

**Before the Hearings Panel  
At Wellington City Council**

**Under** Schedule 1 of the Resource Management Act 1991

**In the matter of** The Proposed Wellington City District Plan

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**Hearing Stream 4 Further Right of Reply of Anna Mariebel Sutherland Stevens  
on behalf of Wellington City Council – City Outcomes Contributions Follow Up**

**Date: 20 September 2023**

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## INTRODUCTION:

- 1 My full name is Anna Mariebel Sutherland Stevens. I am employed as a Team Leader in the District Planning Team at Wellington City Council (the Council).
- 2 At section 1.2 of my Hearing Stream 4 Section 42A Report - Overview and General Matters<sup>1</sup> for the Commercial and Mixed-Use Zones (CMUZ) I set out my qualifications and experience as an expert in planning.
- 3 I have prepared this Further Right of Reply in respect of the matters identified in paragraph 7 of the Independent Hearings Panel's (IHP) Minute 31 (dated 11 August 2023) regarding the City Outcomes Contributions (COC)<sup>2</sup>.
- 4 I have read Minute 31 and Mr Winchester's legal memo.
- 5 I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023, as applicable to this Independent Panel hearing.
- 6 Any data, information, facts, and assumptions I have considered in forming my opinions are set out in the part of the evidence in which I express my opinions. Where I have set out opinions in my evidence, I have given reasons for those opinions.

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1 Wellington City Council Proposed District Plan, Hearing Stream 4 Section 42A Overview and General Matters for Commercial and Mixed-Use Zone Report, 2023

2 Wellington City Council Proposed District Plan, [Proposed District Plan hearings panel, 11 August 2023 - Minute 31 - City Outcomes Follow up \(wellington.govt.nz\)](#)

## EXECUTIVE SUMMARY

7 This Further Right of Reply provides my final consolidated recommendations on the City Centre Zone (CCZ) chapter.

8 It also responds to:

8.1 Questions raised by the IHP in Minute 31 (City Outcomes Follow-up)<sup>3</sup>; and

8.2 Points raised by Mr Winchester in his legal opinion contained within Minute 31.

9 In summary, the key matters discussed are:

9.1 Guaranteeing additional height through provision of city outcomes;

9.2 Reintroducing the notified assessment criteria for the CCZ-S1 and CCZ-PREC01-S1 'City Outcomes Contribution (COC) height threshold' as relates to the assessment of the effects of building height.

9.3 Amending the COC application so it would not apply to alterations to buildings and structures, only new buildings and structures and additions to buildings;

9.4 The level of certainty developers have when implementing COC; and

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<sup>3</sup> Wellington City Council Proposed District Plan, [Proposed District Plan hearings panel, 11 August 2023 - Minute 31 - City Outcomes Follow up \(wellington.govt.nz\)](https://www.wellington.govt.nz/propose/Proposed-District-Plan-hearings-panel-11-August-2023-Minute-31-City-Outcomes-Follow-up)

- 9.5 Whether non-compliance with the COC requires a resource consent to be publicly notified.
- 10 In response to Mr Winchester’s legal opinion I have identified changes which I recommended should be beneficially made to the CCZ, Metropolitan Centre Zone (MCZ) and Local Centre Zone (LCZ) chapter as shown in tracked changes in Appendix A to this further right of reply response memo.
- 11 The changes are:
- 11.1 Reintroducing the notified assessment criteria for the CCZ-S1 and CCZ-PREC01-S1 ‘City Outcomes Contribution (COC) height threshold’ as relates to the assessment of the effects of building height and
- 11.2 Amending CCZ-R19.3, MCZ-R21.3 and LCZ-R18.3 to clarify COC application so it would not apply to alterations to buildings and structures, only new buildings and structures and additions to buildings; and
- 11.3 Amending the notification settings of CCZ-R20.4 to remove the mandatory public notification requirement in alignment with changes recommended in my Hearing Stream 4 Right of Reply<sup>4</sup> to CCZ-R19.3 and CCZ-R20.3.

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<sup>4</sup> Wellington City Council Proposed District Plan, [Hearing Stream 4 Right of Reply Responses of Anna Stevens – City Centre Zone, Te Ngakau, C.O.C & Waterfront Zone](#), 2023

## THE CITY OUTCOMES CONTRIBUTION MECHANISM AS PROPOSED IN MY RIGHT OF REPLY FOR HEARING STREAM 4<sup>5</sup>

12 In paragraph 3 of Minute 31<sup>6</sup> the IHP sought advice from Mr Winchester on whether it is “*legally valid to guarantee additional height through the IPI/PDP in return for providing outcomes that are not directly related to the effects of the additional height, noting that the effects of the height would be addressed under a separate building design resource consent process as well as meeting other plan standards (for example, wind, shading)*”.

13 A summary of the collective changes that I have recommended over the course of the S42A Report for Hearing Stream 4 (Overview and General Matters and Part 1 – City Centre Zone) through to the initial Right of Reply (dated 4 August 2023)<sup>7</sup> is set out below, as was included in Appendix A of my Right of Reply (CCZ Chapter<sup>8</sup> and Appendix 16<sup>9</sup> tracked changes):

13.1 That the COC applies to the CCZ, Te Ngākau Civic Square Precinct (CCZ-PREC01/ Te Ngākau), the Metropolitan Centre Zone (MCZ) and the Local Centre Zone (LCZ). The following development must provide a COC:

13.1.1 Development in the CCZ under the Minimum Building Height control (CCZ-S6);

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<sup>5</sup> Wellington City Council Proposed District Plan, [Hearing Stream 4 Right of Reply Responses of Anna Stevens – City Centre Zone, Te Ngakau, C.O.C & Waterfront Zone](#), 2023

<sup>6</sup> [Proposed District Plan hearings panel, 11 August 2023 - Minute 31 - City Outcomes Follow up \(wellington.govt.nz\)](#)

<sup>7</sup> Wellington City Council Proposed District Plan, [Hearing Stream 4 Right of Reply Responses of Anna Stevens – City Centre Zone, Te Ngakau, C.O.C & Waterfront Zone](#), 2023

<sup>8</sup> Wellington City Council Proposed District Plan, [Hearing Stream 4 – Appendix A – Amended Recommendations – City Centre Zone – Anna Stevens](#), 2023

<sup>9</sup> Wellington City Council Proposed, [Hearing Stream 4 – Appendix A – Amended Recommendations – App 16 – City Outcomes Contribution](#), 2023

- 13.1.2 Development in the CCZ and Te Ngākau above the COC height thresholds (CCZ-S1); and
- 13.1.3 Development in the MCZ and LCZ above the maximum building height limits (MCZ-S1 and LCZ-S1) where these standards are exceeded by 25% or more.
- 13.2 That the COC does not apply to the High Density Residential Zone (HRZ) or the Neighbourhood Centre Zone (NCZ).
- 13.3 That the COC is removed from the Residential Design Guide (RDG) and Commercial and Mixed-Use Design Guide (CMUDG) into a standalone appendix (Appendix 16) within the PDP itself.
- 13.4 That a new Restricted Discretionary Activity rule be added to CCZ-R20, CCZ-PREC01-R8, MCZ-R21 and LCZ-R18 addressing development that exceeds the height thresholds/ maximum height limits at CCZ-S1, CCZ-PREC01-R8, MCZ-S1 and LCZ-S1 COC.
- 13.5 Where development exceeds these COC height thresholds/ maximum height limits and provides COC, then it is precluded from public and limited notification. Where developments do not provide a COC, the section 95 notification tests of the Act apply, thereby allowing a decision on notification to be made by the relevant decision-maker.
- 13.6 Developments must satisfy at least two of the COC outcomes identified within Appendix 16.
- 13.7 Appendix 16 be revised to provide additional detail how COC points can be achieved.

- 14 I continue to recommend that the entire suite of changes detailed above are made, as well as those that I now recommended as detailed in paragraphs 31, 34 and 62 below.
- 15 These relate to reinstating the assessment criteria for CCZ-S1 (City Outcomes Contribution Height Threshold), CCZ-PREC01-S1 (City Outcomes Contribution Height Threshold), amending the rule wording for CCZ-R19.3 (Alterations and additions to buildings and structures), MCZ-R21.3 (Construction of, or additions and alterations to, buildings and structures) and LCZ-R18.3 (Construction of, or additions and alterations to, buildings and structures), and amending the notification setting for CCZ-R20.4 (Construction of buildings and structures).

#### **GUARANTEEING ADDITIONAL HEIGHT THROUGH PROVISION OF CITY OUTCOMES**

##### *Conclusions by Mr Winchester*

- 16 Mr Winchester has provided a memo to the IHP responding to its question pertaining to whether it is legally valid to guarantee additional height through the IPI/PDP in return for providing outcomes that are not directly related to the effects of the additional height. This was discussed in Hearing Stream 4 by S42A officers and submitters.
- 17 Mr Winchester has concluded that *“the absence of a clear link between the effects of additional height and the outcomes intended by the COC Policy is not fatal in terms of validity. There are examples of valid RMA provisions where there is no direct link between the effects under consideration and the outcomes being sought”*. Mr Winchester furthers that an obvious example is financial contributions, whilst also noting that it is *“permissible to advance provisions which do not have a clear relationship between effects generated and the outcomes sought”*.

- 18 Mr Winchester thereby concludes that the COC policy and related provisions are “*not unlawful for the way in which they might duplicate or address legal requirements under other legislation*”.

*Rationale for using height as a proxy for triggering COC*

- 19 The reasons for utilising height as a proxy for triggering COC requirements for larger developments has already been addressed in the following documents:

19.1 Hearing Stream 4 Section 42A – Overview and General Matters for Commercial and Mixed Use Zones<sup>10</sup> report paragraphs 183-184 and 186-189;

19.2 Hearing Stream 4 Section 42A – Part 1 – City Centre Zone report<sup>11</sup> paragraphs 533 – 534;

19.3 Hearing Stream 4 – Statement of supplementary planning evidence of Anna Stevens on behalf of Wellington City Council<sup>12</sup> paragraphs 101-117 and 126-127;

19.4 Hearing Stream 4 – Statement of supplementary planning evidence of Dr Farzad Zamani on behalf of Wellington City Council<sup>13</sup>, paragraphs 34, 40 and 58;

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<sup>10</sup> Wellington City Council Hearing Stream 4 [Section 42A Report – Overview and General Matters for Commercial and Mixed Use Zones report](#), 2023

<sup>11</sup> Wellington City Council Hearing Stream 4 [Section 42A Report – Part 1 – City Centre Zone](#), 2023

<sup>12</sup> Wellington City Council Hearing Stream 4 [Statement of supplementary planning evidence of Anna Stevens](#), 2023

<sup>13</sup> Wellington City Council Hearing Stream 4 [Statement of supplementary planning evidence of Dr Farzad Zamani on behalf of Wellington City Council](#), 2023



- 19.5 Hearing Stream 4 – Legal submissions for Council – Nick Whittington<sup>14</sup>, paragraph 3.4;
- 19.6 Hearing Stream 4 – Right of reply responses of Anna Stevens – City Centre Zone, Te Ngakau, C.O.C & Waterfront Zone<sup>15</sup> paragraphs 127-129; and
- 19.7 Wrap-up Hearing Stream – Legal submissions for Council – Nick Whittington<sup>16</sup>, paragraphs 3.5 - 3.7;
- 19.8 Wrap-up Hearing (ISPP) statement of supplementary planning evidence of Anna Mariebel Sutherland Stevens on behalf of Wellington City Council<sup>17</sup> – paragraphs 77-86 and Appendix 3 (Responses to Mr Heale’s outstanding concerns).
- 20 I consider that height is a suitable proxy for increased intensification, and that the COC mechanism assists in maximising the benefits of intensification as directed by NPS-UD policy 3(a), and to achieve a well-functioning urban environment as directed by NPS-UD Policy 1.
- 21 Paragraphs 37-48 of this Further Right of Reply discuss alternative proxies for height that could be considered. My position remains unchanged that height is a satisfactory proxy for increased intensification as detailed in the above document references.
- 22 Mr Winchester in his legal opinion notes that:

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<sup>14</sup> Wellington City Council Proposed District Plan Hearing Stream 4 [Legal submissions for Council – Nick Whittington](#), 2023

<sup>15</sup> Wellington City Council Proposed District Plan Hearing Stream 4 [Right of reply responses of Anna Stevens – City Centre Zone, Te Ngakau, C.O.C & Waterfront Zone](#), 2023

<sup>16</sup> Wellington City Council Proposed District Plan Wrap up (ISPP Provisions) Hearing, [Legal submissions for Council – Nick Whittington](#), 2023

<sup>17</sup> Wellington City Council Proposed District Plan, Wrap-up (ISPP Provisions) Hearing, [Statement of Supplementary planning evidence of Anna Stevens on behalf of Wellington City Council](#), 2023

*“In particular, the maximum building height standards at CCZ-S1 are proposed to be amended and labelled as City Outcomes Contribution Height Thresholds. In turn, it is proposed that rules CCZR19 (alterations and additions to buildings and structures) and CCZ-R20 (construction of buildings and structures) remove the need for compliance with CCZ-S1 as a permitted activity standard. This would mean that it is entirely uncertain at what height an alteration or new building is permitted in the City Centre Zone. It could potentially mean that every building in the City Centre Zone requires a resource consent irrespective of its height, but it is not clear which rule would regulate that possible scenario.”*

23 He also states that:

*“direct effects of an over-height building cannot be considered under the relevant provisions. The only matters proposed to be considered under relevant rules are the matters in the COC Policy and the application and implementation of the City Outcomes Contribution in Table 3... Notwithstanding this position, it would seem that design and amenity effects and considerations for a building might still be triggered depending upon whether other rules and standards apply, but it is not entirely clear whether they would extend to the effects of additional height”.*

24 I disagree with Mr Winchester’s views in paragraphs 67 and 68 of his legal opinion. Firstly, I note that in my Hearing Stream 4 Right of Reply, Appendix A – CCZ tracked changes I had added CCZ-S1 back into the CCZ-R20.1 permitted activity rule regarding compliance with this standard.

25 As both myself and Dr Zamani have noted in previous references, it is not the intent of the rule framework/COC mechanism that an application for resource consent that is required to provide the COC (i.e. an over-height building) is assessed separately to the building construction requirements of CCZ-R20.

26 It was always the intent that any application that triggers COC requirements under CCZ-R20.3 will still be assessed conjunctively under CCZ-R20.2 in terms of the effects of the building assessment. I have made this clearer through my wording change (in purple) within my original Right of Reply response as follows:

3. Activity status: **Restricted Discretionary**

Where:

a. In addition to the requirements in CCZ-R20.2, ~~t~~he relevant City Outcome Contribution Height Threshold set out in CCZ-S1 is exceeded.

Matters of discretion are:

~~3-1.~~ The matters in CCZ-P11; and  
~~4-2.~~ The application and implementation of the City Outcome Contribution set out in Appendix 16.

Notification status:

27 Mr Winchester’s commentary re *“every building in the CCZ potentially needing a resource consent”* does not make sense to me.

28 I consider CCZ-R20 to be clear that there is a very limited scenario where new development in the CCZ is permitted, and this is detailed in CCZ-R20.1. There is no ‘permitted’ height under the notified PDP or my provisions as proposed per se, because most development requires consent under CCZ-R20.2, which is the way the ODP operates. This is also the case with the MCZ and LCZ, with the intent that my recommended changes to the CCZ carry down to these zones.

29 This approach has not changed. As such most development, and certainly all large new buildings, necessitates a Restricted Discretionary resource consent application, irrespective of compliance with the applicable building height standard.

*Amendment to exclude alterations from COC application*

30 Upon reviewing the COC provisions within the CCZ, MCZ and NCZ, I note that as worded the COC rules (i.e. CCZ-R19.3) applies to both additions **and alterations**. In my view, the COC should not apply to alterations.

31 I consider that doing so would be overly onerous and could restrict necessary alterations to buildings and structures. As such I have proposed an amendment to CCZ-R19.3, MCZ-R21.3 and LCZ-R18.3 as follows so that it only applies to **additions**:

#### City Centre Zone

3. Activity status: **Restricted Discretionary**

Where:

a. In addition to the requirements in CCZ-R19.2, any addition to a building or structure where the relevant City Outcome Contribution Height Threshold set out in CCZ-S1 is exceeded.

Matters of discretion are:

- The matters in CCZ-P11; and
- The application and implementation of the City Outcome Contribution set out in Appendix 16.

Notification status: An application for resource consent made in respect of rule CCZ- R19.3 is precluded from being either publicly or limited notified, except where the application does not satisfy the outcome threshold test in give-effect to CCZ-P11 City Outcomes Contribution.

~~Notification status: An application for resource consent made in respect of rule CCZ- R19.3 that does not give effect to CCZ- P11 City Outcomes Contribution must be publicly notified.~~

#### Metropolitan Centre Zone:

3. Activity status: **Restricted Discretionary**

Where:

a. In addition to MCZ-R21.2, and as it relates to the construction of, or addition to, a building or structure, the relevant building height at MCZ-S1 is exceeded by more than 25%.

Matters of discretion are:

- The matters in MCZ-P10;
- The application and implementation of the City Outcome Contribution as set out in Appendix 16.

Notification status: An application for resource consent made in respect of rule MCZ-R21.3 is precluded from being either publicly or limited notified, except where the application does not satisfy the outcome threshold in MCZ-P10.

## Local Centre Zone

<p>4. <u>Activity status: <b>Restricted Discretionary</b></u></p> <p><u>Where:</u></p> <p>a. <u>In addition to LCZ-R18.2, and as it relates to the construction of, or addition to, a building or structure, the relevant building height at LCZ-S1 is exceeded by more than 25%.</u></p> <p><u>Matters of discretion are:</u></p> <p>3. <u>The matters in LCZ-P10;</u> 4. <u>The application and implementation of the City Outcome Contribution as set out in Appendix 16.</u></p> <p><u>Notification status: An application for resource consent made in respect of rule LCZ-R18.3 is precluded from being either publicly or limited notified, except where the application does not satisfy the outcome threshold in LCZ-P10.</u></p>
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32 I consider that it is still important that the COC applies to additions to buildings and structures to ensure that moderate to large additions are caught by this rule and thus are required to provide City Outcomes in return for a substantial increase in height and intensification.

33 For small additions, beyond those that are exempt under CCZ-S1 (exemptions (a)-(d)) i.e. solar panels, satellite dishes, lift overruns etc., I consider that under the Restricted Discretionary Activity status of CCZ-R19.3, MCZ-R21.3 and LCZ-R18.3, there is sufficient discretion for Council consent officers to decide the appropriateness and extent of requiring COC be applied to any applicable development resource consent application based on extent of additions. The applicable notification test of S95 also assists in this matter.

### *Assessment of the effects of additional height*

34 Noting Mr Winchester's comments regarding lack of clarity about the assessment of the effects of additional height beyond the CCZ-S1 COC height thresholds. I suggest making the consideration of the effects of taller developments more explicit, by adding the assessment criteria as set out in the notified PDP back in for the CCZ, MCZ, LCZ and Te Ngakau

CCZ-PREC01-S1, as shown below. This would allow consideration of these assessment criteria where the applicable height standards are exceeded.

CCZ-S1	<b><u>Maximum height City Outcomes Contribution Height Threshold</u></b>		
<p>1. <del>There are no maximum heights for buildings and structures in the City Centre Zone.</del>  2. <del>Above the following maximum height limits thresholds the The following City Outcomes Contribution Height Thresholds must be complied with</del> (measured above ground level unless otherwise specified) <u>apply to any new building or addition to an existing building:</u></p>		<p><u>Assessment criteria where the standard is infringed:</u>  For CCZ-S1.1:</p> <ol style="list-style-type: none"> <li>1. <u>Streetscape and visual amenity effects;</u></li> <li>2. <u>Dominance and privacy effects on adjoining sites; and</u></li> <li>3. <u>The extent to which taller buildings would substantially contribute to increasing residential accommodation in the city.</u></li> </ol>	
<b>Location</b>		<b><u>Limit Height threshold</u></b>	
a. Height Control Area 1 – Thorndon Quay		35.4m	
b. Height Control Area 2 – Waterloo Quay section		50m	
c. Height Control Area 3 – Bulk of Thorndon		27m	
d. Height Control Area 4 – Mid and Upper Molesworth Street		43.8m	
e. Height Control Area 5 - CBD East		48.5m-93m	
f. Height Control Area 6 - CBD West		75m-95m (MSL) Mean Sea Level as defined by the New Zealand Vertical Datum 2016 (NZVD2016)	
g. Height Control Area 7– Southern edge of CBD		43.8m	
h. Height Control Area 8 –Te Aro		42.5m	
i. Height Control Area 9 - South-East, South-West Zone Edge		28.5m	

j. Height Control Area 10 - Adelaide Road	42.5m	<p><del>2. Fences and standalone walls must not exceed a maximum height of 1.8 metres (measured above ground level).</del></p> <p>-</p> <p>This standard does not apply to:</p> <ul style="list-style-type: none"> <li><del>a.</del> <u>a. Solar panel and heating components attached to a building provided these do not exceed the height City Outcomes Contribution Height Threshold by more than 500mm;</u></li> <li><del>b.</del> <u>b. Satellite dishes, antennas, aerials, chimneys, flues, architectural or decorative features (e.g. finials, spires) provided that none of these exceed 1m in diameter and do not exceed the height City Outcomes Contribution Height Threshold by more than 1m; and</u></li> <li><del>c.</del> <u>c. Lift overruns provided these do not exceed the height City Outcomes Contribution Height Threshold by more than 4m; and</u></li> <li><del>d.</del> <u>d. Fences and standalone walls; and</u></li> <li><del>e.</del> <u>e. Circumstances where up to 50% of a building's roof in elevation exceeds the City Outcomes Contribution Height Threshold where the entire roof slopes 15° or more.</u></li> </ul>
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CCZ- PREC0 1-S1	<u>Maximum height City Outcomes Contribution Threshold</u>	<p>Assessment criteria where the standard is infringed:</p> <ol style="list-style-type: none"> <li>1. Dominance and shading effects within the Precinct and on adjoining sites; and</li> <li>2. Streetscape and visual amenity Effects; and</li> <li>3. <u>The extent to which taller buildings would substantially contribute to increasing residential accommodation in the city.</u></li> </ol>
<p>1. <del>The following maximum height limit The following City Outcomes Contribution Height Thresholds above ground level must be complied with (measured above ground level unless otherwise specified) apply to any new building or addition to an existing building:</del></p>		
<b>Location</b>	<b>Limit Height Threshold</b>	
a. Entire Precinct	40m	
<p>This standard does not apply to:</p> <ul style="list-style-type: none"> <li><del>a.</del> <u>a. Solar panel and heating components attached to a building provided these do not exceed the height City Outcome Contribution Threshold by more than 500mm;</u></li> </ul>		

<p><del>b.</del> <u>b. Satellite dishes, antennas, aerials, chimneys, flues, architectural or decorative features (e.g. finials, spires) provided that none of these exceed 1m in diameter and do not exceed the height City Outcomes Contribution Threshold by more than 1m; and</u></p> <p><del>c.</del> <u>c. Lift overruns provided these do not exceed the height by more than 4m; and</u></p> <p><del>b.</del> <u>d. Fences and standalone walls; and</u></p> <p><u>e. Circumstances where up to 50% of a building's roof in elevation exceeds the City Outcomes Contribution Height Threshold where the entire roof slopes 15° or more.</u></p>	
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35 By adding back these notified PDP assessment criteria in CCZ-S1 and CCZ-PREC01-S1 the Plan will guide resource consent planners to consider the effects of developments higher than the COC threshold:

35.1 Streetscape and visual amenity;

35.2 Dominance and privacy effects on adjoining sites; and

35.3 The extent to which taller buildings would substantially contribute to increasing residential accommodation in the city.

36 I also consider in any event that these are necessary for addressing developments under the height threshold, a matter I overlooked when first recommending deleting them from the plan.

*Alternative proxies for COC*

37 During Hearing Stream 4 the IHP queried whether there were other, more appropriate standards that could be used as a proxy for “intensification” other than height. Other measures such as a gross floor area or floor area ratios (as proposed by Willis Bond [submitter 416] as an alternative) were discussed. However, as detailed in my previous reports and at the Hearing Stream 4 hearing, I consider that height is the



best proxy for enabling the mechanism. In his statement of supplementary evidence for Hearing Stream 4<sup>18</sup> in paragraphs 34, 40 and 50, Dr Zamani discusses the connection of height in relation to the COC, in response to points raised in expert evidence.

38 Under the ODP, height standards have been used as a proxy for various further assessments and requirements. Likewise, height standards have long been the proxy for triggering the need for wind assessments, pre-dating even the ODP. Under the ODP the Central Area height standards (13.6.3.1.1 to 13.6.3.1.11) are used as a proxy for requiring a development to achieve design excellence (refer to ODP policy 12.2.5.5)<sup>19</sup>.

39 There is no evidence of the use of height as a proxy for design excellence being problematic. Likewise, there has been no evidence presented suggesting why any alternatives like floor area ratios are better suited for being the proxy for COC.

40 More broadly the use of bonus floors areas, density bonuses or additional heights in return for public outcomes is a reasonably commonly used tool used in different examples across the world<sup>20,21,22</sup>. A density bonus of sorts is enabled in exchange for the provision of facilities and/or land uses which are seen to represent a significant

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<sup>18</sup> Wellington City Council Proposed District Plan, Hearing Stream 4 [Statement of supplementary evidence of Dr Farzad Zamani on behalf of Wellington City Council](#), 2023

<sup>19</sup> Wellington City Council Operative District Plan, Chapter 12, [v1chap12.pdf \(wellington.govt.nz\)](#)

<sup>20</sup> Abt Associates and NYU Furman Center, Local Housing Solutions, Density Bonuses, 2023 <https://localhousingsolutions.org/housing-policy-library/density-bonuses/>

<sup>21</sup> Taylor Burrell Barnet, Prepared for the City of Melville, Bonus Building Height Local Planning Policy Canning Bridge Activity Centre Plan, July 2020, <https://www.melvillecity.com.au/our-city/our-council/agendas-and-minutes/ordinary-meeting-of-the-council/2020/october/minutes-ordinary-meeting-of-the-council-20-october/3873-draft-local-planning-policy-cbaccp>

<sup>22</sup> InclusionaryHousing.org, Density Bonuses, 2019, <https://inclusionaryhousing.org/designing-a-policy/land-dedication-incentives/density-bonus/>

benefit to the community<sup>23</sup> i.e. a response to identified shortfalls in specific uses such as affordable housing, or community infrastructure or community amenities.

41 For example, Melbourne’s Central City Planning Provisions for Hoddle Grid and Southbank allow additional yield, but seek that a portion of this additional yield is matched by public benefits such as public open space, laneways, community space, or affordable housing<sup>24</sup>. The Victoria State Government notes that this aligns with planning rules used in cities across the world such as New York, Singapore, Vancouver, and Sydney. The planning framework sets a *‘reasonable base floor area ratio of 18:1, with discretion to agree to a floor area uplift bonus if all relevant built form parameters are met, and an appropriate public benefit is provided’*.

42 The Victoria State Government furthers that it *“is common practice around the world to require public benefits when the floor area ratio exceeds the base level. The value of the extra floor area is transparently calculated and the public benefits to be provided are publicly reported”*. Figure 1 below shows an example provided by the Victoria State Government of floor area uplift in the central city.

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<sup>23</sup> Taylor Burrell Barnet, Prepared for the City of Melville, Bonus Building Height Local Planning Policy Canning Bridge Activity Centre Plan, July 2020, <https://www.melvillecity.com.au/our-city/our-council/agendas-and-minutes/ordinary-meeting-of-the-council/2020/october/minutes-ordinary-meeting-of-the-council-20-october/3873-draft-local-planning-policy-cbaccp>

<sup>24</sup> State Government of Victoria, Central City Planning Provisions, 2023, <https://www.planning.vic.gov.au/guides-and-resources/guides/all-guides/central-city-planning-provisions>

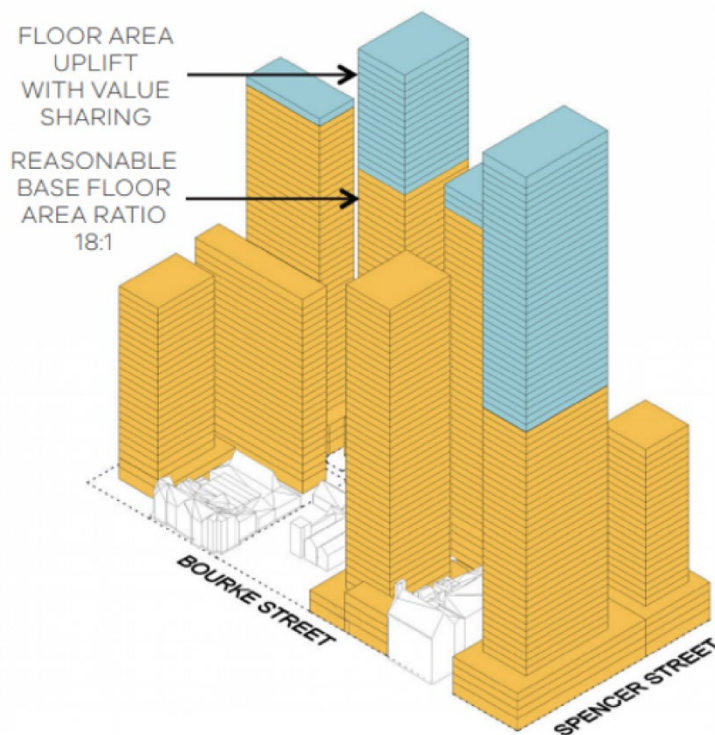


Figure 1: Example of floor area uplift in the central city.

43 The Victoria State Government<sup>25</sup> details this floor area uplift calculation as ‘additional floor area > extra commercial value > 10% public share > value of benefit’. Public benefits agreed with the relevant authority include:

43.1 Public open space and laneways on site

43.2 Strategic use (office)

43.3 Public space in the building

43.4 Affordable housing in the building.

44 Another possible proxy was the use of Gross Floor Areas (GFAs). I consider there are some nuances with the use of GFA, for example a developer could have a small site and build 12 plus storeys but because

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<sup>25</sup> State Government of Victoria, Central City Planning Provisions, 2023, <https://www.planning.vic.gov.au/guides-and-resources/guides/all-guides/central-city-planning-provisions>

of the footprint of the building being relatively small due to site size limits, it may not trigger a set COC GFA trigger depending on the threshold. On the other hand there may be examples where on a large site depending on the GFA threshold development may only be able to build to 4-5 stories before it triggers a GFA COC threshold. This outcome would not align with either the NPS-UD Policy 3 intensification enabling direction or the CCZ's policy direction for the zone to have the highest and most intensive form of development in the District or to achieve optimisation of the development capacity of sites.

- 45 Dr Zamani has advised that it would depend on the GFA threshold for COC and it may be that a GFA proxy would need to be paired with another threshold i.e. height. Another proxy consideration could be building mass (footprint x height) which the ODP's Central Area currently utilises for design excellence and building's bulk and form control.
- 46 In its consideration of the PDP for notification, the Council considered that other proxies could be aside from height. The notified PDP version of the CCZ also applied C.O.C. related considerations to developments that met the definition of 'Comprehensive developments', developments that were considered to be 'large-scale residential' developments (based on a metric of 50 units or more being provided) and developments that did not provide for 'residential activities' as detailed in paragraph 112 of my Hearing Stream 4 rebuttal evidence.
- 47 With regards to the proxy of the number of residential units, the notified PDP proposed a threshold of 25 units and more in the MCZ, LCZ, NCZ and HRZ, and 50 or more in the CCZ required to provide the COC. This is an alternative proxy that could be used either on its own or in unison with height to ensure that additional density and yield provided was able to provide public outcomes back for this increase.
- 48 However, as documented in paragraphs 196-198 of my Hearing Stream 4 Overview and General Matters for Centres and Mixed Use Zone S42A

report<sup>26</sup>, I recommended in HS4-Overview-Rec29 that this requirement is removed. I maintain my view that this requirement is removed and do not recommended the unit thresholds are reinstated.

## **CERTAINTY**

49 I refer the IHP to my response in paragraphs 77-86 and Appendix 3 of my Wrap-up Hearing Supplementary Statement of Evidence<sup>27</sup> where I discuss the COC in response to points raised in Matt Heale's expert evidence. In particular my response covers the following points:

49.1 Encouraging/promoting the COC

49.2 Development Contributions Policy and duplication concerns

49.3 Certainty

49.4 Commentary in table 2 of Appendix 16

49.5 The points system and additional criteria in Appendix 16

49.6 Public amenities and public space provision

49.7 Restoration of heritage, carbon and seismic design

50 In particular paragraphs 83-85 and my response to his concern number d) in Appendix 3 speak to certainty provided by COC. As Dr Zamani notes in paragraph 11 of his Hearing Stream 4 Supplementary Statement of Evidence<sup>28</sup>, the design excellence policy in the ODP has proved to be vague and reliant on subjective expert opinions. Instead the COC policy

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<sup>26</sup> Wellington City Council Proposed District Plan, Hearing Stream 4 [S42a Overview and General Matters for Commercial and Mixed-Use Zones](#), 2023

<sup>27</sup> [Statement of supplementary planning evidence of Anna Stevens on behalf of Wellington City Council](#)

<sup>28</sup> [Statement of supplementary evidence of Dr Farzad Zamani on behalf of Wellington City Council](#)

aims to address these issues by providing certainty and a clear framework for developing significantly taller buildings within Appendix 16.

51 Mr Winchester raises concerns with the degree of subjectivity in the allocation of points by the Council's resource consent planners under the COC mechanism. As I said in paragraph 84 of my Wrap-up Hearing Supplementary Statement of Evidence<sup>29</sup>, I disagree with Mr Heale and Mr Winchester's assertions about perceived subjectivity of point allocation. There is clear updated guidance and a points system in Appendix 16 to guide developers and consent planners.

52 I disagree with the extent and impact of perceived subjectivity by Mr Winchester and some submitters. I note that the application and assessment of the COC is informed by a points system and advice on how points can be achieved in table 3 in Appendix 16.

53 While Council processing planners will be making recommendations on resource consent applications, I anticipate that appropriate advice would be sought from applicable Council's internal experts depending on the COC outcomes incorporated into the development. For example, urban designers, or urban designers, seismic engineers, sustainability advisors and the like, depending on the outcome applied.

54 As noted above, I consider the COC reduces subjectivity through the additional detail provided and point system. For comparison, as a result of the point system I consider that it provides more certainty than the ODP's design excellence.

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<sup>29</sup> Wellington City Council Proposed District Plan, Wrap-up (ISPP Provisions) Hearing, [Statement of Supplementary planning evidence of Anna Stevens on behalf of Wellington City Council](#), 2023

55 In paragraph 85 of my Wrap-up Hearing Supplementary Statement of Evidence<sup>30</sup> rather than a broad assumption of subjectivity, I encourage Mr Heale to speak in more detail to what parts he considers subjective to assist in my response.

56 As I note in paragraph 30 above, the COC's approach, detail, methodology and anticipated outcomes is far more prescriptive and clear than the current ODP approach to 'design excellence'. I consider that it will lead to much more predictable and certain outcomes compared to outcomes associated with design excellence now. I also note that subjectivity is further reduced by the rule framework relating to COC, noting that if a development does not comply with the COC requirement, it remains a Restricted Discretionary activity in all applicable zones (i.e. CCZ, CCZ-PREC01, MCZ and LCZ). Hence the COC does not change activity status as a result of an assessment from a resource consent planner.

## NOTIFICATION

### *Public notification amendment in Hearing Stream 4 Right of Reply*

57 Through Minute 31 the IHP has also sought advice on "*whether it was legally valid according to public law principles to require mandatory public notification for a proposed over/under height building to "discourage" applications seeking to avoid the COC Policy pathway*".

58 As noted in Minute 31<sup>31</sup>, in my Right of Reply for Hearing Stream 4<sup>32</sup> I have recommended removing the mandatory public notification requirements that were proposed at the time of the hearing on the

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<sup>30</sup> Wellington City Council Proposed District Plan, Wrap-up (ISPP Provisions) Hearing, [Statement of Supplementary planning evidence of Anna Stevens on behalf of Wellington City Council](#), 2023

<sup>31</sup> [Proposed District Plan hearings panel, 11 August 2023 - Minute 31 - City Outcomes Follow up \(wellington.govt.nz\)](#)

<sup>32</sup> Wellington City Council Proposed District Plan, [Hearing Stream 4 Right of Reply Responses of Anna Stevens – City Centre Zone, Te Ngakau, C.O.C & Waterfront Zone](#), 2023

CMUZ provisions for the COC mechanism. I concluded it was more appropriate not to provide for mandatory notification where there is non-compliance with the COC policy.

59 Instead, my amended recommendation is that applications are assessed under sections 95A-95G of the RMA apply where the COC is not provided and the notification decision is made by the relevant delegated decision-maker.

60 However, I do note Mr Whittington's conclusions in his legal submission on the ISPP Wrap-up Hearing that he "*considers mandatory notification to incentivise certain behaviour to be a legitimate policy choice to give effect to the purpose of the Act*".

#### *Notification settings amendment to CCZ-R20.4*

61 Upon further review of the notification settings for CCZ-R20.4 I have identified a technical discrepancy when compared to the notification settings of CCZ-R19.3 (Alterations and additions to buildings and structures) and CCZ-R20.3 (Construction of buildings and structures) when the COC height thresholds are triggered but not enacted. In paragraph 45 above, in my Hearing Stream 4 Right of Reply I recommended removing mandatory notification for these circumstances and recommended that applications are assessed under sections 95A-95G of the RMA.

62 Given this recommendation, a consistent approach to align with the intent of this change includes amending CCZ-R20.4's notification setting to remove reference to mandatory notification when COC is not met as follows:



~~4.3.~~ Activity status: **Discretionary**

Where:

- a. Compliance with the requirements of CCZ-S4 cannot be achieved.

Notification status:

An application for resource consent made in respect of rule CCZ- R20.4~~3~~ which results in non-compliance with CCZ-S4 is precluded from being either publicly or limited notified, except where the application does not satisfy the outcome threshold test in give effect to CCZ-P11 City Outcomes Contribution.

An application for resource consent in respect of rule CCZ-R20.4 that does not satisfy the outcome threshold test in give effect to CCZ-P11 City Outcomes Contribution must be publicly notified.

**Date:** 20 September 2023

**Name:** Anna Mariebel Sutherland Stevens

**Position:** Team Leader, District Planning Team Wellington City Council

## **Appendix A – Recommended tracked changes to CCZ, MCZ and LCZ Chapters**

Any tracked changes are shown in orange text (in ~~strike through~~ or underline).