

WELLINGTON CITY COUNCIL

Hearing of Submissions and Further Submissions

on

Proposed District Plan

Report and Recommendations of Independent Commissioners

Hearing Stream 4

Report 4A

**Overview and General Matters
Commercial and Mixed Use Zones Framework
City Outcomes Contributions
General Submissions on Commercial and Mixed Use Zones**

Commissioners

**Robert Schofield (Chair)
Elizabeth Burge
Lindsay Daysh
Heike Lutz**

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EXECUTIVE SUMMARY

1. There was a lot of support from submitters for the proposed Commercial and Mixed Use Zones in the Proposed District Plan (PDP), including the Centres hierarchy of zones and increased development capacity for housing and business that is enabled by the policies. Most submissions focussed on changes to specific provisions. We concluded that the strategic approach for managing the City's commercial and mixed use areas was appropriate, and the policy settings were tuned correctly, including the spatial extent of the zones and, in general, the controls on activities and development.
2. We concluded also that the proposed four levels in the Centres hierarchy – Neighbourhood Centre Zone (NCZ), Local Centre Zone (LCZ), Metropolitan Centre Zone (MCZ), and City Centre Zone (CCZ) – provided a suitable management framework for the City's centres, appropriately recognising the urban form and functioning of the City while providing more than sufficient development capacity for the foreseeable future. There was no need for another zone, a Town Centre Zone (TCZ), to achieve these outcomes.
3. There were diverse views about height controls for some of the zones, but we largely agreed with the final recommendations of the reporting officers. In the CCZ, we agree that the height standards should be thresholds, that is to say, as triggers for a more robust level of scrutiny of taller buildings, rather than limits. In the other Centres Zones, the increased height standards should be expressed as limits, as these recommended heights are appropriate for these centres, having regard to the local context and urban form, while still enabling a significant uplift in development capacity.
4. We concluded that the proposed City Outcomes Contributions mechanism was ultimately too problematic to be fit-for-purpose. We were not satisfied it would be an effective method for generating any significant positive impact on the City's public amenities and services, or promote building design excellence. Rather, it would lead to, at best, an ad hoc sporadic provision of public good outcomes. A more strategic approach is necessary.
5. While such positive outcomes should be encouraged, in our view, there was too large an element of subjectivity involved in the assessment of contributions to base height allowances on those assessments, and an insufficient incentive for developers to use the option. We recommended recrafting the relevant policies and provisions to

promote design excellence and the provision of positive development outcomes for the City.

6. We support the establishment and use of an Urban Design Panel as an important method to help support the PDP policies on quality design and development.

1. INTRODUCTION TO STREAM 4

1.1 Topics of Hearing

1. Hearing Stream 4 focused on the Commercial and Mixed Use zones of the PDP, as well as a number of related zones and topics. Specifically, the Hearing addressed submissions on:
 - City Centre Zone
 - Metropolitan Centre Zone
 - Local Centres Zone
 - Neighbourhood Centres Zone
 - Mixed Use Zone
 - Commercial Zone
 - General Industrial Zone
 - Waterfront Zone,
 - Appendix 9 - City Centre Zone and Special Purpose Zone – Minimum sunlight access and wind comfort control – public space requirements, and
 - Development Area 1 relating to the Kilbirnie Bus Barns site.
2. We also heard submissions on the Wind provisions of the PDP (the Wind Chapter, and associated Appendix 8 (Quantitative Wind Study and Qualitative Wind Assessment – Modelling and Reporting Requirements) and Appendix 14 (Wind Chapter Best Practice Guidance Document), as these primarily related to buildings in the Commercial and Mixed Use Zones.
3. These matters were the subject of ten Section 42A Reports. Ms Anna Stevens and Ms Lisa Hayes provided an overview report, addressing general matters relevant to these zones. Ms Stevens also wrote the Section 42A Reports for the City Centre Zone and for the Wind Chapter.
4. Mr Andrew Wharton authored the Section 42A Report for the Waterfront Zone, while Ms Hannah van Haren-Giles addressed the General Industrial Zone. Ms Lisa Hayes

addressed the balance of Commercial and Mixed Use Zones matters, under the following separate reports:

- Metropolitan Centre Zone
- Local Centres Zone
- Neighbourhood Centres Zone
- Mixed Use Zone, and
- Commercial Zone.

5. In relation to the Design Guides, the Hearing Panel for Stream 2, Residential Zones, formed the view that the Residential Design Guide (RDG) was likely not fit for purpose. The Panel directed a process of expert witness conferencing and review to consider both the RDG and the Centres and Mixed Use Design Guide (CMUDG). This process was subsequently expanded to include aspects of the Heritage Design Guide and the Subdivision Design Guide where they overlap with the RDG, and the CMUDG. That process continued in the background while hearings proceeded.¹
6. The outcomes and final recommendations of the Design Guide review were reported back in the wrap up/ integration hearing in September through the Section 42A report prepared by Ms Stevens. A number of the submitters involved with the Design Guide review process presented their position at the wrap up/ integration hearing . The Panel's overarching recommendations on the Design Guides and the related PDP provisions are contained in Report 2A.
7. In her report on the outcomes and recommendations on the Design Guides, Ms Stevens also addressed the relationship of the CMUDG with the provisions of the Commercial and Mixed Use Zones. We discuss the conclusions we have reached on the CMUDG, and the Plan provisions referencing it, taking account of the additional material we heard in the wrap up/integration hearing, in this report. The Hearing Panel's recommendations on the specific provisions in the Heritage and Subdivision Design Guides are discussed in Reports 3A (Heritage) and 5C (Subdivision) respectively.
8. This Report should accordingly be addressed in conjunction with Report 1B, which discusses relevant strategic objectives, and with Report 1A which sets out background on:

¹ The Panel's directions with respect to the Design Guides are set out in Minutes 15, 23, 24, and 36.

- a) Appointment of commissioners
- b) Notification and submissions
- c) Procedural directions
- d) Conflict management
- e) Statutory requirements
- f) General approach taken in reports, and
- g) Abbreviations used.

1.2 Hearing Panel

9. The Stream 4 hearing commenced 22 June 2023 and concluded on 5 July 2023. The wrap up/integration hearing commenced on Tuesday 20 September and concluded on Thursday 22 September.
10. By resolution of the Council on 8 December 2022, the Council appointed an eight member hearing panel to hear and make recommendations on submissions and further submissions on the PDP pursuant to Section 34A of the RMA.
11. For Hearing Stream 4, the Hearing Panel comprised the following:
 - Robert Schofield (Planner) as Chair
 - Heike Lutz (Building Conservation Consultant)
 - Lindsay Daysh (Planner)
 - Elizabeth Burge (Resource Management Consultant).
12. For the Wrap-up and Integration hearing, the Hearing Panel comprised the following:
 - Robert Schofield (Planner) as Chair
 - Heike Lutz (Building Conservation Consultant)
 - Lindsay Daysh (Planner)
 - Elizabeth Burge (Resource Management Consultant)
 - David McMahon (Planner).

1.3 Procedural Directions

13. The Hearing Panel has issued procedural Minutes as required. The first of these Minutes, dated 9 December 2022 set out detailed hearing procedures that the Hearing Panel intended to follow. Those procedures included provision for pre-circulation of expert evidence, legal submissions and lay presentations, set out the process for applications for cross examination in relation to ISPP matters, and described in general terms the format of the hearings. These procedures applied to Hearing Stream 4.
14. As directed by Minute 15, the hearing of submissions on the Design Guides for the Centres and Mixed Use Zones and related PDP provisions was postponed until the IPI Wrap-up Hearing held in September 2023 to enable the Council to undertake further work on the Design Guides in conjunction with the joint conferencing of urban designers.
15. In Minute 16, the Hearing Panel issued the timetable for the circulation of reports, evidence, legal submissions, and statements/presentations for Hearing Stream 4, which was scheduled to commence on 20 June 2023. This timetable was amended through Minute 21 to enable more time for the preparation of the Section 42A Report and supporting evidence, and the Hearing was rescheduled to commence on 22 June 2023.
16. Following the conclusion of the Hearing on 5 July 2023, the Panel issued Minute 26 to outline the matters on which the Panel sought a reply from the Council.
17. On 11 August 2023, the Panel issued Minute 31, notifying parties of legal advice that the Panel had received from James Winchester, a Barrister specialising in the RMA, who addressed a number of questions the Panel had in regard to the proposed City Outcomes Contributions provisions that apply to a number of the Centres zones. The Council and submitters were advised they had leave to respond to any of the reasoning in Mr Winchester's advice by 20 September 2023.
18. A further reply by the reporting officer on the City Outcomes Contributions, Ms Stevens, was received on that date, in which a response was given to Mr Winchester's advice. In his legal submission to the Wrap-up and Integration hearing, the Council's legal counsel also addressed Mr Winchester's advice, as did counsel for Kāinga Ora.

1.4 Conflict Management

19. For Hearing Stream 4, there were no conflicts of interest that required any of the panellists to recuse themselves from hearing and deliberating on any particular matter or submitter.

1.5 Statutory Requirements

20. The relevant statutory functions, considerations and requirements for the review of the District Plan are outlined in Panel Report 1A.
21. In evaluating the PDP Centres provisions, of particular importance are that,
 - a) One of the functions of territorial authorities under the RMA is the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district (s31(1)(aa)); and
 - b) One of the matters that a territorial authority must consider in changing its District Plan are national policy statements, the most relevant for the Centres provisions being the National Policy Statement on Urban Development 2020 (NPSUD) – we shall examine this instrument in respect of the CMUZ later in this report;
 - c) The PDP has an additional purpose as directed by Section 80E of the RMA: to change planning settings to enable development in accordance with the standards in Schedule 3A of the Act and to implement Policies 3 and 4 of NPSUD except where relevant ‘qualifying matters’ apply.
22. The National Planning Standards were Gazetted in April 2019. Operating in conjunction with Section 58I of the RMA, the National Planning Standards direct the structure of the PDP, including its separation and district-wide matters and area-specific matters and the content of a number of the definitions contained in the PDP of importance. For the Centres provisions, a key consideration is how to apply the Zoning Framework specified under the National Planning Standards, in regard to most appropriate zoning for the City’s various commercial areas and the appropriate centres’ hierarchy.
23. Section 73(3) of the RMA states further that the PDP must give effect to the Regional Policy Statement for the Wellington region (**RPS**). The Section 42A Overview Report

noted that there are some 34 policies in the RPS that the PDP is required to give effect to and a further 26 policies that need to be considered.

24. Section 74 also directs that we have regard to management plans and strategies prepared under any other Acts, which includes development strategies and the City Spatial Plan.

1.6 General Approach to our Evaluation

25. Both in relation to matters heard as part of the ISPP, and other matters, we are required to provide reasons for our recommendations on the matters raised in submissions, but the RMA provides that we may group submissions according to the provisions or matters to which they relate.
26. The Section 42A Reports provided to us by Council Reporting Officers provide a comprehensive summary of the submissions made on the PDP in respect of each hearing topic. We have generally aligned our reports with the structure of the relevant Section 42A Report and have adopted the general approach of focussing principally on those aspects of each Section 42A Report where we either disagreed with the reasoning and/or recommendations in the Section 42A Report, or where material provided to us by submitters called the reasoning/recommendations in the Section 42 Report into question.
27. We have focused our evaluation on the principal matters in contention. If we do not refer specifically to an individual submission or group of submissions on a particular point, that is because, having reviewed the submissions and the commentary in the relevant Section 42A Report, we accept and adopt the recommendations in the latter.
28. It follows also that where we accept the recommendation in a Section 42A Report that provisions in the PDP should be amended, we accept and adopt the evaluation contained in the Section 42A Report for the purposes of Section 32AA of the RMA, unless otherwise stated. Where we do not accept the recommendations of the Section 42A Report and have determined that a provision in the PDP should be changed, our decisions have been specifically considered in terms of the obligation arising under Section 32AA of the RMA to undertake a further evaluation of the amended provision. Our evaluation for this purpose is not contained in a separate evaluation document or tabulated evaluation attached to our report. Rather, our evaluation is contained within the discussion leading to our conclusions.

2. OVERVIEW OF HEARING STREAM 4

2.1 Topics of Hearing

29. Hearing Stream 4 covered the following topics:

- Centres Zones as part of the Centres' hierarchy – City Centre Zone (**CCZ**), Metropolitan Centre Zone (**MCZ**), Local Centre Zone (**LCZ**), Neighbourhood Centre Zone (**NCZ**)
- Other Centres Zones – Commercial Zone (**COMZ**), Mixed Use Zone (**MUZ**), General Industrial Zone (**GIZ**)
- Development Areas (**DEV1**) relating to the Kilbirnie Bus Barns site
- Waterfront Zone (**WFZ**)
- Wind (**WIND**)
- Development Area 1 relating to the Kilbirnie Bus Barns site (**DEV 1**), and
- Appendix 9 - City Centre Zone and Special Purpose Zone – Minimum sunlight access and wind comfort control – public space requirements (**Appendix 9**).

30. While the Wind provisions are a general district-wide matter, they primarily apply to the Centres Zones (largely the CCZ), and thus submissions on the Wind provisions and associated appendices were heard as part of this stream.

31. A number of the Centres zones also contain precincts, which are defined by the National Planning Standards as a spatially based method to manage an area where additional place-based provisions apply to modify or refine aspects of the policy approach or outcomes anticipated in the underlying zone. As notified, submissions on the following precincts were heard as part of Hearing Stream 4:

- **CCZ-PREC01 – Te Ngākau Civic Square Precinct:** which covers that part of the CCZ that contains various civic activities and facilities, including the Wellington Town Hall, the Civic Administration Building and the City Library; and
- **GIZ-PREC01 – Miramar/Burnham Wharf Precinct:** which covers the land adjoining the Miramar and Burnham Wharves at Miramar.

32. Under the National Planning Standards, a development area spatially identifies and manages areas where plans such as concept plans, structure plans, outline

development plans, master plans or growth area plans apply to determine future land use or development.

33. There is one development area that has a centres zoning: **DEV1 Development Area – Kilbirnie Bus Barns**, which is predominantly zoned MCZ, although a number of adjoining residentially zoned (MRZ) sites are also part of this development area.
34. Under the National Planning Standards, a District Plan may provide for special purpose zones, either one of the eight defined ones or additional special purpose zones when the proposed land use activities or anticipated outcomes of the additional zone are significant to the district, region or country, are impractical to be managed through another zone, and are impractical to be managed through a combination of spatial layers. As it provides the interface between the City Centre and Te Whanganui a Tara / Wellington Harbour, submissions on the **Waterfront [Special Purpose] Zone (WFZ)** were heard as part of Hearing Stream 4².
35. One key matter for the Centres Zones that was heard as part of Hearing Stream 1: Plan Structure and Strategic Direction was the Centres Hierarchy that has been applied to Wellington City through the notified PDP. The hierarchy is derived from the PDP's Strategic Direction in relation to the City Economy, Knowledge and Prosperity (**CEKP**) which seeks to provide a framework that is flexible enough to support diversity in commercial activities and uses, while still ensuring the effects of those uses are appropriately managed. The five CEKP Objectives provide the direction for managing the City's commercial and industrial environments. In particular, Objective CEKP-O2 directs that the City maintains a hierarchy of centres based on their role and function: these being the City Centre, Metropolitan Centres, Local Centres, and Neighbourhood Centres (CEKP-O3 addresses mixed use and industrial areas outside of these Centres).
36. As the PDP's four level centres hierarchy is derived from this Strategic Objective, the question of whether this particular hierarchy is the most appropriate one for Wellington City was addressed in Hearing Stream 1. In particular, Kāinga Ora challenged the proposed hierarchy and sought an additional level, town centres, be included that would manage three of the City's centres (Newtown, Miramar, and Tawa) that are identified as Local Centres in the PDP. The recommendation of the

² As a further connection to the City Centre, the WFZ is located within the Operative District Plan's Central Area.

Panel on that matter is provided in Panel Report 1B, in which we recommend retaining the four level centres hierarchy as notified.

37. As giving effect to this hierarchy is achieved through the zoning framework for the City's centres, the matter of whether there should be a TCZ was naturally revisited in Hearing Stream 4, with additional evidence provided to the Panel.
38. It should be noted that the phrase "Centres" has been used as a simple reference to all of the zones referred to above: however, the National Planning Standards requires the use of the following mandatory structure for District Plans:

Under Area-Specific Matters:

- Commercial and mixed use zones:
 - ▶ Neighbourhood centre zone
 - ▶ Local centre zone
 - ▶ Commercial zone
 - ▶ Large format retail zone [not used in Wellington City PDP]
 - ▶ Mixed use zone
 - ▶ Town centre zone [not used in Wellington City PDP]
 - ▶ Metropolitan centre zone
 - ▶ City centre zone
- Industrial zones:
 - ▶ Light industrial zone [not used in Wellington City PDP]
 - ▶ General industrial zone
 - ▶ Heavy industrial zone [not used in Wellington City PDP]
- Special Purpose Zones
 - ▶ One of the eight defined by the National Planning Standards, and
 - ▶ A special purpose zone identified as necessary for Wellington City (for Hearing Stream 4, being the Waterfront Zone (WFZ))
- Development Areas:
 - ▶ Kilbirnie Bus Barns Development Area.

39. More fully, therefore, the matters heard under Hearing Stream 4 should be summarised “Commercial and Mixed Use Zones, General Industrial Zone, Waterfront Zone, Kilbirnie Bus Barns Development Area and Wind”. However, for the sake of conciseness, we have continued with using “Centres” or “Centres Provisions” unless we are specifically addressing the zones used to implement the PDP’s Centres Hierarchy – namely, the CCZ, MCZ, LCZ and NCZ – in which case we have used the acronym CMUZ as used in the National Planning Standards.

2.2 Division of Schedule 1 and ISPP Provisions

40. While the Centres provisions are being considered in their entirety, the PDP is annotated with provisions that are to be assessed under the ISPP or the Part 1 of Schedule 1 of the RMA.

41. A summary of the division of the Centres provisions into either ISPP or Pt 1 Sch 1 considerations is as follows:

- City Centre Zone:
 - Introduction – Pt 1 Sch 1
 - Objectives – ISPP
 - Policies CCZ-P4-CCZ-P6 and CCZ-P8-CCZ-P12 - ISPP
 - Policies CCZ-P1-CCZ-P3 and CCZ-P7 – Pt 1 Sch 1
 - Rules CCZ-R17-CCZ-R20 – ISPP
 - Rules CCZ-R1-CCZ-R16, CCZ-R21 and CCZ-R22 – Pt 1Sch 1
 - Standards CCZ-S1-CCZ-S13 – ISPP
- Te Ngākau Civic Square Precinct:
 - Introduction – Pt 1Sch 1
 - Objectives – ISPP
 - Policies – CCZ-PREC01-P2-CCZ-PREC01-P4 – ISPP
 - Policies – CCZ-PREC01-P1 – Pt 1Sch 1
 - Rules CCZ-PREC01-R7 (Note: this should say CCZ-PREC01-R8) - ISPP
 - Rules CCZ-PREC01-R1-CCZ-PREC01-R7 – Pt 1Sch 1
 - Standard CCZ-PREC01-S1 – ISPP

- Metropolitan Centre Zone
 - Introduction – Pt 1 Sch 1
 - Objectives O1-O3 – ISPP
 - Objective O4 – Pt 1 Sch 1
 - Policies MCZ-P1 and MCZ-P6 to MCZ-P10 - ISPP
 - Policies MCZ-P2-MCZ-P5 – Pt 1 Sch 1
 - Rules MCZ-R18 to MCZ-R20 - ISPP
 - Rules MCZ-R1 to MCZ-R17, MCZ-R21 to MCZ-R22 - Pt 1 Sch 1
 - Standards MCZ-S1 to MCZ-S11 – ISPP

- Local Centre Zone
 - Introduction – Pt 1 Sch 1
 - Objectives O1-O3 – ISPP
 - Objective O4 – Pt 1 Sch 1
 - Policies LCZ-P1 and LCZ-P6 to LCZ-P10 - ISPP
 - Policies LCZ-P2-LCZ-P5 – Pt 1 Sch 1
 - Rules LCZ-R16 to LCZ-R18 - ISPP
 - Rules LCZ-R1 to LCZ-R15, LCZ-R19 to LCZ-R20 - Pt 1 Sch 1
 - Standards LCZ-S1 to LCZ-S11 - ISPP

- Neighbourhood Centre Zone
 - Introduction – Pt 1 Sch 1
 - Objectives O1-O3 – ISPP
 - Objective O4 – Pt 1 Sch 1
 - Policies NCZ-P1 and NCZ-P6 to NCZ-P10 - ISPP
 - Policies NCZ-P2-NCZ-P5 – Pt 1 Sch 1
 - Rules NCZ-R16 to NCZ-R18 - ISPP
 - Rules NCZ-R1 to NCZ-R15, NCZ-R19 to NCZ-R20 - Pt 1 Sch 1
 - Standards NCZ-S1 to NCZ-S11 - ISPP

42. The following full chapters fall under the ISPP:
- a) Appendix 9: City Centre Zone and Special Purpose Waterfront Zone – Minimum Sunlight Access and Wind Comfort Control – Public Space Requirements
 - b) DEV1: Kilbirnie Bus Barns.
43. The following chapters fall under the Part 1 Schedule 1 process:
- a) Mixed Use Zone
 - b) Commercial Zone.

2.3 Structure of the Reports for Hearing Stream 4

44. The structure of our reports on Hearing Stream 4 generally follows that used by the s42A authors, as follows:
- 4A. Overview and General Matters for the Commercial and Mixed Use Zones, including the City Outcomes Contributions and Design Guides
 - 4B. City Centre Zone and Waterfront Zone
 - 4C. Metropolitan Centre Zone, Local Centres Zone and Neighbourhood Centres Zone
 - 4D. Mixed Use Zone, Commercial Zone and General Industrial Zone
 - 4E. Wind and associated Appendices 8 and 14.
45. For Panel Report 4A, the matters addressed are the same as those contained in the first of the ten Section 42A Reports for Hearing Stream 4, *Overview and General Matters*, which was jointly prepared by the principal reporting officers for Hearing Stream 4, Ms Anna Stevens and Ms Lisa Hayes. The following matters have been considered in this order:
- Zone Framework
 - General Submissions on the Commercial and Mixed Use Zones
 - Definitions
 - Support for Commercial and Mixed Use Zones provisions
 - Expansion of Commercial and Mixed Use Zones
 - Town Centre Zone

- Requests for Changes to Zoning
- Consistency with Other Zones
- Amendments to Commercial and Mixed Use Zones provisions
- Urban Design
- City Outcomes Contributions Mechanism
- New Commercial and Mixed Use Zones provisions
- Minor and Inconsequential Amendments.

2.4 Hearing Arrangements

46. The Stream 4 hearing commenced on Thursday 22 June 2023, and concluded on Wednesday 5 July 2023. There was a lay day on Monday 3 July 2023.

47. Over the balance of the hearing we heard from the following parties:

- For Council:
 - Nick Whittington (Counsel)
 - Anna Stevens (Reporting Planner, Overview and General, City Centre, and Wind)
 - Lisa Hayes (Reporting Planner, Overview and General, Metropolitan Centres, Local Centres, Neighbourhood Centres, Mixed Use, and Commercial Zone)
 - Hannah van Haren-Giles (Reporting Planner, General Industrial Zone)
 - Andrew Wharton (Reporting Planner, Waterfront Zone)
 - Dr Farzad Zamani (Urban Designer)
 - Dr Kirdan Ross Lees (Urban Economist)
 - Dr Michael Donn (Wind Expert)
 - Nick Locke (Wind Expert)

- For the Thorndon Residents' Association³:
 - Richard Murcott
- For Willis Bond and Company Limited⁴:
 - Jimmy Tait-Jamieson
 - Alistair Aburn (Planning)
- Guy Marriage⁵ and for NZIA Wellington Branch⁶:
 - Guy Marriage
 - Ric Slessor
 - Hayley Hedges Fickling
- For the Wellington Tenths Trust⁷:
 - Vicki Hollywell
 - Anaru Smiler
 - Liz Mellish
 - Christine Fox
- For Foodstuffs North Island⁸:
 - Stephen Quinn (Counsel)
 - David Borensen
 - Luciana Tarnoski
 - Evita Key (Planning)

³ Submission #333, Further Submission #64

⁴ Submission #416, Further Submission #12

⁵ Submission #407

⁶ Submission #301

⁷ Submission #363

⁸ Submission #476

- For Friends of Khandallah⁹:
 - Martin Jenkins
- For EnviroWaste Services Limited (now Enviro NZ)¹⁰:
 - Kaaren Rosser (Planning)
- Roland Sapsford¹¹
- For Restaurant Brands Limited¹²:
 - Mark Arbuthnot (Planning)
- For Stride Investment Management Limited¹³ and Investore Property Limited¹⁴:
 - Bianca Tree (Counsel)
 - Amy Dresser
 - Jarrod Thompson
 - Cameron Wallace (Urban Design)
 - Joe Jeffries (Planning)
 - Mark Georgeson (Transport)
 - Timothy Heath (Property Economics)
- For Argosy¹⁵, Oyster Management Limited¹⁶, Fabric Property Limited¹⁷, and Precinct Properties NZ Ltd¹⁸ :
 - Bianca Tree (Counsel)
 - Grant Burns (Argosy)
 - Jarrod Thompson (Fabric & virtual)

⁹ Submission #252

¹⁰ Submission #373

¹¹ Submission #305, Further Submission #117

¹² Submission #349

¹³ Submission #470, Further Submission #107

¹⁴ Submission #405

¹⁵ Submission #383

¹⁶ Submission #404

¹⁷ Submission #425

¹⁸ Submission #139

- Jessica Rod (Fabric & virtual)
- Tom Kane (Oyster)
- Kevin Pugh (Precinct)
- Cameron Wallace (Urban Design)
- Joe Jeffries (Planning)
- Richard Murcott¹⁹
- Hilary Watson²⁰
- For Te Herenga Waka – Victoria University of Wellington²¹:
 - Claire Wills
 - Peter Coop (Planning)
- For Kāinga Ora²²:
 - Jennifer Caldwell (Counsel)
 - Natalie Summerfield
 - Brendon Liggett
 - Michael Cullen (Economics)
 - Matt Heale (Planning)
 - Nick Rae (Urban Design)
- For Moir Street Collective²³ and Dougal List²⁴:
 - Dougal List

¹⁹ Submission #322

²⁰ Submission #321, Further Submission #74

²¹ Submission #106

²² Submission 391, Further Submission #81

²³ Submission #312

²⁴ Submission #207

- For the WCC Environmental Reference Group²⁵:
 - Shannon Wallace
- Michelle Rush²⁶
- For Stratum Management Limited²⁷:
 - Craig Stewart
 - Mitch Lewandowski (Planning)
- For Generation Zero²⁸:
 - Marko Garlick
- For Wakefield Property Holdings Limited²⁹:
 - Sophie Glendenning
- For Parliamentary Services³⁰:
 - Libby Neilson
 - Peter Coop (Planning)
- For Wellington Civic Trust³¹:
 - Helene Ritchie
 - Sylvia Allan (Planning)
 - Clive Anstey
- For KiwiRail³²:
 - Kristen Gunnell (Counsel)
 - Michael Brown

²⁵ Submission #377

²⁶ Submission #426

²⁷ Submission #249, Further Submission #133

²⁸ Submission #254, Further Submission #54

²⁹ Submission #108

³⁰ Submission #375, Further Submission #48

³¹ Submission #388, Further Submission #83

³² Submission #408

- Julia Fraser
- Catherine Heppelthwaite (Planning)
- For The Urban Activation Lab of Red Design Architects³³ and Anna Kemble Welch³⁴:
 - Martin Hanley
- For Inner City Wellington³⁵:
 - Stephen King
- For Bus Barn Limited³⁶:
 - Cameron de Leijer (Planning)
- For Peter Kennedy³⁷:
 - Cameron de Leijer (Planning)
- For Prime Property Limited³⁸:
 - Cameron de Leijer (Planning)
 - Ian Leary (Planning)
- For Rongotai Investments Limited³⁹:
 - Cameron de Leijer (Planning)
- For Z Energy Limited⁴⁰:
 - Sarah Westoby
- For Mount Victoria Historical Society Inc.⁴¹:
 - Joanna Newman

³³ Submission #420

³⁴ Submission #434

³⁵ Submission #352

³⁶ Submission #320, Further Submission #95

³⁷ Submission #353

³⁸ Submission #256, Further Submission #93

³⁹ Submission #269, Further Submission #92

⁴⁰ Submission #361, Further Submission #33

⁴¹ Submission #214, Further Submission #39

- James Coyle⁴²
- Sarah Crawford⁴³
- For Ryman⁴⁴ and RVA⁴⁵:
 - Luke Hinchey (Counsel)
 - Alice Hall
 - Nicola Williams (Planning)
 - Rebecca Skidmore (Urban Design)
- For Woolworths New Zealand Limited⁴⁶:
 - Daniel Shao
 - Kay Panther-Knight (Planning)
- For Newtown Residents Association⁴⁷:
 - Rhona Carson
 - Tim Helm (Economics)
- For Tawa Community Board⁴⁸:
 - Miriam Moore
 - Jill Day
- For Claire Nolan et al⁴⁹:
 - James Fraser
- For Disabled Assembly New Zealand Inc.⁵⁰:
 - Chris Ford

⁴² Submission #307

⁴³ Further Submission #118

⁴⁴ Submission #346, Further submission #128

⁴⁵ Submission #350, Further Submission #126

⁴⁶ Submission #359

⁴⁷ Submission #40, Further Submission #63

⁴⁸ Submission #294

⁴⁹ Submission #275

⁵⁰ Submission #343

- For Halfway House Heritage Gardeners⁵¹:
 - Claire Bibby
 - Russel Brodie
 - Jacqui Knight
- For JCA⁵²:
 - Warren Taylor
 - Mary Therese;
- For LIVE WELLington⁵³:
 - Jane O'Loughlin
- For ORCA⁵⁴ and Julie Ward⁵⁵:
 - Lawrence Collingbourne
 - Julie Ward
- For WCTT⁵⁶ and HPW
 - Duncan Ballinger (Counsel)
 - Felicity Wong
 - Stuart Niven (Urban Designer)
- For Eldin Family Trust⁵⁷:
 - Duncan Ballinger (Counsel)
 - Benjamin Lamason (visual simulations)
- Craig Palmer⁵⁸

⁵¹ Submission #203

⁵² Submission #429, Further Submission #114

⁵³ Submission #154, further Submission #96

⁵⁴ Submission #283, Further Submission #80

⁵⁵ Submission #103

⁵⁶ Submission #233, Further Submission #82

⁵⁷ Submission #287

⁵⁸ Submission #492

- Ann Mallinson⁵⁹
48. Copies of the speakers' speaking notes and/or presentations were provided and are available online, together with the expert evidence and legal submissions. In addition, Ms O'Loughlin for LIVE WELLington provided a copy of the Adelaide Road Framework (WCC, 2008) and Hilary Watson provided a copy of the visuals she used to support her speaking notes.
49. We also received tabled material from the following parties:
- Oil Companies⁶⁰
 - MoE ⁶¹
 - Oyster Management Ltd⁶²
 - Dept of Corrections⁶³, and
 - WIAL⁶⁴.
50. During the wrap up/ integration hearing in September 2023, we heard from the following parties in relation to Stream 4 issues (including urban design matters):
- For the Council:
 - Nick Whittington (Counsel)
 - Anna Stevens (Reporting Planner, Design Guides, City Outcomes Contributions)
 - Dr Farzad Zamani (Urban Design)
 - Sarah Duffel (Urban Design)
 - For Stratum Management⁶⁵:
 - Maciej Lewandowski
 - For RVA and Ryman Healthcare:⁶⁶
 - Luke Hinchey (Counsel)

⁵⁹ Further Submission #3

⁶⁰ Submission #372

⁶¹ Submission #400, Further Submission #52

⁶² Submission #404

⁶³ Submission #240

⁶⁴ Submission #406, Further Submission #36

⁶⁵ Submission #249

⁶⁶ Submissions #346 and #350

- Nicola Williams
- Rebecca Skidmore
- For Restaurant Brands Limited⁶⁷
 - Mark Arbuthnot
- For McIndoe Urban Limited⁶⁸:
 - Graeme McIndoe
 - Andrew Burns
- Guy Marriage⁶⁹:
 - Guy Marriage
 - Hayley Hedges Fickling
- For Willis Bond and Company Limited⁷⁰:
 - Jimmy Tait-Jamieson (Counsel)
- For Kāinga Ora⁷¹:
 - Natalie Summerfield (Counsel)
 - Matt Heale
 - Nick Rae
- For Onslow Residents and Community Association⁷²:
 - Lawrence Collingbourne
- For the Johnsonville Community Association⁷³:
 - Warren Taylor
 - Mārie Therese
- For Il Casino Apartment Body Corporate and Thomas Broadmore⁷⁴:
 - Ian Gordon (Counsel)
 - Tim Castle

⁶⁷ Submission #349

⁶⁸ Submission #135

⁶⁹ Submission #407

⁷⁰ Submission #416

⁷¹ Submission #391

⁷² Submission #283

⁷³ Submission #429

⁷⁴ Submissions #426 and #417

- Thomas Broadmore

51. On behalf of Woolworths NZ Limited, Kay Panther-Knight tabled a written statement. Photographs of the tabled models of different height setbacks made by architectural student Hayley Hedges Fickling were later circulated by Mr Marriage in support of his submission. Section 32AA evaluations were also later supplied by Mr Arbuthnot and Ms Williams in support of their recommended amendments.
52. All of the expert evidence, submitter statements, speaking notes, presentations and legal submissions were made available on the PDP website.
53. As recorded in our Report 1A, the entire Hearing Panel undertook a general site visit around various parts of the City on 2 December 2022, which included most of the Centres. The Hearing Panel for Stream 4 undertook a site visit to the City's various Centres on 28 June 2023.
54. The Hearing Panel received two requests for us to undertake particular site visits. Mr Stewart for Stratum Management Limited requested that we visit the company's recently completed apartment/hotel building at 172 Thorndon Quay to view the size of some example units. The Hearing Panel undertook this site visit during a break in the hearing. Ms Bibby on behalf of Halfway Heritage House requested that the Panel visit the Halfway House on 246 Middleton Road and its vicinity. We undertook this visit as part of our general site visit on 28 June 2023, partway through the Hearing.
55. Separately, the Hearing Panel members undertook more informal site visits to view different areas of the City that were the subject of evidence.
56. No site visits were undertaken in relation to the Wrap-up Hearing.

3. MATTERS OF STRATEGIC OR CROSS-ZONE IMPORTANCE

3.1 Zone Framework

57. The rationale for the Zone framework for Commercial and Mixed Use Zones was explained by the reporting officers in the Hearing Stream 4 Overview and General Section 42A Report. In particular, the report explained that the PDP retains a hierarchy of centres zoning used in the ODP to provide suitable housing and business capacity to meet the City's development needs, as required by the NPSUD, in particular (emphasis added):

***Policy 2:** Tier 1, 2, and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.*

***Policy 3:** In relation to tier 1 urban environments, regional policy statements and district plans enable:*

- (a) *in city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification; and*
- (b) *in metropolitan centre zones, building heights and density of urban form to reflect demand for housing and business use in those locations, and in all cases building heights of at least 6 storeys; and*
...
- (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.*

58. The reporting officers also explained how the PDP has adopted the zoning framework standards required under the National Planning Standards which provide a range of zoning options for the Council to apply as appropriate: "*the Council has determined that the six zones CCZ, MCZ, LCZ, NCZ, MUZ and COMZ suitably cover the range of existing centres and has zoned these based on their best fit with each of these zones.*"⁷⁵

- a) The City Centre Zone has an identical role and purpose to the 'Central Area' in the ODP in managing the main centre of the City and Region, with the zoning extended in some places such as Adelaide Road, Pipitea and Thorndon, but not now covering the Port, Lambton Harbour (the Waterfront), and the Stadium;

⁷⁵ Paragraph 50, Section 42A Report on General Matters

- b) The Metropolitan Centre Zone aligns with 'sub-regional centres' in the ODP and covers those parts of the City that are the focal points for sub-regional urban catchments and contain a broad range of commercial, community, recreational and residential activities – this zoning applies to Johnsonville and Kilbirnie;
- c) The Local Centres Zone aligns with 'district centres' in the ODP and applies to areas used predominantly for a range of commercial and community activities that service the needs of a residential catchment – applies to Newtown, Island Bay, Hataitai, Karori, Brooklyn, Churton Park, Crofton Downs, Kelburn, Khandallah, Linden, Miramar, Newlands and Tawa centres;
- d) The Neighbourhood Centres Zone aligns with 'neighbourhood centres' in the ODP and applies to areas used predominantly for a range of small-scale community and commercial activities that service the immediate residential neighbourhood – for example, the NCZ applies to the shopping centres in Aro Valley, Berhampore and Ngaio.
- e) The Commercial Zone aligns with the Curtis Street Business Area in the ODP, as special site specific zoning that arose from an Environment Court decision on a private plan change to a site between Northland and Karori.
- f) The Mixed Use Zone aligns with the Business Area 1 zone in the ODP, and applies to areas around the City used predominantly for a compatible mixture of residential, commercial, light industrial, recreational and/or community activities; and
- g) The General Industrial Zone aligns with the Business Area 2 zone in the ODP, and applies to areas around the City used predominantly for a range of industrial and compatible activities.

59. The reporting officer Ms Stevens also explained that there are specific areas in the City Centre that, under the notified PDP, are managed differently to how they are managed in the Central Area under the ODP and which have been realigned to comply with the National Planning Standards. These areas are:

- The ODP Central Area's Lambton Harbour Area has been rezoned as a Special Purpose Waterfront Zone (**WFZ**)
- The ODP Central Area's Wellington Regional Stadium area (to be considered in Hearing Stream 6), has been rezoned as Special Purpose Stadium Zone in the PDP (**STADZ**), and

- The Port Area, which is zoned as Central Area in the ODP, comprising two precincts, Pipitea Precinct and Port Redevelopment Precinct, these have been rezoned as a Special Purpose Port Zone (**PORTZ**) under the PDP, with two parts of this zone to be managed as being the Inner Harbour Port Precinct (**PORTZ-PREC01**) and Multi-User Ferry Precinct (**PORTZ-PREC02**). Submissions on the Port Area are to be considered in Hearing Stream 6.
60. The WFZ has been addressed under Hearing Stream 4 because of its integral relationship with the City Centre: the other zones will be addressed in later hearings.
 61. The CCZ contains a new Precinct, the Te Ngākau Civic Square Precinct, not previously included in the ODP as a precinct or with any standalone Central Area provisions, to manage the redevelopment of the Civic Square area: this area was defined as Civic Centre Heritage Area in the ODP.
 62. The issue of whether the PDP should have a Town Centre Zone as sought by Kāinga Ora is addressed in Section 3.2 of this report.
 63. The Design Guides that apply to the Commercial and Mixed Use Zones and some Special Purpose Zones (specifically the Waterfront, Tertiary Education and Hospital Zones), and the related District Plan provisions, were not addressed in Hearing Stream 4 as they were subject to a separate review process as a result of Panel directions emanating from Hearing Stream 2 Residential. The Panel heard on the final recommendations on the Design Guides and related Plan provisions as part of the Wrap-up and Integration Hearing. The Panel's overarching recommendations on the Design Guides and related PDP provisions are addressed in Panel Report 2A. The Panel's recommendations on the specific provisions on the CMUDG are contained in this report in Section 3.3.
 64. A number of district-wide issues that apply to the Commercial and Mixed Use Zones such as transport, natural hazards, infrastructure, and three waters, were also not addressed in Hearing Stream 4, as these have been or will be addressed in other hearing streams. The matter of walkable catchments around the perimeter of centres zones was addressed in Hearing Stream 1.
 65. The Panel Report on Hearing Stream 1 addressed the strategic issues associated with the proposed Centres hierarchy and the general approach to managing the City's commercial and industrial areas. The Panel concluded that the strategic approach for managing the City's commercial and mixed use areas was appropriate. This

report addresses specific issues relating to the Commercial and Mixed Use Zones in the PDP, including:

- The spatial extent of the zones
- Precincts within the zones
- The controls on activities and development within the zones, and
- Provisions to support the application of the zones, such as definitions.

3.2 Should there be a Town Centre Zone?

66. In its submission, Kāinga Ora sought to have the PDP amended to include a new Town Centre Zone within the Centres Hierarchy in the PDP, and to rezone Miramar, Tawa and Newtown from Local Centres Zone to Town Centre Zone⁷⁶.
67. This matter was partly addressed as part of *Hearing Stream 1: Plan Structure and Strategic Direction*, with the Panel's recommendations contained in Report 1B.
68. The Centres Hierarchy is derived from the PDP's Strategic Direction in relation to City Economy, Knowledge and Prosperity (CEKP), with the five CEKP Objectives providing the direction for managing the City's commercial and industrial environments. In particular, Objective CEKP-O2 is to maintain a hierarchy of centres based on their role and function: these centres being the city centre, metropolitan centres, local centres, and neighbourhood centres (CEKP-O3 addresses mixed use and industrial areas outside of these Centres). Therefore, the decision not to have a town centre zone was made at a strategic level in the PDP.
69. As we concluded for Hearing Stream 1, at a strategic level, we considered the use of a hierarchy of centres based on four levels of centres management was an appropriate, easily understood and effective means of managing the City's commercial centres, and there was no substantial purpose and function for having an additional centres level, particularly given there would be only minor differences in provisions between a LCZ and TCZ. Accordingly, the Panel has recommended against modifying CEKP-O2 to include a town centre level as sought by Kāinga Ora.
70. The question of whether there should be a Town Centre Zone was revisited in Hearing Stream 4 when the appropriateness of the PDP's commercial and mixed use zonings was addressed by some submitters. In particular, further evidence was

⁷⁶ Submission #391.52, 391.53

provided by Kāinga Ora to this hearing in support of its submission, which we address shortly.

71. First, it is important to set out the regulatory background to this matter.
72. Under the National Planning Standards, with very narrow exceptions, a District Plan must only use the zones listed in the Zone Framework in Section 8 of the Standards. For commercial and mixed use areas, the Standards list eight potential zones, from which a local authority must select the most appropriate zone(s) to manage its district's commercial environments. Based on their descriptions, five of these zones clearly apply to a hierarchy of centres serving different levels of catchments and providing different types and varieties of services, ranging from the smallest, neighbourhood centres, to city centres that apply to the main centre of a district or region. Other centres zones listed are local centres, town centres and metropolitan centres. In addition, there are three zones that could apply outside a centres hierarchy: large format retail zones, commercial zones, and mixed use zones.
73. Under the National Planning Standards description, in larger urban areas, a Town Centre Zone is for areas that “provide for a range of commercial, community, recreational and residential activities that service the needs of the immediate and neighbouring suburbs”. In comparison, the Local Centre Zone is for “that are used predominantly for a range of commercial and community activities that service the needs of the residential catchment”: this description compares with the Neighbourhood Centres Zone which are for “areas that service the immediate residential neighbourhood”.
74. There are no metrics or other guidance provided to assist in determining the most appropriate zoning for any particular centre, and the descriptions used in the National Planning Standards require a number of judgments to be made: what is a ‘broad range’, a ‘residential catchment’ or ‘predominantly’? Even within the Wellington Region, Kāinga Ora informed us at the hearing that the constituent local authorities have different approaches to applying the different CMUZ zones: the Kāpiti Coast District, for example, has neither a CCZ or an NCZ, but has an MCZ, TCZ and LCZ, while Porirua City has an MCZ, LCZ and NCZ, but no CCZ or TCZ.
75. To assist it in developing the PDP, the Council engaged Colliers International and Sense Partners to undertake a City-wide *Retail and Market Assessment* (the “Sense

Partners Report”⁷⁷) in which, to inform the centres hierarchy, all of the centres outside the city centre were assessed against five criteria: total retail spend in each centre, the catchment area for retail, the range of retail activities, future population potential, future development density. In conclusion, the report authors suggested that “*Karori, Miramar, Tawa, Khandallah, Kelburn, Linden and Newlands should be town centres. The low scores we obtain for the other centres suggest Haitatai [sic], Brooklyn, Crofton Downs and Churton Park are better suited as Local centres.*”⁷⁸

76. On outlining the reasons why a Town Centre Zone was not adopted for the PDP, the reporting officer for Hearing Stream 4 referred to the Section 42A Report for Hearing Stream 1, in which the reporting officer for that topic, Mr McCutcheon, noted that the Sense Partners Report showed there were arbitrary differences in the catchments of people serviced between the various centres and range of levels of business activity⁷⁹. We agree with Mr McCutcheon’s point: we note, for example, that in Figure 115 of the Sense Partners Report, Kelburn scored best of all centres on future density in the catchment (recommended in the Sense Partners Report as a town centre), while Kilbirnie scored low for current catchment population (recommended as a metropolitan centre). The assessment scores reveal a diversity in characteristics between the centres.
77. In further support of the reasoning for excluding a Town Centre Zone in the PDP centres hierarchy, Mr McCutcheon noted that the PDP responds to Policy 3d of the NPSUD by enabling taller and denser development in and around all centres, and that typically there is no difference in the PDP in building height and density between the former business and centres zones (in the ODP) and the newly termed local and neighbourhood centres in the PDP⁸⁰.
78. Mr McCutcheon also noted that the planning provisions for all centres have a high degree of similarity in all centres (except for metropolitan centres), enable the same range of activities, and are subject to common built form standards and design guides. He concluded that “*an additional zone would result in unnecessary duplication of content.*”⁸¹

⁷⁷ [Retail and Market Assessment for Wellington City Council, Colliers International and Sense Partners, 30 November 2020](#)

⁷⁸ At Page 113

⁷⁹ Section 42A Report, Hearing Stream 1, paragraph 874(b)

⁸⁰ At paragraph 874(a)

⁸¹ At paragraph 874(c)

79. For Hearing Stream 4, Kāinga Ora expanded on the points it made for Hearing Stream 1, stating that the simplified approach taken by the Council is “not appropriate for Wellington given the clear national direction, particularly in light of the National Planning Standards and need for regional consistency.”⁸²

*In short, a Town Centre provides more activities, to a wider catchment, with greater accessibility, therefore supporting greater residential density and growth.*⁸³

80. Through the economic evidence of Mr Cullen, Kāinga Ora sought to support its contention that the gap in economic performance between the Metropolitan Centres and Local Centres in the Wellington Centres hierarchy is sufficiently wide enough that a middle centre category is appropriate and desirable.

81. Mr Cullen’s evidence relied primarily on NZ Statistics 2022 data on journey to work, employment density, and employment diversity, summarised in his Table 1⁸⁴. Mr Cullen’s principal point was that Miramar, Tawa and Newtown function at a different level to other centres in the City, based on his analysis of retail spending, the level of commercial and community services, employment diversity, and journey to work⁸⁵.

82. As with the assessment outcomes in the Sense Partners Report for the Council, we consider that Mr Cullen’s data also contained some arbitrary differences between the centres, indicating a diversity in centres characteristics rather than a clear hierarchy. For example, the total employment for Miramar (recommended by Mr Cullen as a town centre) was comparable to that for Island Bay and Karori (recommended as local centres). Further, the total employment data for Newtown (a recommended town centre) was significantly greater than those for Johnsonville or Kilbirnie (recommended metropolitan centres).

83. In reply, the Council’s economics expert, Dr Lees, noted that Mr Cullen’s statistics are based on NZ Statistics data at suburb level and raised several issues with the conclusions Mr Cullen drew from this information. For instance, he noted that the employment statistics for Newtown are skewed because of the presence of the regional hospital in that suburb, noting that, even with the hospital employment figures removed, Newtown still has higher employment ratios than the two metropolitan centres⁸⁶.

⁸² Legal submissions for Kāinga Ora, Hearing Stream 4, paragraph 5.7

⁸³ At paragraph 5.10

⁸⁴ Michael Cullen evidence for Kāinga Ora, page 7

⁸⁵ At paragraph 5.4

⁸⁶ At paragraph 6.16

84. Dr Lees identified a number of other factors that might be influencing the difference in employment data; for example, in regard to the differences in non-retail to retail employment ratios. He also considered that the higher rentals in the denser suburbs may attract service businesses that can afford the area's higher rent, forcing large format retail to operate closer to residential areas with better transport connections⁸⁷.
85. We also had some difficulty in accepting the reliability and usefulness of Mr Cullen's data in terms of demonstrating whether there was any meaningful quantum difference between the functioning of the centres at Miramar, Newtown or Tawa and those of other centres. In our opinion, the statistics indicate a broad diversity of characteristics in the functioning of the City's centres rather than a clear structure of function and roles.
86. Both Dr Lees and Mr Cullen appear to agree on one critical point: that further development of businesses and households generate jobs, and that enabling intensification in and around centres will further assist in those centres' vitality and vibrancy, improving facilities, services and amenities and contributing to enhancing well-functioning urban environments.
87. At this point, we note that, in Hearing Stream 1, Mr Cullen was asked by the Chair whether it mattered what you call a Centre as long as the level of development enabled in and around the Centre is commensurate with the level of services, and he agreed it possibly did not matter.
88. We concur with Mr Cullen, and conclude that, if the PDP provisions enable a broad range of business and housing development opportunities, then ultimately whether a centre is zoned 'town centre' or 'local centre' becomes somewhat moot. On this point, we agree with Mr McCutcheon and Ms Hayes.
89. Another contention made by Mr Cullen in his evidence was that there is an implied assumption in the PDP that the centres hierarchy should remain as is, forever, and that local centres should remain local centres and never grow to become town centres⁸⁸. We respectfully disagree. Provided that there is sufficient business and housing 'enablement' in the PDP for centres and their surrounds, if the many other factors that direct development and commercial investment are in play (and which

⁸⁷ Reply from Dr Lees, paragraphs 14 - 17

⁸⁸ Cullen evidence, at paragraph 6.29

largely function outside the PDP), then, under an enabling regulatory framework, local centres should continue to grow.

90. Collectively, the economic evidence provided for Hearing Stream 4 for both the Council and Kāinga Ora persuaded us that the City's centres all function in different ways and we were not convinced that there was sufficient consistent evidence across a number of criteria to demonstrate that the centres at Miramar, Newtown, and Tawa function at a sufficiently higher level to warrant a separate zoning for these areas.
91. Ultimately, particularly given the inconclusive evidence, the Panel considers that the decision about the number and types of levels in the PDP's Centres hierarchy is primarily a planning one rather than a purely economic decision. Even if an economic analysis indicates that some centres function at a different level to others, there are a range of factors that the Council must consider in determining the most appropriate zoning, including the ease of administration and to minimise the amount of unnecessary duplication in PDP.
92. We accept that the centres in Miramar, Tawa and Newtown are at the 'higher' end of the spectrum of local centres (in comparison with say Brooklyn or Khandallah), but nevertheless we have determined they still primarily function as local centres, providing a range of commercial and community activities (but not recreational or residential) that service the needs of the local residential catchment (and not the immediate and neighbouring suburbs). We have concluded that the evidence does not convincingly indicate that these three centres have the necessary critical mass in terms of the range and collective synergy of commercial, community, recreational and residential activities that would be anticipated in a town centre.
93. Ultimately we asked ourselves what would be gained by having a Town Centre Zone? We accept Mr McCutcheon's advice in Hearing Stream 1 that the Local Centres Zone enables a wide range of commercial, community recreational and residential activities, and that a Town Centre Zone would simply replicate these enabling provisions. Further, informed by the City's Spatial Plan⁸⁹, the development capacity of these centres is dictated by the development standards for the zone, which can be calibrated according to the particular context of each centre.

⁸⁹ *Our City Tomorrow: Spatial Plan for Wellington City* identifies different height controls in and around the various centres of the City to enable growth.

94. We also undertook an on-the-ground assessment of the three centres that Kāinga Ora sought to be rezoned as Town Centres. Our observations can be summarised as follows:

- While **Miramar** has some attributes of a town centre, including having a supermarket, library and a few recreational facilities, we did not consider it has the collective assemblage of commercial, community, recreational and residential activities that provide the critical mass required to fully function as a town centre. It has a limited number and range of retail activities, and very few businesses or services that would be anticipated within a town centre. While the supermarket, garden centre, library and cinema may draw some custom from beyond the immediate Miramar vicinity, we not convinced there was sufficient evidence to demonstrate that the collective ‘pull’ of the Miramar centre was that of a town centre.
- **Newtown** has a fairly long main shopping street, but we were not convinced there was adequate depth and range of retail businesses and other commercial activities to provide most of the services one would expect from a town centre. This was confirmed to a degree by the experience of a local resident (Hilary Watson) who informed us that she goes to the Kilbirnie centre (which is in the adjoining suburb) for most of her shopping requirements.
- The **Tawa** centre is probably the closest to a town centre of the three centres, likely an inheritance of its distance from Wellington, its history of local government and its broader catchment. This centre has more of range of retail and commercial activities, and is supported by a number of community facilities. However, we were not satisfied that this centre has sufficient critical mass in terms of the range of commercial, community, recreational and residential activities to fully function as a town centre. While it may be a more finely balanced decision for Tawa, we would also question the value of having a separate zone for just one centre.

95. In conclusion, we find there is not sufficient conclusive evidence to demonstrate a need to introduce a fifth level into the Centres Hierarchy of zones and recommend rejecting Kāinga Ora’s submission points on this matter.

3.3 Urban Design

96. Under the direction of the Panel in Minute 15, the hearing of submissions on the CMUDG and related PDP provisions did not occur during the Hearing on Stream 4,

That minute, issued after the Hearing on residential provisions, directed that a technical review process was to be undertaken on that Design Guide, as well as those for residential, subdivision, and heritage, under the auspices of an urban design expert conferencing group who issued a joint witness statement. The conferencing and Design Guide review process started in April and was largely completed in time for the final wrap-up hearing held in September⁹⁰. The Hearing Panel for the Centres Stream 4, along with Commissioner McMahon were also on the Panel to hear wrap-up matters.

97. The Panel report on the PDP residential provisions (Hearing Stream 2) addresses the background and the main recommendations of the Hearing Panel in the relation to the Design Guides and related PDP provisions. This report will focus only on the matters that relate specifically to the CMUDG and the provisions of the CMUZ where they differ from the general recommendations of the Hearing Panel.
98. One of the key recommendations of the reporting officer Ms Stevens in relation to the Design Guides, was that the Centres and Mixed Use Design Guide should only be applied to development within the Commercial and Mixed Use Zones, as well as Development Areas and the Waterfront Zone⁹¹. This recommendation was in line with the expert agreement to have the RDG only apply to development in the residential zones and the CMUDG only apply to development in the CMUZ. As notified, the RDG also applied to the CMUDG.
99. There were 107 submission points on the CMUDG: most of these were resolved by the review and conferencing process by the time of the Wrap-up Hearing.
100. TRoTR⁹² and Paul M Blaschke⁹³ sought that the CMUDG is retained as notified.
101. Stride Investment Management Limited⁹⁴ generally supported in general the CMUDG, while McDonald's⁹⁵ generally supported the intent and provisions of the

⁹⁰ The Subdivision Design Guide had not been reviewed by the time of the hearing. Following the hearing, it was subsequently the subject of a review. The recommendations arising from that review were circulated through the evidence in reply from Anna Stevens and Hannah van Haren-Giles on behalf of Wellington City Council Date on 20 October 2023. The Panel's recommendations on the Subdivision Design Guide are contained in Panel Report 5C.

⁹¹ At paragraph 51, Section 42A Report for Wrap-up Hearing Part 2 Design Guides

⁹² Submission #488.96

⁹³ Submission #435.11

⁹⁴ Submission #470.65

⁹⁵ Submission #274.77

CMUDG and sought that it be retained, subject to amendments. Lucy Harper and Roger Pemberton⁹⁶ also sought that the CMUDG be retained, with amendments.

102. Investore Property Limited⁹⁷, supported by the RVA and Ryman, sought that the Design Guides are retained with amendments.

Retirement Villages

103. RVA⁹⁸ and Ryman⁹⁹ generally supported the changes made to the CMUDG and related provisions in the CMUZ arising from the conferencing. However, the RVA and Ryman position at the Wrap-up Hearing was to recommend 'ring fencing' only those CMUDG elements that they considered should apply to retirement villages: specifically:

- a) Under the theme of 'Responding to the natural environment in an urban context': Design guidance G2, G3 and G4;
- b) All of the design outcomes and design guidance listed under the theme of 'Effective public-private interface';
- c) Under the theme of 'Well-functioning sites': Design guidance G17, G19 and G21; and
- d) Under the theme of 'High quality buildings': Design outcomes O12, O14 and Design guidance G32, G33, G35, G36 and G37.¹⁰⁰

104. Ms Rebecca Skidmore provided urban design evidence in support of RVA and Ryman, contending that the application of the Design Guides for retirement villages should be limited to addressing relevant aspects of the Guides and the way retirement villages relate to the surrounding public realm and adjacent properties. The Guides are generally not suitable for managing internal matters, given the specialist layouts that retirement villages require¹⁰¹.

105. The reporting officer, in reply, continued to maintain her view that the CMUDG should apply to retirement villages in the CMUZ, noting that the introduction of "where practicable" to the guidance points means that it is unnecessary to adopt a different

⁹⁶ Submission #401.94

⁹⁷ Submission #405.139

⁹⁸ Submission #350.68

⁹⁹ Submission #346

¹⁰⁰ Evidence of Nicola Williams, at paragraph 25. Ms Williams later provided after the hearing a s32AA evaluation in support of this change.

¹⁰¹ At paragraph 17

approach. Her position was supported by the Council's urban designer, Dr Zamani, who considered that applying the Design Guides will help to ensure these developments are designed to provide a good standard of amenity and be adaptable for future uses.

106. We agree with the reporting officer that adding an exclusionary approach to the application of the CMUDG in relation to retirement villages in the CMUZ is an unnecessary complication as there is sufficient flexibility in the Design Guide to enable a flexible approach to its application. For example:
- a) The introductory explanation at the start of the Design Guide notes that "Applicants need only apply those design outcomes and guidance points that are relevant to the proposal";
 - b) Design Statements can explain where design outcomes and guidance points are not relevant or how alternative approaches are proposed; and
 - c) The "consider" guidance points are not mandatory.
107. For these reasons we therefore do not recommend accepting the submissions of RVA and Ryman on this matter.

Stratum Management Limited

108. At the Wrap-up Hearing, the consultant planner for Stratum¹⁰², Mr Lewandowski, noted that the submitter was by a large measure in agreement with the recommended changes to the CMUDG and associated PDP provisions. The only outstanding matter was in relation to guidance point G44, which he recommended adding the words "where practicable" so it would read:

Wherever practicable, located and design living areas within residential units to receive winter sunlight.

109. Mr Lewandowski's reason for this amendment was to recognise that constraints on the ability to achieve this directive in the CMUZ when accounting for topography and site constraints.
110. In reply, the reporting officer accepted this request, and recommended this change be made to G44.

¹⁰² Submission #249

111. We agree with both the reporting officer and Mr Lewandowski that it will not always be practicable to have a residential building in the CMUZ designed to have living areas receiving winter sunlight: for example, for the south facing side of an apartment building. We therefore recommending accepting this request.

McIndoe Urban Limited

112. At the Wrap-up Hearing, Mr Burns and Mr McIndoe for McIndoe Urban Limited¹⁰³ were in agreement with the proposed changes to the CMUDG, highlighting the agreed position of the urban designers through the joint witness statement.

Restaurant Brands

113. On behalf of Restaurant Brands¹⁰⁴, Mr Mark Arbuthnot provided planning evidence to the Wrap-up Hearing. Mr Arbuthnot expressed agreement with the outcomes of the conferencing and the recommended changes to the Design Guides and associated Plan provisions, with one exception, which was in relation to the “Quality Design Outcomes” policies (CCZ-P9, MCZ-P7, LCZ-P7, NCZ-P7) and the equivalent policies for the COMZ and MUZ (COMZ-P5, MUZ-P6). He had two concerns with these policies.
114. First, Mr Arbuthnot considered that the requirement to “*fulfil the intent*” of the CMUDG is more directive than the other policy requirements (for example, “*recognise*”, “*respond to*”) and creates a hierarchy that does not align with the NPSUD definition of a “*well-functioning urban environment*”. He also considered the term as ambiguous compared with other well used policy terms like “*have regard to*”. He recommended replacing “*fulfil the intent*” with “*have regard to*”.
115. Second, Mr Arbuthnot sought to include reference to the functional and operational requirements in these policies as he considered they were relevant matters in urban design: “without it, there is a potential undervaluing of the practical needs that developers might face, which may result in outcomes that are not viable or cost-effective”¹⁰⁵.
116. The position of the reporting officer, confirmed in her reply to the Wrap-up Hearing, was unchanged from her Section 42A recommendations. Ms Stevens noted that the term “*fulfils the intent*” was agreed through the expert conferencing, in which Mr

¹⁰³ Submission #135

¹⁰⁴ Submission #349

¹⁰⁵ Supplementary evidence of Mark Arbuthnot, at paragraph 2.15

Arbuthnot did not participate. She further considered the term “*having regard to*” was more ambiguous and would provide no direction to the plan users on how to apply the Design Guides. Ms Stevens considered the operational and functional needs of activities could be considered through flexibility provided by the amended guides.

117. For the reasons we set out in relation to the submission of RVA and Ryman above, we agree with the reporting officer in relation to recognising the functional and operational requirements: these needs can be considered in determining the relevancy of the Design Guides to any particular proposal. Further, we agree that the term “have regard to” is vague and would create uncertainty for plan users as to the weight to apply the Design Guides. The term “fulfils the intent” has been agreed to by the participating parties. We therefore recommend rejecting the submission points of Restaurant Brands on this matter.

Kāinga Ora

118. At the Wrap-up Hearing, Kāinga Ora¹⁰⁶, which had been an active participant in the Design Guide expert conferencing process through its Urban Designer, Mr Rae, noted their general support for the outcomes of that process. Mr Rae had a number of remaining outstanding changes to the Design Guides that he provided to the hearing through a tracked changes version.
119. The Panel report on Hearing Stream 2, Residential, outlines our recommendations on the changes sought by Mr Rae as they related to the RDG; we make the same recommendations for the CMUDG where they apply to the same provisions in the RDG. We address specific changes to the CMUDG sought by Mr Rae:
120. In relation to G4 Vegetation and Planting, we agree with Mr Rae that the introductory text should be reworded to explain that, in the CMUZ, less importance is given to on-site vegetation to provide amenity, unlike Residential Zones. We recommend the following text:
- In the CMUZ, it is not expected that vegetation will play a big role in providing amenity on private sites. The best location for new planting is on streets and open space, to enable a priority for buildings to be built to the street edge.*
121. In terms of the wording of G4 itself, we agree with Mr Rae that the appropriate word in the chapeau is “when designing for planting” rather than ‘planning’, as the provisions of planted vegetation within a development is a design matter. However,

¹⁰⁶ Submission #391

we do not consider that adding the words “consider the following” to the end of the chapeau contributes anything to the application of this guidance point.

122. In relation to G6, we do not agree that adding “Locate buildings close to the street” to the beginning of this point is fully appropriate, given the range of sites and development opportunities in the CMUZ to which this guidance could apply: for example, on larger sites, not all buildings may be able to be located close to the street, as some buildings may be located towards the rear of a site. We recommend the following alternative wording:

Where buildings are located close to the street, orientate these buildings to face the street.

....

123. In relation to G23 and G24, communal open space and communal outdoor living space, we do not agree that Mr Rae’s suggested changes to the wording adds anything to the application of these points.

124. In relation to G36, the design of tops of buildings, we agree with Mr Rae that the wording is confusing and recommend his suggested amendment to bullet point 4:

contribution to the skyline ~~of the centre.~~

Urban Design Panel

125. There was general support for the establishment and use of an Urban Design Panel to support the raising the quality of design outcomes. Willis Bond¹⁰⁷ sought that a Design Excellence Panel or similar be established to be charged with ensuring each development achieves the quality urban outcomes sought by the PDP. The concept of an Urban Design Panel was also support by Wellington Branch of the NZIA¹⁰⁸, with a mandatory design review for all inner city developments. Stuart Niven, who gave urban design evidence for ORCA and Wellington’s Character Charitable Trust¹⁰⁹ fully supported the use of an Urban Design Panel, and provided some advice on how it should be established and operate.

126. In response, the reporting officer considered that the Urban Design Panel outcome listed in the Appendix 16: City Outcomes Contributions be relocated from that provision to become a ‘method’ that sits in each zone that the COC would apply (that

¹⁰⁷ Submission #416

¹⁰⁸ Submission #301

¹⁰⁹ Submissions #283 and #233 respectively

is, CCZ, MCZ and LCZ)¹¹⁰. She also recommended that it be an independent panel, which we take to mean it should comprise urban design experts who work outside the Council.

127. We agree that there is merit in establishing and that it should be identified as a method in the Plan provisions for the CCZ, MCZ and LCZ. While the funding and mechanics of such a Panel would sit outside the PDP (and therefore outside the ambit of our recommendations), its identification in the Plan would underpin its role and function. We will return to the question of an Urban Design Panel later in this report.

3.4 City Outcomes Contributions Mechanism

128. The City Outcomes Contributions (COC) mechanism describes a set of provisions in the PDP intended to encourage developments to provide wider public benefits in exchange for either building over the height standard or under the minimum building height ('over height' or 'under height' for short). The COC mechanism is a new planning method, introduced by the PDP: no equivalent mechanism is contained in the ODP, although we were informed that it had its origins in the 'design excellence' policy in the ODP (we discuss this shortly).
129. The COC was the subject of many submissions from a spectrum of submitters, ranging from qualified support to full opposition. Overall, the COC mechanism was the most contentious issue to be heard in Hearing Stream 4.
130. For this reason, and due to its novelty and complexity, we provide a detailed analysis as follows:
- The derivation of the COC
 - The mechanics of the COC
 - Objectives of the COC
 - Submissions on the COC
 - The COC as a 'design excellence' mechanism
 - Assessing design quality for over height buildings
 - Under height buildings
 - Height as a proxy

¹¹⁰ Section 42A Report Overview, at paragraph 207

- Legal validity of the COC
- COC benefits
- COC effectiveness
- COC for the MCZ and LCZ
- Merits of design excellence
- Merits of City Outcomes Contributions
- Conclusions about COC
- Recommended Changes to PDP
- Section 32AA evaluation.

Derivation of City Outcomes Contributions

131. The reporting officer stated that the COC had its origins in the existing ODP ‘design excellence’ provisions which themselves stem from a policy introduced into the ODP via Plan Change 48 in 2007 that required that buildings that exceed the maximum height limit specified for the site or are “*very tall in relation to the surrounding properties*” should achieve “*design excellence*” (Policy 12.2.5.5). The reporting officer stated that this policy was introduced along with new height and mass standards as a mechanism to ensure that buildings that are noticeably tall within the Central Area make a positive contribution to the townscape. The explanation to Policy 12.2.5.5 provided guidance for applicants as to when and where it may be appropriate to develop a significant over-height ‘landmark’ building¹¹¹.
132. The reporting officer advised that, as part of the District Plan review, an analysis of the effectiveness of the ODP design excellence provisions in the Issues and Options report for the Central Area identified a number of issues in its implementation, including:
- A lack of specific and clear assessment criteria, leading to different approaches taken by different urban design advisers, creating uncertainty for applicants and questions around the consistency and objectivity of design excellence assessments.
 - A focus on architectural and aesthetic qualities of buildings rather than a broader consideration of design excellence including consideration of issues

¹¹¹ Section 42A Report on Centres Overview and General Matters, at paragraph 176

such as on-site amenity.

- Design excellence was often applied to any over height proposal, even visually indiscernible height exceedances, unnecessarily complicating the resource consent process.
- There is no clear definition of design excellence and no specific criteria for assessing this in the ODP.
- A confusing relationship between the Design Guide and the meaning of 'design excellence'¹¹².

133. The recommendation in that report was to amend the policy provision in the District Plan to provide more clarity for developers and to change to another mechanism. The report noted that the Council had drafted a policy amendment to provide greater clarity and guidance around design excellence¹¹³.

134. We were informed by the reporting officer that, "through the District Plan Review process, the Council sought to retain the purpose and public benefit that design excellence provided... the [COC] tool is useful to improve the quality of design for projects that have a significant impact on the quality and functionality of the city"¹¹⁴.

135. She also expressed her opinion that it is important that, with the anticipated growth in Wellington's population, development be of a high quality both in terms of the appearance of the building and the on-site amenity it provides: "*the City Outcomes Contribution is seen as a collective method for improving urban outcomes and the lived environment*"¹¹⁵.

136. We were informed that the COC mechanism was introduced in the PDP as a new approach to design excellence, with the intent to provide more certainty for the public, District Plan users, the development community as well as the Council's resource consent planners. The reporting officer acknowledged that the concept significantly broadens that of the ODP design excellence provisions in that it:

- Applies to not only to CCZ (like the ODP does) but also to MCZ, LCZ, and, as notified, the NCZ and HRZ as well;
- Has hooks in the policies and rule frameworks for each zone and associated

¹¹² [Planning For Growth - District Plan Review: Central Area Issues and Options Report](#)

¹¹³ At page 29

¹¹⁴ At paragraph 180

¹¹⁵ At paragraph 180

design guidance in the CMUDG and RDG (now in recommended Appendix 16)

- Is triggered through non-compliances with height standards:
 - In the MCZ, LCZ and NCZ, development that exceeds the maximum height limits;
 - In the CCZ, either exceeds the height thresholds in the CCZ (CCZ-S1) or is below the minimum building height limit (CCZ-S4);
- Introduces four categories of outcomes that are considered important in terms of enhancing the quality of built projects, being the provision of public space, accessibility, sustainability, and affordability;
- Introduces a points system and identifies a range of beneficial outcomes that could be provided through developments; and
- Introduces a matrix table with criteria related to the outcomes to assess developments against and allocate points, along with specifying how many points are required for projects to achieve City Outcomes Contribution.

137. We were informed that there are many international examples of cities using a form of design excellence mechanism in their planning documents, including the City of Melbourne, the City of Darebin (a municipality in Melbourne), Willoughby (northern Sydney), Liverpool City (UK), and Northwest Arkansas (USA).

138. The reporting officer considered that the COC is a mechanism for ensuring that “density is done well”, and “ensures that tall buildings (relevant to zone typologies) and buildings under the City Centre Zone minimum building height provide beneficial public and private outcomes to contribute to well-functioning urban environments”¹¹⁶.

139. We were further informed that the COC is targeted at commercial, residential, and mixed use developments that are either under-height or above area specific height thresholds: we were advised that “*these developments, typically more so than others, have the potential to impact on the quality and level of public and private amenity within the City’s commercial centres, and securing additional benefits from these developments is therefore required*”¹¹⁷.

140. We were advised that the justification for the COC was based on a requirement to achieve the strategic directions of the PDP, the objectives of the NPSUD and s5 RMA, and that Policy 3 of the NPSUD is not elevated above broader RMA outcomes. The

¹¹⁶ At paragraph 183

¹¹⁷ At paragraph 184

reporting officer informed the Hearing that Objective 1 to the NPSUD reflects this wider scope by requiring well-functioning urban environments, with Policy 1 listing a broad range of matters that make up a well-functioning urban environment. The reporting officer considered COC to be a key method to implement NPSUD Policy 1 directives.

The Mechanics of the City Outcomes Contributions

141. During the course of Hearing Stream 4 and subsequent replies, the reporting officer had recommended a series of amendments to the provisions relating to the COC mechanism. The final set of PDP provisions for the COC mechanism was recommended by the reporting officer in her Further Right of Reply to Hearing Stream 4, dated 20 September 2023.
142. In summary, the final recommendations would have the COC mechanism work as follows:
- a) That the COC applies to development of new buildings or additions in the CCZ, Te Ngākau Civic Square Precinct (CCZ-PREC01), the MCZ and the LCZ – originally it was going to also apply to the NCZ and HRZ.
 - b) The following development must provide a COC:
 - ▶ Development in the CCZ more than 25% below the Minimum Building Height control (CCZ-S4);
 - ▶ Development in the CCZ and Te Ngākau Precinct above the COC height thresholds (CCZ-S1); and
 - ▶ Development in the MCZ and LCZ above the maximum building height limits (MCZ-S1 and LCZ- S1) where these standards are exceeded by 25% or more.
 - c) That the COC assessment method is removed from the Residential Design Guide (RDG) and Commercial and Mixed-Use Design Guide (CMUDG) into a standalone appendix (Appendix 16) within the PDP itself.
 - d) That a new Restricted Discretionary Activity rule be added to CCZ-R20, CCZ-PREC01-R8, MCZ-R21 and LCZ-R18 addressing development that exceeds the height thresholds/ maximum height limits at CCZ-S1, CCZ-PREC01-R8, MCZ-S1 and LCZ-S1.

- e) Where development exceeds these COC height thresholds/ maximum height limits and provides COC, then it is precluded from public and limited notification. Where developments do not provide a COC, the section 95 notification tests of the Act apply, thereby allowing a decision on notification to be made by the relevant decision-maker on a case-by-case basis.
 - f) Developments must satisfy at least two of the COC outcomes identified within Appendix 16.
 - g) Appendix 16 has been revised to provide additional detail how COC points can be achieved.
143. It is this final set of recommendations on which we have focused our consideration on, as some matters were superseded during the hearing process. For example, the proposed mandatory public notification of over-height developments that did not offer City Outcomes Contributions was recommended to be discarded following the hearing¹¹⁸. This recommendation came after we questioned the validity of this approach, and sought legal advice about its appropriateness. With its recommended deletion, there is no need to undertake any further deliberation of the issue.
144. We would also note, for the record, that application of the COC to the NCZ and LCZ was also recommended to be removed, and thus there is no need to undertake deliberation of this aspect.
145. However, one recommended deletion to which we will return to was that of removing the Urban Design Panel approval as a means of obtaining COC points, as this aspect had a clear source in the design excellence policy of the ODP, from whose roots the COC was purported to have been grown.
146. For the purpose of simplicity, in this report, we have referred to the COC provisions as they apply to the CCZ (including officer's recommendations to these provisions), but note that there are mirror or similar provisions in the MCZ and LCZ (and mirror recommendations for amendments to those provisions). Our evaluation should be taken as applying equally to all COC provisions, except where we highlight critical differences where we necessarily have had to evaluate separately.
147. Similarly, we use 'over height buildings' as shorthand for new buildings or additions that exceed either the height thresholds in the CCZ or, in the MCZ and LCZ, the

¹¹⁸ Without this direction, such applications would undergo the standard notification tests under the RMA

height limits by more than 25%, thereby triggering the COC provisions. Conversely, we use 'under height buildings' as shorthand for new buildings or additions that are below the minimum height limits for the CCZ (noting COC provisions are not triggered by under height buildings in the MCZ or LCZ).

148. The COC mechanism is derived from a single policy in the CCZ, with mirror policies in the MCZ and LCZ¹¹⁹. Using the CCZ as an example, this policy seeks to:

Require developments over CCZ-S1 height thresholds and under CCZ-S4 minimum building heights in the City Centre Zone to deliver City Outcomes Contributions as detailed and scored in Appendix 16, including satisfying at least two of the following outcomes:

1. *Positively contributing to public space provision and the amenity of the site and surrounding area; and/or*
2. *Enabling universal accessibility within buildings for people of all ages and mobility/disability; and/or*
3. *Incorporating a level of building performance that leads to reduced carbon emissions and increased earthquake resilience; and/or*
4. *Incorporating construction materials that increase the lifespan and resilience of the development and reduce ongoing maintenance costs; and/or*
5. *Incorporating assisted housing into the development; where this is provided, legal instruments are required to ensure that it remains assisted housing for at least 25 years.*¹²⁰

149. At a rule level, again using the CCZ as the example, CCZ-R20.3 is a specific rule that requires the construction of buildings and structures over a certain footprint or site coverage that exceed the COC Height Threshold set out in CCZ-S1 to obtain resource consent as a restricted discretionary activity, with the matters of discretion limited to the matters in CCZ-P11 (the COC policy) and the application and implementation of the COC set out in Appendix 16.

150. In addition, for developments below the minimum height level in CCZ-S4, resource consent as a full discretionary activity is required under Rule CCZ-R20.4, also triggering consideration of COC.

¹¹⁹ Being CCZ-P11, MCZ-P10, and LCZ-P10.

¹²⁰ Final recommended version, following the Wrap-up and Integration Hearing

151. A resource consent application under CCZ-R20.3 or 20.4 is precluded from public or limited notification unless the application does not satisfy the outcome threshold test, and then the s95 tests for notification would apply.
152. These provisions are duplicated for the Te Ngākau Civic Precinct (CCZ-PREC01-R8.2) which comes within the CCZ, as well as in the MCZ and LCZ (Rules MCZ-R21 and LCZ-R18).
153. It should be highlighted that the construction of new buildings and additions would also require resource consent as a restricted discretionary activity under Rule CCZ-R20.2 and be subject to the matters of discretion under that rule. This includes quality development outcomes under Policy CCZ-P9¹²¹. These rules are also mirrored in the MCZ and LCZ. In other words, a new building requiring resource consent under the COC provisions will also be requiring resource consent under the quality development outcomes provisions.
154. The principal standard that would trigger the requirement for a resource consent under the COC mechanism is CCZ-S1 (and the mirror standards in the CCZ-PREC-01, MCZ and LCZ) which sets out the COC Height Thresholds, depending in which part of the CCZ the site is located. This standard applies to any new building or addition. If the threshold is exceeded, the assessment criteria include:
- Streetscape and visual amenity effects;
 - Dominance and privacy effects on adjoining sites; and
 - The extent to which taller buildings would substantially contribute to increasing residential accommodation in the City.
155. For the MCZ and LCZ, only buildings exceeding the height limit by more than 25% trigger the COC consent process. Buildings between 1% and 25% above the height limit require consent as a restricted discretionary activity under Rule MCZ-R21.2 or LCZ-R18.2. In the CCZ the heights are expressed as 'thresholds', but in the MCZ and LCZ they are expressed as 'limits'.
156. It is important to note that there is no upper building height limit for the CCZ, CCZ-PREC-01, MCZ or LCZ: in theory, therefore, a building could be of unlimited height in these zones, subject to obtaining resource consent.

¹²¹ As notified, this policy was titled 'Quality Design Outcomes', but was recommended to be amended to 'Quality Development Outcomes' to recognise that this policy addressed matters outside the Design Guides.

157. Standard CCZ-S4 sets a minimum building height of 22m, while Standards MCZ-S2 and LCZ-S2 sets a minimum building height of 7m. CCZ-PREC01 does not have a minimum building height standard.
158. Appendix 16 sets out the requirements for the COC, which are applied through categories of height threshold variances (either above the maximum height threshold or below the minimum height limit): the greater the variance, the greater the number of points required. However, in the CCZ, no COC would be required for developments to 25% below the minimum building height: that is, COC would only apply to developments more than 25% below the minimum height. In the MCZ and LCZ, height exceedances up to 25% above the maximum height limit would not trigger COC. No COC are expected for developments below the minimum building height in the MCZ or LCZ.
159. A development can achieve points through the provision of a range of outcomes:
- A contribution to public space and amenity:
 - For every 10% of the site accessible as public open space
 - Any lane-way or through-block connection
 - Provision of appropriate communal gardens, playgrounds, and roof gardens
 - Provision of permanent public amenities, such as public toilets, street furniture, electric vehicle charging facilities, park benches, landscaping, bike parking, public art (e.g. sculptures or murals) and street improvement works
 - Universal accessibility, determined by Lifemark star rating or equivalent
 - Sustainability and resilience:
 - Green Star or Home Star rating
 - Restoration of a heritage building, heritage structure, or site/area of significance to Māori, which is listed in Schedule 1, 2 or 7, and is on the same site or adjoining site to the development
 - Reduction in embodied carbon in buildings compared to an equivalent standard construction
 - Exceeding the 100% New Building Standard for seismic resilience

- Assisted housing, based on a percentage of net floor area
160. A certain number of points are required to obtain an additional amount of height. For example, 20 points are required to exceed the maximum building height limit by 25-49% in the MCZ, or 30 points to exceed the limit by more than 50%. The policy requires that at least two of the outcomes have to be 'satisfied': that is, a proposal has to seek points in at least two of the above outcomes.
161. As we noted, the notified version originally included points for obtaining Urban Design Panel approval, the range in points depending on the development's response to all the design guides as a decided by the Panel. However, this points category was recommended to be removed from the COC, and instead was recommended to be included in the PDP as a method, so that the Urban Design Panel could have a much wider role in urban design assessments.

Objectives of the COC

162. The COC policies were intended to achieve a number of outcomes: in summary –
- a) Enabling intensification in the City's main centres, particularly in the City Centre, to reinforce their regional and City functions and enable business and housing opportunities;
 - b) Promoting high quality design in terms of sustainability, accessibility, and resilience; and
 - c) Promoting the provision of public good outcomes that may not otherwise be achieved, such as public amenities, heritage regeneration, open space, assisted housing, and improved connectivity.
163. These outcomes are expressed through a range of relevant objectives.
164. There are a number of strategic objectives which have relevance including (as amended by the Panel's recommendations in Report 1B):

CC-02 – Wellington City is a well-functioning Capital City where: ...

4. Urban intensification is delivered in appropriate locations and in a manner that meets the needs of current and future generations;

CC-03 – Development is consistent with and supports the achievement of the following strategic city objectives:

1. Compact: Wellington builds on its existing urban form with quality development in the right locations;

2. Resilience: Wellington's natural and built environments are healthy and robust, and physical and social resilience is achieved through good design;
...

CEKP-O1 – A range of commercial and mixed use environments are provided for in appropriate locations across the City to:

1. Promote a diverse economy....

CEKP-O2 – The City maintains a hierarchy of centres based on their role and function, as follows:

1. City Centre – the primary centre serving the City and the wider region for shopping, employment, city-living, government services, arts and entertainment, tourism and major events. ...The City Centre is the primary location for future intensification for both housing and business needs;

2. Metropolitan Centres – these centres provide significant support to the City Centre Zone at a sub-regional level by offering key services to the outer suburbs of Wellington City and the wider Wellington region. ...Intensification for housing and business needs will be enabled in these locations, to complement the City Centre;

3. Local Centres – these centres service the surrounding residential catchment and neighbouring suburbs. ...Local Centres will play a role in accommodating and servicing the needs of the existing and forecast population growth that is complementary to the City Centre and Metropolitan Centre Zones.....

165. The COC is also linked to achieving other strategic objectives such as having the built environment supporting net reduction in emissions and more energy efficient buildings (SRCC-O1), and in mitigating the risks from natural hazards (SRCC-O2). In terms of urban form and development, COC supported the following:

UFD-O1 – Wellington's compact urban form is maintained with the majority of urban development located within the City Centre, in and around Centres, and along major public transport corridors.

UFD-O5 – At least sufficient, feasible land development capacity is available to meet the short-, medium- and long-term business land needs of the City, as identified in the Wellington Regional Housing and Business Capacity Assessment

UFD-O7 – Development supports the creation of a liveable, well-functioning urban environment that enables all people and communities to provide for their social, economic, environmental, and cultural wellbeing, and for their health and safety now and into the future.

Development will achieve this by:

1. Being accessible and well-designed; ...

166. For the City Centre Zone, a number of objectives are relevant:

- CCZ-O1 – Supporting the purpose of the City Centre

- CCZ-O2 – Accommodating growth
- CCZ-O3 – The scale and form of development in the City Centre Zone reflecting its purpose as Wellington’s primary commercial and employment centre, with the highest and most intensive form of development concentrated in the zone relative to other parts of the city.
- CCZ-O6 – Development in the City Centre Zone positively contributing to creating a high quality, well-functioning urban environment, including reinforcing the City Centre Zone’s distinctive sense of place, providing a quality and level of public and private amenity in the City Centre Zone that evolves and positively responds to anticipated growth and the diverse and changing needs of residents, businesses and visitors, and maintaining and enhancing the amenity and safety of public space.

167. For the Metropolitan Centre Zone, COC supported several objectives:

- MCZ-O1 – The purpose of the Zone
- MCZ-O2 – Accommodating growth
- MCZ-O3 – Amenity and design

168. MCZ-O3 is of particular relevance in that it is seeking that medium and high density mixed-use development is achieved that positively contributes to a good quality, well-functioning urban environment that reflects the changing urban form and amenity values of the Metropolitan Centres Zone.

169. For the Local Centres Zone, the relevant objectives are those relating to supporting the purpose of the zone (LCZ-O1), accommodating growth (LCZ-O2) and amenity and design (LCZ-O3).

Submissions on COC provisions

170. There was no submission that expressed full or unqualified support of the COC. While the submission from the Disabled Persons Assembly¹²² did express support for the COC, in context, this support was in relation to its role in incentivising the building of housing and public buildings to Universal Design Standards¹²³.

¹²² Submission #343, at paragraphs 184-190

¹²³ The reason for the relevant submission point, which was in reference to the HRZ was to “support the widest possible application of the City Outcomes Contribution through the Environmental and Accessibility Performance Fund established by the WCC in order to incentivise the building of housing and public buildings to Universal Design standards”

171. Investore and Fabric Property Limited sought to have the COC deleted from the PDP¹²⁴.
172. Stride¹²⁵ objected to the COC and references to this in the zone-based provisions (policies and rules) and Design Guides. Foodstuffs¹²⁶ also objected to the COC and sought the same relief.
173. McDonald's and Argosy sought that all references to the COC be removed from the PDP¹²⁷.
174. Willis Bond¹²⁸ sought a thorough review of the COC process to ensure developers receive certainty early on as to the additional height (or floor space) that will apply.
175. The Property Council¹²⁹ sought that incentives be provided to encourage but not require large developments to deliver COC.
176. RVA¹³⁰ sought that policies relating to the COC are deleted in their entirety.
177. At the hearing, we heard evidence in support from Dr Zamani, formerly the Urban Regeneration and Design Manager at WCC. Evidence in general support was provided by Alistair Aburn, planner for Willis Bond, subject to the inclusion of architectural excellence being an outcome.
178. Evidence opposing the COC was given for Kāinga Ora by Nick Rae, urban designer, and Matt Heale, planner. Stuart Niven, an urban design consultant and former urban designer for WCC gave evidence opposing the COC generally on behalf of the WCCT and as it applies to LCZ and NCZ on behalf of ORCA.
179. On behalf of Stride Investment, Investore, Fabric, Argosy, and Precinct who all opposed the COC, Cameron Wallace gave urban design evidence, and Joe Jeffries gave planning evidence.
180. Planning evidence criticising some of the mechanics of the COC was provided by Mitch Lewandowski on behalf of Stratum.

¹²⁴ Submissions #405.55 and #425.49 respectively

¹²⁵ Submission #470.2

¹²⁶ Submission #476.1

¹²⁷ Submissions #274.1 and #383.1 respectively

¹²⁸ Submission #416.5

¹²⁹ Submission #338.12

¹³⁰ Submission #350.178

The COC as a 'Design Excellence' Mechanism

181. The background and purpose of the COC mechanism as a design excellence tool is important to understand, as this factored strongly into our evaluation.
182. Before we expand on the background, an important point to emphasise is that the City Outcomes Contributions mechanism is a novel approach. While we were provided with references to other “design excellence” processes used by some urban councils in Australia and the USA, these approaches did not appear to use a system such as that relied on the COC mechanism. The closest was the Floor Area Uplift mechanism used in the central city of Melbourne, Australia, and similar types of mechanisms used in other planning systems. Certainly, we were provided with no comparable approaches in New Zealand, and, further, none of the IHP had any experience with or knowledge of a similar process in the New Zealand planning framework.
183. While we are not opposed to introducing novel processes per se, to recommend its inclusion in the PDP, we would have to be satisfied, to a high level of confidence, that the mechanism would be effective and efficient, and be an appropriate method for achieving the objectives of the PDP. This level of confidence is particularly important for a mechanism that would affect significant investment decisions in the City’s centres over the life of the Plan.
184. Our first challenge was to understand the purpose of the policy for which the mechanism was being proposed to be used as a method.
185. At the beginning of the hearing, we were advised by the reporting officer Ms Stevens that the COC was developed in response to problems in applying the design excellence provisions of the ODP. From our evaluation of the history behind the COC, however, and despite the contention that the COC control is a variation to the existing design excellence control in the ODP¹³¹, our first conclusion was that the mechanism is not simply an evolution of the previous ‘design excellence’ provisions in the ODP. Indeed, the only connecting thread between the design excellence policy in the ODP and the COC policies of the PDP appeared to be the Urban Design Panel approval ‘outcome’, and this thread was subsequently recommended to be cut.

¹³¹ At paragraph 176

186. Design excellence in the ODP clearly sought to deliver design excellence because of the prominence of exceptionally tall buildings in the Central Area or that are tall in the context of the local environment, as clarified in the explanation to Policy 12.2.5.5:

The issue of design quality is even more important for buildings of unusual height or bulk, which due to their size, height and massing can have a significant impact on the city, both at street level and from a distance. To ensure that over height buildings visually enhance the cityscape of the Central Area, the Council will require that they display design excellence.

When processing a consent application for an over-height building, Council will consider both the scale of the proposed height increase and the comparative height of the resulting building in relation to its surroundings. While all buildings in the Central Area must be of sufficient design quality that they make a positive contribution to the urban environment, the requirement to deliver design excellence applies particularly to proposals that will result in a building that is significantly higher than the surrounding built form.

... An exceptionally tall building would be a defining element on the City's skyline for years to come. Such buildings may be more appropriately located in the high city where they would enhance the compact nature of the Central city, and reinforce the high city/low city urban form. Done well these buildings can become landmarks, adding interest to and enhancing the overall cityscape. Developing an exceptionally tall building would bring with it certain responsibilities. Such a building would become a landmark feature in the Wellington skyline, and a prominent feature in all future images of the city. As such the building should be truly iconic and display a quality of design that befits its status as being one of, if not the most visible building in Central Wellington.

Design excellence is also required for buildings that are tall in relationship to the surrounding neighbourhood. Though not 'exceptionally' tall, these buildings can still be highly visible and have a significant impact on the character of the surrounding neighbourhood. As such they require careful consideration, and should display a quality of design that corresponds appropriately to their level of visibility.

187. We have highlighted the last sentence to the explanation, as that statement appears to encapsulate the design excellence policy of the ODP.
188. When we then turn to the explanation to the COC requirements in Appendix 16, the quantum shift from the ODP design excellence policy becomes apparent:

[COC] is a method to ensure that tall buildings (relevant to zone typologies) and buildings under the City Centre Zone minimum building height provide beneficial public and private outcomes, ...and contribute to well-functioning urban environments.

[COC] is targeted at commercial, residential and mixed-use developments that are either under-height or above area specific height thresholds.

These developments, typically more so than others, have the potential to impact on the quality and level of public and private amenity within the City's commercial centres, and securing additional benefits from these developments is therefore required.

....the taller or larger the development, the greater its potential impact on public amenity and urban living in the city. Consequently, it is anticipated that under-height or larger developments will positively address future challenges confronting the city regarding access to public and green space, sustainability and climate change, accessibility, and assisted housing.

189. As this explanation reveals, none of the outcomes being sought in the COC relate to achieving “a quality of design that corresponds appropriately to the level of visibility”, the purpose of the ODP design excellence policy. While some COC outcomes are, intangibly, related to design excellence in a broad sense (for example, sustainable building design, seismic resilience, heritage restoration), other COC outcomes relate more to the contribution a development could make to the public environment through the provision of additional public amenities and connections. Whether these outcomes represent design excellence is questionable: does a new public toilet or access lane represent a hallmark of significant design quality?
190. Through supplementary evidence to the hearing, the reporting officer did clarify that the focus of the COC was not on design excellence, architectural quality or building design alone, and that the outcomes sought by the COC policies are different from the outcomes sought by the separate PDP quality design outcomes policies¹³².
191. In summary, under the COC, the quest for achieving landmark or iconic buildings has essentially been abandoned – instead the focus is on obtaining either intrinsic building quality or on compensatory public good outcomes. Whether the quest for achieving design excellence from prominent developments should be discarded is a question we address shortly. First, we turn to how design quality in relation to ‘over height’ buildings would be otherwise addressed in the PDP.

Assessing Design Quality for Over Height Buildings

192. In the PDP, the ‘heavy work’ on design quality would be undertaken by the consent process for new buildings or additions through, for example, Rules CCZ-R19.2 and CCZ-R20.2. These rules are the key method for implementing Policy CCZ-P9 on Quality Design (recommended to be amended to ‘Development’) Outcomes, along with the application of the Design Guides.

¹³² At paragraph 142

193. When the PDP was notified, these rules were also the key method for implementing the COC Policy, CCZ-P11. In other words, Rules CCZ-R19.2 and CCZ-R20.2 addressed both COC and design quality together. Therefore, because the COC matters of discretion were included in the same rule as for general design assessment matters, there was a process for considering the design quality of over height buildings, in addition to considering City Outcomes Contributions.
194. However, the Council Rebuttal, just prior to the Hearing on Stream 4 recommended removal of non-compliance with Standard CCZ-S1, the area height control thresholds, from CCZ-R19.2 and CCZ-R20.2, and place it into new COC specific rules, CCZ-R19.3 and CCZ-R20.3, where the matters of discretion are confined to COC matters alone, and not the quality of design¹³³. However, as an over height building or addition would also be required to obtain resource consent under the general design assessment rule (either CCZ-R19.2 or CCZ-R20.2), the design quality of that proposal could be considered through that separate consent process. However, it is not fully clear whether any specific assessment could be given to the design of over height buildings because it was recommended to delete “*the extent and effects of any non-compliance with CCZ-S1*” as a matter of discretion¹³⁴.
195. To plug this gap, the final recommendation of the reporting officer following the hearing was to restore the following additional assessment criteria to non-compliances with Standard CCZ-S1¹³⁵:
- Streetscape and visual amenity effects;
 - Dominance and privacy effects on adjoining sites; and
 - The extent to which taller buildings would substantially contribute to increasing residential accommodation in the city.
196. While non-compliance with CCZ-S1 would trigger consideration of these criteria, it is not clear, however, whether these criteria would come within the matters of discretion under Rule CCZ-R19.3 or R19.3 which are:
- The matters in CCZ-P11 (the COC policy); and

¹³³ The equivalent rules for the MCZ and LCZ (MCZ-R21,2 and LCZ retained the reference to the height limits standard, as the COC rule would not apply to height exceedances up to 25% above the limits, which would be subject to quality design consent process.

¹³⁴ Conversely, some discretion around the design quality of over height buildings is available under Rules CCZ-R19.2 and CCZ-R20.2, which refer to the matters under Policy CCZ-P9 which brings quality design outcomes and the CMUZ Design Guides into play.

¹³⁵ The Section 42A Report had recommended deleting these assessment criteria from CCZ-S1

- The application and implementation of the City Outcome[s] Contribution set out in Appendix 16.

197. A simple ‘fix’ would be to add “the extent and effects of any non-compliance with CCZ-S1” as a matter of discretion to these Rules, and possibly also add Policy CCZ-P9 to enable the design guides to apply as well.

198. In relation to the Design Guides, we note that the CMUDG¹³⁶ contains no specific design outcomes or guidance for over height buildings; rather it provides a more general outcome (O#) and guidance point (G#) as follows:

O14. Parts of buildings that rise conspicuously above those around them demonstrate visual interest and architectural coherence when viewed from the surrounding urban environment.

G35. Design elevations to provide visual interest and display articulation of form in a way that responds to the locations and distances from which they are visible.

The more visible a building is, the more it contributes to the visual appearance of the streetscape and broader townscape. Consider the visibility of a building from surrounding public spaces, including at a distance. In particular, consider side and rear building elevations where development is taller than surrounding buildings

199. Guidance point G36 would also be relevant for over height buildings:

G36. Integrate the top of the building as a coherent part of the overall building composition.

200. In summary, the COC and associated PDP provisions represent a major shift in policy for managing the design quality of over height buildings – under the PDP, the pursuit of achieving ‘design excellence’ for tall or large developments has been forsaken. The COC has replaced rather than upgraded the search for design excellence.

201. The COC is a completely new and innovative policy, one based on the premise that over height buildings impact negatively on the quality and level of public and private amenity within the City’s commercial centres, therefore requiring that additional benefits should be secured from these developments¹³⁷. In other words, the COC policy is founded on the principle that tall buildings should compensate for their additional height through the provision of additional public amenity, assisted housing, or in applying high standards of sustainability and resilience. Similarly, as under

¹³⁶ Wording as recommended to the Wrap-up Hearing to be revised

¹³⁷ Refer to the discussion in the final reply of the reporting officer, dated 20 September 2023, paragraphs 19 - 21.

height buildings represent a sub-optimal use of Centres' resources, some form of public good in return should be expected. Building height is considered to be a 'proxy' for determining when such compensation is necessary.

202. We address the question of using height as a proxy shortly. At this point, we simply note that the heavy lifting for achieving design quality (rather than excellence) in over height buildings lies with the CCZ, MCZ and LCZ policies and methods for achieving quality development outcomes.

COC for Under Height Buildings

203. As we have outlined, the COC provisions are also triggered by proposed under height buildings and additions in the CCZ, while under height buildings in the MCZ or LCZ do not trigger COC provisions. While the s32 analysis provides no elucidation as to the purpose of applying the COC to under height development, the supplementary evidence of the reporting officer advised the Hearing as follows:

The minimum building height aligns with the City Centre walking catchment height of six storeys and directly links to CCZ objectives, policies and rules seeking to efficiently optimise the development capacity of sites within the CCZ...

The effects of this [underdevelopment] include suboptimal development capacity, impaired residential and commercial building supply and adverse aesthetic and streetscape effects...

Based on this rationale for having a minimum building height, I think it is important to required [sic] C.O.C where there is non-compliance so that citywide benefits or outcomes can be derived from a development that at face value is not giving effect to objectives and policies such as optimisation of a site but is able to deliver two or more of the outcomes sought in CCZ-P11 C.O.C.¹³⁸

204. Based on this advice, we conclude that the COC is attempting to act as a disincentive to under height buildings, a conclusion further supported by the discretionary activity status of such proposals, an activity status that is not considered 'plan enabled' under the NPSUD¹³⁹ (as opposed to the restricted discretionary activity status of over height buildings under the COC).

¹³⁸ Paragraphs 115-117, Statement of supplementary planning evidence of Anna Stevens on behalf of Wellington City Council, 19 June 2023

¹³⁹ Policy 3.4(2), NPSUD

Using Height as a Proxy

205. While building height is the only proxy proposed to be used to trigger the COC process, it is not clear to us why it is the only trigger to apply, given that many of the effects on public amenities and services for which some contribution is intended to address could also arise from large-scale, but height compliant, developments. This ambiguity was highlighted by the following statement in the Appendix 16: City Outcomes Contribution requirements (emphasis added):

The thresholds defined in the below tables reflect the extent of the impact certain forms of under-height or large-scale development can have on the city. For example, the taller or larger the development, the greater its potential impact on public amenity and urban living in the city. Consequently, it is anticipated that under-height or larger developments will positively address future challenges confronting the city regarding access to public and green space, sustainability and climate change, accessibility, and assisted housing.¹⁴⁰

206. Certainly, we would agree that a tall building could create a much higher level of occupancy and activities, and thereby generate demand over and beyond a more moderately scaled development. Conversely, however, the same logic would apply to a large-scale, but height compliant, development. We return to this question shortly.
207. In terms of using height as a trigger, we were satisfied that, in principle, it is a workable and effective mechanism. It is readily measurable and certain. However, as far as the specific height thresholds that have been proposed, as far as we could determine, there has been no quantitative or qualitative analysis to determine the appropriate height thresholds to trigger the application of the COC provisions. In other words, there is no evidence of any evaluation to support the various height thresholds that are proposed to be used, to demonstrate buildings over certain heights in certain contexts will have a greater than acceptable negative impact on the quality and level of public and private amenity within the City's commercial centres such that some form of public benefit is needed to compensate.
208. We accept that many (if not all) limits and thresholds in District Plans are going to be arbitrary to some degree, and will represent some general level of acceptability rather than a scientifically derived threshold. However, at this point, we simply observe that

¹⁴⁰ Introduction to *Appendix 16: City Outcomes Contribution*, as recommended to be amended in Section 42A Report.

no economic or other assessment has appeared to have been undertaken to support the basic premise that underpins the COC provisions.

209. In terms of using height as a proxy for larger developments to trigger COC, in the final reply on the Centres Hearing, the reporting officer outlined the reasons why height is considered a suitable proxy for increased intensification¹⁴¹. She concluded that the COC mechanism assists in maximising the benefits of intensification as directed by NPSUD policy 3(a), and to achieve a well-functioning urban environment as directed by NPSUD Policy 1.
210. During the hearing, the reporting officer was questioned as to whether there were other more appropriate standards that could be used as a proxy for intensification: her further reply responded more fully to this question. We raised this question as it was apparent that the effects which the COC sought to address were, in large measure, based on the pressure put on public services and amenities by a building with a large occupancy capacity (for offices or residential for example).
211. In response, we were informed by the reporting officer that height is used as a proxy for other purposes, such as wind assessments, and that there is no evidence that the use of height for design excellence is problematic, or that alternatives such as floor area ratios are better suited¹⁴². We do not disagree with these points: we simply questioned why the same effects for which the COC seek compensation could arise with a large-scale building as noted in the introduction to Appendix 16.
212. The reporting officer acknowledged that the use of bonus floor areas, density bonuses or additional heights in return for public outcomes is a reasonably commonly used tool used in different examples across the world, and we were referred, as an example, to the Floor Area Uplift provisions for Melbourne's Central City, implemented by the Victoria State Government in Australia¹⁴³.
213. In regard to why GFA was not used as a COC threshold, the reporting officer advised that this could lead to a COC being triggered by a 4-5 storey development, for example, on a large site which, in her opinion, would not align with the intensification enabling mandate of the NPSUD.

¹⁴¹ At paragraph 19 - 29

¹⁴² At paragraph 38

¹⁴³ At paragraphs 41 - 43

214. Another proxy to which we were referred is building mass (footprint x height), which is currently used by the ODP Central Area for bulk and form controls. The reason why this proxy was not used was not given.
215. Finally, we were informed that the Council had originally intended (and in the notified version of the PDP provided for) to apply COC provisions to ‘comprehensive developments’, either large-scale residential developments, or developments that did not provide residential activities. Comprehensive developments were later recommended to be removed from the COC provisions as “*the wide spread of development that would be caught by these various hooks is considered onerous and could unintentionally risk deterring development, as well as causing issues with the alignment of the mechanism with the NPSUD’s objectives and policies.*”¹⁴⁴
216. On the basis of the evidence before us, we were not convinced that height should be the only trigger for applying the COC provisions. The underlying premise of the COC is for large scale development to offset adverse effects, such as the pressure on public amenities and services or for assisted housing provision, through other contributions to the City. While tall buildings could create such pressure, equally such pressure could be generated by a development with large floor plates that complied with the height limits.
217. Further, we do not agree with the reasoning that setting a COC trigger based on building mass would not align with the intensification mandate of the NPSUD: such reasoning could equally apply to the use of building height. Provided a building mass trigger did not set an upper limit, then we consider that density could still be enabled to realise as much development capacity as possible, while still applying the COC.
218. We have concluded that an absence of some form of building mass trigger is a shortcoming of the COC, based on the rationale on which the mechanism is supposedly founded. And it is a shortcoming we are unable to remedy in the absence of empirical evidence or quantitative alternative options.

Legal Validity of the COC

219. Council’s counsel, Mr Whittington, opened the hearing of Stream 4. Mr Whittington addressed the question of whether the mechanism was vires, and referred us to the *Infinity* case in Queenstown-Lakes District to support his contention the COC

¹⁴⁴ Hearing Stream 4 Section 42A Report, Overview and General Matters for Commercial and Mixed Use Zones, at paragraph 196

provisions were lawful¹⁴⁵. In that case, the following question of law was put to the High Court: *Does the RMA empower the Council to direct that developers provide or subsidise affordable housing?* The question arose from a plan change which sought to introduce affordable housing into the objectives and policies of the Queenstown-Lakes District Plan so that it can become a relevant matter when plan changes are proposed, as well as when resource consent applications are considered. In particular, Council's counsel used *Infinity* to address the main criticism levied at the proposed provisions by submitters, namely that the link between height as a trigger and the provisions is unclear.

220. The *Infinity* case addressed the need for a link between the effects of the use or development of the land and the objectives, policies and methods that are established to achieve integrated management as a function of the Council under s31(1)(a) of the RMA. The High Court determined that as the plan change concerned a perceived effect of future development within the District, it met the requirement to fit within the function of integrated management since the question of providing affordable housing will only arise if the development is construed as having an impact on the issue of affordable housing (in terms of an assessment under the provision of that district plan). Thus the High Court was satisfied that the requisite link between the effects and the instrument used to achieve integrated management existed¹⁴⁶.
221. Mr Whittington made the following observation on the linkage between the adverse effects of higher developments and the requirement for amelioration:

*The provision of a City Outcomes Contribution seeks to both encourage higher development while also ameliorating some of the adverse effects of higher, more dense, development. The link is not a complete or direct one, as would justify every new development being required to provide a proportionate City Outcomes Contribution, but uses the height threshold as a proxy for the point at which the adverse effects of higher development justify requiring additional amelioration. I do not see that indirectness as the absence of a clear link, but as an example of the sort of tradeoffs that are required when devising a regulatory framework to address the complexities of land development.*¹⁴⁷

222. The plan change questioned in *Infinity* contained no mechanism for requiring affordable housing. The decision was an 'in principle' agreement by the Court that

¹⁴⁵ *Infinity Investment Group Holdings Limited v Queenstown Lakes District Council* High Court INV CIV-2010-425365, 14 February 2011 at [40] per Chisholm J. A copy of this decision was circulated after the hearing.

¹⁴⁶ At paragraph 42

¹⁴⁷ Legal submissions on behalf of Wellington City Council Hearing Stream 4, at paragraph 3.4

affordable housing could be an appropriate and intra vires matter for the District Plan to address.

223. In contrast, the proposed COC provisions were set at policy level, and were sought to be implemented through rules and standards, as well as Appendix 16, a relatively novel and complex mechanism that would apply across several Centres zones.
224. The COC provisions were opposed by a wide range of submitters, including development interests, community and special interest groups. As these are IPI provisions and thus not be able to be appealed, the Panel considered it essential to seek additional legal advice.
225. The Hearing Panel therefore requested Mr James Winchester, Barrister, to provide it with an opinion focussing on two key questions about the City Outcomes Contributions provisions:
- Is it legally valid to guarantee additional height through the IPI/PDP in return for providing outcomes that are not directly related to the effects of the additional height, noting that the effects of the height would be addressed under a separate building design resource consent process as well as meeting other plan standards (for example, wind, shading)?
 - Is it legally valid according to public law principles to require mandatory public notification for a proposed over/under height building to “discourage” applications seeking to avoid the COC Policy pathway, particularly when the mandatory notification pathway is for a restricted discretionary activity?
226. Through Minute 31, the Panel circulated the legal advice we received from Mr Winchester to all parties, and leave was granted for a response. The legal submissions of Counsel for the Council and Kāinga Ora to the Wrap-up and Integration Hearing addressed Mr Winchester’s advice. A further reply from the reporting officer on COC was received on 20 September 2023.
227. The question of the validity of using mandatory public notification for a proposed over/under height building to ‘discourage’ applications seeking to avoid the COC Policy pathway became academic when the reporting officer recommended through her reply that the mandatory public notification requirement be removed.
228. In relation to the question of the absence of a clear link between additional height and the outcomes sought by the COC, Mr Winchester advised:

*... the absence of a clear link between the effects of additional height and the outcomes intended by the COC Policy is not fatal in terms of validity. There are examples of valid RMA provisions where there is no direct link between the effects under consideration and the outcomes being sought. An obvious example is financial contributions, where case law has made it clear that there does not need to be a clear nexus between the environmental effect of the activities for which contributions are taken and the level of contribution.*¹⁴⁸

*...It is however permissible to advance provisions which do not have a clear relationship between effects generated and the outcomes sought.*¹⁴⁹

*The COC Policy and related provisions are also not unlawful for the way in which they might duplicate or address legal requirements under other legislation.*¹⁵⁰

229. Mr Winchester did, however, advise that the absence of a clear link between the effects of additional height and the outcomes intended by the COC policy will likely be a matter that is highly relevant to whether the provisions are justified on the merits.

230. To the extent that the COC Policy and related provisions might be regarded as a form of compensation or offset for the effects of additional building height, Mr Winchester noted (at paragraph 41) that they could be argued to be within the contemplation of section 104(1)(ab) of the RMA as:

any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity ...

231. Mr Winchester did express concerns about the level of discretion involved with the application of some COC provisions:

*14. The operation of the COC Policy and related provisions as recommended by WCC officers in supplementary evidence is, however, highly problematic from a certainty perspective, and could result in the reservation of unlawful discretions. Invalidity would be most likely to arise due to the significant uncertainty resulting from WCC officers' recommendations.*¹⁵¹

232. He later expanded his concerns by way of an illustration:

71. For example, in both rules CCZ-R19.3 and CCZ-R20.3, it would be very difficult (if not impossible) to objectively ascertain the "score" that an over-height building or alteration would achieve under the City Outcome Contribution table in Appendix 16. This would require the exercise of

¹⁴⁸ At paragraph 11

¹⁴⁹ At paragraph 12

¹⁵⁰ At paragraph 13

¹⁵¹ At paragraph 14

subjective judgment or discretion by WCC, quite apart from the fact that it may be difficult (if not impossible) in most instances for an applicant to provide WCC with sufficiently detailed information at the lodgement of its resource consent application for WCC to effectively assess Lifemark, Green Star or Home Star ratings and hence points.

72. This situation would then translate into uncertainty and/or the exercise of judgement or discretion by WCC about how many points are accrued and what percentage range the allowable additional height would fall into. A conclusion that a proposal does not “give effect to” the COC Policy CCZ-P11 would, in my view, be materially uncertain and potentially open to considerable debate....

233. In response, through his opening legal submission to the Wrap-up and Integration Hearing, Mr Whittington addressed Mr Winchester’s issues relating to certainty and the possible reservation of unlawful discretion. Mr Whittington agreed that the more difficult issue is the degree of subjectivity in the allocation of COC points by Council processing planners. While he considered the degree of subjectivity can be overstated (noting the level of subjectivity involved in the design excellence provisions of the ODP), Mr Whittington agreed with Mr Winchester that there remains a residual risk of reserving an unlawful discretion: *“If the Council is prepared to take that legal risk – which should fundamentally be for the Council, not the Panel – the position can later be tested through consenting processes and potentially the Environment Court.”*¹⁵²
234. In legal submissions at the Wrap-up and Integration hearing, legal counsel for Kāinga Ora largely supported Mr Winchester’s analysis, but clarified that Kāinga Ora considers the proposed duplication between COC and Building Act processes to be inappropriate and unnecessary, rather than unlawful, and that such duplication would add an additional layer of compliance to address matters that are already addressed through separate processes.
235. In her further reply to Hearing Stream 4, the reporting officer, Ms Stevens, addressed the question of certainty, disagreeing with the extent and impact of perceived subjectivity by Mr Winchester and some submitters. She considered that the COC’s approach, detail, methodology and anticipated outcomes is far more prescriptive and clearer than the current ODP approach to ‘design excellence’ and that it will lead to much more predictable and certain outcomes compared to outcomes associated with design excellence now.

¹⁵² At paragraph 3.9

236. Ms Stevens stated that the subjectivity is further reduced by the rule framework relating to COC, noting that if a development does not comply with the COC requirement, it remains a restricted discretionary activity in all applicable zones: *“hence the COC does not change activity status as a result of an assessment from a resource consent planner.”*¹⁵³
237. In summary, based on the advice we have received, we have concluded that:
- a) The absence of a clear link between the effects of additional height and the outcomes intended by the COC Policy is not fatal in terms of validity, but it is a matter that is highly relevant to whether the COC provisions are justified on the merits.
 - b) There does not need to be a clear nexus between the environmental effect of the activities for which contributions are taken and the level of contribution for a RMA policy to be valid, the most obvious example being financial contributions.
 - c) The outcomes sought by the COC Policy and related provisions are not a financial contribution, but are more in the nature of works and/or enhanced sustainability or public good outcomes, a form of compensation.
 - d) The RMA has a relatively broad statutory purpose and the subject matter of the COC Policy is not clearly beyond that purpose: the COC Policy and related provisions are also not unlawful for the way in which they might duplicate or address legal requirements under other legislation.
 - e) The operation of the COC Policy and related provisions is problematic from a certainty perspective; in particular, the determination of the level of COC points a proposal would achieve under the recommended Appendix 16 relies on a substantial level of discretion by Council officers.
 - f) The recommended removal of the mandatory public notification for proposals not fulfilling the COC eliminates our uneasiness with that aspect of the COC policy, a discomfort that was confirmed by legal advice that it would be in breach of public law principles.
238. In relation to the ‘residual risks’ that Mr Whittington identified in relation to the level of discretion involved with the COC provisions, while we acknowledge his invitation to

¹⁵³ At paragraph 56

leave that risk to be tested through future consenting processes, this risk was still a relevant factor in our overall consideration of the merits of the COC, which must also include its potential costs and benefits, as well as its effectiveness and efficiency.

Benefits and Costs

239. To further inform our understanding about the rationale and reasoning for the introduction of the COC provisions, we first turned to the evaluation that underpinned the development of these provisions.
240. One of the key issues that the Council's s32 evaluation addressed as part of the development of the Centres, Commercial, Mixed Use and Industrial Zones was "*resolving the inherent tension between measures to enable development uplift and quality design outcomes in centres and mixed-use zones*".¹⁵⁴ The evaluation identified that:
- a) Additional measures to address unrealised development capacity and limited growth in centres and mixed-use areas are necessary;
 - b) The Council's aspirations for quality design outcomes in these areas are valid and supportable within the context of the RMA; and
 - c) The impact of potential measures to achieve quality design outcomes must also be clearly understood, such that their imposition avoids adverse impacts on the feasibility and viability of worthy development projects.
241. In response, the report recommended careful consideration of:
- the relationship between plan provisions and design guidance
 - the rationale for and implications of design-led standards in cost benefit terms, and the consent status accorded building activities that do not meet design-led standards.¹⁵⁵
242. The s32 evaluation recognised that the "*the imposition of new policy considerations and standards to address additional amenity and quality design outcomes*" was of medium significance, but that the amenity and quality design outcomes were supportable in terms of the purpose and principles of the RMA¹⁵⁶. It also considered that changes involving the imposition of new policy considerations and standards to

¹⁵⁴ Section 32 - Part 2 - Centres, Commercial, Mixed Use and Industrial Zones, page 30

¹⁵⁵ At page 30

¹⁵⁶ At page 32

address additional amenity and quality design outcomes represented a more significant shift from the status quo, but that their imposition should have a positive impact on social, cultural and wellbeing of residents, workers and consumers¹⁵⁷.

243. The evaluation concluded that the proposal would impose new and more onerous standards focused on amenity and design-led outcomes for resource users than exists at present, and consequently, a high-level evaluation of the proposed provisions was identified as appropriate for the purposes of that report, with the exception of those that would introduce additional, more onerous controls, for which a more detailed evaluation was considered warranted.
244. In terms of the costs and benefits of the proposed provisions, the s32 evaluation referred to the report specifically commissioned to analyse the proposed amenity and design provisions by The Property Group ('TPG report')¹⁵⁸. In relation to the proposed COC provisions, that report concluded that:

It is likley [sic] that to acheive [sic] a feasible development under the draft provisions, that either the height or bulk controls may need to be exceeded and therefore the city outcomes contribution will be a key assessment tool.

This assessment outlines that the proposed amenity provisions have been found to have developments [sic] costs that may not be outweighed by the direct benefits to residents or neighbours. As noted in the introduction however, when considered at a broader neighbourhood or street block scale the benefits of the provisions have the potential to have broader benefits for the community and this is something that should be assessed [sic] in more detail. The key to sucess [sic] of the City Outcomes Contribution provision will be that it is used as a way to work with the development sector to achieve a [sic] good design outcomes without generating signifincant [sic] additional costs.¹⁵⁹

245. The economic evidence to the Hearing did not address the costs and benefits of the COC provisions specifically, although general observations about the economics of height limits were made by Dr Kirdan Lees for the Council¹⁶⁰.
246. In summary, the evidence before us on the benefits and costs of the COC provisions was sparse and unpersuasive. The benefits of the COC were largely expressed in terms of the additional amenity and quality design outcomes that would arise, which were assessed as having a positive impact on social, cultural and wellbeing of

¹⁵⁷ At page 33

¹⁵⁸ [Proposed Amenity and Design Provisions: Cost Benefit Analysis by The Property Group June 2022](#)

¹⁵⁹ At page 16.

¹⁶⁰ Evidence of Dr Kirdan Lees for Wellington City Council, paragraphs 56 - 69

residents, workers and consumers. No quantitative information on the costs of the COC provisions was provided.

247. On reflection, the absence of a benefits-costs analysis is not surprising as the implementation of the COC would be very context driven, and highly dependent on particular proposals, particularly locations and the costs of potential specific outcomes. Furthermore, many of the benefits would be generally intangible ones and difficult to quantify. However, it is unfortunate that the recommendation in the TPG report to further assess the benefits and costs of the COC provisions was not followed up.
248. In the absence of a quantitative evaluation, we undertook a more qualitative assessment, focusing on the effectiveness and efficiency of applying COC to development in the City's centres.

Effectiveness of COC

249. In terms of certainty, as we highlighted above, the application of the COC provisions to any particular development is dependent on the point scoring process directed by Appendix 16, the final recommended version of which was presented to the Wrap-up and Integration Hearing. The determination of the points received for any particular contribution by a development will rest with the consent processing planner, who will be advised by a Council urban designer. Based on advice received during the hearing, officers expect this to be an iterative pre-application process.
250. While the amendments recommended by the reporting officer over the course of the hearings sought to provide a greater level of certainty to the point assessment process, adding matters to take into account and other advice notes, a large measure of discretion and judgement will still be required to confirm what contributions would earn how many points. For example, the provision of a laneway or through block connection will earn between 1 and 10 points based on the following:

The range in points depends on the quality, extent and level of amenity that each solution provides.

Matters taken into account when attributing points to a lane-way or through-block connection:

- *Extent of public access. Connections with full public access will achieve higher points than those with limited (e.g. daytime only) access, or private connections.*

- *Activation at ground level – for example through store frontages in tenancies facing the laneway, or cafes opening out to the laneway.*
- *Landscaping and street furniture within the lane-way or through block connection.*
- *Accessibility.*

Note: The design of any lane-ways or through-block connections must take into account the principles of Crime Prevention Through Environmental Design (CPTED).

251. All of these will require subjective judgement, as would –

- the level of amenity in public open space
- the provision of appropriate communal gardens, playgrounds, and roof gardens, the provision of permanent public amenities (public toilets, street furniture, EV charging, park benches, landscaping, bike parking, public art (e.g. sculptures or murals) and street improvement works, the provision of spaces for community use (e.g. artist studios))
- restoration of a heritage building, heritage structure, or site/area of significance to Māori.

252. In and of itself, this level of discretion has no implications from a compliance perspective: the reporting officer was correct in her view in this regard. The calculation of total points does not determine whether a proposal is permitted or moves to a more onerous consent status: it would remain as a restricted discretionary activity, no matter what points are allocated. However, the level of discretion is a concern in relation to the practical application of the COC provision, and hence to the effectiveness of the process, which goes to the merits of the mechanism.

253. The subjectivity involved with points calculation will require an iterative pre-application process between applicant and the Council, with inevitably divergent views, simply for the applicant to confirm how high they can build. This process will add time and cost to the development process, costs that could be avoided if additional height was not sought. Further, the process of determining COC will add a further layer of uncertainty into the normal consent process.

254. On this point, Tim Heath, who provided economics evidence for Stride Investment Management Ltd and Investore Property Ltd, observed that:

In my experience developers will typically choose the path of least resistance in terms of time and cost, and in this instance are likely to focus

*on buildings less than 35m which do not have to satisfy the City Outcome contribution tests.*¹⁶¹

255. In relation to the use of the Lifemark, Green Star and HomeStar certification systems for obtaining COC points, we have several concerns about their efficacy. First, these are not documents that have been incorporated by reference into the PDP. They are externally managed and administered non-statutory certification systems that are subject to change outside the RMA Schedule 1 process. Secondly, some aspects of these systems require certification after construction is complete, well after the resource consent process, to determine COC points. We were informed in response to questions that achievement of these ratings can be 'conditioned' into the consents for COC, which in turn raises questions about compliance and enforcement. Again, this is not a fatal flaw, but it does contribute to questions about effectiveness.
256. This matter leads to another aspect of effectiveness, the potential uptake of the COC.
257. Based on submitter evidence before us, we were not convinced there would be a meaningful uptake of the COC. The evidence of one developer who presented evidence to the hearing, Craig Stewart of Stratum Management Ltd¹⁶², a developer who focuses on City Centre residential developments, echoed the views of a number of submitters:

We have constructed buildings of up to 17 storeys in the past few years but due to changing seismic requirements the additional cost that comes with height to this level, or even higher, is proving not to be very cost effective. Therefore, residential buildings in the 12-14 storey range are where we see the future.

258. Most recent development in the Centres, particularly the CCZ, have been within the current height limits: certainly, there was no evidence of a demand for much higher buildings in recent times. While higher buildings can yield higher revenue either by way of rents or value, as Mr Stewart highlighted, they also involve higher costs, particularly through meeting seismic standards.
259. We consider it more likely that the forms of development that may seek to employ the COC process for the additional height would be commercial retail/office buildings in the Central City, where high quality and high value office leases would act as a strong incentive for the construction of taller buildings. To attract high value tenants, such buildings would also be likely to incorporate some of the design outcomes in the COC,

¹⁶¹ Evidence of Tim Heath for Investore paragraph 38

¹⁶² Submission #249

such as high Greenstar and Lifemark ratings, and meeting high seismic standards. There is nothing in the COC provisions that would direct such developments to provide outcomes that were not otherwise going to be an inherent part of the design.

260. Another concern raised by submitters was the likely sporadic and ad hoc application of the COC provisions, and the lack of a strategic approach to the provision of additional public amenities and services. The supply of the public amenities and services may occur in places already well serviced with, for instance, public toilets, parks, and public access and connections. For instance, Stuart Niven who presented urban design evidence for the WCCT, made the following statement:

*I consider that these sorts of incentive programmes are flawed because experience shows that the public goods that they provide do not have longevity, and because if the provision of the public goods is desirable then it ought to occur according to a strategic pattern and not be bartered for in a haphazard manner.*¹⁶³

261. Mr Niven's statement raised another question, that of the longevity of the public goods:

*....as with many similar mechanisms popular at the time around the world, I think it would be fair to say that the permanent marks it has left on the Central City as advantageous public qualities would be slim and, in the case of public art attached to buildings – now almost non-existent. By contrast, the extra floor space achieved by developers through this barter system is still in place and still earning a return as we speak. In short, there is a real issue with achieving longevity of impact when public goods are bartered for as part of a development proposal.*¹⁶⁴

262. Mr Niven's criticism is not entirely fair, as some of the contributions under COC will be 'inbuilt' as part of the development: for example, seismic resilience, reduced embodied carbon, sustainable construction, and accessibility. However, we accept that other contributions could be subject to the vagaries of change over the long term, and be lost over time, as Mr Niven noted occurred with the outcomes generated by the Bonus Floor Area provisions introduced into the 1985 Wellington City District Scheme. For example, we were given no assurance as to how the provision of public amenities through the COC process could be assured to have longevity or permanency¹⁶⁵.

¹⁶³ Urban design evidence of Stuart Niven, for Wellington's Charitable Trust (#233), at paragraph 13

¹⁶⁴ At paragraph 38

¹⁶⁵ For example, communal gardens, playgrounds, and roof gardens, public toilets, street furniture, electric vehicle (ev) charging, park benches, landscaping, bike parking, public art and street improvement works, the provision of spaces for community use.

263. Mr Niven also questioned the limited application of the COC outcomes for universal accessibility, sustainability and resilience to over or height buildings:

Universal access is far too important a quality of a well-functioning city to limit its delivery to those buildings that choose to exceed the Central City's height thresholds.

Given the Council's commitment to the sustainability and resilience of the city in these times of increasing climate change, it is also surprising to find specific design standards and measures that ensure a sound approach to sustainability or new urban development similarly confined to only those new developments that exceed the various height thresholds. These measures should rightly be an expected standard for all new city buildings, not just for those effected [sic] by a City Outcomes mechanism.¹⁶⁶

264. In summary, we were not satisfied that the COC provisions would be effective in achieving a comprehensive set of outcomes, or would be well utilised.

COC for the MCZ and LCZ

265. In response to submissions from a number of community groups, we turned our mind to whether the COC would be an appropriate policy to apply to the MCZ and LCZ. In particular, we considered whether having a potentially unlimited height through the COC process was appropriate in regard to establishing the planned urban form for these centres.
266. JCA¹⁶⁷, for example, expressed concern about the potential for very high buildings in the Johnsonville MCZ in terms of wind, shading and traffic effects, as well as tall buildings being out of scale with the Johnsonville area¹⁶⁸. The ORCA¹⁶⁹ expressed similar concerns, focusing on the effects on the Khandallah LCZ and its neighbourhood following the officer recommendation to exclude NCZ and HRZ from the COC policy¹⁷⁰. Stuart Niven provided urban design evidence for ORCA to the hearing, outlining the reasons he considered the COC would be inappropriate for the Khandallah centre¹⁷¹.
267. We have outlined our recommendations for the height limits for the MCZ and LCZ in the relevant report (4C). For the reasons we set out in respect of our recommendations for the height limits in these zones, we also consider that these height standards should remain as limits rather than thresholds, as these

¹⁶⁶ At paragraphs 48-49

¹⁶⁷ Submission #426

¹⁶⁸ Presentation by Warren Taylor, for the Johnsonville Community Association, at pages 14 – 16,

¹⁶⁹ Submission #283

¹⁷⁰ Presentation by Lawrence Collingbourne, for ORCA

¹⁷¹ At paragraphs 14 - 17

recommended heights are appropriate for these centres, having regard to the local context and urban form, while still enabling a significant uplift in development capacity for these centres.

268. Based on the evidence before us, we concluded that the recommended building heights and densities for the MCZ appropriately reflect the demand for housing and business in these centres. For the LCZ, we concluded that the proposed building heights and densities provide an anticipated urban form that would be commensurate with the level of commercial activity and community services for these centres.
269. Opportunities for over height buildings in these Centres should still be available through the resource consent process, as discretionary activities, with an amplified assessment process to examine the appropriateness of a proposed over height building relative to the level of demand for business and residential and the anticipated urban form of each centre.
270. For the same reasons, we have therefore concluded that COC would be inappropriate to apply to the MCZ and LCZ. The Panel considers the height limits for these centres define an appropriate planned urban form for these centres and are commensurate with the level of commercial activity and community services they provide. Conversely, over height buildings in these local centres may not be appropriate to the scale and character of these centres, and could be adverse to a well-functioning urban environment, notwithstanding any public benefits that could be extracted from a development proposal.

Merits of Design Excellence

271. As we concluded earlier in this report, the PDP has abandoned having a separate policy and mechanism for requiring design excellence for visually prominent buildings. On this matter, as part of the background to the COC, we were referred to an evaluation of the effectiveness of the ODP design excellence provisions undertaken as part of the development of the draft District Plan¹⁷². This report, which was summarised in the Section 42A Overview Report for the CMUZ hearing¹⁷³, was critical of the effectiveness of the design excellence provisions and its implementation. In brief, the evaluation drew the following conclusions:

¹⁷² Urban Perspectives Limited, Draft Wellington District Plan Review: Building Mass Control Provisions, Urban Design Report, October 2020

¹⁷³ At paragraphs 178-179

- a) While the policy and its explanation were intended to achieve design excellence for buildings of significant visibility and prominence, due to the wording of the ODP provisions, design excellence was required for any height exceedance, even when this is small (1 metre or less) and visually indiscernible, and with no obvious effect on the actual building form and/or the townscape environment.
- b) As there was no clear definition for 'design excellence' and no specific criteria for assessing it, the process was open to subjective interpretation and inconsistency in assessing design excellence, leading to different approaches taken by urban design advisors, creating uncertainty for applicants and raising questions about the objectivity of design excellence assessments.
- c) The policy directed the assessment of design excellence to focus on the external form and aesthetic and architectural quality of the building and its contribution to the public realm, but not typically on on-site amenity as part of the assessment.
- d) There was an unclear relationship between design excellence and the provisions of the Central Area Urban Design Guide (CAUDG), creating confusion and unnecessarily complicating the overall assessment of design quality.

272. Among the recommendations of the report were the following pertinent suggestions:

- a) Assessing design excellence through a design panel review for important over-height buildings might be appropriate to consider.
- b) Review the policy in light of anticipated height increases as directed in the Spatial Plan.
- c) Address the 'disconnect' between the words in the policy and explanations, and refine the trigger for 'design excellence' assessment.
- d) Provide a definition of design excellence and supplement it by clear assessment criteria that cover all aspects of the design (aesthetic and architectural quality, contribution to the public environment as well as on-site amenity for residential developments + specific criteria for building volume with a mass breach as a result of a height breach).
- e) In relation to the Central Area Urban Design Guide (CAUDG):

- i. Clarify the relationship between the CAUDG provisions and any future design excellence assessment criteria.
- ii. Define the specific objectives/outcomes that design excellence has to deliver in addition to satisfying the objectives of the CAUDG and link those to the relevant policies.
- iii. Consider integrating design excellence into the CAUDG.

273. It is apparent that the COC provisions were developed, at least in part, in response to the 'contribution to the public environment' aspect of recommendation (d) rather than the three other aspects, which appear to be appropriate matters for either the Design Guide or PDP development standards. The first recommendation (of having an Urban Design Panel to assess design excellence for over height buildings), appears to have been carried into the COC as one of the point scoring categories, but it was subsequently recommended that this be deleted. None of the other recommendations are reflected in the COC provisions.

274. As the reporting officer stated in her final reply:

As Dr Zamani notes in paragraph 11 of his Hearing Stream 4 Supplementary Statement of Evidence, the design excellence policy in the ODP has proved to be vague and reliant on subjective expert opinions. Instead the COC policy aims to address these issues by providing certainty and a clear framework for developing significantly taller buildings within Appendix 16¹⁷⁴.

275. As we concluded above¹⁷⁵, the COC process is still highly dependent on a discretionary and subjective evaluative process, and while it may be a step-change improvement to the vagueness in the ODP design excellence provisions, we certainly do not agree that it has fully overcome that problem.

276. Furthermore, the CMUDG Design Guide does not explicitly address 'design excellence' as was recommended in the report, although there may be some implicit 'design excellence' considerations in elements of the Guide (for example, in Design Outcome O14 and Design Guidance G35 and G36, as discussed in paragraph 198 above).

277. As notified, the COC process did include an element that did, partially or implicitly, seek to address design excellence by enabling a proposal to gain COC points through

¹⁷⁴ Further right of reply response of Anna Stevens - City Outcomes Contribution, at paragraph 50

¹⁷⁵ Paragraph 239

the approval of an Urban Design Panel, with the range in points depending on the development's response to all the design guides as decided by the Panel. However, this particular City Outcome was recommended to be 'relocated' by the reporting officer for Hearing Stream 4 to become a method, for the reason that "*an 'urban design panel' is more about assessment of beneficial outcomes to the city through applications, as opposed to a city outcome itself.*"¹⁷⁶

278. This recommendation generated concern from Mr Alistair Aburn, who gave planning evidence on behalf of Willis Bond, and whose company undertook the review of the design excellence provisions of the ODP to which we referred in paragraph 271 above. In Mr Aburn's opinion, an outcome seeking excellence in architectural design should still be encouraged and he recommended replacing 'Urban Design Panel' with 'Architectural Design Excellence' within the City Outcomes Contribution, with the range of points depending on the development's architectural response to its context and its overall design quality as assessed by the Urban Design Panel¹⁷⁷.
279. We have concluded that there is still a role for considering design excellence in some form, to avoid tossing the baby out with the bathwater. While we agree that it may be too problematic to develop objective criteria or any quantitative assessment process, as there will always be a level of subjectivity involved in determining 'good design', we consider that it is still important that a proposed prominent building undergo robust scrutiny, and that the normal 'quality design' assessment is ramped up. Buildings that will change the cityscape, its form, memorability, and sense of place, should be required to undergo an extra level of inspection and inquiry.
280. In reaching that conclusion, we accept that this consideration cannot be achieved through the COC mechanism in the PDP, which is not oriented towards design excellence in the meaning given in the ODP. The logical 'home' for it is not in the policies that underpin the quality design assessment process (CCZ-P9, MCZ-P7 and LCZ-P7) but through a specific policy element that triggers a consideration of whether a development proposal positively contributes to the sense of place and distinctive form of the City Centre where the site or development will be prominent. We would hope that this determination would be made by an Urban Design Panel, but that is a matter for Council.

¹⁷⁶ Section 42A report to Hearing Stream, Overview and General Matters for Commercial and Mixed Use Zones, at paragraph 208.

¹⁷⁷ Evidence of Alistair Aburn on behalf of Willis Bond, at para 6.9

281. Furthermore, we have concluded some of the more intrinsic design excellence outcomes in the COC policy should be transferred to the quality design policies as we consider it important that the benefits of well-designed accessible, resilient, and sustainable development should be addressed across all development proposals, and not be confined to over or under height buildings. We agree with Mr Niven on this point. These matters relate to the extent to which development proposals:
- a) Enable universal accessibility within buildings, ease of access for people of all ages and mobility/disability;
 - b) Incorporate a level of building performance that leads to reduced carbon emissions and increased earthquake resilience; and
 - c) Incorporate construction materials that increase the lifespan and resilience of the development and reduce ongoing maintenance costs.

Merits of City Outcomes Contributions

282. While we have identified a number of problematic elements of the COC provisions, we do recognise that there are merits to the purpose of the policy: that is, to encourage the provision of positive outcomes for public amenities and services that large-scale development can provide. This is consistent with the recommendation of the Design Excellence Review (referred to in paragraphs 271 and 272 above) in relation to better addressing development proposals' contributions to the public environment¹⁷⁸.
283. Accordingly, we have concluded that the COC policies (CCZ-P11, MCZ-P10, and LCZ-P10) should be reframed such that they are seeking to 'encourage' rather than require the provision of outcomes contribute positively to the amenity of the City and its sense of place. These policies would encourage applicants of over or under height development proposals to provide offsetting or compensation for adverse effects that these forms of development can create.
284. This approach aligns with Section 104(1)(ab) RMA which requires consenting authorities, in considering resource consent applications, to have regard to "*any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the*

¹⁷⁸ Urban Perspectives Limited, Draft Wellington District Plan Review: Building Mass Control Provisions, Urban Design Report, October 2020

environment that will or may result from allowing the activity". While the amended policy would identify those wider public environmental outcomes listed in the COC policy, it would not be confined to those outcomes and therefore an applicant could propose other forms of contributions that would be assessed on a case-by-case basis.

285. The recommended public outcomes for this revised policy would include:
- a) Positively contributing to public space provision and the amenity of the site and surrounding area, particularly in areas of deficit public space;
 - b) Positively contributing to public accessibility and connections;
 - c) Restoring and reusing heritage buildings and structures;
 - d) Recognising and responding to adjacent sites and areas of heritage or sites and areas of significance to Māori; and
 - e) Incorporating assisted housing into the development; where this is provided, legal instruments are required to ensure that it remains assisted housing for at least 25 years.

Conclusions about the City Outcomes Contributions

286. While the intent of the COC has some merits in terms of seeking to promote greater level of public amenities and a better quality of design for the more City's prominent developments, we find that it is not an appropriate policy or method for achieving the objectives of the PDP, for the following reasons:
- a) The application requires a substantial degree of discretion to apply that will add to the costs and time of developing proposals and applications, and could act as a disincentive for developers from pursuing this pathway, contrary to the enabling directive of the NPSUD.
 - b) We were not satisfied that there would be sufficient uptake to realise the benefits and public goods envisaged by the policy, and any provision of public amenities or services that may occur would most likely be scattered, ad hoc and potentially inconsequential.
 - c) The COC did not capture all of the potential public good outcomes that could be provided by large-scale development or encourage such outcomes.

- d) While we accept that the COC mechanism is not legally invalid, we were not convinced that there was a satisfactory nexus between over or under height buildings and the types of effects that the public contributions were intended to address. In particular, we were not satisfied that the level of effects created by either tall (over-height) or short (under-height) buildings are of such a magnitude that they should be required to be compensated for.
- e) The provision of public amenities could be much more effectively and strategically achieved through other mechanisms, like development contributions, that would enable a planned and targeted approach across the City.
- f) Some of the contributions, such as Greenstar and Life Mark ratings were intrinsic quality matters that did not directly provide any direct benefit to the public in terms of amenities or services.
- g) The certification systems, which were not incorporated into the PDP, were external processes that are subject to change over time.
- h) While the promotion of more sustainable and resilient buildings is consistent with the strategic objectives of the PDP, such outcomes should be promoted on a wider City wide basis, and not be confined to the infrequent development of over or under height buildings.
- i) We were not satisfied that the public amenities and services provided by a COC mechanism would necessarily have any longevity or provide enduring contributions to the City.
- j) Applying the COC to the LCZ and MCZ would be inappropriate as the height limits recommended for these centres define an appropriate planned urban form for these centres and are commensurate with the level of commercial activity and community services: conversely, over height buildings in these local centres may not be appropriate to the scale and character of these centres, , notwithstanding any public benefits that could be extracted from a development proposal. As such, they would need a case-by-case assessment.

287. Collectively we have concluded that these problems render the mechanism unfit for purpose. We have, however, concluded that there are some merits in the purpose and intent of COC in terms of encouraging large-scale or under-height developments to provide demonstrable, tangible, and enduring positive outcomes that are of benefit

to the area of the proposed development and positively contribute to the sense of place and distinctive form, quality and amenity of the CCZ. Such outcomes would compensate for those adverse effects that cannot be addressed solely through good quality design, such as additional pressure on public amenities and services or the suboptimal development and use of Centre resources. Such outcomes could include:

- a) Positively contributing to public space provision and the amenity of the site and surrounding area, particularly in areas of deficit public space;
- b) Positively contributing to public accessibility and connections;
- c) Restoring and reusing heritage buildings and structures;
- d) Recognising and responding to adjacent sites and areas of heritage or sites and areas of significance to Māori; and
- e) Incorporating assisted housing into the development; where this is provided, legal instruments are required to ensure that it remains assisted housing for at least 25 years.

288. As we earlier concluded, while we consider that building height is a valid proxy to initiate the encouragement of the provision of wider outcomes, for large-scale developments, there are other thresholds such as building mass that preferably could have been used to instigate these considerations. However, in the absence of evidence about other forms of thresholds, we have accepted the height thresholds as the basis for this policy consideration.

289. In relation to building heights, we have also concluded that the use of height thresholds is an appropriate approach in the CCZ, where there is no ultimate height limit, as this is consistent with the direction under the NPSUD Policy 3(a) for the PDP to enable “*in city centre zones building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification*”.

290. In the MCZ and LCZ, we have concluded that the specified height limits should be just that, limits, and not thresholds. The Panel considers the height limits for these centres define an appropriate planned urban form for these centres and, for LCZ, are commensurate with the level of commercial activity and community services, and, for the MCZ, reflect the demand for business and housing and provide in all cases for buildings of at least 6 storeys. The height limits in all of these centres have been

considerably increased from those under the ODP, thereby representing a significant uplift in development potential.

291. Conversely, over height buildings in these centres may not be appropriate to the scale and character of these centres, and could be adverse to a well-functioning urban environment, notwithstanding any public benefits that could be extracted from a development proposal. We consider that it appropriate that proposed exceedances of the height limits in these zones should necessarily pass a higher bar via resource consent as a discretionary activity, given that the height limits in these LCZ and MCZ have been significantly increased from those in the ODP. For example, in the Johnsonville centre, the height limits in the ODP of 12m and 18m are recommended to be increased to a limit of 42m (ie, from 3-5 storeys to 12 storeys)¹⁷⁹.
292. In our view, while the effects of buildings within the recommended height limits can be effectively addressed as a Restricted Discretionary Activity, the effects of buildings higher than 42m (ie, more than 12 storeys) may be much wider. We therefore we consider a Discretionary Activity status to be more appropriate as it would provide the Council with a broader scope of potentially relevant matters to be considered. Acknowledging that submitters only sought either an increase or decrease in maximum height limits for the LCZ and MCZ, we therefore recommend making this change in activity status by applying clause 99(2), Schedule 1, Part 6, which enables us to make recommendations that are not limited to being within the scope of submissions made on the IPI.

Recommendations

293. The recommended changes to the relevant CCZ provisions are shown below (including amendments made in respect of other recommendations: only the affected provisions are shown):

Policies

CCZ-P9	<p>Quality design <u>development</u> outcomes</p> <p>Require new development, and alterations and additions to existing development, at a site scale to positively contribute to the sense of place and distinctive form, quality and amenity of the City Centre Zone by:</p> <ol style="list-style-type: none"> 1. <u>Fulfilling the intent of the Centres and Mixed Use Design Guide;</u> <u>24.</u>Recognising the benefits of well-designed, comprehensive development, including the extent to which the development:
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¹⁷⁹ This is an increase from the notified height limit of 35m for the Johnsonville MCZ.

- a. ~~Acts as a catalyst for future change by reflecting~~ Reflects the nature and scale of the development ~~proposed~~ enabled within the zone ~~and in the vicinity~~ and responds to the evolving, more intensive identity of the neighbourhood;
- b. Optimises the development capacity of the land, ~~particularly including sites that are:~~ large, narrow, vacant or ground level parking areas;
 - ~~i. Large; or~~
 - ~~ii. Narrow; or~~
 - ~~iii. Vacant; or~~
 - ~~iv. Ground level parking areas;~~
- c. Provides for the increased levels of residential accommodation anticipated; ~~and~~
- d. Provides for a range of supporting business, open space and community facilities; and
- e. Is accessible for emergency service vehicles;

3. ~~2.~~ Ensuring that development, where relevant:

- a. Responds to the site context, particularly where it is located adjacent to:
 - i. A scheduled site of significance to Māori;
 - ii. A heritage building, heritage structure or heritage area;
 - iii. An identified character precinct;
 - iv. A listed public space;
 - ~~v. Identified pedestrian streets;~~
 - vi. Residential zones;
 - vii. Open space zones; and
 - viii. The Waterfront Zone;
- b. Responds to the pedestrian scale of narrower streets;
- c. Responds to any identified significant natural hazard risks and climate change effects, including the strengthening and adaptive reuse of existing buildings;
- d. Provides a safe and comfortable pedestrian environment;
- e. Enhances the quality of the streetscape and the private/public interface;
- f. Integrates with existing and planned active and public transport activity movement networks, including planned rapid transit stops; ~~and~~
- g. Allows sufficient flexibility for ground floor space to be converted to a range of activities, including residential along streets that are not subject to active frontage and/or verandah coverage requirements ~~and sites free of any identified natural hazard risk;~~ and

	<p>h. <u>Positively contributes to the sense of place and distinctive form of the City Centre where the site or proposal will be prominent.</u></p> <p>4. <u>Recognising the benefits of well-designed accessible, resilient and sustainable development, including the extent to which the development:</u></p> <ul style="list-style-type: none"> a. <u>Enables universal accessibility within buildings, ease of access for people of all ages and mobility/disability; and</u> b. <u>Incorporates a level of building performance that leads to reduced carbon emissions and increased climate change and earthquake resilience; and</u> c. <u>Incorporates construction materials that increase the lifespan and resilience of the development and reduce ongoing maintenance costs.</u>
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<p>CCZ-P11</p>	<p>City outcomes contribution <u>Development Outcomes</u></p> <p>Require over height, large-scale residential, non-residential and comprehensive development in the City Centre Zone to deliver City Outcomes Contributions as detailed and scored in the Centres and Mixed Use Design Guide guideline G107, including through either:</p> <p><u>Recognise the positive outcomes that developments either over the height thresholds or under minimum building heights in the City Centre Zone can make to a well-functioning urban environment, as compensation for adverse effects, through the provision of enduring outcomes that provide public benefit and positively contribute to the sense of place and distinctive form, quality and amenity of the City Centre Zone, including:</u></p> <ul style="list-style-type: none"> 1. <u>Positively contributing to public space provision and the amenity of the site and surrounding area, particularly in areas of deficit public space; and/or</u> 2. <u>Positively contributing to public accessibility and connections;</u> 3. <u>Restoring and reusing heritage buildings and structures;</u> 4. <u>Recognising or responding to adjacent sites and areas of heritage or sites and areas of significance to Māori; and</u> 2. Incorporating a level of building performance that leads to reduced carbon emissions and increased climate change resilience; and/or 3. Incorporating construction materials that increase the lifespan and resilience of the development and reduce ongoing maintenance costs; and/or 45. <u>Incorporating assisted housing into the development; where this is provided, legal instruments are required to ensure that it remains assisted housing for at least 25 years; and/or</u> 5. Enabling ease of access for people of all ages and mobility.
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294. The same changes are recommended to the equivalent policies for the MCZ (MCZ-P7 and MCZ-P10) and LCZ (LCZ-P7 and LCZ-P10), with appropriate adjustments to the policy wording to reflect our recommendation that those zones are subject to height limits, not height thresholds.

Rules and Standards

295. In terms of the rules and standards for the CCZ, the following amendments are recommended:

CCZ-R2349	Alterations and additions to buildings and structures
	<p>1. Activity Status: Permitted</p>
	<p>2. Activity status: Restricted Discretionary</p> <p>Where:</p> <p style="padding-left: 20px;">a. Compliance with any of the requirements of CCZ-R2349.1 cannot be <u>is not</u> achieved.</p> <p>Matters of discretion are:</p> <ol style="list-style-type: none"> 1. The matters in CCZ-P4, CCZ-P5, CCZ-P6, CCZ-P7, CCZ-P8, CCZ-P9, CCZ-P10, CCZ-P11 and CCZ-P12 <u>and CCZ-P13</u>; 2. The extent and effect of non-compliance with CCZ-S1, CCZ-S2, CCZ-S3, CCZ-S4, CCZ-S5, CCZ-S6, CCZ-S7, CCZ-S8, CCZ-S9, CCZ-S10, CCZ-S11, CCZ-S12 and CCZ-S13, CCZ-S15 and CCZ-S16; <u>and</u> 3. Construction impacts on the transport network; and 4. <u>Where CCZ-S1 or CCZ-S4 cannot be complied with, the matters in CCZ-P11.</u> and 5. The Centres and Mixed-Use Design Guide, including guideline G107 – City Outcomes Contribution for any building that exceeds the maximum height requirement and either comprises 50 or more residential units or is a non-residential building; and 6. The Residential Design Guide. <p>Notification status:</p> <p><u>An application for resource consent made in respect of rule CCZ-R23.2.a that complies with all of the identified standards in CCZ-R23.2.a.2 is precluded from being either publicly or limited notified.</u></p> <p>An application for resource consent made in respect of rule CCZ-R2349.2.a which results in non-compliance with CCZ-S5, CCZ-S9, <u>and CCZ-S10, CCZ-S11, CCZ-S12 and CCZ-S13</u> is precluded from being either publicly or limited notified.</p> <p>An application for resource consent made in respect of rule CCZ-R2349.2.a which results in non-compliance with CCZ-S1, CCZ-S2, CCZ-S3, CCZ-S4, CCZ-S6, CCZ-S7, and CCZ-S8, CCZ-S11, CCZ-S12, CCZ-S13, CCZ-S15 and CCZ-S16 <u>is</u> precluded from being publicly notified.</p>

CCZ-R2420	Construction of buildings and structures
	<p>1. Activity Status: Permitted</p> <p>.....</p>
	<p>2. Activity status: Restricted Discretionary</p> <p>Where:</p> <p>a. Compliance with any of the requirements of CCZ-R20.1, excluding CCZ-S1 and CCZ-S4, cannot be <u>is not</u> achieved.</p> <p>Matters of discretion are:</p> <ol style="list-style-type: none"> 1. The matters in CCZ-P4, CCZ-P5, CCZ-P6, CCZ-P7, CCZ-P8, CCZ-P9, CCZ-P10, CCZ-P11, and CCZ-P12 and CCZ-P13; 2. The extent and effect of non-compliance with CCZ-S1, CCZ-S2, CCZ-S3, CCZ-S5, CCZ-S6, CCZ-S7, CCZ-S8, CCZ-S9, CCZ-S10, CCZ-S11, CCZ-S12, and CCZ-S13, CCZ-S14, CCZ-S15 and CCZ-S16; 3. The Centres and Mixed-Use Design Guide, including guideline G107 – City Outcomes Contribution for any building that exceeds the maximum height requirement and either comprises 50 or more residential units or is a non-residential building; 3. Where CCZ-S1 or CCZ-S4 cannot be complied with, the matters in CCZ-P11 4. The Residential Design Guide; 4. The extent and effect of any identifiable site constraints; 5. The impacts of related construction activities on the transport network; and 6. The availability and connection to existing or planned three waters infrastructure. <p>Notification status:</p> <p><u>An application for resource consent made in respect of rule CCZ-R24.2.a which complies with all of the identified standards in CCZ-R24.2.2 is precluded from being either publicly or limited notified.</u></p> <p>An application for resource consent made in respect of rule R2420.2.a which results in non-compliance with CCZ-S5, CCZ-S9, <u>and CCZ-S10, CCZ-S11, CCZ-S12 and CCZ-S13</u> is precluded from being either publicly or limited notified.</p> <p>An application for resource consent made in respect of rule R2420.2.a which results from non-compliance with CCZ-S1, CCZ-S2, CCZ-S3, CCZ-S6, CCZ-S7, and CCZ-S8, CCZ-S11, CCZ-S12, CCZ-S13, CCZ-S15 and CCZ-S16 is precluded from being publicly notified.</p>
	<p>3. Activity status: Discretionary</p>

	<p>Where:</p> <p>a. Compliance with the requirements of CCZ-S4 cannot be <u>is not</u> achieved.</p> <p>Notification status:</p> <p>An application for resource consent made in respect of rule CCZ- R2420.43 which results in non-compliance with CCZ-S4 is precluded from being either publicly or limited notified.</p>
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CCZ-S1	<u>Maximum Height threshold</u>
<p>1. The following maximum height limits <u>thresholds</u> must be complied with (measured above ground level unless otherwise specified) <u>apply to any new building or addition to an existing building:</u></p>	
<p>Assessment criteria where the standard is infringed:</p> <ol style="list-style-type: none"> 1. Streetscape and visual amenity effects; 2. Dominance and privacy effects on adjoining sites; and 3. The extent to which taller buildings would substantially contribute to increasing residential accommodation in the city; and; 4. <u>The extent to which the building would positively contribute to the sense of place and distinctive form of the City Centre where the site or proposal will be prominent.</u> 	
Location	<u>Limit Height threshold</u>
a. Height Control Area 1 – Thorndon Quay	35.4m
b. Height Control Area 2 – Waterloo Quay section	50m
c. Height Control Area 3 – Bulk of Thorndon	27m
d. Height Control Area 4 – Mid and Upper Molesworth Street	43.8m
e. Height Control Area 5 - CBD East	48.5m-93m
f. Height Control Area 6 - CBD West	75m-95m (MSL) Mean Sea Level as defined by the New Zealand Vertical Datum 2016 (NZVD2016)
g. Height Control Area 7– Southern edge of CBD	43.8m
h. Height Control Area 8 –Te Aro	42.5m
i. Height Control Area 9 - South-East, South-West Zone Edge	28.5m

j. Height Control Area 10 - Adelaide Road	42.5m	
<p>2. Fences and standalone walls must not exceed a maximum height of 1.8 metres (measured above ground level).</p> <p>This standard does not apply to:</p> <ul style="list-style-type: none"> a. Solar panel and heating components attached to a building provided these do not exceed the <u>height threshold</u> by more than 500mm; b. Satellite dishes, antennas, aerials, chimneys, flues, architectural or decorative features (e.g. finials, spires) provided that none of these <u>exceed 1m in diameter and do not exceed the height threshold</u> by more than 1m; and c. Lift overruns provided these do not exceed the <u>height threshold</u> by more than 4m; b. d. Fences and standalone walls; and <u>e. Circumstances where up to 50% of a building's roof in elevation exceeds the height threshold where the entire roof slopes 15° or more.</u> 		

CCZ-S4	Minimum building height	
<p>A minimum height of 22m is required for new buildings or structures.</p> <p>This standard does not apply to:</p> <p>Any site adjoining a site located within a character precinct or Residentially Zoned Heritage Area and thus subject to CCZ-S3; and</p> <p>Any site within the Te Ngākau Civic Square Precinct.</p>	<p>Assessment criteria where the standard is infringed:</p> <ul style="list-style-type: none"> – The extent to which a reduced height is necessary to provide for the functional needs or operational needs of a proposed activity; and – Whether topographical or other site constraints make compliance with the standard impracticable or unnecessary. 	

296. The same changes are recommended to be made to the relevant rules and standards for Te Ngākau Civic Square: in particular, CCZ-PREC01-R10.1 and CCZ-PREC01-S1.

297. In terms of the rules and standards for the MCZ, it is recommended to make over height buildings a discretionary activity, as follows:

Metropolitan Centre Zone

MCZ-R2120	Construction of, or additions and alterations to, buildings and structures
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	<p>1. Activity status: Permitted</p> <p>.....</p>
	<p>2. Activity status: Restricted Discretionary</p> <p>Where:</p> <p>a. compliance with any of the requirements of MCZ-R19.1<u>MCZ-R2120.1</u>, excluding MCZ-S1, cannot be <u>is not</u> achieved.</p> <p>Matters of discretion are:</p> <ol style="list-style-type: none"> 1. The matters in MCZ-P6, MCZ-P7, MCZ-P8, and MCZ-P9, and MCZ-P11; 2. The extent and effect of non-compliance with MCZ-S1, MCZ-S2, MCZ-S3, MCZ-S4, MCZ-S5, MCZ-S6, MCZ-S7, MCZ-S8, MCZ-S9, MCZ-S10, and MCZ-S11 and MCZ-S12; 3. The Centres and Mixed-Use Design Guide, including guideline G107 – City Outcomes Contribution for any building that exceeds the maximum height requirement and either comprises 25 or more residential units or is a non-residential building; 4. The Residential Design Guide; 3. The extent and effect of any identifiable site constraints; 4. Construction impacts on the transport network; and 5. The availability and connection to existing or planned three waters infrastructure. <p>Notification status:</p> <p><u>An application for resource consent made in respect of rule MCZ-R2120.2.a that complies with all standards is precluded from being either publicly or limited notified.</u></p> <p>Notification status: An application for resource consent made in respect of rule MCZ-R2120.2 which complies with MCZ-S3, MCZ-S7, MCZ-S8, MCZ-S9, MCZ-S10 and MCZ-S11 is precluded from being either publicly or limited notified.</p> <p>Notification status: An application for resource consent made in respect of rule MCZ-R2120.2 which results from non-compliance with MCZ-S1, MCZ-S2, MCZ-S4, MCZ-S5, and MCZ-S6 and MCZ-S12 is precluded from being publicly notified.</p>
	<p>3. <u>Activity status: Discretionary</u></p> <p><u>Where:</u></p> <p>a. <u>Compliance with the requirements of MCZ-S1 is not achieved.</u></p>

298. The same changes would be made to the equivalent rule for the LCZ (LCZ-R19).
299. No changes are required to be made to the maximum height limits for the MCZ and LCZ to give effect to our recommendations.
300. As a consequence of our recommended decision on the City Outcomes Contributions, Appendix 16 should be deleted.

Summary of Findings on City Outcomes Contributions

301. As we outlined earlier, the COC provisions were intended to achieve a range of outcomes, both at a strategic level and at a zone level¹⁸⁰. Summarised, the objectives that the COC policies are intended to achieve are:
- a) Enabling intensification in the City's main centres, particularly in the City Centre, to reinforce their regional and City functions and enable business and housing opportunities;
 - b) Promoting high quality design in terms of sustainability, accessibility, and resilience; and
 - c) Promoting the provision of public good outcomes that may not otherwise be achieved, such as public amenities, heritage regeneration, open space, assisted housing, and improved connectivity.
302. Originally, as notified, the COC sought also to provide a greater level of quality design for taller buildings and under height developments through the input of an Urban Design Panel.
303. As we have concluded, we were not satisfied that the COC provisions, even subject to the reporting officer's many recommended amendments, would be an appropriate means of giving effect to the objectives of the PDP, given the issues we have identified with the effectiveness and efficiency of the implementation of the mechanism, its dependency on a discretionary points system, and the insufficiency and uncertainty of information regarding the costs and benefits.
304. Conversely, we do not consider that it would be appropriate to have no policies or provisions that address the outcomes that were sought to be achieved by the COC. These outcomes addressed a number of strategic and zone specific objectives: to promote a more resilient, sustainable City, supporting intensification of the City's centres, particularly in the City Centre, promoting the restoration and reuse of heritage resources, and enhancing a well-functioning urban environment. It is appropriate to give effect to these outcomes through some form of provisions that encourage development to seek these outcomes. Having clear policy articulation of these outcomes will support the Council in carrying out its functions under the Act.

¹⁸⁰ Refer paragraphs 164 to 171

305. We have recommended that the more intrinsic quality design attributes of the COC are more appropriate as elements of the policies on quality development outcomes across the CCZ, MCZ and LCZ. These elements relate to promoting higher standards of resilience, sustainability, and accessibility in building design so that these elements are explicitly considered as part of the resource consent process across all development. It would also include an element that focuses on whether a proposal positively contributes to the sense of place and distinctive form of the respective centre where the site or proposal will be prominent.
306. It is more appropriate to address the intrinsic design quality aspects of development as part of the general design process and to promote such outcomes on a broader basis. The design assessment process is well established and well understood, and while the intrinsic design aspects cannot be mandatorily imposed on development, having these aspects clearly articulated in policy will ensure that applicants address their responses to these matters as part of the design evaluation.
307. While it is not expected that it will necessarily produce a wide uplift in the standard of building design in regard to sustainability, resilience, and accessibility, we are satisfied that this policy would generally improve the focus of design on these aspects that will contribute to improved building standards outcomes across all development in the Centres. This outcome would be more effective than reliance on dispersed and, in our view, infrequent development proposals that would use these standards to obtain COC points.
308. In terms of the assessment of developments where the site or proposal will be prominent, it is envisaged these projects will be assessed by the proposed Urban Design Panel, which has been recommended as a method to support the implementation of the PDP's design assessment processes. As we outlined earlier in this report (Section 3.3), a stable permanent Panel will have the benefit of providing consistent and clear advice to the development sector. We strongly advise that the advice of Stuart Niven on the composition and nature of the panel should be followed¹⁸¹.
309. In conjunction with the recommended amendments to the quality development policies, we have also recommended that the COC policy be amended to a policy on 'City Development Outcomes', that encourages the provision of public amenities and

¹⁸¹ Refer to paragraph 70-85 of Mr Niven's evidence on behalf of the Wellington's Character Charitable Trust

public good outcomes by over height and under height buildings as we have concluded this is a more appropriate way to achieve the objectives of the Plan.

310. In terms of the provision of public amenities and services and other public good outcomes, it is more efficient for an applicant to determine the form and type of outcome that is appropriate for the development proposal. While this approach may not provide the level of certainty that the COC sought to achieve, and thus may be less efficient from that perspective, pre-application discussions can draw upon the guidance produced to date to assist applicants and improve the level of certainty. In addition, with over or under height buildings, it is expected the Urban Design Panel would have a significant contribution to assessing the quality, utility and longevity of public good outcomes.
311. In conclusion, we are satisfied that the proposed amendments to the policies are the most appropriate way to achieve the objectives of the PDP, having regard to –
- a) other reasonably practicable options for achieving the objectives, including the notified COC provisions (as amended by the reporting officer's recommendations); and
 - b) assessing the efficiency and effectiveness of the provisions in achieving the objectives by identifying and assessing the benefits and costs of the effects anticipated from its implementation together with the risk of acting or not acting if there is uncertain or insufficient information about the matter; and
 - c) whether they would assist the Council in carrying out its functions under the Act; and
 - d) whether the rules would assist in the implementation of the policies.

4. OTHER MATTERS

4.1 General Submissions on the Commercial and Mixed Use Zones

312. There was one submission of a very general nature relating to the Commercial and Mixed Use Zones, from the Chair of Inner City Wellington¹⁸², that unfortunately was at too high a level to be able to be analysed in any detail, and it did not seek any specific relief. This submission referred to concerns relating to green space, sunlight protection and the diversity of inner City neighbourhoods. Many of these concerns were also raised by other submitters and have accordingly been addressed elsewhere.

4.2 Definitions

313. In relation to the definition of terms used in the Commercial and Mixed Use Zones there were no issues in contention.

314. Nick Ruane¹⁸³ sought new definitions for ‘universal design’ and ‘accessibility’. We were advised by the reporting officers, that these are terms used in the Building Code and that new definitions for the PDP would be unnecessary. We agree with this point and therefore do not recommend that definitions for these terms are included in the PDP.

315. Waka Kotahi¹⁸⁴ sought that the term ‘roading network’ be replaced by ‘transport network’ to ensure it captures all transport modes. We agree with the reporting officers that this submission be accepted insofar as the change in terminology should be adopted but that the definition be retained as it already captures all transport modes.

4.3 Support for Commercial and Mixed Use Zones provisions

316. The reporting officers identified a range of submitters who supported the Centres hierarchy and the various PDP provisions, and we adopt their reasoning and recommendations for accepting that support.

¹⁸² Submission #352

¹⁸³ Submission #61.1

¹⁸⁴ Submission #370.400, 370.401

4.4 Expansion of Commercial and Mixed Use Zones

317. A number of submitters sought to ensure that the Centres have sufficient capacity to enable larger more comprehensive developments, to promote intensification in these areas.
318. Woolworths¹⁸⁵ sought to make the CMUZ more flexible in relation to supermarkets as they are an essential service and are anchor tenants in many commercial developments.
319. In response, the reporting officers considered that the purpose of the CMUZ is to enable a wide range of activity that is appropriate to the role and purpose of the Centre, and this purpose is reflected in the rules framework that provides for a wide range of activities in these zones.
320. We concur with the reporting officers, and also note that the development controls for the CMUZ in the PDP, particularly height controls, have been significantly modified from those in the ODP to enable larger more comprehensive developments. We also consider that a certain level of controls is required to ensure that new development is appropriate to the role and purposes of the particular Centre to promote a well-functioning urban environment.
321. With respect to supermarkets, we agree with the reporting officer that the PDP rules for supermarkets are generally very permissive in the CMUZ, but that new supermarket buildings, which can be large box-like structures, are appropriately managed through a consent process to ensure good design outcomes.

4.5 Requests for Changes to Zoning

322. Kāinga Ora requested a number of zoning changes, either to expand existing centres or to rezone land in the HRZ to a CMUZ. By the time of the Hearing on Centres, the planning and urban design advisers for Kāinga Ora had undertaken comprehensive site visits, which resulted in reduction in the number of requested rezonings. For the Hearing on Stream 4, Kāinga Ora were requesting the following changes:
- Connecting the two centres zoning in **Tawa**, rezone land between Tawa Centre North and Tawa South along Oxford Street
 - Extending the MCZ in **Johnsonville** to the northwest and southwest

¹⁸⁵ Submission # 359.47

- Extending the MCZ in **Kilbirnie** to the west and south, and
- In **Karori**, small extensions of the LCZ to the eastern end of the main Karori Centre, and extensions on the western and eastern end of the Marsden Centre.

323. Other submitters sought a number of rezonings in various centres, generally either to reduce the spatial extent of the centres zoning or to change the zoning to a lower level in the centres hierarchy.

324. These rezoning requests are assessed within those relevant parts of the Panel report addressing submissions on the CCZ, MCZ, LCZ, NCZ and MUZ.

4.6 Amendments to Commercial and Mixed Use Zones provisions

325. There was general level of support for the provisions for the Commercial and Mixed Use Zones, and we agree with the reporting officer that no changes to the PDP are necessary to respond to submission points in support of the provisions.

326. We note at this point that the PDP only provided for one site in the entire City to be zoned Commercial, an orphan site lying between Northland and Karori zoned “Curtis Street Business Area” under the ODP. This is a site-specific zoning that was introduced via an Environment Court appeal. We address the appropriateness of zoning this site Commercial given the current development aspirations of the owner in Panel Report 4D.

4.7 New Commercial and Mixed Use Zones Provisions

327. Dept of Corrections¹⁸⁶ requested that a new permitted activity rule for enabling ‘supported residential care activities’ is added to the CMUZ if the definition of ‘supported residential care activity’ is retained. The Department provided the wording of such a rule, enabling supported residential activities up to 10 residents as a permitted activity subject to a number of conditions.

328. The reporting officers noted that, in Hearing Stream 1, it was recommended that the ‘supported residential care’ definition be removed as it was considered this activity was captured as a residential activity generally.

329. The RVA¹⁸⁷ sought to include a new policy in the CMUZ to support the provision of retirement villages in these zones. The reporting officers agreed to recommend a

¹⁸⁶ Submission #240.56

¹⁸⁷ Submission #350.286

policy supporting retirement villages in the CCZ, MCZ, LCZ and NCZ to align with the similar policy in the HRZ. The reporting officers also recommended incorporating new rules to provide for retirement villages in the Centres zones as a permitted activity, and as a discretionary activity in the MUZ and COMZ, the latter to align with the approach to managing development in the COMZ and MUZ.

330. KiwiRail¹⁸⁸ sought to include a 5m building setback from the rail corridors in the CCZ, LCZ, MCZ and MUZ. The reporting officers agreed in part with KiwiRail's submission, noting it would align with the direction of the RPS to protect regionally significant infrastructure from incompatible new subdivision, use and development, but recommended a setback of 1.5m was more appropriate for CMUZ to minimise the loss of developable land in these zones, while providing sufficient separation distance to enable servicing and maintenance.
331. For the reasons provided by the reporting officers, we agree with the changes recommended in regard to the submissions of Dept of Corrections, KiwiRail, and the RVA.

4.8 Minor and Inconsequential Amendments

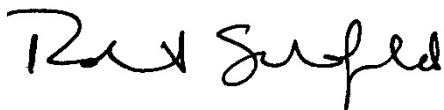
332. No minor or inconsequential amendments were highlighted by the reporting officers in the Hearing Stream 4 – Overview and General Matters Section 42A Report as being necessary to existing building made to the CMUZ provisions.

¹⁸⁸ Submission #408.129

5. CONCLUSIONS

333. We have sought to address all material issues of the parties who have appeared before us put in contention in relation to the City Outcomes Contributions provisions, as well as in general to the provisions of the CMUZ, GIZ and wind provisions.
334. To the extent that we have not discussed submissions on these topics, we agree with and adopt the reasoning of the respective Section 42A Reports prepared by the Reporting Officer, as amended in her written Replies.
335. To the extent that the Section 42A Reporting Officers have recommended amendments to the Plan requiring evaluation in terms of Section 32AA, we adopt their evaluation for this purpose.
336. Where we have discussed amendments, in particular where we have identified that further amendments should be made, our reasons in terms of Section 32AA of the Act are set out in the body of our Report.
337. The amendments that we recommend should be made to the PDP as a result of recommendations in this report are provided in the relevant appendices of the other centres reports.
338. Our recommendations on the submissions addressed in this report are contained in **Appendix 1** to this report. Our recommendations on the submissions allocated to other Hearing Stream 4 topics are also set out tabular form in the appendices to the other centres reports. Our recommendations on relevant further submissions reflect our decisions on the primary submission to which they relate.

For the Hearing Panel



Robert Schofield

Chair, Hearing Stream 4

Dated: 2 February 2024