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 – Hearing Stream 5

Statement of supplementary planning evidence of Hannah van Haren-Giles on behalf of Wellington City Council

Date: 25 July 2023

INTRODUCTION:

1 My name is Hannah van Haren-Giles. I am employed as a Senior Planning Advisor in the District Planning Team at Wellington City Council.

2 I have read the respective evidence of:

Greater Wellington Regional Council ID 351 and FS84

a. Richard Sheild

Heritage New Zealand Pouhere Taonga ID 70 & FS9

a. Dean Raymond

Transpower Limited ID 315 and FS29

a. Roy John Clement Noble

b. Pauline Mary Whitney

Firstgas Limited ID 304 and FS97

a. Graeme John Roberts

KiwiRail Holdings Limited ID 408 and FS72 and **NZ Transport Agency Waka Kotahi** ID 370 and FS103

a. Catherine Lynda Heppelthwaite – Planning

b. Michael James Brown – Corporate

c. Dr Stephen Gordon Chiles – Acoustics

Board of Airline Representatives of New Zealand Inc ID FS139

a. Catherine (Cath) O'Brien

Wellington International Airport Limited ID 406 and FS36

a. John Kyle – Planning

b. Kirsty O'Sullivan – Planning

c. Jo Lester – Corporate

d. Lachlan Richard Thurston – Head of Operational Readiness at WIAL

e. Darran Humpheson – Acoustics

Stride Investment Management Limited ID 470 and FS107 **and Investore Property Limited** ID 405 and FS108

a. Janice Carter

Kāinga Ora - Homes and Communities ID 391 and FS89

a. Brendon Scott Liggett – Corporate

b. Victoria Emily Jane Woodbridge – Planning

c. Matthew Armin Lindenberg – Planning

d. Jon Robert Styles – Acoustics

3 I have prepared this statement of evidence in response to expert evidence submitted by the people listed above to support the submissions and further submissions on the Proposed Wellington City District Plan (the Plan / PDP).

4 Specifically, this statement of evidence relates to the matters of Hearing Stream 5 - Section 42A Report - Subdivision.

QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

5 My section 42A report sets out my qualifications and experience as an expert in planning.

6 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 EVIDENCE

7 My statement of evidence:

a. Addresses the expert evidence of those listed above; and

b. Identifies errors and omissions from my s42A report that I wish to address.

RESPONSES TO EXPERT EVIDENCE

Greater Wellington Regional Council ID 351 and FS84 **–** Richard Sheild

8 Mr Sheild supports my recommendations in response to GWRC's submission, noting that the chapter goes a long way towards giving effect to the NPS-FM, as well as to aligning with proposed RPS Change 1.

9 Mr Sheild has proposed one amendment, on the basis that the phrasing of clause 1 of the new responsibilities section is awkward and unclear. I am supportive of this revised wording (green text) as follows:

Responsibilities

GWRC has a key role under the RMA in conserving soil, maintaining and enhancing water quality and aquatic ecosystems and avoiding or mitigating natural hazards. In practice, this means that:

1. GWRC have functions and responsibilities ~~for the control relating to~~ that may impact on subdivision;
2. GWRC manages potable water where a connection to Council's reticulated potable systems is not available, and the water supply is from groundwater or a waterbody.
3. GWRC manages wastewater disposal where a connection to Council's reticulated wastewater systems is not available and sewage is to be disposed to ground.
4. GWRC manages stormwater disposal where a connection to Council's reticulated wastewater systems is not available and stormwater is to be disposed to ground or into a waterbody.
5. GWRC also manages disturbance activities in the beds of rivers and lakes.

Heritage New Zealand Pouhere Taonga ID 70 & FS9 – Dean Raymond

10 Mr Raymond raises no outstanding matters, and supports several of my recommendations as follows:

a. HS5-SUB-Rec9: That references to consent notices, covenants, easements and other legal instruments in all relevant policies and rules in the Subdivision Chapter are deleted.

b. HS5-SUB-Rec66: That an additional policy for the protection of heritage values is not necessary or appropriate. Mr Raymond agrees that the provisions across the subdivision chapter and the historic heritage chapter adequately cover policy direction for subdivision and development as it relates to historic heritage.

c. HS5-SUB-Rec70: Mr Raymond agrees with amendments to SUB-P10, noting the additional clauses will enable a broader evaluation of subdivision proposals and the potential effects on heritage values.

Transpower Limited ID 315 and FS29 – Pauline Mary Whitney and Roy John Clement Noble

11 I note for completeness that the evidence of Ms Whitney on behalf of Transpower supports the relevant recommendations of my s42A Report. There are no outstanding matters to be addressed.

Firstgas Limited ID 304 and FS97 – Graeme John Roberts

12 I note for completeness that the evidence of Mr Roberts on behalf of Firstgas supports the relevant recommendations of my s42A Report. There are no outstanding matters to be addressed.

KiwiRail Holdings Limited ID 408 and FS72 **and NZ Transport Agency Waka Kotahi** ID 370 and FS103 – Catherine Lynda Heppelthwaite, Michael James Brown, and Dr Stephen Gordon Chiles

13 Ms Heppelthwaite has raised three outstanding matters relating to a new rule, SUB-O1, and SUB-P3/SUB-P4.

<u>New rule</u>

14 In its submission Waka Kotahi (supported by Kiwirail) sought a new rule to manage effects of noise and vibration at the time of subdivision. Ms Heppelthwaite has signalled her support for this new rule, but proposes to amend it in a manner that reflects the changes to NOISE-R3 supported by Mr Hunt and Dr Chiles.

15 As I understand it, both the submitters' and Councils' noise experts are in favour of noise modelling rather than blanket setbacks as it relates to NOISE-R3. At this stage I do not support introducing a new subdivision rule with insufficient evidence determining where/why the rule should apply. There is no analysis provided by the submitters' experts as to the number and nature of sites affected, or the potential costs associated with the more stringent consenting process proposed.

16 In the absence of such analysis, I have sought to better understand the proposed rule and the implications of including it in the Subdivision chapter. I attach spatial maps in Appendix

B which show the requested road/rail buffers, noting these include tunnels and on/off ramps to state highways. These maps have been prepared based on horizontal setbacks, and do not factor in terrain, elevation, or screening from existing urban development.

17 These maps, and associated number of properties within these buffers, demonstrate that the majority of the requested road/rail buffers cover a densely developed urban area. In my view there is a lack of evidence presented that there are existing issues with reverse sensitivity, whether complaints have been received that have resulted into a curtailment on operations, or if there is an increased threat based on upgrades or planned changes. To that extent I do not consider there is a subdivision noise reverse sensitivity effect on the safe and efficient operation of road/rail infrastructure. I do however acknowledge there are potential health effects as discussed in the evidence of Dr Chiles.

18 Where subdivision is proposed within the requested road/rail buffers that is within the City Centre or Commercial and mixed use zones, the plan anticipates that residential activities will be above ground level in most cases. Ms Heppelthwaite identifies noise bunds and walls as examples of mitigation that would be enabled through a restricted discretionary activity subdivision. I question whether the construction of acoustic walls/bunds along site boundaries would have any efficacy in mitigating outdoor noise effects for such activities – and if they are adopted, there may be corresponding adverse effects on streetscape and pedestrian amenity. Ms Heppelthwaite has not identified any other methods that could realistically be adopted under a subdivision application to address relevant effects. This raises questions about the clarity with which applications can be determined and whether proposals will be declined if no viable mitigation is available apart from reliance on internal mitigation/attenuation.

19 It is important to note that the state highway network and/or rail corridor are not qualifying matters[1]. As such, there is no ability to limit intensification of MRZ land. As per the Medium Density Residential Standards (MDRS) in Schedule 3A of the RMA:

[1] Hearing Stream 1 Right of Reply

a. Clause 3 requires subdivision rules to provide for the subdivision of land as a controlled activity where for the construction and use of residential units permitted by Clause 2 or restricted discretionary under Clause 4; and

b. Clause 7 requires that subdivision provisions must be consistent with the level of development permitted under the other clauses of the schedule, and be provided for as a controlled activity.

20 On this basis I continue to recommend as per paras 75-81 of my s42A Report that the Noise Chapter is the most appropriate place to address this matter as it relates to land use provisions that address noise and potential reverse sensitivity within proximity to the road/rail corridor. I note that the focus of the submitters noise experts has been on mitigation delivered though land use noise provisions.

21 Additionally, I wish to note that not all subdivision will result in noise sensitive activities. By way of example, if a subdivision were proposed on a site adjoining the road/rail corridor in the General Industrial Zone (identified as a higher noise area in NOISE-P3), it is in my view not warranted that restricted discretionary consent be required. If a noise sensitive activity were proposed to locate within any high noise area or moderate noise area, NOISE-R3 appropriately manages the potential health effects of noise and vibration. In my view this approach is most efficient and effective as it manages the potential effects through noise mitigation i.e. insultation standards, as opposed to a blanket approach to subdivision that lacks nuance and will result in unnecessary consent requirements – and is therefore a less efficient way to achieve the objectives of the PDP. I note that where acoustic insultation standards are infringed, one of the assessment criteria is 'the ability to achieve acceptable outdoor acoustic amenity'[2].

22 The NPS-UD seeks well-functioning urban environments which includes having *good accessibility for all people between housing, jobs, community services, natural spaces, and*

[2] NOISE-S4 and NOISE-S5

open spaces, including by way of public or active transport[3]*.* In my view this inherently implies proximity to road and rail corridors in order to provide for good accessibility. Policy 3 of the NPS-UD directs that district plans enable density of urban form in city centre zones to realise as much development capacity as possible, to maximise benefits of intensification. This directive is then reflected in Strategic Direction UFD-O1: *Wellington's compact urban form is maintained with the majority of urban development located within the City Centre, in and around Centres, and along major public transport corridors.* Given the extent of urban motorway and rail through the city, it is not appropriate in my view to restrict subdivision on the basis of potential reverse sensitivity from road/rail noise.

SUB-O1

23 Both KiwiRail and Waka Kotahi sought changes to SUB-O1 relating to the efficiency of the transport network, which for the reasons set out in para 161 of my s42A Report, I recommended not accepting. Ms Heppelthwaite agrees that the plan is to be read as a whole and that there are existing provisions (e.g. UFD-O7, SCA-O1, SCA-O2, INF-O3, and INF-P7) which address the matters raised.

24 However, at para 11.2 of her evidence Ms Heppelthwaite goes on to say that in her experience 'it is only the objectives and policies of the chapters where rules are infringed that are considered in any detail'.

25 It is unclear from Ms Heppelthwaite's evidence whether her experience includes plans that have been prepared in accordance with the National Planning Standards and the direction it provides to reduce duplication and achieve greater consistency, in particular that:

> *'5. Provisions relating to energy, infrastructure and transport that are not specific to the Special purpose zones chapter or sections must be located in one or more chapters under the Energy, infrastructure and transport heading. These provisions may include:*

[3] Policy 1(C) NPS-UD

a. …

b. …

c. the management of reverse sensitivity effects between infrastructure and other activities'[4]

'25. The chapters under the Subdivision heading must include cross-references to any relevant provisions under the Energy, infrastructure and transport heading.'[5]

26 I acknowledge that the National Planning Standards are relatively new and to that extent experience with their approach may be limited as district plans continue to be amended to implement the standards. However, I do not consider that perceived poor historical practice is sufficient in this case to justify an unnecessary duplication of direction and associated departure from the planning standards. That said, I consider that the cross-reference to the Infrastructure chapter could be amended to better highlight policies relating to reverse sensitivity.

Other relevant District Plan provisions

…

- **Infrastructure** - the subdivision chapter includes rules to implement objectives and policies in the Infrastructure Chapter where ~~certain types of~~ subdivision may have adverse effects, including reverse sensitivity effects, on infrastructure such as the gas transmission pipeline, national grid, and transport network. ~~are in close proximity to some network utilities.~~

27 For the reasons set out in para 161 of my s42A Report, I continue to recommend that SUB-O1 is retained as notified. I reiterate that the PDP is to be read as a whole and that duplicating, recasting and/or expressing potentially conflicting direction/outcomes in the Subdivision chapter is unnecessary and inefficient in my view.

[4] Page 32, District-wide Matters Standard, National Planning Standards

[5] Page 34, District-wide Matters Standard, National Planning Standards

SUB-P3 and SUB-P4

28 In its submission KiwiRail sought to add 'Manage adverse effects of activities through setbacks and design controls to achieve appropriate protection of infrastructure' to SUB-P3. Ms Heppelthwaite agrees with my recommendation to reject this submission point. However, at para 11.6 of her evidence, Ms Heppelthwaite instead proposes the amendment is better placed within SUB-P4 which relates to integration and layout of subdivision, and considers that objective and policy support is needed in the Subdivision chapter where rules are located to be most effective.

29 I have not changed my view on this matter and continue to recommend per para 192-195 of my s42A Report, in particular as detailed in the s32 Report*:*

"This aim is already set out in SCA-O5, INF-O4 and supporting policies. Including an additional aim in the subdivision chapter is redundant, and in conflict with the direction in the National Planning standards that "Provisions relating to energy, infrastructure and transport…must be located in one or more chapters under the Energy, Infrastructure and Transport heading…and may include…the management of reverse sensitivity effects between infrastructure and other activities."[6]

Board of Airline Representatives of New Zealand Inc ID FS139 – Catherine (Cath) O'Brien

30 Ms O'Brien notes that BARNZ and its members support the position articulated in the evidence given on behalf of Wellington International Airport Limited, noting in particular they support:

a. Making corresponding changes to the objectives, policies and methods within the Subdivision Chapter to create alignment with the above framework and to generally discourage the intensification of noise sensitive activities through subdivision within the ANB or 60dB Ldn; and

[6] Subdivision s32 Report, Page 57

b. The identification of WIAL as an affected party to any application within the Air Noise Overlay for the reasons articulated in the WIAL evidence.

Wellington International Airport Limited ID 406 and FS36 – John Kyle and Kirsty O'Sullivan

31 Ms O'Sullivan raises four outstanding matters relating to SUB-O1, SUB-PX, SUB-R26, and SUB-R29. For completeness I acknowledge the evidence of Mr Kyle who has noted his support for the evidence of Ms O'Sullivan.

SUB-O1

32 Ms O'Sullivan has raised concern that the statement 'reverse sensitivity matters are addressed in other chapters' is incorrect, as she notes that the Infrastructure chapter does not apply to activities that fall under the definition of airport purposes or airport related activities. This particular matter is more appropriately considered as part the Airport Zone and/or Infrastructure Hearing. However, to the extent Ms O'Sullivan raises concerns about objectives for reverse sensitivity, I draw attention to SCA-O6[7], as does Ms O'Sullivan at para 10.6 and her s32aa assessment for SUB-PX and SUB-R29 on page 136 of her evidence. I have not changed my view and continue to recommend as per para 162 of my s42A report that there are sufficient outcomes on the matter of avoiding reverse sensitivity effects on regionally significant infrastructure when the plan is read as a whole.

33 Of particular relevance to WIAL as applicable to SUB-PX and SUB-R29 is NOISE-O2 – that '*existing and authorised activities that generate higher levels of noise are protected from reverse sensitivity effects.'*

SUB-PX and SUB-R29

34 Ms O'Sullivan has proposed to broaden the scope and amend the heading of SUB-PX and SUB-R29 from 'Air Noise Boundary' to 'Air Noise Overlay'. The intent of this policy and rule is to address reverse sensitivity effects of noise within a 65 dBA contour. The definition of

[7] Para 162 and 695 of the Subdivision s42A Report

the Air Noise Boundary is that it is based on the modelled Ldn 65 dBA contour and therefore corresponds to the outer extent of the Inner Air Noise Overlay. On this basis, I recommend that SUB-PX and SUB-R29 be amended to *'Subdivision within the Inner Air Noise ~~Boundary~~ Overlay'*. This aligns with Councils identification[8] of the Inner Air Noise Overlay as a qualifying matter, and not the full extent of the Air Noise Overlay.

35 I acknowledge Ms O'Sullivan's point about how SUB-PX begins with 'Provide for' and is linked to a discretionary activity rule. The phrase 'provide for' is used for policies that set up a generally permissive rule regime, or to describe what the plan actively enables. 'Enable' is the policy phrasing generally used to set up a permitted activity rule. The approach that has been adopted within the Subdivision chapter is a general intent to encourage and enable subdivision where overlays/values are protected. By way of example, SUB-P10, like all other historic heritage subdivision policies, is phrased 'Provide for…' and associated with discretionary activity rules.

36 Ms O'Sullivan's evidence highlights that there may be multiple ways to express policy direction to effectively implement relevant objectives and to inform a consistent regulatory approach. In my view, the notified direction remains appropriate for reasons I have previously expressed; however, if the panel is minded to consider the consistency of language and corresponding regulatory approach for policy provisions using 'provide for… where certain outcomes are achieved ' vs 'only allow… unless certain outcomes are achieved', this may be best addressed as a wider drafting consistency matter at the integration hearing.

37 I do not support the requested phrasing 'unless reverse sensitivity effects can be appropriately managed' as in my view this provides no directive to plan users or decision-makers. Instead, I continue to recommend the policy wording recommended in my s42A Report, that is to provide for subdivision where potential future permitted density of noise sensitive activities will avoid reverse sensitivity effects on the Airport. This provides

[8] Hearing Stream 1 Right of Reply

direction that the reverse sensitivity effects are related to noise sensitive activities – which as identified above is the aim of NOISE-O2.

SUB-R26

38 In para 5.94 of her evidence, Ms O'Sullivan has proposed to amend SUB-R26 to clarify its application to the Airport. I agree this will assist with clarity, however for consistency with amendments recommended by Mr Sirl for CE-R19, I recommend that SUB-R26 be amended to 'Airport purposes' to align with the existing definition in the PDP.

Stride Investment Management Limited ID 470 and FS107 **and Investore Property Limited** ID 405 and FS108 – Janice Carter

39 Ms Carter on behalf of Stride and Investore supports the relevant recommendations of my s42A Report, particularly:

a. HS5-SUB-Rec3 and HS5-SUB-Rec4: That I reject the submissions of Waka Kotahi and KiwiRail seeking a new subdivision rule.

b. HS5-SUB-Rec17 and HS5-SUB-Rec18: That SUB-O1 be confirmed as notified, and the submissions of Waka Kotahi and KiwiRail seeking amendment be rejected.

40 I have not changed my view on these matters.

Kāinga Ora - Homes and Communities ID 391 and FS89 – Brendon Scott Liggett, Victoria Emily Jane Woodbridge, Jon Robert Styles, and Matthew Armin Lindenberg

41 Mr Lindenberg has proposed to amend SUB-PX and SUB-R29. I disagree with Mr Lindenberg at para 6.7 of his evidence that the policy should be reframed to expand the '*current focus of the proposed policy wording which seeks to focus exclusively on potential adverse effects relating only to the noise generating activity (being the airport in this instance)'.* The intent of SUB-PX relates solely to the noise effects of the Inner Air Noise Overlay – having been identified as a qualifying matter. I have not changed my view, and for the reasons set out in paras 693-697 and 704-705 of my s42A Report continue to recommend the versions of SUB-

PX and SUB-R29 set out in my s42A Report, except to amend the headings of these provisions to 'Subdivision within the Inner Air Noise Overlay'.

42 Ms Woodbridge raises six outstanding matters relating to SUB-O1, new objective, SUB-P2, SUB-P3, notification clauses, and SUB-S6.

SUB-O1

43 Ms Woodbridge has signalled her support for the submission points of Kāinga Ora to amend clauses 2 and 3 of SUB-O1.

44 In respect of SUB-O1.2, I agree with Ms Woodbridge that the intent should not be to protect the character, intensity or scale of existing areas which may have developed historically where the PDP is ultimately seeking a change in those respects. In my view SUB-O1.2 is forward-looking rather than retrospective or protective of the status quo, as evident by the inclusion of the words 'anticipated for' in the notified objective.

45 Further to this, the limit of referring exclusively to 'the underlying zone' in my view is that zones coalesce throughout the city, and where that occurs it is relevant that edge effects are taken into account – and that is brought to bear in a number of the zone provisions in the notified plan. For these reasons, my view remains that the amendments sought by the submitter are not accepted.

46 Turning to SUB-O1.3, Ms Woodbridge has acknowledged Strategic Objective CC-O2, and identified that clause 5 references 'innovation'. While I agree CC-O2 is relevant, in my view CC-O2.4 is most applicable to subdivision, and the directive for the outcomes sought in SUB-O1, as set out below (**emphasis added**).

CC-O2.4:	SUB-O1.3:
Urban intensification is delivered in **appropriate** locations and in a manner that	Subdivision achieves an efficient development pattern that:

meets the needs of current and future generations;	Enables **appropriate** future development and use of resulting land or buildings; and

47 The notified clause is squarely about the role of subdivision enabling development and use of resulting buildings. The amendment proposed by Ms Woodbridge shifts the focus from the core 'enabling' role of subdivision into something more qualitative.

48 I disagree that all subdivision should be innovative, particularly given the 'enable' phrasing of SUB-O1.3 and that enabling innovation and suggesting that innovation should always apply are materially different aims. Further, Ms Woodbridge has not provided any justification as to why innovative subdivision should be preferred compared to more conventional or accepted practice.

49 I note that Kāinga Ora continues to seek a minimum shape size for vacant allotments. In my view Ms Woodbridge's suggestion of a minimum shape factor is somewhat contradictory to seeking that all subdivision enable innovation, choice and flexibility, as a shape factor would directly inhibit this from occurring.

50 For the reasons set out above, and per paragraphs 159-160 of my s42A Report, I continue to recommend that SUB-O1 be retained as notified.

<u>New objective</u>

51 Ms Woodbridge has sought a new objective to provide for overarching outcomes for subdivision within areas that have specific values. In my view, the proposed new objective does not add any value to existing objectives – the aim is simply that subdivision is 'managed' which is not overly helpful for a decision-maker or other plan users in my view.

52 I reiterate that the PDP is to be read as a whole. This is a fundamental principle of the PDP's structure – that relevant district-wide objectives will be brought to bear in those instances

where, for example, historic heritage values are present, at which point HH-O2 would be a relevant consideration.

53 As per para 143 of my s42A Report:

'A new objective in the Subdivision chapter as suggested would in my view risk creating a scenario where a conflicting outcome is expressed in the Subdivision chapter that does not align with one already established and expressed in the parent overlay chapter. It further risks that the specific direction and detail in those objectives is overridden and made ineffective by a more succinct objective, downplaying and weakening the outcomes anticipated in those parent chapter objectives as it relates to subdivision. I consider that the 'Other relevant District Plan provisions' section at the start of the Subdivision chapter provides suitable cross referencing to ensure wayfinding between relevant provisions.'

54 I continue to recommend no new objective for the reasons set out above and in paras 141-145 of my s42A Report.

<u>SUB-P2 and SUB-P3</u>

55 I have not changed my view and continue to recommend that SUB-P2 be retained as notified for the reasons set out in paras 172-173 of my s42A Report.

56 In respect SUB-P3, I disagree with Ms Woodbridge's amendments to delete reference to 'resilient communities' and instead attach this with 'resilient and adaptive to the effects of climate change'. Resilience is broader than just in response to the effects of climate change – it is one of the six strategic goals in the Spatial Plan and an aim of Strategic Objective CC-O3:

2. Resilient: Wellington's natural and built environments are healthy and robust, and we build physical and social resilience through good design;

57 I also consider that Ms Woodbridge's reorganisation of SUB-P3 diminishes the importance of renewable energy. As set out at para 191 of my s42A Report, *I note that the benefits to be derived from the use and development of renewable energy are a s7(j) RMA matter to*

which 'particular regard' must be had. I also note that SUB-P3 directly aligns with strategic direction SRCC-O1 – that the City's built environment supports an increase in the use of renewable energy sources. I note SUB-P3 is not requiring renewable energy facilities to be provided, but provides policy support for proposals that do.

58 On this basis I disagree with Ms Woodbridge's amendments. I note also that the policy direction is not binding on applicants to meet all matters of SUB-P3 when designing their subdivisions, but rather is binding on the Council to 'provide for' subdivisions that achieve the matters set out under the policy.

59 As to the inclusion of 'safe vehicle access', I disagree with Ms Woodbridge that this is incongruous with the aim for well-connected communities and development patterns. I disagree that 'safe vehicle access' is more appropriately located within SUB-P7 as that policy has a 'require' directive, and not all subdivision will need/be able to achieve vehicle access i.e. unit title. In my view SUB-P3.4 is appropriate as the policy relates to the design and layout of subdivision.

60 For the reasons set out above, and per paragraphs 189-191 of my s42A Report, I continue to recommend that SUB-P3 be retained as notified.

Non-notification preclusions

61 Ms Woodbridge agrees with my recommendation to reject Kāinga Ora's submission seeking non-notification preclusions for all restricted discretionary activity rules, however continues to seek an exclusion for public notification for natural hazard rules SUB-R17 to SUB-R26.

62 I have not changed my view and continue to recommend that it is more appropriate to rely on s95 RMA so that the specifics of each application can be assessed on their merits, as set out in para 83 of my s42A Report. Subdivision within natural hazard overlays has the potential to have more a more than minor effect on people and property.

SUB-S6

63 Ms Woodbridge agrees with my recommendations for SUB-S6, except to the extent I did not accept a minimum shape factor for vacant lots.

64 At para 8.22 of her evidence Ms Woodbridge considers that given there are no minimum allotment sizes for the Residential Zones, it is appropriate that a shape factor is applied to ensure high quality urban design outcomes for allotments where a dwelling design is not established. She continues that '*Wellington topographical constraints coupled with the increased density and enabling of infill development, it has the potential to lead to poor outcomes for creation of vacant allotments without controls over size and shape*'. Ms Woodbridge has not provided any analysis as to why a shape factor is warranted in the Wellington context or why topographical characteristics dictate a need for minimum shape factor. Furthermore, Ms Woodbridge has not addressed flatter parts of the city and whether a shape factor is less relevant in those areas, nor has she conducted any cost / benefit analysis to justify the additional regulatory stringency entailed.

65 I have not changed my view and continue to recommend as per paras 324-327 of my s42A Report that a shape factor is not necessary or appropriate.

66 I disagree with Ms Woodbridge that 'a shape factor will ensure allotments are of a practical shape and size to provide for a future dwelling and outdoor living space which aligns with good urban design principles'. Instead, introducing a minimum shape factor as proposed, would in my view be inconsistent with SUB-P1[9] and SUB-P5[10] in providing for flexibility, innovation, and choice in the supply and variety of new housing.

67 A minimum shape factor would also not be enabling of *'a variety of housing types with a mix of densities within the zone, including 3-storey attached and detached dwellings, and*

[9] Recognise the benefits of subdivision in facilitating the supply and variety of new housing, business and other activities that meet the needs of people and communities.

[10] Provide for flexibility, innovation and choice for future development enabled by subdivision for residential activities, while ensuring allotments are of a size, shape and orientation that is compatible with the nature, scale and intensity anticipated for the underlying zone or activity area.

low-rise apartments' as per Policy 1 of Schedule 3A Medium Density Residential Standards (MDRS), and PDP Strategic Direction UFD-O6: *'A variety of housing types, sizes and tenures, including assisted housing, supported residential care, and papakainga options, are available across the City to meet the community's diverse social, cultural, and economic housing needs.'*

68 Ms Woodbridge has not discussed the MDRS; however it is important to consider the implications of a shape factor under Schedule 3A. While on the surface, Clause 8 of the Schedule suggests size and shape requirements can be imposed as long as they relate to vacant land, Clauses 3 and 7 state that subdivision must be a controlled activity.

69 By way of example, there may be a scenario where a three (or more) lot subdivision is proposed in the MRZ, and one or more of those lots is vacant, with the balance of lots being used for residential units – it is not uncommon that one or more lots in a subdivision will be on-sold for others to develop. If Ms Woodbridge's requested amendment were adopted, and one or more of those vacant lots did not meet the minimum shape factor, with the bundling principle applied, the subdivision proposal would be considered as a restricted discretionary activity. This would be inconsistent with Clause 3 which requires that the subdivision of land for the purpose of the construction and use of residential units in accordance with clauses 2 and 4 must be a controlled activity.

70 As I understand it, there is a misalignment in the drafting whereby on the one hand, Clause 8 implies that a lot size or shape requirement may be appropriate to apply in some circumstances, but those circumstances do not necessarily align with the expectations of Clauses 3 and 7 regarding subdivisions that must be considered as controlled activities. In any case, Schedule 3A does not require a minimum size or shape factor to be imposed – and it only allows for such provisions in certain circumstances.

71 Based on the 'without limiting clause 7' phrasing of Clause 8, I interpret that controls must not affect the imperative for a subdivision to be considered as a controlled activity where it is for the purposes of constructing or using residential units that are permitted or restricted discretionary activities under the MDRS.

MINOR AND INCONSEQUENTIAL AMENDMENTS

72 I recommend a minor amendment to SUB-R2.3 to add 'and SUB-R1.c' to correct a missing link in the rule framework, and to correct 'operational port activities' in SUB-R26.1.5.

73 In considering the matters raised in evidence, it has become apparent there is a need to ensure that subdivisions do not facilitate development that would be undesirable when considered against the land use outcomes sought by the PDP. I consider adding a new clause to SUB-P4 to work in conjunction with SUB-P4.3 will ensure that subdivision will enable development but will also not compromise the land use outcomes sought by the PDP.

SUB-P4 Integration and layout of subdivision and development

Provide for the efficient integration and layout of subdivision and associated development by:

1. Encouraging joint applications for subdivision and land use;
2. Enabling subdivision around development that has already been lawfully established; ~~and~~
3. Ensuring standalone subdivision proposals provide allotments that can be feasibly developed and are fit for the future intended purpose~~.~~; and
4. Ensuring enabled land use outcomes will be able to be achieved following subdivision.

74 In considering the MDRS requirements further, I have identified some errors with the subdivision rule framework for residential units within the MRZ and HRZ. The issue being that the introduction to the Subdivision chapter sets out that:

Rule SUB-R1 relates specifically to subdivision of land for the purpose of the construction and use of residential units in the Medium Density Residential Zone and the High Density Residential Zone. Subdivisions under Rule SUB-R1 are not subject to Rules SUB-R2 – SUB-R5, but are subject to the area-specific and topic-specific rules where the land also contains a corresponding planning notation or overlay.

75 However, it is incorrect to say that *area-specific and topic-specific rules* apply because as per the MDRS, only qualifying matters can limit subdivision for residential units within the MRZ and HRZ. By way of example, subdivision of a site on which a notable tree is located (SUB-R10) is a discretionary activity. However, as I understand it, notable trees have not been identified as a qualifying matter in the PDP, and as such subdivision of a site with a notable tree within the MRZ and HRZ should be a controlled activity.

76 I have not sought to amend this in Appendix A, but rather note this error, and that there may be other similar errors to resolve through redrafting provisions.

25 July 2023

Hannah van Haren-Giles

Senior Planning Advisor

Wellington City Council