WELLINGTON CITY COUNCIL

Hearing of Submissions and Further Submissions

on

Proposed District Plan

Report and Recommendations of Independent Commissioners

Hearing Stream 1

Report 1A

Introduction to Plan Hearing Process
Introduction to Stream 1 Hearing
Plan Wide Matters of Strategic or Procedural Importance
Wrap-up Issues
Initial Plan Chapters

Commissioners

Trevor Robinson (Chair)
Jane Black
Elizabeth Burge
Lindsay Daysh
Rawiri Faulkner
Heike Lutz
David McMahon
Robert Schofield

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EXECUTIVE SUMMARY

1. We do not recommend that the Council's allocation of matters to the ISPP, or to the 'normal' First Schedule process (as applicable) be changed. We did not agree with the submissions seeking that specific allocations be changed, and we concluded that we do not have the power to do so, other than (possibly) in response to a specific submission seeking that relief. While we have determined that we should not follow the Environment Court's decision in *Waikanae Land Company Limited v Heritage New Zealand Pouhere Taonga*[1], our second finding makes that determination largely academic.

2. We do not recommend that the Council's allocation of matters to the ISPP, or to the 'normal' First Schedule process (as applicable) be changed, partly because we did not agree with the submissions seeking that specific allocations be changed, but also because we conclude that we do not have that power other (possibly) than in response to a specific submission seeking that relief. While we have determined that we should not follow the Environment Court's decision in *Waikanae Land Company Limited v Heritage New Zealand Pouhere Taonga*[2], our second finding makes that determination largely academic.

3. We consider the general approach to growth in the notified PDP to be soundly based. While we find that there is a significant current problem with the availability and affordability of housing in Wellington City, the evidence we heard did not lead us to conclude that the PDP can solve that problem by providing for more growth than the NPSUD requires. We therefore do not recommend acceptance of submissions from Kāinga Ora in particular suggesting that the PDP needs to provide for significantly more growth. Equally, we did not hear evidence that convinced us that there was any basis to limit development to a materially greater extent than the PDP currently provides for through identification of additional Qualifying Matters;

4. The Johnsonville Rail Line is not a rapid transit service, most obviously because it is not 'frequent', but it is also questionable whether it is either 'quick' or 'high-capacity', as the NPSUD requires. As a result, we do not recommend identification of walkable catchments around the railway stations on that line between Johnsonville and the Central City;

5. We recommend that walkable catchments be identified based on the time taken to walk from the CCZ Boundary, the boundaries of the two Metropolitan Centre Zones (at

[1] [2023] NZEnvC056
[2] [2023] NZEnvC056

Johnsonville and Kilbirnie) and the railway stations on the Hutt and Kāpiti rail line, and that the starting point for identifying such catchments before considering local factors is:

(a) CCZ: 15 minutes;

(b) Metropolitan Centres: 10 minutes

(c) Railway Stations: 5-10 minutes;

6. Our consideration of local factors has led us to recommend the following changes in walkable catchments from those that underpin the zoning in the notified PDP:

(a) The walkable catchment around the Redwood Railway Station should be extended to 10 minutes on the except for the east and southeast sides of the station;

(b) The walkable catchment around the Johnsonville Metropolitan Zone should be reduced at its western and eastern margins, because of unfavourable topography and poor walking conditions;

(c) Around the CCZ:

i. We recommend that the northern end of the walkable catchment in Thorndon terminate at Sar Street, and include Newman Terrace;

ii. We recommend that the walkable catchment in Kelburn be the upper boundary of Kelburn Park and the Tertiary Education Zone (i.e. effectively as notified);

iii. We do not recommend a material change to the walkable catchment in the Aro Valley;

iv. We recommend that the walkable catchment be reduced on the western side of Wallace Street to reflect the distance to employment centres and other services within the CCZ from there;

v. We recommend that John Street be the boundary of the walkable catchment at the interface of the CCZ with Newtown partly for the same reason, but also consequential on the decision of the Stream 4

Hearing Panel to recommend a change to the CCZ boundary (back to the Basin Reserve);

vi. We do not recommend any change to the walkable catchment including Mount Victoria (the Town Belt provides a natural boundary);

vii. We recommend that a walkable catchment be identified in Oriental Bay, extending along the Parade as far as Grass Street, and part way up Hay Street (to include numbers 7 and 8).

7. We found the population predications on which the PDP was based to be appropriate. While a number of submitters criticised those predictions, we did not receive expert evidence casting doubt on them, or putting any alternative on the table that we might have considered.;

8. We recommend that Council work with its mana whenua partners to develop a Papakāinga Chapter in the District Plan. We did not hear evidence in the form such a chapter should take, other than at a very high level, so as to enable us to make clear recommendations ourselves.

1. INTRODUCTION TO PLAN HEARING PROCESS

1.1 Background

9. For convenience, we have employed a number of abbreviations and acronyms in our reports. To assist readers, we have set out below, the most commonly used abbreviations and acronyms.

10. This Report serves two purposes. First, it serves as an introduction to the process for hearing of submissions and further submissions on the Proposed District Plan (**PDP**), for Wellington City pursuant to the Resource Management Act 1991 (**RMA**). Second, it forms one of two reports on the matters heard as part of Stream 1 of the PDP hearing process.

1.2 Appointment of Commissioners

11. 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.

12. The Hearing Panel was also delegated all relevant procedural powers.

13. The Hearing Panel's panellists appointed were:

- Trevor Robinson (Barrister) as Chair;
- Robert Schofield (Planner) as Deputy Chair;
- Jane Black (Urban Planner);
- Elizabeth Burge (Resource Management Consultant);
- Lindsay Daysh (Planner);
- Rawiri Faulkner (Resource Management Commissioner).
- Heike Lutz (Building Conservation Consultant)
- David McMahon (Planner);

14. As part of its initial familiarisation with the issues the subject of hearing, the entire Hearing Panel undertook a general site around various parts of the City on 2 December 2022. That included most of the Centres, the railway stations and some of the proposed character areas.

15. All Commissioners sat on Hearing Stream 1. In subsequent streams hearing panels of generally four commissioners were convened under the Chairmanship of either Commissioner Robinson or Commissioner Schofield.

16. Commissioner Faulkner resigned following completion of the Stream 5 hearing and took no further part in subsequent hearings.

1.3 Notification and Submissions

17. The submission period for the PDP ran from 16 July to 12 September 2022. The Hearing Panel was advised that the Council had received 497 submissions containing over 12,900 submission points.

18. Seven submissions were lodged shortly after the expiry of the submission deadline.

19. The Hearing Panel waived receipt of late submissions by a Minute dated 25 January 2023.

20. The Summary of Submissions was publicly notified on 21 November 2022. A total of 138 further submissions were received up until the notified expiry of the period for further

submissions. Seven further submissions were lodged after that date. The Hearing Panel was advised that three of those further submissions were in fact received within ten working days of notification and accordingly, within the statutory timeframe. In the same Minute as above, receipt of late further submissions from all of these further submitters was waived.

21. Fifteen submissions were received that Council staff categorised as incomplete because they had not provided information required by RMA Form 5. The Council staff advised that five further submissions were likewise considered incomplete. The missing information is in each case, non-substantive. The Hearing Panel does not intend to exclude submissions on this basis.

1.4 Procedural Directions

22. 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 examine in relation to ISPP matters, and described in general terms the format of the hearings.

23. By the conclusion of the ISPP phase, the Hearing Panel had issued some 40 procedural Minutes.

1.5 Conflict Management

24. As foreshadowed in Minute 1 (Hearing Procedures) the Hearing Panel prepared a Register of Conflicts. Although initially intending that this would be available on request, feedback from the parties suggested that it should be publicly available on the Council's hearing website.

25. The Conflicts Register has been progressively updated as new issues came to light during the course of the hearings.

26. Generally, disqualifying conflicts were managed by the allocation of Commissioners to different hearing streams. In some cases, it was not possible to avoid such issues, and when this occurred, the relevant Commissioner did not actively participate in the hearing

and did not participate in the Hearing Panel's deliberations or preparation of its recommendations on that subject.

1.6 Statutory Requirements

27. The starting point is to note what is not relevant. On 24 August 2023, the Natural Resources and Built Environment Act 2023 (**NBEA**) took effect. The intention was that the NBEA would replace the RMA over time. However, until such time as the first NBEA Plan for the Wellington Region is operative (the 'region's NBEA date'), Part 5 of the RMA (the part governing preparation, inter alia, of District Plans) remained in force for the purposes of district planning in Wellington[3]. In his opening submissions for the IPI wrap up hearing, counsel for the Council told us that it was likely to be several years before that occurred, and that in the interim, we did not need to consider the new legislation.

28. In the event, however, the NBEA was repealed (save for some limited purposes that are not relevant to us) by the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023, which took effect on 23 December 2023.

29. We have therefore approached the finalisation of our decisions and recommendations (as applicable) without regard to the NBEA.

30. What we are required to consider starts with Section 72 of the RMA which states:

> *"The purpose of the preparation, implementation, and administration of District Plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act."*

31. Relevant Council functions for this purpose are specified in Section 31. They include the establishment of objectives, policies and methods to achieve integrated management of the effects of use, development and protection of land and associated natural and physical resources, and to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district, along with the control of any actual or potential effects of the use, development or protection of land. Those effects are specifically identified as including the avoidance or mitigation of natural hazards and the maintenance of indigenous biological biodiversity.

[3] NBEA, Schedule 1, Clause 5

32. Section 74 of the RMA further directs that the District Plan must be prepared and changed in accordance with the Council's functions, the provisions of Part 2 of the RMA, any direction of the Minister for the Environment under Section 25A(2), the obligations imposed by Section 32, which relate to the preparation of evaluation reports and the related obligation to have particular regard to any such report, a National Policy Statement, a New Zealand Coastal Policy Statement, a National Planning Standard, and any regulations.

33. This particular 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 the National Policy Statement for Urban Development 2020 (**NPSUD**) except where relevant 'qualifying matters' apply.

34. Addressing these various considerations, the only relevant direction of the Minister for the Environment is for the Council to notify decisions in accordance with Clause 102 of Schedule 1 of the RMA by 20 March 2024[4].

35. Relevant National Policy Statements and Coastal Policy Statements that the PDP must give effect to are:

    (a) The New Zealand Coastal Policy Statement 2010 **(NZCPS**);

    (b) National Policy Statement on Electricity Transmission 2008 (**NPSET**);

    (d) National Policy Statement for Renewable Electricity Generation 2018 (**NPSREG**);

    (e) National Policy Statement on Freshwater Management 2020 (**NPSFM**);

    (f) National Policy Statement on Urban Development 2020 (**NPSUD**).

36. The Section 42A Overview Report provided a brief summary of each of these documents which we adopt. Two additional National Policy Statements have been gazetted since notification of the PDP. Firstly, the National Policy Statement for Highly Productive Land 2022 (**NPSHPL**) took effect on 17 October 2022. We were advised that there is no highly productive land, as defined in the NPSHPL, within the district. Secondly, the National Policy Statement for Indigenous Biodiversity 2023 (**NPSIB**) took effect on 4 August 2023. The instruction in Clause 4.1 of the NPSIB is to give effect to it as soon as reasonably practicable. The Hearing Stream most directly concerned with implementation of the

[4] Extending a previous direction requiring notification of decisions by 20 November 2023.

NPSIB is Stream 8. The hearing for Stream 8 had yet to commence at the time this report was written, and the Hearing Panel has yet to form a view on the extent to which implementation of the NPSIB may be reasonably practicable in the current process.

37. Turning to relevant regulations, we were advised that there are four relevant National Environmental Standards that are relevant to the PDP:

    (a) The National Environmental Standard for Telecommunication Facilities 2016 (**NES-TF**);

    (b) The National Environmental Standard for Electricity Transmission Activities 2009 (**NES-ETA**);

    (c) The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health in 2021 (**NES-CS**);

    (d) The National Environmental Standards for Plantation Forestry 2017 (**NES-PF**)[5].

38. Again, we adopt the Section 42A Overview Report's summary of those standards. That Section 42A Report also noted four further National Environmental Standards that principally apply to GWRC.

39. 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.

40. 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 RPS was made operative in 2013. It contains a comprehensive overview of the significant resource management issues affecting the region and sets out objectives, policies and methods to address those issues and to achieve integrated management of the regions natural and physical resources. 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.

41. A substantial plan change to the RPS was notified on 19 August 2022 (**RPS-Change 1**). Hearings on RPS-Change 1 are proceeding in parallel with the PDP hearings and we

[5] Renamed the National Environmental Standards for Commercial Forestry, and amended, with effect from 3 November 2023

understand that the RPS-Change 1 hearings are scheduled to run until March 2024. In the normal course, we would expect decisions to follow in the second half of 2024. In the meantime, Section 74(2) requires that we have regard to RPS-Change 1.

42. Section 74(4) of the RMA requires that the PDP be consistent with any regional plans currently in force. At notification of the PDP, there were five operative regional plans that were in the process of being replaced by the Proposed Natural Resources Plan. Sections of the latter were being progressively finalised by the Environment Court through 2022 and 2023, and the Natural Resources Plan (**NRP**) was made operative on 28 July 2023.

43. Section 74 also directs that we have regard to management plans and strategies prepared under any other acts, relevant entries on the New Zealand Heritage List/Rārangi Kōrero required by the Heritage New Zealand Pouhere Tonga Act 2014, the extent to which a District Plan needs to be consistent with plans or proposed plans adjacent territorial authorities[6], any emissions reduction plan made in accordance with Section 5ZI of the Climate Change Response Act 2002 and any National Adaption Plan made in accordance with Section 5ZS of the Climate Change Response Act 2002.

44. We are also required to take into account any relevant planning document recognised by an iwi authority and lodged with the Council. We were advised that there are no such documents.

45. Lastly, in relation to substantive issues, Section 74(3) of the RMA directs that we not have regard to trade competition or the effects of trade competition.

46. These various instructions apply to most, but not all of the PDP. Part 8 of the RMA provides a specific series of directions relevant to heritage orders and designations that will be discussed in Reports 3A and 11 respectively.

47. In addition to these various substantive directions that we must factor into our deliberations, there are also procedural requirements that we should note. The PDP sought to give effect to Section 80E of the RMA by including its Intensification Planning Instrument (**IPI**) within the broader PDP. The PDP as notified classified provisions as IPI where relevant and those provisions have been heard within the Intensification Streamlined Planning Process (**ISPP**) which proceeded in accordance with Part 6 of the

[6] In this case, the relevant territorial authorities are Porirua City Council and Hutt City Council

First Schedule to the RMA. We record that the allocation of topics to the IPI was the subject of some controversy. We address that further in Section 3.1 of this Report.

48. For present purposes it is sufficient to note the following key features of the ISPP:

    (a) The Hearing Panel is able to permit cross examination. We made procedural directions for making of applications for leave to cross examine. It is fair to say, however, that the option of cross examination was largely not pursued;

    (b) Under Clause 99 of the First Schedule, the Hearing Panel is not limited to making recommendations within the scope of submissions before it in relation to matters the subject of the ISPP;

    (c) The Council's decisions on our recommendations in relation to ISPP matters are not open to appeal to the Environment Court.

49. It is important to note that our discretion to make out-of-scope recommendations is not open-ended. Clause 99 itself requires that the Panel's recommendations must be related to a matter identified either by the Panel or some other person "*during the hearing"*. We interpret that constraint as designed to ensure that at least the parties appearing at the hearing have the opportunity to provide comment on a potential out-of-scope recommendation. That suggests in turn, that an idea that emerges for the first time in the Council's Reply provided after the hearing, or in the Panel's post hearing deliberations, could not be the subject of an out-of-scope recommendation.

50. Even where that precondition is satisfied, the discretion provided by clause 99 to make out-of-scope requirements must be exercised on a principled basis. We have been assisted by the principles adopted by the IHP for the Auckland Unitary Plan, considering the parallel power available under that process, quoted by the High Court in *Albany North Landowners v Auckland Council*[7] without adverse comment:

> *"(a) The panel does not regard itself as having an unlimited power to make out of scope recommendations;*
>
> *(b) The panel must proceed in accordance with principles of natural justice, the requirements of the Act and the RMA, including the s32 requirements;*

[7] [2016] NZHC 138 at [44]

(c) *The submission stage is an important part of the process, as is the identification of significant resource management issues and methods to address them;*

(d) *The panel has heard evidence for 18 months and is aware of the range of issues that rezoning may raise including accommodating population growth and the effect of intensity on residential amenity; and*

(e) *The panel is conscious that any person affected by an out of scope recommendation has a full right of appeal to the Environment Court and that it is a safeguard for any person prejudiced by an out of scope recommendation."*

51. Those principles were established in respect of a bespoke statutory process. The process we are engaged in does not have the 'safeguard' of a full right of appeal to the Environment Court the Auckland IHP referred to. We consider that we should therefore take a more conservative approach to the exercise of the clause 99 discretion than did the Auckland IHP.

52. Another distinguishing factor is that the ISPP is limited in scope to the matters specified in section 80E of the RMA. It would clearly be inappropriate to make out-of-scope recommendations in relation to a matter that could not form part of an IPI.

53. The key aspect of the rules of natural justice is that people affected by a decision have the right to be heard in relation to it. While clause 99 envisages some curtailment of those rights, we consider that we need to be alive to the unfairness of significant changes to the Plan being made that no one could have anticipated when reading the notified Plan, or the submissions filed in relation to it. Identifying what a significant change is, and distinguishing it from minor changes requires case-by-case evaluation. Adopting the approach of the High Court in *Palmerston North City Council v Motor Machinists Limited*[8] for a different purpose, changes not contemplated or evaluated in the Section 32 reports underpinning the PDP are likely to be both significant and inappropriate for an out-of-scope recommendation. Similarly changes that affect a material number of people and/or a material number of properties.

[8] [2013] NZHC 1290

54. At the other end of the spectrum, changes to address technical glitches in the Plan that do not affect material numbers of people or properties are entirely appropriate candidates for out-of-scope recommendations.

55. In Hearing Stream 3, counsel for the Council submitted that the decision as to whether out-of-scope recommendations should be made might have regard to the time constraints councils were under producing their IPI. That might be a valid point for councils addressing these issues from a 'standing start' but Wellington City Council had been working on its PDP for several years, and so we discount that as a relevant consideration in our case.

56. We do need to acknowledge that the ISPP process has been designed to implement the NPSUD. Accordingly, changes that promote the objectives of the NPSUD, including but not limited to its focus on a well-functioning urban environment, should be viewed favourably; subject to the principles of natural justice we have already discussed.

57. Beyond those general principles, we address these issues on a case-by-case basis where out-of-scope recommendations might potentially be made.

58. Clause 100 of the First Schedule contains directions as to the requirements for our reports on ISPP matters. We will note these in the following section.

59. It is important to note that, because of the Minister's directions as to the timing of decisions on the IPI component of the PDP, our reports on the topics the subject of the first five hearing streams have been released in advance of our recommendations on the balance of the PDP.

60. The allocation of hearing topics and Commissioners to our first six hearings was as follows:

Hearing Stream Topics	Panel Members
Hearing Stream 1 – Strategic Direction- commenced 21 February 2023	
Overarching issues including caselaw District Plan structure Strategic direction Cross-Plan definitions	Robinson (chair) Black Burge Daysh Faulkner Lutz McMahon Schofield
Hearing Stream 2 – Residential- commenced 28 March 2023	
Residential zones - MRZ, HRZ, Character Precincts Residential zone – LLRZ Residential Design Guide	Robinson (chair) Burge Lutz McMahon
Hearing Stream 3 – Historic Heritage- commenced 9 May 2023	
Historic Heritage - HH Notable Trees - TREE Viewshafts - VIEW Sites and areas of significance to Māori - SASM Heritage Design Guide Papakāinga Design Guide Schedules 1 to 7	Robinson (chair) Faulkner Lutz McMahon
Hearing Stream 4 – Centres- commenced 22 June 2023	
City Centre Zone - CCZ Wind - WIND Waterfront Zone - WFZ Centres - NCZ, LCZ, CZ, MCZ Centres - CZ, MUZ, GIZ	Schofield (chair) Burge Daysh Lutz

Hearing Stream Topics	Panel Members
Residential Design Guide Centres and Mixed Use Design Guide	
Hearing Stream 5 – General District Wide Matters- commenced 1 August 2023	
Natural Hazards - NH Earthworks - EW Subdivision - SUB Three Waters - THW Subdivision Design Guide Noise Coastal Hazard provisions	Schofield (chair) Black Daysh Faulkner
Wrap-up Hearing – ISPP Provisions- commenced 19 September 2023[9]	
Wrap up and integration hearing – ISPP Provisions	Schofield (Chair) Burge Daysh Lutz McMahon

1.7 General Approach taken in Reports

61. Our role is to stand in the shoes of the Council and make recommendations in relation to the matters raised in submissions.

62. 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

[9] Commissioner Robinson was unable to attend this hearing for personal reasons. However, he has read the written material that was pre-circulated and viewed the Livescreen of the hearing.

RMA provides that we may group submissions according to the provisions or matters to which they relate.

63. 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 either we 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 42A Report into question.

64. 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.

65. We have generally not discussed Further Submissions. Our recommendations in relation to Further Submissions reflect the position we have taken on the primary submissions to which they relate.

66. 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.

67. In relation to matters heard as part of the ISPP, any recommendations that we have made that are outside the scope of the submissions in respect of the relevant provisions is specifically identified as such.

68. We have not produced a separate report on the matters heard in the wrap up hearing. Rather, our reports on the substantive issues covered in the first five hearings incorporate consideration of evidence heard in the wrap up hearing, as relevant.

1.8 Abbreviations

69. For convenience, we have employed a number of abbreviations and acronyms in our reports. To assist readers, we have set out below, the most commonly used abbreviations and acronyms.

70. Under the General Heading of Legislative and Planning Instruments, these are:

- RMA/the Act – Resource Management Act 1991;
- RMA-EHS – Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021;
- HNZPT Act – Heritage New Zealand Pouhere Taonga Act 2014
- NPSET – National Policy Statement for Electricity Transmission 2008;
- NZCPS – New Zealand Coastal Policy Statement 2010;
- NPSREG – National Policy Statement for Renewable Electricity Generation 2011;
- NPSFM – National Policy Statement for Freshwater Management 2022 (including amendments dated 8 December 2022);
- NPSUD – National Policy Statement on Urban Development 2020 (including amendments made by RMA – EHS and those dated 11 May 2022);
- NPSHPL – National Policy Statement for Highly Productive Land 2022;
- NPSIB – National Policy Statement for Indigenous Biodiversity 2023;
- NES-ET -National Environmental Standards for Electricity Transmission Activities 2009;
- NES-TF – National Environmental Standards for Telecommunication Facilities 2016;
- NES-PF – National Environmental Standards for Plantation Forestry 2017;

- RPS – Operative Wellington Regional Policy Statement;
- RPS-Change 1 – Plan Change 1 to the Wellington Regional Policy Statement;
- NRP – Wellington Regional Natural Resources Plan;
- ODP – Wellington Operative District Plan;
- PDP/Plan – Wellington Proposed District Plan as notified;
- IPI – Intensification Planning Instrument
- ISPP -Intensification Streamlined Planning Process
- RLTP – Regional Land Transport Plan 2021.
- Council-Wellington City Council.

71. We have also abbreviated the names of a number of the parties who provided input across a range of hearing reports, as follows:

- Argosy Property No 1 Limited - Argosy
- Claire Nolan et al - Claire Nolan, James Fraser, Biddy Bunzl, Margaret Franken, Michelle Wolland and Lee Muir
- Dept of Corrections - Ara Poutama Aotearoa the Department of Corrections;
- DoC – Director General of Conservation;
- FENZ – Fire and Emergency New Zealand;
- Forest and Bird – Royal Forest and Bird Protection Society Inc
- GWRC – Greater Wellington Regional Council;
- HNZ – Heritage New Zealand Pouhere Taonga;
- HPW – Historic Places Wellington
- JCA – Johnsonville Community Association

- Kāinga Ora – Kāinga Ora – Homes and Communities;
- KiwiRail – KiwiRail Holdings Limited;
- MHUD – Ministry of Housing and Urban Development
- MoE – Ministry of Education;
- NZDF – New Zealand Defence Force;
- Oil Companies – Z Energy Limited/BP Oil (NZ) Limited/Mobil Oil (NZ) Limited;
- ORCA – Onslow Residents Community Association Inc
- RVA – Retirement Villages Association of New Zealand Inc;
- Ryman – Ryman Healthcare Limited;
- Survey & Spatial – Survey & Spatial New Zealand Wellington Branch
- Taranaki Whānui – Taranaki Whānui ki te Upoko o te Ika;
- Telcos – Spark New Zealand Trading Limited/Chorus New Zealand Limited/Vodafone New Zealand Limited;
- Transpower – Transpower New Zealand Limited;
- TRoTR - Te Rūnanga o Toa Rangatira;
- Waka Kotahi – Waka Kotahi NZ Transport Agency;
- WCCT- Wellington's Character Charitable Trust;
- WHP – Wellington Heritage Professionals;
- WIAL – Wellington International Airport Ltd;
- Woolworths – Woolworths NZ Limited.

2. INTRODUCTION TO HEARING STREAM 1

2.1 Topics of Hearing

72. Hearing Stream 1 covered the background to the PDP already discussed in Section 1, Plan-wide matters of strategic or procedural importance, initial chapters of the PDP and the Strategic Direction chapters.

73. We record that Commissioner Black declared a conflict in respect of the strategic objectives and took no part in our deliberations on that matter, or in the writing up of our recommendations on it.

74. This report addresses the Plan-wide matters of strategic or procedural importance and the initial chapters to the PDP.

75. The specific matters of strategic or procedural importance identified in the Section 42A Report, authored by Mr Adam McCutcheon and Mr Andrew Wharton, were:

    (a) Allocation of topics – ISPP v Part 1, Schedule One process and Qualified Matters;

    (b) Growth Approach of Intensification;

    (c) Classification of Rapid Transit Service and Stops under the NPSUD;

    (d) Size and definition of walkable catchments to implement NPSUD Policy 3(c);

    (e) Underutilised land and development capacity;

    (f) Population projections;

    (g) Let's Get Wellington Moving;

    (h) Climate Change and Nature based solutions;

    (i) Affordable Housing;

    (j) Māori Interests/Papakāinga;

    (k) Local/Community Planning.

76. Of these topics, (a)-(f) were identified as ISPP matters, while topics (g)-(k) were identified as matters following the Part 1 First Schedule process.

77. The Introductory chapters heard as part of this hearing stream were:

(a) Purpose Chapter;

(b) Description of District Chapter;

(c) Statutory Context Chapter;

(d) General Approach Chapter;

(e) Cross Boundary Matters Chapter;

(f) Relationships between Spatial Layers Chapter;

(g) Definitions, including requests for new definitions;

(h) Abbreviations Chapter;

(i) Glossary;

(j) National Policy Statements and New Zealand Coastal Policy Statement Chapter;

(k) National Environmental Standards Chapter;

(l) Regulations Chapter;

(m) Tangata Whenua Chapter.

78. Of these topics, (a)-(f), (h) and (i)-(l)-(m) were identified as Part 1 First Schedule matters, while (g) and (j) were identified as having a mixture of ISPP and Part 1 First Schedule matters.

79. The Section 42A Report separated the strategic direction chapters under nine separate headings. Those matters are addressed in Report 1B**.**

2.2 Hearing Arrangements

80. The Stream 1 hearing commenced on Tuesday 21 February 2023 and concluded on 1 March 2023

81. On the day preceding the opening of the hearing proper, the Hearing Panel was welcomed onto Pipitea Marae by the representatives of Taranaki Whānui.

82. On the first day of hearing, the hearing opened with a karakia, and after initial introductions the Hearing Panel heard legal argument and other representations on a procedural issue

(allocation of hearing topics as between ISPP and First Schedule) that we will address in much greater detail in Section 3.1 of our Report below.

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

(a) For Council:

- Nick Whittington (Counsel);
- Adam McCutcheon (Planning);
- Andrew Wharton (Planning);
- Phil Osborne (Economics);
- Orla Hammond (Walkable Catchments);
- Kirdan Lees (Population Projections);

(b) Paul Rutherford[10]

(c) For Victoria Stace[11] and Pukepuke Pari Residents[12]:

- Ian Gordon (Counsel);
- Victoria Stace;
- Tore Haywood;
- Andy Thomson;
- Felicity Wong;

(d) For WCCT[13], Julie Ward[14] and ORCA[15]:

- Duncan Ballinger (Counsel);
- Lawrence Collingbourne;

[10] Submission #424
[11] Submission #235
[12] Submission #237, Further Submission #37
[13] Submission #233, Further Submission #82
[14] Submission #103
[15] Submission #293, Further Submission #80

- Julie Ward;
- Don Wignall (Transport Planning);
- Dr Tim Helm (Economics).

(e) Nick Ruane[16];

(f) Trevor Farrer[17];

(g) For JCA[18]:

- Warren Taylor;
- Mary Therese;

(h) For Meridian Energy Limited[19]:

- Christine Foster (Planning);

(i) For Newtown Residents Association[20]:

- Rhona Carson;

(j) For Generation Zero[21]:

- Marko Garlick;

(k) Paul Ridley-Smith[22]

(l) For Escape Investments Limited[23]:

- Leo Archer;

(m) Robert Murray[24]

[16] Submission #61
[17] Submission #332
[18] Submission #429, Further Submission #114
[19] Submission #228, Further Submission #101
[20] Submission #40, Further Submission #63
[21] Submission #254, Further Submission #63
[22] Submission #245
[23] Submission #484
[24] Submission #213

(n) For Envirowaste Ltd[25]:

- Kaaren Rosser.

(o) For Willis Bond[26]:

- David McGuinness;
- Jimmy Tait-Jamieson

(p) For Claire Nolan et al[27]:

- James Fraser;

(q) For Kāinga Ora[28]:

- Jennifer Caldwell (Counsel);
- Brendon Liggett;
- Nick Rae (Urban Design);
- Mike Cullen (Economics);
- Matt Heale (Planning)

(r) Dr Paul Blaschke[29];

(s) Steve Dunn[30];

(t) Stephen Minto[31];

(u) For Property Council[32]:

- Sandamali Gunawardena;

[25] Submission #373
[26] Submission #416, Further Submission #275
[27] Submission #275, Further Submission #68
[28] Submission #391, Further Submission #89
[29] Submission #435
[30] Submission #288
[31] Submission #395, Further Submission #100
[32] Submission #338

(v) Dr Richard Norman[33]

(w) Phil Kelliher[34];

(x) Hilary Watson[35];

(y) For WHP[36]:

- Cherie Jacobson (Introduction);
- Amanda Mulligan (Historic Heritage);
- Eva Forster-Garbutt (Archaeology);
- Chessa Stevens (Historic Heritage)

(z) For Elayna Chhiba[37]:

- Mandy Peng

(aa) For Waka Kotahi[38]:

- Mike Scott (Introduction);
- Akhylesh Keshaboina (attendance excused);
- Alastair Cribbens (Planning)

(bb) For Muaūpoko Tribal Authority[39]:

- Tom Bennion (Counsel);
- Tim Tatapua;
- Dean Wilson;
- Di Rump.

[33] Submission #247
[34] Submission #58, Further Submission #57
[35] Submission #321, Further Submission #74
[36] Submission #412
[37] Submission #480, Further Submission #131
[38] Submission #320, Further Submission #103
[39] Submission #379

(cc) For Thorndon Residents Association[40]:

- Richard Murcott;

(dd) For Heritage NZ[41]:

- Dean Raymond (Planning);

(ee) For Lower Kelburn Neighbourhood Group[42]:

- Dr Rosalind McIntosh;

(ff) Roland Sapsford[43];

(gg) For TRoTR[44]:

- Hohepa Potini;
- Kahu Ropata;
- Dr Onur Oktem-Lewis (Planning);

(hh) For Taranaki Whānui[45]:

- Lee Hunter;

(ii) For Dept of Corrections[46]:

- Sean Grace (Planning);
- Andrea Miller;
- Sean Difford.

(jj) For Ryman[47] and RVA[48]:

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[40] Submission #333, Further Submission #69
[41] Submission #70, Further Submission #59
[42] Submission #356
[43] Submission #305, Further Submission #117
[44] Submission #488, Further Submission #138
[45] Submission #389
[46] Submission #240
[47] Submission #346, Further Submission #128
[48] Submission #350, Further Submission #126

- Luke Hinchey (Counsel);
- John Collyns;
- Matthew Brown;
- Dr Phil Mitchell (Planning);

(kk) For Grant and Marilyn Griffiths and Griffiths Family Trust[49]:

- Grant Griffiths

(ll) For Tawa Community Board[50]:

- Miriam Moore;
- Jill Day;
- Jackson Lacy;

(mm) For LIVE WELLington[51]:

- Jane O'Loughlin

(nn) For KiwiRail[52]:

- Michelle Grinlinton-Hancock (Planning);

(oo) For MHUD[53]:

- Aidan Cameron (Counsel);
- Ben Wachope;
- Fiona McCarthy;

(pp) For Living Streets Aotearoa[54]:

[49] Submission #460
[50] Submission #294
[51] Submission #154, Further Submission #96
[52] Submission #408, Further Submission #72
[53] Submission #121
[54] Submission #482, Further Submission #130

- Ellen Brake;

(qq) For Wellington City Youth Council[55]:

- Keelan Heesterman;
- Meika
- Anastasia

(rr) Graham Spargo[56]:

(ss) Richard Murcott[57]

(tt) For HPW[58]:

- Felicity Wong;
- Christina Mackay;

(uu) Dr Matthew Keir and Sarah Cutten[59]

(vv) Rod Bray[60]

(ww) For Stride Investment Management[61] and Investore Property Ltd[62]:

- Bianca Tree (Counsel);
- Jared Thompson;
- Mark Gorgeson (Transport Engineering);
- Joe Jeffries (Planning);

(xx) Andy Foster[63]

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[55] Submission #201
[56] Submission #211
[57] Submission #322, Further Submission #71
[58] Submission #182, Further Submission #89
[59] Submission #415, Further Submission #91
[60] Submission #311
[61] Submission #470, Further Submission #107
[62] Submission #405, Further Submission #108
[63] Further Submission #86

(yy) For WIAL[64]:

- Jenna Raeburn;
- John Kyle (Planning);
- Jo Lester;

(zz) For Transpower Limited[65]:

- Dougall Campbell;
- Pauline Whitney (Planning).

84. We received tabled material from the following parties:

(a) Telcos[66];

(b) Fuel Companies[67;]

(c) Woolworths New Zealand Ltd[68];

(d) Restaurant Brands Limited[69];

(e) Foodstuffs North Island Ltd [70];

(f) Firstgas Ltd[71];

(g) Wellington Civic Trust[72;]

(h) Survey + Spatial[73];

(i) NZDF[74];

[64] Submission #406, Further Submission #36
[65] Submission #315, Further Submission #29
[66] Submission #99, Further Submission #25
[67] Submission #372
[68] Submission #359
[69] Submission #349
[70] Submission #476, Further Submission #23
[71] Submission #304, Further Submission #97
[72] Submission #388, Further Submission #83
[73] Submission #439, Further Submission #116
[74] Submission #423, Further Submission #104

(j) MoE [75];

(k) Metlifecare Ltd[76];

(l) John Tiley[77];

(m) Horokiwi Quarries Ltd[78];

(n) Powerco Ltd[79]

85. We also received the following additional inputs from parties who had appeared in the Stream 1 hearing:

(a) Ms Julie Ward provided us with a copy of a LGOIMA response from GWRC dated 8 November 2022 that she had referred to in her presentation;

(b) Mr Leo Archer (Escape Investments) provided us with a hard copy of a graph and photographs he had shown us on screen and a copy of a 2019 Council report, 'Planning for Growth';

(c) Mr Alastair Cribbens (Waka Kotahi) provided us with additional census data breaking down percentages of people walking, and taking active and public transport to the City Centre, together with the census question that generated that data;

(d) Mr Phil Kelliher provided us with a cost breakdown of 3-Waters Upgrades by suburb sourced from a 2021 Wellington Water Report;

(e) WIAL provided us with information clarifying the WIAL Obstacle Limitation Surface Designation and how it applies to the Metropolitan Centre Zone (Johnsonville};

(f) Counsel for Kāinga Ora filed a memorandum dated 28 February addressing a question we had posed regarding the inter-relationship between walkability and intensification.

[75] Submission #400, Further Submission #52
[76] Submission #413
[77] Submission #142
[78] Submission #68, Further Submission #28
[79] Submission #127. Further Submission #61

86. A number of submissions were allocated to the wrap up/integration hearing in September that can conveniently be addressed in this report. Mr McCutcheon provided a separate Section 42A Report addressing them. The only submitter we heard from, whose submission was addressed by Mr McCutcheon in his report was JCA, again represented by Mr Taylor and Ms Therese.

87. Commissioner Faulkner had retired from the Hearing Panel by the time of the Wrap-up/Integration hearing and he took no part in our deliberations on these submissions. Although Commissioner Robinson did not sit on the Wrap-up/Integration hearing, he has read all the pre-circulated material and watched the Livescreen, and so he has participated in the resolution of the Hearing Panel's position on these matters.

88. In conjunction with the Stream 1 hearing, we undertook two site visits at the request of the JCA. On the first site visit, the Hearing Panel took the Johnsonville Line train from Wellington Central Railway Station up to Johnsonville and walked through the Johnsonville Mall to Disraeli Street, and from there, through the motorway subway to Sheridan Terrace and up to the edge of the walkable catchment proposed in the notified PDP. On the second occasion, the Hearing Panel walked from the Johnsonville Railway Station firstly up Frankmore Avenue, Prospect Terrace, and Woodland Road and then from the railway station to and part way up Middleton Road.

89. Separately, members of the Hearing Panel undertook informal familiarisation visits to areas throughout the City.

3. PLAN-WIDE MATTERS OF STRATEGIC OR PROCEDURAL IMPORTANCE

3.1 Allocation of Topics ISPP v Part 1, Schedule 1 process and Qualifying Matters

90. Under this general heading, at Section 4.1 of the Section 42A Report, Mr McCutcheon summarised two different strands of submissions. The first set of submissions focussed on the allocation of PDP provisions to the ISPP process or the 'normal' First Schedule process[80], as applicable. They included:

[80] When we refer to the First Schedule process, we mean the process set out in Part 1 of the First Schedule, to distinguish it from the ISPP process, which is provided for in Part 6 of the First Schedule.

- WIAL[81] which sought that the Natural Hazard Chapter should not be included in the ISPP;

- Sarah Cutten and Mathew Keir[82], who sought that listing of their property at 28 Robieson Street in the Heritage Schedule should be the subject of a First Schedule process rather than the ISPP.

91. Mr McCutcheon also identified RVA as having an interest in this matter (seeking that all provisions relating to retirement villages be included in the ISPP rather than being split between the two processes), but did not identify any particular submission point seeking that as relief, and we have been unable to identify one ourselves.

92. The second strand of submissions incorporated a series of submissions seeking identification of existing Plan provisions as a qualifying matter, or alternatively identification of new qualifying matters.

93. Some of these submitters recognised that the consequence of identifying provisions as a qualifying matter would be that they would be included as part of the ISPP. Transpower was in this category with its request that the National Grid be recognised as a qualifying matter[83]. For other submitters, the focus was more on the limitations on intensification that identification of a new qualifying matter would have. Among the suggested qualifying matters were:

- A broader scoped qualifying matter for Mount Victoria and for Aro Valley (Mount Victoria Residents Association[84] and Roland Sapsford[85] respectively);

- Heritage/Character/Townscape Amenity Values and the lack of adequate infrastructure in Mount Victoria (Nick Humphries[86]) and other inner City suburbs (Phil Kelliher [87]);

- The Rail Corridor (KiwiRail[88]);

[81] Submission #406.1
[82] Submission #415.15
[83] Submission #315.15
[84] Submission #342.5
[85] Submission #305.26
[86] Submission #223.1
[87] Submission #58.2
[88] Submissions #408.19 and #408.20

- Three Waters infrastructure (Claire Nolan et al[89]);
- Steep side streets and lack of access for emergency vehicles (Ruapapa Limited[90]);
- The costs of urban development and the iconic location provided by Hay Street (Pukepuke Pari Residents Association[91]);
- Sunshine and privacy (Lower Kelburn Neighbourhood Group[92]);
- Noise Rule R3 (Waka Kotahi[93]);
- Negative environmental effects of high risk development (Newtown Residents Association[94]).

94. Mr McCutcheon provided a longer list of submissions, many of which overlapped with those that we have summarised above.

95. Mr McCutcheon also noted a submission from Grant Buchan[95] who considered that qualifying matters should be applied on a site-by-site basis, not by broad areas.

96. As regards the latter, Mr McCutcheon considered the approach of the PDP was consistent with the NPSUD. We agree with that at a general level. As we will discuss in much greater detail in Report 2B, site-by-site evaluation of some qualifying matters is required under Section 77L of the Act, but that is not a universal requirement. Moreover, even where applicable, this is an issue of evaluation. Once evaluated, in our view, sites can be amalgamated for the purposes of mapping areas within which qualifying matters arise.

97. As regards the suggested new qualifying matters, Mr McCutcheon agreed that the National Grid might properly be categorised as a qualifying matter and that the railway corridor might well meet that requirement. Nevertheless, in both cases, he noted that the Council had made its decision as to what was or was not to be processed through the ISPP and in

[89] Submission #275.8
[90] Submission #225.2
[91] Submission #237.2
[92] Submission #356.4
[93] Submission #370.42
[94] Submission #440.10
[95] Submission #143.1

his view, that determination was not now able to be changed. He had the same response to WIAL and to Sarah Cutten/Mathew Keir.

98. Mr McCutcheon disagreed with the submitters suggesting that Three Waters might be classified as a qualifying matter. He also noted that the Council did not hold sufficient information to be able to justify Three Waters capacity as a qualifying matter on a site-by-site basis.

99. He also disagreed with the submitters seeking identification of local environmental factors as qualifying matters. In his view, these matters are better dealt with through an assessment of environmental effects and the resource consenting process.

100. As regards sunshine and privacy, Mr McCutcheon did not regard these as justifiable as qualifying matters. He noted the direction from Policy 6 of the NPSUD that changes in amenity values are not themselves an adverse effect.

101. Mr McCutcheon also considered that the noise rule identified by Waka Kotahi was not a qualifying matter since it does not have the effect or restricting building heights and densities or the permitted status to build an MDRS compliant building. He contrasted the Inner Air Noise Overlay, however, because that does have an effect on the permitted activity status of the MDRS.

102. In the end result, Mr McCutcheon recommended that no changes be made to the allocation of provisions between planning processes.

103. As above, we identified the allocation issue as a potential preliminary legal issue that we were to address. We heard argument on it at the commencement of the Stream 1 hearing and, because of the complexities of the issues raised, instructed Mr James Winchester, Barrister, to provide us with an independent legal opinion on those issues. Mr Winchester's opinion, dated 8 March 2023, was circulated to the parties under the cover of our Minute 12. As advised in that Minute, we accepted Mr Winchester's advice that we should not make a preliminary determination of any kind because clause 96(1)(a)(ii) directs that we can only make recommendations to Council "*after the hearing of submissions is concluded".*

104. We have now reached that point.

105. Our consideration of the arguments that have been put to us around this issue now also needs to take into account the decision of the Environment Court in *Waikanae Land Company Limited v Heritage New Zealand Pouhere Taonga*[96].

106. That decision relates to an application for an archaeological authority and a subdivision and land use consent in respect of a development on the Kāpiti Coast. Kāpiti Coast District Council had notified its IPI which included a new wāhi tapu affecting the subdivision and land use application before the Court. The Court considered, as a preliminary issue, whether the statutory provisions governing the permissible ambit of the IPI allowed for inclusion of a new wāhi tapu. The Court concluded that it did not, and found Kāpiti Coast District Council's action in including the new wāhi tapu in its IPI to have been ultra vires.

107. This decision was released shortly before the Stream 3 hearing. Counsel for the Council, Mr Whittington addressed us on the Court's decision arguing:

(a) It is not binding on us, and in any case;

(b) It is wrong.

108. Mr Whittington advised us that Kāpiti Coast District Council had appealed the Court's decision, but his subsequent advice was that the decision of the High Court on that appeal is unlikely to be released in a timeframe which is useful to us (we understand it has been set down for hearing in February 2024).

109. Dr Keir also appeared before us in Stream 3 pointing to the parallels between the case he and Ms Cutten had presented in Stream 1 and that found to be ultra vires by the Court. Understandably, he argued that the same result should follow.

110. We accept Mr Whittington's submission that the *Waikanae Land* decision is not binding on us as a matter of law. As he observes, the determinations of the Environment Court ordinarily bind the parties to the proceedings only. The position might be different in the case of declarations made pursuant to Section 310 of the RMA, but this decision is not in that category.

111. However, any Environment Court decision is worthy of respect, and we would normally follow its guidance if satisfied that there were no material points of distinction. We would certainly not lightly form the view impressed on us by Mr Whittington that the Environment

[96] [2023] NZEnvC 056

Court erred in reaching the conclusion that it did. The fact that the Court's decision is subject to appeal does not alter our position in that regard.

112. The key element of the Environment Court's reasoning is its finding that the new wāhi tapu inserted in the Kāpiti Coast District Plan was not a "*related matter*" for the purposes of Section 80E(1)(b)(iii) because it did not support and was not consequential on either the MDRS or Policies 3, 4 and 5 of the NPSUD. Rather, it actively precluded operation of the MDRS on the site and could not be said to be consequential on the MDRS "*which sets out to impose more permissive standards relating to the 9 defined matters*"[97].

113. We pause to observe this line of argument was almost identical to that pressed on us by Dr Keir in the legal submissions he tabled in Stream 1. The only difference was that rather than a new wāhi tapu, Dr Keir was focussed on the new Heritage Listing on his and Ms Cutten's property on Robieson Street.

114. In his argument to us in Stream 3, Mr Whittington focussed on the implied premise of the Court (it did not discuss this possibility), that the new wāhi tapu did not fall within the category of mandatory elements that incorporate the MDRS and give effect to NPSUD Policies 3 and 4 (in the case of a Tier 1 Council). He pointed out that Policy 4 expressly relates to qualifying matters and argued that where a territorial authority provides for lower heights or densities than those that would otherwise be required by the MDRS Policy 3, it must do so through its IPI.

115. The weak point of Mr Whittington's argument, in our view, is that Policy 4 only relates to the application of qualifying matters to the outcome Policy 3 would otherwise require. Policy 3 in turn relates to areas where at least six storey developments must be enabled.

116. To arrive at the conclusion that Mr Whittington supports, therefore, requires one to infer an intention that the same approach was intended to apply to new provisions qualifying the MDRS.

117. With due respect to the Court, we think that one could and should draw such an inference. Schedule 3A specifically requires insertion of a policy in the relevant Plan directing that the MDRS be applied across all relevant zones "*except in circumstances where a qualifying matter is relevant (including matters of significance such as Historic*

[97] Paragraph [30]

Heritage and the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, *wāhi tapu and other taonga)".*

118. It seems to us to follow that the rules applying such qualifying matters must be considered at the same time as the rules implementing the MDRS.

119. It seems to us unlikely that it would have been intended that qualifying matters affecting the application of Policy 3 must be considered in the ISPP, but that qualifying matters affecting the MDRS must fall within the 'related matter' exception before they can do so, particularly when the qualifying matter might be the same: e.g. earthquake and flood hazard mapping.

120. There is an argument that they might not necessarily need to be considered through the same process, and there is an alternative process proceeding in parallel with the ISPP. That is not, however, the norm. We were told that Wellington City Council is unique in so far as it is pursuing its IPI in tandem with provisions relating to the balance of the Plan, and so we do not think it would have been intended that councils must notify new qualifying matters in a separate Plan Change in every other case.

121. We also find telling, Mr Whittington's point that the RMA-EHS clearly contemplated that there may be entirely new qualifying matters because it provided a separate evaluation process for existing qualifying matters (in Section 77K).

122. In summary, we disagree with the Court that the only route for a qualifying matter to the MDRS to be considered is via the related matter provisions.

123. There are other questions that could reasonably be posed in relation to the Court's reasoning. We have difficulty understanding how, if a strict construction is given to matters that support and are consequential on the MDRS, any qualifying matter would ever 'qualify', since the whole point of qualifying matters is that they qualify the exercise of the MDRS, and make them less enabling than they would otherwise have been. Many of the considerations noted above would similarly support a broader interpretation of related provisions than the Court deemed appropriate.[98]

[98] We note that the IHP hearing the IPI for the Kāpiti Coast District declined to follow the Environment Court's decision because it considered that *"the conclusion of the Environment Court unduly restricts sensible planning necessary to achieve Objective 1*".

124. We do not, however, need to go there. It is sufficient for us to find that it is not apparent to us that new qualifying matters that either preclude or make development pursuant to the MDRS less enabling than it would otherwise be, cannot (and should not) be part of the IPI. However, the issue does not end there. We agree with Mr Winchester's analysis (accepting in turn the submissions of Mr Ballinger for WCCT) that the correct characterisation of the process the Council is engaged in is one where it has notified two Plan changes operating in parallel. It must be within our power, therefore, to recommend that a particular provision be deleted from Plan Change A and inserted in Plan Change B. We agree, however, with Mr Winchester that such a decision would need to be for proper planning grounds and in scope.

125. As regards issues of scope, additions to/ deletions from the IPI Plan Change could potentially be the subject of out-of-scope recommendations, but the parallel change to the First Schedule Plan Change requires a submission seeking that relief. The only submissions clearly seeking such relief that we have identified are those of WIAL and Dr Keir/Ms Cutten.

126. Understandably, the parties seeking to argue that provisions should not be part of the IPI had focussed on the consequences of that, namely that the Council's ultimate decisions would be subject to right of appeal to the Environment Court on the merits. We do not ourselves consider that that would be a sufficient ground, in itself, to recommend that a provision noted as falling within the ISPP, be transferred to the Plan Change following the 'normal' First Schedule process. To do that would be second guessing the Council's decision as to the basis of a notification, and we agree with Mr Winchester that we do not have power to do that.

127. The hurdle is higher for those contending that matters notified as First Schedule matters be heard as part of the ISPP, because Section 80G(1)(b) precludes the Council from using the IPI for any purpose other than the uses specifies in Section 80E.

128. Dr Keir and Ms Cutten did not present an argument, as far as we could identify, explaining why new heritage listings should be treated separately from continuation of existing heritage listings (or their amendment) other than their desire to access the right of appeal available in relation to First Schedule matters, and we consider that we are adequately able to assess the merits of such new listings.

129. It is also relevant to our consideration of the merits of their submission in terms of the Section 32 tests that it is specific to their property at 28 Robieson Street. If accepted, it would mean that the merits of a heritage listing of that property would be considered in one Plan Change, and the new heritage listings of other properties would be considered separately, in the ISPP. We do not consider that that is efficient or effective in Section 32 terms for heritage listings to sit in separate planning instruments.

130. We therefore recommend rejection of their submission point.

131. We record, however, that neither our conclusion (to recommend that the Keir/Cutten submission should be rejected) or the Council's decision should it accept our recommendation, are determinative. The acid test will be if our recommendation/ the Council's decision on the substantive issue (whether the submitters' home at 28 Robieson Street is the subject of a heritage listing) is appealed. The Environment Court will determine if it has jurisdiction to consider an appeal, not us (or the Council).

132. WIAL made the argument that it is not possible for us to make recommendations within the ISPP on natural hazard provisions that apply outside urban areas. We do not think that that is correct. Clearly, insofar as natural hazard provisions apply within urban areas (including the Airport), that is properly a matter that should be considered as part of the IPI since they make development within urban areas less enabling than would otherwise be provided for. The National Planning Standards direct such matters be considered by way of an overlay. In our opinion, it would be artificial to separate out urban and non-urban areas, and in effect consider separate overlays. These are district-wide provisions and should be considered as such.

133. We also have difficulty with WIAL's argument for other reasons. WIAL accepted that we did not have power to transfer provisions from one process (the ISPP) to the other (First Schedule). Proceeding on that basis, even if we had accepted that the Environment Court's reasoning in its *Waikanae Land* decision applied, the Council's decision to notify (in this case) natural hazard provisions under the ISPP remains valid, unless and until struck down by a Court with jurisdiction over it. To state the obvious, we are not a Court with that power.

134. We therefore recommend rejection of WIAL's submission point.

135. Turning to the submissions seeking identification of new qualifying matters, we have some difficulty with Mr McCutcheon's general approach. He suggests that sunlight and

privacy, for instance, cannot be a qualifying matter. NPSUD Policy 6 says that changes in amenity are not automatically an adverse effect. It does not say they can never be an adverse effect, and we do not think a subsidiary instrument could have that effect even if it purported to do so (only Parliament can deem matters to be a fact that are not). We consider such matters are issues of degree. At a certain point, loss of sunlight ceases to be an amenity issue (in the sense of being 'nice to have') and becomes an issue of health and wellbeing. It is then a question whether such effects can meet the evaluation requirements in Section 77J and 77L of the Act.

136. We also have an issue with Mr McCutcheon's reasoning that local environmental factors like the steepness of streets and lack of access for emergency facilities should appropriately be considered as part of a resource consent process. That of course presumes that there will be such a process i.e. that the activity is not permitted by the Plan without regard to those issues. The direction of Section 77I is that the Council can only make the MDRS and the building height and density requirements under Policy 3 less enabling of development to the extent necessary to accommodate a qualifying matter. Again, therefore, we think this is an issue of evidence and evaluation. If submitters present sufficient material in support of their case, there may be good grounds to find that other qualifying matters exist.

137. There are cases where we clearly do agree with Mr McCutcheon's reasoning. As he observes, the noise rule referenced in Waka Kotahi's submission does not impinge on the MDRS standards or activity status directed by Schedule 3A. Arguably, Three Waters is in the same category.

138. Putting those cases aside, we find that none of the submitters pursing these arguments presented evidence or evaluation that would satisfy us that the particular points they are relying on are in fact a qualifying matter. That does not preclude the potential that in later hearing streams they might do so, but they had not done so by the conclusion of the Stream 1 hearing. It follows that we agree with Mr McCutcheon's recommendations that no amendments should be made to the Plan to respond to the submissions he had summarised, but not for the reasons set out in the Section 42A Report.

3.2 Growth Approach of Intensification

139. Under this heading, at Section 4.2 of the Section 42A Report, the Reporting Officer (Mr McCutcheon for this topic) summarised a series of submissions both supporting the overall

growth approach of the Plan in relation to intensification, some with qualifiers regarding location and design, and opposing the general approach of the Plan. Additional submissions were canvassed in Sections 6.1.8, 6.1.13 and 6.1.19 of the Wrap-up/Integration Section 42A Report to similar effect.

140. We adopt the Section 42A Reports' summaries of those submissions.

141. We heard from a number of parties on this general issue, including parties who, although not making general submissions summarised in the Section 42A Report, used the opportunity to provide commentary on these issues as an introduction to more specific submissions heard both in Stream 1 and in subsequent hearing streams.

142. In the latter camp, we record, in particular, the submissions and evidence we heard from Kāinga Ora. Presenting Kāinga Ora's corporate position, Mr Brendon Liggett expressed concern about key themes of the PDP which, in his view, compromised the extent to which the Plan enables appropriate development within Wellington, having regard to the objectives and policies of the NPSUD. Mr Michael Cullen provided economic evidence for Kāinga Ora and summarised the economic underpinning of the NPSUD as being based on a view that "*all else being equal, more density is better, (economically) than less density."*

143. Mr Wauchop, presenting corporate evidence for MHUD, likewise sought to emphasise the benefits of intensification from a social, economic and environmental perspective.

144. These points were reinforced by representatives of a younger generation of aspiring houseowners and renters such as Mr Garlick for Generation Zero, Ms Peng of behalf of Elayna Chhiba and the representatives of the Wellington City Youth Council, who sought to emphasise to us the urgent need for more affordable residential accommodation.

145. As against those views, we heard many expressions of concern about the drive towards intensification of existing suburbs. The concern was not so much with the application of the so called 3x3 rules[99], but rather with the potential for zoning to permit residential developments of six storeys or more across a wide area. A particular concern expressed for example by Ms Carson for Newtown Residents Association and by Mr Sapsford, was that the end result would not be a consistent level of higher development, but rather isolated single site developments would occur out of keeping with the urban

[99] Shorthand for the three units of three storeys per site enabled by the MDRS in Schedule 3A

form of the area in which they are located. We agree that that is a risk that we need to take into account.

146. In addition, while we certainly accept there is a significant problem with housing availability and cost, especially for young people looking for their first home, it was by no means clear to us that existing constraints on development in the ODP are the cause of those problems, or that a much greater level of development than is provided for under the MDRS is the solution.

147. Mr McGuinness of Willis Bond, for instance, told us that availability of land is not the problem, it's the cost of development. He said that there was not enough demand to produce the (onsale) values that drive development. His focus was therefore on the cost implications of unnecessary design requirements contained in the Design Guides.

148. This view (that there is more than sufficient developable land available) was supported by Mr Osborne's economic evidence for Council, presenting the results of his analysis of projected future demand over the next 30 years, which showed a significant surplus of realisable capacity.

149. In Stream 2, Dr Helm (for WCCT) described the surplus capacity enabled by the PDP as "*an inconvenient truth*" for those, like Mr Garlick, who told us that planning controls play a dominant role in housing affordability. We consider that quite an apt description in the circumstances.

150. Mr Garlick told us that upzoning land in Auckland had led to doubling of consented new builds and a reduction in the real cost of rentals, but provided no details or analysis that might have demonstrated either that there was a causal relationship between these changes[100], or that the same result would likely follow in Wellington.

151. As regards the latter, Mr McGuinness suggested that upzoning Wellington hill suburbs was of little utility[101]. Developers would inevitably focus on flatter sites to reduce their costs of construction.

[100] Dr Helm told us in Stream 2 that in his opinion, the jury was out on that question.
[101] We note also Brooklyn Residents Association's submission [459.2] seeking that consideration be given to topography.

152. We put that observation to Mr Cullen, who suggested that we should let the market determine where the optimum places to build were. To our minds, Mr Cullen was putting an economic lens on the scenario that was of concern to Ms Carson and Mr Sapsford.

153. These issues come into focus much more clearly in our consideration of objectives, policies and rules applying in residential zones. Suffice it to say, however, that the evidence we heard in Stream 1 did not suggest a clear need for greater intensification than is clearly directed by the NPSUD, and did show downside risks if a much greater level of intensification is provided for than currently.

154. Returning to the more specific submissions addressed in the Section 42A Report, we agree with the Reporting Officer that attempts to roll back the general approach of the PDP to intensification cannot be supported at a general level. Put simply, given the direction of the NPSUD, removal of the MDRS provisions in the Plan sought, for instance, by Mr Graham Spargo[102] is not a starter.

155. Similarly, suggestions that greenfield development should be prioritised over infill intensification is generally contrary to the focus of the NPSUD (Objective 8) on supporting reductions in greenhouse gas emissions, as well as being inconsistent with the City's zero carbon emission goals.

156. JCA's submission[103] that the effects of intensification should be monitored is well made. However, this is a matter for Council once the Plan is in place, and some experience is gained of its operation. Likewise, the suggestion of the Mt Victoria Residents Association[104] that density should be measured on the basis of the number of people per hectare is a matter for the Council in the future.

157. It follows that we accept the reasoning of the Reporting Officer and adopt his recommendations in relation to the submissions he addresses at Section 4.2 of the Section 42A Report (and in the sections of the Wrap-up/Integration Section 42A Report noted above, at least at the general level at which they are framed.

[102] Submission #211.1
[103] Submission #429.3
[104] Submission #342.2

3.3 Classification of Rapid Transit Service and Stops under the NPSUD

3.3.1 Introduction

158. At paragraph 4.3.1 of the Section 42A Report, Mr Wharton noted a series of submissions seeking variously:

(a) A definition of rapid transit service and/or listing of the rapid transit services and/or stops on each Wellington City rapid transit line;

(b) Specification of the criteria to determine rapid transit services and stops under the NPSUD;

(c) Application of the NPSUD to proposed LGWM mass transit routes east and south from Wellington Railway Station;

(d) Identification of the Johnsonville Rail Line as a rapid transit service and consequential enablement of six stories within its walkable catchment;

(e) Enablement of high density development around the Johnsonville Rail Line irrespective of its classification as rapid transit or not.

159. The reason for submitters' interest in the classification of rapid transit lines is because Policy 3(c) of the NPSUD directs that in Tier 1 urban environments (of which Wellington City is one) District Plans are to enable:

> *"(c) Building heights of at least six storeys within at least a walkable catchment of the following:*
>
> *(i) Existing and planned rapid transit stops;*
>
> *(ii) The edge of City Centre Zones;*
>
> *(iii) The edge of Metropolitan Centre Zones…"*

160. The significance of identifying a rapid transit stop is accordingly to implement the NPSUD (as we are bound to do). It is then necessary to identify a 'walkable catchment' around that rapid transit stop, within which at least six storey buildings must be enabled, subject only to identification and appropriate evaluation of a Qualifying Matter which might justify a lower density of development. Section 3.4 of this Report addresses the second stage of the inquiry (walkable catchments) for the rapid transit stops we have identified.

161. Confirmation that a particular transport stop is not a rapid transit stop is not the end of the matter. We still need to consider the appropriate zoning of the area around the transport stop and, as above, there were submissions[105], who sought enablement of higher density development around the Johnsonville Rail Line irrespective of its NPSUD rapid transit classification. Such submissions, however, depend on the application of more general instructions in the NPSUD that incorporate consideration of a wide range of issues. Put simply, the Hearing Panel has a much broader discretion on such matters than the relatively confined discretion that follows from identification of rapid transit status. Given our findings regarding the Johnsonville Rail Line below, we return to make initial findings on that question later in this section of our report.

162. Consideration of Policy 3(c) needs to take into account the definitions provided of the relevant terms. For those purpose, a rapid transit stop is defined to mean:

> *"A place where people can enter or exit a rapid transit service, whether existing or planned."*

163. Planned for this purpose is defined to mean:

> *"Planned in a regional land transport plan prepared and approved under the Land Transport Management Act 2003".*

164. Rapid transit service is defined to mean:

> *"Any existing or planned frequent, quick, reliable and high-capacity public transport service that operates on a permanent route (road or rail) that is largely separated from other traffic."*

165. Public transport on roads in Wellington City does not meet the last of these requirements. While there are dedicated bus lanes along sections of various bus routes, we did not hear evidence that any bus service met the test of being "*largely separated from other traffic*".

166. Accordingly, the debate focussed on rail services.

[105] Oliver Sangster [#112.7]; Matthew Gibbens [#148.3] and Bruce Rae [#334.2]

167. The PDP proceeded on the basis that the stops on the Kāpiti rail line at Kenepuru[106], Linden, Tawa, Redwood and Takapu are rapid transit stops, and no submissions sought to dispute that position.

168. The PDP similarly proceeded on the basis that the Kelburn Cable Car was not a rapid transit service, and again, we have not identified any submission that sought to challenge that view.

169. The matters that were the subject of challenge, as above, were the status of the LGWM mass rapid transit lines and the Johnsonville Rail Line.

170. As regards the former, the submitters seeking recognition of the LGWM routes[107] did not appear before us, and Mr Wharton recommended rejection of their submissions on the basis that while the Wellington RLTP includes budget lines for planning the LGWM mass rapid transit system and a dotted circle showing a general map location, specific service or stops have yet to be identified. He advised that decisions on the location of these stops and the construction and operation of the mass rapid transit service are still to be taken[108].

171. We agree with Mr Wharton that it cannot seriously be suggested that the LGWM routes be identified for this purpose, given that even indicative station locations are not available[109]. We therefore recommend that the submissions seeking that identification be rejected.

172. The position was much less clear in relation to the Johnsonville Rail Line. That service incorporates stops at Johnsonville, Raroa, Khandallah, Box Hill, Simla Crescent, Awarua Street, Ngaio, and Crofton Downs, before it arrives at the Wellington Central Station.

173. Mr Wharton's advice was that the location of the Johnsonville and Wellington Railway Stations within the Metropolitan Centre Zone and the City Centre Zone respectively meant that the classification of the Johnsonville Rail Line was academic to identification of an area of greater intensification (at least six storeys) in either Johnsonville or Wellington

[106] The Kenepuru Rail Station is in fact within Porirua City, but sufficiently close to the local authority boundary that its walkable catchment extends into Wellington City
[107] Simon Ross (#37.3); Coalition for More Homes (#76.11)
[108] Stream 1, Section 42A Report at paragraph 136
[109] Announcements made following the change of central government calling the future of LGWM into question only reinforce that view.

Central; Policy 3(c) already requires identification of walkable catchment from the edge of the Metropolitan Centre Zone (Johnsonville) and the City Centre Zone.

174. The significance of the classification of the Johnsonville Rail Line was accordingly for the intermediate stations and we heard much argument and evidence on the question as a result.

175. The first step in the classification process for the Johnsonville Rail Line is to explore in greater detail the tests that a rail line needs to meet before it can be classed a rapid transit service.

3.3.2 Interpreting and Applying NPSUD Provisions re Rapid Transit Stops to Johnsonville Rail Line

176. The approach required to Plan interpretation questions such as the identification of a 'rapid transit' service for the purposes of Policy 3(c) is not in doubt. The leading authority is the decision of the Court of Appeal in *Powell v Dunedin City Council*[110] which held that while it is appropriate to seek the plain meaning of a rule through a study of the words themselves, it is not appropriate to undertake that exercise in a vacuum, without regard to context. Regard must be had to the immediate context (including the relevant objectives, policies and methods of the relevant section) and, where any obscurity or ambiguity arise, it may be necessary to refer to other sections of the Plan and the objectives and policies of the Plan itself.

177. The tests that have to be applied are similarly not in doubt. As above, the definition of 'rapid transit service' poses five questions. Specifically, is the service currently, or planned to be:

(a) Frequent?

(b) Quick?

(c) Reliable?

(d) A high-capacity public transport service?

[110] [2004] 3 NZLR 721

(e) And does it operate on a permanent route that is largely separated from other traffic?

178. Clearly the Johnsonville Rail Line satisfies the fifth question. It is largely separated from other traffic.

179. The other four questions are, however, more difficult to answer.

180. Mr Wharton suggested to us that if one of the above 'descriptives' happens not to apply to a proportion of the service, this is not necessarily a fatal flaw that rules out the whole service being defined as rapid transit. He emphasised the need to form a view on the service as a whole, not on segmented parts.

181. Counsel for the Council, Mr Whittington pursued that point in his opening submissions, pointing out to us the fact that there are numerous case authorities reading "*and*" to mean "*or*".

182. Counsel for WCCT, Mr Ballinger challenged the applicability of such cases. While he accepted that the service had to be assessed as a whole, Mr Ballinger submitted that each criterion must be met before the service can be described as rapid transit. He said that the cases reading "*and*" to mean "*or*" were based on situations where a literal interpretation would not make any sense.

183. By the Council's reply, Mr Whittington had retreated from the position apparently advanced in opening, saying that he was not suggesting that this is a scenario where the correct interpretation requires "*and*" to be read as "*or*", but rather one where when interpreted in light of purpose and context an 'impressionistic' assessment of the service is required in terms of the four relevant characteristics.

184. Against this background, we think that all four criteria do need to be satisfied. The difficulty is that, as Mr Wharton pointed out, these are descriptive words without any measurements. Another way to put that is that the NPSUD provides no reference point for determining how fast a service must be to qualify as *fast.* Similarly, how *reliable*? How *frequent*? *High capacity* relative to what?

185. These are difficult questions, but we can say with some confidence that the answers we give to them are not assisted by various documents that Mr Wharton referred us to that characterise the Johnsonville Rail Line as a rapid transit service. He identified the RLTP,

the Wellington Regional Public Transport Plan 2021 (**RPTP**) and the Wellington Regional Growth Framework in his regard. He placed more weight on the RLTP than the other documents because, as he noted, the NPSUD states that the RLTP is to be used to identify 'planned' rapid transit services. We do not think that follows. If the NPSUD had intended the RLTP be used to determine whether a particular service qualifies as a rapid transit service, it would surely have said so. However, it makes sense to us that the RLTP might be considered an authoritative guide as to what transport improvements are planned, since its primary function is to set out transport priorities within each region for the next 10 years[111].

186. As far as we can see, none of the documents Mr Wharton referred us to, as above, show any indication that their authors considered the tests/criteria in the NPSUD when arriving at the view that the Johnsonville Rail Line is a rapid transit service. We put to one side also the tabled advice from GWRC that it considered the Johnsonville Rail Line to be a rapid transit service also, for the same reason. We also note the evidence that Mr Taylor of the JCA produced that this appears to have been a view that GWRC has come to somewhat belatedly.

187. We also put little weight on the MfE guidance document[112] which states that train stations on the commuter rail services in Wellington are an example of existing rapid transit stops. We will have more to say on the relevance generally of MfE guidance documents in our discussion of walkable catchments in Section 3.4.2 below, but for present purposes, it is sufficient to note that even if we regarded MfE Guidelines as being a source of authoritative comment (which we do not), this is a general description. It does not say **all** rail stops qualify.

188. Lastly, Mr Wharton put some weight on the One Network Framework Movement and Place Classification (**ONF**), which is a national classification system by Waka Kotahi to determine the functions of roads and streets. Unlike the other documents Mr Wharton referred us to, the ONF does indicate that the NPSUD criteria had been considered, and he quoted a passage from a March 2021 version suggesting that all metro rail corridors qualify as rapid transit services. Dr Helm for WCCT, however, provided us with evidence that the version Mr Wharton had referred us to was a draft discussion document, that the

[111] Land Transport Management Act 2003, section 16
[112] Understanding and implementing intensification provisions for the National Policy Statement on Urban Development 2020.

current version of the ONF Classification Guidance dated November 2022 no longer classes all metro rail as rapid transit, and that Waka Kotahi has issued classification guidance that describes the Johnsonville Rail Line as meeting a lesser (PT4) standard. That document, in our view, provides an indication of the possible answer but, in our view, we are assisted more by a systematic assessment of each criterion against any relevant benchmarks.

189. We similarly put to one side the Wellington Rail Programme Business Case (July 2022) that Mr Georgeson placed considerable reliance on in his evidence for Stride Investment Management and Investore Property Ltd. Quite apart from the fact that this document is not the RLTP, Mr Wharton advised us in his reply that the rail programme business case is a proposed 30-year investment programme that has yet to go before the Waka Kotahi Board for confirmation and, before it advances, each listed project would be the subject of separate business cases to test the priority projects in the programme business case. Mr Wharton did not regard options contained in such a broad programme business case as meeting the test of being "*planned"* in the RLTP. We agree with that view.

190. We were accordingly most assisted by Mr Wharton's careful analysis of each consideration in his Section 42A Report, supplemented by the material in his written reply, and by the evidence of Dr Helm and Mr Wignall for WCCT that undertook a similarly structured analysis.

191. The contribution of other parties who expressed a view on the issue without providing a clear analysis based on the NPSUD criteria was of rather less assistance.

192. We think it is significant that of the three witnesses who undertook a detailed analysis, as above, only Mr Wharton concluded that the Johnsonville Rail Line qualified as a rapid transit service, and he accepted that it was "*finely balanced"*[113]. Dr Helm and Mr Wignall were somewhat more definitively in the opposite camp, concluding that the Johnsonville Rail Line was not a rapid transit service.

193. We propose to work through each of the NPSUD criteria before reaching a final conclusion.

[113] Stream 1 Reporting Officer Reply at paragraph 33

3.3.3 Testing the Johnsonville Rail Line Against NPSUD Criteria

Speed

194. It is fundamental to a "*rapid transit service"* [emphasis added] that it is quick. The problem, as above, is to determine what speed qualifies as being "*quick"*.

195. This was the point that some of the lay people we heard from struggled with. Having taken the train from Wellington Railway Station to Johnsonville ourselves, it is obvious that the train winds quite slowly up the steep incline of the Ngaio Gorge and that one would not immediately describe it as quick, even on the flatter sections of the route. Mr Wignall's evidence was that the maximum operating speed is approximately 50km per hour and that the average rail travel time from Wellington to Johnsonville, including stops, is 22-27km per hour. As former Mayor Foster pointed out, this is significantly slower than the Kāpiti and Hutt Rail Lines that reach speeds of 100km per hour.

196. On the other hand, Aesop's classic fable "*The Hare and the Tortoise"* teaches us that instantaneous speed is not everything. Messrs Wharton, Wignall and Helm sought to put the speed of the Johnsonville Rail Line into context by comparing the speed of the rail service with competing modes of transport along the same route.

197. There appeared to be a consensus between these expert witnesses that train travel to Wellington Railway Station from the stations closest to it (Crofton Downs, Ngaio, Awarua Street) was quicker than bus or private car alternatives, but that buses and private cars were quicker from the stations at the top end of the line (Raroa and Johnsonville) into Wellington. The evidence was more equivocal for the stations in between (Simla Cres, Box Hill and Khandallah). The train compared less favourably in off-peak times based on an analysis prepared by Ms Ward and Mr Collingbourne of ORCA that Mr Wharton had provided to us, but the comparison appeared more evenly balanced during peak hours. We consider the evidence supports a conclusion that at these intermediate stations, there was no marked advantage taking the train compared to private cars that would overcome the problem that having got to Wellington Railway Station, almost all commuters will have some greater or lesser distance to go from there to their ultimate destination (a point made by Dr Helm[114]). We accept that the Johnsonville Rail Line is no different to other Wellington

[114] On a more personal note, Mr Ridley-Smith told us that when he lived almost over the road from the Box Hill Station, he never took the train because it didn't take him where he wanted to go.

and Auckland rapid transit services that deliver their patrons to a single point[115], but we think it is relevant when comparing the train service with alternatives open to passengers.

198. Given the evidence on that comparison, we asked Mr Wharton to consider the possibility that part of the Johnsonville Rail Line might appropriately be classed as a rapid transit service, but not the whole line. He recommended that we treat the full length of the Johnsonville Rail Line as one public transport service, both because the service does not change its characteristics from one station to another[116] and because while currently, most passengers use the Johnsonville line to get to Wellington City, there are exceptions and as Johnsonville grows and develops, it will increase in attractiveness as a destination.

199. We asked Mr Wharton also if there were any passenger breakdown numbers that would enable us to form a view as to whether the 'quick' section of the rail line represented a majority or minority of total passenger numbers, but he was unable to supply that data.

200. We think that at least in theory, part of the Johnsonville Rail Line could be treated as a rapid transit service meeting the quickness criterion. However, this would in our view be an artificial distinction, and we agree with Mr Wharton that it is more appropriate to treat it as a complete service.

201. We were accordingly left with a position where it is at best dubious whether the Johnsonville Rail Line is quick for the purposes of the NPSUD.

Reliability

202. Mr Wharton's evidence was that the Johnsonville Rail Line is relatively reliable and unaffected by traffic congestion. The latter is unsurprising given that it operates on its own line. He quoted Metlink records as indicating that the percentage of scheduled Johnsonville line services that were not cancelled, were not at capacity, and that stopped at every station was 97.5% for the 2019/2020 year and that the percentage of services running within five minutes of the scheduled time was 96.5%. He advised that both measures compared favourably with the Kāpiti Rail Line.

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[115] The reality is that New Zealand's relatively small cities will never have a rapid transit network whose spatial coverage will be comparable for instance with 'the Tube' in London.
[116] He compared the Hutt and Kāpiti lines that change trains to those adapted to long-distance commuting beyond Upper Hutt and Waikanae Stations respectively.

203. While impressive, Mr Collingborne's evidence for ORCA was that these percentages do not count the number of times the rail service has been substituted by a bus. His evidence was that in recent times, reliability has been poor with many bus replacements.

204. Mr Wharton accepted that the service had suffered from recent poor reliability due to slips and upgrades. Mr Wharton also accepted Mr Wignall's evidence that dew and frost on steep parts of the Johnsonville Rail Line make slippery track conditions which adversely affect service reliability and that delays from one service can compound delays through the day.

205. In his view, however, it fundamentally qualifies as reliable.

206. Dr Helm did not express a strong view on reliability issues.

207. Our summary of the evidence is that while not wholly clear, it appears that the Johnsonville Rail Line meets the reliability criterion.

High Capacity

208. Mr Wharton provided us with an analysis he had prepared, indicating that the capacity of the Johnsonville Rail Line is sufficient to allow for projected population growth in the suburbs it services, but that the capacity of the current service may need to be increased in the 2035-2050 period.

209. There was some initial confusion in the evidence as to the ability to expand the line's capacity. WCCT produced 2020 advice from Metlink that one of the platforms on the Johnsonville line was not big enough for anything more than a four-car train. In reply, however, Mr Wharton advised that more recent upgrades had meant that all platforms are sized for six carriage trains, although he separately noted that a new buffer stop has been put in at Johnsonville so that the platform may be too short now for six carriages.

210. More to the point, in terms of the NPSUD definition, Mr Wignall advised that there are no planned improvements to increase rail capacity in the RLTP.

211. He observed that the current maximum seated capacity is 1176 people per hour at the maximum capacity the line can accommodate. He did not consider this to be high capacity, citing an Auckland Council study comparing rapid transit favourably to the capacity of a single lane of traffic at 800-2000 vehicles per hour. In other words, rapid transit should provide significantly more capacity than a single lane road.

212. Dr Helm made similar points. He also analysed the capacity of the line to respond to population increases, suggesting that when peak service patronage hits capacity, there will be one service in the busiest month that some passengers cannot board, and when peak hour patronage hits capacity, some passengers would be unable to board around half the peak hour trains that month, with knock on effects of timely running. He also forecast adverse effects on road capacity resulting from increased road patronage associated with additional intensification.

213. Dr Helm accepted that even the revised ONF used a threshold of 1000 passengers a day for rapid transit, but in his opinion, this was far too low. Mr Wignall agreed, noting that a single bus per hour would provide equivalent passenger capacity.

214. To our minds, this is very much a chicken and egg scenario. Currently, the Johnsonville line has high capacity relative to the number of passengers seeking to use it, but the comparison Dr Helm drew with a single lane of traffic is telling.

215. Mr Wharton suggested that if rail service upgrades are unable to cope with increased demand, increased bus services can supplement rail services. We do not think that this is an adequate answer. If buses are required to supplement the train service, that would tend to suggest to us that the train service is not of sufficiently high capacity.

216. Mr Wharton also fairly acknowledged that the ONF capacity limit is low in his written reply. He also noted that it is not determinative for deciding rapid transit descriptors.

217. We agree with the Auckland Council analysis. Rapid transit services work when they can shift more people more quickly than the roads. If they cannot do that, all other things being equal, people will be incentivised to continue relying on their private vehicles.

218. In summary, we regard the assessment of the Johnsonville Rail Line against the "*high capacity"* criterion as dubious at best.

Frequency

219. Mr Wignall's evidence was that the Johnsonville Rail Line operates every 15 minutes at peak times, every 30 minutes off-peak (7am to 7pm) and on weekends, and hourly early and late at night.

220. Dr Helm compared this frequency with a 'turn up and go' service. His evidence was that frequency 'turn up and go' is an often-used criterion for rapid transit as it provides a

step-change in quality of service. The concept is that people do not need to worry about the timetable because they know, if they arrive at the station, a train will be there in short order. Dr Helm's evidence is that a ten minute frequency is the benchmark most often cited in the transport policy literature for turn up and go. He also recorded that it has some empirical support as a threshold for behavioural change.

221. Dr Helm cited Auckland Transport commentaries that suggest rapid transit services operate services enable users to turn and go and most times of day, seven days a week, and that a true turn up and go frequency would be a minimum of every ten minutes. Auckland Transport, however, accepts a threshold of 15 minute frequencies 7am to 7pm seven days a week for a rapid transit assessment.

222. Mr Wignall made similar points.

223. Mr Wharton cited comparisons with the Kāpiti and Hutt lines which, at most stations, operate every 20 minutes at peak times and every 30 minutes off-peak. He emphasised that those lines, along with the Auckland lines that he instanced with similar frequencies, are accepted as rapid transit services.

224. He accepted, however, that these other lines have plans for higher off-peak frequencies. He also recorded that increasing peak frequency to every ten minutes is not planned for the Johnsonville Rail Line, and if put in place, would likely affect timetabling reliability.

225. It seems to us that this is perhaps the clearest instance of the Johnsonville line failing to meet one of the scheduled criteria. While Mr Wharton is right to draw comparisons to other accepted rapid transit lines to our attention, as above, they have plans to increase frequencies and Johnsonville does not. Mr Cribbens, for Waka Kotahi accepted that the existing service is not rapid transit, primarily because of the inter-peak frequencies. However, he suggested that based on documents such as the RLTP and RPTP, he believed that improvements could be considered 'planned'. Mr Cribbens did not point us to where in those documents such planned improvements are set out and Messrs Wharton and Wignall agreed that this was not correct, at least as regards the RLTP, which is the relevant document for the purposes of the NPSUD.

226. We find that the Johnsonville Rail Line service is not frequent, and nor is it planned to become frequent in the sense required by the NPSUD.

3.3.4 Overall Finding- Rapid Transit or Not?

227. As above, our finding is that the Johnsonville Rail Line does not meet all of the criteria in the NPSUD, and that there are good arguments that it fails a number of the criteria.

228. As against that, a number of parties pressed on us the need to facilitate intensification in the western suburbs served by the Johnsonville Rail Line. Mr Marko Garlick for Generation Zero suggested to us that the requirement for a rapid transit service merely fulfils the role of a proxy to identify areas suitable for intensification.

229. By contrast, Mr Wharton, correctly in our view, told us that it was not appropriate to assess whether the Johnsonville Rail Line was a rapid transit service by reference to the appropriateness of intensification along the corridor[117].

230. In our view, the argument made by Mr Garlick and others puts the cart before the horse. The NPSUD focuses on walkability to rapid transit services because, in our view, ready availability of such services will likely mean that they are utilised. One cannot assume that every person within a walkable catchment of a rapid transit service will utilise the service, but the premise of the NPSUD is that many are likely to do so. This is the context that the caselaw directs we keep in mind.

231. By contrast, if a train service is not in fact a rapid transit service, the scenario painted by Dr Helm is likely to take effect. Intensification in outer suburbs will lead to greater levels of car use, more road congestion, and more greenhouse gas emissions, contrary to Objective 8 of the NPSUD.

232. In summary, we find that the Johnsonville Rail Line is not a rapid transit service for the purposes of the NPSUD Policy 3(c).

3.3.5 Consequences of Our Finding

233. If the Johnsonville Rail Line is not a rapid transit service, as we have found, that removes the requirement in NPSUD Policy 3(c) to define a walkable catchment around the stations on the line between the Wellington Railway Station and the Johnsonville Railway Station.

[117] Stream 1 Reporting Officer Reply at paragraph 32

234. Mr Wharton helpfully considered that potential outcome from our deliberations and recommended selected height increases to 14 metres near the Khandallah Local Centre – refer his Figure 15. He regarded the end result as more consistent with the direction of the NPSUD and the notified Plan's overall pattern of enabling building density near local centres.

235. While a final determination of our views to the appropriate heights in residential areas adjacent to local centres must wait until the conclusion of Hearing Streams 2 and 4, Mr Wharton's recommendation appeared logical to us, and we provisionally accept it.

236. Mr Wharton also recommended that definitions of 'rapid transit' and 'rapid transit stop' be added and amended respectively to set out the definitions in the NPSUD and to state, for the avoidance of doubt, which lines are considered to be rapid transit services.

237. We accept that this would be helpful, but given our finding above, reference to the Johnsonville Rail Line and the Johnsonville Rail Line stations should be deleted from the suggested definitions.

238. The definitions we recommend are therefore:

> *"RAPID TRANSIT has the same meaning as 'rapid transit service' in the National Policy Statement on Urban Development 2020, as follows: 'means any existing or planned frequent, quick, reliable and high-capacity public transport service that operates on a permanent route (road or rail) that is largely separated from other traffic'. For the avoidance of doubt, rapid transit within the boundaries of Wellington City includes the Kāpiti Rail Line and the Hutt/Melling Rail Line."*
>
> *"RAPID TRANSIT STOP means a place where people can enter or exit a rapid transit service, whether existing or planned. For the avoidance of doubt, rapid transit stops with walkable catchments within the boundaries of Wellington City include Wellington Railway Station, Ngauranga Railway Station, and the Kāpiti Rail Line's Takapu Road, Redwood, Tawa and Linden stations. The Kenepuru Rail Station is a rapid transit stop but only part of its walkable catchment is within Wellington City."*

3.4 Size and Definition of Walkable Catchments to Implement NPSUD Policy 3(c)

3.4.1 Introduction

239. As already noted, NPSUD Policy 3(c) requires the identification of 'walkable catchments' around city centres, metropolitan centres and rapid transit stops, within which

buildings of at least six storeys must be enabled, subject only to potential Qualifying Matters.

240. In Section 4.4.1 of the Section 42A Report, Mr Wharton noted a number of submissions seeking to define walkable catchments either in terms of distance (from the relevant centre boundary or rapid transit stop) or time.

241. Waka Kotahi[118], for instance, sought identification of a walkable catchment of 800 metres from all rapid transit stations as a minimum. Conor Hill[119] sought walkable catchments of 20 minutes from all stations on the Kāpiti and Johnsonville Railway Lines. Mr Hill similarly sought a 20 minute walkable catchment from the City Centre Zone and from the Johnsonville and Kilbirnie Metropolitan Centres[120].

242. Waka Kotahi[121] sought a minimum of 1.5 kilometres from the Centre City Zone and 800 metres from Metropolitan Centre Zones.

243. These appear to be the largest walkable catchments sought and there are a wide variety of shorter distances and times sought by other parties.

3.4.2 Interpreting the NPSUD Provisions re Walkable Catchments

244. The NPSUD contains no definition of what a walkable catchment is, or how it might be defined. Accordingly, this question requires consideration through application of the established principles of plan interpretation discussed in section 3.3.2 above.

245. The literal meaning of walkable is 'ability to walk'. That meaning is captured, for instance, as one of two alternatives proffered by Dictionary.com:

"Capable of being travelled, crossed, or covered by walking."

246. The problem with that definition is that different people have different abilities and in practice most parts of New Zealand are 'capable' of being walked. Some people could walk from Cape Reinga to Bluff, but most cannot, and an even fewer number would choose to do so, particularly on a regular basis. Closer to the current context, many people could

[118] Submission #370.43
[119] Submissions #76.10 and #76.12
[120] Submissions #76.13-76.15
[121] Submission #370.43

walk 4-5 kilometres, particularly on flat ground, but whether many people would choose to spend the time required walking that distance to and from work each day is doubtful[122].

247. The second alternative meaning proffered by Dictionary.com captures some of those considerations:

> *"Suited to or adapted for walking".*

248. This meaning aligns with the online Cambridge Dictionary, which suggests that when used to describe an area, the appropriate definition is *"pleasant, easy, and safe to walk".* One of the examples provided by that authority of its application links walkability to the *"availability of parks, paths and coffee shops"* and we agree that in a Wellington context, the last in particular is a relevant criterion (some might describe it as being essential).

249. Mr Wharton summarised the approach of the District Plan as being to base the definition of walkable catchments on a ten minute walkable area with the catchment being able to be reduced to five minutes "*where there are limited or no local shops and services nearby, public transport services are limited, transit-orientated development potential is limited by topography, reserves or other constraints, or pedestrian routes have poor connectivity or quality".*[123]

250. In the following paragraph, Mr Wharton suggested that the walkable catchment area might be increased from ten minutes where there are "*lots of local shops and services, frequent public transport options, transit-orientated development potential is high, and the area has good pedestrian and micro-mobility services to allow safe, convenient and efficient access to the rapid transit stop or centre".*

251. Basing a walkable catchment on time raises the obvious question of what speed of walking is assumed. Ms Orla Hammond gave extensive evidence on the development of a walkable model that she had developed for the Council. Her evidence was that walking speed is highly subjective and that the average speed quoted in the literature of 1.5m/s (or 5km/hour) is skewed because the data underpinning it was provided by active walkers who cannot be assumed to represent the general population. Her investigations suggested an average speed of 0.93m/s for low, 1.1m/s for moderate and 1.35m/s for fast walking

[122] Ms Hammond cited authorities suggesting that people are unlikely to walk more than 10 minutes to public transit services and are inclined to take private transport for journeys more than 30 minutes in urban areas.
[123] Section 42A Report at paragraph 269

speeds on flat slopes. This was then adjusted (reduced) to account for slope effects, depending on the gradient either up or down hill.

252. Counsel for Kāinga Ora criticised the Council's approach as too simplistic, and not providing for future growth of the City due to its limiting nature.

253. Ms Caldwell argued that:

(a) An 800 metre/ten minute walkable catchment is the appropriate minimum standard for train stations based on international standards;

(b) The slower walking speed applied by Council reduces the extent of walkable catchments;

(c) The application of the Council's methodology to rapid transit stops has produced walkable catchments which fail to give effect to Policy 3(c) of the NPSUD;

(d) The Council has failed to consider existing data showing people are already walking at least 1500 metres to access the City Centre Zone.

254. She confirmed that Kāinga Ora sought walkable catchments of ten minutes for all rapid transit stops on the Kāpiti and Johnsonville Lines, 10 minutes from the edge of Tawa, Miramar and Newtown centres, and 20 minutes from the edge of the City Centre Zone[124]. Counsel's submissions were supported by the evidence of Messrs Cullen, Rae and Heale in this regard.

255. We record that counsel for Kāinga Ora sought to apply similar principles to the Local Centre Zones in the notified Plan (in particular to Miramar, Newtown and Tawa that Kāinga Ora sought be identified as Town Centre Zones). We think that such arguments were misconceived. Policy 3(d) of the NPSUD governs the application of higher densities in the vicinity of both Town and Local Centre Zones. It does not employ the mechanism of a 'walkable catchment', but rather directs building heights and densities of urban form in areas 'adjacent' to those zones that are commensurate with the level of commercial activity and community services they provide. We infer that the intention is that in the vicinity of such zones, the area identified is smaller than a walkable catchment because they provide fewer services and a generally lower level of commercial activity than do City Centres and Metropolitan Centres. We also infer that the wording of this policy indicates a recognition

[124] Stream 1 legal submissions for Kāinga Ora, paragraph 7.3

that smaller centres vary considerably in terms of the level of commercial and community services they provide, and thus the Plan-enabled intensification around these types of centres will depend on context and urban form.

256. How much smaller, and what areas should be identified for more dense development and greater building heights than the MDRS is addressed in Report 2A.

257. Returning to walkable catchments, we note that Mr Rae recorded, when he gave evidence in the Stream 1 hearing, that he was reviewing the ambit of the walkable catchments Kāinga Ora had sought to identify if reductions might be required in some locations. He returned to this issue in Stream 2 where he stated[125] that a reduction in walkable catchment size (and therefore the application of higher densities) may be appropriate where the ability to achieve a walkable catchment is very constrained with safety issues and urban fabric discontinuity. The elements he noted as potentially applying included:

(a) Poorly connected areas separated by open spaces or natural features such as cliffs and rivers, or infrastructure such as motorway and railways;

(b) Consistent built form response to land form;

(c) Narrow streets (<12 m), or where pedestrian connectivity is poor and hard to achieve in the future;

(d) Streets steeper than 11 degrees (1:5) 20% and with consideration of street gradients above 12.5% except where stairs are provided;

(e) Low (re)development opportunities (high value housing stock);

(f) High coastal hazards such as inundation and tsunami risk (avoid high risk areas; manage in medium risk areas).

258. The maps Mr Rae tabled in Stream 2 showed the application of these principles with him recommending abandonment of a number of areas that Kāinga Ora's submission had identified as being within a walkable catchment.

[125] Nick Rae, Stream 2, Evidence in Chief at 3.3

259. Counsel for MHUD placed considerable reliance on MfE guidelines, quoting a suggestion in those guidelines that, while a distance of ten minutes (or 800m) should be the minimum walkable catchment in all urban areas, Tier 1 local authorities such as Wellington City should extend this threshold further *"to account for local factors, including street layout, topography, connectivity and urban amenity".*

260. In his evidence for Waka Kotahi, Mr Cribbens supported identification of walkable catchments based on 800 metres from rapid transit and metropolitan centre catchments and 1500 metres for the City Centre as the appropriate starting point. He provided us with considerable detail based on census data indicating the propensity of Wellingtonians to walk from inner city suburbs into the City to work, and also expressed his view that in this context it was inappropriate to base walking speeds on slow to moderate walkers (as Ms Hammond had suggested). He considered[126] that an average walking speed is more appropriate for spatial land use planning than a slower one, on the basis that it will reduce the range of living options for people, putting those who can walk faster in more direct competition with those who can't.

261. Mr Cribbens also relied on MfE guidance suggesting that a walkable catchment is the area an average person could walk.

262. Presenting a different perspective, we heard lay evidence from the Pukepuke Pari Group, and from Mr Ridley-Smith opposing extension of a walkable catchment up Hay Street, because of its steepness and distance from the Central City, from Dr McIntosh on behalf of the Lower Kelburn Residents Group pointing to the steepness of Bolton Street and Aurora Terrace as a clear disincentive to walking, and from Ms Hilary Watson who is a long standing Newtown resident who observed that a 15 minute walkable catchment from the Central City extending into Newtown still left another 30-40 minute walk to get to the City Centre proper. As she noted, having walked 15 minutes from the edge of the 'walkable' catchment the PDP defines in Newtown, you have arrived at the VTNZ Centre.

263. Stating the obvious, walking is something that almost everyone can do. Commenting on the ability (and ease) of walking particular distances is not, therefore, the sole preserve of experts, and we found the evidence of the lay people we heard who have walked the routes in question many times helpful.

[126] Refer A Cribbens Stream 1 Evidence in Chief at 6.50

264. It suggested to us, in particular, that the Council methodology might be flawed, because it failed to take account of the influence steep Wellington slopes have on the readiness of people to walk. It assumed they would just walk more slowly[127].

265. We sought to test these issues with a number of witnesses who appeared before us and the general answer seemed to be that there was little if any data on what slopes people were happy to walk up on a regular basis. The material Mr Cribbens provided to us based on census data appeared a promising source of information, but when he checked the exact question people had been asked, it was what mode of transport they used to walk **to** work. The topography of Central Wellington (and also many of the other centres within the City such as Johnsonville and Newtown) is one of an amphitheatre. We can readily believe that people might walk a reasonable distance to work, because that is generally downhill. That did not tell us, however, how they get home (back up the hill from which they have come). We do not consider that an area can be considered within a walkable catchment if people have to rely on other modes of transport to travel in one direction.

266. We also have considerable reservations about the weight we should give to MfE guidance on the interpretation and application of the NPSUD.

267. While counsel for MHUD, Mr Cameron, referred us to a legal textbook that suggested Courts have on occasion had regard to the conduct by those charged with administration of an Act in a complex area after an Act has been passed, the examples he gave did not seem to us to be readily applicable. Mr Cameron referred us to the release of public information bulletins by the Inland Revenue Department, as well as binding taxation rulings, which are intended to clarify the application of complex statutes. The latter at least are specifically provided for in the Tax Administration Act 1994 (Part 5A).

268. The specific example he provided of utilisation of extraneous MfE materials[128] seemed to us to be an orthodox application of interpretation principles, with the High Court having regard to MfE commentary on the draft of the National Planning Standards when seeking to interpret the final enacted Standards. Mr Cameron accepted that it may not be particularly apposite.

269. By contrast, as we pointed out to Mr Cameron, the Environment Court has expressed considerable concern about reliance on the content of MfE guidelines on National Policy

[127] See e.g. Ms Orla Hammond's Figure 12, and Table 8
[128] Poutama Kaitiaki Charitable Trust v Taranaki Regional Council [2022] NZHC 629

Statements: thus, for instance, in *Greater Wellington Regional Council v Adams and Others*[129] the Court said:

> *"Firstly, we note that NPS-FM is a statutory instrument established under Part 5 (ss45-55) RMA, changes to which must be affected in accordance with s53. The proposition that a definition contained in such a statutory instrument might be altered in some way or its application affected by operation of non-statutory instruments such as the guidance document and hydrology tool is one with which we have extreme difficulty as a legal proposition…"*

270. The same point was made even more strongly by the Environment Court in *Federated Farmers of New Zealand and Others v Northland Regional Council*[130], which put its reasoning firmly on the basis of constitutional principle.

271. More recently, in *Gray v Dunedin City Council*[131], the Court stated that it was not prepared to give any weight to the discussion of a National Policy Statement (in this case the NPSHPL) in MfE guidelines.

272. We respectfully concur. If MfE had wished to provide a definition of walkable catchments in the NPSUD, the option was always open to it to advise the Minister to provide that guidance within the statutory document itself. Having not taken that option, or having its advice not followed (we do not know which is the case), we do not think that MfE can utilise this sort of non-statutory 'guidance' as an opportunity to materially influence the application of the NPSUD.

273. We also think that the legal submissions for Kāinga Ora, and the evidence of Mr Cribbens for Waka Kotahi, suggesting that walkable catchments should be defined to enable greater areas of intensification, approached the issue the wrong way round. Our reading of the NPSUD is that areas of intensification are defined because they lie within a walkable catchment, rather than walkable catchments being defined by reason of the desirability of enabling intensification. If the latter were intended, the reference to walkability serves no purpose. It follows that we do not accept the suggestion of counsel for Kāinga Ora that the role of walkable catchments in the NPSUD is to act as a proxy.

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[129] [2022] NZEnvC25 at [136]
[130] [2022] NZEnvC016
[131] [2023] NZEnvC45 at [205]-[207]

274. Thus, while counsel for Kāinga Ora is correct that a slower walking speed reduces the extent of walkable catchments, the issue is whether a slower walking speed than Kāinga Ora proposed more appropriately captures the area of walkability.

275. It seemed to us that the correct reasoning process might be derived by analogy from the process for identifying outstanding natural landscapes under the RMA, where the Court of Appeal has held[132] that identification of an outstanding natural landscape is a question of fact guided by professional opinion, and that the planning consequences flowed from that identification, rather than the identification of the outstanding natural landscape being influenced by the planning consequences.

276. Counsel for Kāinga Ora's response[133] was to draw attention to potential points of distinction between the process for identifying an outstanding natural landscape from that of identifying a walkable catchment. We agree, for instance, that the latter arises in the interpretation of a National Policy Statement, whereas the former seeks to interpret the instructions in Part 2 of the RMA, but we consider that rather beside the point. The issue was whether some guidance might be taken from the process the Court of Appeal has endorsed.

277. We agree also that identification of a walkable catchment is somewhat subjective. Whether it is more subjective than the process for identifying outstanding natural landscapes, however, is arguable in our view.

278. While there is clearly some science used in the various methodologies we were presented with for determining walkable catchments, how that science is being used is a developing field, and is based on many assumptions and suppositions. Ultimately, some subjective judgement is required. We note the evidence of Kāinga Ora's urban designer, Nick Rae, who used terms such as convenient, useful, safe, comfortable, and interesting in relation to walkable catchments[134]. In large degree, these terms are inherently qualitative in nature. Mr Rae also considered that "*basic distance parameters based on time should be used as a starting point for defining the walkable catchments, then adjusted*

[132] Man O'War Station Limited v Auckland Council [2017] NZCA 24
[133] We gave counsel the opportunity to consider her response to this question and she provided a memorandum dated 28 February 2023 discussing it.
[134] For example, paragraphs 1.4 and 1.9 of Nick Rae Stream 1 Evidence-in-chief, for Kāinga Ora

as required to be larger or smaller depending on the context at each location."[135] Again, context is largely a qualitative concept.

279. Similarly, we agree that the spatial extent of walkable catchments is not solely determinative of the area of higher density, because Policy 3(c) refers to building heights of six storeys within "*at least"* a walkable catchment. However, the walkable catchment defines the area where six storeys are required to be provided for, subject only to potential Qualifying Matters. We therefore consider that there is some value in the analogy, although we accept that it cannot be pressed too far.

280. More importantly, our understanding of the intention underlying a walkable catchment definition is that, if people live within a walkable catchment of a rapid transit stop, they are more likely to use the rapid transit service than private vehicles. This has obvious benefits in terms of the NPSUD Objective 8, which seeks that New Zealand's urban environments support reductions in greenhouse gas emissions, and also contributes to establishment of "*well-functioning urban environments"* in terms of NPSUD Objective 1 and Policy 1.

281. By contrast, if areas are defined for high density living on the basis that they are supposedly within a walkable catchment, but most residents do not in fact walk, this is counterproductive in terms of those same provisions.

282. The Central City is a possible exception. Even if people near the Central City do take their cars instead of walking, this is better from a greenhouse gas emissions perspective than them driving from the outer suburbs into the Central City.

283. That in turn would support Mr Wharton's recommendation that a larger walkable catchment be defined around the Central City Zone than for rapid transit stops and metropolitan centres, although there are other reasons for taking that view which we will come to shortly.

284. The same considerations support Ms Hammond's view that when seeking to establish an appropriate walking speed, the focus needs to be on what the majority of people will do, rather than the fitter, faster, minority.

285. As to the question of whether time or distance is the appropriate starting point, we unquestionably choose time as the relevant criterion in a Wellington context given the

[135] Nick Rae, Stream 1 Evidence-in-chief, for Kāinga Ora, paragraph 1.10

steep slopes that ring the Central City in particular. Ms Hammond provided a convincing analysis satisfying us that the view we had intuitively is in fact correct; that people walk more slowly up a hill. Interestingly, it also demonstrated that people generally walk more slowly going downhill.

286. Starting with an arbitrary distance (like 800 metres) assumes that people will accept a lengthening of the time spent on their daily walking commute that we do not consider was supported by the evidence that we heard. We note for instance that Mr Cribbens agreed that a distance criterion was only suitable for flat routes.

287. In our view, distance is too blunt (and two-dimensional) a parameter as it automatically discards key factors such as topography, the quality, ease and comfort of access, connectivity and amenity.

288. We reject also the contention inherent in the submissions proposing particular distances or times be treated as a minimum, that identifying a walkable catchment is a zero sum game, which starts from an arbitrary distance and only contemplates possible extensions of that distance due to local factors. It seems to us that that approach repeats the errors of early surveyors applying a desktop approach to the design of Wellington street layouts without consideration for the local topography.

289. We prefer the view of Mr Wharton and of Mr Rae (as per his Stream 2 evidence quoted above) that the adjustment goes both ways from the starting point; that is to say expanding or contracting the identified walkable catchment according to a range of local factors.

290. We agree also with Mr Wharton that availability of local services is one of those relevant local factors. In our view, it strains credibility to contemplate a scenario where people will walk to a rapid transit stop, take a train to another location where they can do their supermarket shopping, and return by train, unless their home base is relatively close (certainly a lot closer than 800 metres) to the train station, and the route is flat. The City Centre Zone, and to a lesser extent the Metropolitan Centre Zones, have the greatest level of services accessible by foot, as well as employment opportunities, and it therefore makes sense to define a broader walkable catchment around them, all other factors being equal.

291. We agree also with Mr Rae that walkable catchments need to be adjusted where streets are narrow and pedestrian connectivity is poor. Mr Rae overlaid a test of whether improvements to connectivity would be hard to achieve in the future. We agree with that view, to a point. We accept, in particular, Mr Rae's view that one has to look forward rather

than assessing walkability solely on the basis of conditions at present. However, if current connectivity is poor, we think there needs to be a reason to believe it **will** be improved, not just that it **could** be improved.

292. In relation to steepness, we asked the Council team to consider the hypothetical situation of our determining that the steepness of some streets on the margins of the Central City might be regarded as a barrier to walkability and to suggest defensible boundaries in their Reply, if that hypothesis was accepted. Somewhat unhelpfully, the Council did not do that, but rather gave us further material in the form of expert commentary from Ms Sandra Mandic, a Principal Advisor in Transport Strategy at the Council, with qualifications in exercise physiology and physical activity epidemiology Strategic Transport, identifying with greater precision how steepness at various gradients increases the intensity of exercise. Unsurprisingly (to us at least), Ms Mandic confirmed that walking up the steep streets we had asked the Council team to consider (Hay Street, Bolton Street, Aurora Terrace, Everton Street and Devon Street) would be a vigorous physical activity for most adults. Ms Mandic reasoned that because, in each case, the distances were relatively short, this would be "*doable"* for most adults. With respect, we don't think that is the question. That comes back to the point we discussed at the outset, that the inquiry is one seeking to identify the area which is suitable for walking, rather than the area which is capable of being walked.

293. Moreover, we consider that suitability needs to take into account that, in this particular context (identifying an area which by reason of its walkability is suitable for high density development), we are looking for areas where the majority of people would be happy to walk most days, irrespective of weather.

294. The Pukepuke Pari representatives emphasised the importance of weather in this regard, providing data that suggested that the southern end of Oriental Parade is particularly subject to wind, even by Wellington standards. We accept their point, to a degree, but we also think that Wellingtonians generally are resilient to most winds, and to constantly changing weather patterns, else they would live somewhere else.

295. Ms Mandic's evidence was, however, helpful because she provided hard data confirming our intuitive view that all of the streets we had asked the Council team to consider are seriously steep, on any view.

296. Accordingly, we struggle with Ms Mandic's view that definition of a walkable catchment can disregard the effect of the steepness of the streets being walked in every case. We accept, in particular, the evidence we heard from the Pukepuke Pari Group and from Mr Ridley-Smith that the walk up (and down) Hay Street combined with the distance from the bottom of the hill to the margins of the City Centre Zone is a real disincentive to the walking commuter[136]. Our analysis of walkable catchments therefore looks for like situations. We distinguish those situations from the steep streets (Bolton Street and Aurora Terrace) feeding into the bottom of the Terrace. While those streets are indeed very steep[137], their proximity to the commercial hub of the Central City suggests to us that their residents would nevertheless choose to walk rather than taking a vehicle such a relatively short distance.

297. The final consideration that we identify as being relevant to the definition of walkable catchment in relation to the Central City is derived from the previous point. The services available in the Central City Zone are not uniformly distributed. Large-scale employers are generally located north of Boulcott and Manners Streets, between The Terrace and the harbour edge, and in the streets north of Whitmore Street. Entertainment areas are centred on Courtenay Place and the streets immediately either side of it extending west towards Willis Street. While there are obvious exceptions, by comparison, the level of services and centres of employment in the south-eastern quarter of the Central City Zone is relatively sparse. A submitter from Newtown, Ms Watson, made a telling point when she described the low level of Central City services and attractions arriving at the margins of the notified City Centre Zone when walking from Newtown. We consider, therefore, that there is room to differentiate walkable catchments around the City Centre Zone depending on the particular City Centre Zone boundary that one is stepping out from.

298. Last, but not least, we record that our examination of walkable catchments as part of the Stream 1 hearing was premised on the boundaries of the Central City Zone and Metropolitan Zones as notified. Some submissions sought amendments to those boundaries which, if accepted, would need to be taken into account in the definition of walkable catchments relative to those centres. Our findings on the evidence we heard in

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[136] We discount, however, Mr Ridley-Smith's argument that the walkable catchment boundary in this area should be adjusted to take account of Waitangi Park. Contrary to Mr Ridley-Smith's understanding the CCZ zone boundary is on the southern side of Waitangi Park already.

[137] Ms Mandic identified the steepest part of Bolton Street as having a slope of 19.7% and the 200 metres from the Central City boundary as having an average of 16.225% with Aurora Terrace being even steeper, with a maximum 50 metre length at 26.1% and an average of 21.425% over 197 metres

Stream 1 therefore need to factor in the conclusions arrived at by the Stream 4 Hearing Panel in relation to those submissions. We have noted where this has occurred.

3.4.3 General Approach to Walkable Catchments in Wellington City

299. Applying the factors discussed above, we have determined the following starting point should be used to establish appropriate walkable catchments:

- For Rapid Transit Stops, between 5 and 10 minutes depending on local topography, pedestrian connectivity, the level of services at the railway stations, street and access amenity;
- For the Metropolitan Centre Zone, a 10 minute walkable catchment from the edge of the zone, and
- For the City Centre Zone, a 15 minute walkable catchment from the edge of the zone.

300. For interpolating these parameters spatially 'on the ground', we relied on the evidence of the Council (in particular of Ms Hammond for translation of walkable catchments to spatial areas) and the mapping it provided to the hearing.

301. In relation to Rapid Transit Stops, a greater walking distance was considered reasonable where the local topography was suitable, and where there was a good level of connectivity and amenity. Conversely, where there is more challenging topography and/or the level of connectivity and amenity was poorer, we considered a shorter walking distance was more appropriate.

302. For the Metropolitan Centre Zone, there was general agreement among submitters that a baseline of a 10 minute walking distance was the appropriate metric to apply, given the level of services and amenities provided in each of the two centres, the generally good level of connectivity in and around these hubs, and the pedestrian and street amenities.

303. For the City Centre Zone, we concluded that a 15 minute walking distance was the appropriate base metric for determining the walkable catchment. Adopting Ms Hammond's proposed walking speeds, that is less than the 1200m sought by some submitters.

304. These baseline parameters are useful and appropriate starting points for determining walkable catchments. In line with the advice of both Mr Wharton for the Council and Mr

Rae for Kāinga Ora, we then examined the specific environmental context around the CCZ, the two MCZs, and each Rapid Transit Stop, to adjust the outer limit of the walkable catchments to take into account such factors as topography, the presence or absence of shops and services, and the level, safety and quality of connectivity within the neighbourhood and with the centre/stop. Mr Wharton captured some of these considerations in 'amenity heat maps', which we have found useful as an indicator of the level of amenities, relative to other locations. Where we considered it appropriate, we took into account known or planned improvements in local attributes.

305. The Hearing Panel undertook site visits to the various Centres and rapid transit stops, including some of those parts of the City that were a particular focus for some submitters (for example, Hay Street).

306. Prior to setting out our more detailed evaluation, we would note that between Hearing Stream 1 and 4, Kāinga Ora's planning and urban design advisers had the opportunity to undertake site visits and walking explorations in the areas around the CCZ, MCZs and Rapid Transit Stops. We observed that, as a result, they recommended decreasing the size of many of the walkable catchments that Kāinga Ora originally sought.

307. Mr Wharton recommended that a definition of 'walking catchment' be included in the Plan[138]. His suggested definition reflected the Council's model-based approach, and therefore lacks the nuances that we believe need to be overlaid on the model outputs. Revising Mr Wharton's draft to capture those nuances would be a challenge. We were also unclear what utility such a definition would have, given that definition of a walking catchment is only a step in the process towards identifying residential zone boundaries. In summary, we do not accept that recommendation.

3.4.4 Area Specific Analysis

3.4.4.1 Kenepuru Railway Station

308. The Kenepuru Railway Station is located just beyond the northern edge of Wellington City, in Porirua City. A 10 minute walkable catchment from this stop within Wellington City was proposed as the basis for the HRZ zoning in the PDP. No submitters sought a smaller

[138] Accepting in this regard the submissions of Michelle Rush [436.6] and WCC ERG [377.7]

catchment (for example, 5 minutes), while some submitters sought a 20 minute walkable catchment.

309. Within the Wellington City boundary, the Kenepuru Railway Station services a purely residential area located between the railway line and the State Highway 1/59 Motorway, with no community or commercial facilities. The lack of services suggests that there might have been a case to reduce the walkable catchment. However, no submitter sought that outcome and the criteria for an out-of-scope recommendation did not apply. We therefore accept Mr Wharton's recommendation that a 10 minute catchment is appropriate, with the motorway providing a good physical eastern boundary.

310. The recommended walkable catchment for Kenepuru (and Linden) is shown in the Figure below.

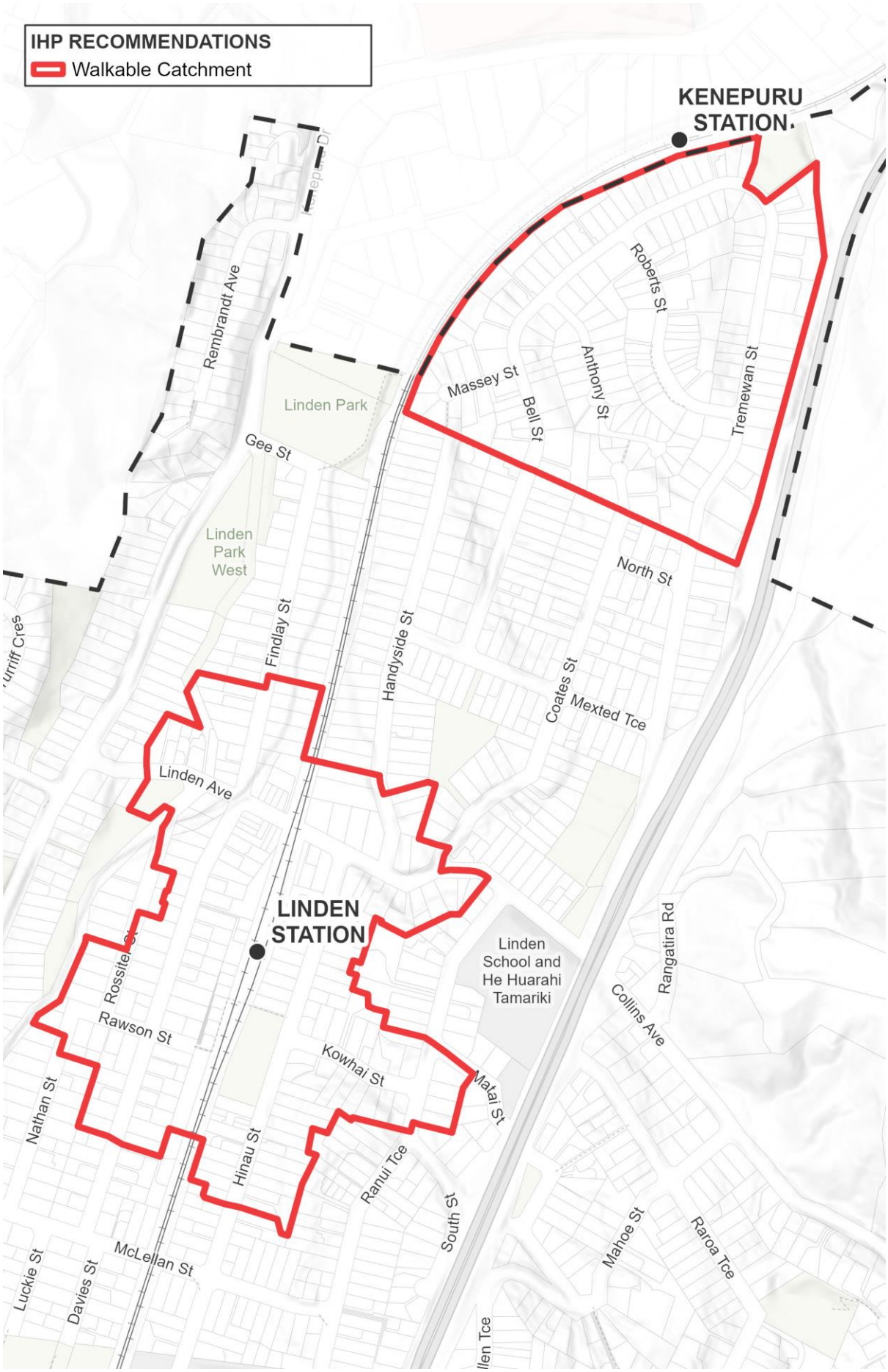
3.4.4.2 Linden Railway Station

311. The PDP was notified based on a 5 minute walkable catchment around the Linden Railway Station. Submitters sought either a 10 or 20 minute walkable catchment. The reporting officer recommended a 10 minute walkable catchment due to the accessibility of the Station, good street amenity, and the availability of local parks, good pedestrian connections, local shops and community services. However, that description contrasts with the amenity heat map classification he presented of 'Moderately low'.

312. Our view, which was confirmed by a site visit, is that there is only a limited range of services at the Linden Centre, which we consider only provide a low to moderate level of amenity[139]. Further, while the valley floor immediately around Linden Railway Station is favourable for walking, the topography beyond a 5 minute walking distance from the railway station becomes more challenging, and the elongated street network is not favourable for a centric form of walkable catchment. Accordingly, we recommend retaining the 5 minute walkable catchment, as shown by the extent of the HRZ at Linden in the notified PDP.

313. The recommended walkable catchment for Linden is shown in the Figure following.

[139] The Panel Report for Hearing Stream 4 recommends 'downzoning' the Linden centre from Local to Neighbourhood Centre Zone to better recognise the level of commercial activity and community services at Linden. That report recommends retaining the LCZ of Tawa which has a considerably higher level of commercial and community services and amenity than the Linden centre.


IHP RECOMMENDATIONS
Walkable Catchment
KENEPURU STATION
LINDEN STATION
Rembrandt Ave
Linden Park
Gee St
Linden Park West
Findlay St
Handyside St
Roberts St
Massey St
Bell St
Anthony St
Tremewan St
North St
Coates St
Mexted Tce
Linden Ave
Linden School and He Huarahi Tamariki
Rangatira Rd
Collins Ave
Rossiter St
Rawson St
Kowhai St
Matai St
Nathan St
Hinau St
Ranui Tce
South St
McLellan St
Luckie St
Davies St
Mahoe St
Raroa Tce

3.4.4.3 Tawa and Redwood Railway Stations

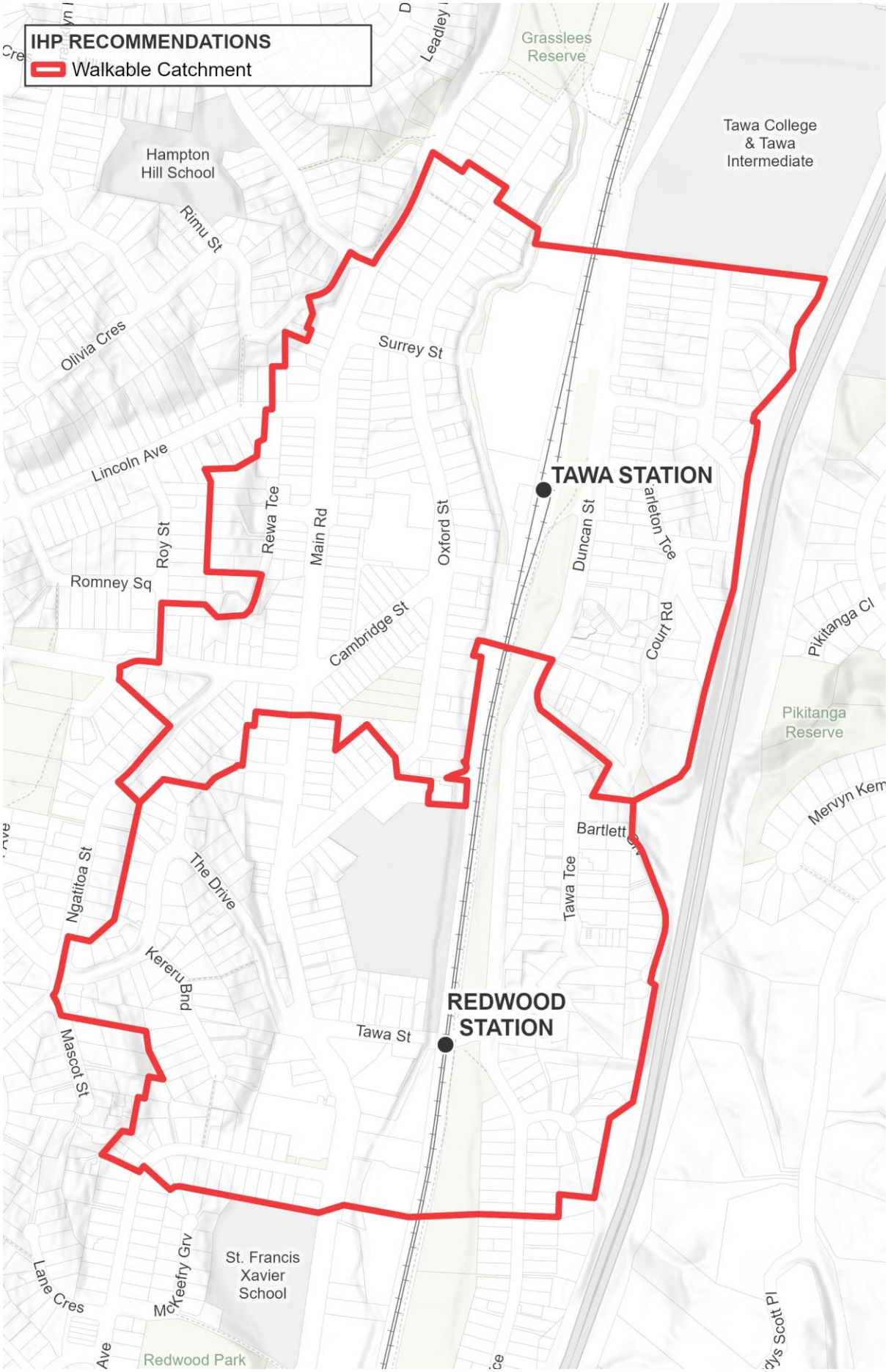
314. We evaluated the walkable catchments around the Tawa and Redwood collectively as the two stations are not far part, distance-wise, as are the two commercial centres on Tawa Main Road (the primary Local Centre, and a much smaller centre to the south).

315. The walkable catchment identified around the Tawa Railway Station was 10 minutes, while a 5 minute catchment was considered appropriate around the Redwood Railway Station.

316. Submitters sought either a 10 or 20 minute walkable catchment around both railway stations. The reporting officer recommended a 10 minute walkable catchment around both railway stations due to the moderately high level of services and amenity collectively provided in the local centres at Tawa Central and Tawa South, as well as good pedestrian connectivity and street amenity.

317. The Panel agrees that a 10 minute walkable catchment is appropriate around the Tawa Railway Station, given the topography of the valley floor, the level of commercial and community services, the good pedestrian connectivity and amenity, and the employment generation in the area. We also agree that the same reasoning should be applied to the area to the southwest and west of the Redwood Railway Station (that is a 10 minute walkable catchment is appropriate), but to the east and southeast of Redwood Railway Station, there are greater constraints in topography and poorer pedestrian connectivity, and accordingly we recommend the 5 minute walkable catchment which formed the basis of the notified zoning pattern is appropriate in those areas, as shown on the map following.

318. The recommended walkable catchments for Tawa and Redwood is shown in the Figure following.


IHP RECOMMENDATIONS
Walkable Catchment
Grasslees Reserve
Tawa College & Tawa Intermediate
Hampton Hill School
Rimu St
Olivia Cres
Surrey St
Lincoln Ave
TAWA STATION
Roy St
Rewa Tce
Main Rd
Oxford St
Duncan St
Romney Sq
Cambridge St
Court Rd
Pikitanga Cl
Pikitanga Reserve
Mervyn Kem
Bartlett
Ngatitoa St
The Drive
Tawa Tce
Kereru Bnd
REDWOOD STATION
Tawa St
Mascot St
St. Francis Xavier School
Lane Cres
McKeefry Grv
Redwood Park

3.4.4.5 Takapu Road Railway Station

319. The notified PDP was based on a 5 minute walkable catchment around the Takapu Road Railway Station. Submitters sought a 10 or 20 minute walkable catchment.

320. The reporting officer, Mr Wharton, recommended a 10 minute walkable catchment based on submitter support for this sized catchment, good street amenity and the fact that the Spatial Plan showed a 10 minute catchment.

321. The Panel was not satisfied that there was sufficient justification for extending the walkable catchment around the Takapu Road Railway Station. The station is located in a confined valley with steep sides, the level of street amenity along the main roads and around the motorway interchange is low, and there is a low level of community and commercial services, with no defined hub of activity. This is reflected in the amenity heat map classification of 'Moderately low'. There are also limited opportunities for intensification. Accordingly, we recommend retaining the 5 minute walkable catchment which formed the basis for the notified residential zone boundaries.

322. We have not shown a map for a five minute walkable catchment as none had been produced for the hearing. Because of the topography, roading and disjointed pattern of connections, the walkable catchment around the Takapu Road railway station only extends to the junction of Main Road and Sunrise Boulevard.

3.4.4.6 Ngauranga Railway Station

323. The Ngauranga railway station is the only station on the Hutt Valley/Melling railway line within Wellington City. Within either a five or ten minute walkable catchment of this station, the only urban zones are General Industrial Zone and Mixed Use Zone. While the maximum building height in these zones is 18m, buildings can be higher than this as a restricted discretionary activity. Thus, the requirement to enable at least six storeys is easily met around the Ngauranga Rail Station. While therefore somewhat academic in this case, we recommend a ten minute walkable catchment apply to this locality, as topography presents a significant barrier to any further distance being practicable.

3.4.4.7 Metropolitan Centre Zone – Johnsonville

324. As a Metropolitan Centre Zone, the NPSUD requires building heights of at least 6 storeys within the walkable catchment around the Johnsonville Centre (Policy 3(c)).

325. The Johnsonville Railway Station is located on the eastern side of the Johnsonville Metropolitan Centre Zone. As the IHP has recommended that the Johnsonville Rail Line not be classified as a Rapid Transit Line, the requirement in Policy 3(c) NPSUD of having a walkable catchment around the Johnsonville Railway Station would not apply. However, as discussed in section 3.3.1 of our report above, the Panel heard evidence that the walkable catchment around the Johnsonville MCZ overlaps with that for the Railway Station so that there would be no material difference in terms of the application of the HRZ around the perimeter of the Johnsonville Centre.

326. We note first that the Hearing Panel's recommendation on the spatial extent of the Johnsonville MCZ arising from Hearing Stream 4 remain as that as notified.

327. Secondly, JCA referred us to the Environment Court's decision in *Johnsonville Community Association Inc v Wellington City Council*[140] which considered the then proposed Medium Density Residential Area zoning. The Court concluded that the area east of the Motorway accessed via Disraeli Street and north of the Helston/Middleton intersection were not suitable for intensification. The Court's decision is not determinative. The Court was considering these issues in a much less directive policy context, and we also need to consider the potential that the local environment has changed in the interim. Nevertheless, we have found this decision helpful.

328. Following two site visits to the Johnsonville Centre involving a number of trial walks to the edge of the 10 minute walkable catchment outside the MCZ, the Panel concluded that it would be fallacious to apply a walkable catchment of 10 minutes to the east of the State Highway 1 Motorway via Disraeli Street. The motorway underpass limits pedestrian connectivity and the area beyond the underpass is so steep to make walking a challenge to the average person, quite aside from the difficulties and costs that would be involved in constructing six-storeyed buildings on that terrain. As above, that was the conclusion of the Environment Court, and in his evidence for Kāinga Ora in Hearing Streams 2 and 4, Mr Rae also recommended the area not be upzoned. We recommend that the motorway

[140] [2013] NZEnvC 159

should be the boundary of the walkable catchment in this area. The Helston Street overbridge provides better access to the north, and we recommend that the Section 42A HRZ boundary east of the Motorway and to the northwest of Johnsonville MCZ be accepted. The southern edge of that area is as shown by Mr Rae in his Stream 4 evidence[141].

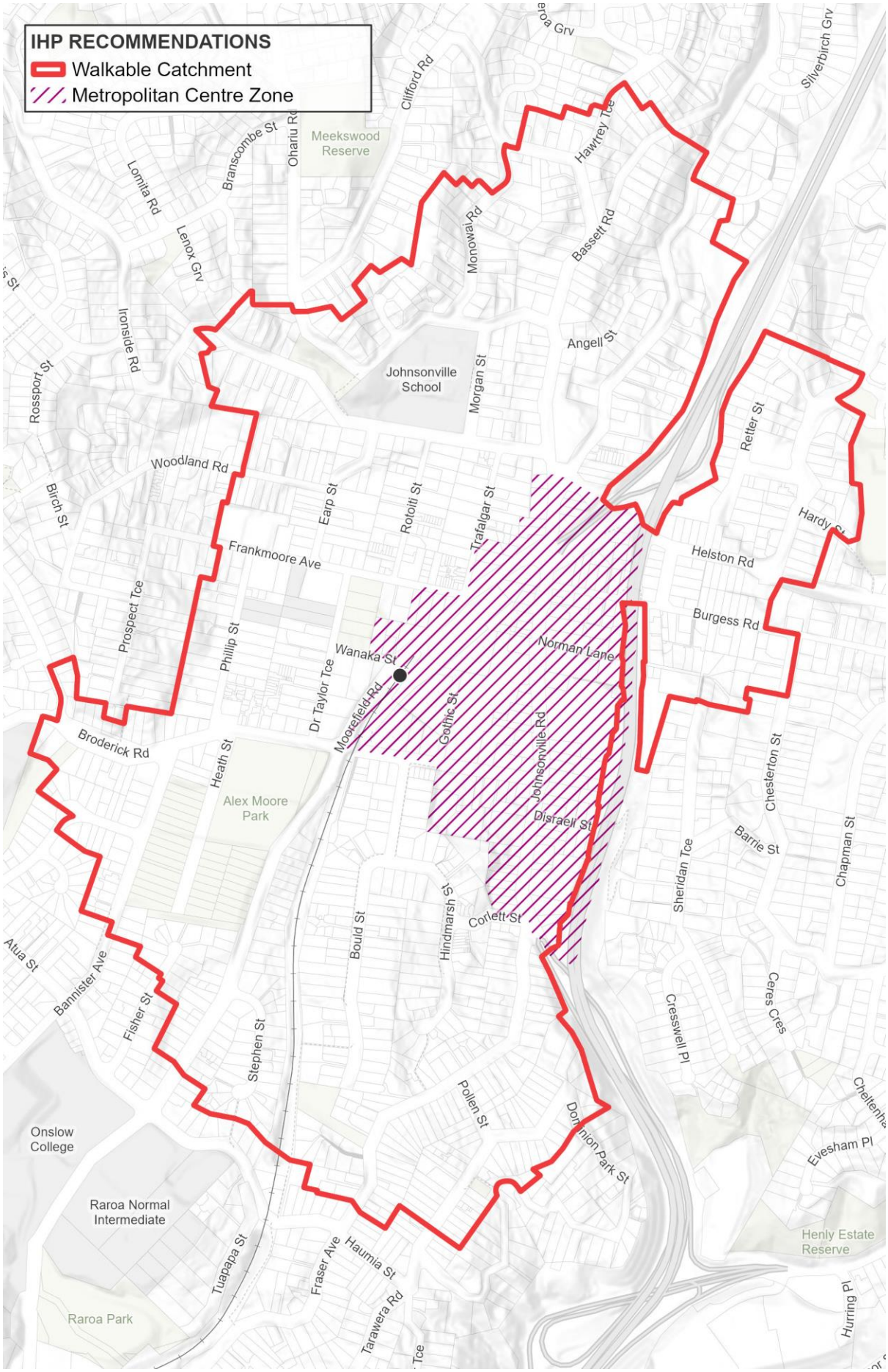
329. The topography to the west of Johnsonville is also such that in our view, the walking catchment should be confined to the basin floor and not extend uphill. Thus, the far western end of Frankmoore Avenue, as well as Prospect Terrace and Woodland Road, would be excluded. This was also Mr Rae's recommendation for Kāinga Ora, and we again adopt his recommendations to indicate the area we recommend be excluded from the walkable catchment recommended in the Section 42A Report[142].

330. In relation to the northern side of Johnsonville, we were told that pedestrian connections had been improved since the Environment Court's decision. The Panel was, however, concerned about the current level of walkability given the busy roads that radiate from two large roundabouts and which pose challenges to pedestrians, notwithstanding the installation of a pedestrian crossing near the Bassett and Ironside Road junction. We have recommended retaining the 10 minute walkable catchment to the north and northwest of the Johnsonville Centre (across the motorway) as notified, but emphasise that the pedestrian issues in this area need to be addressed to improve the safety and accessibility of this part of the suburb.

331. To the south of Johnsonville and west of the Motorway, with the exclusion of Raroa as a Rapid Transit Stop (which would have created an overlap in walkable catchments), we recommend the walkable catchment from the Johnsonville MCZ which was the basis for the notified HRZ zone not be changed.

332. The recommended walkable catchment around the Johnsonville MCZ is shown in the Figure following.

[141] The area excluded from the walkable catchment is noted as 'Amend to MRZ" on Maps 6 and 7 in Attachment C to Mr Rae's Supplementary evidence to Hearing Stream 4, dated 12 June 2023
[142] Ibid


IHP RECOMMENDATIONS
Walkable Catchment
Metropolitan Centre Zone
Meekswood Reserve
Johnsonville School
Alex Moore Park
Onslow College
Raroa Normal Intermediate
Raroa Park
Henly Estate Reserve
Clifford Rd
Hawtrey Tce
Silverbirch Grv
Branscombe St
Ohariu Rd
Lomita Rd
Lenox Grv
Monowai Rd
Bassett Rd
Angell St
Morgan St
Ironside Rd
Rossport St
Woodland Rd
Birch St
Earp St
Rotoiti St
Trafalgar St
Retter St
Hardy St
Helston Rd
Burgess Rd
Frankmoore Ave
Prospect Tce
Phillip St
Wanaka St
Dr Taylor Tce
Moorefield Rd
Norman Lane
Gothic St
Johnsonville Rd
Disraeli St
Chesterton St
Barrie St
Chapman St
Sheridan Tce
Broderick Rd
Heath St
Corlett St
Hindmarsh St
Bould St
Cresswell Pl
Ceres Cres
Atua St
Bannister Ave
Fisher St
Stephen St
Pollen St
Dominion Park St
Evesham Pl
Tuapapa St
Fraser Ave
Haumia St
Tarawera Rd
Hurring Pl

3.4.4.8 Metropolitan Centre Zone – Kilbirnie

333. One of the recommendations from Hearing Stream 4 (Centres) is to retain the spatial extent of the Kilbirnie MCZ to that as notified in the PDP. While the IHP for that Hearing considered there to be some merits in the expansion sought by Kāinga Ora, the IHP was concerned about the lack of consultation with the local community and affected landowners about such expansion and consequential natural justice issues.

334. A 10 minute walkable catchment around the perimeter of the Kilbirnie MCZ as notified would capture a relatively large, and predominantly flat, area for high density residential zoning, particularly to the south and east of the MCZ. However, as part of the Section 32 evaluation, the Council determined that the combined risks of multiple natural hazards, including liquefaction, tsunami inundation and flood hazards, would make areas within the walkable catchment inappropriate to enable high density residential development. Thus, as notified, the residential zoning around the Kilbirnie MCZ is MRZ only.

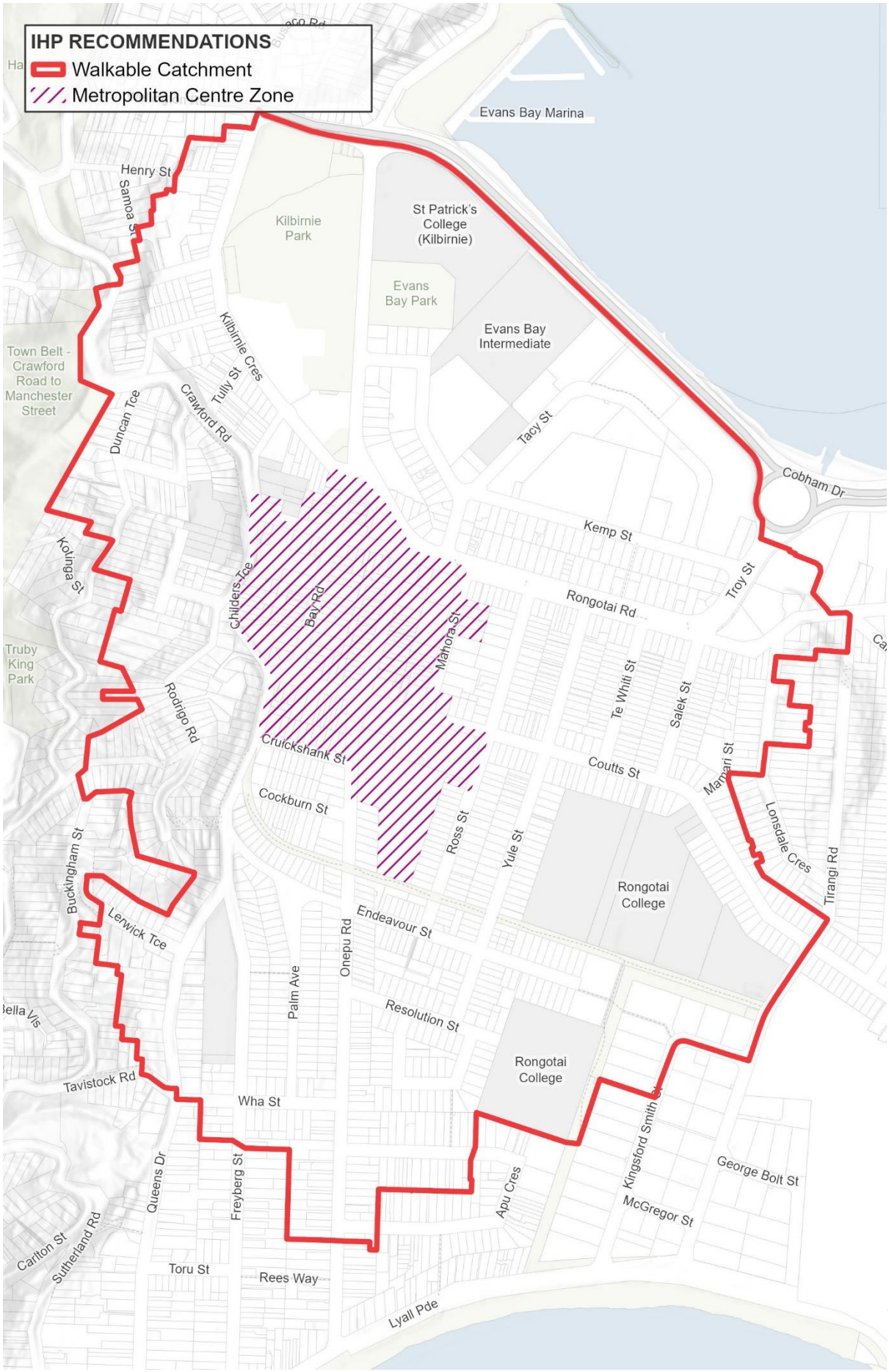
335. In the Section 42A Report for Hearing Stream 1, the reporting officer reconsidered the 10 minute walkable catchment around the Kilbirnie MCZ and the potential to upzone that catchment to HRZ. Mr Wharton advised that an outcome of the mapping of natural hazards for the PDP was to identify that the areas of greatest risk from multiple natural hazards in Kilbirnie is largely confined to the north of the MCZ. In response to the direction under the NPSUD, the reporting officer recommended rezoning most of the 10 minute walkable catchment around the Kilbirnie MCZ as HRZ, but excluding those areas subject to multiple natural hazards as well as a number of other constraints to the north, west and south of the Centre[143]. While some of the areas within a 10 minute walkable catchment (and therefore subject to upzoning to HRZ) would contain some identified natural hazards, these risks were relatively lower in scale and there were building solutions available (for example, raised floor levels in parts subject to flood inundation).

336. In line with our general conclusions on walkable catchments, we concur with the reporting officer that the 10 minute walkable catchment is appropriate to apply around the Kilbirnie MCZ as shown in Figure 44 of the Section 42A Report to Hearing Stream 1.

[143] Other constraints that were identified were the Air Noise Overlay, stream corridors and heritage buildings.

Recommendations on the extent of the HRZ within this catchment are provided within the Panel report for Hearing Stream 2.

337. The recommended walkable catchment around the Kilbirnie MCZ is shown in the Figure following.


IHP RECOMMENDATIONS
Walkable Catchment
Metropolitan Centre Zone
Evans Bay Marina
Henry St
Samoa St
Kilbirnie Park
St Patrick's College (Kilbirnie)
Evans Bay Park
Evans Bay Intermediate
Kilbirnie Cres
Tully St
Crawford Rd
Duncan Tce
Town Belt - Crawford Road to Manchester Street
Tacy St
Cobham Dr
Kemp St
Troy St
Rongotai Rd
Kolinga St
Childers Tce
Bay Rd
Mahora St
Truby King Park
Rodrigo Rd
Te Whiti St
Salek St
Cruickshank St
Coutts St
Mamari St
Lonsdale Cres
Tirangi Rd
Cockburn St
Ross St
Yule St
Buckingham St
Rongotai College
Lerwick Tce
Endeavour St
Onepu Rd
Palm Ave
Resolution St
Tavistock Rd
Wha St
Kingsford Smith St
George Bolt St
McGregor St
Queens Dr
Freyberg St
Apu Cres
Carlton St
Sutherland Rd
Toru St
Rees Way
Lyall Pde

3.4.4.9 Wellington City Centre Zone

338. The question of the appropriate walkable catchment to apply around the CCZ attracted many submissions:

- Support for a 10 minute walkable catchments was received from 15 submissions, plus further submissions;
- Support for a 15 minute walkable catchments was received from 11 submissions, plus further submissions; and
- Support for a 20 minute walkable catchments was received from 3 submissions, plus further submissions.

339. In addition, there were submitters who sought 15-20 minute walkable catchment and for a 1.5km minimum from the edge of the CCZ. There were also requests to use a distance-based staggered catchment, with reduced height limits the further out from the CCZ.

340. As we outlined above, we found that the most appropriate starting point for a walkable catchment around the CCZ was a base of 15 minutes. From that point, we then evaluated the specific constraints and opportunities around the perimeter of the City Centre. We also took into account the scale and nature of the commercial and community services, employment generators and other factors inside the CCZ, and the distance the average person would typically have to walk from outside the CCZ to get to the key areas of employment and services.

341. Our findings are outlined below (where we have not specifically addressed a locality, we have accepted and adopt the recommendations and reasoning of the Section 42A reporting officer):

(a) In **Thorndon**, Grant Road generally forms an appropriate outer northern edge to the walkable catchment, given the steepness of the terrain to the northwest (which is primarily Town Belt), extending northwards to Sar St in the north and St Mary Street in the south; however, we recommend that the small residential enclave in upper Newman Terrace should also form part of the walkable catchment.

(b) In **Kelburn**, we recommend that the lower part of the suburb should be within the CCZ walkable catchment, from the Bolton Street / Aurora Terrace vicinity along The Terrace and up to the University / Anderson Park and south to Devon Street and Aro Valley. For the avoidance of doubt, the areas immediately west and uphill of the University are not recommended to be within the walkable catchment.

(c) In **Aro Valley**, we recommend following the outer limit of the 10 minute walking catchment, due to the steep topography and narrow streets in the area captured within a 15 minute distance; we also took into account that, in practical terms, most of the core areas of employment, amenities and services activities in the CCZ are much further north, to which it would take at least an additional 10-15 minutes of walking.

(d) In **Mount Cook**, we recommend the Town Belt be used as the western outer edge of the CCZ walkable catchment, south to Hargreaves Street, with Wallace Street then forming the outer western edge down to John Street. This boundary takes into account that it would take the average resident much longer than 15 minutes to get to the principal areas of commercial and retail activity in the CCZ – while it may be possible to walk to the southern edge of the CCZ in Te Aro, in practical terms most of the core activities and attractions in the CCZ are much further north, to which it would take at least 15-30 minutes to walk. We also observe that the Stream 2 IHP has recommended that most of the Hargreaves/ Wallace Street area be zoned MRZ to reflect its identification as a Character Area Precinct.

(e) In **Newtown**, as an outcome of our deliberations on Hearing Stream 1, the Panel determined that John Street should form the southern edge of the CCZ walkable catchment: that is, a nil walkable catchment from the edge of the CCZ as notified in the PDP. Our view was based on two primary reasons:

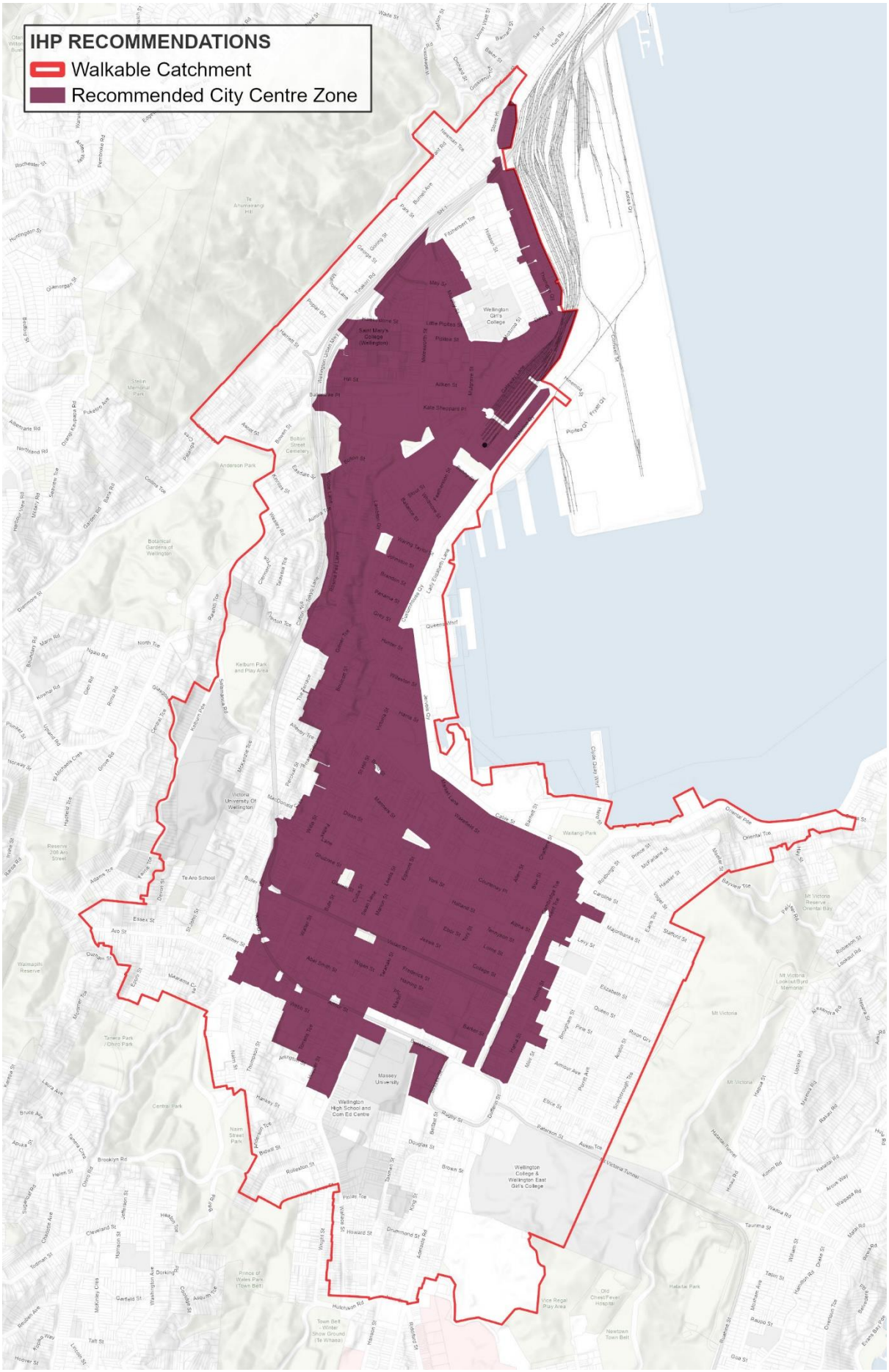
- John Street provides an effective northern boundary of Newtown and the exclusion of the CCZ walkable catchment to the south of John Street avoids an inevitable overlap with the intensification provisions relating to the Newtown Local Centre and its surrounding residential areas; and

- The Adelaide Road corridor between John Street and the Basin Reserve does not function as part of the City Centre, with few of the types of business, commercial and entertainment services, retail activities, amenities and employment found in the CBD that would draw residents to walk there. Starting at John Street walking north, the average resident would have to walk at least 20-30 minutes to get to the principal activity areas of the CBD.
- The Stream 4 IHP has recommended that the area between the Basin Reserve and John Street be rezoned MUZ. If accepted by Council, that would pull the boundary of the CCZ north. Our reasoning does not suggest that the boundary of the walkable catchment should be moved north correspondingly. The factors that caused us to identify John Street as an appropriate walkable catchment boundary working out from the City Centre remain valid. Accordingly, we recommend that John Street be the boundary of the walkable catchment to the south of the recommended revised CCZ boundary.

(f) In **Mount Victoria**, we recommend all of the suburb be included within the CCZ walkable catchment, given its proximity to the CBD and the relative ease of access and connectivity;

(g) Finally, in **Oriental Bay**, we agree with the recommendations and reasoning of the reporting officer in relation to the extent of the walkable catchment, with the exception of its outer boundary within Hay Street. Following a site visit, we were persuaded by the evidence from submitters opposing the full inclusion of Hay Street within the CCZ walkable catchment. The distance of Hay Street from the eastern edge of the CCZ, its steepness and narrowness, and the poor pedestrian environment, satisfied us that the outer boundary should be no further than the uphill side of 7 and 8 Hay Street. It should also exclude properties in Baring Street, which is also a steep and very narrow lane, unsuitable for intensification. Mr Wharton did not show us where the 15 minute walkable catchment would extend to along Oriental Parade, because of the overlap of the Oriental Bay Height Precinct. Based on the distance up Hay Street it extended, we recommend that the walkable catchment boundary be the Grass Street corner.

(h) The recommended walkable catchment around the Wellington CCZ is shown in the Figure following.


IHP RECOMMENDATIONS
Walkable Catchment
Recommended City Centre Zone

3.5 Underutilised Land and Development Capacity

342. There were a number of submitters who sought to have the PDP focus on enabling development in certain parts of the City, rather than a general upzoning across the City. Some submitters considered the City Centre should be the focus of enabling development rather than elsewhere in the City, particularly the inner residential areas. We note for instance the position advanced by Richard Murcott[144]:

> *"Take the focus away from a laissez-faire approach on Wellington's inner city residential areas (full of character, green spaces, and oftentimes significant heritage) and place incentives (via rates, or similar) on City Centre areas where high density is more readily achievable and devoid of grim consequences. Aim to achieve the best of both worlds i.e. encourage building in the city centre, whilst retaining the significant character of inner residential Wellington."*

343. Other submitters specifically referred to certain parts of the City that they considered should be specifically targeted first for development, including the Kent and Cambridge Terrace vicinity, Thorndon Quay and Te Aro.

344. The reporting officer, Mr McCutcheon, acknowledged there were areas of the City ready for redevelopment but explained that the NPSUD does not enable Councils to stage enabling development potential within cities, but rather upzoning must be undertaken on a city-wide scale. He further noted the PDP will leave it to the market to determine which sites are developed when, and the Plan cannot compel landowners to invest in intensification, although he did note the Council are investigating options to incentivise development on underdeveloped land as part of the wider review of its Rating Policy.

345. One submitter[145] questioned whether the existing urban zoning is adequate to create a sufficiently competitive market to drive housing costs substantially down, and sought far more greenfield land be rezoned for urban development to achieve that outcome. In response, the reporting officer referred to the report "*Wellington City Qualifying Matters Capacity Assessment*", which indicates the Plan does provide sufficient housing and business land capacity for anticipated future growth. Mr McCutcheon also noted that other market factors such as interest rates can have a far greater effect on house values.

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[144] Submissions #322.12-13
[145] Conor Hill [#76.6, 76.8]

346. We fully concur with Mr McCutcheon's analysis of submissions on this matter and we are satisfied that the PDP, at a strategic level, provides much more potential for further intensification and development than is likely to be taken up within forecast horizons. We refer to our discussion in section 3.2 of our report. Accordingly, we recommend that no changes are made to the Plan as a result of submissions on underutilised land and development capacity.

3.6 Population projections

347. Several submitters considered that population growth will either not occur in the 50,000-80,000 range as referenced in the Plan, that the population projects were flawed, or sought a responsive staged approach to population growth, updating the Plan as population growth occurs incrementally. Some submitters did not want population growth.

348. The Council relies on Sense Partners for its population projections, who also provide this information at a regional level for use as the basis of the region's housing and business assessment (**HBA**). Mr Kirdan Lees provided expert evidence to the hearing, addressing the concerns expressed by submitters on the population projections.

349. Mr Lees acknowledged that population forecasts are inherently uncertain, and that there are a number of things that the forecasts do not take into account, such as national or local policy changes which can affect actual population and economic growth. He explained this is the reasons Sense Partners provide forecast ranges that reflect uncertainty: hence the range of 50,000 to 80,000 extra people that Wellington City Council uses for long-term (30-year) land use planning purposes, allowing the Council to plan for a range of outcomes. He stressed that the forecasts that are produced should be interpreted as potentials. Mr Lees also noted that population projects are reviewed annually to take into account changes in the underlying data and assumptions.

350. We were satisfied that the population projections that underly the preparation of the PDP are appropriate for the purpose of forecasting capacity demand and for use in land use planning and infrastructure delivery. While we accept the estimated development capacity that is enabled by the PDP far exceeds the estimated actual uptake of development potential, it is preferable to ensure that the housing market can dynamically operate in a flexible regulatory framework. It would not be prudent to only plan development capacity to meet an estimated demand at one point in time.

351. Finally, we agreed with Mr McCutcheon that the Plan cannot be staged to provide development capacity incrementally due to the requirements of the Act to notify a plan change which fully implements the directions of the NPSUD.

352. For these reasons, we recommend that no changes are needed to be made to the Plan as a result of submissions on population projections.

3.7 Let's Get Wellington Moving

353. Matters raised in submissions on this topic[146] related to the provision of infrastructure and not to the district plan. As Mr McCutcheon noted, such matters must follow a public consultation process before they can proceed. He did not recommend any amendments to respond to the submissions on this topic and we agree with this conclusion.

354. Mr McCutcheon had a similar response to submissions[147] seeking a Council commitment to other infrastructure upgrades. We agree with his position in that context also. These are not matters for the District Plan.

3.8 Climate change and nature based solutions

355. A number of submissions[148] raised issues under this general heading.

356. The Section 42A Report contains a detailed discussion of the submissions at Section 4.8, concluding that no changes are required.

357. We note that most of the submitters did not appear. In particular, we did not hear from GWRC to explain why Mr McCutcheon's view that the PDP already contains a number of provisions that respond to the effects of climate change, ensure a resilient built environment and prioritise nature based solutions to environmental issues was unfounded. We also record that RPS-Change 1, on which the GWRC submission relied, is currently the subject of hearings and we will not know the final form of that document before our recommendations have to be finalised.

358. We similarly did not have a detailed expert analysis of carbon emissions from demolition of existing buildings from which we might conclude that the intensification of

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[146] Mark Tanner [24.1]; Richard Keller [232.1-2]; Regan Dooley [239.1]; VicLabour [414.5]
[147] Summarised at Section 6.1.19 of his Wrap-up/Integration Section 42A Report
[148] Bruce Crothers [319.1-2]; Jane Szentivanyi and Ben Briggs [369.3]; David Lee [454.1; Newtown Residents Association [440.3]; VUWSA [123.5]; Amos Mann [172.7]; Anna Jackson [222.1]; Roland Sapsford [305.5]; Grant Buchan [143.1]; GWRC [351.18-23]; Ben Barrett [479.12]; VicLabour [414.6]

urban sites the NPSUD directs we enable will have a net negative effect on carbon emissions (as some submitters contended, and contrary to Mr McCutcheon's view).

359. More generally, while we have had regard to the Emissions Reduction Plan made in accordance with the Climate Change Response Act 2002, the primary way the PDP can support the former is through its management of urban form. Direct control of greenhouse emissions, as sought by VicLabour, is a matter for GWRC and Central Government.

360. In summary, having read the reasoning in the Section 42A Report, we agree with the reporting officer's reasoning and recommendations on these submissions.

3.9 Affordable housing

361. Submitters[149] sought provisions in the Plan that address affordable housing. It was submitted that increasing intensification does not by itself result in affordable housing.

362. Mr McCutcheon stated that it is not a requirement of the Act or the NPSUD to address this matter, and that it was up to the elected Council to decide what mechanism was most appropriate to address it. However, he noted that the Plan does address affordable housing through proposed provisions relating to 'assisted housing'. This is identified as a City Outcomes Contribution which enables height credits for the provision of assisted housing in developments.

363. Mr McCutcheon provided some background to the consideration that Council has given to affordable housing:

> *"At a meeting of the Council's Planning and Environment Committee on 23 June 2022, Councillors agreed to remove the assisted (affordable) housing chapter from the notified District Plan. Instead, they directed officers to investigate the use of a targeted rate on land in identified growth areas of the city where additional height has been enabled to fund an assisted (affordable) housing fund as part of the wider review of the Rating Policy. This work is underway.[150]"*

364. He recommended that until that work is completed, an assisted housing chapter should not be included in the Plan particularly as people would not have had the opportunity to submit on it. While we agree that enabling intensification does not, of itself, improve or

[149] Glen Scanlon [212.2]; Mt Victoria Residents' Association [342.13]; Vic Labour [414.7]; Living Streets Aotearoa [482.21]; Richard Norman [247.2]; Jill Ford [163.1], Robert Murray [123.5]; Stephen Minto [395.1-2]
[150] Section 42 Report at Section 4.9.2

even address affordability, the mechanisms suggested by submitters are largely non-RMA solutions. The Hearing Panel agrees that the Council should complete the work it is engaged in and decide what mechanism is the most appropriate to address this matter. It is not for this Panel to make a decision on whether a plan change should be undertaken without any knowledge of the proposal.

365. For these reasons we adopt the reporting officer's recommendations.

3.10 Māori interests/Papakāinga

366. The Section 42A Report noted at paragraph 4.10 a number of submissions seeking a greater role for mana whenua including through development of papakāinga.

367. Both Taranaki Whānui[151] and TRoTR[152] sought in submissions the introduction of a Papakāinga Chapter[153]. Mr McCutcheon noted that this was not raised during the consultation period; however, the Council was open to having conversations and introducing a Papakāinga Chapter into the Plan via a future plan change[154]. In response, Dr Oktem-Lewis stated in her presentation for TRoTR that enabling papakāinga developments was raised during the consultation and development of the Plan, however it was considered that other provisions within the Plan would accommodate this without the need for a standalone chapter.

368. No specific wording or provisions were provided to us as part of the relief sought.

369. We consider that a Papakāinga Chapter within the Plan would be appropriate. We note that a number of other councils either already have such a chapter in their District Plans, or are in the process of developing one. However, without any specific wording of provisions or relief to consider, we are unable to recommend any amendments to the PDP.

370. We consider that a process to develop and agree Papakāinga provisions is appropriate and encourage the Council and its iwi partners to work together to address this in a more fulsome manner.

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[151] Submissions #389.10 and 389.11. See also Submission #389.1, which was addressed in the Wrap-up/Integration Section 42A Report.
[152] Submission #488.1
[153] GWRC [351.25] similarly sought a Papakāinga Chapter
[154] Hearing Stream 1-Section 42A Report (Para 456)

371. To the extent that the submissions on this subject extend beyond development of a Papakāinga Chapter, we agree with Mr McCutcheon's recommendations as to how those submissions should be addressed.

372. We therefore recommend that Council engage with Taranaki Whānui and Ngāti Toa Rangatira to develop Papakāinga provisions and introduce these via a future plan change.

373. As regards Taranaki Whānui's specific submission[155] seeking that all references to 'mauri' be replaced with 'mouri', Mr McCutcheon recommended the suggested change sought provided TRoTR were comfortable with that. TRoTR made no comment on that suggestion. The Hearing Panel did not itself consider this an unreasonable request based on Commissioner Faulkner's knowledge of the matter, and we recommend that change to Council.

3.11 Local/community planning

374. Submitters[156] sought a range of changes to the PDP related to providing for local or community planning. Specific changes sought included enabling and prioritising development in specific areas and more master planning of local areas.

375. Mr McCutcheon commented that the PDP had been developed with many opportunities for community input and the process is now at the hearing stage. He added that there are further opportunities for public engagement as part of Council public space and infrastructure projects.

376. The Hearing Panel agrees with Mr McCutcheon's assessment and adopts his recommendations.

4. WRAP-UP/INTEGRATION MATTERS

377. As above, the Hearing Panel considered a series of submissions in the wrap-up/integration hearing that are conveniently addressed in this Report. References to the

[155] Submission #389.9
[156] Lorraine and Richard Smith [230.5] Alan Fairless [242.3 and 242.7] Carolyn Stephens [344.2 and 344.4, Elizabeth Nagel [368.2 368.3 and 368., Josephine Smith [419.1, 419.2, 419.4, 419.5, 419.6, 419.8 (supported by FS123.9, FS123.31, FS123.47 Lower Kelburn Neighbourhood Group)], The Urban Activation Lab of Red Design Architects [420.1 420.6, 420.7], Paul Gregory Rutherford [424.1, 424.8 424.9, 424.10, Anita Gude and Simon Terry [461.5, 461.6, Roland Sapsford [305.3], Mount Victoria Residents Association [342.10]

Section 42A Report are to the report authored by Mr McCutcheon that was circulated prior to the wrap-up/integration hearing.

378. The first area of general matters Mr McCutcheon noted were submissions in general support or support in part for the PDP and background material. Mr McCutcheon summarised those at Section 5.1.1.1 of his Section 42A Report. We agree with his approach, which is to acknowledge the submissions but not recommend any change to the Plan to respond to them.

379. On the other side of the coin, at Section 5.2.1 of his Section 42A Report, Mr McCutcheon noted a number of submission points in general opposition or opposition in part to the PDP, and in one case to the MDRS. Mr McCutcheon's summary was that the submissions largely opposed the complexity of the PDP.

380. Like Mr McCutcheon, we sympathise with the submitters. We also agree, however, with Mr McCutcheon that complexity is difficult to avoid given the nature and range of matters in issue. Ultimately, we agree with Mr McCutcheon that no changes are required to respond to these submission points.

381. At Section 5.1.4 of the Section 42A Report, Mr McCutcheon noted a series of submissions on what he summarised as process issues – challenges to the summary of submissions[157], to the form for public consultation[158], raising the inherent bias of the hearing process[159], the need for a Commissioner able to understand a Jewish perspective[160], a request that deep debate on the PDP is impartial and driven by merit, that further public consultation is undertaken and the Spatial Plan is updated in lieu of the PDP[161], better resourcing for Council Officers[162], critiquing the decision of councillors to disregard submissions on the Spatial Plan and draft District Plan[163], seeking that the PDP is evaluated against newly suggested objectives[164] and more rigorous testing of the PDP[165].

[157] Kay Larsen [#447.1];
[158] Grant Birkenshaw [#52.1]
[159] Matthew Gibbons [#148.1] and VicLabour [#414.1]
[160] Sophie Kahn [#161.1]
[161] Chris Howard [#194.4-6] and Richard Murcott [#322.2]
[162] Regan Dooley [#239.2]
[163] Hilary Watson [#321.3]
[164] Lorraine and Richard Smith [#230.3] and Alan Fairless [#242.5]
[165] Elizabeth Nagel [#368.5] and Paul Rutherford [#424.4]

382. Mr McCutcheon also noted support from GWRC of the Council's Section 32 Reports.

383. While Mr McCutcheon felt the need to defend the process that had been undertaken, from our point of view, we will endeavour to rigorously test all aspects of the Plan based on our collective experience, and the evidence that we have heard in the first five hearing streams and in the wrap-up/integration hearing.

384. If there are flaws in the process before our appointment, and even of our appointment, these are matters that are outside our power to do anything about.

385. Accordingly, we agree with Mr McCutcheon's recommendation that no changes are made to the Plan to respond to these submissions.

386. Mr McCutcheon noted submissions by the House Movers Association[166] seeking that relocated buildings are treated no differently from those constructed on site.

387. Mr McCutcheon's response was that the rules and standards for buildings and structures are intended to treat relocated buildings in the same way as buildings constructed on site. He did not consider that any change was required to the Plan. Given that the Association did not appear to tell us why Mr McCutcheon was wrong, we adopt that recommendation.

388. At Section 6.1.3.1 of his Section 42A Report, Mr McCutcheon noted two submissions regarding the management of collection and processing of recycled waste and of construction project waste.

389. As regards to the first point, Mr McCutcheon disagreed with the submitters' essential point. He considered it appropriate that refuse and recycling facilities are treated as a heavy industrial activity given the potential for adverse effects. We agree. While in theory, at a sufficiently small scale, that may not be the case, defining that scale would be a challenge and we did not hear further from the submitters to assist us with that process.

390. As regards construction waste, we agree with Mr McCutcheon's view that this is not a District Plan matter.

391. Mr McCutcheon noted a submission from James Barber[167] seeking that a levy be introduced on property developers to contribute to civic spaces with intensification. Mr

[166] Submissions #485.1-4
[167] Submission #56.1

McCutcheon responded that development contributions have such a function and that the proposals for 'City Outcome Contributions' have a similar effect.

392. Report 4A addresses the latter, finding that the mechanism the Council has adopted is problematic, but that the essential objective of incentivising positive City outcomes is desirable. As regards a levy in the true sense, we agree that against a background where the Council relies on development contributions, further Plan provisions are inappropriate. We therefore adopt Mr McCutcheon's recommendation that no changes be made to the Plan in response to this submission.

393. Mr McCutcheon noted a series of submissions from Air BnB[168] seeking that the Council support efforts to streamline and simplify residential visitor accommodation regulation at a central Government level. We agree with Mr McCutcheon's view that any efforts the Council might make in that regard are outside the scope of the District Plan, and adopt his recommendation that no change be made to the Plan in response to that submission.

394. As regards urban design, Mr McCutcheon noted a submission from Victoria University of Wellington Students Association[169] seeking that housing in City areas have a people-centred design and, on a related point, from Steve Dunn[170] and Cheryl Robilliard[171] seeking inclusion of the Council's Green Network Plan as an enforceable key document for greening Wellington and identifying open spaces in the City Centre.

395. As regards the Students Association submission, Mr McCutcheon noted that no specific provisions have been identified that might implement the desired relief, but that existing provisions were consistent with that relief. As regards the Green Network Plan, Mr McCutcheon noted that much of that plan cannot be realised by the PDP, and that the most that can be done is through setting strategic direction and provisions in the Plan to give effect to it where possible and appropriate. Having noted the Section 42A Report in Hearing Stream 4, it was considered that the Plan already does this.

396. Also under a general heading of Design, Mr McCutcheon noted at Section 6.1.15 of his Section 42A Report submissions seeking:

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[168] Submissions #126.1-4
[169] Submission #123.3
[170] Submissions #288.1
[171] Submission #409.3

- Non-carparking be incorporated into City design[172];
- More encouragement for the quality of urban form, the density and safe attractive walking corridors with food growing that is cared for by Council Staff[173];
- Incentivise lifts in multi-storey developments[174];
- Design that manages the impacts of Covid-19. This submitter also opposed developers' proposals which are considered idealistic[175].

397. Mr McCutcheon noted that there are already minimum cycle and micro mobility parking requirements in the PDP and that there are no minimum carparking requirements. While he supported well-designed walking corridors, Mr McCutcheon observed that food growing by the Council is not a PDP matter.

398. In relation to accessibility, Mr McCutcheon noted that the limitations imposed by the Building Act mean that the Council can only take an advocacy role in promoting accessibility reform.

399. Lastly as regards design responses, Mr McCutcheon considered that the PDP already promoted enduring good design outcomes.

400. We agree with Mr McCutcheon's analysis on all of these matters and adopt his recommendation that no changes are made to the Plan to respond to them.

401. Mr McCutcheon noted a series of submissions from Mt Cook Mobilised[176] who suggested measures requiring water tanks in a range of locations. While Mr McCutcheon noted his support for emergency preparedness, his view was that the PDP was not the most efficient nor effective avenue for the relief sought. He also recorded that no Section 32AA Evaluation had been supplied which would support the relief. We did not hear further from the submitter, and therefore have no basis to disagree with Mr McCutcheon that no changes be made to the Plan to respond to these submissions.

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[172] Wellington City Youth Council [#205.5]
[173] Ben Barrett [#479.9 and #479.19]
[174] Amos Mann [#172.1]
[175] Living Streets Aotearoa [#482.13 and #482.19]
[176] Submissions #331.2-5

402. Mr McCutcheon noted GWRC's submissions[177] seeking that any changes made through the process that require Section 32AA evaluation should include consideration of identified policies in RPS-Change 1. GWRC were also noted as seeking that references to the 'Proposed Natural Resources Plan' be changed to remove 'proposed'.

403. Mr McCutcheon agreed with the latter request, as do we. We have already noted that the NRP was operative from July 2023. It follows that references in the Plan to the Regional Plans the operative NRP has replaced should be deleted.

404. As regards RPS-Change 1, Mr McCutcheon noted that while a relevant document to our deliberations, it was not necessary to undertake a Section 32AA evaluation against it. We agree. Adopting GWRC's submission would overstate the legal effect of RPS-Change 1, the hearing of which is proceeding in parallel with our deliberations.

405. In summary, we adopt Mr McCutcheon's recommendations that the NRP should not be referred to as 'proposed' in the PDP, and any existing references should delete that term, but that no other amendments be made in response to these submissions.

406. Mr McCutcheon noted at Section 6.1.11 of his Section 42A Report requests variously that height limits be strictly enforced[178], resource consents are properly enforced[179], Council investigate making resource consent fees fixed and payable upfront[180], all building heights outside the CCZ and Centres Zones be reduced to be more specific to Wellington[181], and for the Council to have a dedicated Customer Team to assist developers[182]. The Lower Kelburn Group's submission fails to take account of the way in which activities are classified in the Plan. The only way in which height limits can be strictly enforced is if buildings greater than the nominated height are Prohibited Activities. No case has been presented to us to justify that outcome. Enforcement of resource consents is a matter for the Council outside of the Plan. Similarly, the rules around resource consent and Council customer support. Lastly, a general reduction of building heights would need to be justified in terms of the Qualifying Matter requirements of the RMA-EHS. We did not hear from the submitter, and we have no basis on which to consider such a proposal

[177] Submissions #351.1 and #351.3
[178] Lower Kelburn Neighbourhood Group [#356.1]
[179] Mount Victoria Residents Association [#342.1]
[180] WHP [#412.4]
[181] James Coyle [#307.4]
[182] Ben Barrett [#479.2]

further. In summary, we adopt Mr McCutcheon's recommendation that no changes be made in response to these submissions.

407. At Section 6.1.12, Mr McCutcheon noted two inter-related submissions from JCA[183] seeking that the PDP include a compensation framework for neighbouring residents who suffer a loss of value and amenity due to nearby high density housing developments. When he appeared in support of this submission, Mr Taylor for JCA emphasised that the NPSUD had not and could not repeal the special status given to amenity values in Section 7 of the Act. He pressed the case for a compensation arrangement, or mandatory mitigation in lieu of compensation.

408. For his part, Mr McCutcheon did not agree with JCA that there was a need for compensation. He also noted that where land has been upzoned, the landowner has extra development potential, even if they have not taken it up, which is likely to correlate with a higher property value.

409. Mr Taylor is correct that the NPSUD, as a subsidiary legislative instrument, cannot repeal a section of the principal Act. What it can and does do, however, is to explain how that section should be given effect. As Mr McCutcheon noted it gives guidance that amenity values will change over time and that changes are not of themselves an adverse effect.

410. Moreover, Mr Taylor did not provide any basis on which a compensation arrangement could be put in place under the RMA. As we have already noted, the Council has chosen to use the powers of the Local Government Act, and impose development contributions, rather than financial contributions under the RMA. Even if that had not been the case, financial contributions are moneys payable to the Council, not to any third party[184].

411. Mr Taylor did also not provide us with a clear understanding of how the 'mandatory' mitigation he envisaged would operate. We observe that if it had the effect of constraining heights and densities prescribed in the NPSUD, it would need to be evaluated and justified in terms of the statutory requirements. We did not have any material of that ilk from Mr Taylor.

[183] Submissions #429.4-5
[184] Central Otago DC v Contact Energy Ltd C204/2004 at [12] and [24].

412. In summary, we adopt Mr McCutcheon's recommendation that no changes be made in response to JCA's submissions.

413. Mr McCutcheon noted submissions from the New Zealand Motor Caravan Association[185] seeking that camping be recognised in the PDP as an important activity, with an exemption for freedom camping, and permitted activity status for camping grounds in all zones.

414. Mr McCutcheon's view was that it was not the role of the District Plan to manage freedom camping in public spaces, this being addressed by Section 13 of the Public Places Bylaw 2022.

415. More generally, he regarded camping grounds as falling under the definition of 'visitor accommodation'. He regarded that as appropriate, and that the status of visitor accommodation was a zone-specific issue.

416. We agree with Mr McCutcheon and note that the Association did not appear to explain why his views were in error.

417. MoE[186] sought that education facilities are enabled as part of urban growth and development and are considered in any zoning changes made. Mr McCutcheon agreed in principle with the submission but did not consider that any changes were required in response to it. We agree. We observe that MoE has the power to designate schools and other educational facilities, and typically exercises that power. For smaller educational facilities, their appropriateness will depend on the nature of the facility and the zone in which it is proposed to be located. We do not consider that a general response would be appropriate. Accordingly, we agree with Mr McCutcheon's recommendation that no changes be made to the Plan in response to this submission.

418. At Section 7.1.1.1 of the Section 42A Report, Mr McCutcheon noted a series of submissions seeking minor amendments by way of clarification. We accept Mr McCutcheon's recommendations as to the submissions that might be accepted. As regards the exceptions, Southern Cross Healthcare Limited[187] sought that full zone names are used throughout the Plan rather than acronyms. Mr McCutcheon considered that acronyms are sufficient and would become progressively better understood. We concur.

[185] Submissions #314.1-2
[186] Submission [#400.92]
[187] Submission [#380.3]

As other submitters have noted, the PDP is already complex. We do not consider it would benefit by being lengthened by expanding every reference to a zone to include its full name.

419. Mr McCutcheon also did not agree with Waka Kotahi's submissions[188] seeking to change the term "*access allotment*" to "*access lot*", and to change "*access strip*" to "*access lot*". Mr McCutcheon accepted that there were inconsistencies in the terminology used in the Plan. To address the inconsistencies, he recommended instead that the single reference in the Plan to "*access lot*" be changed to "*access allotment*". He also identified a clear distinction between access strips and access lots. Waka Kotahi did not appear to explain the basis for its views or to contradict Mr McCutcheon, and accordingly, we adopt his recommendations.

420. Mr McCutcheon noted at Section 8.1.1.1 of his Section 42A Report, submissions seeking general recognition of the submitters' activities or general relief in accordance with submissions. The submitters in question did not appear in the wrap-up hearing and we have no basis to disagree with Mr McCutcheon's recommendations.

421. Lastly, Mr McCutcheon noted some 39 submitters with one or more submission points that in his opinion have not been made on the PDP or its content, and cannot be granted relief as sought. The complete list of submissions in this category are set out at Section 9.1.1.2 of the Section 42A Report. We adopt Mr McCutcheon's summary, and note that the only submitter who appeared in the wrap-up/integration hearing to challenge Mr McCutcheon's recommendation was JCA**.**

422. The three JCA submissions in issue[189]:

(a) Sought that Council complete planned roading improvements in the area around Johnsonville;

(b) Noted that the old Johnsonville library site provides a good opportunity to meet a current local deficit in public parking and green space;

[188] Submissions #370.3-4
[189] Submissions # 429.7, 429.9 and 429.10

(c) Sought that Council outline the planned investment in facilities and infrastructure- in particular indoor sports stadium, parks, greenspace, public transport and roading.

423. Mr Taylor presented a detailed commentary on these submissions, arguing for their acceptance. He emphasised the need for integrated decision-making, so that intensification is accompanied by an appropriate level of infrastructure of all kinds, and criticised the apparent inconsistency of Mr McCutcheon supporting provision of green space and concluding JCA's submissions are ultra vires.

424. Mr Taylor makes a valid point about the desirability of integration. Mismatches between the timing of infrastructure provision and intensification, however, are the product of separation of the Council's decision on what it funds, and when, from its planning function. The former occurs under the Local Government Act and the latter under the RMA. The NPSUD exacerbates the issue by directing intensification without regard for the availability of infrastructure.

425. Accordingly, we see no inconsistency in Mr McCutcheon agreeing with the merits of Mr Taylor's position and nevertheless regarding the submissions as ultra vires.

426. We agree that requests focussed on the Council's investments in infrastructure are not matters for the District Plan, and therefore that JCA's relief cannot be granted through the mechanism of the District Court.

427. More generally, we agree with Mr McCutcheon's reasoning and adopt his recommendations in Section 9.1.1.2 of his Section 42A Report.

5. INTRODUCTORY PLAN CHAPTERS

428. In this section of our report, we address submissions on the opening sections (Part 1) of the PDP. If we do not discuss any section of the PDP in Part 1, it is because no submission sought substantive change to it, and we have no basis to recommend any amendment to Council.

429. In each section, we have retained the advice as to whether the section was notified under the ISPP, or the Part 1 of the First Schedule. Once the provisions of the Plan have become operative, that advice will have served its purpose. However, for the moment, it

assists readers to know whether the provision is potentially subject to appeal, at least in the Council's view. As discussed above (in Section 3.1), the Environment Court's view on jurisdictional matters such as that is the one that counts).

5.1 Description of the District

430. Submissions sought amendments to this section variously to acknowledge the contribution of ridgelines to visual amenity[190], update population forecasts[191], better align with the now NRP[192], and to acknowledge that Taranaki Whānui hold ahi kā and primary mana whenua status[193].

431. The Section 42A Report contains a detailed discussion of the submissions, concluding that some amendments should be made in response to the Council and CentrePort submissions.

432. Having read the reasoning in the Section 42A Report, we agree with the reporting officer's reasoning and recommendations both on these submissions and in relation to those submissions he recommended not be accepted. Taranaki Whānui was the only party we heard from at the hearing, and we address its submission in greater detail in Report 1B at Section 6.2.

5.2 General Approach

433. Transpower[194] sought amendments to this section to accurately reflect the implementation of the MDRS under the Act, and that the MDRS do not have immediate legal effect in qualifying matter areas or new residential zones.

434. The Section 42A Report agreed that some qualification of the existing text was required and adopted the requested amendments.

435. Ms Whitney supported the suggested amendment in her planning evidence for Transpower, but sought that additional definitions be included in the Plan (for 'qualifying matter' and 'qualifying matter area'). We address that aspect in Section 5.5.4.1 of this report.

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[190] John Tiley [142.4], Churton Park Community Association [189.4]
[191] Wellington City Council [266.48]
[192] CentrePort [402.3]
[193] Taranaki Whānui [389.24]
[194] Submissions #15.11-12

436. Having read the Section 42A Report on the remaining issues, we agree with the reporting officer's reasoning and recommendations on this matter.

5.3 Cross Boundary Matters

437. In its submission GWRC sought both that joint processing of consents be given greater emphasis, and that the cross-boundary issue occurring across Porirua Stream be identified and highlighted[195]. TRoTR sought that the cross-boundary issue of pollution of Te Awarua o Porirua harbour from Wellington City be identified.

438. The Section 42A Report contains a discussion of the submissions concluding that some amendments should be made in response to them.

439. Submitters either did not appear at the hearing (GWRC) or did not discuss the issue further (TRoTR).

440. We agree with the reporting officer's reasoning and recommendations on these submissions, with a minor wording change to one of the suggested amendments.

5.4 Relationships Between Spatial Layers

441. The sole submission seeking change to this section related to the inter-relationship between character precincts[196].

442. The Section 42A Report agreed that some clarification would assist Plan readers in this regard and suggested inclusion of an additional sentence.

443. We agree with the reporting officer's reasoning and recommendations on this matter.

5.5 Definitions

444. In Section 5.0 of the Section 42A Report, Mr McCutcheon identified submissions seeking amendments to or deletion of the defined terms for:

- Building, Building coverage and Building Footprint
- Childcare Service

[195] Submissions #351.34-35
[196] Avryl Bramley [202.9]

- Commercial Activity
- Community Corrections Activity
- Community Facility
- Development Capacity
- Development Infrastructure
- Education Facility
- Emergency Service Facility
- Functional Need
- Ground Level
- Habitable Room
- Health Care Facility
- Heavy Industrial
- Height In Relation To Boundary
- Marae Activity
- Multi-Unit Housing
- Operational Need
- Primary Production
- Public Transport Activity
- Regionally Significant Infrastructure
- Residential Activity
- Residential Unit
- Residential Visitor Accommodation

- Retirement Village
- Sensitive Activity
- Structure
- Visitor Accommodation
- Well-Functioning Urban Environment

445. The Section 42A Report contains a discussion of the submissions and recommends that the following definitions be deleted:

- Education Facility
- Habitable Room (included twice in error)
- Residential Visitor Accommodation

446. It also recommends that the definition of 'Health Care Facility' be amended.

447. The submitters on these definitions[197] either did not appear at the hearing, or if they did appear either agreed with the Section 42A Report recommendation or did not discuss the issue further.

448. Having reviewed the reasoning in the Section 42A Report, we agree with the reporting officer's reasoning and recommendations on these submissions.

[197] New Zealand Motor Caravan Association [314.3]; Rimu Architects [318.5-8]; FENZ [273.5-6]; MoE [400.4]; Oyster Management Ltd [404.5]; Foodstuffs Ltd [476.3], Dept of Corrections [240.3], WELL [355.11-12]; Waka Kotahi [370.19]; WELL [355.13]; Envirowaste Services Ltd [373.3]; CentrePort [402.13-14]; MOE [400.4 and 400.6]; FENZ [273.7] and Oyster Management Ltd [404.6]; Meridian [228.5]; Horokiwi Quarries Ltd [271.12]; FENZ [273.8]; Transpower [315.20]; Woolworths [395.5]; Rimu Architects 318.9]; WCC [266.55]; Southern Cross Health Care Limited [380.22],;WCC ERG [377.10]; Rimu Architects [318.10]; Tapu-te-Ranga Trust [297.7]; RVA [350.5-6], Kainga Ora [391.35 and 391.13;, FENZ [273.13]; Meridian {228.7]; Transpower [315.30]; MoE [400.9]; Woolworths [359.6], NZ Agricultural Aviation Association [40.4], Waka Kotahi [370.30], Transpower [315.32], FENZ [273.14]; Waka Kotahi [370.32]; WIAL [406.41]; KiwiRail [408.14]; CentrePort [402.22],;Powerco [127.1]; Firstgas [304.9-10], M&P Makara Family Trust [41.1-2]; Transpower [29.40]; Forest and Bird [345.10]; Guardians of the Bays [44.16]; Powerco [61.1]; KiwiRail [72.6]; Firstgas [97.3]; Meridian {101.6]; NZDF {104.1]; Oranga Tamariki [83.1]; Dept of Corrections [240.6]; FENZ [273.15]; Tapu-te-Ranga Trust [297.8]; FENZ [273.16]; Airbnb [126.5]; Metlifecare Limited [413.2-3]; Transpower [315.34]; Waka Kotahi [370.34]; The Oil Companies [372.19]; MoE [400.10]; KiwiRail [408.16],;Meridian [228.12]; NZ Motor Caravan Association Ltd [314.7-8],;FENZ [273.17]; NZ Motor Caravan Association Ltd [314.9]; RVA [350.10]

449. There were a number of submissions on some definitions that were discussed at the hearing and while we do not disagree with the Section 42A reporting officer, the discussion warrants recording.

5.5.1 Assisted housing

450. WCC ERG[198] sought that the definition of 'Assisted Housing' include papakāinga housing in order that provision of papakāinga housing would qualify towards city outcomes, on the basis that there is a shortage of this type of accommodation. Kāinga Ora[199] sought that the definition be deleted.

451. Mr McCutcheon's opinion was that papakāinga is not limited to housing and can include a range of activities that usually occurs on Māori land. In addition, papakāinga has yet to be defined in the Plan. As will be discussed shortly, Mr McCutcheon addressed a submission seeking such a definition, concluding that it ought to be developed as part of the exercise of developing a Papakāinga Chapter. In Section 3.10 of this report, we have supported his recommendation that such a process be undertaken. It follows that we agree with Mr McCutcheon that it would be premature to include specific reference to papakāinga in the definition of assisted housing.

452. That said, Mr McCutcheon was of the view that the definition of assisted housing does not preclude housing managed by an iwi authority being included.

453. Mr McCutcheon explained that City Outcomes Contributions apply to over height buildings in High Density Residential Zones, the City Centre Zone and other Centre Zones where a bonus is given where, amongst other public good activities, assisted housing is provided. He therefore opposed deletion of the term.

454. Mr Heale addressed Kāinga Ora's submission in his planning evidence, explaining that its request for deletion of the term is linked to its opposition to the city outcomes contribution provisions. Kāinga Ora's submission on the latter was heard in Stream 4 and in Report 4A, the Hearing Panel recommends significant amendments to those provisions. Assisted housing remains relevant to the recommended amended provisions, and accordingly, we recommend that Kāinga Ora's submission be rejected, and the definition retained.

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[198] Submission #377.9
[199] Submission #391.32

5.5.2 Reverse Sensitivity

455. KiwiRail[200] sought that this definition be amended to include "*development, upgrading and maintenance*" of existing activities, as well as their operation, to accurately reflect the activities of established businesses. Kāinga Ora sought[201] that the definition be deleted.

456. Mr McCutcheon recommended that KiwiRail's submission be accepted. In relation to Kāinga Ora's submission, he accepted a Transpower further submission[202] which pointed out that recognition of reverse sensitivity effects is mandated by the NPSET.

457. At the hearing, the Hearing Panel asked Mr McCutcheon whether it was necessary or desirable to qualify the extent to which upgrading of existing infrastructure is taken into account. In the Council's reply, the reporting officer considered that it would be helpful to qualify the extent of both 'upgrading' and 'development' as they could expand the scope and effects of an activity. To this end he recommended that a sentence be added to the definition: *'Development' and 'upgrading' of an existing activity in this definition are limited to where the effects are the same or similar in character, intensity and scale to those which existed before the development or upgrade'.*

458. We also heard from Mr Heale for Kāinga Ora on the point. He did not oppose a definition of reverse sensitivity per se, but queried whether provision for unlimited upgrading is appropriate, whether infrastructure coming to existing activities might be considered appropriate and whether perceived effects were a relevant consideration.

459. Mr McCutcheon's suggested amendment addresses the first point. As regards the second and third points Mr Heale made, he did not develop a reasoned argument as to why the definition required further amendment. He merely posed the question and sought to reserve his ability to argue the point in the context of further hearing streams.

460. The definition did not strike us as inherently objectionable in either respect, and in the absence of reasoning supporting further change we recommend that Kāinga Ora's submission be rejected.

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[200] Submission #408.15
[201] Submission #391.9
[202] FS 29.4

461. The Hearing Panel agrees, however, with Mr McCutcheon's revised recommendation as it defines the extent to which change to an activity will be taken into account.

5.5.3 Supported residential care activity

462. This definition was the subject of submissions seeking its deletion[203] or amendment[204]. RVA's revision would read:

> *"means land and buildings in which residential accommodation, supervision, assistance, care and/or support is provided by another person or agency for residents excluding retirement villages. "*

463. Oranga Tamariki proposed a slightly different rewording, which omitted reference to retirement villages.

464. RVA sought the exclusion of retirement villages as these are specifically provided for in the Plan. Mr McCutcheon agreed that these two amendments provided clarification.

465. Both Dept of Corrections and Oranga Tamariki questioned why supported residential care was any different to residential activities generally and why therefore, supported activities were only a permitted activity up to 10 persons. Their argument was that the effects of 10 people living in a supported residential care facility are no different to 10 people living in a residential house. They sought no limit on the number of residents.

466. Mr McCutcheon did not support this request in his Section 42A Report. However, the Hearing Panel asked him to consider in his reply:

> *"Can Mr McCutcheon please advise the justification of treating this activity differently to large residential households. In addition, can he please advise his view as to how the discretion reserved, if the relevant restricted discretionary activity is triggered for a supported residential activity, should be exercised – what matters, in particular, should be taken into account?*[205]*"*

467. In addressing this matter in his reply, Mr McCutcheon said that having listened to Dept of Corrections at the hearing, he considered that the definition could be removed, as the effects of supported residential care activities are not dissimilar from residential

[203] Dept of Corrections [240.7-8]
[204] Oranga Tamariki [83.3], RVA [350.8-9]
[205] Council Officers' Reply

activities generally. On the same basis he recommended the removal of the definition of 'boarding house'.

468. The Hearing Panel supports this recommendation. We consider that if separate provision for these activities cannot be justified on an effects basis, it is difficult to retain them, and in their absence, the need for the defined terms falls away.

5.5.4 New Definitions

469. In section 6.0 of the Section 42A Report, Mr McCutcheon identified submissions seeking new definitions:

- Ahi Kā
- Overlay
- Papakāinga
- Qualifying Matter
- Rahui
- Yard

470. The Section 42A Report contains a discussion of each of the submissions on these terms concluding that the Plan should include definitions of:

(a) Ahi Kā– Mr McCutcheon recommended that a definition be developed in consultation with Taranaki Whānui and TRoTR.

(b) Papakāinga – As above, Mr McCutcheon recommended that a definition of papakāinga be developed with mana whenua as part of the development of a new chapter addressing that issue, which might then be the subject of a future Plan Change.

(c) Qualifying Matter – this is addressed separately below.

(d) Yard -- this is addressed separately below.

471. Mr McCutcheon did not consider that new definitions for Overlay and Rahui were necessary.

472. A number of the submitters[206] either did not appear at the hearing, or if they did appear, they either agreed with the Section 42A Report recommendation or did not discuss the issue further:

473. Having reviewed the Section 42A Report, we agree with the reporting officer's reasoning and recommendations on submissions relating to definitions of Papakāinga, Overlay and Rahui. In relation to a definition of Ahi Kā, while Mr McCutcheon suggested that this might be addressed in the wrap-up hearing, he was not in a position to advance the matter in his wrap-up Section 42A Report. Accordingly, we do not have a definition we could recommend at this time.

5.5.4.1 Qualifying matter

474. Transpower[207] sought a definition be added for "Qualifying Matter ". This was variously supported by WIAL[208] and KiwiRail[209], and opposed by Kāinga Ora[210]. It separately sought a new definition of 'Qualifying Matter Area'[211]. The same parties supported and opposed that submission.

475. Mr McCutcheon recommended that the definition of 'Qualifying Matter' used in the Act be included as a definition in the Plan. He did not support adding a list of qualifying matters as these will be subject to change through the hearing process. In addition, as the Plan ages, these matters become business as usual in terms of plan use.

476. Following the hearing and discussion with the Hearing Panel, Mr McCutcheon advised (in his Reply) that he would be comfortable if clarification of the role of qualifying matters was by way of an explanatory note. This addresses the temporary nature of the need for a definition given that once the PDP is operative, there will be no need for this term.

477. The Hearing Panel considers therefore that this is the preferable approach. We recommend that the following explanation be inserted at the end of the General Approach Chapter:

> *The rules governing urban development reflect the application of qualifying matters where appropriate. Qualifying matters are defined in section 2 of the*

[206] Taranaki Whānui [389.26, 389.25 and 389.27]; Heritage NZ [36.7 and 36.8]; WCC [266.54]
[207] Submission #315.14
[208] FS36.10
[209] FS72.1
[210] FS89.23
[211] Submission #315.15

Act with reference to sections 77I and 77O, which in turn list matters that can potentially justify making the MDRS (and the relevant building height or density requirements under policy 3 of the NPS-UD) less enabling of development than would otherwise be the case.

478. We do not recommend insertion of a separate definition of 'Qualifying Matter Area'. Transpower's submission suggested a definition that listed such areas. However, Ms Whitney (for Transpower) was not in a position to fill out such a list to include Qualifying Matter Areas other than those related to the National Grid. Any such list would also be subject to the issues Mr McCutcheon identified.

5.5.4.2 Yard

479. The Council[212] sought definitions for Front, Side and Rear Yards be included, noting that these had been omitted in error. Mr McCutcheon agreed, and no other party expressed a view on the matter. We likewise recommend the suggested definitions be included.

5.5.5 Other Matters

480. In section 7.0 of the Section 42A Report Mr McCutcheon identified a number of submissions[213] seeking amendments to definition related matters;

(a) Including definitions 'nested' tables;

(b) Explanation that greyed out definitions are from the National Planning Standards.

481. The Section 42A Report addressed these matters and recommended that nested tables for definitions to be presented as part of the IPI wrap up hearing in September 2023.

482. Mr McCutcheon also agreed that a note should be included in the definitions chapter identifying that the greyed out definitions are those from the National Planning Standards.

483. The submitter (Rimu Architects) did not appear to express concern about his suggested response on the latter point and we agree with Mr McCutcheon's recommendation.

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[212] Submission #266.54
[213] McDonalds [274.3-4]; Foodstuffs [476.2]; Rimu Architects [318.1]

484. The wrap-up Section 42A Report presented suggested nested tables. We did not hear any adverse comments on them in the Wrap-up/Integration hearing that would have provided a basis to disagree with Mr McCutcheon's recommendation that we accordingly accept. We note that if the Nesting Tables are to form a separate Chapter of the Plan, they will require a Te Reo name to be added to the Version attached as Appendix 1.7.

485. That report also noted a submission from the Tyers Stream Group[214] seeking clarification of the definition of 'waterbody'. We agree with Mr McCutcheon's response noting that this is a National Planning Standards definition, which cannot be changed.

5.6 Glossary

486. Heritage NZ[215] sought amendments to the glossary terms 'Wāhi tapu' and 'Wāhi Tīpuna' and the deletion of glossary term 'Wāhi Tūpuna' to ensure consistency with the terms used in the HNZPT Act. TRoTR[216] opposed these submissions points.

487. Although he disagreed that changes needed to be consistent with the HNZPT Act, Mr McCutcheon agreed with the intent of the submission. He therefore recommended that the terms for Wahi tapu and Wahi tipuna be amended, as sought. Consequential changes will also be needed in other chapters of the plan including the SASM chapter.

488. TRoTR did not address this point when their representatives appeared at the hearing.

489. Having reviewed the Section 42A Report, we agree with the reporting officer's reasoning and recommendations on these submissions.

5.7 National Policy Statements and New Zealand Coastal Policy Statement

490. As noted above (in Section 1.6), the NPSHPL and NPSIB were gazetted after notification of the PDP. These documents have not been formally reviewed by Council yet, but we recommend that their existence be acknowledged in this chapter as a minor correction.

[214] Submission #221.6
[215] Submissions 70.7-12
[216] FS138.3-9

5.8 National Environmental Standards

491. Also as noted in Section 1.6 above, the National Environmental Standards for Production Forestry 2017 were renamed the National Environmental Standards for Commercial Forestry 2017 in November 2023. We recommend that this amendment be reflected in a change to this section of the PDP, again as a minor correction.

5.9 Tangata Whenua

492. Muaūpoko Tribal Authority (**MTA**) sought several amendments to the Tangata Whenua chapter in their submission[217]. In summary, MTA were seeking more recognition of their cultural association and interests within Te Whanganui ā Tara (Wellington). This was mainly regarding sites and areas where their traditional connection is recorded in existing place names.

493. Mr McCutcheon[218] acknowledged that MTA have a '*a traditional rohe that includes Te Whanganui āTara'* but stated that the Council only recognise Ngāti Toa Rangatira and Taranaki Whānui as mana whenua for the purpose of the Plan under the RMA.

494. Melissa Harward[219] sought that the scope of the Tangata Whenua chapter is expanded beyond the minimum required by Treaty Settlement legislation.

495. Mr McCutcheon referred us to the National Planning Standards, which determines the scope of the Tangata Whenua chapter. His view was that as drafted, it is broader than content relating to treaty settlements. He noted also that provisions throughout the Plan seek to realise the aspirations of mana whenua. He did not recommend any additional amendments to respond to this submission.

496. Ms Harward did not appear to explain to us exactly how the Tangata Whenua chapter should be expanded, and we agree with Mr McCutcheon's recommendation.

497. Regarding the submission from Muaūpoko to have their cultural connections recognised formally in the Tangata Whenua chapter, we note that the RMA defines 'tangata whenua' as being, in relation to a particular area, "the iwi, or hapu, that holds mana whenua over that area". While the amendments sought to the Tangata Whenua

[217] Submissions #379.1-2, 379.4-8 (inclusive).
[218] Hearing Stream 1-Section 42A Report (Para 776)
[219] Submission #65.2

chapter do not state Muaūpoko has mana whenua status, and the thrust of the case its representatives presented sought to emphasise the ancestral connections of Muaūpoko to Te Whanganui ā Tara, insertion of such recognition in that context, in our view, implies mana whenua status.

498. We note that, during the hearing, in response to a question from Commissioner Faulkner, the representatives of MTA could not provide any evidence regarding how Muaūpoko status as mana whenua was derived. No further evidence was provided to assist us in this determination. Further to this, Mr Kahu Ropata (for TRoTR) stated that it was absolutely inconsistent with tikanga Māori for us to make such determinations as it should be done through korero between Muaūpoko and the mana whenua partners. He further stated that their door was 'always open' if MTA wanted to have this discussion in an appropriate way.

499. We agree with the evidence of Mr Ropata that appropriate conversations with the existing mana whenua partners are a necessary prerequisite to recognition of Muaūpoko in a Tangata Whenua context. We consider that for us to recommend providing for this would be inappropriate and inconsistent with tikanga Māori. Formal consultation between mana whenua partners and MTA is the appropriate way to address these concerns.

500. Notwithstanding the above, we agree that the evidence presented to us shows that MTA have a relationship or cultural association with Te Whanganui ā Tara. We are also mindful of section 6(e) of the RMA which states that as a matter of national importance the *relationship of **Māori*** and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga shall be recognised and provided for [emphasis added]. Mr McCutcheon[220] considered this in his written reply and suggested that ancestral sites and areas of significance to Muaūpoko could be identified in the Plan given the broad scope of 'Māori', but noted that Muaūpoko had not identified any such sites in its submission. Any recognition of Muaūpoko interests is therefore necessarily in relation to sites that have yet to be identified. It also needs to be in the context of section 6(e) of the RMA, to avoid creating the implications an amendment to the Tangata Whenua chapter would have.

501. Section 6(e) is referred to at the end of the introduction to the Strategic Objectives Chapters relating to Historic Heritage and Sites of Significance to Māori. We find that an amendment immediately following that reference, recognising the cultural connection to

[220] Hearing Stream 1 – Council Reply (paras 64-73)

the area of the iwi who were present before the arrival of Taranaki Whānui ki te Upoko o te Ika and Ngāti Toa Rangatira is appropriate. It is important, however, that recognition of that interest acknowledges and involves mana whenua. Our recommended text is as follows:

> *"Section 6(e) is broadly expressed and there is potential for sites and areas of significance to the iwi who inhabited the Wellington City area before the arrival of Taranaki Whānui ki te Upoko o te Ika and Ngāti Toa Rangatira to be identified over the life of the Plan. Such sites and areas need to be managed in accordance with tikanga Māori."*

502. We recommend that MTA's submissions be accepted in part, to that extent. It follows that the only changes recommended to this chapter are to delete the notification statement, and to make the terminology change discussed in Section 3.10 above.

6. CONCLUSIONS

503. We have sought to address all material issues of the parties who have appeared before us put in contention.

504. To the extent that we have not discussed submissions on the topics allocated to Hearing Stream 1, we agree with and adopt the reasoning of the Section 42A Reports prepared by Messrs McCutcheon and Wharton, as amended in their respective Replies.

505. The same is the case in respect of submissions allocated to the Wrap-up/Integration hearing that raise issues not addressed in other chapter-specific reports.

506. Appendix 1 sets out the amendments we recommend be made to the PDP as a result. For convenience, Appendix 1 includes amendments to the Definitions and Glossary made as a result of the Hearing Panel's recommendations in subsequent IPI hearing streams. We note that the Advice at the top of the Definitions Chapter (that greyed out definitions show those taken from the National Planning Standards) has not been actioned in the Appendix 1 Version. The ePlan Version will show that change. We also observe, as noted above, that if the Definitions Nesting Tables are to form a new Chapter of the Plan, they will require a Te Reo name to be inserted at the top.

507. 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.

508. Where we have discussed amendments, in particular where we have identified that further amendments should be made, our reasons for our recommendations in terms of Section 32AA of the Act are set out in the body of our Report.

509. Appendix 2 sets out in tabular form our recommendations on the submissions allocated to Hearing Stream 1 topics (including those transferred from the Wrap-up/Integration hearing) other than those considered in Report 1B.

510. Lastly, we note our recommendation at Section 3.10 above that Council engage with mana whenua to develop a Papakāinga Chapter for the Plan, and that this be the subject of a future Plan Change.

For the Hearing Panel:

Trevor Robinson
Chair
Wellington City Proposed District Plan Hearings Panel

Dated 26 January 2024