas of high or outstanding natural character in the coastal environment as a qualifying matter are appropriate, and I do not consider that there is evidence to support any further further amendments to PC2 in this regard.

[83] Policy 3 of the NZCPS only applies where the adverse effects of an activity are potentially significantly adverse.

13.0 Other matters

13.1 Ara Poutama (Department of Corrections) [S111]

Definition of 'household'

(348) In their primary submission and in their evidence at the hearing, Ara Poutama sought inclusion of a replacement definition of "household" which explicitly references the existence of support elements to avoid any misinterpretation as to what constitutes a "residential unit" (at para 6.9 of Mr Gifford's evidence on behalf of Ara Poutama).

(349) While Ara Poutama agrees that the current definition is broad and unlimiting, they consider that providing a definition of "household" which explicitly references the existence of support elements is necessary to avoid any misinterpretation (para 6.13 of Mr Gifford's evidence).

(350) I continue to consider that this is not necessary. The existing definition of "household" is broad and not limiting. There are no rules in the General Residential Zone that limit the ability for support to be provided to residents in the manner set out by Ara Poutama. As such, I continue to consider that the support activities described by Ara Poutama will be a residential activity permitted under the rules of the General Residential Zone.

Community corrections activities

(351) In their primary submission, Ara Poutama sought that *community corrections activities* (as defined in the National Planning Standards) be provided for in the Metropolitan Centre, Town Centre, Mixed Use and Industrial Zones.

(352) Ara Poutama considers that it community corrections activities are not a subset of community facility, and that it would be clearer and more certain to provide for community corrections activities as a stand alone activity (at paragraph 7.21 of Mr Gifford's evidence).

(353) I agree with Mr Gifford that community corrections activities are not likely to be considered as a community facility. However, in any case, I do not consider that it is necessary to provide for community corrections activities as a stand-alone activity in these zones. This is because (as explained at para (234) above), these zones operate under a permissive presumption, where activities that are not specifically provided for are permitted activities so long as they comply with the permitted activity standards of the zone. On this basis, if it were the case that Ara Poutama were considering the development of a new community corrections activity in one of these zones in the future, it would be a permitted activity so long as it complied with the permitted activity standards of the zone.

13.2 Reverse sensitivity in relation to service stations

Submitters: Fuel Companies [S114]

(354) In his evidence, Mr Dixon for the Fuel Companies [S114] sought amendments to General Residential Zone policy GRZ-P9 (at paragraph 6.9) and rule NOISE-R14 in the Noise chapter (at paragraph 7.6) to address the issue of reverse sensitivity in relation to service stations. Mr Dixon also included an appendix to his evidence (Appendix A), which helpfully identifies the location of the fuel companies' service stations in the Kāpiti Coast District.

(355) In response to the evidence, I do not consider that the issue of reverse sensitivity in relation to service stations is of a sufficient scale or significant to warrant the amendments sought by the Fuel Companies. My reasons for this are:

(a) All service stations in the district are located either within a centre zone or the General Industrial Zone;

(b) For service stations located in a centre zone, residential development on adjacent sites in the centre zone is subject to the acoustic performance requirements set out under rule NOISE-R14, which I consider will manage reverse sensitivity effects.

(c) For service stations located in the General Industrial Zone, it is not anticipated that residential activities will occur on adjacent sites in the zone (except for caretaker accommodation). I therefore do not consider that reverse sensitivity effects will be an issue in this regard.

(d) There are three service stations adjacent to the General Residential Zone, being Mobil Kāpiti, Mobil Waikanae and Mobil Ōtaki[84]. The number of sites in the General Residential Zone adjacent to or over the road from these sites is 10. While residential development on these sites will not be subject to the acoustic performance requirements set out under rule NOISE-R14, the service stations themselves are subject to permitted activity standards that will limit effects on adjacent sites in the General Residential Zone, including:

(i) Hours of operation being limited to 7am to 11pm (TCZ-R1(1) and GIZ-R1(1));

(ii) Limitations on light levels at the General Residential Zone boundary (TCZ-R1(3) and GIZ-R1(5));

[84] While BP Ōtaki is located adjacent the General Residential Zone, I note that Ms Maxwell has recommended that the adjacent site be rezoned to Town Centre Zone in PC(R1), in response to submission point number S187.01.

(iii) Limitations on noise generated from service station activities in the Town Centre and Industrial Zone, measured at the boundary of the General Residential Zone (NOISE-R3 and NOISE-R5).

(356) Notwithstanding this, I consider that Mr Dixon has helpfully highlighted two interpretation issues with both rule NOISE-R14 and the definition of *noise sensitive activity* that I consider should be addressed. Specifically:

(a) At paragraphs 5.1 to 5.4 of his evidence, Mr Dixon sets out his position that exclusion (1) under the definition of *noise sensitive activity* is unclear. Specifically, this exclusion provides that "residential accommodation in buildings which predominantly have other uses such as commercial or industrial premises" is excluded from the definition of *noise sensitive activity*. Mr Dixon considers that it is unclear what the purpose of the exclusion is. It is not clear to me either, as residential accommodation would be sensitive to noise regardless of the other uses contained within a building. Further, I agree with Mr Dixon that the phrase "buildings which predominantly have other uses" is difficult to interpret. On this basis, I consider that the exclusion should be removed.

(b) At paragraph 7.5 of his evidence, Mr Dixon identifies that clause (1)(g) of NOISE-R14 is incorrectly shown as a criterion, rather than the standard to be achieved. This would be remedied by deleting the number (g). I agree with Mr Dixon that this appears to be an error and consider that it should be remedied.

Recommendations

(357) For the reasons set out above, I consider that the amendments requested by the Fuel Companies to address the issue of reverse sensitivity in relation to service stations are not accepted.

(358) However, in response to the matters of interpretation raised by Mr Dixon, I recommend that the relief requested by the Fuel Companies is accepted in part by:

(a) Amending the definition of *noise sensitive activity* to remove exclusion (1) (refer to amendment 20.9 of PC(R2));

(b) Amending rule NOISE-R14 to remove "(g)" from the final paragraph under standard (1) (refer to amendment 16.14 of PC(R2)).

Section 32AA evaluation

(359) I consider that the recommended amendments are a more appropriate way to achieve the objectives of PC2 and the purpose of the RMA than the notified provisions, because the

amendments provide for clearer interpretation of existing provisions related to noise sensitive activities.

13.3 Matters of Discretion for Restricted Discretionary Rules for Buildings and Structures in the Centres and Mixed Use Zones

Submitters: Leith Consulting [S202]

(360) At the hearing, Ms White tabled a statement on behalf of Leith Consulting Ltd [S202] requesting that the Council review the matters of discretion associated with the restricted discretionary activity rules for buildings and structures in the Centres and Mixed Use zones, as an alternative to the relief sought by Leith Consulting Ltd under submission point S202.12. Ms White identified matters 9, 12 and 13 under rule TCZ-R11 as examples of matters of discretion that are considered to be superfluous.

(361) The rules in question are MCZ-R13, TCZ-R11, LCZ-R12 and MUZ-R13. Each rule contains thirteen matters of discretion, which are common across the four rules. I have reviewed the matters of discretion, and consider that it is appropriate to remove the following matters of discretion from the rules:

- *Matter 7: design and appearance of buildings.* I consider that matters related to design and appearance of buildings are able to be addressed under matters 1, 2 and 4. I note that the design and appearance of buildings is appropriately provided for in section 6.2 of the Centres Design Guide, which is a matter of discretion under matter 4;
- *Matter 8: Location and design of parking, traffic circulation areas, loading and access.* I consider that these matters are able to be addressed under matters 1 and 6. I also note that these matters are provided for under the rules of the Transport chapter.
- *Matter 9: Public safety.* I consider that this matter is able to be addressed under matters 1, 3 and 4. I note that public safety is addressed by guidelines 96 to 104 in the Centres Design Guide, which is a matter of discretion under matter 4;
- *Matter 10: Context and surroundings.* I consider that this matter is able to be addressed under matters 1, 3, 4 and 5. I note that context and surroundings are addressed by guidelines 71 to 75 in the Centres Design Guide, which is a matter of discretion under matter 4;
- *Matter 11: Cumulative effects.* I do not consider that a separate matter is necessary for cumulative effects, as cumulative effects can be considered under the relevant matter of discretion.
- *Matter 12: Whether any nuisance effects are created.* I do not consider that a separate matter is necessary for nuisance effects, as these kinds of effects can be considered under the relevant matter of discretion.

- *Matter 13: The consistency with the relevant objectives and policies.* I do not consider this matter is necessary, as the relevant objectives and policies can be considered under the matters of discretion for which they are relevant.

Recommendations

(362) For the reasons stated above, I recommend that matters of discretion 7, 8, 9, 10, 11, 12 and 13 are deleted from the following rules:

(a) MCZ-R13 (refer to section 5.8 of PC(R2));

(b) TCZ-R11 (refer to section 6.11 of PC(R2));

(c) LCZ-R12 (refer to section 7.8 of PC(R2));

(d) MUZ-R13 (refer to section 8.9 of PC(R2)).

(363) In addition to this, I recommend that the equivalent matters of control or discretion are also removed from the following rules:

(a) MCZ-R14 (refer to section 5.9 of PC(R2));

(b) TCZ-R10 (refer to section 6.10 of PC(R2));

(c) MUZ-R11 (refer to section 8.7 of PC(R2)).

(d) HOSZ-R8 (refer to section 9.2 of PC(R2)).

Section 32AA evaluation

(364) I consider that the recommended amendments are a more appropriate way to achieve the objectives of PC2 and the purpose of the RMA than the notified provisions, because they provide for more efficient interpretation of the District Plan by avoiding unnecessary duplication and overlap in matters of discretion.

13.4 Hydraulic neutrality provisions

Submitters: Leith Consulting [S202]

(365) Paragraph 6 of the statement tabled by Leith Consulting asked that I consider whether it would be appropriate to introduce a land use rule requiring development to achieve hydraulic neutrality, in response to submission point S202.15.

(366) In response to S202.15 as part of the Council Officers' Planning Evidence, I noted that hydraulic neutrality requirements are addressed under the subdivision rules SUB-DW-Rx1 and SUB-DW-R5. This however was not the issue. As pointed out by Ms White, the issue was whether hydraulic neutrality requirements are appropriately provided for under the land use rules.

(367) The operative District Plan does not have a specific land use rule requiring hydraulic neutrality. Rather, Ms White correctly identified that the hydraulic neutrality requirements in relation to land use are set out in the Council's *Land Development Minimum Requirements, April 2022*[85] (LDMR). Section E of the LDMR sets out performance requirements for development, which includes (at page 56):

> *achieve hydraulic neutrality so that peak flows into the receiving bodies for the 1 in 2-year, 1 in 5-year, 1 in 10-year, 1 in 50-year and 1 in 100-year design rainfall events shall not exceed the pre-development peak flows for the same design rainfall events*

(368) While this is differently expressed, I consider this to be substantially similar to the requirement that is expressed in the subdivision rules SUB-DW-Rx1 and SUB-DW-R5 (the difference being that the 1 in 50-year design rainfall event is not required to be calculated in the subdivision rules).

(369) Rule INF-MENU-R27 is a district-wide permitted activity rule in the Infrastructure chapter that applies in all zones. It specifies that development (including buildings, earthworks, retaining and artificial surfaces) must be undertaken in accordance with the Council's LDMR. This means that new development must achieve hydraulic neutrality in accordance with the LDMR.

(370) I accept that elevating the hydraulic neutrality performance requirement from the LDMR into its own rule in the District Plan would increase the prominence of the requirement. However, I also observe that the hydraulic neutrality requirement sits within a range of other stormwater design requirements within the LDMR, which I consider are intended to be read together. In any case, I do not consider that it is necessary to provide for hydraulic neutrality under its own land use rule, because it is already provided for within the LDMR, which provided for under rule INF-MENU-R27.

[85] See https://www.kapiticoast.govt.nz/media/0cynhnww/pc2_s32_appendixx_land-development-minimum-requirements.pdf

Appendix A. Council Officer Reply Version of PC2 (PC(R2))