

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

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

**In the matter of** Hearing submissions and further submissions on the  
Proposed Wellington City District Plan

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**Stream 4 - Right of Reply of Lisa Hayes  
on behalf of Wellington City Council**

**Date: 4 August 2023**

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## **RIGHT OF REPLY**

### **AUTHOR**

- 1 My name is Lisa Hayes. I am employed as Principal Advisor in the District Planning Team at Wellington City Council (the Council).
- 2 I have prepared this Right of Reply in respect of the matters in Hearing Stream 4 relating to the Commercial and Mixed Use Zones (CMUZ) raised during the hearing, excluding the City Centre Zone (CCZ).
- 3 I have listened to submitters in Hearing Stream 4, read their evidence and tabled statements, and referenced the written submissions and further submissions relevant to the Hearing Stream 4 topics.
- 4 My qualifications and experience as an expert in planning are set out at paragraphs 17 to 22 of the Overview and General Matters Section 42A Report for Hearing Stream 4 (dated 26 May 2023).
- 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.

### **SCOPE OF RIGHT OF REPLY**

- 6 This Right of Reply follows Hearing Stream 4 held from 22 June 2023 to 5 July 2023. Minute 26: Stream 4 Follow Up of the Independent Hearings Panel (IHP) requested that the Section 42A Report authors submit a written Right of Reply as a formal response to matters raised during the hearing. The Minute requires this response by 4 August 2023.
- 7 This Right of Reply includes:
  - (i) Feedback on specific matters and questions the IHP asks the Section 42A Report authors and subject matter experts to respond to in Minute 26.
  - (ii) Commentary on additional matters I consider it useful to clarify or that were the subject of verbal requests from the IHP at the hearing.

- 8 I note that this Right of Reply should be read in conjunction with the Right of Reply prepared by Anna Stevens in relation to the CCZ. Also of relevance is the Right of Reply prepared by Joshua Patterson in relation to Hearing Stream 2 – Residential Zones (dated 29 May 2023).

#### **RESPONSE TO QUESTIONS IN MINUTE 26**

- 9 This section of my Right of Reply addresses questions relating to the Metropolitan Centre Zone (MCZ), Local Centre Zone (LCZ), Neighbourhood Centre Zone, Mixed Use Zone and Commercial Zone.

***Question i. Whether the rules requiring resource consent for ‘minor alterations and additions’ (for example, CCZ-R19) could be provided with greater level of certainty to avoid capturing minor changes that have little or no adverse effect? In particular, could some metrics be applied to differentiate the scale of alterations and additions that alter the external appearance of buildings (we were referred to the Auckland Unitary Plan’s approach to ‘cosmetic’ changes)?***

- 10 Ms Stevens has addressed this matter in her Right of Reply, where she has recommended amendments to CCZ-R19 that specifically relate to the City Centre Zone (CCZ). Ms Stevens has made recommendations as to works should be considered minor and fall under the ambit of the permitted activity rule (CCZ-R19.1).

***Question ii. Should there be a ‘carve out’ for minor additions/alterations to acknowledge differences in the scale and quality of building stock within Kilbirnie and Johnsonville compared with the Central City (such as in relation to rule MCZ-R20).***

- 11 As discussed in the hearing, I consider that requiring resource consent for minor additions and alterations (that do not qualify as permitted activities) is appropriate in the CCZ, as such changes can have effects that detract from the visual quality of established buildings. With respect to the MCZ (Kilbirnie and Johnsonville), my view is that the existing building stock may not be of the same scale and quality. That said, the PDP will enable considerable new development within these MCZ. Following development, which will in all instances be subject to an urban design assessment, the effects of any ‘minor additions and alterations’ to newly constructed substantially sized buildings have the potential to detract from the design quality of these buildings. It would not be uncommon for a building owner

to seek changes that result in the loss of design features that, at the time of initial resource consent assessment, were considered integral to the quality of the design. An example of this would be closing in verandahs/balconies or windows. Another example would be changes to a verandah design, where the verandah as constructed will have been approved by the Council's encroachments team and may have other benefits, such as mitigation of wind effects. Without further assessment by way of resource consent for additions and alterations, there is a risk that design changes create adverse effects on the public environment. I note that the risks associated with changes to verandahs apply to both new and existing buildings.

12 For the above reasons, my view is that minor additions and alterations to buildings should be captured in the rule framework for the MCZ, at least in relation to new buildings constructed under the PDP framework – noting that the rule (as notified) includes exemptions where the additions and alterations:

- (i) Do not alter the external appearance of the building – ie are internal; or
- (ii) Are below verandah level – thereby enabling changes to shop frontages and the like; or
- (iii) Are not visible from public spaces – thus allowing for changes to the rear of buildings and the installation of plant (for example on rooftops, where this is screened by a parapet).

13 I agree with Dr Zamani that at present a number of resource consent applications for minor additions and alterations are unnecessarily sent to the Council's urban design team for assessment, and acknowledge that this can add costs to developers. Defining 'minor additions and alterations' may assist resource consent planners in determining whether or not an application should be assigned to the urban design team for consideration. I note that the Council already has processes where more minor applications are assessed through 'urban design

workshops' or short email responses, rather than a full urban design assessment. Hence such applications incur less expense.

- 14 To maintain consistency within the District Plan, I recommend that the changes recommended by Ms Stevens with respect to question i. are carried down to the MCZ-R20.1. These changes are shown below, and within the updated MCZ chapter provided at Appendix G.

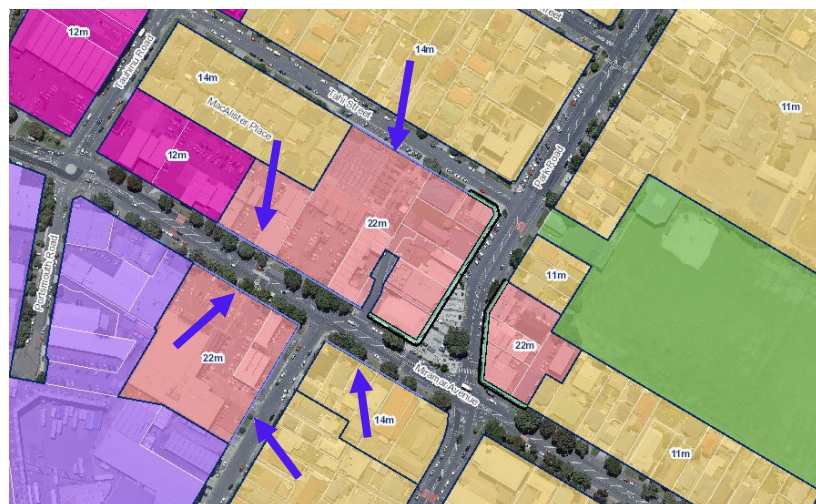
1. Activity status: **Permitted**

Where:

- a. The alterations or additions to a building or structure:
  - i. Do not alter its external appearance; or
  - ii. Involve the placement of solar panels on rooftops; or
  - iii. Involve maintenance, repair or painting; or
  - iv. Involve re-cladding with like for like materials and colours; or
  - v. Relate to a building frontage that is:
    - Below verandah level, including entranceways and glazing; and
    - Compliant with MCZ-S6; or
  - vi. Are not visible from public spaces; and
- b. The alterations or additions:
  - i. Do not result in the creation of new residential units; and
  - ii. Will comply with standards MCZ-S1, MCZ-S2, MCZ-S3, MCZ-S4, MCZ-S5, MCZ-S6, MCZ-S7, MCZ-S8 and MCZ-SX (Fences and standalone walls).

**Question xv. Should the Local Centre at Miramar be subject to active frontages and verandah requirements?**

- 15 The area that this question relates to is shown below:



- 16 While the eastern end of the Miramar Centre is identified as subject to the active frontage and verandah requirements, the remainder of the centre is

not. Instead, these areas are 'non-residential frontages'. It is not clear why the non-residential frontage extends along the residential properties to the east of Stone Street, however, this matches the ODP where Map 49A identifies these areas as 'secondary frontages':



- 17 My understanding is that the active frontages and verandah controls have been applied to 'primary frontages' identified at ODP maps 46 to 49D, and the non-residential frontage controls have been applied to 'secondary frontages'. I consider that it is appropriate to extend the active frontages and verandah controls along the full extent of the Miramar LCZ, but not along the section of Miramar Avenue to the east of Stone Street, which will retain its residential zoning. This will not impose additional restrictions on ground floor level residential development along these frontages as they are already 'non-residential frontages'.
- 18 I note that the site at 48 Miramar Avenue contains an established New World supermarket, and the site opposite at 61 Miramar Avenue contains a garden centre. Both of these buildings are set towards the rear of their respective sites, with car-parking in front. Likewise, the site at 37 Miramar Avenue contains a number of shops around a central car-park. I note that the extension to the active frontage and verandah controls will not require these activities to construct verandahs as they will retain existing use rights

under section 10 of the RMA; however, should these sites be redeveloped in the future, the requirements will apply. I consider that this is appropriate as new active frontages and verandahs will contribute to the vibrancy of the centre and align with objective 1 of the NPS-UD.

**Question xvi. What were the criteria or principles used to determine whether an area be zoned Mixed Use or some other form of Centres zoning? In particular, what were the reasons for zoning the area on Tauhinu Street, Miramar, as MUZ rather than LCZ or other zoning? Further, can an explanation for the height limit of 12m for this area of MUZ be given in comparison with the proposed height limit of 18m for the MUZ between Maupuia and Shelly Bay Roads?**

18 For the most part, land zoned Business Area 1 under the ODP has been zoned as Mixed Use Zone (MUZ) under the PDP, with Business Area 2 land zoned as General Industrial Zone (GIZ). The MUZ was considered to represent the 'best fit' for the ODP provisions under the National Planning Standards.

19 The Monitoring Report<sup>1</sup> (dated August 2019) and Issues & Options Report<sup>2</sup> (dated September 2019) for Business Areas set out the rationale for the zoning of the area of Tauhinu Street as MUZ. It appears from these reports that no consideration was given to rezoning any Business Area 1 land in Miramar as LCZ. At paragraph 3.3.1 of the Issues and Options Paper it is asserted that:

*"...it is crucial that the strengthened District Plan provisions are developed to protect Wellington's supply of business land by guiding residential development in mixed use and commercial zones to ensure that it is well integrated, represents good outcomes and does not inhibit the future use of the zone for mixed uses".*

20 Thus the MUZ was applied to this zone because:

- i. It is zoned Business Area 1 under the ODP,
- ii. It contains established mixed use activities, and

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<sup>1</sup> [Business Areas - Monitoring Report 2019-09.docx \(sharepoint.com\)](#)

<sup>2</sup> [Business Areas - Issues & Options Report \(September 2019\).docx \(sharepoint.com\)](#)



iii. The zoning seeks to prevent the loss of business land to residential activities and ensure that opportunities for business activities are retained.

21 Turning to the different heights to the east and west of Tauhinu Road, under the ODP the maximum building height at standard 34.6.2.1.1 is 12 metres for the entirety of the Business Area 1 across Ropa Lane, Maupuia Road and Tauhinu Road. Under the PDP this is increased to 18 metres for the area of MUZ to the west of Tauhinu Road (ie the portion of the MUZ between Maupuia and Shelly Bay Roads). I note that the height of 18 metres has been applied at both MUZ-16.1 and MUZ-16.2. In my view this is an error in the PDP and it was intended that the ODP height of 12 metres was carried down to the PDP as the 'permitted height' at MUZ-16.1, with the Restricted Discretionary height intended to be 18 metres. I recommend that this error is corrected at MUZ-S1 and in the mapping.

**Question xxii. Does the proposed MUZ zoning of Shelly Bay match, spatially, the area for which its redevelopment has been consented?**

22 The consented development is contained within the 'HASHAA boundary' as shown on the Masterplan below:



- 23 The HASHAA boundary is the area coloured pink in the image below, whereas the recommendation at HS4-P5-MUZ-Rec10 is to extend the boundary to the red line.



- 24 As detailed at paragraph 46.iv of Part 5 (Mixed Use Zone) of my Section 42A report, I recommend this change to avoid a split-zoning applying to the respective parcels of land. I acknowledge that as a result of this change there will be a reduction in the extent of the adjoining Open Space Zone land.

**Question xviii. What are the final recommendations on the proposed height limits in the LCZ and NCZ (if changed from the notified PDP)?**

- 25 Appendix B of this Right of Reply provides a full set of tables showing the recommended heights in relation to LCZ-S1 and NCZ-S1.
- 26 I note that these tables are consistent with the recommendations in Part 3 (Local Centre Zone) and Part 4 (Neighbourhood Centre Zone) of my Section 42A Report, which differ in some instances from the PDP as notified.
- 27 For completeness Appendix B includes a revised MCZ-S1 table that shows the new MCZ heights I have recommended at paragraphs 61 to 63 below, along with amendments to the table MUZ-S1 as discussed at paragraph 70.

**Question xxxi. In regard to active frontages (for example, CCZ-S8), officers referred to that they can be 'otherwise enhanced'. What tools are available to 'otherwise enhance'?**

28 This recommendation relates to the submission from Willis Bond, who have requested that the active frontages standard be amended across the suite of CMUZ to allow a developer with flexibility to provide alternative positive outcomes when, for an acceptable reason, the requirement of the assessment criterion to 'create a strong visual alignment with adjoining buildings' could not be met. In my view the onus should be on the developer to show how the streetscape can be 'otherwise enhanced'. To list options in the District Plan may be limiting or result in unintended consequences. However, such outcomes may be:

- Public art / murals
- Landscaping
- Textured walls

**Question xxxii. Can Dr Lees please provide comment on the employment data provided in section 6 of the evidence of Mr Cullen for Kāinga Ora, particularly in regard to the Miramar, Newtown and Tawa centres.**

29 Dr Lees has provided a response to this question, which is provided in full at Appendix C (paragraphs 9 to 17).

**Question xxxiii. Can Council provide further comment on whether the COMZ is the most appropriate zoning for the Curtis Street development site, given the development aspirations of the owner, or whether the site should be more appropriately incorporated into another zone, such as the MUZ, possibly with bespoke provisions relating to the Curtis Street site?**

30 The rationale for the COMZ zoning of the Curtis Street site is discussed in the Issues and Options Report that I have attached at Appendix D. This report identifies that the following zoning options were considered:

- **Option 1: Retain the status quo.** This option seeks to retain the existing policy direction, such that the anticipated land uses are largely residential and commercial, subject to standards.
- **Option 2: Reviewing the anticipated land use as a centre or mixed use site.** This option seeks a review of the policy direction for the site, with a view to

diversifying or intensifying land use to include the gamut of residential, community, commercial and industrial land uses.

- **Option 3: Reviewing the anticipated land use as a primarily residential site.** This option seeks a review of the policy direction for the site, with a view for further limiting land use such that the area's unique values are further preserved.

31 Of the three options above, Option 1 was identified as the preferred option because:

*“It is considered to already achieve the right balance in terms of the site's development and land use potential, and recognition and provision for the unique area values of Creswick Valley. This specific question was tested within Plan Change 77 and further Environment Court proceedings, wherein the Environment Court found that the then proposed objectives and policies, now operative, were the most appropriate for the site”.*

32 Subsequently, the following options were considered:

- **Option 1: Re-housing the provisions in a Centres Zone supported by a Precinct.** This option is proposed as the Centres Zones are a zone typology that anticipates a mixture of land uses, including residential and commercial / retail. Precinct provisions would provide additional policy direction.
- **Option 2: Re-housing the provisions in the Mixed Use Zone supported by a Precinct.** This option is proposed as the Mixed Use Zone is a zone typology that anticipates a mixture of land uses, including residential and commercial / retail. Precinct provisions would provide additional policy direction.
- **Option 3: Re-housing the provisions in a Special Purpose Zone.**

33 Option 3 was selected as the preferred option for the following reasons:

*“Options 1 and 2 are not preferred because the policy direction of the underlying Centres Zones and Mixed Use Zone are sufficiently different from the current policy direction in the Operative District Plan that the supporting Precinct would need to substantially change the policy direction of the underlying zone. In such a situation, it is more efficient to simply have a Special Purpose Zone.*

*It is noted that the mixture of land uses anticipated within the Curtis Street Business Area are more limited than those anticipated within either the Centres Zones or the Mixed Use Zone. A substantially more restricted policy and rule regime, in comparison with the candidate zones, is more suitably addressed through a separate zone”.*

34 Essentially, taking into account the history of the site, it is intended that only commercial and residential activities occur there. This does not align

with the MUZ, which enables a wide range of activities. On the basis that the site did not align with the policy direction of any other CMUZ, in particular the LC or NCZ (which also enable a wide range of activities), it was determined that a bespoke zone should apply. The land was zoned COMZ as this zone in the National Planning Standards Zone Framework most closely aligns with the purpose of the Curtis Street zone.

- 35 Mr Leary, on behalf of Precinct Properties Limited (the owner of the Curtis Street site), advised that his client has explored a range of commercially and economically viable options for the COMZ site and that, as they have been unable to secure a commercial tenant, residential development of the site is most viable. Mr Leary confirmed that the submitter prefers the COMZ zoning as this allows them to develop the site for commercial activities, but also seeks that the restrictions on ground level residential activities are removed.
- 36 The introduction to the COMZ chapter states that *“The purpose of the Commercial Zone is to provide for a mixture of commercial and residential activities”*, whereas COMZ-O1 (Purpose) states: *“The Commercial Zone contributes to meeting the City’s needs for business land and supports the hierarchy of centres”*. Hence there is less of an emphasis on residential in the statutory objective than is inferred in the introduction. Nevertheless, residential activities are enabled under COMZ-P1 (where these are above ground level) as they are in the other centres.
- 37 MUZ-O1 (Purpose) states that the purpose of the MUZ is as follows: *“The Mixed Use Zone is developed and used for a wide range of compatible activities”*. MUZ-O2 (Accommodating Growth) states: *“The Mixed Use Zone has an important role in accommodating growth and has sufficient serviced, resilient development capacity to meet business, and to a lesser extent residential growth needs”* and residential activity above ground floor level is enabled under MUZ-P2. Additional building height is available within the MUZ where a building contains

residential development; however, restrictions on ground level residential development are the same.

38 So essentially, the policy framework for the COMZ and MUZ are enabling of residential development to the same extent. I also note that the rule framework is the same, with the matters of discretion under COMZ-R2 and MUZ-R10 (Residential activities) essentially the same, and those under COMZ-R9 and MUZ-R16 (Construction of, or additions and alterations to, buildings) and structures being very similar.

39 Noting the commentary at paragraphs 30 to 38 above, I have further considered whether the Curtis Street site could be rezoned as MUZ, with a new MUZ-Precinct-01 with specific development controls (specifically in relation to height) applied. In my view this would not achieve the relief that the submitter seeks, in that there will still be restrictions on residential development, particularly at the ground floor level. I acknowledge that the zoning imposes constraints, but do not consider these are any more onerous on the submitter than those that would be imposed by the Mixed Use Zone. In both instances a resource consent will be required and the appropriateness of residential development can be considered based on its merits. For the reasons detailed at paragraph 75 of my Supplementary Statement of Evidence (dated 19 June 2023), I consider this to be an appropriate approach<sup>3</sup>.

40 That said, I acknowledge that the National Planning Standards Zone Framework anticipates commercial rather than a mix of commercial and residential uses in the zone. I have therefore prepared a revised MUZ chapter that includes a new MUZ-PREC01 – Curtis Street section for the IHP’s consideration. This is included at Appendix E. I note that this essentially carries over the provisions of the COMZ to the new precinct. The precinct provisions will apply in conjunction to the MUZ requirements; however, where there is a difference the precinct provisions override the

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<sup>3</sup> [Statement of supplementary planning evidence of Lisa Hayes on behalf of Wellington City Council](#)

general provisions of the MUZ. This approach does not address the issue that the District Plan seeks to enable only commercial and residential activities in the COMZ, and not the wide range of activities that the MUZ provides for.

- 41 An alternative response would be to amend COMZ-O1 (Purpose) so that it is clear that the zone can accommodate the style of development that the submitter seeks, for example as follows (change in purple and underlined):

COMZ-O1 (Purpose)

The Commercial Zone contributes to meeting the City's needs for business and residential land and supports the hierarchy of centres.

## COMMENTARY ON ADDITIONAL MATTERS RAISED IN THE HEARING

### *Response to Kāinga Ora Request for Changes to the Zone Hierarchy*

- 42 Kāinga Ora Homes and Communities (Kāinga Ora) has requested that a Town Centre Zone (TCZ) be added to the District Plan centres hierarchy. What was not clear in the submission but became apparent during the hearing is that Kāinga Ora want the centres hierarchy applied across the region, with the Wellington City Centre as the CCZ in the hierarchy and the main centres at Porirua, Hutt City, Upper Hutt, and Kapiti comprising MCZ (along with Johnsonville and Kilbirnie). It follows that the mid-sized centres including Newtown, Tawa, Miramar and mid-sized centres in other jurisdictions are TCZ within this hierarchy, and that the LCZ and NCZ sit below the TCZ. In the submitter's view, the policy framework across the region would also be consistent, so that any developer will have clear expectations for development in the different zones. Furthermore, the TCZ will enable greater levels of development than those available to the LCZ, NCZ, MUZ and COMZ.
- 43 I acknowledge the logic to the approach sought by Kāinga Ora; however, achieving a regional centres hierarchy would require a large integrated

piece of work between the different councils that has not yet occurred. Each of the centres is at a different stage in their District Plan review and it would cause uncertainty and delay to revisit the zoning at this high level. Therefore, in my view, it will not be possible to achieve a standardised regional approach when all of the councils in the region are acting independently. It is therefore not necessary to impose a TCZ within the Wellington City context based on a regional outcome that is unlikely to eventuate until such time as a Regional Spatial Strategy is developed.

- 44 Looking at the Wellington City context, the reasons why I do not consider that a TCZ should be added to the District Plan centres hierarchy are set out at paragraphs 96 to 105 of the Overview and General Matters section of the Section 42A Report, with further analysis provided by Mr McCutcheon in relation to Hearing Stream 1<sup>4</sup>. Kāinga Ora clarified at the hearing that the purpose of their request for a TCZ is to provide differentiation between the activities that can occur in the different centres (namely the TCZ, LCZ and NCZ), and certainty for developers through the policy framework applying to each type of centre. I maintain the view that this additional zone is not required as the level of residential growth sought by Kāinga Ora can be achieved through other means (ie increasing the height limits at LCZ-S1). Furthermore, the Wellington City District Plan enables activities of all scales across the range of centres, and is not restrictive of particular activities in the LCZ or NCZ. To add a TCZ and more restrictive policy framework would be inconsistent with both the ODP approach and notified PDP.

#### ***Response to Kāinga Ora Amended Maps***

- 45 In addition to changing the zone hierarchy, Kāinga Ora have submitted a revised set of maps prepared by Mr Rae (dated 12/06/2023) that introduce a number of changes including:

- 45.1 Extensions to a number of CMUZ boundaries;

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<sup>4</sup> [Hearing stream 1 – Section 42a Report – Part 1 plan wide matters and strategic direction \(wellington.govt.nz\)](#), para 874



45.2 Increases to the maximum height limits within the CMUZ and in the adjoining residential land; and

45.3 Extensions to the verandah and active frontage controls associated with a number of CMUZ.

46 I have detailed my specific responses to each of the maps in the table at Appendix F, which should be read in conjunction with this report. I note that I generally agree with the requested extensions to the active frontage and verandah controls. Further comments in relation to the centre expansions and requested heights are provided below.

#### *Zone Expansions*

47 Kāinga Ora seeks expansions to the zone boundaries to provide for outwards growth (as well as upwards growth) and sees the District Plan review as an opportunity to incorporate established residential land into the respective centres and effectively future proof them for future growth. As I noted at the hearing, a review of the centres boundaries was undertaken in conjunction with Plan Change 73 (operative November 2014) and, where considered necessary, zone boundaries were expanded at that time.

48 I accept that centres can grow both upwards and outwards and agree with Mr Rae that the PDP focusses on upwards growth. The PDP provides for significant height increases within most centres, in line with the expectations of policy 3 of the NPS-UD. I maintain the view that the Council does not need to expand the existing centres outwards because the upwards growth enabled in the District Plan will provide for suitable capacity to meet both business and residential demand<sup>5</sup>. Given that most centres are significantly underdeveloped at present, there is significant unrealised capacity (both commercial/business and residential) within the established centres boundaries.

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<sup>5</sup> [section-42a--overview-and-general-matters-for-commercial-and-mixed-use-zones.pdf \(wellington.govt.nz\)](#), para 103

- 49 I also accept Mr Rae’s assertion that once land is ‘lost to residential’ it is hard to get back; however, I note that the opposite is also true. In a lot of instances the submitter is asking that a centres zoning is imposed on land that is currently owned and used for residential use. I am concerned that while there is a further submission process available, many of the property owners concerned will not be aware of, or have engaged in this process, and would be concerned if the Council rezoned their residential sites without further consultation. In this respect, I acknowledge in the Table at Appendix F that the HRZ land to the south-east and south-west of the DEV1 may be appropriate for rezoning; however, for the reasons set out above I have not recommended this change.
- 50 I agree with Mr Patterson’s assertion at paragraph 14 of the Right of Reply for Hearing Stream 2<sup>6</sup> that *“section 31(1)(aa) of the RMA requires that objectives, policies, and methods are established, implemented and reviewed to ensure that there is sufficient development capacity in respect of both housing and business land to meet the expected demands of the district. Therefore, should a situation arise in the future where it is determined that the plan does not provide sufficient development capacity, the plan will need to be reviewed, and this is anticipated under the RMA”*. As indicated during the hearing, I share the view that *“there is no need to pre-empt this, particularly as the PDP provides for greater capacity than is currently required”*.
- 51 For the above reasons, I do not agree with the ‘outwards’ CMUZ expansions requested by Kāinga Ora. I consider that retaining the zone boundaries as notified will encourage development potential within the centres to be realised in the first instance. This aligns with Objective 1 of the NPS-UD insofar as contained centres provide for a concentration of services.

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<sup>6</sup> [Right of reply responses Mr Josh Patterson \(wellington.govt.nz\)](https://www.wellington.govt.nz/RightofreplyresponsesMrJoshPatterson)

## Height Increases

52 The maps provided by Mr Rae show height increases both in and around the CMUZ. With respect to the requested height increases at the periphery of the CMUZ, I note Mr Patterson's response at paragraphs 8 and 9 of his Right of Reply<sup>78</sup>. With the exception of a small expansion to the HRZ in Kilbirnie, Mr Patterson does not support Kāinga Ora's requested height increases in the HRZ. He notes:

*"In recommending their proposed height increases, Kāinga Ora have relied heavily on Policy 3 of the NPS-UD which, among other matters, states that at least six storeys should be enabled within at least a walkable catchment of rapid transit stops, the edge of city centre zones, and the edge of the metropolitan centre zones. I consider that Kāinga Ora Homes and Communities have not given enough consideration to other parts of the NPS-UD and the purpose of the RMA. In addition, I cannot see any evidence that Kāinga Ora have considered Policy 3(d) of the NPS-UD. This states that within neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and densities should be commensurate with the level of commercial activity and community services that are offered. In many cases, as described in what follows, Kāinga Ora have proposed large height increases and expansions to the high-density zones in and around centres which cannot accommodate the level of intensification proposed. An example of this is height increases around Khandallah and Ngaio where the centres are limited in scale. As a result, I consider that Kāinga Ora have proposed heights and densities well in excess of what policy 3(d) suggests is appropriate for these centres.*

*Policy 3 of the NPS-UD does not sit in isolation and does not elevate recognising the national significance of urban development above broader RMA outcomes. In other words, giving effect to the NPS-UD does not mean that other resource management matters should be ignored. To achieve the purpose of the RMA, the Plan must recognise the national significance of urban development in a way that assists in achieving the overall purpose of the Act. Objective 1 to the NPS-UD reflects this wider scope by requiring well-functioning urban environments, with Policy 1 listing a broad range of matters that make up a well-functioning urban environment. These matters are:*

- (a) have or enable a **variety of homes** that: (i) meet the needs, in terms of type, price, and location, of different households; and*
- ...*
- (c) have **good accessibility** for all people **between housing, jobs, community services**, natural spaces, and **open spaces**, including by way of public or active transport; and*

<sup>7</sup> [Right of reply responses Mr Josh Patterson \(wellington.govt.nz\)](https://www.wellington.govt.nz)

<sup>8</sup> [Erratum to Mr Josh Patterson's Right of reply \(wellington.govt.nz\)](https://www.wellington.govt.nz)

...

(e) **support reductions in greenhouse gas emissions; and**

(f) **are resilient to the likely current and future effects of climate change**

*For this reason, in considering Kāinga Ora's height and density recommendations I have measured the proposed outcomes based on Policy 3 against Objective 1 of the NPS-UD and Part 2 of the RMA, in particular section 5. Section 5 of the RMA outlines the purpose of the Act which is to 'promote the sustainable management of natural and physical resources'. In this context, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety".*

- 53 I agree with Mr Patterson's commentary above and consider that the same analysis of the NPS-UD applies to the CMUZ, in that policy 1 considerations do not outweigh the remaining policies or Part 2 of the Act, and that the heights attributable to centres should be commensurate with the level of commercial activity and community services that are offered. This is reflected in my recommendations with respect to the heights in the Newtown, Tawa, Khandallah and Kelburn Centres (HS4-P3-LCZ-Rec86).
- 54 I share Mr Patterson's view that the significant height increases requested by Kāinga Ora have not been accompanied by a detailed analysis of how these heights and supporting controls achieve a sustainable balance of growth and amenity, whereas the PDP is *"informed by a vast array of work including an analysis of the effect of the notified standards on residential amenity ..."*<sup>9</sup>, and that *"the proposed heights are not grounded in good planning principles and have not factored in other resource management matters or integrated with other parts of the plan"*<sup>10</sup>.
- 55 I agree with Mr Patterson that the approach to heights requested by Kāinga Ora is inconsistent with the Wellington City Spatial Plan, which is well understood by the community<sup>11</sup>.

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<sup>9</sup> [Right of reply responses Mr Josh Patterson \(wellington.govt.nz\)](#), paragraph 11.2

<sup>10</sup> [Right of reply responses Mr Josh Patterson \(wellington.govt.nz\)](#), paragraph 11.3

<sup>11</sup> [Right of reply responses Mr Josh Patterson \(wellington.govt.nz\)](#), paragraph 13

- 56 As with the requested changes to the CMUZ boundaries, I am concerned that there will be large parts of the community who will have no knowledge of the increased height limits that Kāinga Ora are proposing within the CMUZ.
- 57 I acknowledge that Dr Zamani generally supports increased heights within the CMUZ. I note that this advice is from an urban design perspective only and does not reflect broader planning considerations, including achieving sustainable management.
- 58 For the reasons set out above, I disagree with the height limits requested by Kāinga Ora in relation to the CMUZ, including their proposed TCZ. The exception to this is my recommendation to add a new Height Control Area 4 and increase the height in Newtown and Tawa to 27 metres. While I agree with other submitters that this will represent a substantial increase, as discussed in Part 3 (Local Centre Zone) of my Section 42A Report, I consider that these centres can suitably accommodate this additional height<sup>12</sup>.

***Requests to Increase Heights in the Metropolitan Centre Zones***

- 59 In addition to the Kāinga Ora request to increase the heights available to the Johnsonville and Kilbirnie MCZ to 55 metres, submitters owning land in these centres have requested the following height increases:
- 59.1 Stride and Investore – Request 50 metres in Johnsonville;  
and
- 59.2 Bus Barns Limited – Request 40 metres in Kilbirnie (with respect to Dev1).
- 60 On the basis of the information provided at the hearing I have considered whether any changes to the heights specified at MCZ-S1 are appropriate. As noted at paragraph 57 to 58 of my Supplementary Statement of Evidence<sup>13</sup>, I do accept that additional building height may be appropriate in these centres. I maintain the view that buildings that

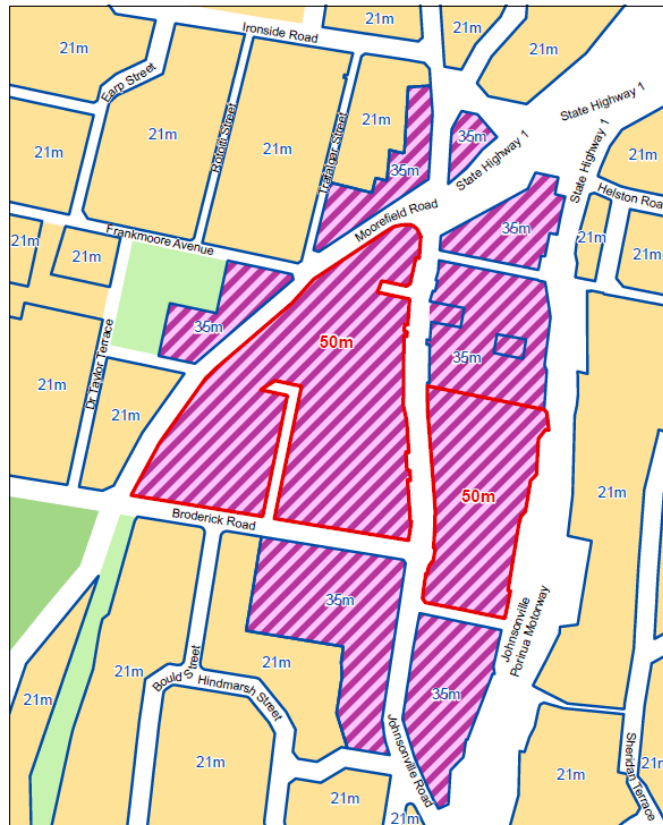
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<sup>12</sup> [section-42a-report---part-3---local-centre-zone.pdf \(wellington.govt.nz\)](#), paragraph 366

<sup>13</sup> [Statement of supplementary planning evidence of Lisa Hayes on behalf of Wellington City Council](#)

exceed the specified heights should be subject to the City Outcomes Contribution. In the MCZ this will apply where the height limit is exceeded by more than 25%, meaning that if the building height is 35 metres, a building of 43 metres can be constructed prior to the City Outcomes Contribution being applied. Thus increasing the underlying heights in the MCZ to those in MCZ-S1 as notified will enable buildings of significant height, with such buildings having marked effects upon the context within which they sit.

61 That said, I acknowledge that the MCZ is second in the hierarchy of centres and the District Plan seeks to enable significant additional growth in these areas. I consider that additional building height is appropriate centrally within the Johnsonville MCZ, as shown below:



62 I recommend that the maximum height limit for the sites outlined in red above is increased to 42 metres, enabling approximately two additional stories. This will enable buildings of up to 52.5 metres before the City Outcomes Contribution is required. This additional height is considered

appropriate due to the central location of these heights within the zone. Taller buildings on the eastern side of Johnsonville Road will provide a visual buffer between Johnsonville and the Motorway, whereas retaining the 35 metre limit across the remainder of the zone will provide a transition between the taller buildings and the adjoining residential land.

- 63 For consistency with my recommendations above, I recommend that the height limit in Kilbirnie is increased to 35 metres, where this was notified as 27 metres. An increase from 27 metres to 35 metres also provides sites in this MCZ with approximately two additional stories (from the notified height). The City Outcomes Contribution will be required at 43.75 metres. I note that enabling additional height in this zone aligns with my recommendation to increase the height in Newtown to 27 metres, in that it will enable more height in the MCZ than this nearby LCZ.

***Requests to Rezone Khandallah as a Neighbourhood Centre Zone***

- 64 The Onslow Residents' Association, Julie Ward and Friends of Khandallah presented oral submissions requesting that Khandallah is rezoned from LCZ to NCZ. I have addressed this request at paragraphs 49 to 59 of Part 3 (Local Centre Zone) of my Section 42A Report. While I acknowledge the submitters' localised knowledge with respect to the use of the centre and the reliance of residents on private vehicles, I disagree that Khandallah should be rezoned as NCZ. The characteristics of this centre are best aligned with the LCZ and I recommend that this zoning is retained.

***KiwiRail Request for a 5 metre Setback from the Rail Corridor***

- 65 I have further considered the evidence presented by KiwiRail in relation to their requested 5 metre setback from the rail corridor, including the clarification that this would not be a 'no build zone', and that a 4 metre width with 1 metre access is required for scaffolding. I note that alternative mechanisms, such as the wrapping of scaffolding, enable this to be constructed closer to a boundary. In addition, the rail corridor inherently provides a buffer zone between the tracks and any adjacent property boundary that mitigates the safety risks identified by Kiwirail.

- 66 Construction safety is regulated through the Health and Safety at Work Act 2015. Further, organisations such as Worksafe NZ<sup>14</sup> and Site Safe<sup>15</sup> provide guidance on the erection of scaffolding, including requirements in relation to who can install scaffolding and the provisions of safety plans. In my view the District Plan does not need to further regulate the installation of scaffolding through a 5 metre setback requirement and I maintain my position that a 1.5 metre setback is appropriate in the CMUZ.
- 67 I note that the Council is seeking consistency across the District Plan as much as possible, and that a 1.5 metre setback has also been recommended for the residential zones, for example in the HRZ<sup>16</sup>. If the IHP for Hearing Stream 2 recommends a wider setback in the residential zones, then I recommend a consistent setback is applied across the CMUZ.

***Halfway House Heritage Gardens Request to Lower Height Limits at 236-238 Middleton Road***

- 68 The Halfway House Heritage Gardens representatives expressed concern about shading that would result from 15 metre high buildings constructed within the MUZ at 236-238 Middleton Road and request an additional height in relation to boundary (HIRB) control. At HS4-P5-MUZ-Rec66 of Part 5 (Mixed Use Zone) I have recommended the following change to the notified PDP:

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<sup>14</sup> [Scaffolding in New Zealand | WorkSafe](#)

<sup>15</sup> [scaffolding \(sitesafe.org.nz\)](#)

<sup>16</sup> [S42A Hearing Stream 2 - Part 2 - High Density Residential Zone \(wellington.govt.nz\)](#)



MUZ-S3 (Height in relation to boundary)

Assessment ~~criteria~~ ~~xriteria~~ where the standard is infringed:

....

Location	Recession plane
Boundary adjoining any <a href="#">site</a> within the MRZ with a <a href="#">height</a> limit of 11m identified on the District Plan Maps	60° measured from a <a href="#">height</a> of 4m vertically above <a href="#">ground level</a>
Boundary adjoining any <a href="#">site</a> within the MRZ with a <a href="#">height</a> limit of 14m identified on the District Plan Maps	60° measured from a <a href="#">height</a> of 5m vertically above <a href="#">ground level</a>
Boundary adjoining any <a href="#">site</a> within the HRZ	60° measured from a <a href="#">height</a> of 8m vertically above <a href="#">ground level</a>
Boundary adjoining any <a href="#">site</a> within an Open Space Zone	60° measured from a <a href="#">height</a> of 5m vertically above <a href="#">ground level</a>
<u>Boundary adjoining any site containing a scheduled heritage building, site and area of significance to Māori, heritage area or notable tree</u>	<u>60° measured from a height of 5m vertically above ground level</u>

69 For clarification, I recommend that this additional HIRB control also applies to all Sites and Areas of Significance to Māori. I am not aware of any MUZ adjoining scheduled Heritage Areas or sites containing Notable Trees, but the IHP might consider including these in the standard for completeness. This change has been added to the box above (changes in purple and underlined).

70 The submitter has correctly identified that there is an error in the table at MUZ-S1 but has misinterpreted the error, which is that Glenside has not been included at MUZ-S1 and not that it is incorrectly included at MUZ-S2 (ie it should be in both standards). I recommend the table at MUZ-S1 is amended as shown below and at Appendix B:

MUZ-S1 (Maximum height for the purposes of MUZ-R16.1)	
1. The following maximum height limits above ground level must be complied with:	
Location	Limit
...	
<b>Height control area 2</b>	15 metres
<del>Tawa Junction</del>	
Kaiwharawhara	
Kilbirnie North	
Miramar - Park Road and Weka Street	
<u>Glenside</u>	
<b>Height control area 3</b>	16 metres
...	

71 The table at MUZ-S2 correctly shows that Glenside is within Height Control Area 5 for the purposes of MUZ-R16.2, meaning that where a development contains residential development it can achieve increased height through a Restricted Discretionary resource consent.

72 The submitter seeks that the height at MUZ-S1 is reduced to prevent shading of the gardens. I note that while the gardens may be gazetted as a heritage area, they are not recognised as such under the District Plan or by Heritage New Zealand Pouhere Taonga. I acknowledge that development on the MUZ site will create shading on the heritage gardens site in the afternoon, generally after 2.30 pm; but note that the gardens will still receive sunlight during the remainder of the day. As such, I do not consider a reduction in building height is necessary.

***Wellington Tenth's Trust Request to Rezone 557-559 Adelaide Road from Medium Density Residential Zone to Mixed Use Zone***

73 The Wellington Tenth's Trust (the Tenth's Trust) provided an oral submission at the request of the IHP for Hearing Stream 2. I had not undertaken any analysis of the zoning of this site. I acknowledge that the Tenth's Trust have development aspirations for the site and would like to see it re-zoned MUZ.

- 74 I note that Mr Patterson does not support the requested rezoning or an increase to the height limit for the site on the basis that it is located within an area of MRZ with a 14 metre height limit<sup>17</sup>. While I agree with Mr Patterson that spot-zoning is not appropriate, I do note that this site is at the southern periphery of the MRZ, with the land to the south zoned Wellington Town Belt Zone (WTBZ). Hence a change to the zoning may be appropriate as the site is at a transition between zones. In addition, I am inclined to agree with the Tenth Trust that a more permissive zoning will assist them to optimise the benefits of the site and facilitate a development with wider community benefits. This would align with the strategic direction of the District Plan, namely objectives AW-O2 and CEKP-O5.
- 75 That said, I do not consider that sufficient analysis has been undertaken through the District Plan review to understand the implications of the rezoning. As noted by Mr Patterson, the Tenth Trust will have the opportunity under the MRZ provisions to apply for a Restricted Discretionary resource consent to realise their aspirations for development on the site, once these are further developed. Therefore, I recommend that the proposed rezoning from MRZ to MUZ is rejected.

***Clarification in Response to Submission from Wakefield Property Holdings***

- 76 The submission from Wakefield Property Holdings seeks a 22 metre building height for the site at 10 Surrey Street, Tawa (Tawa Junction). As detailed in the hearing, this height is available to this site under MUZ-S2 where a building contains residential development – subject to resource consent for a Restricted Discretionary Activity. I have recommended at HS4-P5-MUZ-Rec62 that the permitted height at MUZ-S1 be increased to 18 metres. In my view it was not fully explored in the hearing whether the submitter seeks the height at MUZ-S1 be increased to 22 metres. I note that the residential land adjoining this site is zoned HRZ, with a 21 metre height limit (or 22 metres if the IHP for Hearing Stream 2 adopts the recommendation of Mr Patterson in his Right of Reply<sup>18</sup>) and I have

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<sup>17</sup> [Right of reply responses Mr Josh Patterson \(wellington.govt.nz\)](#), paragraphs 141-142

<sup>18</sup> [Right of reply responses Mr Josh Patterson \(wellington.govt.nz\)](#), paragraph 93

considered whether a permitted height of 22 metres is acceptable for this site. In my view, an 18 metre building constructed across the extent of this site will be sizeable and has the potential to create bulk and dominance effects within this context. Such effects are mitigated when the building contains residential development due to design features (such as windows and verandahs), whereas a purely commercial building could be a large windowless box. Therefore I do not support the increase to 22 metres at MUZ-S1 as requested by this submitter as this will increase the associated bulk and dominance effects. It is appropriate that buildings over 18 metres are subject to resource consent under MUZ-R16.

***Response to Submissions on the Centres and Mixed Use Design Guide***

77 As was identified at the hearing, the Design Guides are being considered outside of the topic-specific hearings and will be further considered at the ‘Wrap-up Hearing’ relating to Hearing Streams 1 to 5.

78 I acknowledge that a number of submitters raised concerns during Hearing Stream 4 about the wording in the CMUZ policies relating to the Design Guides (namely the Centres and Mixed Use Design Guide and Residential Design Guide).

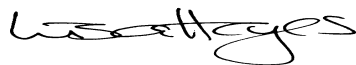
79 I note that wording referencing the Design Guides within the CMUZ policies is intended to be provisional only, and recommend that this is reviewed and finalised following the wider review of the Design Guides. I recommend that the wording is not formally adopted until the outcomes of the Design Guides review is clear.

**DISTRICT PLAN CONSISTENCY**

80 In addition to the matters detailed in this Right of Reply, changes recommended by Ms Stevens to objectives, policies, rules and standards across the range of CMUZ chapters that would then consequentially flow down to the remaining CMUZ chapters should be incorporated into MCZ, LCZ, NCZ, MUZ and COMZ where relevant. Notably, where Ms Stevens has recommended changes to the COC, I recommend these changes are adopted across the CMUZ (MCZ, LCZ, NCZ), as shown in APP G.

## APPENDICES LIST

- 81 Appendix A contains a list of amendments to my recommendations in the Hearing Stream 4 Section 42A Reports relating to the MCZ, LCZ, NCZ, MUZ and COMZ.
- 82 Appendix B provides my final recommendations in relation to LCZ-S1 and NCZ-S1 (also provided in Appendix A).
- 83 Appendix C comprises Dr Lees' full response to question xxxii.
- 84 Appendix D provides the Issues and Options Paper relating to the COMZ.
- 85 Appendix E provides an alternative MUZ chapter that includes a MUZ-PREC01 for the Curtis Street (COMZ) site.
- 86 Appendix F provides a table setting out the requested zone expansions, height increases and changes to the active frontage and verandah controls as requested by Kāinga Ora, along with my recommendations in relation to these changes.
- 87 Appendix G provides a full amended set of provisions (ie updated Appendix A) for the MCZ, LCZ, NCZ, MUZ and COMZ.



**Date:** 4 August 2023

**APPENDIX A – AMENDED RECOMMENDATIONS RELATING TO THE COMMERCIAL AND MIXED USE PROVISIONS**

**APPENDIX B - FINAL RECOMMENDATIONS IN RELATION TO MCZ-S1, LCZ-S1, NCZ-S1 AND MUZ-S1**

**APPENDIX C – DR LEES RIGHT OF REPLY - RESPONSE TO QUESTION xxxii.**

**APPENDIX D - ISSUES AND OPTIONS PAPER RELATING TO THE COMZ.**

**APPENDIX E – AMENDED MIXED USE ZONE CHAPTER INCORPORATING A NEW MUZ-PREC01 FOR CURTIS STREET**

**APPENDIX F - TABLE SETTING OUT THE REQUESTED ZONE EXPANSIONS, HEIGHT INCREASES AND CHANGES TO THE ACTIVE FRONTAGE AND VERANDAH CONTROLS AS REQUESTED BY KĀINGA ORA, ALONG WITH MY RECOMMENDATIONS IN RELATION TO THESE CHANGES.**

**APPENDIX G – AMENDED SET OF PROVISIONS (UPDATED APPENDIX A) FOR THE METROPOLITAN CENTRE ZONE, LOCAL CENTRE ZONE, NEIGHBOURHOOD CENTRE ZONE, MIXED USE ZONE AND COMMERCIAL ZONE**