

**BEFORE COMMISSIONERS
APPOINTED BY WELLINGTON
CITY COUNCIL**

**WELLINGTON CITY COUNCIL PROPOSED DISTRICT
PLAN**

IN THE MATTER of Hearing Stream 2 –
Residential

AND

IN THE MATTER of a submission by Pukepuke Pari
Residents Incorporated

SYNOPSIS OF SUBMISSIONS IN SUPPORT OF PUKEPUKE PARI RESIDENTS INC.

24 March 2023

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MAY IT PLEASE THE COMMISSIONERS:

Introduction

1. These submissions on behalf of Pukepuke Pari Residents Inc (the **Submitter**) are intended to assist the Panel with the matters raised by the Submitter and to give those issues appropriate legal context.
2. The Submitter is an incorporated group of Hay Street residents with a range of concerns for the implementation of the NPS-UD. Those issues range from health and safety to public amenity, and ultimately to the components that go to make up a well-functioning urban environment. There is not a focus on the preservation of private amenity.
3. In these submissions, the Submitter explains why it supports the Oriental Bay Height Precinct (the **Precinct**) and height restrictions for the surrounding properties (including Hay Street). Both the s 32 and s 42A reports support the Precinct, but some other submitters (most notably Kāinga Ora) have suggested it be amended or revoked. These submissions set out the Submitter's opposition to those suggestions.
4. These submissions also address the health and safety implications of greater development in part of Hay Street.

Factual and legal context

5. The Precinct relates to the front row of properties on Oriental Parade from the Central City Fire Station to 350 Oriental Parade. It was initially established by the Environment Court, which found that Oriental Bay had a special character that warranted special consideration.¹ The maximum heights are set at varying rates along the Precinct. The heights range from 12.6 m to 33.6 m above sea level.
6. There is no reason to depart from the maximum heights set in that carefully reasoned judgment. The authors of both the ss 32 and 42A reports agreed:
 - (a) The s 32 report noted the "Environment Court has determined that the Oriental Bay area is unique with special character and requires a

¹ *Foot v Wellington City Council* W73/98, 2 September 1998 [Environment Court decision]

special approach. The use of a precinct to manage this area is therefore appropriate and consistent with the [NPS].”²

(b) The s 42A report rejected Kāinga Ora's suggestion that the Precinct be removed, noting that it is “generally supported by the community and contains height limits which are higher than the limits in the wider MRZ”. The report went on to say that there is “sufficient evidence that the [Precinct] has unique qualities and development opportunities that are distinct from the other residential areas of the city, and a more specific approach is required to address the outcomes sought for this area”.³

7. In the notified District Plan, the Precinct was not part of the (10 minute) walkable catchment and was identified as medium density (MRZ). If any part of the Precinct or the sites immediately behind the Precinct were to be included in the walkable catchment, this would enable development of building heights of at least six storeys on those sites.⁴
8. The Council may set the building height requirements under Policy 3 of the NPS-UD less enabling of development within a residential zone only to the extent necessary to accommodate a qualifying matter.⁵
9. If the Precinct were to fall within the walkable catchment, the Submitter says the Precinct and its rationale are together, “any other matter that makes higher density ... inappropriate in an area”.⁶ It also says the requirements of s 77L of the Resource Management Act are met or can be met in the Panel's report of recommendations to the Council. Its reasoning is set out below.

² Section 32 Evaluation Report — Part 2: High Density and Medium Density Residential Zones at 37.

³ Section 42A — Stream 2 Part 3, Residential Zones, Part 3: Medium Density Residential Zone at [74].

⁴ NPS-UD, Policy 3(c).

⁵ NPUS-UD, Policy 4; and Resource Management Act, s 77L.

⁶ Section 77I(j).

The Precinct makes higher density inappropriate

10. The existence of the Precinct and the rationale as explained by the report writers and the Environment Court decision are “qualifying matters” for the purposes of s 771 that justify a departure from the six plus storey limit.
11. The Environment Court correctly found that the character of Oriental Bay provided significant public amenity.⁷ It is an area with high public recreational usage, not limited to those who live in the area. The area’s public amenity value includes views up through to the green belt of Mount Victoria, with housing set up in a manner that creates a natural amphitheatre.⁸ The available public views provide a “dynamic visual interaction” which is a “characteristic ingredient of the Oriental Bay’s identity”.⁹
12. The Court found that the Oriental Bay environment “is a dynamic one and unique in terms of the amenities it offers, not only to its residents, but also to the public”.¹⁰
13. These findings remain true today, as accepted by the s 32 report.¹¹ Indeed, there has been an even greater desire to make Oriental Bay a place for the entire community since the judgment, for example by replenishing the beach with imported sand and maintaining angle parks at the street level. It is axiomatic that Oriental Bay is enjoyed by very many Wellingtonians, not just those who reside in the area. That could not have been clearer than from its popularity with inner-city inhabitants during Covid Lockdown in 2020.
14. The Precinct currently strikes the right balance between preserving public amenity and permitting development where and to the extent that it is appropriate. The Precinct permits development as high as 33.6 m in some places. It achieves a range of (medium to high) densities – intensification

⁷ Environment Court decision, above n 1, at [345].

⁸ At [45].

⁹ At [47].

¹⁰ At [264]. See also [310], where the Court noted that “the public quality of Oriental Bay and the amenity values of its private residential component are strongly interrelated”.

¹¹ Section 42A report, above n 3, at [74].

outcomes - while contributing positively to public amenity in a special place.

15. There is therefore no need to disturb the findings of the Environment Court and ss 32 and 42A report writers on this point.

Section 77L is satisfied

16. The s 32 report writer considered the Precinct and recommend that it be maintained mostly as stated in the operative District Plan, with a new proposed objective added. The s 32 report noted the Environment Court's conclusions as to the public significance of Oriental Bay and so concluded that "the use of a precinct to manage this area is therefore appropriate and consistent with the National Planning Standards".¹²

17. This report meets the requirements of s 77L:

- (a) It identifies the Precinct as a place having a specific characteristic that makes greater development inappropriate.
- (b) It justifies why the Precinct makes greater development inappropriate by referencing the Environment Court's rationale of why Oriental Bay is unique and requires special consideration. The report clearly accepted the Environment Court judgment, where this point was given careful and extensive consideration.
- (c) It includes a site-by-site specific analysis by virtue of the fact that it endorses the Environment Court's judgment. That judgment fully considered the best way to achieve the greatest height appropriate for each site while maintaining the special characteristics of Oriental Bay. This is evident in the variation of heights for each site within the Precinct.
- (d) It is therefore clear that the s 77L criteria are met, even if the report did not say so explicitly. It was sufficient for the report to refer to the detailed explanation given by the Court.

¹² Section 32 report, above n 2, at 37.

18. It is inconsequential that these comments were not explicitly identified as being “qualifying matters” for the purposes of s 77L, as other matters were. What matters is that the requirements set out in s 77L are met.
19. If the Panel is not of the view that this satisfies s 77L, that can be rectified. The Panel is obliged to undertake its own s 32AA report when providing its recommendations to the Council.¹³ It would be appropriate for the Panel to address the matters raised in s 77L if required.
20. For completeness, the Submitter notes that it supports the view of the s 42A report writer that there is no need to turn the Precinct into an overlay, as Waka Kotahi submit it should be,¹⁴ and it is unclear what Waka Kotahi hope to achieve with this proposed change.

Sites behind the Oriental Bay Height Precinct

21. Given the topography of Oriental Parade there are no houses immediately behind the Precinct until Oriental Terrace (just past the “seven sisters”) This is because before that point there is a steep cliff with the Precinct houses built right up against it. However, from Oriental Terrace there are some properties that sit behind the “front row”.
22. The sites behind the Oriental Bay Height Precinct are not subject to any special height rules. The notified District Plan has assumed that these sites will be zoned as medium density (MRZ). In line with the MDRS, the PDP proposes a maximum height of 11 m.
23. The Council has since proposed that the walkable catchment be extended to 15 minutes. If that proposal is adopted,¹⁵ high-rise residential buildings (six floors minimum) could be enabled on the sites behind the front row of properties covered by the Precinct.
24. Without an appropriate constraint on height for these properties, the Precinct would not achieve its aims of preserving the public amenity of the Bay and its beach by preserving the view and special character of the area. This is a qualifying matter under s 77L(j).

¹³ Resource Management Act, schedule 1, cl 100(2)(e).

¹⁴ Section 42 report, above n 3, at [75].

¹⁵ The Submitter notes its opposition to that position, as submitted during Hearing 1.

25. Furthermore, there is no value in undermining the Precinct. The Council's analysis suggests that increasing the walkable catchment so as to include the sites behind the Precinct would result in only a further 5-10 dwellings. That is not a significant benefit to the city.¹⁶
26. The Submitter proposes that the properties behind the Precinct should have a height restriction of a maximum of 13 m (from ground level). This is calculated using the most common height limit of the Precinct (15.6 m from sea level), deducting 3 m (because sea level is estimated to be 3 m lower than the base of the buildings in the Precinct) and rounding up to the nearest metre. Because the buildings behind the Precinct would be built from a ground level higher than the ground level of the front row of Oriental Parade, the buildings would sit higher than those on the Parade. This would maintain the visual effect of stepped up 'rows' of buildings that naturally sit in an amphitheatre environment, while at the same time maintaining the views of Mount Victoria from the Parade.
27. The qualifying matter of the need to preserve the integrity of the Precinct, should the walkable catchment be extended, was not considered in the s 32 report, as that report reflects the notified District Plan with a 10-minute walkable catchment. However, for the reasons given above, the Panel is able to rectify that when providing its report to the Council.¹⁷ The updated report can meet the requirements of ss 77J and 77L.

Public amenity conclusion

28. The Environment Court and ss 32 and 42A reports were correct to identify the special characteristics and public value of Oriental Bay and the need to protect and preserve that space for the public. The best way to do so is to maintain the current Precinct, which allows for the greatest development possible on each site while still maintaining the character and value of the area.
- 29.

¹⁶ Updated City-wide Estimated Growth Distribution Figures, September 2021, at Table 6; and evidence of Mr Tore Hayward.

¹⁷ It is obliged to provide a s 32AA assessment and necessary alterations: clauses 100(2)(e) and 100(3)(a) of Schedule 1, RMA 1991.

30. The public amenity value of the Precinct should not be undermined by enabling minimum six-storey developments in the properties behind the Precinct.
31. The Submitter respectfully suggests the Panel adopt the views in the ss 32 and 42A reports in relation to the Precinct and surrounding sites and invites the Panel to undertake its own s 32AA evaluation, where required, when reporting back to the Council together with any necessary alterations to the IPI.

Health and Safety

32. Section 5 of the RMA places emphasis on the importance of health and safety of people and communities, as does Objective 1 of the NPS-UD.
33. At the walkability hearings, the Submitter gave evidence as to the dimensions and steepness of Hay Street and the characteristics of the Hay Street Extension (a private roadway running off Hay Street). Ms Stace and Mr Hayward will give additional evidence as to those characteristics and the practical aspects of poor access.
34. The submitter's case is that intensification of Hay Street (including the Hay Street Extension) is counter intuitive because of the narrowness of Hay Street. The street becomes particularly narrow above number 9 Hay Street. This creates access problems with inevitable risks to health and safety.

35. Ms Stace will explain the circumstances of the emergency vehicle in the image below. Her point is that access for emergency services is already minimal and that risk to human life and property will only be exacerbated if intensification is provided for in relation to any properties in Hay Street above number 9.



36. In relation to the Hay Street Extension, its narrowness provides even more limited access for emergency vehicles. The health and safety concerns are compounded by the lack of any footpaths, no turning area and the narrowness of the Extension. The narrowness of the Extension, which is used by pedestrians and cars (often driving in reverse), means that the safety of persons using the Extension would be further compromised by any upzoning of sites accessed off the Extension.
37. It is the case for the Submitter that these characteristics of Hay Street and the constrained state of the Hay Street Extension together amount to a qualifying matter. There is compelling evidence of hazard risk that might

not reach the s 6(h) threshold for significant risk from natural hazards but still goes to the wider s 5(2) purpose of maintaining health and safety.

38. For what it is worth, the MfE Guidance document identifies risk of hazard as a potential qualifying matter.¹⁸ The configuration and circumstances of Hay Street from at least #9 upwards (and the extension) fall into that category.
39. Given these health and safety issues, the Submitter recommends that the maximum heights for houses above 9 Hay Street be limited to 11m.
40. This qualifying matter could be addressed in the Panel's updated s 32 report to meet the requirements of ss 77J and 77L.
41. For the submitter, Mr Hayward and Ms Stace will present evidence.



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¹⁸ Understanding and implementing intensification provisions for the NPS-UD 2020 at 6.6.2, page 43; MfE