


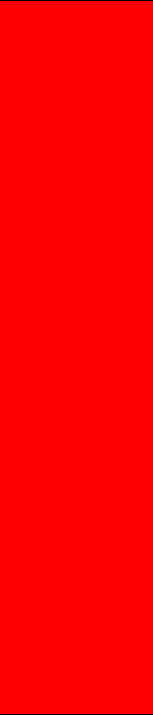



Section 77J and 77L Assessment Analysis

Prepared by Victoria Woodbridge on behalf of Kāinga Ora – Homes and Communities

Legend	
	Incomplete or missing assessment
	Complete Assessment

Section	Council Assessment	Compliance	Comment on Council's Assessment	Response to Council's Table Outlining Compliance
Assessment of Section 77J				
77J(3) The evaluation report must, in relation to the proposed amendment to accommodate a qualifying matter -				
77J(3)(a) demonstrate why the territorial authority considers— (i) that the area is subject to a qualifying matter; and	The Section 32 Evaluation Report – Part 2: Character Precincts and the Mt Victoria North Townscape Precinct does explain why the Council considers the Character Precincts are subject to a qualifying matter.		As clause (3)(a) does not give an indication of the depth of level of consideration technically Council has met this test because it has considered why the area is subject to a qualifying matter. However, the fundamental matter of whether it is appropriate to apply the qualifying matter has not been sufficiently addressed.	Paragraphs 40-47 of the Supplementary Evidence are a bland account of the legislation and assessments already undertaken through the Section 32 Evaluation Report. Section 8 of the Section 42A report undertakes a similar assessment with reference to specific submissions which are addressed in more detail. The general tenor is that Council considers the areas subject to a qualifying matter in order to maintain the existing concentrations of consistent and coherent character.
(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	The Section 32 Evaluation Report – Part 2: Character Precincts and the Mt Victoria North Townscape Precinct makes limited commentary on the erosion of character as a consideration for applying character as a qualifying matter.		The Section 32 Evaluation Report – Part 2: Character Precincts and the Mt Victoria North Townscape Precinct does not provide sufficient assessment and consideration to demonstrate that the qualifying matter is incompatible with the level of development permitted by the MDRS within all areas of the Character Precincts – there is an underlying principle approach which does not consider specifics despite the differing characteristics and values of each area. It is noted that a permitted activity status required by Schedule 3A would not provide for the management of character without a resource consent, but of particular relevance is there is an assessment required as to why the qualifying matter is incompatible with the intensification requirements of Policy 3. Noting that the NPS-UD only requires 6 storeys to plan-enabled, which includes up to a Restricted Discretionary activity status.	Sections 9.1 and 9.2, Section 11 of the Section 32 Evaluation Report demonstrate the process Council undertook to determine a 'streetscape' approach to determining the extent of the character precincts. The conclusions also provide some explanation as to why Council considers character incompatible with the MDRS or requirements of Policy 3 – because the level of intensification would erode character values. Paragraphs 44, 54 of the Section 42A Evaluation make the same assessment but with reference to the Kāinga Ora submission and a loop back to the assessment within the Section 32 Evaluation. Paragraphs 18, 40-47 of the Supplementary evidence further reiterate the above and provide the legislative context (sections 77J and 77L). No new information has been provided to demonstrate exactly why, in detail, intensive development is incompatible with maintaining character within all character areas.
77J(3)(b) assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity;	The Section 32 Evaluation Report – Part 2: Character Precincts and the Mt Victoria North Townscape Precinct references development capacity but this was not supported by any expert evidence or assessment as the report notes that information was unavailable at that time.		The Wellington City Qualifying Matters Assessment – November 2022 – Property Economics report was published after the Section 32 Evaluation and therefore the Section 32 Evaluation Report could not have fully taken into account the findings of this assessment. The Section 32 Evaluation Report Part 1: Context to s32 evaluation and evaluation of Strategic Objectives does consider capacity but I could find no reference to consideration of the	Both paragraphs 41 and 53 of the Section 42A report and paragraph 46 of the Supplementary Evidence refer back to the Property Economics assessment and apply that assessment to reach a conclusion that character as a qualifying matter will still ensure that sufficient development capacity to meet demand will be provided and that character as a qualifying matter reduce overall capacity by 1.9%.

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			<p>impact of limiting development capacity through applying character as a qualifying matter.</p> <p>Council's section 42A report for Character Precincts does reference the Property Economics' report.</p>	
<p>77J(3)(c) <i>assess the costs and broader impacts of imposing those limits.</i></p>	<p>The Section 32 Evaluation Report – Part 2: Character Precincts and the Mt Victoria North Townscape Precinct undertakes a cost benefit analysis</p>		<p>It's not entirely clear what 'broader impacts' might be and I note the Section 32 Evaluation Report does not quantify the effects either maintaining or losing character values due to the subjective nature of these effects. Furthermore, there are some economic costs / benefits which are not quantified.</p> <p>However, the Section 32 Evaluation does undertake a cost benefit assessment but in my opinion that assessment is too narrow. As noted above, no consideration has been given to the cost of limiting bulk and location standards to maintain character i.e. if 11m is inappropriate to maintain character.</p>	<p>I agree 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, however, as noted in my comment to the left and above the assessment does not go far enough.</p> <p>The Supplementary Evidence loops back to the Section 32 Evaluation and doesn't provide any new information.</p>
<p>77J(4) The evaluation report must include, in relation to the provisions implementing the MDRS,—</p>				
<p>77J(4)(a) <i>a description of how the provisions of the district plan allow the same or a greater level of development than the MDRS:</i></p>	<p>The Section 32 Evaluation Reports for the Residential Zone and Character Precincts describe how the PDP provides for the same or a greater level of development than the MDRS.</p>		<p>I consider the test met because The Section 32 Evaluation Reports for the Residential Zone and Character Precincts do describe how the PDP provides for the same or a greater level of development than the MDRS.</p>	<p>I agree that the references provided on Council's roadmap refer to the descriptions of how the PDP allows the same or a greater level of development than the MDRS.</p>
<p>77J(4)(b) <i>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></p>	<p>The Section 32 Evaluation Report – Part 2: Character Precincts and the Mt Victoria North Townscape Precinct describes modifications to the MDRS but it is unclear whether those modifications are limited to only those necessary to accommodate character as a qualifying matter.</p>		<p>As a fundamental point the application of character as a qualifying matter remains unproven (as noted in my primary evidence in chief and assessment of Section 77L below) and until a decision is reached as to whether character should be a qualifying matter consideration of this clause is something of a moot point.</p> <p>However, the Council have described how the MDRS is modified – due to the requirement for resource consent for demolition and construction of new buildings.</p> <p>The report identifies the purpose of this is to manage character by controlling the design of new buildings, this effectively means that to successfully maintain and enhance character (MRZ-PREC01-01) height may need to be reduced from the MDRS level as this would be inconsistent with the qualities and cohesiveness of the streetscape (MRZ-PREC01-P1).</p>	<p>Council references paragraph 25 of their Supplementary Evidence where Mr Lewandowski notes that the Precinct provisions do not seek to "maintain the existing amenity", however, MRZ-PREC01-01 specifically seeks to manage character precincts so as to provide for their ongoing use and development that maintains and enhances character. I would consider character a component of amenity. Whilst Mr Lewandowski considers that the purpose of the provisions is to ensure new development is responsive to the character values the use of 'maintain and enhance' tell a different story. I agree that the Character Precinct areas are reduced from the ODP but this does not mean the modifications to the MDRS are limited to <u>only</u> those necessary to accommodate the qualifying matter – the qualifying matter itself remains unproven in my opinion.</p>
<p>77J(4)(b)(i) <i>any operative district plan spatial layers; and</i></p>	<p>N/A - a full plan review is proposed</p>	<p>N/A</p>		
<p>77J(4)(b)(ii) <i>any new spatial layers proposed for the district plan.</i></p>	<p>Reference is made to the new Character Precinct spatial layer.</p>			

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77J(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.				
77J(6) <i>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.</i>	It does not appear any modifications were made to the requirements of Section 32.	N/A	As this clause is a 'may' clause Council has discretion as to whether it is relevant.	Council cites Section 11 of the Section 32 Evaluation Report, however this appears to follow the requirements of Section 32 and does not modify those requirements to achieve the development objectives of the MDRS.
Assessment of Section 77L				
77L(a) <i>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</i>	The Boffa Miskell Assessment identifies the specific characteristics of each of the Character Precinct areas.		An urban design assessment to consider the specific effects of MDRS or Policy 3 enabled provisions should have been provided to assess the actual and potential effects of allowing higher density development in these areas and to test whether the Council provisions are appropriate to achieve the relevant outcomes with a lens on Policy 3 and 6 of the NPS-UD.	<p>I agree that the paragraphs identified by Council do <u>identify</u> the specific characteristics of the character precincts. However, other than general commentary on how applying MDRS or Policy 3 of the NPS would erode those specific characteristics there is no in-depth assessment to explain exactly how allowing that level of development would be inappropriate.</p> <p>For example, test cases could have been used to look at the actual effects on character values from allowing increased development opportunity.</p>
77L(b) <i>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</i>	Very limited assessment based a reduction in the character area provisions from the ODP and the fact that character is valued by some members of the community.		<p>No real assessment undertaken to assesses why character is more important than providing for the level of development required by the NPS-UD in light of the national significance of urban development and NPS-UD objectives. There does not appear to be any evidence to suggest consideration was given to the national significance of urban development when assessing character as a qualifying matter.</p> <p>No specific assessment against the NPS-UD objectives within the Residential section 32 report, instead readers are referred to the Part 1: Context to section 32 evaluation and evaluation of Strategic Objectives report. This report does not assess Character Precincts against the specific Objectives of the NPS-UD.</p>	<p>As noted in my comments column I cannot find a specific assessment of protecting character against the Objectives of the NPS-UD. The paragraphs referenced do not contain that assessment.</p> <p>Furthermore, the assessment undertaken within the paragraphs referenced appears either circular in nature or to originate from an incorrect starting point. Council assessment seems to be based on the premises that to protect character demolition should be restricted and control placed on re-development thereby the scale of development provided for through the MDRS or Policy 3 of the NPS-UD is appropriate. There is also a repeated argument that the PDP has reduced the character areas compared to the ODP when the starting point should be the requirements of Policy 3 of the NPS-UD.</p> <p>The real test is to justify why protecting character values is more important than the national significance of urban development not to consider that the MDRS standards are inappropriate because they would erode character. The starting point for the assessment should therefore, be what do the Objectives of the NPS-UD require and how does protecting character weigh against these Objectives and the national significance of urban development.</p> <p>The Wellington City Qualifying Matters Assessment November 2022 – property Economics report does not provide justification for downgrading the character areas it simply highlights that</p>

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				there is capacity in the remainder of the City to meet or exceed demand. This is not a justification to explain why the specific characteristics of character are more important than the Objectives of the NPS-UD in light of the national significance of urban development.
77L(c) includes a site-specific analysis that:				
(i) identifies the site to which the matter relates	The following documents in combination identify the sites to which the matter relates: <ul style="list-style-type: none"> Boffa Miskell pre-1930 Character Area Review Wellington City Council Pre-1930 Character Area Review Story Map Section 32 Evaluation Report – Part 2: Character Precincts and the Mt Victoria North Townscape Precinct 		I consider this test satisfied.	I agree that the Council has undertaken assessment which identify the sites to which the matter relates, the references provided demonstrate that assessment has been undertaken.
(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	The Boffa Miskell pre-1930 Character Area Review identifies the specific characteristic on a site-specific basis to determine the geographic area.		I consider this test generally satisfied. However, the assessment could have gone further to consider building condition given this is a matter on which demolition may be approved. Although I appreciate this is something which changes over time. Furthermore, the assessment should have also undertaken a site specific analysis to understand if intensification needs to be compatible on every site. For example, if a building which is detractive is demolished and the site redeveloped what is the specific characteristic of that site which intensification should be compatible with.	The Boffa Miskell Pre-1930 Character Area Review and the Urban Perspectives - Mt Victoria North Townscape Precinct Urban Design Review provide information on the specific characteristics on a site-specific basis but do not evaluate why intensification needs to be compatible with those specific characteristics on a site specific basis. Council's assessment in the paragraphs referenced considers the effects of development on the character values of the precincts which is based on a streetscape approach. However, the test is to understand if intensification on a site-by-site basis would be incompatible with the specific characteristics of the site – not the streetscape or a wider area.
(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	The Section 32 Evaluation Report – Part 2: Character Precincts and the Mt Victoria North Townscape Precinct does not consider a sufficiently broad range of options to achieve the greatest heights and densities permitted by the MDRS or provided for by Policy 3 whilst managing the specific characteristics.		The range of options considered is too narrow. The Section 32 Evaluation Report– Part 2: Character Precincts and the Mt Victoria North Townscape Precinct assesses the following options: <ul style="list-style-type: none"> Proposed approach (PDP as notified) Status Quo (ODP) Alternative Approach – No Objective, Policies, Rules or other methods An example of an alternative assessment would be to assess applying a HRZ with amended standards, such as reduced height. However, the options considered do not relate to a site-specific analysis i.e. how would the specific provisions and options apply to each specific site.	As noted in my comments column the tables in Section 11 of the Section 32 Evaluation Report are, in my view, too narrow in their range of options and do not consider a site specific analysis of how the greatest heights and densities permitted by the MDRS or provided for in Policy 3 of the NPS-UD can be provided while managing character values. I note this test relates to managing specific characteristics, whereas the PDP policy approach is to maintain or enhance, or minimise the erosion of character values which in my opinion are not managing but seek to preserve and protect.