

# Decision making on the Proposed District Plan Intensification provisions

## Context on the Proposed District Plan

### Why is a new District Plan needed?

Under the Resource Management Act 1991 (RMA) every territorial authority in New Zealand must have a District Plan to ensure well planned and organised growth. Council are required by law to review our District Plan every ten years.

The Operative District Plan (ODP) was made operative in 2000. Since it was made operative there have been 83 plan changes, reflecting the changes that Wellington has gone through. The ODP is now out of date. Significant parts of the plan have not been reviewed in over 10 years and it is deficient in significant areas of responsibility e.g. natural hazards and significant natural areas.

The Government has also amended resource management legislation and introduced new national policies and regulations in recent years that require a change to our District Plan, including the:

- National Planning Standards, which requiring a standardised structure and format for district plans;
- National Policy Statement on Urban Development (NPS-UD); and
- The Medium Density Residential Standards (MDRS), brought in through the RM (Enabling Housing Supply and Other Matters) Amendment Act 2021.

### What is the National Policy Statement on Urban Development?

The National Policy Statement on Urban Development (NPS-UD) requires district plans to enable urban growth both 'up' and 'out'. The NPS-UD has an overall objective of achieving well-functioning urban environments. It requires:

- 6+ storey buildings within a walkable catchment of rapid transit stops and major urban centres; and
- building heights and density of urban form to realise as much development capacity as possible, to maximise the benefits of intensification within the city centre zone.

In general terms, it requires the District Plan to better enable housing and urban development to provide for a growing population and help improve the supply and affordability of housing.

### What is the Resource Management (Enabling Housing Supply) Amendment Act 2021?

The Amendment Act introduced the MDRS that allow three houses up to three stories on each property in residential areas as a permitted activity. It also requires Councils to change their district plans to introduce the MDRS, along with the intensification policies of the NPS-UD.

### How was the Proposed District Plan developed?

There have been three phases to the District Plan review – the Spatial Plan, the Draft District Plan and the Proposed District Plan (PDP). Members of the public, stakeholders and interested parties

have been able to make submissions on each stage of the review. The PDP has also been informed by a large amount of evidence and technical information to support the new direction and proposed objectives, policies, rules and standards (referred to collectively as provisions). The PDP also aims to implement the direction and achieve the objectives of the Wellington Spatial Plan, including confirming where and how urban development will occur, and setting the policy and rule framework to enable it.

The different phases including public consultations informing the District Plan are identified in the table below:

<b>District Plan review phase:</b>	<b>Year:</b>	<b>Number of submissions received:</b>	<b>Context:</b>
Our City Tomorrow consultation	2017	724	Council sought feedback on the challenges and opportunities facing the city including population growth, climate change, and earthquakes.
Possible future growth scenarios consultation	2018-2020	1,372	Council established the Planning for Growth programme through the Long-term Plan and consulted on four possible future growth scenarios based on community engagement undertaken in 2017.  The scenario incorporating suburban growth with some inner-city growth gathered the most public support.
Draft Spatial Plan	2020	2,897	In 2020 Council undertook consultation on the Draft Spatial Plan which had been informed by the growth scenarios consultation and a variety of technical evidence. Based on this consultation Council adopted the Final Spatial Plan in 2021.
Draft District Plan	2021	1,034	In 2021 Council released the Draft District Plan for consultation. Submissions were received with a wide range of views on a variety of topics.
Proposed District Plan	2022	497 submissions 138 further submissions	In July 2022 Council notified the PDP, which involved an 8-week consultation period. A summary of submissions was then released, followed by a 2-week further submission period, before the hearings commenced earlier this year.

## **What Mana Whenua involvement has there been in the District Plan Review?**

Significant engagement and consultation with Ngāti Toa Rangatira and Taranaki Whānui ki te Upoko o te Ika took place throughout the development of the PDP. More than 100 pre-notification hui and wānanga were held, including with kaumātua.

This engagement with Mana Whenua has resulted in significant advancements from the current district plan with respect to the recognition of mana whenua aspirations. This includes a standalone Tangata Whenua chapter, Anga Whakamua Strategic Directions and a standalone Sites and Areas of Significance to Māori chapter. An extensive process was undertaken with both Mana Whenua to identify Sites and Areas of Significance to Māori within the PDP.

## **What were the key shifts from the Operative District Plan to the Proposed District Plan?**

These are broadly summarised as follows:

- New strategic objectives to guide how the city will be developed and recognised values protected;
- A new system of urban zoning including new residential, mixed use and commercial zones to better enable housing and urban development;
- Identification of land for future housing, industry and business in a Future Urban Zone;
- New objectives, policies and rules for a range of district wide matters including infrastructure, three waters, subdivision, earthworks, transport, renewable electricity generation, noise, light and signs;
- A new risk-based approach to managing natural hazards including coastal hazards, seismic fault hazards and flooding hazards;
- New flooding and fault hazard maps;
- Recognition and promotion of Tangata Whenua values;
- An updated list of buildings and sites of historic and cultural importance, and new objectives, policies and rules in relation to how they are managed;
- The identification and protection of areas of indigenous biodiversity in non-residential areas;
- The identification and protection of valued landscapes, natural features and areas of high natural character in the coastal environment;
- Revised urban design guides for all Residential, Commercial Zones and other areas; and
- New maps showing the location of all new and revised zones and spatial features.

## **Plan making processes – Intensification Streamlined Planning Process and First Schedule Process**

### **What plan making processes have been followed?**

Council's PDP is contained in one document formed of two separate legal planning instruments:

- The PDP, prepared under the standard RMA Schedule 1 process; and
- The Intensification Planning Instrument (IPI), prepared using an Intensification Streamlined Planning Process (ISPP).

The IPI is the part of the plan that implements the NPS-UD and the MDRS. The IPI follows the ISPP, a new process prescribed by the Government to speed up the RMA plan making process. The remainder of the PDP has been prepared using the traditional Part 1, Schedule 1 process under the RMA.

A combined submission process was used for the IPI and PDP, with the role of the Council appointed Independent Hearings Panel (Hearings Panel) to make recommendations on both processes. The two processes are summarised as follows:

<b>Intensification Streamlined Planning Process (ISPP)</b>	<b>Standard RMA plan making process (Schedule one)</b>
<ul style="list-style-type: none"> <li>• Introduced by 2021 RMA changes.</li> <li>• Must be used for intensification provisions and mapping (e.g. new medium and high density residential zones).</li> <li>• Must also used for introducing 'qualifying matters' which limit intensification in certain areas (e.g. to protect heritage values).</li> <li>• The Hearings Panel makes recommendations although the Council is the decision maker. If Council rejects a recommendation of the Hearings Panel the Minister for the Environment makes the decision.</li> <li>• There are no appeals allowed on decisions, other than judicial review of procedural matters.</li> </ul>	<ul style="list-style-type: none"> <li>• Used since the RMA was introduced in 1991.</li> <li>• Used for all PDP provisions and mapping that do not relate to intensification.</li> <li>• The Hearings Panel makes recommendations although the Council is the decision maker.</li> <li>• Appeals can be made on Council's decision to the Environment Court</li> </ul>

## **What is the purpose of the hearings?**

The PDP hearings provide an opportunity for submitters to provide verbal submissions and supporting evidence in relation to their written submissions, and for Council officers to make recommendations to the Hearings Panel on the submissions and evidence received.

## **Who makes up the Independent Hearings Panel?**

Eight independent resource management commissioners were engaged by Council to sit on the Hearings Panel. Their role is to hear and make recommendations on submissions on the IPI and PDP to Council. The Hearings Panel brings extensive experience in a range of resource management fields including environmental law, planning, architecture, heritage, urban design and Te Ao Māori.

The appointed Commissioners are:

- Trevor Robinson (Barrister based in Napier) as Chair;
- Robert Schofield (Planner, based in Wellington) as Deputy Chair;
- Jane Black (Urban Planner, based in Wellington);
- Elizabeth (Liz) Burge (Resource Management Consultant, based in Carterton);
- Lindsay Daysh (Planner, based in Wellington);
- Rāwiri Faulkner (Resource Management Commissioner, Mana Whenua Partnerships Consultant, based in Wellington);
- Heike Lutz (Building Conservation Consultant, based in Auckland); and
- David McMahon (Planner, based in Wellington);

## What is the role of Council Officers in the hearings process?

During the hearings process Council officers took up the role as independent planning experts (known as reporting officers), as required by the hearings procedures in the RMA and the Environment Court Code of Conduct for Expert Witnesses. The Code imposed on officers an overriding duty to impartially assist the IHP on matters within their expertise. As part of this expert role, Council officers made recommendations within their topic-based hearing reports whether to accept or reject submission points, and recommending whether these should lead to any amendments to the relevant provisions.

## What topics have been heard to date?

Most topics heard in 2023 were comprised entirely of provisions that fall within the ISPP plan making process relating to the IPI. However, there were several topics or parts of topics also heard under the Schedule 1 plan making process where they related to intensification in some way.

There have been six hearing streams held to date covering more than 35 topics over 36 days between February and September 2023.

The topics heard under each hearing stream and the planning process followed were as follows:

<b>Completed IPI Hearing Streams</b>	
<b>Planning process</b>	<b>Topic</b>
<b>Hearing Stream 1 – Strategic Direction</b>	
ISPP ISPP ISPP ISPP	Overarching issues District Plan structure Strategic directions Cross-Plan definitions
<b>Hearing Stream 2 – Residential</b>	
ISPP ISPP ISPP Schedule 1	Residential zones – Large Lot, Medium Density, High Density Character Precincts Residential Design Guide
<b>Hearing Stream 3 – Historic Heritage</b>	
ISPP Schedule 1 ISPP ISPP ISPP ISPP	Historic Heritage Notable Trees Viewshafts Sites and areas of significance to Māori Heritage Design Guide Papakāinga Design Guide
<b>Hearing Stream 4 – Centres and Commercial Zones</b>	
ISPP ISPP ISPP ISPP Schedule 1	City Centre Zone Wind Waterfront Zone Neighbourhood, Local and Metropolitan Centre Zones Commercial, Mixed Use and General Industrial Zones

ISPP	Centres and Mixed Use Design Guide
<b>Hearing Stream 5 – District Wide Matters</b>	
ISPP	Natural Hazards
ISPP	Earthworks
ISPP	Subdivision
ISPP	Three Waters
ISPP	Subdivision Design
ISPP and Schedule 1	Noise
ISPP	Coastal Hazard provisions
<b>Wrap-up hearing</b>	
ISPP	Wrap up and integration

## What's the process for Council decision-making?

The Hearings Panel have spent recent months deliberating and are currently drafting recommendation reports on the IPI topics under delegated authority.

Recommendation reports justify the recommendations that have been made for each topic. They set out the recommendations, identify any “out-of-scope” recommendations, address the submissions made, provide reasons for accepting or rejecting submissions and provide additional assessment where justified.

Council officers will present the Panel’s recommendations to Council in February 2024 at six briefings as follows:

- February 7th – Process recap, legal matters and strategic direction
- February 13th – Residential, Character and Centres
- February 14th – City Centre and Waterfront
- February 20th – Historic heritage, Notable trees, Viewshafts and Sites and areas of significance to Māori
- February 27th – Natural hazards Three waters, Noise and Subdivision.
- February 28th – Q & A session
- March 12th – Q&A session

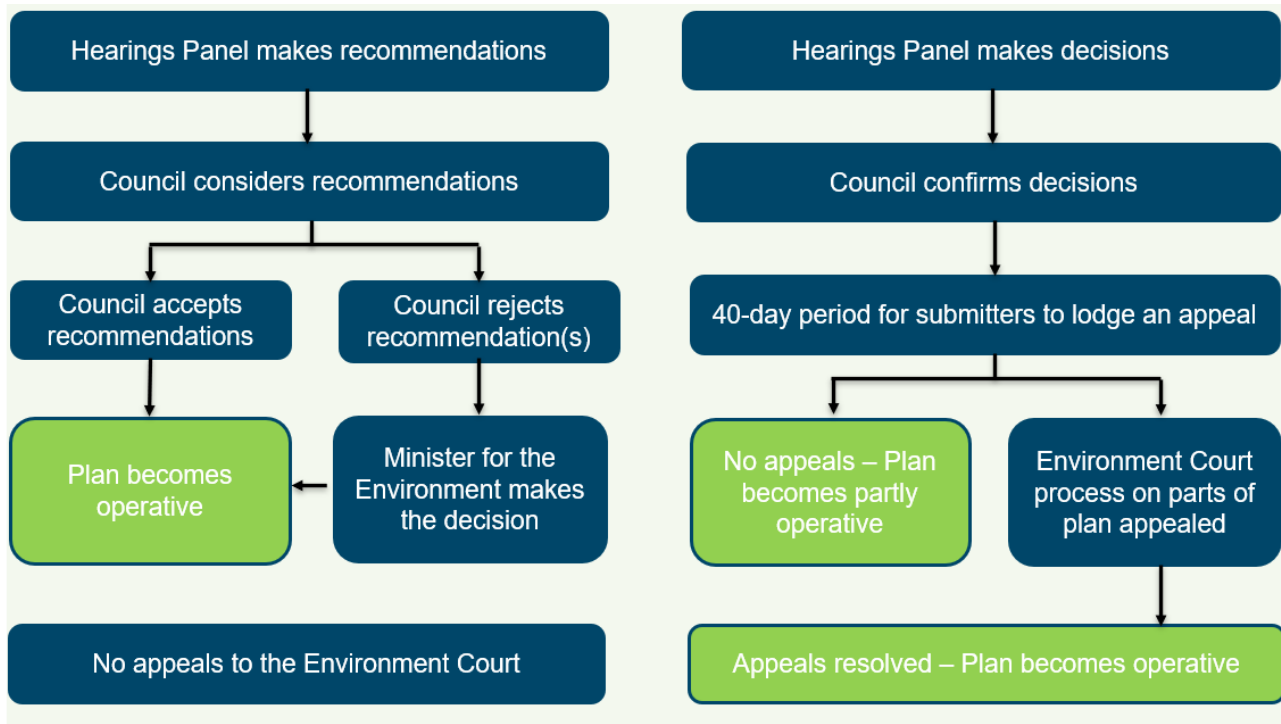
Council will need to decide whether to accept or reject each recommendation. If a recommendation (or recommendations) is rejected, Council must decide whether to formulate an alternative recommendation. For each Hearing Panel recommendation that Council rejects it must provide reasons for doing so.

When making a decision to accept or reject or to specify an alternative recommendation, the Council:

- is not required to consult any person or consider submissions or other evidence;

- must not consider any submission or evidence that was not before the Hearings Panel; and
- may seek clarification from the Hearings Panel on the recommendation.

Council decisions on the recommendations of the Hearings Panel will be confirmed at the Council meeting on 14 March 2024. All decisions on the IPI must be notified by 20 March 2024 in accordance with the direction from the Minister for the Environment. The decision-making process is summarised as follows:



## What happens if a recommendation is rejected?

While the ISPP is a new process, under the standard RMA Schedule 1 process it is very rare for a Council to reject a Hearings Panel recommendation. This is because the Hearings Panel has gone through a robust process in reaching their recommendations, including having:

- Reviewed all submissions on the PDP;
- Considered written and oral evidence and submissions;
- Considered the recommendations of Council Officers;
- Taken advice from a large number of experts;
- Questioned participants and tested evidence in the open public forum of the hearings; and
- Undertaken site visits.

Before deciding to reject a recommendation, Council must have regard to the reasoning supporting the recommendation. Appropriate reasons for rejection of any recommendation and support for any alternative recommendation proposed are required.

## **When are the ISPP provisions made operative?**

When Council makes its decisions, these must be publicly notified in accordance with Clause 102 of Schedule 1 of the RMA. Public notification will be via a public notice in The Post, which will also be emailed to all submitters on the IPI.

All accepted recommendations become Operative when the decisions are publicly notified, which must be no fewer than 5 working days following notification of decisions. The provisions associated with these decisions replace those in the current ODP.

Any recommendations on the IPI that are rejected and the provisions they relate to will not be made operative and will be sent to the Minister for the Environment who will make the final decision. The Minister will then notify his or her decision (to accept or reject the Council's position on the Hearing Panel's recommendation). The associated provisions then become operative.

Once all IPI decisions have been made these provisions are all operative (approximately 60% of the PDP). All remaining Schedule 1 provisions in the PDP are still to go through a hearings process and then Council will be required to make decisions on the Hearing Panel's recommendations. These provisions will still be subject to possible appeal to the Environment Court, and only once appeals are resolved will the District Plan become fully operative.