

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of the Proposed Wellington District Plan

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**MEMORANDUM FOR RESTAURANT BRANDS LIMITED IN RESPONSE  
TO MATTERS RAISED AT HEARING ON 20 SEPTEMBER 2023**

**22 SEPTEMBER 2023**

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## **MAY IT PLEASE THE PANEL**

### **1. INTRODUCTION**

1.1 This memorandum for Restaurant Brands Limited (“**Restaurant Brands**”) follows the hearing on 20 September 2023 held by the Independent Hearings Panel (“**IHP**”) in relation to the “ISPP Wrap Up Hearing Part 2: Design Guides”.

### **2. CENTRES AND MIXED-USE DESIGN GUIDE**

2.1 At the hearing, Commissioner Schofield requested that I provide the IHP a section 32AA RMA analysis in relation to the changes that I have recommended to:

- (a) “Quality Design Outcomes” policies CCZ-P9, MCZ-P7, LCZ-P7, NCZ-P7, COMZ-P5; and
- (b) “Design of new development” policy MUZ-6.

2.2 My recommended changes relate to amending the above policies such that:

- (a) The Centres and Mixed Use Design Guide is a matter to “have regard to” when assessing new development proposals (as opposed to new development proposals being “required” to “meet” or “fulfil the intent” of the Design Guide).
- (b) Express recognition is provided to the functional and operational requirements of activities and development.

2.3 For ease of reference, a copy of the changes that are recommended to the above policies within my primary statement of evidence are reproduced as **Attachment 1**.

2.4 As required by section 32AA RMA, the following further evaluation is provided in relation to these changes at a level of detail that corresponds to the scale and significance of the changes.

### **Appropriateness of the objective (s.32(1)(a) RMA)**

- 2.5 The objective of the “Quality Designs Outcomes” policies and “Design of new development” policy are contained within the “amenity design” objectives of CCZ-O5, COMZ-O3, LCZ-O3, MCZ-O3, MUZ-O4, and NCZ-O3.
- 2.6 While there are variances between each of the objectives, the central tenant remains the same; namely the creation of “quality, well-functioning urban environments”. I am satisfied that this objective gives effect to Objective 1 and Policy 1 of the National Policy Statement on Urban Development 2020 (“**NPS-UD**”) and is an appropriate amenity and design outcome for the centre and mixed-use zones.

### **Appropriateness of the amended provisions to achieve the objective (s.32(1)(b) RMA)**

#### “Have regard to” vs. “meet” or “fulfil the intent”

- 2.7 Policy 1 of the NPS-UD defines the term “well-functioning urban environments” to include a wide range of matters, ranging from cultural considerations to environmental concerns. The policy presents these matters in a format that does not create a hierarchy or prioritisation among them, indicating that they are all equally important considerations for achieving a well-functioning urban environment.
- 2.8 Policies CCZ-P9, MCZ-P7, LCZ-P7, NCZ-P7, COMZ-P5, and MUZ-6 similarly set out a wide range of matters that are consistent with the NPS-UD definition of a “well-functioning urban environment” (for example, adaptability, functionality, cultural recognition, accessibility, and resilience). However, the requirement to “meet” or “fulfil the intent” of the Centres and Mixed Use Design Guidelines is more directive than the other policy requirements (for example, “recognise”, “respond to”) and creates a hierarchy that does not align with the NPS-UD definition of a “well-functioning urban environment”.
- 2.9 While I agree that design guidelines are an important consideration, the objective of policies CCZ-P9, MCZ-P7, LCZ-P7, NCZ-P7, COMZ-P5, and MUZ-6 is to create “quality, well-functioning urban environments”.

In the context of how this term is defined by Policy 1 of the NPS-UD, a balanced non-hierarchical approach is required, placing matters of adaptability, functionality, cultural recognition, accessibility, and resilience alongside their inherent design considerations.

- 2.10 The term “fulfil the intent” is also ambiguous. For example, it is unclear what it means to “fulfil the intent” or who gets to decide when the intent is satisfied. The wording of policies can significantly influence the outcome of a consent application. There are some well-established terms such as “avoid”, “enable”, “provide for”, “have regard to”. The term “fulfil the intent” does not have a clear meaning, and this ambiguity could lead to increased consent complexities and litigation, as parties seek clarity on how the term should be applied.
- 2.11 The more appropriate method to achieve the objective is for the policies to “have regard to” the Centres and Mixed Use Design Guidelines alongside the other matters. This is consistent with the Policy 1 NPS-UD definition of a “well-functioning urban environment”.

#### Functional and operational requirements

- 2.12 Strategic objective UFD-O7 seeks to ensure that 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...”*.
- 2.13 While economic wellbeing is a relevant matter to the creation of a “well-functioning urban environment” at the strategic level, there is no explicit recognition of the functional and operational requirements of activities and development within the policies.
- 2.14 The only place where consideration of the functional and operational requirements is enabled is within the matters of discretion for infringements to the following rules and standards:
- (a) Outdoor storage areas (CCZ-R22, WFZ-R18, LCZ-R20, MUZ-R20, NCZ-R20).

- (b) Height in relation to boundary (MUZ-S3).
  - (c) Minimum building height (LCZ-S2, MCZ-S2, NCZ-S2).
  - (d) Minimum ground floor height (CCZ-S5, COMZ-S3, LCZ-S3, MCZ-S3, MUZ-S4, NCZ-S3).
  - (e) Maximum gross floor area of buildings (MUZ-S6).
  - (f) Active frontage control (CCZ-S8, LCZ-S6, MCZ-S6, NCZ-S6).
  - (g) Verandah control (COMZ-S4, MUZ-S7).
  - (h) Building setback controls (COMZ-S8).
- 2.15 Consideration of the functional and operational requirements of activities and development is a relevant matter and should be recognised within the policies of the Proposed Plan. 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.
- 2.16 Providing such policy recognition ensures that urban environments are not only well-designed but also practical and functional, aligning with the broader goals of creating well-functioning urban environments, including supporting the competitive operation of markets.

### Conclusion

- 2.17 The amendments sought better achieve the objective of the “Quality Designs Outcomes” policies and “Design of new development” policy; namely the creation of “quality, well-functioning urban environments”. They also more appropriately give effect to Policy 1 of the NPS-UD.
- 2.18 As the amendments to policies CCZ-P9, MCZ-P7, LCZ-P7, NCZ-P7, COMZ-P5, and MUZ-6 have been assessed to achieve the objective of the District Plan (CCZ-O5, COMZ-O3, LCZ-O3, MCZ-O3, MUZ-O4, and NCZ-O3), I consider that they are inherently consistent with the strategic objectives of the Proposed District Plan.
- 2.19 I do not consider it necessary to provide further analysis in respect of the strategic objectives of the Proposed District Plan, other than to

confirm that I am of the opinion that the amended policies are consistent with the outcomes of strategic objective UFD-O7, which does not adopt a “hierarchical” approach and includes consideration of economic factors.

- 2.20 For completeness, appended to this memorandum as **Attachment 2** is an evaluation of the costs and benefits of the options considered against the objective.

**Mark Nicholas Arbuthnot**

**22 September 2023**

## Attachment 1

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Changes sought in evidence to policies  
CCZ-P9, MCZ-P7, LCZ-P7, NCZ-P7,  
COMZ-P5, and MUZ-6

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Changes sought are shown in ~~strikethrough~~ and underline

Changes to “Quality Design Outcomes” policy (CCZ-P9, MCZ-P7, LCZ-P7, NCZ-P7):

Require new development, and alterations 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 | Metropolitan Centre Zone | Local Centre Zone | Neighbourhood Centre Zone | ] by:

1. ~~Meeting-Having regard to~~ the requirements of the Centres and Mixed Use Design Guide as relevant;
2. Recognising the benefits of well-designed, comprehensive development, including the extent to which the development:
  - a. ...
3. Ensuring that development, where relevant:
  - a. ...
  - ...
  - h. Recognises the functional and operational requirements of activities and development.

Changes to “Design of new development” policy (MUZ-6):

Encourage a high standard of built form and amenity while;

- a. Enabling innovation and choice in the design of new built development to reflect the diverse neighbourhood context of the Mixed Use Zone; ~~and~~
- b. Meeting the intentions of the Centres and Mixed Use Design Guide as relevant; ~~and~~
- c. Recognising the functional and operational requirements of activities and development.

Changes to “Quality design outcomes” policy (COMZ-P5):

Require new development, and alterations and additions to existing development at a site scale, to positively contribute to the sense of place, quality and amenity of the Commercial Zone by ensuring that it, where relevant:

1. ~~Meets-Has regard to~~ the requirements of the Centres and Mixed Use Design Guide where relevant;
2. Responds to the site context, particularly where it is located adjacent to:
  - a. Residential zoned areas; and/or



Changes sought are shown in ~~strike through~~ and underline

- b. Open space zoned areas;
- 3. Provides a safe and comfortable pedestrian environment;
- 4. Enhances the quality of the streetscape and public / private interface;
- 5. Integrates with existing and planned active and public transport movement networks; and
- 6. Allows sufficient flexibility for ground floor space to be converted for a range of activities.
- 7. Recognises the functional and operational requirements of activities and development.

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Evaluation of the costs and benefits of the  
options considered against the objective

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Options considered:

- (a) Option 1 – Retain the notified policy requirement new development to “meet” the Centres and Mixed Use Design Guidelines.
- (b) Option 2 – Retain Council’s recommended policy amendment for new development to “fulfil the intent” of the Centres and Mixed Use Design Guidelines.
- (c) Option 3 – Amend the policy requirement for new development to “have regard to” the Centres and Mixed Use Design Guidelines and to provide express recognition to the functional and operational requirements of activities and development.

An analysis of the options has been undertaken where it was concluded that “Option 3” is the preferred option, as it better achieves the objective of the “Quality Designs Outcomes” policies and “Design of new development” policy; namely the creation of “quality, well-functioning urban environments”. It also more appropriately gives effect to Policy 1 of the NPS-UD.

<b>Evaluation of Option 3 Against Objectives</b>		
	<b>Costs</b>	<b>Benefits</b>
<b>Environmental</b>	No environmental costs are identified for this option.	By recognising functional and operational requirements, developments can be designed to be more adaptable to changing environmental conditions.
<b>Economic</b>	No economic costs are identified for this option.	<p>The "have regard to" policy approach provides more flexibility, potentially reducing unnecessary consent costs and litigation associated with strict adherence to design guidelines.</p> <p>Recognising functional and operational requirements within the policies ensures that developments are practical and can meet market demands without incurring unnecessary costs.</p>

		The changes support the competitive operation of markets by ensuring that design guidelines do not overly restrict development.
<b>Social</b>	No social costs are identified for this option.	Including policy consideration of functional requirements, developments can be designed to optimise accessibility for their intended users.
<b>Cultural</b>	No cultural costs are identified for this option.	By ensuring that design guidelines are balanced with functional requirements, developments can better cater to cultural needs and expressions.
<b>Economic growth provided or reduced</b>	<p>The changes will provide greater flexibility, and will reduce unnecessary consenting costs, better promoting economic growth.</p> <p>The proposed changes support the competitive operation of land and development markets, increasing the potential for increased competition, promoting economic growth.</p> <p>The ambiguity of terms like "fulfil the intent" can lead to complexities and potential litigation. The amended policy language and balanced approach, has the potential to reduce the complexity of the resource consent process, leading to reduced litigation costs and a more predictable development environment.</p>	
<b>Employment opportunities</b>	The "have regard to" approach, combined with recognising functional and operational requirements, supports a wider range of development types, which has the potential to create increased job opportunities.	
<b>Uncertain or insufficient information</b>	There is sufficient information to support the proposed changes.	
<b>Risk of acting or not acting</b>	There is sufficient information to support the proposed changes.	
<b>Effectiveness</b>		
The changes align with the objectives and policies of the National Policy Statement on Urban Development 2020 (NPS-UD) and give effect to the NPS-UD's definition of a "well-functioning urban environment." In doing so, they better support economic and social wellbeing by ensuring that urban environments are designed with both aesthetic and practical considerations in mind and has the potential to lead to more diverse and adaptable urban environments.		
<b>Efficiency</b>		
The changes to the policies will facilitate a more efficient resource consent process by enabling a more wholistic assessment of an application to be undertaken. They also have flow on benefits of reducing ambiguity, reducing the potential for litigation as parties seek clarity on how the policy requirements should be applied.		