

WELLINGTON CITY COUNCIL

Hearing of Submissions and Further Submissions

on

Proposed District Plan

Report and Recommendations of Independent Commissioners

Hearing Stream 2

Report 2B

**Residential Zones – Character Precincts
Mount Victoria North Townscape Precinct
Oriental Bay Height Precinct
Character Precincts Design Guide
Mount Victoria North Design Guide**

Commissioners

**Trevor Robinson (Chair)
Elizabeth Burge
Heike Lutz
David McMahon**

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EXECUTIVE SUMMARY

1. This report addresses the three types of precincts the PDP identifies within the residential zones, and the provisions and supporting design guides relating to those precincts.
2. We consider that the Character Precincts and the Mount Victoria North Townscape Precinct seek to protect important City values, and that to the extent they limit urban development capacity, they have been properly evaluated in accordance with the requirements of the RMA.
3. We are similarly satisfied that the Oriental Bay Height Precinct seeks to protect important City values. However, we have found that the evaluation of this precinct does not meet the requirements of the RMA. Council appears to have proceeded on the assumption, which we believe to be erroneous, that no evaluation was required. As a result, we have been forced to recommend that the height limits in this precinct be a minimum of 21m.
4. Many submissions sought expansion of the areas that are the subject of Character Precincts. The Reporting Officer has undertaken a careful analysis of the Character Precincts, and recommended significant amendments to the areas covered. We consider that his recommendations are well considered and we support them. However, we also consider that in a number of areas, those precincts can properly be further expanded to produce more robust and logical boundaries to the identified precincts.
5. We have recommended the addition of a relatively small Character Precinct centred on The Terrace, in the area north of MacDonald Crescent. We consider the concentration of character values there justifies recognition.
6. We have evaluated both the additions to Character Precincts recommended by the Reporting Officer, and the further additions we have recommended. We are satisfied that those additions (and the consequential rezoning of the affected areas as MRZ) do not materially reduce Plan-enabled development capacity, given the very large surplus of realisable capacity over long-term predicted demand.
7. We recommend rejection of submissions seeking to equate character and heritage values. We accept the logic underpinning the PDP that these different values are related, but focus on different aspects of older properties. In our view, they therefore need to be evaluated separately and be subject to different provisions, with Character

Precincts having a lower level of restriction on redevelopment than is appropriate for Heritage buildings and Heritage Areas.

8. We therefore also recommend rejection of submissions seeking greater constraints over demolition of buildings within Character Precincts. We are satisfied at a general level that the notified provisions strike the correct balance between maintaining character values and enabling redevelopment.
9. More generally, while we have recommended some amendments to PDP provisions governing character precincts, they are relatively minor in nature.
10. We consider the Character Precincts Design Guide Appendix to be incomplete. We lacked the evidence to address the missing elements and we recommend that Council consider a future Plan Change to address the issue. The need to do so is greater if our recommendations as to the areas the subject of the Character Precincts are accepted, but the issue needs to be addressed irrespective.

1. INTRODUCTION

1.1 Topics of Hearing

11. Hearing Stream 2 covered the Residential Zones and related Design Guides. This Report addresses the three different Precincts that are the subject of a subset of the MRZ Zone Chapter with the prefix MRZ-PREC, and the related appendices to the Residential Design Guide for Character Precincts and the Mount Victoria North Townscape Precinct. Most of these matters were the subject of a separate Section 42A Report authored by Mr Mitch Lewandowski. While Mr Patterson addressed the Oriental Bay Height Precinct in his Section 42A Report, for convenience, we address that also in this report.
12. Our Report follows the general layout of Mr Lewandowski's Section 42A Report and needs to be read in conjunction with Report 2A, which addresses the balance of matters heard as part of Hearing Stream 2, Report 1B, which addresses strategic objectives, and Report 1A, which sets out:
 - (a) Appointment of commissioners;
 - (b) Notification and submissions;
 - (c) Procedural directions;

- (d) Conflict management;
- (e) Statutory requirements;
- (f) General approach taken in reports;
- (g) Abbreviations used.

1.2 Introduction to Character Precincts

13. Report 2A contains a general summary of the residential precincts, as notified. We record that there are in fact three sets of precincts:
 - (a) Character Precincts;
 - (b) The Mount Victoria North Townscape Precinct;
 - (c) The Oriental Bay Height Precinct.
14. In the Notified PDP, the Character Precincts were located in the following suburbs:
 - Berhampore;
 - Newtown;
 - Mount Cook;
 - Mount Victoria;
 - Aro Valley;
 - Thorndon: and
 - Lower Kelburn.
15. The PDP records that Character Precincts seek to identify existing concentrations of consistent character and prevent its further erosion. The character in question is described as being “*a product of the architectural values of the dwellings in these areas, patterns of subdivision and the resulted streetscape*”.
16. The unique element of the Character Precincts, within the structure of the MRZ Chapter, is a series of buildings and structure activity rules and standards, seeking to achieve the single objective (MRZ-PREC01-O1) and implement six policies (MRZ-PREC01-P1-6).

17. The stated purpose of the Mount Victoria North Townscape Precinct is to provide for the management of townscape values within the Mount Victoria North Area. That area has been identified due to its high visibility and proximity to St Gerard's Monastery and the escarpment below the Monastery.
18. As with the Character Precincts, the building and structure activity rules and standards within the Mount Victoria North Townscape Precinct are specific to that precinct. They seek to achieve the single objective (MRZ-PREC02-O1) and to implement the single policy applying to that precinct (MRZ-PREC02-P1). There is considerable overlap between the Mount Victoria North Townscape Precinct and the Character Precincts in the area of St Gerard's Monastery and the residential sites south of the Monastery.
19. The third precinct (the Oriental Bay Height Precinct) covers a series of sites with a frontage to Oriental Parade commencing at 40 Oriental Parade (aka Bay Plaza Hotel) and ending at 352 Oriental Parade. There appear to be no areas where the Oriental Bay Height Precinct overlaps with either of the other two precincts as notified¹, but there are areas where site boundaries also mark the boundary between that and one or other of the other two precincts.
20. There are separate building and structure activity rules and standards for this precinct which specify varying height limits depending on the location. Those limits range from 12.6m to 33.6m. The PDP states that the specified heights seek to maximise residential development potential while at the same time offering protection for the amenity of the properties to the rear and public amenity along Oriental Parade as well as protecting townscape views of St Gerard's Monastery and the escarpment below it.
21. These matters are collectively described in the single objective for the Oriental Bay Height Precinct (MRZ-PREC03-O1) which is supported by a single policy (MRZ-PREC03-P1).

2. CHARACTER PRECINCTS AS A QUALIFYING MATTER

2.1 Regulation of Qualifying Matters

22. It was common ground between the parties before us that each of the three sets of precincts described above needed to meet the legal tests relating to qualifying matters.

¹ If our recommendations are accepted, there are two properties on McFarlane Street that would be in both the Mount Victoria North Townscape Precinct and the Oriental Bay Height Precinct

23. Unfortunately, that was about where the level of consensus among the parties stopped.
24. Accordingly, it is necessary for us to set out in some detail the relevant statutory provisions that we need to consider.
25. The starting point is the requirement in Section 77G(1) for every relevant Residential Zone to have the MDRS incorporated into its zone or the requirement in Section 77G(2) to give effect to NPSUD Policy 3 (if applicable).
26. Section 77I then specifies that:

“A specified territorial authority [of which Wellington City is one] may make the MDRS and the relevant building height or density requirements under policy 3 less enabling of development in relation to an area within a relevant residential zone only to the extent necessary to accommodate 1 or more of the following qualifying matters that are present:

(a) A matter of national importance the decision makers are required to recognise and provide for under section 6;

:....

(j) Any other matter that makes higher density, as provided for in the MDRS or policy 3, inappropriate in an area, but only if section 77L is satisfied.”

27. Section 77J provides as follows:

“Requirements in relation to evaluation report

- (1) This section applies if a territorial authority is amending its district plan (as provided for in section 77G).*
- (2) The evaluation report from the specified territorial authority referred to in section 32 must, in addition to the matters in that section, consider the matters in subsections (3) and (4).*
- (3) The evaluation report must, in relation to the proposed amendment to accommodate a qualifying matter,—*
 - (a) demonstrate why the territorial authority considers—*
 - (i) that the area is subject to a qualifying matter; and*
 - (ii) that the qualifying matter is incompatible with the level of development permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 for that area; and*
 - (b) assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity; and*
 - (c) assess the costs and broader impacts of imposing those limits.*
- (4) The evaluation report must include, in relation to the provisions implementing the MDRS,—*

- (a) a description of how the provisions of the district plan allow the same or a greater level of development than the MDRS;
- (b) a description of how modifications to the MDRS as applied to the relevant residential zones are limited to only those modifications necessary to accommodate qualifying matters and, in particular, how they apply to any spatial layers relating to overlays, precincts, specific controls, and development areas, including—
 - (i) any operative district plan spatial layers; and
 - (ii) any new spatial layers proposed for the district plan.
- (5) The requirements set out in subsection (3)(a) apply only in the area for which the territorial authority is proposing to make an allowance for a qualifying matter.
- (6) The evaluation report may for the purposes of subsection (4) describe any modifications to the requirements of section 32 necessary to achieve the development objectives of the MDRS.”

28. Section 77K provides an alternative to the application of Section 77J as follows:

“Alternative process for existing qualifying matters

- (1) A specified territorial authority may, when considering existing qualifying matters, instead of undertaking the evaluation process described in section 77J, do all the following things:
 - (a) identify by location (for example, by mapping) where an existing qualifying matter applies:
 - (b) specify the alternative density standards proposed for those areas identified under paragraph (a):
 - (c) identify in the report prepared under section 32 why the territorial authority considers that 1 or more existing qualifying matters apply to those areas identified under paragraph (a):
 - (d) describe in general terms for a typical site in those areas identified under paragraph (a) the level of development that would be prevented by accommodating the qualifying matter, in comparison with the level of development that would have been permitted by the MDRS and policy 3:
 - (e) notify the existing qualifying matters in the IPI.
- (2) To avoid doubt, existing qualifying matters included in the IPI—
 - (a) do not have immediate legal effect on notification of the IPI; but
 - (b) continue to have effect as part of the operative plan.
- (3) In this section, an **existing qualifying matter** is a qualifying matter referred to in section 77I(a) to (i) that is operative in the relevant district plan when the IPI is notified.”

29. Lastly, in relation to qualifying matters coming within Section 77I(j), Section 77L imposes additional requirements worded as follows:

“Further requirement about application of section 77I(j)

A matter is not a qualifying matter under section 77I(j) in relation to an area unless the evaluation report referred to in section 32 also—

- (a) *identifies the specific characteristic that makes the level of development provided by the MDRS (as specified in Schedule 3A or as provided for by policy 3) inappropriate in the area; and*
- (b) *justifies why that characteristic makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD; and*
- (c) *includes a site-specific analysis that—*
 - (i) *identifies the site to which the matter relates; and*
 - (ii) *evaluates the specific characteristic on a site-specific basis to determine the geographic area where intensification needs to be compatible with the specific matter; and*
 - (iii) *evaluates an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 while managing the specific characteristics.”*

30. While the NPSUD has evaluation requirements of its own², they do not appear to pose any additional requirements not contained in the statutory requirements. Certainly, no party identified any to us.
31. Each of the three sets of precincts were derived to a greater or lesser extent from regulatory controls contained in the ODP. The Character Precincts were significantly reduced in area and the rules and standards relating to activities within them were also amended. As we will discuss later in this Report, a number of submitters sought to expand the spatial coverage of the Character Precincts back to the areas covered by the ODP, and to amend the relevant rules to reverse changes from the ODP. WCCT in particular sought to strengthen the controls on demolition of buildings within the Character Precincts.
32. The Mount Victoria North Townscape Precinct and Oriental Bay Height Precinct appear to have been largely rolled over from the ODP.
33. The question we have to determine is whether one or more of the sets of precincts satisfy the requirements of Section 77K.
34. That was not the Council’s position. It considered that all three sets of precincts were seeking to preserve visual amenity and, as such fell within Section 77I(j) i.e. they were an ‘other matter’.
35. A number of parties who appeared before us highlighted the inter-relationship between character values and historic heritage values. Ms Newman for the Mount Victoria

² See Clause 3.33

Historical Society, for instance observed that the focus of the Character Precincts on pre-1930 residential buildings meant that character was explicitly informed by the history of the buildings. She suggested to us that most Character Precincts could also be Heritage Areas.

36. Ms Wong for HPW took the matter further, suggesting to us that Section 77K applies because heritage is the basis of character areas. She suggested that character and heritage were intertwined³.
37. While agreeing that there was a difference between character and historic heritage, Dr Jacobs of HNZ agreed that most character areas could probably also be heritage areas, but noted the importance of documenting them as such. The group of submitters led by Claire Nolan put a similar point, suggesting to us that character and heritage are indistinguishable, but said that they would not hang their hat on that point without research.
38. It seems to us that the last two submitters we have noted rightly focus on the need to assess historic heritage as such.
39. Every building has a history, and the older the building the longer that history. That does not mean, however, that every old building has historic heritage value for the purposes of Section 6(f) of the Act. That requires assessment by those with expertise in that field.
40. Further, while identification of pre-1930 residential buildings was the starting point for the Character Precincts, as the Plan states, it was not their history that was the focus, but rather the contribution their architectural values make to streetscape. Streetscape is an amenity issue, not a historic heritage issue.
41. In summary, we accept the Council's analysis that the Character Precincts fall within Section 77I(j) and have to be evaluated as such.
42. There was rather less focus on the Mount Victoria North Townscape Precinct and Oriental Bay Height Precinct in this regard, although Ms Woodbridge in her planning evidence for Kāinga Ora suggested to us that the Mount Victoria North Townscape Precinct might be better based on heritage protection. However, she had not assessed the point. We record that we heard a similar position from Kāinga Ora in Hearing Stream 3, supported by expert historic heritage evidence. However, it was framed as

³ Former Mayor Foster similarly suggested Section 77K applied based on the heritage values of the identified areas.

a possibility that deserved analysis and as such, we do not think we can place great reliance on it.

43. While clearly there is an inter-relationship between both the Mount Victoria North Townscape Precinct and the Oriental Bay Height Precinct and the historic values of St Gerard's Monastery, those historic values are part of a broader picture underlying those two precincts and we do not think that we had sufficient material before us of which to conclude that the development constraints within those precincts are necessary to accommodate the historic heritage values of St Gerard's Monastery.
44. We therefore proceed on the basis that they too are "*other matters*" and need to be evaluated as such.
45. Proceeding on that basis, we heard a number of legal submissions seeking to characterise the various tests contained within Section 77J and 77L. Counsel for Waka Kotahi, for instance characterised them as imposing 'onerous' requirements, setting a 'high bar' and requiring 'significant justification' for qualifying matters falling within Section 77I(j).
46. Counsel for Kāinga Ora similarly suggested that such qualifying matters needed to be 'strictly assessed and quantified'. Ms Caldwell characterised Section 77L(b) as requiring that such qualifying matters be 'so significant' that they displace the MDRS and NPSUD Policy 3.
47. We have to confess that we found the level of over-statement, if not hyperbole, somewhat surprising when coming from experienced counsel.
48. Viewed objectively, Section 77L clearly requires a more granular analysis before one can reach the conclusion both that a qualifying matter is justified, and identify the level of restriction on the outcomes that the MDRS/Policy 3 would otherwise require. It also requires an assessment "*in light of the national significance of urban development and the objectives of the NPS-UD*" which Section 77J does not explicitly require. However, we would expect an evaluation under Section 77J to take these matters into account nonetheless since the issue either way is whether the qualification can be justified in light of the directions of the NPSUD.
49. What Section 77L does not say is that a qualifying matter must be of national significance in order to prevail over those directions. The fact that Section 77I provides for potential qualifying matters other than those based on the matters of national importance identified in Section 6 suggests to us that that is quite deliberate.

50. On a related point, counsel for Waka Kotahi submitted to us that amenity considerations could never be the basis of a valid qualifying matter. When we queried that view, counsel pointed us to NPSUD Policy 6. However, as Ms Sheard acknowledged, that does no more than tell us that amenity considerations point both ways in this field, and that one should not assume that a change in amenity values is necessarily an adverse effect.
51. The conclusion we draw is that we must be guided by the evidence before us. It seemed to us, by contrast, that some of the parties who appeared before us had predetermined that a proper analysis under Sections 77J and 77L could never arrive at the conclusion that precincts such as those proposed could be a valid qualifying matter. Mr Scott for Waka Kotahi said almost exactly that, and Mr Wauchope for MHUD similarly suggested that if we considered the issues properly, we would struggle to justify the notified PDP approach.
52. We prefer to assess the evidence in relation to each of the required statutory tests, and see where that takes us, rather than prejudge the outcome.
53. We also do not accept that the requirements of Section 77J(3)(c) impose a materially greater obligation on decision-makers to assess and quantify costs and benefits than Section 32. While Section 77J(3)(c) requires consideration of 'broader' impacts, we regard that as a difference in emphasis rather than a material addition.
54. Supporting that view, counsel for Kāinga Ora accepted that the language of the two provisions is largely the same, and that quantification of costs and benefits should be subject to the same 'where practicable' qualification as is in Section 32. Similarly, counsel for MHUD suggested that what was required was a 'robust' cost-benefit analysis, but accepted in response to our question that a Section 32 evaluation should similarly be robust.
55. We accept counsel for MHUD's submission that when interpreting and applying Section 77L, "it is also relevant that the provision distinguishes between the 'site' to which 'any other matter' might relate, and the 'geographical area' where intensification may need to be moderated to be compatible with the specific matter."
56. The example counsel for MHUD gave of the application of that principle is the Auckland War Memorial Museum Viewshaft Overlay where the specific characteristics of the Museum site may justify a lesser form of development in a broader geographical area, being the area which views are available through to the Museum.

57. That suggests to us that if we are satisfied that the precincts can be justified as a qualifying matter, the identification of the area within which development is constrained is not dependent on the characteristics of each site in a proposed area of restriction. It can be justified by the inter-relationship of that site with the sites around it. At a practical level, we therefore have the ability to constrain development at their margins to protect the identified values from interface effects, provided that that can be appropriately justified on the evidence of the effects on those values.
58. Lastly, by way of preliminary analysis, we note that Sections 77J and 77L focus on the evaluation supporting the notified PDP. It seemed to us that our inquiry is not limited to the material published prior to notification, but rather that we need to be satisfied that the precincts can be justified against the statutory tests before recommending them based on all of the evidence that we have heard. We note that that was the position that Mr Wauchope supported in his corporate evidence for MHUD.

2.2 Evaluating Character Precincts

59. The Character Precincts notified in the PDP occupied a significantly larger area than the other two sets of precincts and, accordingly, were the subject of most of the debate. In his Section 42A Report, at Section 8.0, Mr Lewandowski assessed the numerous submissions on this issue, referring us to the material supporting their identification as a qualifying matter including the “*Wellington City Qualifying Matters Capacity Assessment*” that was prepared by Property Economics in November 2022 (i.e. after notification of the PDP). He recorded that the assessment of the effect of the proposed Character Precincts was that they would lead to a reduction in development capacity of some 3,942 feasible dwellings and 2,106 realisable dwellings against a background of the PDP providing for 61,750 realisable dwellings in total against a predicted demand of 31,242 dwellings over the 30 year timeframe assessed.
60. Mr Lewandowski noted the definition of “*character*” that had been adopted for the purposes of the Character Precincts. In his view:
- “Given that their character is derived from the originality and condition of these dwellings, and their collective coherence as being of a particular era, their demolition and/or redevelopment in a manner provided by an MDRS all density and height requirements of Policy 3, makes them incompatible with the level of development anticipated by these requirements due to the impact this would have on their character.”*
61. Mr Lewandowski responded to submitters critiquing the Council’s approach and suggesting that it should have adopted a more holistic definition of character and/or a

wider application of qualifying matters to character values and/or rolled over the existing character areas. He regarded the approach taken by Council as adopting an appropriate methodology, and disagreed that rolling over the existing character areas would be justifiable based on the assessment of character values of each site within the existing character areas.

62. Mr Lewandowski disagreed also with the submissions of Waka Kotahi⁴ and Kāinga Ora⁵ that special character should be provided for as an overlay. In his view, the precinct tool was the appropriate spatial layer with reference to its purpose and to the National Planning Standards. He did not consider that the approach submitters had proposed of managing character through design controls would achieve the fundamental purpose of the Character Precincts, because that approach accepts that demolition of the existing housing stock (particularly that predating 1930) is appropriate in the first instance.
63. Mr Lewandowski disagreed also with a series of submissions⁶ which considered that modern fit for purpose housing should prevail over character protection, noting that the Character Precincts contain many fit for purpose dwellings that have been renovated and brought up to more modern standards. He also noted that the Character Precinct provisions do not preclude renovation and upgrading works nor the construction of new dwellings. He also recorded that the proposed significant reduction of the existing character areas would enable greater development potential in those areas.
64. Responding to submitters like VicLabour⁷, Mr Lewandowski emphasised that the Character Precincts do not freeze development potential, but rather require consideration of the effects of new development on the character values of a given precinct and provide restrictions on the demolition of existing buildings, which is the source of their character.
65. We heard from a number of parties who suggested to us that the Council's evaluation of the character precincts was flawed. This varied from a wide-ranging critique of the Council's approach (e.g. from Mr Lockhart for VicLabour, and from Mr Garlick for Generation Zero) and a more technical analysis from Waka Kotahi, Kāinga Ora, and MHUD. The most detailed and comprehensive analysis was provided to us by Ms Woodbridge in her planning evidence for Kāinga Ora. We will work through her

⁴ Submission #370.259

⁵ Submission #391.313 and #391.316

⁶ Grant Buchan [143.16]; Matthew Gibbons [148.2 and #148.4]; Wellington City Youth Council [201.30]

⁷ Submission #414.9

evidence, incorporating consideration of the evidence of other witnesses as relevant. Ms Woodbridge provided a tabulated analysis which assists this process, as does Mr Lewandowski's adoption of that format as part of the Council's Reply, and his provision of a point-by-point comment on those areas Ms Woodbridge drew attention to.

66. The first step is to put to one side those aspects of Section 77J and 77L where Ms Woodbridge accepted that the Council had complied with the statutory requirements. Those were:

- (a) Demonstrating why the Council considers that the area is subject to a qualifying matter (Section 77J(3)(a));
- (b) Assessment of the impact that limiting development capacity, building height, or density will have on provision of development capacity (Section 77J(3)(b)), albeit noting that this was dependant on the Property Economics analysis that was belatedly supplied. We do not consider that fatal, for the reasons set out above, and from Ms Woodbridge's acceptance that this requirement was met, it appears that she agreed with that view.
- (c) Assessing the costs and broader impacts of imposing limits on development in Character Precincts (Section 77J(3)(c));
- (d) Describing how the provisions of the District Plan allowed the same or a greater level of development than the MDRS (Section 77J(4)(a));
- (e) Describing how modification to the MDRS is limited to only those modifications necessary to accommodate qualifying matters and how they apply to any spatial layers relating to overlays, precincts, specific controls, and development areas (Section 77J(4)(b)); and
- (f) A site-specific analysis that identifies the site to which the matter relates (Section 77L(c)(i)).

67. We agree with Ms Woodbridge's views in this regard. We consider, in particular, that there is a sound case for identification of character values in a number of inner-Wellington residential areas and, subject to our findings on the balance of statutory considerations, providing a measure of protection for those values.

68. Ms Woodbridge also noted that while the Section 32 evaluation report did not identify any modifications to the requirements of Section 32 necessary to achieve the

development objectives of the MDRS (as per Section 77J(6)), this is a discretion that the Council has and therefore the absence of any modifications is not critical.

69. Focussing then on the statutory tests Ms Woodbridge suggested had not been complied with, these were:
- (a) Demonstrating why the Council considers that the qualifying matter is incompatible with the level of development permitted by the MDRS (as specified in Schedule 3A) or as provided for by Policy 3 for that area (Section 77(3)(a)(ii));
 - (b) Identification of the specific characteristic that makes the level of development provided for by the MDRS inappropriate in the area (Section 77L(a));
 - (c) Justification as to why that characteristic makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPSUD (Section 77L(b));
 - (d) A site-specific analysis evaluating the specific characteristics that determine the geographic area where intensification needs to be compatible with the specific matter (Section 77L(c)(ii));
 - (e) A site-specific analysis evaluating an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS or as provided for by Policy 3, while managing the specific characteristics (Section 77L(c)(iii)).
70. There is in our view considerable overlap between the first two points. Sections 77(3)(a)(ii) and 77L(a) are asking essentially the same question which we would paraphrase as: *Why does the proposed qualifying matter require modification of the standards that the MDRS/NPSUD Policy 3 would otherwise require?*
71. One can readily understand the rationale for such a test. Different qualifying matters have different characteristics. Intuitively, for instance, we know that height is likely to be an issue in areas of seismic hazard, whereas it is not likely to be an issue in areas subject to flood hazards.
72. In the body of her evidence, Ms Woodbridge suggested that the technical analysis the Council had relied on, did not consider how the special characteristics of each area would make those areas unsuitable for intensification. She suggested, in particular, that the Council should have commissioned a further expert report to fully assess the

potential effects intensification required by NPSUD Policy 3 would have on the character values⁸.

73. In her tabulated comments, Ms Woodbridge pitched the issue more as one of the sufficiency of the analysis undertaken by the Council in the absence of an in-depth assessment to explain exactly how allowing the level of development NPSUD Policy 3 would otherwise require would be inappropriate. She suggested that test cases could have been used to look at actual effects on character values from allowing increased development opportunity.
74. It seems to us that Ms Woodbridge's critique fails to take account of the basis for identification of the Character Precincts. The Boffa Miskell Report underpinning identification of the Character Precincts identifies building height and shape, and site coverage as elements of the character it was seeking to identify⁹. That report illustrates properties that detract from character values, highlighting building scale and form, and the relationship to the street as key elements¹⁰. The examples shown include 3-4 storey buildings. By contrast, the primary, contributory and neutral examples shown¹¹ were 1-2 storey buildings. Against that background, we think that Mr Lewandowski was on strong ground concluding that 6 storey buildings developed in accordance with HRZ standards would erode the character values the Council was seeking to retain.
75. We would note in support of that view also Mr Rae's confirmation in his evidence for Kāinga Ora that height and height in relation to boundary are likely to be the characteristics with potential to have greatest effects on character values.
76. Where Mr Lewandowski was arguably on somewhat weaker ground was in justifying exactly where the Council fixed the line for new buildings in character areas (the MRZ Standards). The Boffa Miskell Report would suggest that there could have been a basis to move marginally from those standards, particularly as regards height, either up or down. However, we note Dr Jacobs' view, when he presented his evidence for HNZ, that it would be inadvisable to have even MRZ sized buildings next to character areas. That would suggest that if anything, the position the Council has settled on is somewhat conservative (i.e. pro-development, rather than the reverse).

⁸ V Woodbridge Stream 2 Evidence in Chief at 4.10 and 4.12

⁹ Refer Boffa Miskell, pre-1930 character area review, 23 January 2019 at 1.2

¹⁰ Ibid at page 8

¹¹ Ibid at pages 5-7

77. Discussing the issues with Ms Woodbridge, we think it is fair to say that she retreated, certainly from the position set out in her written evidence, concluding that she was “*more neutral*” on compliance with Section 77L(a).
78. We would add the position higher than that. We are comfortable that the related requirements of Section 77J(3)(a)(ii) and 77L(a) are satisfied.
79. The next statutory requirement Ms Woodbridge assessed as being an issue was that in Section 77J(3)(c), which requires an assessment of the costs and broader impacts of imposing those limits. Ms Woodbridge’s tabulated comments noted her agreement that Section 11 of the Section 32 Evaluation Report and the Property Economics Report do provide an assessment of the costs of imposing the qualifying matter limits but, in her view, the assessment did not go far enough. She noted that the Section 32 evaluation does not quantify the effects of either maintaining or losing character value due to the subjective nature of these effects, and that some economic costs and benefits had not been quantified. Mr Lewandowski agreed that some impacts had not been quantified. However, he emphasised that the development capacity impacts had been quantified and that impacts on housing typologies are inherent in development capacity impacts. Mr Lewandowski also noted that broader costs have been acknowledged.
80. Whether the assessment is adequate is itself a subjective question. We note our reasoning above supporting the conclusion that while emphasising the need for a wide-ranging assessment, there is no statutory requirement that all costs must be quantified.
81. Mr Wauchope referred us to reports discussing the costs and benefits of urban development that informed development of the NPSUD. However, we consider that such materials can be given little weight, because the authors of those studies were not before us and we could not therefore discuss with them, the relevance of their findings to current conditions in Wellington City. Mr Wauchope himself did not claim to be giving independent expert evidence and his assertion that rising land prices in areas of high demand such as inner-city Wellington suburbs should support more intensive land use in these suburbs, but this has not occurred to date “*due to the restrictive framework under the operative District Plan*” was not supported by expert evidence before us. The evidence of Willis Bond in Stream 1 contradicted it. As we noted in Report 1A, Willis Bond’s evidence was that there is plenty of land in Wellington. Development is not occurring because of excess cost and (on-sale) values that are too low to drive development. That is also supported by the evidence we heard in Stream

1 of the HBA assessing inner city Wellington as providing an excess of realisable development capacity over predicted demand.

82. Mr Wauchope told us also, based on the studies that he had referred to, that infrastructure costs are lower on average for inner-city areas. By contrast, in Stream 1, Mr Murcott from the Thorndon Residents Association tabled a Wellington Water analysis of Three Waters upgrade costs per dwelling that identified (in order starting from the highest cost) Thorndon, Mount Cook, Mount Victoria, Pipitea and Newtown as being within the 7 suburbs having the highest upgrade costs. The five suburbs with the lowest upgrade costs were (in order from lowest cost) Khandallah, Churton Park, Ngaio, Lyall Bay and Hataitai. That evidence supports the opposite conclusion to the one Mr Wauchope put to us. It also illustrates the dangers of assuming that the findings of generic studies of the type Mr Wauchope put to us apply to the Wellington City context.
83. Mr Wauchope made the valid point that Character Precinct provisions shift development. He said it would be shifted to areas less suited to that development, but we do not think he was in a position to say more than that this was a possibility.
84. Mr Wauchope, among others, sought to emphasise climate change costs (in terms of increased emissions) if development is shifted from inner-city areas to the suburbs. However, no one provided evidence to us as to how material those costs are, so as to suggest that the Council's failure to have greater regard to that as an issue was a significant failure on its part. We also note that Ms Wong from HPW provided us with material on the increased emissions associated with demolition of existing homes in order that they might be replaced.
85. We heard many witnesses expressing concern about the struggle for people to find affordable homes to rent or buy in inner-city areas. The problem is very real, and has a number of adverse consequences pointed out to us by the witnesses we heard. We think, however, that Mr Phil Kelliher had a point when he observed that affordable homes would not be built on expensive inner-city sites without Government subsidies. Likewise, Mr Garlick (for Generation Zero) told us that rents in inner-city suburbs would remain high because of the attractiveness of those areas.
86. Put another way, the market is unlikely to deliver affordable homes in inner city suburbs irrespective of the level of planning regulation in the PDP, or lack thereof. The expert economic witness for ORCA, Dr Tim Helm explained to us in this regard that so long as planning rules do not constrain development below the level of demand, the number

of houses will be set by the market, and in particular by the readiness of private actors to commit capital. Accordingly, we do not find that the Character Precinct provisions are likely to have any effect on the provision of affordable housing.

87. In summary therefore, we find that the evaluation of the costs and broader impacts of the Character Precincts before us was adequate.
88. Turning to the next area where Ms Woodbridge identified non-compliance (Section 77L(b)), Ms Woodbridge's view was that the Character Precinct provisions achieved NPSUD Objective 4 and Policy 6 in part because they allow a consenting pathway for new development and recognise that the Character Precincts areas will undergo change over time. However, she considered that the restrictions on development opportunities had not been sufficiently justified¹². In her tabulated comments, she described the assessment undertaken by Council as variously "*very limited*" and constituting "*no real assessment*". Speaking verbally to her evidence, Ms Woodbridge described this as the single biggest hole in the Council's evaluation with a light to non-existent touch having been given, that had not been drawn out.
89. Mr Lewandowski acknowledged that there was no separate analysis/evaluation in the Section 32 Report clearly directed to this issue, but contended that it had in substance been addressed. He drew attention to the significant reduction of Character Precincts from the extent covered in the ODP. While he accepted that that was not the starting point, Mr Lewandowski suggested that this did demonstrate a focus on modifying building heights and densities to the least extent necessary. Secondly, he recorded that the PDP had ensured that the development capacity that it enables is significantly in excess of projected demand over the long term. Lastly, Mr Lewandowski pointed to the role of Character Precincts in achieving the well-functioning urban environments that NPSUD Objective 1 seeks.
90. We consider that Mr Lewandowski makes a number of fair points. In our view, the critical point in relation to Section 77L(b) is the very significant excess of realisable dwellings provided for in the PDP over and above predicted demand.
91. Counsel for MHUD submitted that it did not follow that an excess of PDP realisable capacity justifies Character Precincts. We consider that is correct, but only to a point. An excess of realisable capacity provided for in the PDP will not justify Character Precincts on its own. It is critical that the Council has evaluated where character values

¹² V Woodbridge Stream 2 Evidence in Chief at 4.17-4.18

arise of importance. We are satisfied that Boffa Miskell's work provides a sound basis for that assessment. Where the excess of capacity is relevant is on the specific point in issue: whether those character values make the level of development that would otherwise be prescribed by the NPSUD inappropriate, taking account of the national significance of urban development and the objectives of the NPSUD. It seems to us that an excess of capacity is highly relevant to that point. Put simply, the closer the PDP is to only just providing for projected demand, the greater the onus to establish that a qualifying matter (in this case Character Precincts) are justified, and vice versa. Ms Woodbridge accepted the proposition we put to her that the greater the margin of realisable capacity provided over predicted demand, the less significant is the need to provide yet further capacity in terms of the objectives of the NPSUD. To be fair to Ms Woodbridge, she qualified her acceptance by referring to the desirability of encouraging competition.

92. While as a matter of economic theory, prices will fall if supply exceeds demand, Mr Cullen accepted that developers are not going to build if there is no demand. We could accept that if the position were unclear, developers might commit to projects before they found that were the position, but the bigger the pool of available sites, the more obvious it is going to be that supply will exceed demand if they are all utilised.
93. That is exactly the position that we are in. The PDP provides development capacity for almost double the projected demand. Stating the obvious, this is well in excess of the margin the NPSUD requires be created. In such circumstances, we do not think that the "*national significance of urban development*" weighs strongly in the balance.
94. If the number of realisable dwellings had been close to the margin over predicted 30 year demand, by contrast, the case to prune if not delete the Character Precincts would have been strong. But that is not the situation we face.
95. In summary, we find that the Council has undertaken a sufficient analysis to justify the Character Precincts in the light of the national significance of urban development and the objectives of the NPSUD.
96. The next area where Ms Woodbridge identified potential non-compliance was in relation to Section 77L(c)(ii). This is the evaluation on a site-specific basis to determine the geographic area where intensification needs to be compatible with a specific matter.
97. Ms Woodbridge's tabulated comment was that this test was "*generally satisfied*", but the assessment could have gone further to consider building condition and whether

intensification needs to be compatible on every site. Mr Lewandowski's response was to point to the detail of the Boffa Miskell Report analysing character values on a site-specific basis in each area. He emphasised the methodology adopted ensured that where the evidence was inadequate to justify not implementing the MDRS, areas have been omitted. He observed that Boffa Miskell had specifically commented on the relevance of building condition justifying the failure to take it into account other than in extreme cases on the basis that it can be altered, improved or reversed over time. Mr Lewandowski considered that building condition is an appropriate matter to consider in detail in any resource consent process seeking demolition.

98. We agree with that view. We also note again in this context Dr Jacobs' evidence expressing concern about development even to an MDRS standard on sites adjacent to Character Precincts.
99. We find that Section 77L(c)(ii) has been complied with, at least as regards the notified Character Precincts. The potential for those Character Precincts to expand, and the evidence supporting submissions seeking that relief is discussed in Section 4 below.
100. Lastly, we need to consider whether Section 77L(c)(iii) has been complied with. That subsection requires an evaluation of an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS or as provided for in Policy 3, while managing the specific characteristics. Ms Woodbridge's view was that the range of options considered was too narrow and that alternative options should have been considered such as HRZ with amended standards, such as reduced height.
101. Mr Lewandowski disagreed with that assessment. His view was that the level of development Policy 3 directs be provided for was not considered appropriate given the potential effects on the characteristics of the Character Precincts, and that the bulk and location standards had been set at a level (i.e. the MDRS) that was consistent with the built form of those areas.
102. We agree with Mr Lewandowski's comments. Again, we note Dr Jacobs' evidence as supporting the view that if anything, the standards adopted might be considered pro-development rather than the reverse.
103. Kāinga Ora's submission sought in the alternative (to deletion of the Character Precincts), management of character values by means of an overlay. Ms Woodbridge's evidence annexed a Section 32 evaluation supporting that option. Mr Rae similarly supported that approach in his expert urban design evidence. Somewhat curiously,

however, Ms Woodbridge did not produce the provisions of the overlay in question, and in her rebuttal evidence, she explained that she had had second thoughts about the appropriateness of doing so.

104. Whatever the reasons, Kāinga Ora's failure to put an alternative planning framework before us which might have achieved an appropriate level of protection for the identified character values means that we are not in a position to assess that option in a meaningful way, or to doubt Mr Lewandowski's view that the option of a precinct with an underlying MRZ was the appropriate planning mechanism.
105. In summary however, we find that the material before us is sufficient to satisfy the relevant statutory tests as they relate to the notified Character Precincts and proceed on that basis and we recommend their retention, subject to our consideration in Section 4.3 below of submissions on their spatial extent at their margins.

2.3 Evaluating Mount Victoria North Township Precinct

106. The analysis of both Mr Lewandowski and Ms Woodbridge largely dealt with the Mount Victoria North Townscape Precinct at the same time as their respective commentaries on the Character Precincts.
107. That was an efficient way to proceed, but we observed that there are some important differences between the two. The first is that, as Mr Lewandowski noted, the Mount Victoria North Townscape Precinct serves a different purpose to the Character Precincts. The latter focus on streetscape values, whereas the Mount Victoria North Townscape Precinct is, as its title suggests, focussed on broader townscape values. Consistent with that, the Mount Victoria North Townscape Precinct contains no constraint on demolition. It is not concerned with retaining what is within the precinct, but rather managing whatever might replace it.
108. In contrast to the Character Precincts also, Ms Woodbridge supported the purpose of the Mount Victoria North Townscape Precinct. In her view, the townscape values "*are important to protect and manage as an iconic part of Wellington which is appreciated [sic] by both the community and visitors to the region.*"¹³
109. No party sought to dispute that view. It follows, in our opinion, that in the balancing of costs and benefits required under Section 77J(3)(c), and in the justification of the proposed constraints relative to the national importance on urban development (as per

¹³ V Woodbridge Stream 2 Evidence in Chief at 7.4

Section 77L(b)), the townscape values in question weigh more heavily than do the character values sought to be protected by the Character Precincts.

110. Also relevant to that balance is the fact that the area that is the subject of the Mount Victoria North Townscape Precinct is much smaller than the area that is the subject of the Character Precincts. Accordingly, the extent of the restriction on development capacity is also correspondingly smaller.
111. In summary, the case for recognising and protecting the townscape values that are the focus of the Mount Victoria North Townscape Precinct is stronger than that for the Character Precincts. Given that we have found the evaluation of the latter to comply with the relevant statutory requirements, we have no difficulty in concluding that the evaluation of the Mount Victoria North Townscape Precinct similarly complies with the relevant statutory requirements, and we recommend its retention, subject to our consideration in Section 8.1 below of submissions on its spatial extent at the margins.

2.4 Evaluating the Oriental Bay Height Precinct

112. Submissions on the Oriental Bay Height Precinct including Kāinga Ora's submission¹⁴ seeking its deletion were addressed in Mr Patterson's MRZ Section 42A Report at Section 5.0. Mr Patterson's response to that submission was that the Oriental Bay Height Precinct is generally supported by the community and contains height limits which are higher than the limits in the wider MRZ. He considered that there was sufficient evidence that the precinct has unique qualities and development opportunities that are distinct from other residential areas of the City, requiring a more specific approach. He referenced, in particular, the Environment Court's decision in *Foot v Wellington City Council*¹⁵ as supporting that view.
113. When he appeared, we asked Mr Patterson if the Environment Court's decision provided sufficient evaluation to satisfy the requirements of Sections 77J and 77L. He told us that he would need to check that point.
114. The answer to our question was provided by Mr Whittington as counsel, in his legal reply. Mr Whittington noted that the precinct sits within a walkable catchment of the City Centre Zone and is thus required to allow for at least six storeys. In his submission, at a precinct level, it broadly achieves this by offsetting lower heights on some sites with a rule framework providing for eight or potentially nine storeys on other sites. In

¹⁴ Submission #391.321

¹⁵ W73/98

relation to other controls such as the number of permitted residential units, he noted that the rule framework is more lenient than the MDRS.

115. Mr Whittington's advice was that the Council had not approached the precinct as a whole as engaging Policy 4 of the NPSUD, but that if this is not correct "*there is no evidence base that meets the strictures of ss77J and 77L*".
116. We have a number of comments to make about Mr Whittington's analysis. The first point to make is that we agree that a substantial proportion of the Oriental Bay Height Precinct is within a walkable catchment of the CCZ. The material put before us in Hearing Stream 1 did not allow a precise assessment of where a ten minute walkable catchment would end on Oriental Parade, but based on the evidence that we did hear, we estimated that it would be somewhere between the northern intersection of Oriental Parade and Oriental Terrace on the one hand, and Hay Street on the other. We note also our finding in Report 1A that based on the 15 minute walkable catchment around the CCZ that we have generally found to be appropriate, the boundary of the walkable catchment is the corner of Grass Street¹⁶.
117. Based on that recommendation, a building height of at least six storeys is required along the length of Oriental Bay to the corner with Grass Street. As above, that encompasses most, but not all, of the area the subject of the Oriental Bay Height Precinct.
118. Within that area, as Mr Whittington observes, there are height limits imposed which are less than six storeys and height limits which are more than six storeys. He suggests an unders-and-overs approach might be taken, but the Council has provided no evidence as to whether the end result is, on average, more or less than six storeys.
119. More particularly, given the direction of Section 77L that a site-specific analysis is required, we cannot see how an unders-and-overs approach can be justified, even if we had the evidence to support it. Put another way, to the extent that the Oriental Bay Height Precinct prescribes height limits which are greater than six storeys within a walkable catchment of the CCZ, that is completely consistent with Policy 3(c) of the NPSUD, which requires "*at least*" six storeys. To the extent that the Oriental Bay Height Precinct prescribes height limits that are less than six storeys (21-22m), it is not. In our view, the sites where height limits are imposed that are less than 21m required evaluation and justification as a qualifying matter before they could be accepted.

¹⁶ Report 1A at section 3.9

120. Mr Whittington's advice, as above, is that there is no evidence base that meets the strictures of ss77J and 77L.
121. We do not think that is quite correct. Looking first at the Environment Court's decision, it contains an extensive and authoritative analysis of the entire precinct, concluding both that the values of Oriental Parade were extremely important, and what was required to protect those values.
122. Unsurprisingly, given that it was issued in 1998, the Environment Court's decision does not consider these matters against the background of a National Policy Statement emphasising the importance of urban development and prescribing, in detail, how that value is to be addressed. Even excluding the shift in planning direction contained in the NPSUD, the cost/ benefit balance has also likely changed in the intervening 25 years, meaning that it is difficult to put significant weight on the Environment Court's conclusions in that regard. We cannot assume that they remain valid without evidence.
123. Accordingly, while still relevant, the Environment Court's decision leaves large holes in the evaluation that is required.
124. Mr Hayward, who presented evidence both as a member of the Pukepuke Pari Residents Group, and in his own right, recognised the problem. He sought to fill the gap, noting his expertise in economics, and providing commentary. Unfortunately, however, Mr Hayward limited his analysis to the requirements of Section 77J, and did not go on to address the additional requirements of Section 77L. If he had done so, we might have had quite a difficult decision to make about the weight we could give to his evidence given that, while qualified in economics, he did not purport to give independent expert evidence. As it is, however, the absence of any evaluation under Section 77L is fatal.
125. As above, Policy 3(c) is only able to be qualified if the requirements of both Sections 77J and 77L are satisfied. Our finding that Section 77L (at least) has not been satisfied means that, in our view, the Oriental Bay Height Precinct has to be amended where it restricts development below 6 storeys within a walkable catchment of the CCZ– 6 storeys should be the minimum height limit south of Grass Street. The evidence we heard is that 6 storeys equates to 21-22m. As discussed in Report 2A, Dr Zamani's evidence was that 22m would better provide for quality 6 storey developments. In this context, we take 21m as minimum compliance with NPSUD Policy 3(c).

126. We accept that many parties might find this a somewhat surprising outcome. The Council's failure to provide evidence by way of evaluation to meet the statutory requirements¹⁷, combined with its reliance on a legal argument that we believe both untenable as a matter of law, and insufficiently supported in evidence, leaves us hamstrung.
127. Accordingly, we recommend that those areas of the Oriental Bay Height Precinct south of Grass Street which prescribe a height limit of less than 21m be amended on the PDP maps to make 21 metres the prescribed height limit.

3. PRE-1930'S CHARACTER AREA REVIEW 2019

128. Under this heading, in contrast to a series of submissions Mr Lewandowski noted in support of the pre-1930 character area review, the submission¹⁸ of WHP suggested that the pre-1930 character area review was flawed as it overly elevated the importance of original built form over pre-1930 character. Mr Lewandowski did not agree with that view, noting that the methodology employed by Boffa Miskell in its report did not preclude inclusion of buildings that had been modified post construction and pre-1930 within a Character Precinct. He accepted though that it might have influenced the classification of the building as primary, contributory, neutral or detractive. His summary was that it was the degree of modification that was important in assessing character contribution, rather than whether any modification has occurred.
129. While we heard evidence from the WHP on this point, we consider that they have put excessive focus on this issue. While the Boffa Miskell Report is an important building block, the reason that Council has utilised it is to identify areas where both primary **and** contributory buildings are concentrated. The end result, as Mr Lewandowski has noted, is that post construction modifications have not disqualified a building, but have rather been part of the analysis. High quality modifications that maintain or enhance character values have properly been taken into account. Low quality modifications that do not maintain or enhance character values have likewise been taken into account, again appropriately in our view.
130. We therefore recommend that the submission point of WHP be rejected.

¹⁷ A similar issue arose in Hearing Stream 3, in relation to evaluation of Viewshafts, but there, the reporting officer sought to fill any gap in evaluation in her reply with a separate statutory analysis.

¹⁸ Submission #412.11

4. SPATIAL EXTENT OF CHARACTER PRECINCTS

4.1 General Approach

131. A large number of submissions sought an increase in the spatial extent of Character Precincts. This was put in terms of either rolling over the character areas currently identified in the ODP¹⁹, adopting the indicative character areas identified in the Boffa Miskell Report²⁰, extending the Precincts to include specific properties and areas²¹ or more generally²². Some submissions accepted the extent as notified by council in the Spatial Plan 2021²³, and relatively few submitters requested to reduce or remove all Character Precincts²⁴.
132. The Character Precincts that were notified in the PDP were reviewed by the Reporting Officer (Mr Lewandowski for this topic) in his Section 42A Report, in response to the submissions.
133. Two submitters²⁵ sought that the Council undertake an investigation of heritage and character values in Brooklyn (currently not part of any Character Precinct), which the officer did not support. We agree with his view for the reasons set out in his Report²⁶.
134. Mr Lewandowski recommended that the relief sought to further reduce or completely remove the Character Precincts should likewise be rejected. He noted that the areas have already been considerably reduced and the remaining properties have been appropriately assessed as requiring protection for their character contribution and values.
135. To an extent, consideration of such submissions overlaps with challenges to the evaluation of the Character Precincts against the statutory tests, which we have addressed above in Section 2 of our Report. Mr Lewandowski therefore noted, that according to the Property Economics' evaluation, the loss of development capacity through the protection of Character Precincts is small. It is not required under the NPSUD or the MDRS, due to the overall abundance of capacity by a large margin

¹⁹ Submissions #24, #202, #233, #270, #275, #305, #368, #412, #419, #481,

²⁰ Submissions #42, #46, #51, #58, #85, #87, #109, #111, #114, #153, #154, #155, #182, #186, #190, #204, #214, #226, #233, #243, #278, #300, #317, #322, #331, #336, #393, #430, #434, #440, #458, #462, #463, #478, Further Submissions #39, #69, #82,

²¹ Submissions #33, #46, #60, #72, #87, #275, #305, #401, Further Submission #68

²² E.g. Submission #166.2

²³ Submissions #157, #196

²⁴ Submissions #239, #326, #391, #432, #433

²⁵ Submissions #459 and #48

²⁶ Section 42A Report: Part 3 – Residential Zones: Part 4 – Character Precincts and Design Guides, para 148

already, to sacrifice Character Precincts to overachieve development capacity further. Echoing that sentiment, Ms Mackay for HPW cautioned us to not make character and heritage a scapegoat. She noted that there is enough space for development available and the protection of character and heritage is not in the way of achieving more development.

136. In addition, Mr Ballinger for WCCT noted that:

“Limiting the level of development would contribute to a well-functioning urban environment and still leave a sufficient level of plan enabled development capacity to meet forecast demand.²⁷”

137. As above, we agree that a number of areas have character values that justify protection in the context of a Plan that provides significantly more development capacity than is projected to be required.

138. Throughout the hearing it was noticeable that character and heritage was used interchangeably by a number of submitters. We have discussed the distinction between the two in Section 2.1 above, and we will return to it in Section 6 of our report.

139. It is sufficient for present purposes to record that we concur with Mr Lewandowski that character is distinct from heritage, and both serve the protection of different, yet at times related, values.

140. We note that there are some areas that have been classified as a Character Precinct, with parts also having a Heritage Area Overlay. This was required to protect both sets of values inherent in those specific areas, we were told.

141. Several submissions²⁸ sought that the character areas of the ODP be rolled over, which the Reporting Officer disagreed with. We accept his view, taking into consideration that the PDP must meet the requirements of the NPSUD and limit any Qualifying Matters to the ‘extent necessary,’ and justifiable in terms of Sections 77J and 77L. We refer to our discussion of these tests in Section 2 of our report.

142. Submitters²⁹ and the Reporting Officer agreed, as do we, that logical boundaries are needed to achieve Character Precincts that reflect their character values appropriately and provide a coherent area, and visual continuity.

²⁷ Legal Submissions for WCCT for Hearing Stream 2, 24 March 2023, D.W.Ballinger

²⁸ Submissions #193, #202, #305, #344, #368, #412, #454, #481

²⁹ Submission #41, #182, #342, #390, Further Submission #111

143. The methodology used to determine the spatial extent of the Character Precincts Mr Lewandowski recommended included several parameters, above and beyond the character contributions.
144. During the hearing, the Panel asked Mr Lewandowski to clarify the methodology implemented, and to address, in particular, the robustness of the Precinct boundaries. He acknowledged that the assessment has an element of subjectivity, and that a different assessor could quite reasonably come to a different conclusion, which he suggested shows in some of the suggested additions by submitters. It is to Mr Lewandowski's credit that he did not flinch from saying so, and his description is consistent with Dr Jacobs' observation that drawing boundaries (of historic districts) is a combination of an art and a science. For our part, we acknowledge the efforts Mr Lewandowski made to ensure that his analysis was as systematic and robust as it could be.
145. As one of the parameters in the methodology, Mr Lewandowski referred to the need for a 'critical mass' of primary and contributing properties that are required within a street or block to experience the observable patterns of coherent character. This view was confirmed by Mr Raymond in his evidence for HNZ during the hearing, and was also noted by the representatives of LIVE WELLington. We agree that this criterion requires consideration.
146. The Panel has taken this factor into account in its recommendations, particularly where submissions requested that smaller isolated areas or single buildings be included outside a larger area.
147. We observe that the reduction of the extent of the areas proposed, both in the notified PDP and to a lesser extent by Mr Lewandowski in his Section 42A Report, compared to the ODP, has resulted at times in a fragmentation of the Character Precincts. This fragmentation has created some small but cohesive Precincts, but it seems questionable to us whether they reach the threshold of a critical mass. The question we have pondered is whether the exclusion of properties in between different Character Precincts, provide either adequate developable capacity, or sufficient protection for character values within the adjacent areas. We concluded that the question of 'critical mass' cuts both ways.
148. In Council's methodology, sites that are occupied by a church or a school are typically excluded from the Character Precinct. Those institutions are part of the character of the adjacent residential areas. We do not think their exclusion is justifiable from a

methodological perspective, so long as the church or school does not detract from the adjacent residential character values. While it might be considered academic, because they are unlikely to be developed for residential purposes, we liken it to the approach of the Plan zoning Wellington East Girls, Wellington College, and Government House HRZ, for consistency.

149. Another criterion in the Council's methodology that reduced the spatial area of the Character Precincts, was that their assessment disqualified the inclusion of streets where only one side of the street contained character buildings.
150. While we understand Council's desire to employ baseline parameters to define boundaries for the Character Precincts, we have not adopted all of the limitations the Council implemented, and this one in particular. We agree with the submitters that the character contribution of a place is the dominant criterion, and the inclusion or exclusion of a property needs to be assessed on a case-by-case basis.
151. Mr Lewandowski did not support submitters seeking the adoption of the Boffa Miskell Pre-1930 Character Area Review as the extent of the Character Precincts. He told us that this review was intended as a starting point for further evaluation, and did not provide a result for character protection. We accept this explanation.
152. We also agree with Mr Lewandowski, that the blanket inclusion of all primary and contributory properties identified in this report that was sought as relief by some submitters, will not result in a logical pattern of character precincts that would satisfy the requirements of a Qualifying Matter.
153. In the view of many submitters, the contribution of a building to the character values (primary or contributory, and in some cases neutral³⁰) was the determinant to include or exclude a place from a Character Precinct. This was reflected in the large number of submitters that requested additions to the Character Precincts based on the Boffa Miskell review's identification of character values in a site-by-site analysis, as well as submissions that sought the inclusion of specific individual properties.
154. The fact that some submitters sought to include neutral properties in Character Precincts on the basis that they do not have either a negative or positive effect, provides for a different picture on the maps, when looked at in terms of the cohesiveness of the areas that result. The visual impression one gets from the mapped Character Precincts in the notified PDP was of a series of relatively small isolated pockets of character. The

³⁰ Submissions #191, #226, #393, #440,

revised Character Precincts recommended by Mr Lewandowski significantly reduced this impression, but as shown in his Reply³¹, combining (and excluding) neutral and detractive properties still results in a relatively fragmented and less cohesive end result.

155. The point made by submitters is compelling to us. If a property is neither contributing, nor detracting, we consider it can be included to achieve a more cohesive and less fragmented area. That said, we can see the benefits for the purposes of the NPSUD and MDRS from excluding detractive and neutral properties around the perimeter of a Precinct.
156. Mr Lewandowski told us that he did include some isolated neutral properties and in rare cases even detractive ones to avoid a 'missing tooth' scenario. We asked Dr Jacobs (for HNZ) for his view of a 'Swiss Cheese' type scenario, with higher density development in the holes. He suggested that we should get rid of the holes and think of overall values in three dimensions.
157. We agree, in so far as this approach is limited to isolated properties within a larger Character Precinct.
158. It may also apply to isolated properties on the periphery of the Character Precinct, where there is no populated area adjacent, such as on the edge of the Town Belt, and excluding the property would result in an anomaly.
159. However, where pockets of larger sites or several adjoining neutral or detractive properties within a Precinct are large enough to constitute a critical mass, we believe that there is no justification to include those on the basis that Qualifying Matters need to be contained to the 'extent necessary'. We acknowledge that this may result in a 'Swiss Cheese' model, albeit with comparatively large holes.
160. While we discuss the extent of the areas in detail further below in Section 4.3, for the sake of clarity, we have provided maps showing the areas we recommend be identified as Character Precincts in Appendix 1 of this report.

4.2 Spatial Extent of Character Precincts

161. Under this heading, at Section 10.0 of the Section 42A Report, Mr Lewandowski summarised a series of submissions both supporting the extent of the Character

³¹ Stream 2 Reporting Officer Right of Reply of Mitch Lewandowski on Behalf of Wellington City Council, 26 May 2023, Appendix 5

Precincts to various degrees, and those opposing, requesting a reduction or complete removal of the Character Precincts.

162. We adopt the Section 42A Report's summary of those submissions.
163. The PDP defines character for the purposes of the Character Precincts as establishing "*...local distinctiveness and identification of an area...that contribute to a unique 'sense of place'...*". In many submitters' views³², the removal of the Character Precincts would result in a loss of identity for those communities.
164. As above, the Panel agrees with the Reporting Officer and the submitters seeking their retention. We heard from a whole range of submitters, architectural, planning, and urban design experts, and from council that Character Precincts contribute to a well-functioning urban environment, and are part of Wellington's identity.
165. While there were submissions that sought to remove the Character Precincts in part or in their entirety for numerous reasons, none of these submitters disagreed that the Precincts are part of Wellington's identity.
166. In general, the Precincts proposed in the notified PDP reduced the areas included in the ODP by 72%. The Section 42A Report recommends additions to the Character Precincts notified, that amount to an overall areal reduction of 56% compared to the ODP.
167. The Reporting Officer recommended several changes to the Precincts, predominantly extending them. In his view, the Character Precinct extent in the PDP did not sufficiently identify consistent concentrations of character.
168. Considering the overwhelming majority of submissions made to extend the Character Precincts, we largely agree with the areas and properties added in the Section 42A Report. This addresses a number of submissions as noted in Mr Lewandowski's assessment.
169. A number of parties presented to us who had undertaken valuable research of the places in areas that, in their view, warrant inclusion in the Character Precincts. We received detailed maps and numerous photographs that formed a considerable part of the submitters' presentations.

³² Submission #333 and Further Submission #69

170. The Panel also undertook site visits to the areas in question to experience the character values asserted, or lack thereof, as the case may be.
171. In his written reply, at our request, the Reporting Officer took us through the areas, street by street, where submissions sought extensions of the Character Precinct, and provided further comment. Mr Lewandowski did not shift from his previous opinions, and did not support the submissions to extend any of the areas.
172. However, there is one instance where he adjusted the boundaries based on a submission that primarily related to zoning rather than character values.
173. Mr Yiappos for Vik Holdings Ltd³³ submitted that the property at 15 Brougham St (which is part of the Character Precinct and accordingly MRZ), be rezoned to match neighbouring properties (outside the Character Precinct and within a walkable catchment of the CCZ, and therefore HRZ) to allow for the option of amalgamating the properties in the future. The Reporting officer for the MRZ, Mr Patterson, disagreed with the rezoning.
174. In response to Mr Yiappos' request, Mr Lewandowski reviewed his recommendations regarding the extent of the Character Precinct, and recommended that numbers 11 and 13 Brougham St, and 44 and 48 Marjoribanks St be included in the Mount Victoria Character Precinct, to provide for a better-defined boundary.
175. We consider that an appropriate boundary change with regards to the Character Precinct. Rezoning the properties within the enlarged Character Precinct MRZ is a consequential change. While we understand that this does not satisfy Mr Yiappos' relief of a HRZ for all three properties, it will leave open the option for amalgamation of sites.

4.3 Specific changes to Character Precinct Boundaries

176. Under this heading, the Section 42A Report summarises, for each area, the submissions received³⁴, which we adopt.
177. The Section 42A Report, as well as Mr Lewandowski's written reply, provide a detailed assessment of the submissions that ask for more specific character areas to be extended, according to the area they are in. We follow the same approach and discuss each area in turn, where we disagree with the Reporting Officer's recommendations.

³³ Submission #031

³⁴ Section 42A Report: Part 3 – Residential Zones: Part 4 – Character Precincts and Design Guides, para 110 - 147

178. As noted above, while we agree with the Council's methodology in general, some of the submitters' criticisms resonate with us.
179. We heard in particular from submitters that clusters of cohesive character of primary and contributory properties, that are in cases larger in extent than some of the proposed areas, have been excluded on the basis that they did not fit precisely into the methodology mould the Council applied.
180. The areas sought to be added in comparison with the ones proposed in the Section 42A Report are shown in the Officer's written reply, Appendices 6 to 14.
181. While Mr Lewandowski has rejected further additions for the reasons set out in his reply, in our view, the submissions we heard have provided a valid basis to include some of the areas that are predominantly of primary and contributory character. In each case, inclusion of additional areas is subject to our evaluation against the statutory criteria, which is set out in Section 4.4 below.

Aro Valley

182. In the Section 42A Report the proposed Aro Valley Character Precinct consisted of three distinct areas: the north end of Holloway Road which sits to the west of Waimapihi (formerly Polhill Reserve), the north end of Durham Street, and a larger area stretching roughly between Epuni Street and Devon Street, and Ohiro Road to Abel Smith Street, which is an area to the east of the reserve.
183. Submissions variously sought to include properties on Holloway Road, Adams Terrace, Durham Crescent, Mortimer Terrace, Levina Avenue, Durham Street, Aro Street, Devon Street, Ohiro Road, St John Street, Abel Smith Street, Palmer Street and Willis Street.
184. Mr Lewandowski considered that there is insufficient consistency in most of the additional areas. He agreed that Adams Terrace is a cohesive area, but believed that it is disconnected from the rest of the Precinct, and should not therefore be included.
185. For the additions sought to the east of the reserve, we prefer the arguments of Mr Sapsford³⁵, and agree in principle that the majority of these areas should be included, on the basis that they are relatively cohesive in their character values, with very few detractive properties apparent, and some neutral properties in between.

³⁵ Submission #305

186. To add these areas will also provide a logical link between two of the three areas proposed in the Section 42A Report, which will eliminate some of the fragmentation of this Precinct.
187. However, we agree with Mr Lewandowski's recommendation to exclude the three primary and contributory properties to the south of Abel Smith Street (near The Terrace), due to their isolated location, the neutral properties on Willis Street, and a neutral back section on Ohiro Road, that are located at the perimeter of the Character Precinct.
188. As regards to Holloway Road, we agree with Mr Lewandowski that the variability in this area is too great over the length of the road, and that the north end is the most appropriate area for a Character Precinct. In our view, this proposed precinct should be extended to the east, where a large primary property backs onto the reserve, as requested by Mr Sapsford, which provides the relief sought by submitters to some extent.

Berhampore

189. In the Section 42A Report, the recommended Berhampore Character Precinct consisted of four distinct areas. To the southwest, the first included roughly the area between Emerson Street to the west, Morton Street to the north, Adelaide Road to the west and Royal Street to the south. To the south, the second area contained Dawson Street, parts of Lavaud Street, Chatham Street and Blyth Street. The third area lay between east Te Wharepouri Street, Russell Street, Lavaud Street and Rintoul Street, with a small fourth area along the western end of Te Wharepouri Street.
190. Submissions sought extensions and additions along Te Wharepouri Street, Adelaide Road, Palm Grove, Luxford Street, Herald Street, Rintoul Street and Lavaud Street. The Reporting Officer evaluated the additional areas sought as having mainly insufficient consistency.
191. While he agreed with submitters that there may be small pockets of primary and contributory sites, such as along Rintoul Street and Lavaud Street, that could be included to form a logical block boundary, overall, he was not persuaded to include them. Properties along Adelaide Road were excluded based on their orientation and their topography.

192. We examined these areas, and the presentations and evidence provided by submitters as well as the positive assessments from Mr Lewandowski, which convinced us that some of the areas should be included.
193. Based on the evidence we received, in our view, the sites we have identified are all areas that are not materially different from the ones already included. There are some interspersed neutral properties, but few detracting ones are apparent.
194. The inclusion of these properties will provide for more logical boundaries, as well as combining all four areas into one, thus eliminating the fragmentation of the Precinct.
195. We regard the exclusion of Rintoul Crescent, however, as being both justified and unavoidable. This relatively large area is graded as detracting, which creates a large 'Swiss cheese hole' that adjoins, by a margin, another area outside the Character Precinct.
196. A further exception to the inclusions sought by submitters is the area at Palm Grove and the corresponding end of Te Wharepouri Street, including the four neutral properties on Adelaide Road. While there are clearly a number of primary and contributory sites present, the surrounding areas, as stated by Mr Lewandowski, are predominantly of neutral or detracting grading. With the wide Adelaide Rd separating the areas, it could only be included as a separate area. However, it lacks the critical mass required.

Lower Kelburn

197. In the Section 42A Report, the proposed Lower Kelburn Character Precinct consisted of a small area bounded by Bolton Street to the south, Wesley Road to the west, and roughly the motorway to the east, a rollover from the ODP.
198. The Boffa Miskell report identified two further areas of contiguous character to the south of the existing Character Precinct, which submitters requested to be included in the Character Precinct. Messrs McSoriley and David³⁶ went further, submitting that all areas identified by Boffa Miskell for Lower Kelburn should be included.
199. The first area is located between Bolton Street, Wesley Road, Aurora Terrace and San Sebastian Road.

³⁶ Submission #493

200. Mr Lewandowski noted that two thirds of the properties in the area are primary or contributory. However, he did not believe the area satisfies the methodology used by Council, so as to justify inclusion.
201. The Panel walked the area and we observed that the area has the continuity described by Dr McIntosh in her presentation for the Lower Kelburn Group, with 14 out of 21 properties that are primary or contributory, and only two detractive properties. The remaining five are neutral.
202. This area sits alongside the already proposed Precinct to the north, and is a natural extension of the notified area along that hill side. To include this area would also provide for a larger critical mass if it were amalgamated with the existing Precinct. We recommend it be included.
203. The second area sits largely along Talavera Terrace and Clifton Terrace, including the corner of Clermont and Everton Terraces.
204. Mr Lewandowski was more aligned in his assessment of the character contribution with the submitters in this case. Both agree that there is sufficient character. However, Mr Lewandowski did not recommend its inclusion due to it currently not being a character area, and because it would be an isolated island.
205. We agree that the area has cohesive character. In light of the recommendation, we have made regarding the first area, to include and combine it with the existing Precinct, we note that while this second area will not be directly joined, it is a continuation to the south, and it will not be an isolated island within a wider non-character area. It also seems to the Panel to have enough critical mass in itself to warrant inclusion, which we recommend.

Lower Wadestown

206. The Section 42A Report did not propose any Character Precinct in Lower Wadestown.
207. The Boffa Miskell Report identified however an area roughly bound by Wadestown Rd and Sefton St to the west, Lennel Road to the north, Barnard Street to the east, and Frandi Street to the south as an area of contiguous character.
208. The scenario here is similar to the two areas of Lower Kelburn. The area has been proposed by submitters, with Mr Lewandowski acknowledging a reasonably high concentration of character, at least along Orchard St. The surrounds are more variable in his view. He noted here too, that the area would be a small isolated island, and in

light of the pressures of the new intensification legislation, he does not recommend inclusion.

209. We agree with Mr Lewandowski in part, that this area presents to be more isolated. This contrasts with our view of Lower Kelburn, where the submitter proposed areas form a natural extension of the already proposed Character Precinct there.
210. We do not agree, however, with Mr Lewandowski's reasoning that the pressures of the NPSUD and MDRS would significantly impact that area. Lower Wadestown is outside the city centre, is not within a walkable catchment of the CCZ and is not on a rapid transit service.
211. Mr Lewandowski identified that the variable surroundings consist of predominantly contributing properties.
212. Keeping in mind the view of many submitters and experts we have heard from, that contributing properties are a crucial element in a character precinct (and at times even neutral properties), we are unconvinced that because of the lack of sufficient primary properties in the surroundings, the Character Precinct should be reduced to Orchard St only, if at all.
213. Based on the submissions received, and the identification of the area in the Boffa Miskell Report as a contiguous character area, we believe Lower Wadestown, at least on the paper, makes a valid case for inclusion. However, we have not heard any evidence during the hearing that would elaborate on why Mr Lewandowski's recommendation to exclude the area would be unjustified. Although submissions sought its inclusion, we are also concerned that given the lack of evidence specifically addressing it, the residents might consider its identification as a Character Precinct as something of a 'left field' outcome in which they have had no input.
214. The Panel accepts Mr Lewandowski's recommendation to exclude the area. However, we recommend that the Council investigate further the merits of its inclusion as a Character Precinct through a future Plan Change.

Mount Cook

215. In the Section 42A Report, the proposed Mount Cook Character Precinct consisted of two distinct areas. The first and smaller one extends along Bidwell Street. The second, larger area included Ranfurly and Tainui Terraces, Myrtle Crescent and parts of Tasman Street in the north, and was bound by Hargreaves Street to the north-west,

including Wright Street, Wallace Street, Yale Road, Carrington Street and the southern end of Tasman Street.

216. Submissions sought the inclusion of Rolleston Street, a larger portion of Hargreaves Street, Hankey Street, Finlay Terrace, Wallace Street, Howard Street, and Douglas Street.
217. Mr Lewandowski noted that the areas sought as relief by submitters had been assessed, and he did not recommend any further additions to the proposed areas in his Section 42A Report due to too much variability in the character.
218. He acknowledged that areas along Hankey Street as well as Douglas Street do have coherent character, but did not support their inclusion, because the character is predominantly on one side of the street, hence outside the Council's methodology. We noted earlier that we disagree with this approach.
219. Mr Lewandowski drew a comparison between Bidwill Street and Rolleston and Hargreaves Streets, noting that Bidwill Street is more cohesive. We tend to agree with the submitters that Rolleston, Hankey and Hargreaves Streets are sufficiently cohesive, and we consider that the few detracting properties, such as the large Kāinga Ora development between Rolleston and Hargreaves Street, and some minor smaller properties at the periphery, can easily be excluded, and achieve a similarly cohesive area as that of Bidwell Street.
220. The inclusion of most of the areas sought by the submitters will in our view not only result in more logical boundaries, but will also allow the area to be experienced as one and avoids undesirable fragmentation.

Mount Victoria

221. The Council has proposed particular protection for Mount Victoria. Mount Victoria features two types of precincts overlapping each other. These are the Mount Victoria North Townscape Precinct, which we have discussed in Section 2.3 above, and which we will address in greater detail in Section 8 of this report, and the Mount Victoria Character Precinct.
222. The Mount Victoria Character Precinct covers a wider area and the Section 42A Report recommended it consist of one larger, and three smaller areas. The northern most Precinct centred roughly around upper Hawker Street. The second one contained Caroline Street. The third one included parts of Marjoribanks Street and Pat Lawlor Close. The largest one was approximately bound by Elizabeth Street and Claremont

Grove to the north, Brougham and Moir Streets to the west, Ellice Street to the south and the Town Belt to the east.

223. Submissions received sought inclusions ranging from expanding it to cover the entire extent of the character area in the ODP, to specific properties on Vogel Street, McFarlane Street, Austin Street and Claremont Grove, the eastern side of Lipman Street, Earls Terrace, Stafford Street, Hawker Street and Port Street.
224. Mr Lewandowski recommended most of the submitter proposed areas be declined, due to their lacking a concentration of primary buildings and the variability in these streets.
225. Mr Lewandowski assessed that for example Earls Terrace should not be included due to it having only one primary building, with the remainder being contributing and some neutral properties. We consider that the focus cannot be limited to the existence of primary buildings. As Mr Lewandowski observed (in response to WHP's submission suggesting that Boffa Miskell's methodology was flawed because it focussed on original pre-1930 buildings), it is not whether modifications occurred prior to 1930 that matters, but rather the extent and effect of any such modifications.
226. We received compelling evidence and submitter presentations that showed that the character the PDP seeks to protect in these areas is not a pristine character, as would be suggested through a requirement of predominantly primary significant properties, but a character of early historic growth of the city that includes a range of properties that contribute to this character, or at the very least, do not detract from it.
227. We find that the evidence we received, including the Boffa Miskell character contribution maps, show a particularly high concentration of contributing buildings in Mount Victoria. While we agree with the separation of the area proposed around Caroline Street, the integration of the areas that have been sought by the submitters that bind three of the four areas together, would ensure more logical boundaries for the Mount Victoria Character Precinct, as well as the avoidance of excessive fragmentation of the Precinct.
228. There also seems to be a lack of consistency that has been applied to the inclusion or exclusion of properties along the perimeter of the Precincts. In the example of western Pirie St, Mr Lewandowski excluded two primary and two contributory properties along the perimeter, because he preferred a more linear boundary. Submitters argued that these properties should be included.

229. We note that all Precincts have relatively irregularly shaped perimeters. The submissions we received talked repeatedly of the visual aspects of the Character Precincts on the ground. We agree with the view expressed by submissions that Wellington's topography provides for unique views of character areas that are not easily delineated by a straight line on a map.
230. In summary, we recommend the Character Precinct is enlarged where it can include contributory and primary properties at its perimeter, which results in the amalgamation of the fragmented areas in this Precinct, and provides for more logical boundaries. The end result is shown in Appendix 1.

Newtown

231. In the Section 42A Report, the proposed Newtown Character Precinct consisted of three distinct areas: two larger areas, and one smaller area. The Precinct to the west of Riddiford Street included parts of Hanson Street, the south end of Adelaide Road, Manley Terrace, Kenwyn Terrace, Nikau Street, Stoke Street, Colombo Street and Hall Street. The Precinct to the east of Riddiford Street extended to parts of Coromandel Street, Owen Street, Daniel Street, roughly between Mein Street in the north and Lawrence Street to the south. The third small area was concentrated around Roy Street.
232. Relief sought through submissions ranged from the expansion of the Character Precinct to match the Boffa Miskell report, to the inclusion of individual streets such as Emmett and Green Streets, Wilson, Daniell and Regent Streets, Lawrence Street, and Donald McLean and Normandy Streets, and the inclusion of individual buildings in Newtown.
233. Mr Lewandowski noted in his Section 42A Report that a number of the streets and individual buildings requested to be included have been added to the areas specified in the PDP following his further review. However, there are other areas where he disagreed with submitters to include the properties, due to his assessment showing that the streets do not fit the Council methodology. This is the case for Green and Emmett Streets, as well as Wilson Street.
234. In his view, the presence of character on only one side of Emmett Street and the possible isolated location of the properties to be included prevented them from being part of the Character Precinct.

235. The evidence we received, and our own observations during our site visit, confirmed that these three streets contain some very early and very distinct buildings that may well deserve some form of protection. Their location at the edge of the Newtown Shopping Centre Heritage Area links these properties to the development of Newtown in its early years.
236. Mr Webber's submission³⁷ noted that the buildings along Green Street are of 1890s and 1900s vintage and he questioned why these streets were not included in the Riddiford Street heritage area, given they are of the same era and aesthetic.
237. We also heard from Mr Fraser³⁸ that many of these houses that Claire Nolan et al requested be part of either the Character Precinct, or a Heritage Area, are shown on the Thomas Ward map, which is one of the earliest maps for Wellington.
238. While it could be appropriate to add the historic properties in those streets to the heritage area, we have not received any assessments to that effect, nor were we dealing with heritage matters in this Hearing Stream. The Hearing Panel discusses that issue further in Report 3A.
239. With regards to the character contributions of the older properties on Emmett and Green Streets, we agree with the submitters that the properties do have character value. However, in our view, they do not reach the critical mass required to warrant their inclusion as a Character Precinct in that location.
240. Mr Lewandowski confirmed that in the other streets there are areas of primary character. However, they are too various, in his view, and stretch too far outside of the area of greater concentration of primary character.
241. The evidence and presentations received from submitters, confirmed by our site visits, convinced us that the areas sought to be included are not more or less variable than others that Mr Lewandowski proposed to include, nor were they too far away from other Character Precincts. Following the same pattern used by Mr Lewandowski, it is, in our view, preferable to include the primary and contributory properties along the periphery of the proposed Character Precinct to achieve more logical boundaries.
242. The end result is that we recommend the inclusion of further properties, particularly around the perimeter of the proposed areas, to achieve a more consistent approach.

³⁷ Submission #33

³⁸ Submission #275

The Terrace

243. The Terrace is protected as a Character Area in the ODP. However, the Boffa Miskell Report described the area as: “...retain[ing] the semblance of overall coherence [but], it is punctuated by a number of post -1930s...development” and did not recommend its inclusion.
244. The relief sought by submissions³⁹ was to include parts of The Terrace as Character Precinct, either as a roll over from the ODP, or with a new extent based on a required assessment.
245. Mr Lewandowski reviewed the area in his Section 42A Report and concluded that the variability is too great, particularly compared with other areas, and it should not be included.
246. By contrast, Ms Wong, for HPW, noted how the buildings along The Terrace have a very distinct character in this location and topographic landscape. We agree with her that there is a critical mass of character buildings roughly between MacDonald Crescent to the south and just south of Boulcott Street.
247. Dr Jacobs (HNZ) suggested to us that it is necessary to reach a balance between the requirements under the NPSUD and the MDRS, and the protection of character values. He suggested we needed to err on the side of caution and include all character areas, because when they are gone, they are gone. He classified character and heritage as a non-renewable finite resource. We think there is merit in his point of view, but only if the end result is consistent with the objectives of the NPSUD. We return to that issue below.
248. On the merits, however, we recommend this area of The Terrace be included as a Character Precinct.

Thorndon

249. In the Section 42A Report, the proposed Thorndon Character Precinct consisted of six smaller distinct areas. The northern most area was bound by Grant Road to the west, George Street to the south, Tinakori Road to the east and Cottleville Terrace to the north. The second area stretched between Grant Road and Tinakori Road from Aorangi Terrace to Torless Terrace. The third area lay between Bowen Steet West, Sydney Street West, Hill Street and Tinakori Road, including Ascot Street and Upton Terrace.

³⁹ Submission #447, Further Submission #82

The southern most area included Patanga Crescent, St Mary Street, and parts of Tinakori Road, with the last and smallest area being a part of Hobson St, including Hobson Crescent.

250. Thorndon Residents Association, supported by others⁴⁰, sought the inclusion of Selwyn Terrace, Portland Crescent, Hawkestone Street, as well as an extension of the area around Hobson Street in the Character Precinct. It also requested an extension of the Precinct along Tinakori Road.
251. The area around Lewisville and Barton Terraces was described by Mr Lewandowski as highly variable. We agree with this assessment. However, we recommend that a more logical boundary would include the entire south side of Lewisville Terrace within the existing Character Precinct.
252. Selwyn Terrace, Hawkestone Street and Portland Crescent are located to the east of the motorway, as is Hobson Street.
253. The representatives of Eldin Trust told us that Selwyn Crescent has a consistent character and noted specific buildings that primarily contribute to this character, which we could observe during our site visits.
254. Mr Lewandowski did not disagree with the character contribution of this street, but noted that it is a small narrow, steep street, which is not readily visible due to its topography. He also remarked that this is a very small isolated residential area. He assessed Portland Crescent and Hawkestone Street as similarly small and isolated.
255. We agree with Mr Lewandowski's assessment. The areas do have character, but they do not have the critical mass required to include them in a Character Precinct.
256. As regards the extension of the Hobson Street area, we agree with Mr Lewandowski that the area proposed in his Section 42A Report has the most cohesive character in the street, and other areas are too variable in character value and isolated. It is relatively small, but we assess it as having sufficient critical mass (just).

4.4 Statutory Evaluation

257. In our discussion above, we have recommended expansion of Character Precincts in a number of locations beyond those recommended by Mr Lewandowski. We calculate

⁴⁰ Submissions #287, #322, #333, #442, Further Submissions #69, #82

that the expanded character areas would occupy an additional 1261 residential sites, broken down by area as follows:

- Aro Valley: 196
- Berhampore: 165
- Lower Kelburn: 70
- Mount Cook: 213
- Mount Victoria: 106
- Newtown: 401
- The Terrace: 105
- Thorndon: 28

258. This increase is overlaid on the increases in Character Precinct coverage that Mr Lewandowski recommended.
259. Mr Lewandowski quantified the effect of the increases in Character Precinct coverage that he recommended as involving an additional 1086 properties and tabled an economic analysis prepared by Property Economics of the effect of that increase on feasible and realisable capacity. Property Economics' advice was that the difference equated to a reduction of 797 realisable dwelling units. This was in the context of a total realisable capacity of 61,074 dwelling units provided by the PDP, as recommended to be amended by Reporting Officers (and a predicted long-term demand for 31,242 dwelling units). We understand from Property Economics analysis that the figure for total realisable units also needs to be adjusted to take account of non-residential commercial development in the Central City Zone and in other Centres Zones, but even then, the difference is substantial.
260. Property Economics did not regard the increase in Character Precincts as making a material difference to the level of capacity sufficiency, and well above the buffer the NPSUD requires to be built in.
261. Mr Lewandowski reasoned on this basis that the increases he was recommending did not, therefore, make a material difference to the statutory evaluation which, as above, we have found to be sufficient.

262. The increases in Character Precinct coverage we have recommended are of a similar order (slightly greater) to those that Mr Lewandowski recommended, and are in the same, or similar areas of the city. We proceed on the basis that while somewhat unscientific, the effect of our recommendations will be similar to the incremental effect that Property Economics assessed Mr Lewandowski's recommendations to have.
263. We accept that the end result is a further erosion in the dwelling capacity surplus but, in our view, the same conclusion follows. The surplus of dwelling capacity is still very large, and the increase in Character Precinct coverage does not make a material difference either to the overall situation, or to the analysis relative to the statutory tests that we have discussed at length above.
264. We are therefore satisfied that our recommendations meet the statutory criteria, largely for the same reasons as we have set out in Section 2 above.

5. TRANSITION/INTERFACE WITH CHARACTER PRECINCTS

265. Under this heading, Mr Lewandowski noted a number of submissions expressing concern regarding the interface of the proposed Character Precincts with development in neighbouring zones, including the HRZ and CCZ.
266. Issues related to sites where the CCZ adjoins Character Precincts will be addressed in our Stream 4 Report 4B. As regards the HRZ, Mr Lewandowski noted submissions seeking changes to HRZ-S1, greater consideration of the effects of intensity on Character Precincts, and other amendments to better manage effects on Character Precincts, including a buffer of one MRZ property or other transition zone between Character Precinct and a site zoned HRZ.
267. Anita Gude and Simon Terry⁴¹ sought specifically a height limit on properties bordering the Town Belt to minimise adverse effects on the natural backdrop it provides.
268. Mr Lewandowski recorded that in his view, the approach of the PDP applying a more restrictive height in relation to boundary (**HIRB**) control was an appropriate recognition of interface issues. He noted the relevance of the NPSUD's direction regarding anticipated density standards in the HRZ and Policy 6 in relation to the expectation that amenity values will change in response to the directed changes. He remained unconvinced that further changes to the HRZ provisions were necessary.

⁴¹ Submission #461.17

269. Mr Lewandowski did not support suggestions of a MRZ buffer zone between Character Precincts and an adjacent HRZ area. He did not consider that such an approach would justifiably come within the ambit of consideration as a qualifying matter.
270. Lastly, Mr Lewandowski noted that existing provisions within the HRZ provide a degree of concession to neighbouring Character Precincts and that where the parameters prescribed in the PDP are not met, dominance, shading and privacy effects would be considered. We observe that Mr Patterson recommended that HRZ-P8 be amended to provide specifically for consideration of the relationship with Character Precincts as an aspect of site context. In Report 2A we accept the need for such an amendment, and have recommended a revised version of Mr Patterson's proposed rewording.
271. As regards Ms Gude and Mr Terry's submission, Mr Lewandowski did not consider there was a case for a height limit on properties bordering the Town Belt. He observed that such a matter would need to be considered as a qualifying matter and he did not believe there were grounds to support such an approach, or the ability to assess that on a site-specific basis.
272. Mr Terry appeared before us and sought to reinforce his submission seeking to minimise effects on the Town Belt. He pointed, in particular, to the visibility of numbers 4 and 11 Vogel Street and sought that both those properties be part of the Mount Victoria North Townscape Precinct for that reason. We discuss his specific request that number 4 Vogel Street be added to the Mount Victoria North Townscape Precinct (number 11 is already within it) in Section 8.1 of our report below. Mr Terry did not, however, provide us with an evidential base that would have been sufficient to overcome Mr Lewandowski's concerns more generally, and we recommend that the broader aspects of the submission not be accepted.
273. As regards the submissions highlighting interface effects as between Character Precincts and the HRZ, Mr Lewandowski suggested that the changes he had proposed to the spatial extent of Character Precincts will have addressed some but not all of those concerns.
274. We agree with that view. One feature of the Character Precincts as notified (as highlighted in Section 4 of our Report above), is that the identified Character Precincts represented a series of 'islands' surrounded by HRZ. We discussed the implications of this with some of the parties. Mr Lewandowski's recommendations filled in some of those gaps and we have taken them further, with the result that the Character Precincts are larger and areas of HRZ interspersed within them generally eliminated.

275. That means that interface effects will mostly only occur at the margins of larger Character Precincts. In those cases, while the evidence of Dr Jacobs of HNZ would support a view that sites next to Character Precincts should be developed to a standard no higher than that provided for the in the MRZ, none of the submitters who appeared before us had quantified how many sites would be involved and, accordingly, what the effect would be on development capacity. Nor had any assessment been undertaken on a site-specific basis as Section 77L would have required.
276. In summary, for these reasons, and taking account of the recommended amendment to HRZ-P8, we accept Mr Lewandowski's recommendation that no further amendments to Plan provisions should be made to address this issue.

6. RELATIONSHIP BETWEEN HERITAGE AND CHARACTER

277. In Section 13.0 of his Report, Mr Lewandowski noted a number of submissions drawing the link between heritage and character and seeking, among other things, that:

- Heritage values should be considered the most significant characteristic in determining character⁴²;
- A number of proposed heritage areas be retained as Character Precincts⁴³;
- Character be recognised as in part derived from heritage⁴⁴;
- GRWC's 'Guide to Heritage Identification' be applied to assess the value of character areas⁴⁵;
- Character Precincts be assessed for inclusion as heritage areas⁴⁶;
- Character Precincts be reclassified as heritage areas⁴⁷;
- Character Precinct notations be removed where a heritage area already applies⁴⁸.

⁴² Peter Preston [#42.3] and Robert and Chris Gray [#46.9]; Mount Victoria Historical Society [#214.4]

⁴³ Lucy Telfar Barnard [#72]

⁴⁴ Lorraine and Richard Smith [#230.17]; Alan Fairless [#242.16]; Roland Sapsford [#305.7]; Carolyn Stephens [#344.9]; Elizabeth Nagel [#368.14]; Josephine Smith [#419.12]; Paul Rutherford [#424.11]

⁴⁵ Cherie Jacobson [#251.6] and WHP [#412.10]

⁴⁶ WHP [#412.109]

⁴⁷ David Lee [#454.4]

⁴⁸ Kāinga Ora [#391.18]

278. Mr Lewandowski's view was that Character Precincts do not intentionally seek to specifically protect historic heritage values, and that character values are derived from a combination of different considerations. Some of those considerations are common to the assessment of historic heritage and some are not. The same is true in reverse. He recorded specifically that areas have been separately assessed for their character and historic heritage values.
279. Mr Lewandowski therefore did not agree with submitters seeking to emphasise heritage values as the determining factor in identification of Character Precincts.
280. For the same reason, he disagreed with the suggestion that GWRC Guidelines for Heritage Identification should be utilised for this purpose.
281. Mr Lewandowski also noted that there were a limited number of instances where a Heritage Area overlay overlaps with a Character Precinct. While he recognised that this creates an additional regulatory layer, on balance, he was of the view that the approach remains appropriate and therefore disagreed with Kāinga Ora's submission.
282. We have already discussed the relationship between Character Precincts and heritage values for a different purpose in Section 2.1 of our Report above, concluding that the focus for identification of Character Precincts was not their history, but rather a range of amenity values. It follows from that that we accept many of Mr Lewandowski's reasons as to why this group of submissions should not be accepted.
283. We accept that there is an overlap in practice between heritage and character with some properties or areas being recognised for their values in both respects. As Mr Lewandowski acknowledges, this creates an additional layer of regulation. However, we agree with his view that it is not appropriate to dispense with Character Precinct identification on this basis. The policy direction for Character Precincts is different to that for historic heritage, reflecting the different values that are in issue.
284. We draw an analogy with identification of hazard risks. We do not think it would follow from the fact that a site is the subject of both flooding and seismic risks that one or other of those overlays should be deleted to make the Plan more efficient. Both sets of hazards need to be taken into account in order to determine the appropriate management of the site.
285. So it is with Character Precincts and historic heritage overlays.

286. Accordingly, we adopt Mr Lewandowski's recommendation that the Character Precinct provisions not be amended in respect of the relationship between character and heritage.

7. CHARACTER PRECINCT PROVISIONS

7.1 General Submissions

287. At Section 14.3 of his Section 42A Report, Mr Lewandowski noted submissions:

- Seeking that the Council works proactively to better utilise empty and unused land for housing purposes⁴⁹;
- Opposing high density development with no rights of appeal in character areas⁵⁰;
- Seeking that the PDP identifies opportunities for community-based planning for intensification⁵¹;
- Seeking a mechanism to extend Character Precincts with viewshaft protection given within an extension⁵²;
- Suggesting that intensification occur in more harmonious ways on vacant and underutilised areas, or that intensification and development be focussed along main streets in local and neighbourhood centre zones⁵³;
- Considering that the Council has ignored petitions of significant community support when identifying proposed Character Precincts⁵⁴;
- Seeking that renovation activities are financially supported⁵⁵;
- Seeking amended MRZ provisions recognising residential character and heritage qualities while achieving intensification⁵⁶;

⁴⁹ Sam Stocker and Patricia Lee [#216.1]

⁵⁰ Lorraine and Richard Smith [#230.14]

⁵¹ Alan Fairless [242.21]; Josephine Smith [#419.8]; Paul Rutherford [#424.1]

⁵² Laura Gaudin [#279.3]

⁵³ Tina Reid [#341.1]; Jane Szentivanyi [#376.1]; Sue Kedgley [#387.4]; Kat Hall [#430.9]; Stephen Minto [#395.1]

⁵⁴ Matthew Plummer [#300.8]

⁵⁵ Mount Victoria Residents Association [#342.4]

⁵⁶ Dinah Presley [#495.1]

- Seeking that well-maintained pre-1930 houses retain protection from demolition⁵⁷;
- Seeking encouragement for protection of character values in Newtown⁵⁸;
- Seeking a general presumption against demolition of pre-1930 buildings⁵⁹.

288. Mr Lewandowski also noted a number of submissions querying the relationship between housing affordability and recognition of character and heritage values.

289. As regards the last point, we have already discussed the evidence we heard that the reduction in regulation of intensification in inner city areas would likely not improve affordability.

290. It follows that we accept Mr Lewandowski's recommendation that no changes are required to Character Precinct provisions in order to enhance delivery of affordable housing.

291. As regards the other issues raised by submitters and summarised above, Mr Lewandowski noted the overlap with a number of the more general considerations discussed in our Report 1A.

292. Mr Lewandowski's view was that the Smith submission summarised above lacked an evidential basis insofar as it suggested that Lower Kelburn will be a development priority. We agree with his recommendation that the submission does not prompt the need for amendment to Character Precinct provisions. We also note, as discussed in Section 2.2 of this Report, identification of character provisions has as its corollary an MRZ zoning, because the Precinct sits within the MRZ. The concern expressed by those submitters of HRZ development in Character Precinct is therefore misconceived.

293. We agree also with Mr Lewandowski's view that it was not the role of the PDP to provide for community-based planning. That is a matter for the Council to consider prior to the development of the PDP, in order that the Plan might appropriately reflect community input. We likewise agree with Mr Lewandowski that future extensions to Character Precincts and/or viewshafts are not matters that can be predetermined. They should

⁵⁷ Jane and David Kirkcaldie [#455.2]

⁵⁸ Ben Barrett [#479.15]

⁵⁹ Jonothan and Tricia Briscoe [#190.16]

be the subject of future Plan Changes, based on the evidence and evaluation available at the time.

294. The process leading up to finalisation of the PDP is similarly a matter for Council. We can only make our recommendations on the basis of the submissions and evidence we have before us as to what Plan provisions are appropriate.
295. We agree also with Mr Lewandowski's view that financial incentives for housing renovation within Character Precincts are not a matter for the District Plan.
296. Mr Lewandowski's view was that the Character Precinct provisions, as amended in accordance with his recommendations strike an appropriate balance between providing for management of development within Character Precincts and ensuring an appropriate response to the MDRS and NPSUD. Ms Presley did not appear to explain to us why this was not the case and, on that basis, we agree with Mr Lewandowski's assessment.
297. Support in the Kirkcaldie submission for protection of well-maintained pre-1930 houses from demolition is noted. In as far as such houses are within Character Precincts, we will have more to say about the Plan provisions on that specific issue in Section 7.2 below. Addressing the situation where they are not (within Character Precincts), Mr Lewandowski disagreed with the Briscoe submission seeking a general presumption against demolition of pre-1930 buildings. We agree with his reasoning that while it is appropriate to implement demolition controls within Character Precincts, a general presumption would add unnecessary regulatory cost and would not meet the requirements of the MDRS and the NPSUD.
298. As regards Mr Barrett's focus on character protection in Newtown, Mr Lewandowski noted that he had recommended the extent of the Character Precincts in that suburb be enlarged, but that consistency needed to be retained across the PDP. We agree with that view. While the unique features of each suburb need to be considered, consistency in the application of the PDP is an important priority.
299. In summary, we adopt Mr Lewandowski's recommendation that no changes to Character Precinct provisions be made in order to respond to these general submissions.

7.2 Introduction to Character Precinct Provisions

300. Mr Lewandowski noted two submissions on the Introduction to the Medium Density Residential Zone, as it relates to Character Precincts.

301. The first from Kāinga Ora⁶⁰ sought that all reference to Character Precincts, the Mount Victoria North Townscape Precinct and the Oriental Bay Height Precinct be deleted.
302. The second submission from LIVE WELLington⁶¹ sought that the description of the character sought to be managed within Character Precincts be amended to focus on the age of buildings, building materials, architectural styles and their size and shape rather than, as notified, architectural values, patterns of subdivision and the resulting streetscape.
303. In our view Mr Lewandowski correctly identified Kāinga Ora's submission as reflective of its general opposition to the use of Character Precincts. He considered that the use of Character Precincts is appropriate and can be accommodated while still providing for significant development capacity in excess of expected demand.
304. In Section 2 of our Report above, we found that, at least as regards the Character Precincts and the Mount Victoria North Township Precinct, those provisions both satisfy the relevant statutory requirements and identify community values that should be recognised in the Plan. We have found in Section 2.4 of our Report above that the Oriental Bay Height Precinct does not satisfy the statutory requirements in as far as it provides for development of sites to less than 21 metres in the stretch of Oriental Parade south of Grass Street. We have therefore recommended that it be amended in that respect. As amended, we consider that the values identified by the Environment Court in 1998 remain important and should likewise be recognised in the Plan. That said, we recommend acceptance of Kāinga Ora's submissions in part. Mr Patterson recommended that the Introduction not list the qualifying matters which have been applied. We have accepted that recommendation⁶². It follows that Kāinga Ora's submission might be accepted in part.
305. As regards LIVE WELLington's submission, Mr Lewandowski did not agree with the suggested amendment. In his view, age considerations were already referenced by the introductory text and deletion of reference to patterns of subdivision and the resultant streetscape omits a key contributory element to these areas. We concur with his reasoning and accordingly, do not recommend an amendment to the text of the Introduction to Character Precincts on this account.

⁶⁰ Submission #391.314

⁶¹ Submission #154.4

⁶² Refer Report 2A at Section 4.4

306. Before leaving the Introduction, however, we note that the existing text states that the Character Precincts are located in six identified suburbs⁶³.

307. This statement is not correct as a description of the notified Character Precincts, as they included an area on the north side of Bolton Street that we understand is properly categorised as being in Lower Kelburn. Mr Lewandowski recommended that the identified area be expanded, and we have suggested further additions. To the extent that the introductory text was incorrect anyway, amendment to add “*Lower Kelburn*” is correction of a minor error since the introduction is descriptive of other Plan provisions and has no regulatory weight in itself. We recommend that change be made and that reference be added to The Terrace as a consequential change flowing from our recommendation to add that Character Precinct.

308. We also note that the Introduction states:

“The particular characteristics of each Precinct are described in the Character Precinct Appendix to the Residential Design Guide.”

309. That is not correct, as the Character Precinct Appendix does not describe the characteristics of the existing Lower Kelburn Character Precinct. If our recommendation to add a Terrace Character Precinct, it will not describe that either. As discussed in Section 7.8 below, we do not have the evidence with which to populate new sections of the Character Precinct Appendix to fill those gaps. The Introduction also does not reference the Guiding Principles stated in the Appendix, the relevance of which to assessment, we have recommended be drawn out (in Section 7.8 below).

310. We recommend that this sentence be substituted by way of consequential relief with the following to address these issues:

“The Character Precincts Appendix to the Residential Design Guide has material that is relevant to the assessment of building proposals in the identified Character Precincts.”

7.3 Character Precinct Objectives and Policies

311. The only submission Mr Lewandowski noted in relation to the single objective for the Character Precincts (MRZ-PREC01-O1) was in support and therefore we do not need to consider the matter further.

312. Turning to the Precinct policies, we put to one side submissions focussing on the inter-relationship between policies and the Character Precincts Appendix to the Residential

⁶³ Berhampore, Newtown, Mount Cook, Mount Victoria, Aro Valley and Thorndon

Design Guide. We discuss those in Section 7.8 below. Starting then with MRZ-PREC01-P2, which relates to restrictions on demolition of pre-1930 buildings, Mr Lewandowski noted submissions seeking:

- Addition of a further criterion for determining whether contribution of a building to the character area is low relating to whether the building is an original building on the site and an important element in the wider heritage context of the area⁶⁴;
- Inclusion of consideration of the environmental effects of demolition removal and salvage⁶⁵;
- Seeking amendment to expressly allow for the demolition post-1930 buildings⁶⁶;
- Seeking amendment to take into account the status of a building in the wider heritage context⁶⁷;
- Seeking clarification of the meaning of “*poor condition*”⁶⁸. The submitter also sought replacement of reference to pre-1930 features with “*pre-1950*”;
- Alter the focus from original to ‘pre-1930’ design features⁶⁹.

313. Mr Lewandowski did not consider that the amendments sought by Ms Newman and the Mount Victoria Historical Society to test whether the building is ‘original’ was required, noting that the suggested additional criterion duplicated sub policy 1(c).

314. When Ms Newman appeared on behalf of the Mount Victoria Historical Society, she did not tell us why Mr Lewandowski’s reasoning was flawed, but she continued to record the Society’s view that the suggested wording was preferable while indicating a readiness to support alternative wording other submitters had suggested and that we will discuss shortly.

315. On that basis, we have no reason to disagree with Mr Lewandowski’s analysis that the suggested amendment is unnecessary because it duplicates existing considerations.

⁶⁴ Joanna Newman [#85.2]; Mount Victoria Historical Society [#214.6]

⁶⁵ Mike Camden [#226.6]

⁶⁶ Victoria University Students Association [#123.49]

⁶⁷ Jonothan and Tricia Briscoe [#190.17]; Alan Olliver and Julie Middleton [#111.6]

⁶⁸ Khoi Phan [#316.13]

⁶⁹ Wellington Heritage Professionals [#412.75]

316. Mr Lewandowski likewise disagreed with the suggested reference to wider heritage context, since this is not the focus of the Character Precincts. We agree with that view also for the reasons discussed in Section 6 of our report above.
317. Mr Lewandowski did not support addition of consideration of the environmental effects of demolition, removal and salvage since these are not intrinsic to activities within Character Precincts. Mr Camden did not appear, and we share Mr Lewandowski's view that it would be inappropriate to single out demolition in Character Precincts for this reason.
318. Mr Lewandowski did not support the Students Association amendment either, regarding it as unnecessary. The Students Association likewise did not appear, and we agree with Mr Lewandowski's reasoning. The PDP policies do not generally need to discuss activities that the Plan does not regulate, so long as the extent of regulation is clear. Mr Lewandowski thought it was clear in this respect, as do we.
319. Mr Lewandowski did not support the Phan submission. In his view, utilisation of a 1930 trigger point was an established feature of the Character Precincts and the change suggested would fundamentally undermine their purpose. He likewise did not consider that clarification was required of 'poor condition'. We concur on both points.
320. Lastly, Mr Lewandowski thought there was merit in the WHP's submission seeking recognition of the fact that many older buildings will have been modified before 1930. However, he was concerned that relying solely on a pre-1930 reference (as opposed to "*original*" design features) would include unsympathetic additions and alterations. He therefore suggested an amendment to the relevant criterion worded as follows:
- "(c) The extent to which the existing building retains its original or pre-1930 design features relating to form, materials, and detailing and the extent to which those features have been modified."*
321. We likewise think that WHP have a point, but we have two issues with Mr Lewandowski's suggested amended criterion. The first is that simply adding "*or pre-1930*" design features pulls in both sympathetic and unsympathetic modifications from the original, contrary to his reasoning for amending the notified provision. The second issue is that the criterion also already tests the extent to which features have been modified.
322. We consider that the criterion needs to be more selective as to what pre-1930 modifications are taken into account.

323. Our recommended rewording is, accordingly:

“(c) The extent to which the existing building retains either its original design features relating to form, materials, and detailing or modifications prior to 1930 not detracting from its original design features, and the extent to which those features have been modified over time.”

324. At the hearing, we heard from two other submitters who Mr Lewandowski had not identified as having an interest in this matter in his Section 42A Report. Firstly, Mr Brett McKay gave evidence as part of the WCCT case. Mr McKay is a retired planner and former employee of the Council, who had a specific responsibility in relation to the now operative District Plan. He was a submitter in his own right and made a general point in his submission⁷⁰ that *“the Medium Density Residential Zone provisions are recrafted to achieve reasonable intensification while maintaining and enhancing the existing valued housing stock”*. At the hearing, Mr McKay explained the background to the ODP constraints on demolition and highlighted the differences between those provisions and MRZ-PREC01-P2 which, in his view, will significantly weaken the present protections.

325. In his written evidence, Mr McKay emphasised that the ODP character area provisions were much more clearly linked to heritage values than is the case in the PDP. In his view, by severing heritage from character *“the PDP will undermine the rationale for retaining the old City housing stock and lead to decisions that favour intensification, growth and development and the emergence of residential areas which have a new form, appearance and amenity”*.

326. Addressing the substance of the policy, he expressed concern about addition of criteria focussing on poor quality, which in his view will mean that a pre-1930s building could be demolished without any assessment of its character values or contribution to the character of the area.

327. Mr McKay suggested two amendments. The first is to add to the list of relevant considerations when determining that the contribution of a building to the character of an area is low, with a new sub-policy 1(f) worded:

“Whether the building is a distinctive element within the local townscape.”

328. The second amendment he suggested related to sub-policy 2. As notified, that sub-policy read:

⁷⁰ Submission #69.1

“The building is shown to be in poor condition, particularly in terms of:

- (a) Its structural integrity, so that its retention is impractical or economically unviable;*
- (b) Whether the building presents a hazard; and*
- (c) Whether the building presents a risk to life in the event of an earthquake.”*

329. Mr McKay suggested amendment would result in the sub-policy reading:

“Retention of the existing building is impractical or unreasonable, particularly in terms of:

- (a) Its structural integrity, so its retention would render it incapable of reasonable use;*
- (b) Whether the building presents a hazard; and*
- (c) Whether the building presents a risk to life in the event of an earthquake.”*

330. We note that as part of its presentation, the representatives of HPW agreed with Mr McKay’s suggested amendment to this policy. The jurisdictional basis for HPW to comment on this aspect of the PDP was not apparent to us.

331. Lastly, we note that it was Mr McKay’s amendments that Ms Newman referred to on behalf of the Mount Victoria Historical Society, saying that she would support that in the alternative.

332. Responding to the substance of Mr McKay’s evidence in reply, Mr Lewandowski did not agree with his suggested amendment to sub-policy 1. He regarded it as largely already addressed by the existing focus of the policy on the level of visibility of the building from surrounding public spaces. He also noted that the suggested additional matter was framed in relation to townscape whereas the basis for identification of Character Precinct had a narrower perspective, focussing on streetscape.

333. We agree with Mr Lewandowski’s analysis on both counts. We also think that a test of distinctiveness is ambiguous. A building can be distinctive because it is a very good example of the prevailing character, or a very poor example. Testing distinctiveness, therefore, does not to our mind assist with the inquiry.

334. We recommend rejection of that aspect of Mr McKay’s relief.

335. Turning to sub-policy 2, Mr Lewandowski did not consider the change to the chapeau of the sub-policy to be material. However, he did have a problem with the introduction of the concept of retention rendering a building “*incapable of reasonable use*”, suggesting that incorporating the terminology of Section 85 of the Act brings with it particular statutory meanings that are not appropriate in the context of this policy.
336. We tend to agree with Mr Lewandowski on the last point, but we do not regard this sub-policy as wholly satisfactory either in its current form. We agree with Mr McKay that a reference to poor condition is problematic without clarification as to ‘how poor’ when issues of structural integrity, hazard risk, and seismic risk are not involved. There is also an issue that if the term is given its ordinary and natural meaning (as Mr Lewandowski suggests, and we have agreed, it should) a building might not necessarily be thought of as being ‘poor condition’ if it poses risk to life in the event of an extreme earthquake.
337. For these reasons, we recommend an amended version of sub-policy 2, adopting some of Mr McKay’s language and worded as follows:

~~“The building is shown to be in poor condition~~ Retention of the existing building is impractical or unreasonable, particularly in terms of by reason of:

- (a) *Its structural integrity, so that its retention is impractical or economically unviable;*
- (b) ~~Whether~~ The extent to which *the building presents a hazard; and*
- (c) ~~Whether~~ The extent to which *the building presents a risk to life in the event of an earthquake; or*
- (d) Its poor condition.”

338. In his Reply, Mr Lewandowski recommended that MRZ-PREC01-P2 might appropriately be amended to provide for demolition required for the construction of infrastructure as a new sub-policy 3. This was a point emphasised by Mr Scott in his evidence for Waka Kotahi. Mr Scott noted that there appeared to be clear rules when infrastructure overlaps with heritage, but nothing similar for Character Precincts.
339. Mr Scott did not identify the provisions he was referring to that relate to heritage buildings/areas, and in any event, demolition of heritage buildings must meet a much higher hurdle than the Plan proposes for character areas, so we think that the comparison is dubious.

340. More broadly, while we accept that the suggested amendment might be considered technically within scope, because of the general opposition to Character Precincts and their provisions, including from Waka Kotahi, there is to our minds a natural justice issue surrounding a specific provision for demolition within Character Precincts for the purposes of infrastructure, which as far as we are aware, has never specifically been requested in any submission.
341. We note also that infrastructure providers generally, and Waka Kotahi in particular, have the option available to them of designating for their requirements. It therefore seemed to us that the recommendation Mr Lewandowski made in his Reply required rather more justification in terms of the requirements of Section 32AA than he gave it.
342. We are unconvinced that the suggested addition is either necessary or desirable given the availability of alternative mechanisms for infrastructure. We therefore do not recommend the amendment Mr Lewandowski has suggested.
343. Before leaving this matter, we should note that in his Reply, Mr Lewandowski raised a possible issue with the definition of “*demolition*”. He noted that that definition does not explicitly refer to the relocation of buildings or parts of buildings within a Character Precinct. In his view, the similarity of the definition with that of the ODP suggests that removal addresses relocation, but Mr Lewandowski recommended that if the Panel is not satisfied that is sufficiently clear, the definition of “*demolition*” should be amended to add “*relocation*”. Mr Lewandowski’s concern relates to relocation of a building from a site. Read in that way, we are satisfied that “*removal*” covers the action in question. Moreover, the problem with adding “*relocation*” to the definition of demolition without qualification is that it would include relocation within the site. It is not immediately apparent to us why this would require consideration in a Character Precinct (the position would be different if the issue were one of heritage values, because the location of a building on a site is part of its heritage integrity).
344. For these reasons, we do not consider that the amendment Mr Lewandowski suggests is required. However, he also suggested another, more minor amendment at the very end of the definition where it currently states “*it does not include any work that is permitted as repair or maintenance*”.
345. Mr Lewandowski suggested that the word “*such*” be inserted so that repair or maintenance is an example of work that is permitted rather than the sole exclusion. We agree that this is desirable and we recommend, therefore, that the definition of demolition be reworded as an out-of-scope amendment so that the last sentence reads:

“It does not include any work that is permitted, such as repair or maintenance”.

346. Turning to MRZ-PREC01-P3, Mr Lewandowski noted three submissions.

347. As notified, this policy read:

“Enable residential intensification within Character Precincts provided that it does not detract from the character and amenity of the Precinct in which it is located.”

348. The first submission, from Victoria University Students Association⁷¹ sought that the words *“provided that it does not detract from character”* is removed.

349. The second submission from Khoi Phan⁷² sought that the criteria listed in the policy be deleted.

350. Finally, VicLabour⁷³ opposed the policy and sought its deletion.

351. Mr Lewandowski did not support the Students Association submission, noting that maintenance of the character of the precincts is a fundamental aim in giving effect to the objective. We concur. The suggested amendment also suffers from the problem that if accepted, the policy would not make grammatical sense.

352. Mr Lewandowski similarly recommended that the Phan and VicLabour submissions be rejected, as the policy is seeking to provide for intensification, while balancing that aim with maintaining recognised character values. We agree with that reasoning, but neither the reasons Mr Lewandowski gave, nor the objective the policy seeks to achieve explain why the policy should focus on not detracting from the amenity values of the Precinct. We are concerned that to the extent amenity values are broader than character values, a general policy of not detracting from amenity values in character areas fails adequately to take account of Policy 6 of the NPSUD, which directs RMA decision-makers to have particular regard to the fact that the development envisaged within an RMA Plan may involve both detracting and improvements to amenity values. We think, therefore, that the reference to amenity values should be deleted.

353. We therefore recommend that MRZ-PREC01-P3 be amended to read:

⁷¹ Submission #123.50

⁷² Submission #326.13

⁷³ Submission #414.30

“Enable residential intensification within Character Precincts provided that it does not detract from the character and amenity of the precinct in which it is located.”

354. To that extent, we recommend that the Phan and VicLabour submission points be accepted in part.

7.4 Character Precinct Rules and Standards

355. Mr Lewandowski noted submissions on MRZ-PREC01-R3 variously suggesting clarification that the rule is subject to MRZ-PREC01-R4⁷⁴ and that an additional requirement that building and demolition waste be disposed of in an approved facility be inserted to give effect to Policy 34 of the RPS⁷⁵.

356. Mr Lewandowski agreed with the submissions on the first point, suggesting that the activity the subject of MRZ-PREC01-R3 be amended to read:

“Demolition or removal of buildings and structures, except those buildings addressed in MRZ-PREC01-R4.”

357. We agree. It is not helpful to have two rules governing the same activity side by side, with no explicit indication as to which prevails. We adopt Mr Lewandowski’s recommendation.

358. Mr Lewandowski did not consider, however, that the amendment sought by GWRC was practical. He did not consider that the Council could not practically and meaningfully monitor or enforce such a standard. We note that Policy 34 of the RPS directs inclusion of policies and rules that control activities on contaminated land so that those activities are not adversely affected by the contamination. We do not find that implementation of Policy 34 requires the condition that GWRC suggested. We also note that the representatives of GWRC did not address this particular issue when they appeared before the Panel.

359. We accept Mr Lewandowski’s reasoning. We do not consider it practical to impose the additional condition that GWRC suggested.

360. Turning to MRZ-PREC01-R4, Mr Lewandowski noted submissions seeking:

- Removal of restrictions on demolition⁷⁶;

⁷⁴ HNZ [#70.33-34]; Kimberley Vermaey [#348.10]

⁷⁵ GWRC [#351.252-253]

⁷⁶ Victoria University Students Association [#123.51]

- Expansion of the rule so that it applies to all existing pre-1930s character areas⁷⁷;
- Amendment to ensure that demolition is a last resort and provision to allow alterations to bring a dwelling into line with original plans⁷⁸;
- Amendment to refer to pre-1950 buildings⁷⁹.

361. Mr Lewandowski did not support the relief sought by the Students Association, noting that the rule is a central aspect of character protection in Character Precincts. He also did not consider that the further amendments to the rule suggested by Ms Bramley were required. In his view, the rule operating in conjunction with MRZ-PRE01-P2 provides an appropriate regulatory framework to assess any demolition proposal.

362. Lastly, he rejected the Phan submission for the same reasons as in relation to MRZ-PREC01-P2.

363. As regards to the last point, we accepted Mr Lewandowski's reasoning in relation to that policy, and it follows that we likewise adopt his reasoning in this context.

364. We also agree with Mr Lewandowski's assessment of the rule. We did not hear from Ms Bramley to provide us with any reason why Mr Lewandowski's reasoning was unfounded. We recommend rejection of her submission.

365. In relation to MRZ-PREC01-R5, Mr Lewandowski noted a submission from Bruce Rae⁸⁰. The submission point has two limbs. The second part relates to the inter-relationship of the rules with the Character Precincts Appendix to the Residential Design Guide. We discuss that below in Section 7.8. The first suggested amendment is that the matters of discretion be amended to make it clearer that Matter 1 applies in cases where there is no compliance with all relevant standards. Mr Lewandowski did not consider that the amendment was necessary. He considered that the rule is already clear in this regard. We concur, and Mr Rae did not appear to provide us with any reason why Mr Lewandowski's reasoning was unfounded. We recommend that that aspect of Mr Rae's submission be rejected.

366. In relation to MRZ-PREC01-R7, which relates to buildings and structures on or over a legal road, Waka Kotahi sought⁸¹ that the rule be amended to require written approval

⁷⁷ WCCT [#233.17]

⁷⁸ Avryl Bramley [#202.39]

⁷⁹ Khoi Phan [#326.13]

⁸⁰ Submission #334.5

⁸¹ Submission #370.304

from Waka Kotahi authorising the building or structure, where the legal road is controlled by Waka Kotahi. This was a general submission applying to similar rules in the broader Residential Zones. In the context of Character Precincts, however, Mr Lewandowski did not consider that the suggested amendment was required because there are no roads controlled by Waka Kotahi within a Character Precinct.

367. We agree with that reasoning and recommend that the submission be rejected.
368. The only submission on one of the Character Precinct standards was that of Khoi Phan⁸² seeking an amendment to MRZ-PREC01-S1 to reduce the maximum fence height from 2m to 1.5m. Mr Lewandowski did not support acceptance of this submission, noting that the standard provides separately for fences along road boundaries (with a 1m height requirement). He did not consider that for other fences, any departure from the normal MRZ standards were required. We concur. As already noted, character values relate to streetscape. The view from one residential property to another does not impinge on streetscape and accordingly, we do not see any rationale for a different standard from the broader MRZ. We recommend the submission be rejected.

7.5 Character Precinct Definitions

369. Under this heading, Mr Lewandowski noted a submission from LIVE WELLington⁸³ opposing the definition of character on the basis that it is too loose and encouraging of 'faux' replacements.
370. Mr Lewandowski did not consider that the existing definition required amendment. In his view, it did not promote 'faux' replacements. In response to our question, he agreed that even if the definition could be considered to promote faux replacements, that was not an issue in Character Precincts, which primarily relate to streetscape qualities. That is certainly our view. A key distinction between Character Precincts and historic heritage is that the latter focuses among other things on the historic integrity of the structure, whereas alterations and replacements that fit into the existing character are acceptable within Character Precincts.
371. We do not consider that amendment to the definition of "*character*" is required.
372. The Character Precincts require consideration of MRZ standards and Mr Lewandowski noted a submission from the Urban Activation Lab of Red Design Architects⁸⁴ seeking

⁸² Submission #326.13

⁸³ Submission #154.2

⁸⁴ Submission #420.12

that the 11m height control in MRZ-S1 be decreased within the Newtown Character Precincts. He also noted Kāinga Ora's submission⁸⁵ seeking deletion of reference to Character Precincts (or the Mount Victoria North Townscape Precinct) in MRZ-S1. The latter is consistent with Kāinga Ora's general position opposing Character Precincts, which we have not accepted. We recommend that this submission be rejected also.

373. As regards the Red Design submission, Mr Lewandowski emphasised that the Character Precincts seek to align with general MRZ height standards, so it does not overly restrict the development capacity of those areas. We agree that this is desirable. We also note that if that provision were to be changed, it would require further evaluation and justification in terms of the statutory provisions we have discussed in Section 2 of our Report. We did not have the evidence before us that would enable such an evaluation and we adopt Mr Lewandowski's recommendation that this submission be rejected.

7.6 Notification

374. Under this heading, Mr Lewandowski noted the submission of Robert and Chris Gray⁸⁶ seeking that the provisions of the ODP related to notification are carried over. Mr Lewandowski considered that the approach of the PDP, which precludes public notification (but not limited notification) for construction of accessory buildings, new buildings and fences/walls where not permitted, to be appropriate. That compares with demolition of pre-1930's buildings, where there is no preclusion on notification.
375. We did not hear from the submitters to explain why Mr Lewandowski's view was flawed, and we agree with it.

7.7 New Character Precinct Provisions

376. Mr Lewandowski noted the following submissions seeking new provisions relating to Character Precincts as follows:
- Seeking that planning assessments be required based on infrastructure availability, built form, character and heritage, walkability and other good practice ways of identifying areas for identification⁸⁷;

⁸⁵ Submission #391.406

⁸⁶ Submission #46.11

⁸⁷ Graham Spargo [#2011.2]

- A new objective emphasising the essential contributions made by heritage, character and quality design⁸⁸;
- Enabling a more granular level of assessment within extended Character Precincts⁸⁹;
- A new rule protecting original and stained and decorative glass windows⁹⁰;
- Provision in the rules for advice and input from an urban design panel⁹¹;
- Inclusion of provisions to promote adaptive reuse of buildings and to limit the scope of non-residential uses⁹²;
- Provision for upgrading and refurbishment to bring old houses up to modern standards⁹³.

377. Mr Lewandowski did not consider that amended provisions were required as suggested in the Spargo submission. He did not consider that any changes were necessary, considering that Character Precincts form one aspect of how the District Plan responds to the NPSUD and MDRS. Mr Spargo did not appear in this hearing stream to explain why Mr Lewandowski's reasoning was unfounded and we agree with it.

378. Mr Lewandowski also disagreed with the Smith, Fairless and Nagel submissions. He considered that the themes addressed by the submission are already addressed in the Strategic Direction Chapter of the PDP. We agree. We also consider that having an objective at this level of the Plan structure that speaks of heritage and quality design blurs the particular values sought to be protected within Character Precincts.

379. Mr Lewandowski disagreed with the Smith and Rutherford submissions seeking a more granular level of assessment. He considered that the recommended approach strikes an appropriate balance between character protection and giving effect to the MDRS and Policy 3 of the NPSUD. As is evident from the discussion in Section 4 of our Report, we have undertaken a granular assessment in order to determine what, in our minds, is the appropriate area of Character Precinct, and we do not consider that further provisions are required.

⁸⁸ Lorraine and Richard Smith [#230.1]; Alan Fairless [#242.4]; Elizabeth Nagel [#364.4]

⁸⁹ Lorraine and Richard Smith [#230.18]; Paul Rutherford [#424.20]

⁹⁰ Peter Fordyce [#431.8]

⁹¹ Christina Mackay [#478.12]

⁹² HPW [#182.21] and [#182.23]

⁹³ Live Wellington [#154.2]

380. Mr Lewandowski did not consider the amendment sought by Mr Fordyce was necessary either, noting that additions and alterations within Character Precincts already require resource consent approval. We concur with that view also, noting that we did not hear from Mr Fordyce to explain what additional value the new rule he suggested would provide.
381. Mr Lewandowski did not consider that resource consent processes within Character Precincts require input from an urban design panel. As discussed in Report 4A at Section 3.3, there is no urban design panel at present, although the Plan signals that this is a desirable innovation. Even if an urban design panel were established, it is not apparent to us that its input is required in this particular context. To that extent, we agree with Mr Lewandowski.
382. Mr Lewandowski also did not consider that additional provisions were required to promote either adaptive reuse of buildings or to provide for upgrading and refurbishment. We agree and we did not hear evidence from submitters that caused us to have concerns about the validity of Mr Lewandowski's reasoning.

7.8 Character Precinct Appendix to the Residential Design Guide

383. Mr Lewandowski noted a relatively small number of submissions seeking material amendments to the Character Precinct Appendix to the Residential Design Guide. We summarise those submissions as follows:
- (a) Investore Property⁹⁴ sought that all design guides sit outside the District Plan;
 - (b) Roland Sapsford⁹⁵ sought that an Aro Valley-specific design guide be developed, applying over the same area as the existing ODP character area⁹⁶;
 - (c) WHP⁹⁷ considered that the focus of the design guide should be on pre-1930 character as opposed to original elements. The submission identified a specific change requested to the discussion of the Mount Victoria section of the Character Precincts Appendix and also identified a grammatical error where it refers to the overlap between Character Precincts and heritage values;

⁹⁴ Submission #405.46

⁹⁵ Submission #305.65

⁹⁶ Submission #305.65

⁹⁷ Submissions #412.86-88

- (d) Anita Gude and Simon Terry⁹⁸ sought that the guiding principles identified at pages 5-9 of the Character Precincts Appendix be amended so that conformance with those principles is mandatory;
- (e) Christina Mackay⁹⁹ considered that the Character Precinct was too permissive, and sought a more conservation and preservation-based approach.
384. As regards the Investore submission, Mr Lewandowski noted the overlap with broader submissions discussed in Report 2A seeking deletion of all design guides. In Section 6.3.2 of that report, we recommend that those submissions be rejected. Our view there (and here) is that if design guides are fit for purpose, they should be within the Plan.
385. Although there are issues which we discuss shortly with this Character Precinct Appendix, we did not hear any evidence that this design guide was not fit for purpose, and we recommend the Investore submission be declined.
386. Mr Lewandowski did not recommend acceptance of Mr Sapsford's submission either. He considered that the information provided in the Character Precinct Appendix in relation to Aro Valley to be sufficient to inform resource consent processes in the relevant area. We concur. We note that Mr Sapsford did not table an alternative Character Precinct Appendix that we might have considered.
387. As regards WHP's submissions, Mr Lewandowski accepted that the grammatical error they had identified needed to be corrected, that the amendment WHP sought to the discussion of Mount Victoria (to record that pre-1930 alterations are characteristic of many buildings) be accepted, and that some amendments to the text referring to 'original' and 'originality' could properly be replaced with 'pre-1930s' in some cases.
388. We agree with Mr Lewandowski on all of these matters.
389. However, we observe that Mr Lewandowski omitted to supply a marked up version of the Character Precincts Appendix with his Section 42A Report, as he had intended (It was supplied following receipt of the Council Reply). We have therefore reviewed the document afresh to confirm where we considered it appropriate to amend references to original buildings when compiling the amendments shown in Appendix 2 to this report. In summary, we agree with Mr Lewandowski's recommended changes.

⁹⁸ Submission #461.32

⁹⁹ Submission #478.15

390. Mr Lewandowski's view was that it was not the role of the design guide to be either permissive or restrictive. He described it as seeking to provide contextual information on the outcome sought for an area. He also described the guiding principles as seeking to provide direction on the outcomes sought for an area against which a proposal is assessed, but that it was the role of the policy framework and rules to set out an approach to the management of activities and effects. He considered that the PDP struck an appropriate balance in this regard and therefore disagreed with both the Gude/Terry and Mackay submissions.
391. We agree with Mr Lewandowski on these matters, to a point. While we think it would be a bridge to far to make compliance with the guiding principles set out in the design guide mandatory, for reasons that are canvassed in much greater detail in relation to the Residential Design Guide in Report 2A, we think that there is a gap in the policy instruction. MRZ-PREC01-P1 directs new development, and additions and alterations to existing development "*to have regard and respond positively to the character values of the Precinct, as identified in the relevant Character Precincts Appendix to the Residential Design Guide*". It makes no reference to the guiding principles, which we think is an omission given Mr Lewandowski's description of their role (as above).
392. We compare the matter of discretion in the relevant rule (MRZ-PREC01-R5) which simply refers to the Residential Design Guide Character Precinct Appendix.
393. This was not an issue that was canvassed in the hearing and accordingly, we think it would be inappropriate to require that applicants respond positively to those guiding principles, but we think that the policy should at least direct that they be considered.
394. There is another problem with MRZ-PREC01-P1 where it refers to "*the relevant*" Character Precincts Appendix, when there is only one. We can resolve that issue at the same time, utilising the scope provided by the Gude/Terry submission.
395. We therefore recommend in response to the Gude/Terry submission that the chapeau of MRZ-PREC01-P1 be amended to read:

"... to have regard to the guiding principles stated in the Character Precincts Appendix to the Residential Design Guide, and to respond positively to the character values of the Precinct, as identified in the Character Precincts Appendix to the Residential Design Guide that document, and to ..."

396. One difficulty that we identified in the course of our deliberations is that, when applying this policy instruction, the Character Precinct Appendix does not currently have a section related to the existing Lower Kelburn Character Precinct, and thus does not identify any character values in that Precinct. That becomes even more of an issue given that we have recommended that that Precinct be expanded. We have also identified that a Character Precinct be established covering an area of The Terrace. That is not addressed in the Character Precinct Appendix either. At a more minor level, the expansion of the existing precincts in other areas deserves some recognition in the narrative.
397. We considered whether we could fill these gaps ourselves on an out-of-scope basis, but we lacked the evidence to contemplate that option seriously. We would also have been concerned about the implications for affected parties who have not had the opportunity to comment on whatever we might have written.
398. The only additional amendments we therefore recommend to the Character Precincts Appendix are to insert reference to Lower Kelburn and The Terrace in the list of suburbs with character precincts on page 4, together with a correction Mr Lewandowski noted in his report (substituting reference to the Medium Density Residential Zone where it appears in two places in the introductory sections).
399. However, that leaves some material gaps, and we recommend that Council takes steps to fill them through a future Plan Change.

8. MOUNT VICTORIA NORTH TOWNSCAPE PRECINCT

400. Mr Lewandowski commenced his review of submissions on the Mount Victoria North Townscape Precinct with a discussion of the positions taken by Waka Kotahi and Kāinga Ora in relation to the extent to which the Townscape Precinct had been evaluated vis a vis the statutory requirements. We have discussed those matters in Section 2.3 above and do not repeat our reasoning here.

8.1 Spatial Extent

401. Matters raised in submissions seek to include Earls Terrace, Port Street and Stafford Street, as well as Hawker Street, McFarlane Street and Vogel Street (in their entirety¹⁰⁰ or as particular properties¹⁰¹) into the Mount Victoria North Townscape Precinct.
402. Mr Lewandowski did not support the inclusion of Earl Terrace, Port Street and Stafford Street due to the lack of an evidential basis. He referred us to a recent review undertaken by Urban Perspectives, that did not identify these streets as of townscape value. He also noted that those streets are not part of the Mount Victoria Character Precinct either.
403. Based on the same review, he agreed with the submission of Anita Gude and Simon Terry¹⁰² that the properties at 31 and 33 McFarlane Street should be added, since they 'read' as part of the Mount Victoria North Townscape Precinct. We concur.
404. We note that the properties at McFarlane Street are also part of the Oriental Bay Height Precinct, which we consider separately in Section 9 this report.
405. We agree also with Mr Lewandowski, that the two Precincts the McFarlane properties sit within have different objectives (maintaining the height standards of Oriental Bay, and the townscape values of Mount Victoria) and therefore it is appropriate to have them covered by both Precincts.
406. Ms Gude and Mr Terry submitted that 4 Vogel Street was an important part of the Mount Victoria North Townscape Precinct, currently located just outside the Precinct, and requested its inclusion. Mr Lewandowski did not provide a specific assessment for this property in his Section 42A Report as to its inclusion or otherwise to the Mount Victoria North Townscape Precinct.
407. The Panel requested Mr Lewandowski to consider the inclusion of number 4 Vogel Street to the Mount Victoria North Townscape Precinct in his Reply, due to its visibility, as illustrated by a photograph Mr Terry provided to us when he appeared.
408. In his Reply Mr Lewandowski noted that this property was not identified by the Urban Design Review as a property to include in the Townscape Precinct, but reference was

¹⁰⁰ Submission #212.5

¹⁰¹ Submission #317.16

¹⁰² Submission #461.11

made generally to consider height allowances for neighbouring properties. He also noted that historically the site was not part of the Mount Victoria North Character Area.

409. Mr Lewandowski conceded, however, that 4 Vogel Street is located on a prominent site, as the highest point just outside the Mount Victoria North Townscape Precinct boundary, and for that reason could be included in the Townscape Precinct. At the same time, he noted that its inclusion could trigger an 'edge effect', where questions could be raised whether other slightly less visible properties that are at the periphery of the Precinct, should be included as well. He considered this to be an issue and recommended this property not be included in the Precinct.
410. The Panel sympathises with Mr Lewandowski's view that if one includes one, one may as well include another, which might result in a progressive creep effect. This applies generally to Character Precincts, as well as to Townscape Precincts.
411. However, in the case of the Townscape Precinct, we agree with the submitters that the topography of this particular site and its location, directly adjacent to the notified Precinct boundary, makes it visually a bookend to the Precinct, as very few other properties do. Therefore, this property has a different visual prominence to the Mount Victoria North Townscape Precinct than other edge properties have.
412. In our view, based on the evidence we received, this prominence is a valid reason for inclusion of the property, particularly as the townscape character relies on these kinds of features that are visible from afar. We recommend its inclusion.
413. We do not consider that the addition of these three properties to the Precinct will make any material difference to the statutory evaluation of the Mount Victoria North Townscape Precinct discussed in Section 2.3 above.

8.2 Relationship between Mount Victoria North Townscape Precinct and Character Precinct Provisions

414. Under this heading Mr Lewandowski noted a series of submissions seeking clarification as to the relationship between the provisions of MRZ-PRE01 and MRZ-PREC02, where both apply to a site.
415. Mr Lewandowski referenced the Report to the Stream 1 Hearing Panel on this issue, which in turn drew the Panel's attention to the introduction to the MRZ Chapter that explains that in such an instance, the provisions of both precincts apply. The Reporting Officer in Stream 1, Mr McCutcheon, also recommended amendment to the introductory chapters of the Plan which would provide further clarification.

416. Mr Lewandowski did not consider any further change was necessary. We agree with that view.

8.3 MRZ-PREC02 General Submissions

417. Mr Lewandowski noted in this regard submissions:

- Seeking that the provisions of this part of the Plan are amended to specifically acknowledge that the character of inner-city suburbs is in part derived from heritage¹⁰³;
- Seeking removal of any rules allowing building along boundaries, reinstatement of side yards, and removal of any provision allowing for demolition¹⁰⁴;
- Seeking retention of the District Plan approach to the notification of neighbours regarding demolition, new buildings and major alterations¹⁰⁵.

418. Mr Lewandowski's view was that the Mount Victoria North Townscape Precinct is not solely or primarily focussed on heritage considerations. He considered that, if anything, this was more the case for this precinct than for the Character Precincts because the former specifically concentrates on townscape related matters.

419. We consider that Mr Lewandowski's reasoning does not strictly respond to the submission, which does not suggest that the Precinct is solely or primarily focussed on heritage considerations. We note that in Section 2.1 of our Report, we discussed that there is some inter-relationship between the Mount Victoria North Townscape Precinct and the historic values of St Gerard's Monastery. However, we consider that the provisions of the Plan already acknowledge that relationship and thus, we agree with Mr Lewandowski's recommendation that no further amendments are required, but not for the reasons that he suggested.

420. Mr Lewandowski did not recommend acceptance of Ms Bramley's general submission about rules. As regards side yards and buildings on boundaries, Mr Lewandowski considered that the MRZ provisions are appropriate as a means of enabling development. As regards demolition, his advice to us at the hearing was that no demolition controls are contained in the Mount Victoria North Townscape Precinct, because the Plan is not concerned so much with retention of the buildings that are

¹⁰³ HPW [#182.22]

¹⁰⁴ Avryl Bramley [#202.33]

¹⁰⁵ Robert and Chris Gray [#36.14]

currently present within the precinct, but rather with the nature and scale of any buildings that might replace them.

421. We agree with that approach, which is a key distinction between this precinct and the Character Precincts, albeit that there is a significant spatial overlap between the two on the southern side of St Gerard's Monastery.
422. Lastly, as regards notification, Mr Lewandowski made the same point about demolition: that there are no constraints on demolition other than where the Mount Victoria North Townscape Precinct overlaps with Character Precincts or Historic Heritage. As above, we consider that to be an appropriate position, given the values sought to be protected within this precinct.
423. Mr Lewandowski considered that the absence of any limited notification preclusions in MRZ-PREC02-R3 was appropriate. We concur with that view also.

8.4 MRZ-PREC02-O1

424. Mr Lewandowski noted two submissions seeking substantive amendments to the sole objective for this precinct. The first from Ms Bramley¹⁰⁶ sought to narrow the discretion created by the objective and clarify its meaning.
425. The second from Anita Gude and Simon Terry¹⁰⁷ sought to add a statement to clarify that the objective was seeking to protect further erosion of what is sought to be protected.
426. Mr Lewandowski did not consider that there was any discretion inherent within this objective.
427. Ms Bramley did not appear to supplement her submission but, reading it, it appears that her concern was about the use of the term "*appropriate future development*" in clause 4 of the objective.
428. Strictly speaking, we think that Mr Lewandowski's assessment is correct. This phrase does not create a discretion. Any discretion is created by the policies that seek to give effect to it.

¹⁰⁶ Submission #202.36

¹⁰⁷ Submission #461.24

429. Similarly, challenges to the clarity of the objective need to take account of the policies giving effect to the objective. Mr Lewandowski considered that the objective was clear and, viewed in conjunction with the policies, we agree.
430. As regards the Gude/Terry submission, Mr Lewandowski's view was that the objective was clear that it sought to manage townscape values within the precinct, not to prevent development or protect the status quo. On that basis, he recommended the submission be rejected.
431. When Mr Terry appeared, he amplified his submission, arguing that the concept underlying this precinct of "*townscape values*" was not clear and that additional minimum standards including restriction on demolition and a reduced height limit of 8 metres should apply. He also considered that the provisions cross referencing the Design Guide for the precinct should be tightened up.
432. We will come back to Design Guide issues shortly but as regards the more general criticism Mr Terry had, we do not consider that the absence of minimum standards fatally weakens the direction provided in the Mount Victoria North Townscape Precinct. While reasonably generally expressed, MRZ-PREC02-P1 gives adequate direction about the nature of the issues that need to be addressed. To the extent that Mr Terry highlighted in his presentation to us the need for minimum standards, we discuss that further below.
433. In summary, therefore, we recommend rejection of the Gude/Terry submission seeking amendment to this objective.

8.5 MRZ-PREC02-R2 Rules and Standards

434. The only submission on MRZ-PREC02 policies relates to the inter-relationship with the Design Guide Appendix for the precinct. We will return to that issue.
435. In relation to MRZ-PREC02-R2, Mr Lewandowski noted two submissions. The first, from GWRC¹⁰⁸, sought amendment to make permitted activity status for demolition or removal of buildings and structures conditional on building and demolition waste being disposed of at an appropriate facility.

¹⁰⁸ Submission #351.254

436. The second, from Anita Gude and Simon Terry¹⁰⁹ sought an amendment to ensure that demolition is a Restricted Discretionary Activity (as opposed to being a Permitted Activity at present).
437. Mr Lewandowski addressed GWRC's submission in the context of the Character Precincts. We agreed with his reasoning there and we consider that it is equally applicable in this context. We recommend that GWRC's submission be rejected.
438. As regards the Gude/Terry submission, Mr Terry's argument was based on a continuity of planning treatment across the entire Mount Victoria hillside face. He criticised the fact that while demolition was controlled south of St Gerard's Monastery (by virtue of the Character Precincts applying there), the same was not the case north of the Monastery.
439. We have addressed this point in the context of the general submissions discussed above. In our view, there is good reason why demolition is not controlled in the Mount Victoria North Townscape Precinct. To our eye, the residential buildings on the north side of the Monastery are much more varied in character than those to the south. There are many more new buildings that clearly do not have the character values that underpin the Mount Victoria Character Precincts. We also note that if additional controls over demolition were required in the Mount Victoria North Townscape Precinct, this would require further evaluation in terms of the statutory criteria discussed in Section 2 of our Report and Mr Terry did not provide us with an evidential foundation for that evaluation.
440. In summary, we recommend that the Gude/Terry submission point be rejected.
441. In relation to MRZ-PREC02-R5, Mr Lewandowski noted a general submission made by Waka Kotahi¹¹⁰ seeking provision for Waka Kotahi consent to buildings and structures over legal roads they control. Mr Lewandowski noted that as with the Character Precincts, there are in fact no roads that Waka Kotahi control within the Mount Victoria Townscape Precinct, and on that basis, he recommended rejection of the submission. We concur, for the same reasons.
442. In relation to the MRZ rules governing the precinct, Mr Lewandowski noted a submission from Ms Gude and Mr Terry¹¹¹ seeking that MRZ-R2 (which as notified governs residential activities other than retirement villages, supported residential care

¹⁰⁹ Submission #461.30

¹¹⁰ Submission #370.306

¹¹¹ Submission #461.29

activities and boarding houses¹¹²), be subject to compliance with MRZ-P2 and MRZ-P3. Mr Lewandowski did not consider that an amendment was required in respect of the precinct, noting that MRZ-R2 provides for residential activities up to three dwellings, and that beyond that a resource consent requirement is provided for. He also noted that construction of buildings requires a separate resource consent.

443. We agree with Mr Lewandowski's reasoning and note that Mr Terry did not pursue this particular point when he addressed us.
444. Ms Gude and Mr Terry made another submission¹¹³ in relation to MRZ-S1 seeking a maximum height of 8 metres within the precinct.
445. Mr Lewandowski did not recommend acceptance of that submission. He noted that assessment of this Precinct had concluded that an 11m height limit was appropriate to preserve the townscape values sought to be addressed by the Precinct. He also noted the general approach of utilising MRZ standards in order to align with the MDRS in both the Character Precincts and the Mount Victoria North Townscape Precinct. We agree. We also note that if the height limit were to be reduced, it would require further evaluation and justification in terms of the statutory provisions we have discussed in Section 2 of our Report. We did not have the evidence before us that would enable such an evaluation and we adopt Mr Lewandowski's recommendation that this submission be rejected.
446. Mr Lewandowski recommended that another submission from Ms Gude and Mr Terry¹¹⁴ be rejected in as far as it sought that MRZ-S3 be amended to remove the HIRB exemption for multi-unit housing. He observed that there is no such exemption. We concur.

8.6 Mount Victoria North Appendix to the Residential Design Guide

447. Mr Lewandowski identified two submissions on the Mount Victoria North Appendix to the Residential Design Guide. The first¹¹⁵ is a variation of the same Investore Property submission discussed in relation to the Character Precinct Appendix, seeking that the Appendix be removed from the District Plan. Like Mr Lewandowski, we recommend

¹¹² In Report 2A we recommend that reference to supported residential care activities and boarding houses be deleted from it.

¹¹³ Submission #461.22

¹¹⁴ Submission #461.21

¹¹⁵ Submission #405.49

that submission be rejected, for the same reasons as are discussed in relation to the Character Precinct Appendix.

448. The second submission, from Avryl Bramley¹¹⁶, sought an amendment to allow for design alterations in line with original plans when done with materials of the same style. Mr Lewandowski did not support that submission. He noted that the focus of this precinct was not on originality or maintenance of character of an area, but its visual appearance. He described the requested amendment as being unwarranted. We would describe it as unnecessary. Either way, we recommend that the submission be declined.

8.7 Notification

449. As for Character Precincts, Robert and Chris Gray sought¹¹⁷ that the approach to notification of proposals for demolition, new buildings and major alterations remain the same.
450. Mr Lewandowski noted that there are no demolition restrictions in the Mount Victoria North Townscape Precinct. Accordingly, notification issues do not arise. As regards new buildings and alterations, Mr Lewandowski relied on the same reasoning as in relation to Character Precincts. We agreed with his reasoning in that context, and we consider it equally applicable here. We recommend that this submission point be rejected.

9. ORIENTAL BAY HEIGHT PRECINCT

9.1 General Submissions

451. As previously noted, the Oriental Bay Height Precinct was addressed in the Section 42A Report authored by Mr Patterson. He identified general submissions on the Oriental Bay Height Precinct, including that of Kāinga Ora¹¹⁸ seeking both that it be reviewed so that the Council's methods to manage the identified townscape values are reconsidered, and that it be deleted in its entirety. Mr Patterson noted also a general submission from Waka Kotahi¹¹⁹ seeking amendment to the Chapter to turn the Oriental Bay Height Precinct into an overlay.

¹¹⁶ Submission #202.47

¹¹⁷ Submission #46.14

¹¹⁸ Submissions #391.320-321

¹¹⁹ Submission #370.262

452. We have addressed the arguments presented to us by Kāinga Ora in Section 2 above, finding that insofar as the Oriental Bay Height Precinct prescribes heights of less than 21 metres south of Grass Street, that provision has not been adequately evaluated in terms of the statutory requirements, and must therefore be amended. We also found that there were relevant values that the Precinct manages, and it should otherwise be retained.
453. Addressing the question raised by Waka Kotahi's submission, as to whether it should be retained in the form of a precinct or an overlay. Mr Patterson's view was that the Oriental Bay Height Precinct is similar to other Character Precincts and should remain a precinct for consistency in the Plan. He also noted that it was unclear why Waka Kotahi considered that it should be a precinct.
454. The evidence for Waka Kotahi did not explicitly address the Oriental Bay Height Precinct, or examine the rationale as to why an overlay was the preferable planning mechanism to a precinct.
455. In the absence of any clear reasoning from the submitter, we have no basis to disagree with Mr Patterson.
456. It follows that we also recommend acceptance of the submission of Jonathan Markwick¹²⁰ in part, insofar as he sought an amendment to the Plan mapping to allow six storey residential buildings in Oriental Bay in the area we have identified as above. In the area of the Oriental Bay Height Precinct north of Oriental Bay, the relevant heights were fixed by the Environment Court as the best means to address the unique values of Oriental Bay. Because this area is beyond the ambit of a walkable catchment for the CCZ, the NPSUD does not require at least six storey development in this area. Mr Markwick did not appear to support his submission and we accept Mr Patterson's recommendation that the height limits fixed by the Environment Court north of Grass Street should remain in place.

9.2 Spatial Extent

457. The Pukepuke Pari Residents Group presented a case to the hearing suggesting that the sites behind the Oriental Bay Height Precinct be subject to a maximum height of 13m from ground level, in order to maintain the visual effect of stepped rows of buildings.

¹²⁰ Submission #490.6

458. Counsel for the Group, Mr Ballinger, explained that its position was motivated by the Reporting Officer's recommendation (in Stream 1) that a 15 minute walkable catchment be identified from the boundary of the CCZ. He recognised that the flow-on effect of that recommendation, if accepted, would be that the MRZ height limit of 11m would cease to apply within the enlarged walkable catchment. In Mr Ballinger's submission, it was necessary to identify a Qualifying Matter applying to the area behind the Oriental Bay Height Precinct in order to preserve the integrity of the Precinct.
459. Mr Ballinger accepted that the Section 32 Report had not considered this issue, but submitted that we are able to undertake our own evaluation for the purposes of Sections 77J and Section 77L.
460. Because Mr Ballinger's argument linked this height limit to the Oriental Bay Height Precinct, we have treated this as an effective request to extend the ambit of the precinct.
461. We observe that the scope for the Pukepuke Pari relief, at least to the extent that it was put to us, is questionable. While the submitter sought to maintain existing MRZ height limits within Hay Street and the Hay Street extension¹²¹, that would only cover some of the area in question.
462. Nevertheless, we have considered the request on its merits taking account both of the evidence and legal submissions the Pukepuke Pari Residents Group presented, and the opposition to that case made by Mr Archer on behalf of Escape Investments Limited.
463. In Report 1A, we recommend a reduction in the area of the walkable catchment from that recommended by the Stream 1 Reporting Officer (Mr Wharten), but the issue of concern to the Pukepuke Pari Group still arises because there is an area up-hill from the Oriental Bay Height Precinct boundary and within the walkable catchment that NPSUD Policy 3(c) requires be zoned for development of at least six storeys, unless subject to a Qualifying Matter.
464. We asked Mr Patterson to provide us with his view of the Pukepuke Pari case and he did so in his written Reply, advising that it was his view that including development

¹²¹ Submission #237.5

controls outside of the existing Precinct would be contrary to NPSUD Policy 3 and Schedule 3A of the Act¹²².

465. Having said that, we note that part of Mr Patterson's reasoning was that the provisions in and extent of the Oriental Bay Height Precinct already achieve the protection the submitter seeks, and further development controls are not necessary. Given our conclusion that those development controls have not been adequately justified and cannot be sustained, that element of Mr Patterson's reasoning falls away. Nevertheless, we consider that he correctly focusses on the direction of the NPSUD.
466. It seems to us that the Pukepuke Pari case fails at the outset because we have found that the lower height limits that form part of the Oriental Bay Height Precinct below Hay Street cannot be sustained because of the lack of the required statutory evaluation.
467. Even if this had not been the case, however, the Pukepuke Pari Group have not provided sufficient information to satisfy us that a Qualifying Matter applies between the boundary of the walkable catchment we have identified in Oriental Bay and the Oriental Bay Height Precinct. We note in this regard that in Stream 3, the Hearing Panel heard submitters seeking identification of a heritage area applying to Hay Street and its environs, but decided not to recommend that relief (refer Report 3A at Section 2.18.6). Accordingly, justification for a lower height limit (than 21m) would have to satisfy both Sections 77J and 77L. We did not have that evaluation, or the evidence necessary to undertake it, before us to support the Pukepuke Pari request.

9.3 Oriental Bay Height Precinct Provisions

468. Discussing first the single objective for the Oriental Bay Height Precinct, Mr Patterson noted a Kāinga Ora submission¹²³, seeking that the objective be deleted. We read that submission as reflecting Kāinga Ora's more general opposition to the Oriental Bay Height Precinct, which we have addressed above. Subject to the amendment we have recommended to ensure compliance with the statutory requirements, we have not accepted that general opposition. It follows from our finding that the Height Precinct should otherwise be retained that we have no basis to recommend amendment to the objective.

¹²² Paragraph 135

¹²³ Submission #391.331

469. We recommend rejection of the Kāinga Ora¹²⁴ and Waka Kotahi¹²⁵ submissions in relation to MRZ-PREC03-P1 on the same basis.
470. Turning to the rules applying in the Oriental Bay Height Precinct, we make the same recommendation for Kāinga Ora's submissions opposing those rules as part of its general opposition to the Precinct.
471. Mr Patterson noted a submission from Investore Property Limited¹²⁶ seeking that MRZ-PREC03-R1 is amended to remove the reference to the Residential Design Guide as a matter of discretion and replace it with the specific design outcomes sought. In Report 2A at Section 6.3, we have discussed the interface between the Plan and the Residential Design Guide in some detail. We refer to and rely on that discussion as providing the reasons why we do not consider it either necessary or desirable to delete reference to the Residential Design Guide in this context.
472. It follows that we recommend rejection of this submission.
473. In relation to MRZ-PREC03-R5, Mr Patterson noted a Council submission¹²⁷ seeking correction of an apparent error where the rule refers to compliance with 'MRZ-OBPH-S6'. This should clearly be 'MRZ-PREC03-S6' and we recommend it be amended accordingly.
474. In relation to MRZ-PREC03-R6, Mr Patterson noted a Waka Kotahi submission¹²⁸ seeking a requirement be inserted that Waka Kotahi's written approval be obtained authorising any building or structure proposed to be located on a legal road controlled by Waka Kotahi. We have addressed similar submissions in relation to Character Precincts and the Mount Victoria North Townscape Precinct. As with those precincts, we recommend the submission be rejected on the basis that there are no roads controlled by Waka Kotahi within the Oriental Bay Height Precinct (or near to it).
475. Mr Patterson noted a minor formatting error in this rule and recommended its correction. We agree with his suggestion that "*where*" should be replaced by "*matters of discretion are*" as a minor correction within Clause 16 of the First Schedule.
476. MRZ-PREC03-S6 relates to fences and stand-alone walls within the Precinct. Mr Patterson noted submissions from the WCC Environmental Reference Group¹²⁹

¹²⁴ Submission #391.361

¹²⁵ Submission #370.284

¹²⁶ Submission #405.51

¹²⁷ Submission #266.136

¹²⁸ Submission #370.309

¹²⁹ Submissions #377.364 and #377.365

seeking that the standard be amended to require fences on the front boundary to be no greater than 1.2 metres in height, and for fences abutting public walkways to be 50% visually transparent between 1.2 metres and 2 metres in height (2 metres being the maximum height).

477. Mr Patterson agreed in principle that fences on side or rear boundaries with public spaces should have a visual permeability requirement, while still providing for on-site privacy and safety. However, he disagreed with the requested first level height control of 1.2 metres. He proposed a height of 1.5 metres on boundaries adjoining Open Space Zones and public spaces.
478. We considered this issue in the context of the non precinct MRZ standard (MRZ-S11) in Report 2A. In Section 5.5.5 of that report, we recommend that the requirement for 50% transparency of fences on boundaries adjoining Open Space Zones and public spaces start at 1.2m. We see no reason why the standard should be more enabling within the Oriental Bay Height Precinct. We therefore disagree with Mr Patterson and recommend that MRZ-PREC03-S6 be amended accordingly (and therefore that WCC ERG's submission be accepted in that respect).

10. CONCLUSIONS

479. We have sought to address all material issues of the parties who have appeared before us put in contention in relation to the proposed precincts.
480. To the extent that we have not discussed submissions on this topic, we agree with and adopt the reasoning of the Section 42A Reports prepared by Messrs Lewandowski and Patterson, as amended in their respective Replies.
481. Appendix 1 shows the mapped Character Precincts we recommend (overlayed on the notified zones) compared to the notified Character Precincts.
482. Appendix 2 sets out the amendments we recommend should be made to the Character Precinct Appendix to the Residential Design Guide. Recommended amendments to Character Precinct provisions are set out in Appendix 2.2 to Report 2A. We have not attached the Mount Victoria North Appendix to the Residential Design Guide as we have not recommended any changes to the notified version of that document.

483. To the extent that the Section 42A Reporting Officers have recommended amendments to the Plan requiring evaluation in terms of Section 32AA that we agree with, we adopt their evaluation for this purpose.
484. Where we have discussed amendments, in particular where we have identified that further amendments should be made, our reasons in terms of Section 32AA of the Act are set out in the body of our Report.
485. Appendix 3 sets out in tabular form our recommendations on the submissions allocated to the Hearing Stream 2 topics considered in this report (including those transferred from the Wrap-up/Integration hearing).
486. We note the out-of-scope recommendation we have made in relation to the definition of 'demolition' that is discussed in Section 7.3.
487. Lastly, we record our recommendations that Council:
- Investigate whether, as it appeared to us, Lower Wadestown has a sufficient concentration of character values to justify identification of a character precinct in that area (refer Section 4.3 above);
 - Take steps to update the Character Precincts Appendix to the Residential Design Guide so that it discusses the character values of all identified character precincts (refer Section 7.8 above).

For the Hearing Panel:



Trevor Robinson
Chair
Wellington City Proposed District Plan Hearings Panel

Dated: 31 January 2024