

# **Recommendation of Independent Hearing Panel**

## **PLAN CHANGE 56**

### **ENABLING INTENSIFICATION IN RESIDENTIAL AND COMMERCIAL AREAS**



**Recommendation Report of the Independent Hearing Panel  
appointed by the Hutt City Council  
pursuant to section 34A and Schedule 1, Part 6, clause 96(1) of the  
Resource Management Act 1991**

**22 August 2023**

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## SCHEDULE OF APPENDICES

- **APPENDIX 1:** Panel recommendations on relief sought by submissions and further submissions
- **APPENDIX 2:** Annotated version of plan change provisions
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- **APPENDIX 4:** Recommended mapping changes

## INDEX OF ABBREVIATIONS

This report utilises several abbreviations and acronyms as set out in the glossary below:

Abbreviation	Means...
“the Act”	Resource Management Act 1991
“AEP”	Annual Exceedance Probability
“ARI”	Average Re-occurrence Interval
“cI[#]”	Clause number in the relevant Schedule to the RMA, for example cI10 means clause 10
“the Council”	Hutt City Council
“Council Officers Evaluation Report”	Officers' Report for Independent Hearing Commissioners, 7 March 2023
“Council Officers Reply Statement”	Reporting Officers' Written Response to Hearing – District Plan Change 56, 9 June 2023
“the District Plan”	Operative City of Lower Hutt District Plan 2004
“DAPP”	Dynamic Adaptive Policy Pathway
“HBA”	Wellington Regional Housing and Business Development Capacity Assessments
“HCC”	Hutt City Council
“HDRAA”	High Density Residential Activity Area
“the Housing Supply Act”	The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021
“IPI”	Intensification Planning Instrument
“ISPP”	Intensification Streamlined Planning Process
“MDRAA”	Medium Density Residential Activity Area
“MDRS”	Medium Density Residential Standards
“MfE”	Ministry for the Environment
“NES-FW”	National Environmental Standards for Freshwater 2020
“NIWA”	National Institute of Water and Atmospheric Research
“NPS-FM”	National Policy Statement for Freshwater Management 2020
“NPS-HPL”	National Policy Statement for Highly Productive Land 2022
“NPS-IB”	Proposed National Policy Statement for Indigenous Biodiversity
“NPS-UD”	National Policy Statement on Urban Development 2020
“NZCPS”	New Zealand Coastal Policy Statement 2010
“PC43”	Proposed Change 43 to the Plan (Residential and Suburban Mixed Use)
“PC56”	Proposed Change 56 to the Plan
“the plan change”	Proposed Change 56 to the Plan
“PNRP”	Proposed Natural Resources Plan for the Wellington Region
“the Regional Council”	Greater Wellington Regional Council
“RVA”	Retirement Villages Association
“RIS”	Regulatory Impact Statement
“the RMA”	Resource Management Act 1991
“the RPS”	The Regional Policy Statement for the Wellington Region
“s[#]”	Section number of the RMA, for example s32 means section 32
“SASM”	Site(s) and Areas of Significance to Māori

**Hutt City Council**  
**Plan Change 56**  
**Enabling Intensification in Residential and Commercial Areas**  
**Recommendation of the Independent Hearing Panel**

**Proposal Description:**

Plan Change 56 to the City of Lower Hutt District Plan:  
Enabling Intensification in Residential and Commercial Areas

**Hearing Panel:**

SG Daysh – Independent RMA Hearing Commissioner, Chair  
EA Burge – Independent RMA Hearing Commissioner  
DJ McMahon – Independent RMA Hearing Commissioner

**Date of Hearing:**

12, 13, 14, 18, 19, 20, 21, 26, 28 April 2023

**Hearing Closed:** 2 August 2023

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**1. INTRODUCTION****1.1 Report purpose**

1.1.1 This report sets out our recommendations for a decision on Plan Change 56 to the operative City of Lower Hutt District Plan 2004.

1.1.2 We were appointed by the Council to hear submissions made on the plan change and to consider and make a recommendation as to a decision under delegated authority of the Council under section 34A and clause 96(1) of Schedule 1, Part 6 of the Resource Management Act 1991 as to whether PC56 should be declined, approved or approved with amendments.

1.1.3 The plan change (as notified) seeks to:

- a. incorporate the Council's obligations to incorporate the MDRS in the District Plan;
- b. give effect to Policies 3 and 4 of the NPS-UD;
- c. provide for a range of existing and new qualifying matters in relation to (a) and (b) above; and
- d. amend the District Plan's financial contribution provisions.

1.1.4 As such PC56 represents the Council's response to its obligations as a 'Tier 1' territorial authority under the Housing Supply Act and the NPS-UD to enable intensification in residential and commercial areas of the City through amended provisions to its District

Plan. The changes to the District Plan represented by PC56 constitute an Intensification Planning Instrument (IPI) under section 80E of the RMA. IPIs use the Intensification Streamlined Planning Process (ISPP) set out in Schedule 1, Parts 1 and 6 of the RMA. The process differs from the standard plan change process, both in terms of the process itself and in limiting what changes to the District Plan can be made.

- 1.1.5 We will canvass the plan change's background in due course. It has been the subject of a section 32 report<sup>1</sup>, consultation with stakeholders, and, of course, the public notification and hearing process, culminating in our recommendation as to a decision.
- 1.1.6 Before setting out the details of PC56, the submissions to it and our substantive evaluation, there are some procedural matters that we will address, beginning with our role as an Independent Panel.

## 1.2 Role and report outline

- 1.2.1 As noted above, our role is to make recommendations for a decision about the outcome of the plan change to the Council. The authority delegated to us by the Council includes all necessary powers under the RMA to hear and make a recommendation as to a decision on the submissions received on the plan change and the plan change itself.
- 1.2.2 The purpose of this report is to satisfy the Council's various decision-making obligations and associated reporting requirements under the RMA. Clause 100 of Schedule 1 of the RMA requires that we must provide our recommendations to the Council in one or more written reports, wherein each report must:
- (a) *set out the Panel's recommendations on the provisions of the IPI covered by the report; and*
  - (b) *identify any recommendations that are outside the scope of the submissions made in respect of these provisions; and*
  - (c) *set out the Panel's recommendations on the matters raised in its submissions made in respect of the provisions covered by the report; and*
  - (d) *state the Panel's reasons for accepting or rejecting submissions; and*
  - (e) *include a further evaluation of the IPI undertaken in accordance with s32AA (requirements for undertaking and publishing further evaluations).<sup>2</sup>*
- 1.2.3 Our report(s) may also include matters relating to any alterations necessary to the IPI as a consequence of matters raised in submissions and any other matter that we consider relevant to the IPI that arises from submissions or otherwise.<sup>3</sup>
- 1.2.4 Having familiarised ourselves with PC56 and its associated background material, read all submissions, conducted a number of site/locality visits and held a hearing, we hereby record our recommendations in this single report.

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<sup>1</sup> Section 32 of the RMA sets out the requirements for preparing and publishing reports that evaluate the appropriateness of a plan change.

<sup>2</sup> Schedule 1, cl 100(2)

<sup>3</sup> Schedule 1, cl 100(3)

1.2.5 Our report is broadly organised into the following two parts:

a. Factual context for the plan change:

This non-evaluative section (comprising **Section 2** in this report) is largely factual and contains the following:

- i. a brief description of the **purpose** of the plan change (**Section 2.1**);
- ii. a summary of the **statutory context and impetus** for the plan change, inclusive of a description of the commonly used tools and terms arising from the relevant legislation and national direction (**Section 2.2**);
- iii. a brief outline of the **development** of the plan change, inclusive of the s32 evaluation, commissioning of technical input and consultation (**Section 2.3**);
- iv. a summary of the **components and mechanics** of the plan change (i.e., how it seeks to change the District Plan) (**Section 2.4**);
- v. a summary of the **notification process and submissions received** (**Section 2.5**);
- vi. a brief outline of the **Council officers reporting approach** (**Section 2.6**);
- vii. an outline of **pre-hearing directions and procedures**, including site visits (**Section 2.7**);
- viii. a summary account of the **hearing process and our subsequent deliberations** (**Section 2.8**); and
- ix. a record of our consideration and **determination** with respect to **procedural matters** arising during the course of the submission process (**Section 2.9**).

b. Evaluation of key issues:

The second part of our report (comprising **Sections 3** and **4**) contains an assessment of the main issues raised in submissions to PC56. Following an overview (**Section 3.1**), and as a starting point to that assessment, we set out our understanding of the Council's broad approach to addressing its obligations (**Section 3.2**), our recommendations with respect to issues over submission validity and scope that arose ahead of and during the hearing (**Section 3.3**), and our consideration of the relevant statutory framework (**Section 3.4**).

For convenience and readability, the subsequent assessments are divided into four broad topic areas, relating to matters raised in 'whole plan' or general submissions (**Section 3.5**), matters relating to the incorporation of MDRS and implementation of the NPS-UD (**Section 3.6**), qualifying matters (**Section 3.7**) and rezoning requests (**Section 3.8**). We conclude with a broad summary of our recommendations (in **Section 4**). All these parts of the report are evaluative, and collectively record the substantive results of our deliberations.

1.2.6 Our recommendation report also features four appendices. **Appendix 1** comprises our recommendations on the relief sought by each submitter. **Appendix 2** comprises an annotated version of the PC56 provisions, incorporating recommendations for amendments by Council officers that we recommend the adoption of, as well as our recommendations for amendment where they differ from those of Council officers. **Appendix 3** comprises a clean version of the PC56 provisions incorporating, but not specifically identifying, the amendments that officers recommended and that were adopted by us, as well as our own recommendations for amendment (where they differ).

**Appendix 4** identifies all changes to PC56 mapping from that notified, that arose as a result of Council Reporting Officers' recommendations or our own.

- 1.2.7 Section 32 of the RMA requires:
- a. the provisions to be examined as to whether they are the most appropriate way to achieve the objectives; and
  - b. as part of that examination, that:
    - i. reasonable alternatives within the scope afforded by submissions on the provisions and corresponding evidence are considered;
    - ii. the efficiency and effectiveness of the provisions is assessed;
    - iii. the reasons for our recommendations are summarised; and
    - iv. our report contains a level of detail commensurate with the scale and significance of the changes recommended.
- 1.2.8 With respect to our role as a Panel, s32AA additionally requires that our evaluation to be focused on changes to the proposed provisions arising since the notification of PC56 and its attendant s32 report.
- 1.2.9 The Council Officers Evaluation Report prepared by Council staff provides a comprehensive summary of the issues raised in submissions made on PC56 and further submissions. The Council Officers Evaluation Report summarises the submission points and assesses them under a series of headings that corresponds to the key issues raised on relevant chapters (or mapping content) of the Operative District Plan as amended by PC56. To assist readers, we have structured our recommendation report using a similar format.<sup>4</sup>
- 1.2.10 To avoid unnecessary repetition or duplication, we have adopted the approach of focusing our written analysis on those aspects of the Council Officers Evaluation Report where:
- a. we disagreed with the reasoning and/or recommendations in the Council Officers Evaluation Report;
  - b. material provided to us by submitters, either in the form of evidence or representations, called into question the reasoning/recommendations in the Council Officers Evaluation Report; and/or
  - c. the Council Reporting Officers, having considered the evidence or representations of submitters, and following questioning from the Panel, altered their initial recommendations to us, as set out in the Council Officers Reply Statement.
- 1.2.11 If we do not refer to an individual submission or group of submissions on a particular matter addressed during the relevant hearing, or discuss the reasons for our recommendations in relation to it, that is because, having reviewed the submissions alongside the written and oral evidence and representations from submitters, and the commentary, recommendations and reasoning in the relevant Council Officers Evaluation Report and associated Council Officers Reply Statement, we have accepted (and accordingly adopted) the Council Officers Evaluation Report authors' final recommendations to us. This means that our recommendation report must be read in conjunction with the Council Officers Evaluation Report and the Council Officers Reply Statement. The Council Officers Evaluation Report and Council Officers Reply Statement are part of the public record and are available on the HCC website.

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<sup>4</sup> The Council Officers Evaluation Reporting approach is further described in **Section 2.6** of our report.

- 1.2.12 Our recommendation report, accordingly, takes the form of an ‘exceptions’ report to what has been recommended to us in the Council Officers Reply Statement.
- 1.2.13 It follows also that where we accept the recommendation in the Council Officers Evaluation Report or Council Officers Reply Statement that provisions of the plan change should be amended, we accept and adopt the evaluation contained in the Council Officers Evaluation Report for the purposes of s32AA of the RMA, unless otherwise stated.
- 1.2.14 Where we do not accept the recommendations of the Council Officers Evaluation Report and consider that a PC56 provision should be changed, our recommendations have been specifically considered in terms of the obligation arising under s32AA of the RMA to undertake a further evaluation of the amended provision. Our evaluation for this purpose is not contained in a separate evaluation document or tabulated evaluation within our reports. Rather the evaluation required by s32AA is contained within the discussion and reasoning leading to our conclusions in this recommendation report.

### **1.3 Comments on the parties’ assistance to us**

- 1.3.1 In advance of setting out the plan change context, we would like to record our appreciation at the manner in which the hearing was conducted by all the parties taking part.
- 1.3.2 All those in attendance enabled a focused hearing process that greatly assisted us in assessing and determining the issues, and in delivering our recommendation as to a decision.
- 1.3.3 These initial thoughts recorded, we now set out the factual background to the plan change.



## 2. PLAN CHANGE CONTEXT

### 2.1 Purpose of the plan change

2.1.1 The purpose of Plan Change 56 is to:

- a. incorporate the Council's obligations to incorporate the Medium Density Residential Standards in the City of Lower Hutt District Plan;
- b. give effect to Policy 3 of the National Policy Statement on Urban Development 2020;
- c. provide for a range of existing and new qualifying matters in relation to (a) and (b) above; and
- d. amend the District Plan's financial contribution provisions.

2.1.2 The impetus for the plan change are the obligations on the Council created by the relatively recently enacted Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the Housing Supply Act), together with the National Policy Statement on Urban Development 2020 (NPS-UD). The statutory context and impetus for the plan change are further summarised in the next sub-section. Our evaluative understanding of the Council's broad approach in this regard is set out in **Section 3.2**.

### 2.2 Statutory context and impetus for the plan change

2.2.1 Parliament passed the Housing Supply Act in December 2021, with the intention of accelerating the supply of housing in urban areas where demand for housing is high, including the Wellington urban area. It does so by amending both the RMA and NPS-UD to require Tier 1 territorial authorities (including Hutt City Council) to:

- a. prepare an IPI comprising a specific District Plan change to enable greater building heights and density, primarily in residential and commercial areas; and
- b. process the IPI through an ISPP, that is more streamlined and condensed than the standard plan change process.

2.2.2 Plan Change 56 is the Council's IPI. In the first instance, PC56 provides the vehicle for the Council to incorporate the Medium Density Residential Standards (MDRS) – which are a set of development standards specified in Schedule 3A of the RMA – into the District Plan for every relevant residential zone. 'Relevant residential zones' are defined in s2 of the RMA.

2.2.3 The MDRS include density standards on building height, height in relation to boundaries, setbacks, building coverage, outdoor living space, outlook space, windows to street, and landscaped area. It also includes a 'number of residential units per site' standard.

2.2.4 The Council can modify the MDRS requirements to be more enabling of development by either omitting a standard or including more lenient rules that regulate the same effect as a standard. The Council may also make the MDRS less enabling of development in relation to an area within a relevant residential zone to address a 'qualifying matter' listed in the RMA, but only to the extent necessary to accommodate the qualifying matter, as

- provided for under NPS-UD Policy 4. Qualifying matters and the evaluation pathways associated with them are described further below.
- 2.2.5 Secondly, PC56 provides the means for the Council to give effect to NPS-UD Policy 3. Policy 3 sets building height and densities that must be enabled by RPS' and District Plans for Tier 1 urban environments. Lower Hutt is located in the Wellington Tier 1 urban environment.
- 2.2.6 Under Policy 3(a), (b), (c) and (d), respectively, District Plans must enable the following:
- a. realise as much development capacity as possible, in city centre zones, through settings for building heights and density, to maximise benefits of intensification;
  - b. reflect demand for housing and business use in metropolitan centre zones through settings for building heights and density, including building heights of at least six storeys;
  - c. building heights of at least six storeys within walkable catchments of existing and planned rapid transit stops and the edge of city centre and metropolitan centre zones; and
  - d. building heights and density commensurate with the level of commercial activities and community services within and adjacent to neighbourhood centre zones, local centre zones and town centre zones.
- 2.2.7 The zones referred to are from the National Planning Standards 2019. The City of Lower Hutt District Plan predates those standards and so they are taken to mean the nearest equivalent zone or, in the case of the District Plan, activity area. It is up to territorial authorities to determine how 'walkable catchments' are defined, albeit that the Government has developed some guidance in this respect.
- 2.2.8 Once again, the Council can make the District Plan less enabling of development than that set out in Policy 3 to address relevant qualifying matters.
- 2.2.9 Thirdly, and in accordance with the scope of an IPI, PC56 seeks to amend District Plan provisions relating to:
- a. financial contributions; and
  - b. related provisions that support or are consequential on the MDRS or Policy 3 of the NPS-UD.
- 2.2.10 Prior to the Housing Supply Act coming into force, financial contributions could only be required for activities that require resource consent. However, the Housing Supply Act amended the RMA to enable territorial authorities to require financial contributions for permitted activities, so as to further support intensification efforts.
- 2.2.11 'Related' provisions may include district-wide matters, earthworks, infrastructure, stormwater management, and the like.
- 2.2.12 Qualifying matters have the effect of damping down the degree of intensification that IPIs otherwise provide for. Some are specifically listed in the RMA and include, but are not limited to:
- a. matters of national importance that decision-makers are required to recognise and provide for under s6 of the RMA, such as the relationship of Māori and their

culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (s6(e)), protection of historic heritage from inappropriate subdivision, use, and development (s6(f)) and the management of significant risks from natural hazards (s6(h)).

- b. matters required to give effect to any other NPS including the NZCPS;
- c. matters required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure; and
- d. open space provided for public use, but only in relation to the land that is open space.

2.2.13 When it comes to specifying qualifying matters, there are essentially three pathways open to the Council:

- a. An **'alternative'** approach for existing, qualifying matters explicitly listed in s77I(a) to (i) or s77O(a) to (i) of the RMA and already contained in the operative District Plan when the IPI was notified. As the matters were already contested and settled as part of the development of the District Plan a more truncated evaluation process to justify inclusion as a qualifying matter is required, as specified in s77K and s77Q, respectively.<sup>5</sup>
- b. A **'standard'** approach for new qualifying matters explicitly listed in s77I(a) to (i) or s77O(a) to (i) of the RMA, not already contained in the operative District Plan and proposed to be introduced at the time of the notification of the IPI. As the matters concerned are new and 'untested' in the public realm a more comprehensive evaluation process inclusive of a cost benefit analysis, is required, as specified in s77J and s77P.
- c. A **'standard-plus'** approach for 'other' qualifying matters as provided for in s77I(j) and s77O(j) of the RMA and not specifically listed in the legislation. As the matters concerned are not specifically provided for in the legislation the comprehensive evaluation process described in b. above applies, together with additional requirements (inclusive of a site-specific analysis) specified in s77L and s77R. These requirements apply whether or not the matter concerned is existing or new, in terms of the 'parent' District Plan.

2.2.14 The above pathways and attendant evaluation requirements are also set out in clauses 3.32 and 3.33 of the NPS-UD. We briefly and factually summarise the plan change's specification of qualifying matters in **Section 2.4** below, where our understanding of the way the Council has selected the appropriate evaluation pathways is provided in **Section 3.7** of this report, ahead of our consideration of the relevant submissions.

## 2.3 Development of the plan change

2.3.1 Prior to 2019, the Council had taken a rolling approach to reviewing its 2004 District Plan, promulgating changes on an as and when required basis. As part of this approach, Plan Change 43 was notified in 2017 and made fully operative in 2021. The purpose of Plan Change 43 was to provide for greater housing capacity and a wider range of options for housing styles and sizes at medium densities within the existing urban area of the district.

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<sup>5</sup> Noting that s77I (and s77K) caters for qualifying matters in applying MDRS and NPS-UP Policy 3 in relevant residential zones, whereas s77O (and s77Q) caters for qualifying matters in applying intensification policies to urban non-residential zones.

2.3.2 The Council had embarked on a full review of the operative District Plan in May 2019, but had to change tack following the amendments to the RMA arising from the Housing Supply Act in early 2022. To address its obligations, the Council resolved to proceed with the IPI, in advance of the full District Plan review. That process to date can be summarised as follows:

- a. February to March 2022: Preparation of first draft of the IPI;
- b. April 2022: Engagement with the community and other stakeholders;
- c. March 2022 to June 2022: Engagement with Mana Whenua;
- d. April to June 2022: Preparation of a final draft IPI inclusive of a finalised s32 evaluation report; and
- e. 18 August 2022: Notification of PC56.

2.3.3 Subsequent steps following notification of PC56 are summarised in **Section 3.2** of this report, as it is our understanding of the Council's broad approach to addressing development capacity that informs our further consideration of the plan change.

## 2.4 Components and mechanics of the plan change

2.4.1 The components and mechanics of PC56 can be summarised as follows:

- a. adding a new 'urban environment' expression of strategic direction in Chapter 1.10 to set down the District Plan's overall approach to the implementation of NPS-UD Policies 3 and 4 and the MDRS;
- b. applying the MDRS by rezoning residential parts of the City<sup>6</sup> to either Medium Density Residential Activity Areas (MDRAA) or High Density Residential Activity Areas (HDRAA); and embedding MDRS provisions without modification for these zones, with the exception of proposing a more enabling building height standard for the HDRAA;<sup>7</sup>
- c. retaining the existing MDRAA chapter with updates to incorporate the MDRS (inclusive of an 11m/three-storey height limit) and ensure objectives and policies reflect the level of development enabled in the zone;
- d. adding a new chapter relating to the HDRAA which incorporates the MDRS and give effect to the requirements of the NPS-UD in the manner described below, while ensuring the objectives and policies reflect the level of development enabled in the zone;
- e. deleting the General Residential, Special Residential and Historic Residential Activity Areas in favour of the new or modified zones referred to above (albeit that the latter would be redefined as 'heritage precincts' as indicated below);
- f. giving effect to NPS-UD Policy 3(a) by removing building height limits in the Central Commercial Activity Area<sup>8</sup>;

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<sup>6</sup> The Council has defined 'relevant residential zones' as required by s80E(10)(a)(i) RMA as including the operative General Residential, Special Residential, Historic Residential and Medium Density Residential Areas but excluding the Hill Residential and Landscape Protection Residential Activity Areas.

<sup>7</sup> To also give effect to Policy 3(c)

<sup>8</sup> The Council has defined the Central Commercial Activity Area as 'equivalent' to the 'city centre zone' reference in Policy 3(a)

- g. giving effect to Policy 3(b) by raising the height limit to 22m/six-storeys outside heritage areas in 'Area 1' and removing building height limits in almost all of 'Area 2' within the Petone Commercial Activity Area<sup>9</sup>;
- h. giving effect to Policy 3(c) by:
  - i. defining 'walkable catchments' as areas with a 1200m/15 minute walk of the Central Commercial Activity Area and a 800m/10 minute walk of the Petone Commercial Activity Area and railway stations;
  - ii. within those walkable catchments, rezoning residential areas to HDRAA and applying a 22m/six-storey height limit (including to areas in business, commercial, and special purpose zones);
- i. giving effect to NPS-UD Policy 3(d) by:
  - i. rezoning centres formerly zoned as Suburban Commercial and Special Commercial Activity Areas to Suburban Mixed Use and applying a 12m/three-storey height limit commensurate with the building height limits in surrounding residential zones, albeit that a 22m/six-storey limit would apply in centres located within the walkable catchments referred to above;
  - ii. at Moera and Avalon, applying a 22m/six-storey height limit in the commercial centres and surrounding residential zones;
  - iii. at Wainuiomata, Stokes Valley and Eastbourne, applying a 22m/six-storey height limit in the commercial centres and a 14m/four-storey height limit in the surrounding residential zones.<sup>10</sup>
- j. applying Policy 4 by:
  - i. identifying the operative District Plan provisions relating to the Significant Cultural Resources Overlay, sites adjacent to marae and urupā, heritage buildings, structures and areas, the National Grid, recreation activity areas and natural hazard risks associated with fault rupture, as qualifying matters that justify limiting building height, density or development capacity and retaining existing operative District Plan provisions in this regard, albeit these have been reformatted and/or restructured to some extent;
  - ii. identifying new heritage precincts as qualifying matters, with attendant restrictions around building height and density and locating these provisions in zone-specific chapters;
  - iii. identifying new areas subject to significant risks from flooding, tsunami and coastal hazards as qualifying matters, again with attendant restrictions around building height and density and locating these provisions in a new Chapter 14H;
- k. and finally:
  - i. introducing minimum landscaping, outlook and façade glazing rules;

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<sup>9</sup> The Council has defined the Petone Commercial Activity Area as 'equivalent' to the 'metropolitan centre zone' reference in Policy 3(b)

<sup>10</sup> The Council has defined the Suburban Mixed Use, Suburban Commercial, and Special Commercial Activity Areas as 'equivalent' to the 'neighbourhood centre, local centre and town centre zone' references in Policy 3(d)

- ii. amending the provisions requiring developers to pay contributions for infrastructure and reserves so that they are based on the number of dwellings created rather than new lots;
  - iii. relocating district-wide provisions relating to wind effects in areas with increased development capacity to a new Chapter 14M; and
  - iv. updating design guides and design policies to address significant inconsistencies in wording.
- 2.4.2 Our understanding of the Council's broad approach to addressing its obligations with respect to the NPS-UD and Housing Supply Act and, more specifically, in identifying qualifying matters and selecting the appropriate evaluation pathway, are set out ahead of our consideration of the relevant submissions in **Sections 3.2 and 3.7** of our report, respectively, as they closely inform our consideration of those two matters.

## 2.5 Notification process and submissions received

- 2.5.1 The processing of PC56 has followed the procedure required under the ISPP. It is a more streamlined, condensed version of the standard plan change process in that an Independent Hearings Panel must be appointed to hear submissions and make recommendations on the IPI to the Council and any Panel recommendations not adopted by Council are referred to the Minister for the Environment. The Minister can decide to accept the Panel's recommendation or make alternative decisions. There is no right of appeal to the Environment Court on the decisions from the Council or the Minister. The Minister has further specified that decisions on the IHP's recommendations must be notified by 20 August 2023.<sup>11</sup>
- 2.5.2 The plan change was publicly notified on 18 August 2022. The closing date for submissions was 20 September 2022.
- 2.5.3 Given the broad implications and effect of the plan change it drew a considerable amount of interest. A total of 275 submissions were lodged with the Council. The submissions were assessed by the Council as containing a total of 1,686 submission points or decisions requested.
- 2.5.4 A summary of submissions was prepared and subsequently notified for further submissions on 10 November 2022 with the closing date for receiving further submissions being 24 November 2023. Twenty five further submissions were received, containing a further 376 submission points or decisions requested.
- 2.5.5 Without taking away from the finer detail provided in the submissions, the matters raised generally fall into one of more of the following categories:
- a. **General plan change-wide submissions:**
    - i. matters affecting the whole District Plan, and other general or miscellaneous points;
    - ii. providing for papakāinga housing;
    - iii. general plan structure, formatting, corrections and definitions;

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<sup>11</sup> HCC requested an extension to this timeframe from the Minister for the Environment to 23 September 2023. The Minister has approved this extension.

**b. Incorporation of the MDRS and NPS-UD:**

- i. strategic direction;
- ii. Residential Activity Areas and associated chapters (aside from the following);
- iii. Residential Activity Area provisions relating to retirement villages;
- iv. Commercial and other non-residential Activity Areas and associated chapters;
- v. subdivision;
- vi. financial contributions;
- vii. district-wide matters (except where covered under other sub-topics);
- viii. wind;

**c. Qualifying matters:**

- i. heritage buildings, structures, areas and precincts;
- ii. natural hazards;
- iii. sites of significance to Māori;
- iv. the National Grid;
- v. Public open space;
- vi. Other matters that could be qualifying matters;

**d. Rezoning requests.**

2.5.6 We discuss these four broad sets of issues (and the submissions underpinning them) in greater detail under our key issue evaluation in **Sections 3.5, 3.6, 3.7 and 3.8** of this report, respectively.

2.5.7 We provide a full summary of the submissions received in **Appendix 1**, including our recommendations on the relief sought by each submitter.

2.5.8 Aside from the broad topics summarised above, it was the Council's view that a number of submissions received related to matters outside the scope of this plan change. This is a matter we deal with directly in **Section 3.3** of our report.

**2.6 Council officers' reporting approach**

2.6.1 The Council Officers Evaluation Report relating to PC56 was made available to submitters on 7 March 2023. The primary purpose of the Council Officers Evaluation Report is to assist us as a Panel in making recommendations on the plan change but it is also intended to assist submitters attending the hearing. The Council Officers Evaluation Report draws on the plan change itself, the s32 report relating to the plan change, all submissions and further submissions and expert technical advice, and contains the officers' own recommendations with respect to accepting or rejecting submissions, in whole or in part, together with recommendations for changes to the provisions of PC56, as notified.

2.6.2 The Council Officers Evaluation Report was jointly prepared by Council policy planner Stephen Davis and planning consultants Hamish Wesney, Erica Wheatley and Bronte Linkhorn from Boffa Miskell. The Reporting Officers took responsibility for certain sub-

sections in the report. In the body of our report we identify the relevant author, where appropriate.

- 2.6.3 In preparing the Council Officers Evaluation Report, the authors relied on the following expert advice:
- a. on matters of historic heritage from Chessa Stevens, principal conservation architect and heritage consultant with WSP;
  - b. on matters relating to flood hazards from Alistair Osborne, senior hydraulic modeller with Wellington Water;
  - c. on matters relating to coastal hazards from Scott Stephens, senior scientist with NIWA;
  - d. on matters relating to earthquake fault rupture from Nicola Litchfield, senior tectonic geomorphologist and earthquake geologist with GNS; and
  - e. on matters relating to tsunami risks from David Burbidge, tsunami team leader at GNS.
- 2.6.4 The Reporting Officers also relied on legal advice provided by Council's counsel, Stephen Quinn and Kierra Parker, at DLA Piper.
- 2.6.5 Collectively, the Council Reporting Officers recommended a number of amendments to the notified version of PC56 to address matters raised in submissions. These are summarised in the Council Officers Evaluation Report as follows:
- a. updating some definitions for clarity and consistency;
  - b. updating the strategic direction to clarify the application of the MDRS and NPS-UD and qualifying matters;
  - c. improving consistency in implementing NPS-UD Policy 3(d) which requires the District Plan to provide comparable building heights in comparable areas by adjusting the height limits in Eastbourne, Stokes Valley, and Wainuiomata to match those in Avalon and Moera;
  - d. recognising Naenae and Waterloo commercial centres as particularly suitable for taller developments;
  - e. amending to the MDRAA and HDRAA chapters and the Commercial Activity Area chapters to better reflect and enable flexibility, versatility, and planned urban building character for the areas, enable more ways of achieving desired design, servicing, and amenity outcomes, and improve consent process efficiency by precluding limited notification for development standards that are unlikely to result in effects beyond the subject site;
  - f. providing an additional protection for heritage items and SASM to the degree possible within the scope of the plan change and ISPP process; and
  - g. amending the objectives and policies for natural hazards for consistent use of language and consistency in similar situations.
- 2.6.6 As noted below in **Section 2.8** we heard from the Council's Reporting Officers, technical experts and legal counsel during the course of the hearing.



## 2.7 Pre-hearing directions and procedures

2.7.1 Prior to the commencement of the hearing, we issued three minutes to the parties to address various administrative and substantive matters. These minutes, and the others we issued through the course of the hearing and deliberations processes are available on Council website relating to the plan change.

2.7.2 In summary, these minutes addressed the following:

- a. **Minute 1** (8 February 2023) – this confirmed the dates for the hearing, the membership of the Panel, contact details for the hearing administrator, set out dates for the circulation of evidence and Council Officers Reply Statements before and subsequent to the hearing, and outlined details of a submitter briefing session held on 14 February 2023.
- b. **Minute 2** (9 March 2023) – this confirmed the procedures for the hearing, following the 14 February 2023 submitter briefing session, outlined a revised timetable for the hearing and provided a basis for circulating a Register of Panel Interests.
- c. **Minute 3** (6 April 2023) – this responded to an invitation to the Panel and Council staff from submitters to tour a retirement village.

2.7.3 In the lead up to the hearing, the following reports and evidence were received and made available to all parties in accordance with the proposed timetable:

- a. The s42A officer's report 7 March 2023, and incorporating the officers' recommended amendments to PC56, recommended decisions on submissions and the technical evidence and legal submissions prepared by the persons listed in paragraphs 2.6.3 and 2.6.4;
- b. further legal advice from Mr Quinn on limiting the MDRS building and density standards dated 11 April;
- c. primary evidence on behalf of the following submitters, all dated 29 March 2023:
  - i. Ara Poutama Aotearoa: Maurice Dale (Planning);
  - ii. Greater Wellington Regional Council: Richard Sheild (Policy), Barry Loe (Drinking Water Supply), Iain Dawe (Natural Hazards), Pamela Guest (Climate Change), Stuart Farrant (Nature Based Solutions);
  - iii. Heritage NZ Pouhere Taonga: Reuben Daubé (Heritage) and Dean Raymond (Planning);
  - iv. Kāinga Ora: Dave Pearson (Heritage), Nicholas Rae (Urban Design), Gurv Singh (Corporate), Karen Williams (Planning);
  - v. KiwiRail: Mike Brown (Corporate), Stephen Chiles (Noise and Vibration), Cath Heppelthwaite (Planning);
  - vi. Petone Historical Society: Sylvia Allan (Planning);
  - vii. Retirement Villages Association (RVA) and Ryman Healthcare Ltd: Gregory Akehurst (Financial Contributions), Ngaire Kerse (The Elderly), Phil Mitchell (Planning);
  - viii. RLW Holdings Ltd: David Batchelor (Heritage and Urban Design);

- ix. Stride Investment Management Ltd *et al*: Joe Jefferies (Planning); and
- x. Voluntary Heritage Group: Neil Kemp (Heritage).

2.7.4 In addition, during the course of the hearing we received and made available to all parties the following:

- a. Legal submissions from:
  - i. Rachel Murdoch for Ara Poumana Aotearoa, dated 6 April;
  - ii. Michelle Mehlhopt for Greater Wellington Regional Council, dated 11 April;
  - iii. Bianca Tree and Amy Dresser for Stride Investment Management Ltd *et al*, dated 12 April;
  - iv. Luke Hinchey and Hadleigh Pedler for RVA and Ryman Healthcare Ltd, dated 18 April;
  - v. Brigitte Morten for the Voluntary Heritage Group, dated 19 April;
  - vi. Nick Whittington for Kāinga Ora, dated 21 April; and
  - vii. Kirsten Gunnell for KiwiRail, dated 21 April.
- b. Presentations, written statements, speaking notes, letters and additional information from the following submitters and person representing submitters:
  - i. Alan Smith;
  - ii. Andrew Edgar;
  - iii. Anne Smith;
  - iv. Ashley Roper
  - v. Leo Archer;
  - vi. Chris MacKay;
  - vii. Cuttriss Consultants Ltd;
  - viii. David Smith;
  - ix. Fiona Christeller;
  - x. Ian MacLauchlan;
  - xi. John Donnelly;
  - xii. Laura Skilton;
  - xiii. Living Streets Aotearoa;
  - xiv. Merran Bakker;
  - xv. Mary and Michael Taylor;
  - xvi. Ministry of Education;
  - xvii. Nick Ursin;
  - xviii. Peter Kirker;
  - xix. Peter Ricketts;
  - xx. Rebecca Leask and Mike Stewart;
  - xxi. RVA and Ryman Healthcare Ltd;

- xxii. Sandra Walker;
  - xxiii. Shayne Hodge;
  - xxiv. Steve Winyard;
  - xxv. Steven Beech;
  - xxvi. Sylvia and Bill Allan;
  - xxvii. Te Rūnunga o Toa Rangatira;
  - xxviii. Brian Boyer;
  - xxix. Tom Macleod;
  - xxx. Tony Smith;
  - xxxi. Transitional Town Lower Hutt;
  - xxxii. Transpower NZ Ltd;
  - xxxiii. The Voluntary Heritage Group;
  - xxxiv. Wayne Donnelly;
  - xxxv. Susan Ewart for the York Bay Residents' Association; and
- c. Two opening presentations prepared by Council officers for 12 and 18 April.

2.7.5 On the last day of the hearing (28 April) we were also presented with speaking notes relating to Council officers' verbal reply statements.

## 2.8 The Hearing

- 2.8.1 The hearing commenced at 9:00am on Wednesday, 12 April 2023 in the Long Room on Level 2 of the Hutt Recreation grandstand off Myrtle Street, Lower Hutt. We were ably served in the lead-up to and course of the hearing by the Council's hearing administrator, Nathan Geard who was assisted by Heather Clegg.
- 2.8.2 We opened the hearing with a karakia led by Emily Campbell,<sup>12</sup> and following, we outlined the manner in which we expected the hearing to be conducted, and called for appearances and introductions from the attendees. We also set out a range of procedural matters and outlined our role and the relevant statutory matters framing our consideration of the proposal.
- 2.8.3 No procedural matters were raised during the course of the hearing that we were obliged to make a finding on. Having said that, a procedural matter relating to the scope and validity of certain submissions had arisen by the start of the hearing and we record our consideration and determination in this respect in **Section 3.3** of this report.
- 2.8.4 We heard from people in the following general order:

### 12 April 2023

- Introduction from Council officers
- Various submitters

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<sup>12</sup> Council's Pou Whakamahere Kaupapa Here

13, 14, 18, 19, 20, 21, 26 April 2023

- Various submitters

18 April 2023

- Updated presentation from Council officers

28 April 2023

- Final submitter presentations
- Council officers and technical witnesses, verbal reply statements

2.8.5 A full schedule of appearances that were recorded is available in the hearing schedules on the Council's web page for PC56.

2.8.6 All other submitters had formally withdrawn their right to be heard. However, the issues raised in submissions remain 'live' for our consideration and we have done so, as we are required to do. A number of observers and interested parties were also present at the hearing.

2.8.7 We adjourned the hearing on Friday, 28 April 2023 with a closing karakia led by Mr Geard, noting verbally at the time that we would be advising the parties subsequently of a date to reconvene or close the proceedings.

2.8.8 We adjourned the hearing for the following reasons:

- a. to enable us to undertake site visits;
- b. to allow time for Council officers to prepare their Council Officers Reply Statement.

2.8.9 Following the hearing, we undertook a series of general site visits on 3 May 2023 to some Lower Hutt suburbs impacted by the proposed plan change as well as visits to specific sites and locations, often in response to requests from submitters, both during and prior to the hearing. We viewed these areas by car and stopped at many of the locations for a walk and viewing on public footpaths. We issued a summary of the site visits we undertook as **Minute 4**, dated 15 May 2023.

2.8.10 We received the Council Officers Reply Statement on 9 June 2023. The Council Officers Reply Statement contained a summary of officer responses to questions raised by the Panel during the course of the hearing (Section 4 of the Council Officers Reply Statement). The reply then addressed the matters raised in evidence and officer recommendations in relation to the same topics referred to in paragraph 2.5.5 of our report, namely general plan change-wide matters, incorporation of the MDRS and NPS-UD, and qualifying matters (Section 5, 6 and 7 of the Council Officers Reply Statement, respectively). Additionally, the reply included a response to other matters raised during the hearing (Section 8).

2.8.11 The Council Officers Reply Statement was accompanied by a number of appendices, as follows:

- a. an updated set of officers' recommended amendments to PC56 (Appendix 1);
- b. further legal advice from DLA Piper in relation to matters raised by the Panel includes relating to the scope and validity of certain submissions (Appendix 2);
- c. further evidence on heritage, flood hazard and coastal inundation from Ms Stevens and Mssrs Osborne and Stephens, respectively (Appendices 3, 4 and 5); and
- d. other data and other information (Appendices 6 to 11).

2.8.12 To the extent that they are relevant to the matter concerned, the Council Officers Reply Statement and associated appendices are referred to in the relevant topic-based sections in our report. We do note the section numbering used in the Council Officers Reply Statement is somewhat wayward and so we have tended to refer to relevant paragraph(s) rather than section numbers to avoid further confusion. The above documents are all available on the Council website.

2.8.13 Accordingly, on 2 August 2023, following our review of all the information provided by the parties, we confirmed to our satisfaction that there was no further information required to deliver our recommendation as to a decision on the proposed plan change.

2.8.14 On our behalf, Mr Geard then thanked all parties in attendance and advised that as the Panel had completed our deliberations that the hearing was now closed.

## 2.9 Decisions with respect to procedural matters

2.9.1 Before moving on to substantive matters in Sections 3 and 4 of our report, we record our acceptance of the Council Officers Evaluation Report recommendation<sup>13</sup> that a number of late submissions and further submissions be accepted.

2.9.2 Our determination as to whether certain submissions and further submissions were valid and 'in scope' involves an evaluation and is therefore addressed in **Section 3.3** of our report.

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<sup>13</sup> Council Officers Evaluation Report, paras 48-53

### 3. EVALUATION OF ISSUES

#### 3.1 Overview

- 3.1.1 For the purposes of this evaluation, we have grouped our discussion of the submissions and the reasons for accepting, rejecting, or accepting them in part by the *matters*<sup>14</sup> to which they relate – rather than assessing each issue on a submitter-by-submitter basis.
- 3.1.2 This approach is not to downplay the importance of the input from submitters; to the contrary, their input has been invaluable in shaping the grouping of issues and for our consideration of those matters. However, we note that there was some commonality among the submissions on key issues and we consider it will be to everyone’s benefit for our recommendation as to a decision to be as tightly focused on the key issues as possible.
- 3.1.3 For those parties who are only interested in a particular matter as it pertains to their submission(s), reference can be made to the submitter-by-submitter summary of decisions requested in **Appendix 1**, which includes our recommendation on each relief point sought. Those specific recommendations have been derived from our issues assessment below.
- 3.1.4 In terms of the matters to which submissions relate, we have divided these into four broad topic areas, as follows:
- **‘Whole plan’ or general submissions (Section 3.5).** These can be divided further into sub-issues that we deal with in turn:
    - Whole of plan change submissions
    - Provision for papakāinga housing
    - Plan Change 1 to the RPS
    - General plan structure and format matters
    - General corrections and clarifications
    - Definitions
  - **Matters relating to the incorporation of the MDRS and implementation of the NPS-UD (Section 3.6).** These can be divided further into sub-issues that we deal with in turn:
    - Strategic direction
    - Residential Activity Areas and associated chapters
    - Residential Activity Area provisions relating to retirement villages
    - Commercial and other non-residential Activity Areas and associated chapters
    - Subdivision
    - Financial contributions
    - District-wide matters
    - Wind

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<sup>14</sup> Clause 10(2)(a) of Schedule 1, RMA sets out that a plan change decision may address submissions by grouping them according to either the provisions of the plan change to which they relate, *or* to the matters to which they relate.

- **Qualifying matters (Section 3.7).** These can be divided further into sub-issues that we deal with in turn:
  - Heritage buildings, structures, areas and precincts
  - Natural hazards
  - Sites of significance to Māori
  - The National Grid
  - Public open space
  - Other matters that could be qualifying matters
- Rezoning requests (**Section 3.8**).

3.1.5 Under each sub-topic, we have organised our discussion of issues to distinguish between those matters that are contested and determinative to our consideration, and those which are relevant to our consideration, but not determinative.

3.1.6 Before turning to each of the issues listed above, we consider it important to:

- a. set out our understanding of the purpose of the plan change and, on that basis, our assessment of Council's broad approach to addressing its obligations under the NPS-UD and Housing Supply Act including matters relating to development capacity and the timing and staging of the plan change (**Section 3.2**);
- b. set out our recommendations with respect to issues over the scope and validity of certain submissions that were raised prior to and were further discussed at the hearing (**Section 3.3**); and
- c. summarise the relevant statutory matters that frame our evaluation (**Section 3.4**).

3.1.7 Collectively the above provides the legal and narrative context for the Panel recommendations that follow.

## 3.2 Council's broad approach

3.2.1 Here, as signalled above, we set out our understanding and assessment of the purpose of the plan change and, on that basis, Council's broad approach to addressing its obligations under the NPS-UD and Housing Supply Act. This, in part, is intended to acknowledge that submitters, and we, as a Panel, did question the degree to which the plan change would provide for development capacity and therefore assist in implementing the Council's duty under NPS-UD Policy 2 to "*provide at least sufficient development capacity to meet expected demand for housing and business land over the short term, medium term, and long term*". Specifically, we asked officers to investigate whether PC43 had already undertaken the 'heavy lifting' in terms of intensification and raising development capacity, in advance of PC56.<sup>15</sup>

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<sup>15</sup> Framed as questions posed by the Panel on 13 April 2023

- 3.2.2 We note that the development of the plan change was supported by a series of key technical inputs, as follows:
- a. Wellington Regional Housing and Business Development Capacity Assessments (HBA);
  - b. Lower Hutt Residential Character Assessment;
  - c. Hutt City Council Heritage Inventory Report and Additional Review of the Petone State Housing and Moera Railway Heritage Areas;
  - d. Lower Hutt Walkable Catchment Study;
  - e. Hutt City Probabilistic Tsunami Hazard Maps;
  - f. Flood modelling;
  - g. Stormwater Catchment Model Build Reports for Stokes Valley, Petone, Wainuiomata and Eastern Lower Hutt;
  - h. Wellington Fault Investigation;
  - i. Coastal Inundation mapping for Hutt City;
  - j. Review of Wind Controls in the Lower Hutt District Plan;
  - k. Review of Financial Contributions; and
  - l. Hutt City: Planning for the Future
- 3.2.3 The above technical reports and the s32 evaluation report, and the content of PC56 itself can be found here: <https://hutt.city/pc56>
- 3.2.4 One of the key documents listed above was the 2019 HBA report. That report determined that, with respect to land for business, Lower Hutt featured very low vacancy rates but that demand was projected to decline in the long run and there was significant opportunity for residential development in commercial areas. Having said that, the s32 evaluation report indicated Council had significant questions about the 2019 report's methodology and considered it likely that 2023 HBA report will have a different conclusion.
- 3.2.5 Significantly, and with respect to land for housing, the 2021/22 HBA report incorporated the enabling effect of Plan Change 43 but did not account for capacity generated by PC56. That updated HBA report identified a bottom-line requirement of 24,773 units in 30 years and assessed the capacity as comprising 903 greenfield units and 15,944 infill units collectively equivalent to 68% of projected requirements for that same period. Where the impact of PC43 is concerned, the Council noted that residential development in Hutt City, particularly relating to townhouse typologies, has accelerated faster (and in greater quantum) than any other territorial area in the Wellington Region since 2018.<sup>16</sup>
- 3.2.6 At this point, we acknowledge the Council's point<sup>17</sup> that implementing Policy 2 is not the Council's intended purpose of the plan change which, as summarised in **Section 2.1**, is specifically intended to implement the MDRS and give effect to NPS-UD Policies 3 and 4.

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<sup>16</sup> Council Officers Reply Statement, paras 457-461

<sup>17</sup> Council Officers Reply Statement, para 23



- 3.2.7 As such, it was abundantly clear to us that PC56 is not driven by the Council's assessment of development capacity needs. Beyond the outcomes of previous HBA as summarised above, neither the Council, officers, nor any submitters provided any evidence to quantitatively assess the impact of the proposed plan change on development capacity. Having said that, the Council considered that the plan change is highly likely to indirectly implement Policy 2 given the substantial liberalisation of intensification that it represents.<sup>18</sup> We also anticipate that that liberalisation will have a positive influence on housing affordability, among other factors such as supply and labour chains, and that, in any case, increased affordability is not a primary objective of the NPS-UD.<sup>19</sup> We also accept the Reporting Officers' view that the intensification enabled by PC56 presents no particular issues where infrastructure and parking capacity or the prospect of vacant or underutilised properties are concerned.<sup>20</sup>
- 3.2.8 The Council expects to consider the NPS-UD Policy 2/capacity matter more fully as part of the full District Plan review, as informed by the upcoming 2023 HBA report. In the interim, PC56 is solely intended by the Council to meet minimum legal requirements to prepare an IPI, implement the MDRS and give effect to NPS-UD Policies 3 and 4. In doing so, the Council has taken comfort from the suggestion in the Regulatory Impact Statement (RIS) for the Housing Supply Act that implementing the MDRS is likely to cure the residential shortfall referred to above if assumptions in the HBA and RIS are unchanged.
- 3.2.9 The Council acknowledges that the 2023 HBA is still in progress but that early indications suggest there may still be a long-term shortfall in realisable development capacity although this is likely to be from non-District Plan factors. If it is established that Policy 2 is not then met, then the Council accepts that this will need to be addressed through further District Plan changes or other means to give effect to Policy 2 of the NPS-UD.<sup>21</sup> We acknowledge and accept this position as *vires*, valid and pragmatic.
- 3.2.10 This understanding of projected demand and capacity underlines the Council's acknowledged and unapologetic 'minimalist' approach to PC56, given the forthcoming full District Plan review, limits on appeal rights, and what it considers to be severe integration problems caused by ISPP limits on the timeframe for processing the IPI. To a large extent these integration problems arise from the relative dotage of the District Plan and the fact that it is not structured or formatted in the manner prescribed in the National Planning Standards, which post-date it.
- 3.2.11 PC56 is complex. It involves 453 separate amendments to the District Plan. As alluded to above, in large part the number of changes is driven by the structure of the District Plan and the consequential need for multiple, relatively minor but consequential alterations. Through PC56, the Council also proposes to improve useability and readability and address legacy inconsistencies and awkwardly structured provisions through a reformatting exercise. At the same time, the Council has avoided making potentially worthwhile but strictly unnecessary changes that are better left to the full District Plan review.
- 3.2.12 Some submitters did query whether PC56 needed to be implemented immediately, as opposed to potentially 'staging' its effect or impact in response to observed demand for intensification. We agree with the Council's position in this respect i.e., that Council is

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<sup>18</sup> Council Officers Reply Statement, para 24

<sup>19</sup> Council Officers Reply Statement, paras 30-31

<sup>20</sup> Council Officers Reply Statement, paras 462-468, 478-482 and 469-477, respectively

<sup>21</sup> Council Officers Reply Statement, para 26

legally obliged to implement the MDRS and give full effect to NPS-UD Policies 3 and 4 without delay and that, to stagger PC56 in some way, would result in the inefficient use of land.<sup>22</sup> Stepping back and taking a longer range view, PC56 can be seen as one step or stage in Council's response to development needs, when it is considered in the context of PC43, the full District Plan review, and the HBA cycle.

- 3.2.13 The context with which PC56 has been developed is relevant from other perspectives as well. The Council and submitters have been obliged to put considerable effort into developing and responding to PC56. The integration of PC56 with the District Plan has been problematic and a source of some confusion for submitters, given that it has occurred, and is continuing to occur, within the context of the Council initiating its own City-wide responses to development and intensification needs. While this is not an ideal situation, we would just like to take the time to acknowledge that the process has been challenging for all concerned.
- 3.2.14 Overall, and at a general level, the Council's approach to PC56 does not raise any red flags for the Panel in broad terms. We are conscious that the Council's attempt to incorporate into PC56, as qualifying matters, information regarding heritage and natural hazards that was being developed for the purposes of the full District Plan review has not been without its issues, as highlighted by submitters. We are therefore obliged to spend some time addressing these issues in the body of our report (refer **Section 3.7**).
- 3.2.15 Further, we recognise that PC56 represents a bespoke approach to the implementation of the NPS-UD, particularly Policies 3 and 4, but that this is contemplated by the NPS-UD itself. There are specific aspects of PC56 raised in submissions and by the Panel itself beyond those relating to heritage and natural hazards which we also deal with later in **Section 3** but in the meantime, we can conclude that there is no fundamental flaw in this instrument used to give effect to the NPS-UD.

### 3.3 Scope and validity of relief

- 3.3.1 This matter was first raised in the Council Officers Evaluation Report and was the subject of legal advice to the Council provided by DLA Piper.<sup>23</sup> The Council officers initially drew our attention to what they believed to be a considerable number of out-of-scope or invalid submission points and further submissions. As it is determinative as to whether we can accept these points, we must give it appropriate attention. We acknowledge and amplify the officers' observation<sup>24</sup> that the potential for out-of-scope or invalid points is an understandable outcome, given the level of public interest in urban intensification, the topic's natural links with broader matters subject to the full District Plan review, and the limitations that the ISPP places on scope.
- 3.3.2 DLA Piper helpfully outlined a step-by-step procedure for assessing whether submissions are 'on' the plan change and whether the relief sought can be validly granted by decision-makers. Reliefs must be:

- a. valid to grant;

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<sup>22</sup> Council Officers Reply Statement, para 29

<sup>23</sup> Council Officers Evaluation Report, Sections 5.2 and 6.1.1 and Appendix 3 to the Council Officers Evaluation Report: *Scope of submission on Plan Change 56 – Intensification Planning Instrument*, letter from DLA Piper dated 16 February 2023

<sup>24</sup> Council Officers Evaluation Report, paras 112-113

- b. able to be pursued through an IPI and ISPP, with reference to s80E; and/or
  - c. within the scope of the plan change notified by the Council.
- 3.3.3 With respect to b. above, the position of Council officers relied on their assessment that the matters raised in the submission points concerned were not 'related provisions' within the meaning of s80E(1)(b)(iii) and (2).
- 3.3.4 For context, the sub-sections concerned work to define the scope of an IPI. The former sub-section (s80E(1)(b)(iii)) includes that an IPI:
- 'may also amend or include ... **related provisions**, including objectives, policies, rules, standards, and zones, that support or are consequential on – (A) the MDRS; or (b) policies 3, 4 and 5 of the NPS-UD, as applicable.'*
- 3.3.5 The latter sub-section (s80E(2)) defines 'related provisions' as:
- '... including 'provisions that relate to any of the following, without limitation:*
- (a) district-wide matters:*
  - (b) earthworks:*
  - (c) fencing:*
  - (d) infrastructure:*
  - (e) qualifying matters identified in accordance with section 771 or 770:*
  - (f) storm water management (including permeability and hydraulic neutrality):*
  - (g) subdivision of land.*
- 3.3.6 Council officers concluded that the submission points and/or requested decisions were either invalid, not able to be pursued through an IPI/ISPP and/or not 'on' the proposed plan change or (in the case for further submissions) that they were supporting or seeking amendment on a point that itself was out of scope.
- 3.3.7 The relevant submission points and further submissions so characterised and recommended for rejection or noting that no decision was necessary or possible are set out in Section 6.1 of the Council Officers Evaluation Report.
- 3.3.8 As indicated above, Council officers arrived at their position on matters of scope with the benefit of legal advice from counsel.<sup>25</sup> In summary, that initial legal advice was that:
- a. submissions are required to be 'on' PC56, as clause 6 of the RMA First Schedule applies;
  - b. in order to be 'on' PC56, a submission must fall within the ambit of PC56;
  - c. there are additional limitations placed on what can be included in an IPI, and therefore what can be granted through relief;
  - d. as with a standard plan change process, submissions may seek inclusion of new provisions, or amendments to District Plan provisions not already the subject to PC56;

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<sup>25</sup> Appendix 3 to the Council Officers Evaluation Report: *Scope of submission on Plan Change 56 – Intensification Planning Instrument*, letter from DLA Piper dated 16 February 2023

- e. whether or not relief of that nature is within scope of PC56 will depend on the link between that relief and what the Council has chosen to include in PC56;
- f. consequential amendments arising from changes made through the notified version of PC56 will likely be within scope;
- g. just because a provision has been amended through PC56, that does not mean that any and all further amendments sought to that provision will be within scope of PC56; and
- h. once again, whether or not relief is within scope of PC56 will depend on the link between that relief and what the Council has chosen to include in PC56.

3.3.9 While we do not take issue with these conclusions the question remains as to whether the relevant submission points and further submissions are 'on' the plan change, bearing in mind the limits imposed under the IPI/ISPP.

3.3.10 We received legal submissions on this matter on behalf of Ara Poutama Aotearoa, Greater Wellington Regional Council, KiwiRail, Kāinga Ora and RVA/Ryman Healthcare Ltd.<sup>26</sup>

3.3.11 While these submissions generally acknowledged that the matters that may be included in an IPI are more limited than a standard plan change, in sum they concluded that:

- a. the Council has itself identified qualifying matters and included other provisions within PC56 that it considers 'support' or are 'consequential' to the MDRS and/or NPS-UD policies;
- b. the relief sought in the submission points and further submissions at issue similarly fall within the ambit of 'supportive' or 'consequential' provisions and are therefore 'relevant' within the context of s80E(1)(b)(iii) and (2);
- c. this is particularly so where the provisions concerned are directly related to realising of 'well-functioning urban environments' as contemplated by NPS-UD Objective 1 and Policy 1;
- d. 'supportive' and 'consequential' provisions must reasonably include those that serve to manage the interface between intensification and provision of infrastructure;
- e. s80E(2) provides a non-exhaustive list of 'related' provisions; and
- f. the further submissions process provided reasonable opportunity for potentially affected parties to respond to these reliefs, thereby avoiding any natural justice concerns.

3.3.12 Given the force of the above-mentioned legal submissions, and at our request Mr Quinn, for the Council, returned to the matter of scope at length in his closing legal submissions.<sup>27</sup> He reminded us that 'in scope' submission points are limited to those where the relief sought can be implemented through an IPI and, secondly, whether the submissions are 'on' the plan change. With respect to the latter, Mr Quinn referred us to the well-settled

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<sup>26</sup> Respectively, *Legal Submissions on behalf of Ara Poutama Aotearoa, the Department of Corrections (Submitter #111)*, dated 6 April 2023, *Legal Submissions on Behalf of Wellington Regional Council (149 and F02)*, dated 11 April 2023, *Legal Submissions on behalf of KiwiRail Holdings Ltd*, dated 21 April 2023, *Legal Submissions on behalf of Kāinga Ora – Homes and Communities*, dated 21 April 2023 and *Legal submissions on behalf of the Retirement Villages Association of New Zealand Incorporated and Ryman Healthcare Limited*, dated 18 April 2023

<sup>27</sup> *Legal submissions on behalf of Hutt City Council addressing matters raised by the hearings panel*, dated 25 May 2023

legal principles arising from *Palmerston North City Council v Motor Machinists Ltd*,<sup>28</sup> which in turn set out a two-limbed test that must be satisfied:

- a. the submission must address the proposed plan change itself. That is, it must address the extent of the alteration to the status quo which the change entails; and
- b. the Council must consider whether there is a real risk that any person who may be directly affected by the decision sought in the submission has been denied an effective opportunity to respond to what the submission seeks.

3.3.13 Concluding that the Panel must approach scope based on established case law, and turning to the points made in the legal submissions of other parties, Mr Quinn submitted that:

- a. the IPI is not a full District Plan review, is limited in scope, targeted and specific to addressing a statutory obligation;
- b. the IPI cannot give full and immediate effect to other national directives, such as the NPS-FM;
- c. the Council must give genuine thought and attention to Plan Change 1 to the RPS but is not obliged to accept amendments to PC56 in response at this stage; and
- d. to include a full suite of provisions in PC56 relating to retirement villages, community corrections activities and noise sensitive activities would not relate sufficiently closely to the implementation of the MRDS or to NPS-UD Policy 3 and therefore falls outside the scope of this focused plan change.

3.3.14 Consequently, and with reference to Mr Quinn's advice, Council officers indicated that they had not changed their position to allow any relief that they had previously recommended could not be accepted.<sup>29</sup>

3.3.15 We find our ourselves in agreement with the legal representations and evidence of the Council where matters of scope are concerned, for the reasons summarised immediately above. Accordingly, we find that the submission points and further submissions raise matters that are out of scope and not 'on' the plan change, and we are therefore, regardless of the merits or otherwise of such submissions, obliged to reject those submissions and further submissions summarised at Section 6.1 of the Council Officers Evaluation Report on that basis. For the record this also includes those submissions and further submissions found to be invalid as also summarised in that section of the Council Officers Evaluation Report.

3.3.16 Having said that, we would like to signal our encouragement to the Regional Council, in particular to work with the City Council in further developing its approach to incorporating 'nature-based solutions' as part of the full District Plan review exercise which both authorities will shortly be returning to. This is not something that needs to, or should, wait to a submission-making process.

3.3.17 It follows that we need not arrive at merit assessments where the above submissions and related reliefs sought are concerned, although we acknowledge the effort the Council officers have gone to in preparing these<sup>30</sup> at our request during the course of the hearing in the event that we determined we were able to accept them.

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<sup>28</sup> *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290

<sup>29</sup> Council Officers Reply Statement, para 19

<sup>30</sup> Council Officers Reply Statement, for example paras 171-180, 194, 201-217, 292-296

### 3.4 Statutory framework

3.4.1 As signalled earlier, we summarise here the relevant statutory matters that have framed our evaluation. Our consideration of submissions and further submissions has not occurred in a vacuum. There are a number of legislative instructions that we have factored into our recommendations. The Environment Court's decision in *Colonial Vineyard Limited v Marlborough District Council*<sup>31</sup> is often cited for its comprehensive summary of the relevant considerations. Those considerations remain relevant under the ISPP and as it relates to our consideration of an IPI, as we are still required to consider the broader RMA framework when considering and making recommendations on the IPI. In other words, the provisions of the Amendment Act are not to be treated as a code for considering the IPI.

3.4.2 Having said that, amendments to the Act, and more recent case law suggests the need to start from first principles. Accordingly, we note first s72 of the RMA which states:

*"The purpose of the preparation, implementation, and administration of District Plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act."*

3.4.3 Relevant council functions for this purpose, as specified in s31, include establishment of objectives, policies and methods to achieve integrated management of the effects of the use, development and protection of land and associated natural and physical resources, and to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district, along with the control of any actual or potential effects of the use, development or protection of land for the purpose of the avoidance or mitigation of natural hazards and the maintenance of indigenous biological diversity.

3.4.4 The statement in s72 is amplified by s74, which directs territorial authorities to prepare and change District Plans in accordance with their functions under s31, the provisions of Part 2 of the RMA, any direction of the Minister for the Environment given under s25A(2), the obligations imposed by s32, which relate to preparation of evaluation reports and the related obligation to have particular regard to any such report, a National Policy Statement, a New Zealand Coastal Policy Statement, and a National Planning Standard, and any Regulations.

3.4.5 In this instance there are no relevant directions by the Minister for the Environment.

3.4.6 In addition to the NPS-UD and the Housing Supply Act, we need to assess whether PC56 gives effect to the NPS-FM, the National Policy Statement for Electricity Transmission 2008 (NPS-ET), the National Policy Statement for Renewable Electricity Generation 2011 (NPS-REG) and the New Zealand Coastal Policy Statement 2010 (NZCPS). We do this where relevant, later in this report when we assess the efficacy of those particular provisions in PC56 that intersect with those national policy directives.

3.4.7 For the record, we record that the National Policy Statement for Highly Productive Land (NPS-HPL) took effect on 17 October 2022, two months after the notification of PC56.

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<sup>31</sup> ENV-2012-CHC-108, [2014] NZEnvC 55

Given the focus of the latter on enabling intensification in existing urban areas, the NPS-HPL has, in our view, little relevance to our determinations.

- 3.4.8 Lastly, we note the National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB), which was gazetted on 7 July 2023 and took effect on 4 August 2023. In our view, it is not reasonably practicable to give effect to the NPS-IB through PC56, given the relative timing of their development and release, and the need to work through the implications of the NPS-IB in the context of the (forthcoming) full District Plan review.
- 3.4.9 The relevant version of the National Planning Standards for the purposes of s74(1) is the National Planning Standards 2019. Again, these are referenced where relevant to the subject matter in our report.
- 3.4.10 There are a number of regulations of relevance to our recommendations, again depending on the subject matter. We note at this point the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017, the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009, the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (as amended), the Resource Management (Stock Exclusion) Regulations 2020 and the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016.
- 3.4.11 Section 75(3) of the RMA states separately that a District Plan must give effect to any National Policy Statement, any New Zealand Coastal Policy Statement, a National Planning Standard and any Regional Policy Statement.
- 3.4.12 There is an operative Wellington RPS dated 2013 that we have considered in light of the statutory direction in s75, as above.
- 3.4.13 The Supreme Court's decision in *Environmental Defence Society v The New Zealand King Salmon Company Limited*<sup>32</sup> provides the relevant direction on the application of these legislative directions. That decision is best known for its finding that it was unnecessary to refer back to Part 2 of the RMA in order to determine how a plan change to which the New Zealand Coastal Policy Statement applied should be decided. That case found that the NZCPS should be taken as implementing the purpose and principles of the RMA in the absence of identified invalidity, incompleteness, or uncertainty.
- 3.4.14 Consistent with that finding, the Supreme Court confirmed that there is a hierarchy of policy documents under the RMA, with the documents at each level giving effect to and amplifying those at the next level up.
- 3.4.15 The Supreme Court emphasised the need to analyse each objective and policy that is relevant to decisions on a plan change (or in this case PC56), endeavouring to reconcile any inconsistencies by reference to the language used in the relevant higher order document rather than employing an overall broad judgement, as had been generally the case prior to the Supreme Court's decision.
- 3.4.16 We note also the decision of the High Court in *Royal Forest and Bird Protection Society Inc. v Bay of Plenty Regional Council*<sup>33</sup> indicating that the obligation to give effect to a National

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<sup>32</sup> [2014] NZSC 38

<sup>33</sup> [2017] NZHC 3080

Policy Statement applies notwithstanding that an intermediate higher-level document (such as the Wellington RPS in this case) might also have several provisions that need to be given effect.

- 3.4.17 The Supreme Court in its King Salmon decision also provides guidance to our task on the interpretation of higher order documents. The relevant NZCPS policies considered by the Supreme Court identified certain effects that should be avoided. The Supreme Court held that that meant that they should not be allowed, or their occurrence should be prevented.
- 3.4.18 Subsequent cases have observed that this interpretation means that care should be undertaken when drafting (in this case district) plan provisions to ensure that where directive language, such as “avoid” is used, this correctly reflects the intention, and that what it is that has to be avoided is stated clearly so that the plan provision(s) in question do not have an effect that is broader than intended.
- 3.4.19 Our recommendations also need to (and do) take account of the legislative direction in s75(4) that a District Plan must not be inconsistent with a regional plan for any matter specified in s30(1). The latter specifies the functions of regional councils which include, among other things, the control of the use of land for the purpose of the maintenance and enhancement of the quality of water in water bodies and coastal water and the avoidance or mitigation of natural hazards.
- 3.4.20 Other relevant legislative directions are contained in s74(2) and (2A) that direct a council to have regard to any Proposed Regional Policy Statement or Proposed Regional Plan<sup>34</sup>, management plans and strategies prepared under other Acts, relevant entries on the New Zealand Heritage List/Rārangi Kōrero required by the Heritage New Zealand Pouhere Taonga Act 2014 and any relevant planning document recognised by an iwi authority that is lodged with the Council.
- 3.4.21 In terms of the above, we record that the Regional Council notified Change 1 to the Regional Policy Statement on 19 August 2022. Submissions and further submissions on Change 1 closed on 14 October 2022 and 9 December 2022 respectively. Hearings of those submissions commenced on 26 June 2023 and we understand are scheduled to continue until the end of March 2024. It is clear to us that Change 1 is a substantial document in its own right. As indicated in **Section 3.5**, we have given it what weight we consider we can, taking account of the relatively early stage of the hearing process it has reached and the availability of other higher order guidance/ direction, among other things.
- 3.4.22 We understand from the Council that there are no iwi management plans currently in place for the urban area of Lower Hutt.
- 3.4.23 Section 74(2)(c) also directs consideration of the extent to which the District Plan needs to be consistent with the District Plans or proposed plans of adjacent councils. The adjacent councils in this case are Wellington City Council (WCC), Porirua City Council (PCC), Upper Hutt City Council (UHCC) and South Wairarapa District Council. We have, where relevant, given broad consideration to the approaches to the IPI in the three relevant jurisdictions,<sup>35</sup> particularly in relation to the PCC and WCC IPI instruments, given their relative proximity to the Urban Area of Lower Hutt. In particular, whilst we

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<sup>34</sup> The final form of the Regional Natural Resources Plan has been substantially resolved by consent orders made by the Environment Court.

<sup>35</sup> SWDC is not a relevant jurisdiction as it has no obligation to prepare an IPI.



understand that consistency of provisions throughout the region is not a mandatory requirement, we have nevertheless familiarised ourselves with, and assessed the relative consistency of, PC56 with those parts of the PCC, WCC and UHCC IPI instruments dealing with heritage areas/character precincts and hazard areas and regulation. This is undertaken in **Section 3.7** of this report where we assess the appropriateness of those provisions in PC56 aimed at identifying and regulating (in terms so the height and density of residential development) land which is the subject of qualifying matters .

- 3.4.24 Section 74(3) also directs that Councils must not have regard to trade competition or the effects of trade competition.
- 3.4.25 Objectives associated with PC56 also require evaluation against the tests in s32. Other provisions need to be evaluated as to whether they are the most appropriate way to achieve the objectives. Appropriateness for this purpose needs to consider other reasonably practicable options for achieving the objectives, the efficiency and effectiveness of the provisions and the benefits and costs of the environmental, economic, social and cultural effects anticipated from their implementation, including the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the provisions.
- 3.4.26 In considering all of the matters above, we record that our recommendations to the Council are based upon our consideration of the following documents:
- a. the notified plan change and s32 evaluation as notified and subsequently amended;
  - b. the submissions and further submissions received;
  - c. the Council Officers Evaluation Report;
  - d. the s32AA evaluations provided by over the course of, and subsequent to, the hearing; and
  - e. the statements/presentations from all parties appearing before us.
- 3.4.27 As we emphasised at the hearing, it is important that all parties understand that it is not for us to introduce our own evidence on the sets of issues listed above, and we have not done so – rather, our role has been to:
- a. establish that all relevant evidence is before us (or where it isn't, consider whether we should commission additional reports or information<sup>36</sup>); and
  - b. test the evidence of others, and to determine the most appropriate outcome based on the views we consider best achieve sustainable management.
- 3.4.28 It is that dual role to which the following evaluation addresses. Before doing so, and as a closing comment, we observe that s32AA(1)(d)(ii) enables our further evaluation reporting to be incorporated into this report as part of the decision-making record. To this end, our evaluation of each issue has been structured to satisfy the evaluation report requirements of s32AA as outlined above. In other words, for each issue we have considered the merits of any proposed alterations to the notified provisions to assist in ascertaining the appropriateness of the provisions.

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<sup>36</sup> Under s41C(4) of the Act.

### 3.5 'Whole plan' or general submissions

#### *Introduction*

3.5.1 The first group of submission points and further submissions are those categorised in the Council Officers Evaluation Report as those of a general nature and/or those on the plan change as a whole. For practical purposes, these are divided into the following topics that we deal with in turn in this section of our report:

- a. Whole of plan change submissions;
- b. Provision for papakāinga housing;
- c. Plan Change 1 to the RPS;
- d. General plan structure and format matters;
- e. General corrections and clarifications; and
- f. Definitions.

#### *Whole of plan change submissions*

#### *Matters raised by submitters*

3.5.2 Submission points and further submissions in relation to PC56 as a whole are helpfully broken down in the Council Officers Evaluation Report<sup>37</sup> as those:

- a. supporting the plan change in full or in large part;
- b. supporting other submissions in full or in large part;
- c. opposing other submissions in full;
- d. requesting consequential or general relief;
- e. relating to the application of zoning;
- f. relating to the urban environment;
- g. relating to landscaping and permeability;
- h. relating to transport;
- i. concerned about the relationship of PC56 with design guides;
- j. relating to freshwater;
- k. relating to universal design and accessibility; and
- l. relating to social well-being.

3.5.3 Mr Davis advised us that general submission points and further submissions did not require individual consideration. His view is that the majority of the submission points and the associated relief sought (to the extent that they are specific about that relief) are catered for in the way in which PC56 is formulated (to the extent that it is able to given the limitations in scope prescribed by the IPI / ISPP process), are non-RMA matters best

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<sup>37</sup> Council Officers Evaluation Report, paras 122-172

addressed under other legislative mechanisms, or are broader matters more appropriately addressed at the time of the full District Plan review.

*Evaluation and recommended decision*

- 3.5.4 These matters were generally not further contested at the hearing. We agree with Mr Davis's assessments as outlined above and consider that no specific amendments to PC56 are warranted in these respects.

*Provision for papakāinga housing*

*Overview of relevant provisions*

- 3.5.5 Neither the operative plan nor the proposed plan change includes any provisions that explicitly mention papakāinga housing. It is acknowledged that the operative District Plan definition for 'papakāinga housing' defined as '*residential accommodation on Maori owned land*' is somewhat ambiguous as to what activities it encompasses when compared to what the description of papakāinga that is included in the section 32 for the plan change, which describes papakāinga in broader terms, incorporating a range of other complementary activities, including social, cultural, economic and recreation activities. It is also acknowledged that neither the Act nor the National Planning Standards provide a definition for papakāinga.
- 3.5.6 The plan change affects the extent to which the District Plan enables papakāinga housing, regardless of the definition and breadth of what activities it may include. It does, however, indirectly provide greater ability for papakāinga projects to be undertaken within the proposed MDRAA and HDRAA, the Commercial Activity Areas, the General Business Activity Area, and the Community Iwi Activity Area, by increasing the scale of development provided for.

*Matters raised by submitters*

- 3.5.7 There were three submissions and three further submissions which supported provisions throughout the plan to enable papakāinga.<sup>38</sup> Although no specific wording or general policy approach was provided by any of the submissions.
- 3.5.8 Te Rūnanga o Toa Rangatira specifically raised concerns about the lack of specific papakāinga provisions by the plan change. However, they did not provide for any relevant or additional information to further development provisions.
- 3.5.9 Mr Davis considered this matter best addressed in development with both Ngāti Toa and Te Āti Awa as part of the full plan review, noting that Te Āti Awa did not attend the hearing.

*Evaluation and recommended decision*

- 3.5.10 The Panel acknowledges that the legislation<sup>39</sup> only states that an IPI 'may' amend or include provisions for papakāinga housing, rather than 'must'.

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<sup>38</sup> Submissions 52.1, 149.7, 274.36 and Further submission F02.13, F17.3 and F24.11

<sup>39</sup> s80E of the Act

- 3.5.11 The Panel agrees with Mr Davis that a partnership approach is essential for the development of papakāinga provisions and considers that this workstream is best carried out as part of the full review of the District Plan. We acknowledge that there has been some work to date that has been carried out on this matter but also note it appears to us that the Council and the iwi authorities have important additional work to collaborate on in the upcoming period, prior to the notification of the full District Plan review. This matter also addressed in **Section 3.7** in relation to SASM.
- 3.5.12 As a starting point for the full District Plan review, the Panel is aware that the Porirua District Plan review template is a useful base to work from for the further development of the Hutt City Council papakāinga provisions.

*Plan Change 1 to the RPS*

*Matters raised by submitters*

- 3.5.13 The Regional Council<sup>40</sup> and others<sup>41</sup> broadly submitted that PC56 should give considerable weight to Proposed Plan Change 1 to the RPS. Proposed Plan Change 1 is an omnibus document that seeks to amend the RPS to give effect to national direction including the NPS-FM and NPS-UD, to address greenhouse gas emissions and climate change impacts, and to strengthen existing provisions relating to biodiversity.
- 3.5.14 In response to these submissions, Mr Davis was of the view that extremely limited weight should be given to Proposed Plan Change 1 given its nascent nature, its recourse to a standard Schedule 1 process, the statutory requirement that the City Council have 'regard' to a proposed plan change rather than 'give effect' to it, and its breadth of scope relative to PC56.<sup>42</sup> Mr Davis indicated that he would nevertheless consider the Regional Council's more specific submission points where they related to the operative RPS.<sup>43</sup>

*Evaluation and recommended decision*

- 3.5.15 In the Council Officers Reply Statement, Mr Davis did not resile from his view, while noting that it was now clear that the hearing process for Plan Change 1 would commence shortly and extend into 2024 and that there was therefore no prospect of its final shape becoming clearer before HCC is obliged to make its decisions with respect to PC56.<sup>44</sup>
- 3.5.16 We find ourselves in agreement with Mr Davis in relation to this matter, and support his approach to otherwise considering more specific submission points. Accordingly, we recommend the rejection of general submission points seeking that Plan Change 1 be given effect to. We observe that the opportunity to fully account for a finalised Plan Change 1 is not far away, as the Council moves to recommence its full District Plan review.

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<sup>40</sup> Submission 149

<sup>41</sup> Including Waka Kotahi (Submission 151)

<sup>42</sup> Council Officers Evaluation Report, paras 183-188

<sup>43</sup> Council Officers Evaluation Report, para 189

<sup>44</sup> Council Officers Reply Statement, para 90

*General plan structure and format matters**Matters raised by submitters*

- 3.5.17 Kāinga Ora<sup>45</sup> sought that all qualifying matters and supporting overlay provisions be relocated to the district-wide section of the District Plan. The RVA<sup>46</sup> sought that explanation and reasons sub-sections throughout the District Plan be deleted, with relevant text integrated into provisions.
- 3.5.18 Mr Davis acknowledged the submitters raised valid points but that they were potentially out of scope given the narrow context for PC56 and, in any case, were best tackled during the course of the full District Plan review, as they related to the underlying structure of the District Plan.<sup>47</sup>

*Evaluation and recommended decision*

- 3.5.19 Mr Davis briefly returned to this matter in his Council Officers Reply Statement following the conclusion of the hearing. In response to submitter concerns regarding the interaction of activity areas, overlays and district-wide provisions, he noted that administrative sections in the operative District Plan provided some guidance on these matters, and that the Council was commissioning an e-plan platform that should ease the identification of relevant provisions by plan users in the upcoming review.<sup>48</sup>
- 3.5.20 During the course of the hearing, it became apparent that, notwithstanding the above, there was a level of genuine confusion and lack of clarity regarding the operation of the natural hazard overlays in particular areas, as well as other mapping integration issues. In our view, these are purely mechanical issues that HCC proposes to address through mapping changes and the inclusion of explicit statements explaining those changes in PC56.<sup>49</sup> We support this approach and consider that no specific s32AA assessment is warranted with respect to these changes given their mechanical and administrative nature.
- 3.5.21 We also accept the Council's position that these are all matters that can be traced back to the challenging structure of the District Plan that we alluded to in **Section 3.2**, with respect to PC56's inevitable non-alignment with the National Planning Standards 2019. Once again, we agree that these matters are all best addressed through the District Plan review and that no further amendments to PC56 are warranted as a result.

*General corrections and clarifications**Matters raised by submitters*

- 3.5.22 Kāinga Ora<sup>50</sup> sought that PC56 apply the term 'residential unit' instead of 'dwelling'. Mr Davis agreed with this request on the basis the former term was defined under the

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<sup>45</sup> Submission point 206.7

<sup>46</sup> Submission point 211.1

<sup>47</sup> Council Officers Evaluation Report, paras 190-193

<sup>48</sup> Council Officers Reply Statement, paras 40-41

<sup>49</sup> Council Officers Reply Statement, paras 32-37

<sup>50</sup> Submission point 206.284

National Planning Standards 2019 and he identified a number of consequential amendments to other PC56 provisions to follow suit.<sup>51</sup>

- 3.5.23 The owner of land<sup>52</sup> previously subject to Plan Change 47<sup>53</sup> sought that the area concerned be rezoned to MDRRA. Mr Davis acknowledged that this area had been inadvertently omitted from PC56 and that, for consistency, it was his view that the requested rezoning is appropriate.<sup>54</sup>

*Evaluation and recommended decision*

- 3.5.24 The above matters were not further contested at the hearing. We note that Waka Kotahi was opposed to the rezoning request<sup>55</sup> but presented no evidence in support of its further submission. Accordingly, we agree with and accept Mr Davis's recommendations for amendments to PC56 for the reasons he outlined in the Council Officers Evaluation Report.

*Definitions*

*Matters raised by submitters*

- 3.5.25 A number of submitters requested new definitions, relating to the terms:
- a. 'community corrections activities';
  - b. 'residential activity';
  - c. 'household';
  - d. 'minimise';
  - e. 'qualifying matter area';
  - f. 'natural hazard'; and
  - g. those associated with mapping flood hazards outside the District Plan.<sup>56</sup>

- 3.5.26 In response, Mr Davis considered these requests were variously out of scope or covered by existing definitions, policies or commonly understood terms. In only two instances (in relation to b. and f. above) did Mr Davis consider amendments were warranted.<sup>57</sup>

- 3.5.27 Some submitters sought to support existing definitions for certain terms or seek amendments to them, as summarised in the Council Officers Evaluation Report.<sup>58</sup> Mr Davis was of the view that these requests were generally out of scope, would give rise to unintended consequences or were otherwise unwarranted. Only with respect to the submissions from Transpower and Survey and Spatial NZ relating to the defined terms 'qualifying matter' and 'site' did Mr Davis agree that minor amendments were warranted.<sup>59</sup>

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<sup>51</sup> Council Officers Evaluation Report, para 194

<sup>52</sup> Major Gardens Ltd (Submission 216)

<sup>53</sup> PC47 related to the rezoning of land at Kelson to a combination of General Residential Activity Area and General Recreation Activity Area and was made operative on 13 April 2023

<sup>54</sup> Council Officers Evaluation Report, paras 195-197

<sup>55</sup> Further submission FS10.18

<sup>56</sup> Department of Corrections, GWRC, Transpower, Fire and Emergency and Kāinga Ora, respectively

<sup>57</sup> Council Officers Evaluation Report, paras 198-205

<sup>58</sup> Council Officers Evaluation Report, paras 206-216

<sup>59</sup> Submission points 153.7 and 219.1, respectively

*Evaluation and recommended decision*

3.5.28 These matters remain broadly uncontested at the hearing and therefore there was no basis for Mr Davis to alter his views.<sup>60</sup> We agree with and recommend the adoption of the Council Reporting Officer's position on these matters, noting that we have already addressed issues of scope in **Section 3.3** of our report.

**3.6 Incorporation of the MDRS and implementation of the NPS-UD***Introduction*

3.6.1 The second group of submission points and further submissions are those focused on PC56 provisions which seek to incorporate the MDRS and implement the NPS-UD. As to be expected these provisions represent the bulk of the content of PC56 and attracted a commensurate volume of submissions. For practical purposes, these are divided into the following topics that we deal with in turn in this section of our report:

- a. The plan change's strategic direction;
- b. Residential activity areas and associated chapters;
- c. Residential activity area provisions relating to retirement villages;
- d. Commercial and other non-residential activity areas and associated chapters;
- e. Subdivision;
- f. Financial contributions;
- g. District-wide matters; and
- h. Wind.

3.6.2 It is to be noted that the matters referred to in c. above relating to retirement villages have been sectioned out of the broader discussion and evaluation relating to residential activity areas and associated provisions at b. above. The purpose of doing so is to address any perception of or potential for conflict of interest on the part of the Panel Chair, Commissioner Daysh, as his company (but not he, himself) was responsible for making and representing submissions on behalf of the RVA and Ryman Healthcare Ltd.<sup>61</sup> Consequentially, only Commissioners Burge and McMahon have been involved in deliberations on these particular submissions, and their evaluation and recommendations in this regard are set out in paragraphs 3.6.85 to 3.6.90 of this report. For the same reasons, only Commissioners Burge and McMahon have been involved in deliberating and making recommendations with respect to the topic of financial contributions (f. above).<sup>62</sup>

*Strategic direction**Overview of relevant provisions*

3.6.3 As set out in the Council Officer Evaluation Report,<sup>63</sup> this topic encompasses submission points and further submissions on the following aspects of PC56:

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<sup>60</sup> Council Officers Reply Statement, para 39

<sup>61</sup> Submissions 211 and 204, respectively

<sup>62</sup> Refer paragraphs 3.6.122 to 3.6.136 in our report.

<sup>63</sup> Council Officer Evaluation Report, paras 217-220

- a. the general application of the NPS-UD and MDRS as reflected in District Plan strategic direction chapters relating to the urban environment, amenity values, residential activity, commercial activity, heritage values and lessening natural hazards;<sup>64</sup>
  - b. the interpretation and application of the NPS-UD and MDRS with respect to strategic direction objectives and policies and the way in which key elements of national direction are determined, such as those relating to ‘walkable catchments’ and the ‘metropolitan centre zone’; and
  - c. requests for new or altered strategic directions.
- 3.6.4 The proposed **Urban Environment chapter** (1.10.1A) would see the introduction of a new issue statement, an objective relating to a ‘well-functioning urban environment’, four new policies and an explanation and reasons section. The objective and Policies 3 and 4 incorporate Objective 1 of the MDRS and Policies 3 and 4 of the NPS-UD directly and respectively.
- 3.6.5 Amendments to the existing **Amenity Values chapter** (1.10.2) would see the introduction of a new objective relating to evolving amenity values, an amendment to the existing objective and changes to the explanation and reasons section reflecting the deletion of certain special zones, the introduction of a new HDRRA and changes to the purpose of the MDRAA and Suburban Mixed Use Activity Area.
- 3.6.6 PC56 would amend the existing **Residential Activity chapter** (1.10.3) by replacing the current policy with a new Policy 1, that sets out how the MDRAA and HDRAA will incorporate Policy 2 of the MDRS, and new Policy 2, which relates to the rate of residential development in peripheral areas. The explanation and reasons section would be amended accordingly.
- 3.6.7 PC56 would make minor amendments to the **Commercial Activity chapter** (1.10.4) to exclude reference to Suburban Commercial and Special Commercial areas, as these have otherwise been consolidated with other commercial zones in the District Plan.
- 3.6.8 The plan change proposes amendments to the **Heritage chapter** (1.10.10) and **Lessening Natural Hazards chapter** (1.10.11), respectively, to restate heritage and natural hazards policy in areas potentially identified for intensification but co-hosting historic heritage values or prone to particular fault, flood, tsunami or coastal inundation risks.
- 3.6.9 In accordance with NPS-UD Policy 3(c), PC56 introduces introduction / zone statement and policy references to ‘**walkable catchments**’ as the basis for defining the areas around rapid transit stops and the edges of city centre and metropolitan centre zones within which building heights of at least six stories are enabled (including via new Policy 1 within the Urban Environment chapter). The methodology HCC has used to define those catchments is set out in Appendix 4 to the s32 report.<sup>65</sup> Essentially, it utilises a 1200m distance from the city centre and an 800m distance from the metropolitan centre and train stations (rapid transit stops) to define areas within which such building heights are enabled.

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<sup>64</sup> Chapters 1.10.1A, 1.10.2, 1.10.3, 1.10.4, 1.10.10 and 1.10.11, respectively

<sup>65</sup> *Proposed District Plan Change 56 – Enabling Intensification in Residential and Commercial Areas, Appendix 4 – Interpretation of key terms in the MDRS and NPS-UD*



*Matters raised by submitters*

- 3.6.10 With respect to the proposed **Urban Environment chapter**, PC56 attracted a range of submissions seeking to, variously:
- a. retain the provisions as notified;
  - b. amend them to add additional considerations relating to tangata whenua or mana whenua, well-beings, natural hazards, heritage values or other potential qualifying matters; and
  - c. amend them to limit or extend their application (and, consequently, the application of associated provisions) in various ways, mainly relating to the extent to which intensification is enabled through PC56.<sup>66</sup>
- 3.6.11 In response to requests to amend, Mr Davis was generally of the view that they were not warranted as they would introduce internal inconsistencies within the chapter, involve alterations to mandatory MDRS directives, be inconsistent with the policy settings of the NPS-UD, are catered for under other existing strategic directions in the District Plan, or are not justified in terms of an understanding of localised development demand.
- 3.6.12 Mr Davis did agree, with respect to submissions made by Kāinga Ora,<sup>67</sup> that changes to Policy 1 are warranted to reflect the application of unlimited height in the Petone Commercial Activity Area 2, to refer to the appropriateness of six storey-plus development at Naenae and Waterloo suburban centres, and to reflect recommended changes in height limits around the Eastbourne, Stokes Valley and Wainuiomata centres.<sup>68</sup> He also recommended clarifying that the policy did not apply to Recreation Activity Areas.<sup>69</sup>
- 3.6.13 Submissions on amendments to the **Amenity Values chapter** sought to:
- a. broadly oppose them;
  - b. retain the provisions as notified;
  - c. amend them to add additional considerations relating to mana whenua or provide further explanation as to their application; and
  - d. amend them to limit their application to the built environment.<sup>70</sup>
- 3.6.14 In all respects, Mr Davis recommended the retention of the provisions as notified for the reasons outlined in the Council Officer Evaluation Report.
- 3.6.15 Submissions on amendments to the **Residential Activity chapter** sought to retain them as notified, provide greater clarification or explanation, or further amend them to limit their application (and, consequently, the application of associated provisions) in various ways.<sup>71</sup> In response, Mr Davis recommended a number of relatively minor changes to the provisions to provide further clarity and/or explanation.<sup>72</sup>

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<sup>66</sup> As set out in greater detail in the Council Officer Evaluation Report, paras 221-278

<sup>67</sup> Submission point 206.14

<sup>68</sup> Council Officer Evaluation Report, paras 247-257

<sup>69</sup> Council Officer Evaluation Report, paras 258, 385

<sup>70</sup> As set out in greater detail in the Council Officer Evaluation Report, paras 282-297

<sup>71</sup> As set out in greater detail in the Council Officer Evaluation Report, paras 298-313

<sup>72</sup> Council Officer Evaluation Report, para 385

- 3.6.16 Mr Davis considered that the requests of submitters<sup>73</sup> with respect to the **Commercial Activity chapter** would necessitate a broader review of the centres hierarchy in the District Plan that is therefore out of scope of the plan change.
- 3.6.17 Broadly speaking, submissions on the **Heritage and Lessening Natural Hazards chapters** sought to:
- a. retain the provisions as notified;
  - b. strengthen or loosen the wording of references to historic heritage values;
  - c. reword objectives and/or policies relating to natural hazards to alter employed verbs such as 'limit' or 'avoid';
  - d. include provisions and/or controls relating to other natural hazards as qualifying matters (liquefaction and slope stability); and
  - e. shift flood overlays to non-statutory mapping outside the District Plan and make consequential amendments to defined terms.<sup>74</sup>
- 3.6.18 In response to the requests covered in b. above, Mr Davis considered that they would not better reflect to the way qualifying matters work under the MDRS and NPS-UD. With respect to c. above, Mr Wesley provided a useful explanation for the way in which verbs are used in relation to hazard risk levels and recommended some changes to natural hazard policies on this basis.<sup>75</sup> With respect to d. above, he noted that the Council largely addresses liquefaction and slope stability risks through the building consent process and District Plan earthwork rules, respectively, but that this approach could and likely would be revisited at the time of the District Plan review. Finally, Mr Wesley acknowledged that the pros and cons of placing the flood hazard mapping within or outside the District Plan were finely balanced but landed on the former approach for reasons of certainty and transparency.
- 3.6.19 With respect to the Council's methodology for defining **walkable catchments**, PC56 attracted some submissions requesting either that the catchments be increased or decreased.<sup>76</sup> Mr Davis did not agree that any changes were warranted in response to those requests, given that he agreed with the Council's s32 reasoning.
- 3.6.20 Finally, three submitters all requested **new strategic direction** on issues not included in the notified version of Chapter 1.10 or otherwise proposed by PC56. These requests can be summarised as follows:<sup>77</sup>
- a. The Regional Council<sup>78</sup> sought greater alignment with Proposed Plan Change 1 to the RPS through the provision of strategic direction in relation to indigenous biodiversity, customary activities, tangata whenua, equity issues in decision-making, the integration of urban form and transport, climate change resilience and matters connected with the implementation of the NPS-FM.

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<sup>73</sup> As set out in greater detail in the Council Officer Evaluation Report, paras 314-320

<sup>74</sup> As set out in greater detail in the Council Officer Evaluation Report, paras 321-361

<sup>75</sup> Council Officer Evaluation Report, para 385

<sup>76</sup> As set out in greater detail in the Council Officer Evaluation Report, paras 279-281

<sup>77</sup> As set out in greater detail in the Council Officer Evaluation Report, paras 362-382

<sup>78</sup> Submission 149

- b. Te Rūnanga o Toa Rangatira<sup>79</sup> sought the provision of strategic direction in relation to indigenous biodiversity, customary activities, tangata whenua, cultural equity and enabling co-decision-making.
- c. The RVA<sup>80</sup> sought strategic direction around providing for housing and care needs for the ageing population.

3.6.21 The original submissions were variously supported or opposed by the other submitters referred to above and also by Te Āti Awa Nui Tonu,<sup>81</sup> which also sought a new objective to ensure partnership with mana whenua (including decision-making) as part of the intensification process. In the Council Officer Evaluation Report, Mr Davis explained why he considered all these requests fell outside the scope of PC56, lacked suitable connection with it, and/or could not be pursued through the ISPP, with reference to the s32 report's rationale for identifying relevant qualifying matters. Further, to the extent that they were relevant to the Council's s31 functions, it was his view that the matters concerned could be addressed at the time of the full District Plan review.

*Evaluation and recommended decision*

3.6.22 With respect to Mr Davis's recommendations for amendment to the **Urban Environment chapter**, we address the broader matters relating to heights and densities in centres and adjacent residential areas in more detail in paragraphs 3.6.35 to 3.6.84 and 3.6.91 to 3.6.106 of our report, but we can state at this point that we have no issues regarding his further recommendations for amendment to the chapter as notified.

3.6.23 One matter that Mr Davis did return to in the Council Officer Reply Statement was the Regional Council's request that a definition for 'well-functioning urban environment' (as it is employed in the objective) be incorporated into the District Plan by way of PC56.<sup>82</sup> In Mr Davis's view this request should be rejected as the term, which is already defined in the NPS-UD, covers a broader range of issues than are addressed by policies and provisions sitting under it (reflecting the issues of scope that we have dealt with in **Section 3.3** of our report). Mr Davis noted that the full District Plan review provides an opportunity for this broader intent and coverage to be given full effect. We agree, and additionally see no value in redefining or narrowing the term from that already employed in the NPS-UD.

3.6.24 We find no reason to take issue with Mr Davis's recommendations with respect to the **Amenity Values chapter**. We further agree with Mr Davis's assessment that "*the RMA's conception of amenity values does not inherently favour the status quo and that the NPS-UD signals a substantial change to how amenity values should be considered*"<sup>83</sup> and that, on this basis the proposed changes to the chapter appropriately express this shift in mindset.

3.6.25 As above, we also find no reason to take issue with Mr Davis's further recommended amendments with respect to the **Residential Activity chapter**. We do note that, in the Council Officer Reply Statement, Mr Davis addressed the issues as to whether the Council had correctly identified the Hill Residential Activity Area as equivalent to the 'large lot

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<sup>79</sup> Submission 274

<sup>80</sup> Submission 211

<sup>81</sup> Further Submission F24

<sup>82</sup> Council Officer Reply Statement, paras 71-76

<sup>83</sup> Council Officer Reply Statement, para 81

residential zone' nomenclature employed in the National Planning Standards 2019, and was therefore out of the scope of zones relevant to the IPI and PC56.<sup>84</sup>

- 3.6.26 In this regard, Mr Davis's noted that the question as to whether the Hill Residential Activity Area was appropriately excluded from PC56 was chiefly of relevance as a legal question of scope. As such, it was a matter addressed in more detail in Mr Quinn's legal submissions. Mr Quinn compared the characteristics of the Hill Residential Activity Area zoning and areas so zoned with the description for the 'large lot residential zone' in the 2019 Standards and submitted that they are equivalent.<sup>85</sup> We agree that this is the case and therefore find that the Council has correctly categorised these areas as not being 'relevant residential zones', failing to meet the criteria set out in ss77G and 80E and falling outside the scope of PC56. We further agree that there is therefore no scope for Council officers to consider requests to rezone Hill Residential Activity Areas for the purposes of intensification and accordingly we are obliged to reach no determinations in respect to these requests in **Section 3.8** of our report.<sup>86</sup>
- 3.6.27 We agree with Mr Davis's recommendations with respect to the **Commercial Activity chapter**. In the Council Officer Reply Statement, Mr Davis addresses the concerns around the Council's interpretation and application of NPS-UD Policy 3(d) and what the reference to 'adjacent' meant in the context of enabled building heights and densities in areas 'adjacent' to the relevant commercial zones.<sup>87</sup> We cover this matter in more detail in paragraphs 3.6.45 to 3.6.63 in our report and simply note at this juncture that we wish to express our appreciation of the process the Council and Kāinga Ora have engaged in during the course of hearings, in reassessing how building heights and densities could be recalibrated in residential areas adjacent to commercial zones, for our consideration.
- 3.6.28 In the Council Officer Reply Statement, Mr Davis also responded to the evidence of Ms Sylvia Allan for the Petone Historical Society,<sup>88</sup> and the submissions of others, that questioned the Council's classification of the Petone Commercial Activity Area as a 'metropolitan centre' and the Central Commercial Activity Area a 'city centre', within the terms of NPS-UD Policy 3. We accept Mr Davis's position that, in relation to the city centre, no original submission had explicitly requested a re-classification.<sup>89</sup> More broadly, and with respect to the regional hierarchy within which the Petone centre sits, it was Ms Allan's opinion that the only 'city centre' was the Wellington City Centre, and that the Hutt City centre and Petone centre should be seen as consequentially and sequentially subservient to the Wellington centre, and re-classified accordingly.
- 3.6.29 Conversely, it was Mr Davis's key position that it was the National Planning Standards 2019 that provided the zone framework to be applied at a district plan, rather than regional level, and that there was no suggestion that a region could only host one 'city centre'.<sup>90</sup> We agree with Mr Davis in this respect, consider that the Council has exercised its discretion appropriately, and therefore we do not recommend any changes to the classification of the centres concerned. In a spatial planning and functional sense, and in

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<sup>84</sup> Council Officer Reply Statement, paras 65-67

<sup>85</sup> *Legal submissions on behalf of Hutt City Council addressing matters raised by the hearings panel*, 25 May 2023, paras 30-40

<sup>86</sup> Having said that, we have reached a determination as to the appropriateness of rezoning the area at Korokoro with an operative zoning of Hill Residential Activity Area to HDRAA in **Section 3.8** of our report.

<sup>87</sup> Council Officer Reply Statement, paras 68-70

<sup>88</sup> *City of Lower Hutt District Plan Change 56 Statement of Evidence of Sylvia Jean Allan on behalf of Petone Historical Society*, 5 April 2023, paras 9-20

<sup>89</sup> Council Officer Reply Statement, para 51

<sup>90</sup> Council Officer Reply Statement, paras 53-57

the context of the upcoming District Plan review. Furthermore we encourage the Council to view the Hutt City centre as a major regional centre with all its attendant development opportunities and needs.

- 3.6.30 Overall, Mr Davis noted that while there was substantial contention about qualifying matters<sup>91</sup> there was limited debate over the application of NPS-UD Policy 4 at the strategic level.<sup>92</sup> With respect to the Regional Council's suggestion that Te Mana o Te Wai should also be considered as a qualifying matter, it was his view that whilst in theory it certainly could be, given its embedding in the NPS-FM, it need not in practice as no evidence had been presented to suggest that controls on building heights and density were needed to give effect to it. We agree with Mr Davis's conclusion in this respect<sup>93</sup> and also his and Mr Wesley's Council Officer Evaluation Report recommendations and reasons with respect to **heritage** and **natural hazards** at the strategic level.
- 3.6.31 HCC's methodology in defining **walkable catchments** was not strongly contested at the hearing but for completeness, Mr Davis returned to the matter in the Council Officer Reply Statement. In response to submissions from Mr Alan Smith, Ms Adrienne Holmes,<sup>94</sup> and others, Mr Davis explained how the methodology employed measured distances along roads and footpaths, starting points at the exterior edges of the relevant zones, and a degree of 'rounding out'.<sup>95</sup> We consider that these approaches are logical, fair, transparent and reasonable and that the Council has legitimately exercised its discretion in developing and applying the methodology. The wording of new Policy 1 in the Urban Environment chapter supports such an approach and appropriately gives effect to NPS-UD Policy 3(c). Accordingly, we find no basis for recommending changes to the underlying methodology that the Council has adopted or to the manner in which it is represented in the plan change provisions.
- 3.6.32 Mr Davis did acknowledge that whether a particular site is 'walkable' or not does deserve to be considered on a case-by-case basis, and accordingly, we consider specific requests in this regard in the relevant parts of our report, such as **Section 3.8**.
- 3.6.33 Mr Davis briefly returned to matters relating to additional **strategic direction** in the Council Officer Reply Statement.<sup>96</sup> Here, he offered his acknowledgement that PC56 needed to give effect to the NPS-FM and address climate change impacts, but only to the extent that it could effectively do so given the limited scope available to it under the IPI / ISPP process. In the context of our own findings regarding the scope afforded by the process,<sup>97</sup> we agree with his conclusions in this regard.
- 3.6.34 For completeness, we accept and recommend the adoption of the s32AA evaluation informing the recommended amendments to the strategic directions chapters that Mr Davis sets out in his Council Officer Evaluation Report.<sup>98</sup>

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<sup>91</sup> These are matters we address in **Section 3.7** of our report.

<sup>92</sup> Council Officer Reply Statement, para 77

<sup>93</sup> Council Officer Reply Statement, paras 78-80

<sup>94</sup> Submissions 159 and 262, respectively

<sup>95</sup> Council Officer Reply Statement, paras 42-49

<sup>96</sup> Council Officer Reply Statement, paras 82-87

<sup>97</sup> Refer to **Section 3.3** in our report

<sup>98</sup> Council Officer Evaluation Report, paras 386-394

### *Residential Activity Areas and associated chapters*

#### *Overview of relevant provisions*

- 3.6.35 PC56 proposes to amend the residential provisions of the Operative District Plan. In particular, it proposes to amend Chapters 4 and 4F, insert new Chapter 4G, and delete Chapters 4A, 4B and 4C. The net result will be a new and bespoke set of objectives, policies and rules for the MDRAA (Chapter 4F) and the HDRAA (Chapter 4G) governing residential development in the residential environs of Hutt City.
- 3.6.36 The changes proposed to these chapters are substantive and are intended to incorporate density standards of the MDRS (as set out in Schedule 3A of the RMA), give effect to Policies 3 and 4 of the NPS-UD, and accommodate certain qualifying matters which affect the spatial extent of the HDRAA and MDRAA and the height and densities for residential development enabled in those zones.

#### *Matters raised by submitters*

- 3.6.37 Submissions sought both the strengthening and the scaling back of residential intensification provisions through a variety of reliefs sought including minor word amendments, introduction of additional new objectives, policies and rules, and the amendment of permitted activity standards. Submissions also sought changes to the spatial delineation of the HDRAA and the MDRAA, including (but not limited to) amendments to the effect that no housing intensification occur in Petone or that PC56 not apply to Eastbourne and the Eastern Bay suburbs.
- 3.6.38 Some submitters sought specific zoning amendments to the proposed HDRAA and MDRAA at a variety of locations (e.g. Korokoro, Manor Park and Eastbourne to name but three) and provided supporting evidence during the hearing. These requests are considered separately in **Section 3.8** of our report.

#### *Evaluation and recommended decisions – general submissions*

- 3.6.39 At a general and high level, the potential impacts of PC56 on **liveability and amenity** of residential areas was of concern to many submitters. However; as summarised in the Council Officers Reply Statement, implementation of the MDRS (as contained in Schedule 3A of the RMA) is mandatory and provides limited opportunities for the Council to exercise discretion:

*“We acknowledge these concerns, but also note that the MDRS imposes minimum development standards that Council is unable to alter, unless they are altered to be more permissive of development.”<sup>99</sup>*

- 3.6.40 We consider the Council has adopted a robust and replicable methodology in exercising their limited discretion over amenity matters within the constraints of Policy 6(b) of the NPS-UD.

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<sup>99</sup> Council Officers Reply Statement, para 92

- 3.6.41 We also note that the Council holds wider functions under the Local Government Act 2002, and that the Council can undertake measures outside the District Plan to improve liveability and amenity of communities and public spaces. The Panel supports and encourages the Council to undertake the non-District Plan methods described by Council Reporting Officers, such as providing for more and improved public greenspaces, improving amenity and vegetation in the roading corridor, or providing other community services and amenities.
- 3.6.42 Council Reporting Officers did generally not recommend changes in relation to **generic or suburb wide rezoning requests**. We accept the assessment set out in the Council Officers Evaluation Report in this regard and acknowledge concerns related to the management of natural hazards and limitations of infrastructure which are generally responded to in the context of qualifying matters under **Section 3.7** of our report.<sup>100</sup>
- 3.6.43 Individual submitters also raised concerns over a variety of matters, including stormwater design guidelines, earthworks and vegetation clearance. The Panel does not recommend changes in relation to these matters and accepts the analysis of the Council Reporting Officers in this regard.<sup>101</sup>
- 3.6.44 A number of parties provided substantive evidence regarding specific changes and additions to the **MDRAA and HDRAA rule and policy frameworks**. We requested that Council Reporting Officers consider the merits of these additions and changes sought by submitters and their full assessment was provided in the Council Officers Reply Statement.<sup>102</sup> We deal with those requested changes in the following submitter by submitter analysis.

*Evaluation and recommended decisions – Kāinga Ora*

- 3.6.45 Kāinga Ora was the principal submitter seeking to alter the policy and rule framework in the HDRAA and MDRAA.<sup>103</sup> As a general approach they sought to extend the ability to build higher and more dense developments than the minimum stipulated in Policies 3 and 4 of the NPS-UD. The main tenet underpinning their submission was that the standards set out in the MDRS and in Policies 3 and 4 are minimums. In their submission, there is an obligation to enable greater heights where additional supply is required and, due to Policy 6 of the NPS-UD, amenity matters should not be considered as a deterrent to that. This, in the submission of Kāinga Ora, requires a major ‘mind shift’ by councils and residents. The extent of their requested key changes are summarised as follows:
- a. introduction of a height variation control overlaying MDRAA and HDRAA;
  - b. changes to the height-in-relation to boundary planes standard in the HDRAA;
  - c. increase in permitted heights in central Eastbourne, Wainuiomata and Stokes Valley;
  - d. changes to zone overviews, objectives, policies and matters of discretion;
  - e. preclusion of limited notification for non-compliances with certain standards; and

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<sup>100</sup> Council Officers Evaluation Report, paras 531-611

<sup>101</sup> Council Officers Reply Statement, paras 197-199, 201-203

<sup>102</sup> Council Officers Reply Statement, Section 6.2.2

<sup>103</sup> Submission 206

- f. provision for small-scale commercial activities at the ground level of apartment buildings.
- 3.6.46 Kāinga Ora sought a **height variation control overlay** across residential areas within 400m of the city centre and Petone to enable buildings up to 36m (10 storeys). These amendments would see proposed areas of HDRAA south and east of the Central Commercial Activity Area<sup>104</sup> and north of Jackson Street, Petone<sup>105</sup> subject to a 36m height variation control.
- 3.6.47 Having considered the evidence of Kāinga Ora and the response of Council Reporting Officers, we recommend as follows:
- a. For the Hutt City area, we agree with the points put forward by Kāinga Ora, namely that the wording of the NPS-UD suggests that more than six stories are anticipated around city and metropolitan areas.<sup>106</sup>
  - b. For the Petone area, over which the Low Coastal Hazard Area (Inundation) and Low and Medium Coastal Hazard Areas (Tsunami) extend, we agree with the assessment of Council Reporting Officers and consider allowing for additional height would send a conflicting message regarding the management of natural hazards.<sup>107</sup> We do not consider the direction of NPS-UD Policy 3(d) outweighs the consideration of natural hazards as a qualifying matter.
- 3.6.48 For the above reasons, we recommend the height variation control overlay (with a height of 36m) be applied as shown in **Appendix 4** to our report and otherwise recommend the retention of the notified height controls (22m) for the Petone area.
- 3.6.49 On the basis that the height-in-relation-to-boundary planes standard contained in the MDRS effectively constrains the maximum height of buildings, particularly on narrow sites, Kāinga Ora sought modifications to the **height-in-relation to boundary planes standard in the HDRAA** to enable six storey buildings and to encourage those building to be set towards the front of a site. Council Reporting Officers identified potential effects of the proposed amendments, including:
- a. a streetscape which is essentially enclosed by a wall of buildings;
  - b. the development of tall thin spaces between buildings in a manner contrary to crime prevention through environmental design principles; and
  - c. the lack of encouragement or incentivisation to amalgamate smaller sites and achieve more desirable outcomes.
- 3.6.50 While we acknowledge Kāinga Ora's proposed solution aligns with the intent of the NPS-UD, we consider it also introduces uncertainty and complexity. We concur with the Council

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<sup>104</sup> *Supplementary memorandum on behalf of Kāinga Ora – Homes and Communities*, dated 16 May 2023, Attachment B, Centre: Hutt City (South)/Waterloo map and Centre: Hutt City (North) map

<sup>105</sup> *Supplementary memorandum on behalf of Kāinga Ora – Homes and Communities*, dated 16 May 2023, Attachment B, Petone Centre (East) map

<sup>106</sup> *Statement of Primary Evidence of Karen Tracy Williams on behalf of Kāinga Ora – Homes and Communities*, dated 29 March 2023, paras 5.6-5.12

<sup>107</sup> Council Officers Reply Statement, para 100



Reporting Officers that the proposed modifications are not appropriate in the HDRAA, for the reasons set out in the Council Officers Reply Statement.<sup>108</sup>

- 3.6.51 Further to this recommendation, we accept Mr Wayne Donnelly's request<sup>109</sup> that the height-in-relation to boundary planes standard be amended to apply to the near side of the right-of-way. We concur with Council Reporting Officers that this goes some way to addressing Kāinga Ora's concerns regarding "wasted" space.<sup>110</sup>
- 3.6.52 Kāinga Ora also requested that residential areas **around central Eastbourne, Wainuiomata and Stokes Valley** be changed from HDRAA to MDRAA with more enabling height (18m) and height-in-relation to boundary controls. The Council's original position set out in the Council Officers Evaluation Report was that this should be a HDRAA, but with the special provisions removed and the standard HDRAA provisions simply applied in those areas (e.g. 22m height limit).<sup>111</sup> In other words, both the Council and Kāinga Ora agreed that a more nuanced height was an appropriate outcome at these three localities but disagreed on the method to achieve this. We note that there was also a slight difference for the spatial extent between the two zonings being considered by the Council and Kāinga Ora, in that Kāinga Ora sought the MDRAA to be extended in Wainuiomata south of Sheehy Grove to land zoned Hill Residential under the Operative District Plan.<sup>112</sup> However, we consider that these recommended areas are appropriate at the standard MDRAA height limit of 11m. Both Kāinga Ora and the Council acknowledged the limiting factor of services for intensification in these locations.
- 3.6.53 Council Reporting Officers amended their position for these three locations in light of the Kāinga Ora evidence and questions from the Panel at the hearing. The final recommendation of Council officers was to agree with the MDRAA zoning requested by Kāinga Ora and apply a height uplift to 18m and thus be enabling of more intensive urban character although less than under the HDRAA. We adopt the recommendation of Council Reporting Officers that zoning these areas as MDRAA with a height uplift to 18m more appropriately communicates the plan change's expectations for development and intensification.<sup>113</sup>
- 3.6.54 Kāinga Ora sought amendments to the **overviews, objectives, policies and matters of discretion** in Chapters 4F and 4G to clarify and better distinguish between the HDRAA and MDRAA. In general, we agree that a greater level of distinction is appropriate, with the HDRAA being more densely urban and the MDRAA being more medium density suburban in character. We concur with Kāinga Ora that PC56 should include express direction regarding appropriate intensification and ensure PC56 achieves high-quality urban environments.
- 3.6.55 The relief sought by Kāinga Ora is given effect to through the introduction of new objectives and policies and amendments to matters of discretion, which provide an appropriate balance between specifying anticipated design outcomes, while leaving flexibility for a range of possible methods to be used to achieve the outcome. These

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<sup>108</sup> Council Officers Reply Statement, paras 104 and 105

<sup>109</sup> Submission 79

<sup>110</sup> Council Officers Reply Statement, para 196

<sup>111</sup> Council Officers Evaluation Report, para 257

<sup>112</sup> *Supplementary memorandum on behalf of Kāinga Ora – Homes and Communities*, dated 16 May 2023, Attachment B, Wainuiomata map

<sup>113</sup> Council Officers Reply Statement, para 109

include the following alterations that were requested by Kāinga Ora and which are recommended by us for adoption:

- a. Alterations to the Introduction and Objective 4F 2.3A (dealing with consequential changes and removing reference to low density) which we consider to be minor and in alignment with the purpose of the NPS-UD.
- b. Addition of a new Policy 4F 3.2E as per the supplementary evidence of Kāinga Ora to provide more focused design standards.
- c. Amendments to Development Standards (such as the removal of reference to specific listed design elements and the inclusion of reference to height variation controls) under Section 4F 4.2 to provide a clearer link to the new policy, and enable the policy to drive understanding of high-quality urban character.
- d. Addition of a new Objective 4F 2.3AA (reflecting zoning and specific height controls in Wainuiomata, Stokes Valley and Eastbourne) which directly relates to Policy 3(d) of the NPS-UD.
- e. Addition of a new Policy 4F 3.2F which reflects above-mentioned changes to zoning around Wainuiomata, Stokes Valley and Eastbourne to MDRAA with a height uplift and modified height-in-relation to boundary plane standard.

3.6.56 We also accept the Council Reporting Officers suggested change to Objective 4F 2.5 to refer to traffic safety to improve consistency between the corresponding objective in Chapter 4G.<sup>114</sup>

3.6.57 For all other amendments to Chapter 4F objectives and policies, except those discussed elsewhere in this report, we accept and agree with the assessment set out in the Council Officers Evaluation Report.<sup>115</sup>

3.6.58 We accept amendments to Rules 4F 4.1.11 and references to 'residential unit' as a replacement for 'dwelling' for reasons of plan-wide consistency set out in the Council Officers Evaluation Report.<sup>116</sup>

3.6.59 A number of other recommended changes are made to Chapter 4G as appropriate for the context of the HDRAA for the reasons set out in the Council Officers Reply Statement.<sup>117</sup> The changes to policies and rules improve clarity and refine matters of discretion in a similar manner as those changes adopted for Chapter 4F.

3.6.60 We accept the request of Kāinga Ora to **preclude limited notification for non-compliances with standards** that manage on-site amenity, street interfaces and passive surveillance. Non-notification clauses were also requested by Cuttriss Consultants Ltd.<sup>118</sup> We agree with the Council Reporting Officers that these standards are intended to manage urban design outcomes rather than effects on neighbouring sites and therefore are

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<sup>114</sup> Council Officers Evaluation Report, paras 410 and 429

<sup>115</sup> Council Officers Evaluation Report, paras 417-420

<sup>116</sup> Council Officers Evaluation Report, paras 194 and 459

<sup>117</sup> Council Officers Reply Statement, paras 128-140

<sup>118</sup> Submission 221

appropriate to adopt in the HDRAA.<sup>119</sup> However, we do not consider these are appropriate in the MDRAA for the reasons set out by Council Reporting Officers.<sup>120</sup>

3.6.61 We also agree with Kāinga Ora that a range of **small-scale commercial activities at the ground level** of apartment buildings will contribute to well-functioning urban environments. As summarised by Council Reporting Officers:

*Kāinga Ora considers that providing for a range of small-scale commercial offerings at the ground level of apartment buildings within the anticipated HDRAA urban context will result in several benefits, such as:*

- a. Commercial activity at the ground floor of apartments is an optimal way to avoid the privacy and amenity issues associated with residential at ground floor*
- b. Commercial activities, scattered throughout the urban residential environment, can provide meeting locations for residents and others in the neighbourhood and can assist with live work opportunities and the supply of daily needs*
- c. Activities such as commercial tenancies at street level improves safety and surveillance, which improves walkability, and therefore creates a positive and vibrant urban living environment supporting walkable neighbourhoods and provides for health and wellbeing of the community.<sup>121</sup>*

3.6.62 We concur that a restricted discretionary activity consent pathway is appropriate for these activities in the HDRAA.

3.6.63 Overall, we adopt the s32AA evaluation in the Council Officers Reply Statement and the corresponding s32AA evaluation in the supplementary evidence of Kāinga Ora in regard to all of the above six categories of amendment recommended in respect to Kāinga Ora's submissions.<sup>122</sup>

*Evaluation and recommended decisions – Greater Wellington Regional Council*

3.6.64 Through the hearings, GWRC requested a number of specific wording amendments intended to give effect to the NPS-FM.<sup>123</sup> These included provisions to:

- a. ensure **nature-based solutions** are an integral part of new subdivisions and developments;
- b. better incorporate management of freshwater in urban intensification; and
- c. support climate change adaptation and mitigation and improve the health and wellbeing of people, biodiversity and the natural environment.

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<sup>119</sup> Council Officers Reply Statement, para 141-142

<sup>120</sup> Council Officers Reply Statement, para 200

<sup>121</sup> Council Officers Reply Statement, para 143.

<sup>122</sup> Council Officers Reply Statement, para 147; *Supplementary Memorandum on behalf of Kāinga Ora – Homes and Communities*, dated 16 May 2023

<sup>123</sup> Submission 149

- 3.6.65 The Panel is generally supportive of the overall objectives raised by the GWRC submission as matters that need to be addressed to ensure a well-functioning urban environment. We agree that “nature-based solutions” are inevitable and are proven solutions which should be encouraged.
- 3.6.66 However, we also acknowledge Mr Wesley’s assessment in the Council Officers Reply Statement, that whilst the District Plan must not be inconsistent with a regional plan, that there is difficulty reconciling the GWRC requests with the provisions of the Natural Resources Plan. We also note that some amendments seek to give effect to Plan Change 1 to the Wellington RPS. In our view, this creates a timing issue as Plan Change 1 is still in its hearing stage, and those provisions remain subject to change.
- 3.6.67 For the above reasons, and as discussed in **Section 3.3** of our report, we have not adopted the requests of GWRC relating to the inclusion of nature based solutions into the provisions of PC56. The absence of detail in the original GWRC submission and, to a lesser extent, the lack of weight able to be placed on Plan Change 1 to the RPS, counted against that. However, and as mentioned in the above earlier reference, we encourage both councils to liaise over how such provisions might be incorporated in the proposed review of the District Plan in the coming months. At that point Plan Change 1 might be more advanced and further consideration as to how appropriate provisions might be drafted is likely.
- 3.6.68 For provisions regarding **freshwater management**, we agree with Mr Wesley that these matters may ‘muddy’ the purpose of PC56 and should be addressed through regional planning documents.<sup>124</sup>
- 3.6.69 We also agree that PC56 retain 30% **site permeability** as a development standard. While we agree that stormwater management improvements, water sensitive design requirements and nature-based solutions may help to realise ecological, visual and amenity benefits, these options should be explored collectively through a review of the design guides as part of the full District Plan review.
- 3.6.70 For the above reasons, we have not adopted the submissions of GWRC in relation to changes they requested to the Residential Activity Areas and associated chapters. We agree with the assessment contained in the Council Officers Reply Statement:
- “For the purposes of Section 32AA, I consider this is the most appropriate way to achieve the purpose of the Act for the reasons set out above, particularly regarding the effectiveness and efficiency in achieving the objectives of Plan Change 56, the NPS-UD, and the MDRS by not introducing unclear provisions or amending existing provisions that makes them unclear, which would have the effect of restricting residential development necessary to meet projected housing demand.”*
- 3.6.71 In our view, effective consideration of regional and district plan integration is best dealt with during the full District Plan review and we encourage the Council to develop a working partnership with GRWC to develop rules, policies and objectives at this time.
- 3.6.72 In addition, Council Reporting Officers raised concerns with the scope available for specific wording amendments sought by GWRC through the hearings, but not identified in

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<sup>124</sup> Council Officers Reply Statement, para 153

their original or further submissions.<sup>125</sup> We agree that the broad GWRC submission does not support the specific amendments sought and these would be better given effect to through the full District Plan review.

*Evaluation and recommended decisions – KiwiRail*

3.6.73 KiwiRail sought a 5m setback for buildings from the railway corridor to provide sufficient room for scaffolding and other structures for the purposes of building maintenance, as well as any accidentally dropped items from those structures.<sup>126</sup> Mr Brown, on behalf of KiwiRail, provided a diagram demonstrating distances required to provide a safe buffer to items dropped from various heights.

3.6.74 Council Reporting Officers rejected this submission in their Evaluation Report on the basis that the effects on an activity should be internalised:

*“It is considered that if an additional setback is required for safe operation of the rail line, then it is considered that it is more effective and efficient that additional land should be designated to add to the width of the rail corridor.”<sup>127</sup>*

The recommendation of Council Reporting Officers was to retain the standard setback of 1m that applies to all side and rear boundaries.

3.6.75 We note that Kāinga Ora opposed KiwiRail’s submission and considered a reduced setback provided sufficient safety. Council Reporting Officers identified alternative mechanisms, such as height in relation to boundary and designations which, in their view, ensured a sufficiently wide buffer around railway corridors. Council Reporting Officers continued to recommend that KiwiRail’s submission be rejected.<sup>128</sup>

3.6.76 The Panel also remains unconvinced that KiwiRail has provided sufficient evidential basis for a 5m setback. We note that a variety of setback distances are required for the erection of structures adjacent to a railway corridor under different District Plans around the country, including 2m under the Decisions Version of the Proposed New Plymouth District Plan<sup>129</sup> up to 4m under the Christchurch District Plan.<sup>130</sup> We note that the relevant Council officers evaluation reports relating to the Porirua District Plan and Wellington District Plan IPI both recommended a 1.5m setback. On this basis, we recommend that a setback of 1.5m is adopted, as this is regionally consistent.

3.6.77 KiwiRail also sought amendments to noise provisions that are out of scope of PC56, for the reasons set out in **Section 3.3** of our report.

*Evaluation and recommended decisions – Survey and Spatial New Zealand*

3.6.78 Survey and Spatial New Zealand requested the removal of a number of matters of discretion for rules in Chapter 4F.<sup>131</sup> The submitter considered these matters are not relevant to the standard and that inclusion of “*the planned urban built character for the*

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<sup>125</sup> As addressed in **Section 3.3** of our report

<sup>126</sup> Submission 188

<sup>127</sup> Council Officers Evaluation Report, para 469

<sup>128</sup> Council Officers Reply Statement, para171

<sup>129</sup> TRAN-R8, Decisions Version of the Proposed New Plymouth District Plan

<sup>130</sup> Permitted standard 14.4.2.7, Christchurch District Plan

<sup>131</sup> Submission 219

*Medium Density Residential Activity Area*” as a matter of discretion is too broad and unspecific.

3.6.79 The witness for the submitter – Mr David Gibson - is an experienced practitioner and he suggested sensible changes. However; we agree with the assessment as set out in the Council Officers Reply Statement, and we prefer the relief requested by Kāinga Ora. We agree that the planned urban character of the MDRAA is a broad matter, but we agree that the rest of Chapter 4F, as recommended now, provides sufficient guidance and definition on the parameters of urban built character which will assist in the implementation of these matters of discretion. We also consider the amendments to the matters of discretion proposed by Kāinga Ora, and adopted per our discussion above, means the various design elements have been deleted and replaced by more specific matters.

*Evaluation and recommended decisions – Residential Design Guides*

3.6.80 Submitter Ms Fiona Christeller<sup>132</sup> sought to include design guides in the District Plan, and apply consideration of other local authority design guides (for example Wellington City Council) for residential activities in the MDRAA and HDRAA.

3.6.81 In response, Council Reporting Officers acknowledged that the design guides needed updating and recommended that this occur as part of the full District Plan review due to the large amount of work required. They also acknowledged that this brings up questions around the quality of urban design achieved through PC56. In this respect the Council Reporting Officers proposed inserting new Policy 4F 3.2E to ensure sufficient weight is given to high-quality urban design outcomes.<sup>133</sup>

3.6.82 We agree with the assessment as set out in the Council Officers Reply Statement:

*“The proposed changes to residential development standards set out earlier balance the minimum standards imposed by the MDRS with achieving quality urban design outcomes, while deferring review of the Medium Density Design Guide to the full District Plan where it can be more fully and effectively reviewed.”<sup>134</sup>*

3.6.83 Coupled with Kāinga Ora’s recommended amendments and the non-statutory mechanisms available to the Council for influencing high quality residential outcomes, we are satisfied that the approach recommended by Council Reporting Officers is the most appropriate.

3.6.84 Overall, we consider that the recommended amendments are a more appropriate way to achieve the objectives of PC56 and the purpose of the RMA than the notified provisions, because the new and amended provisions ensure effect is given to the NPS-UD.

3.6.85 As an aside to the above, the Panel noticed that Chapter 5E Suburban Mixed Use Activity Area includes references to the Medium Density Design Guidelines despite most references to this document being deleted and replaced with policies and more specific matters of discretion in the MDRAA Chapter 4F. Some references remained in relation to retirement villages and housing for the elderly (Rule 4F 4.1.7 and Rule 4F 5.2.1.1).

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<sup>132</sup> Submission 166

<sup>133</sup> Council Officers Reply Statement, para 191

<sup>134</sup> Council Officers Reply Statement, para 195

- 3.6.86 This situation is at odds with the Panel’s observation about Chapters 4F and 5E above. As noted immediately above, and previously in this report, the Panel is clear in its position that the Medium Density Design Guidelines require a fulsome review as part of the full District Plan Review and sit outside the Plan.
- 3.6.87 Kāinga Ora sought that all references to design guides and design guidelines be removed from PC56. The Panel recommends removing references to the Medium Density Design Guidelines from Chapters 4F, 4G and 5E and relevant rules to ensure a consistent approach to the consideration of residential design outcomes.

*Residential Activity Area provisions relating to retirement villages*

*Matters raised by submitters*

- 3.6.88 As outlined by RVA’s and Ryman Healthcare’s counsel Mr Hinchey and their principal planning witness, Dr Mitchell,<sup>135</sup> and as summarised by Mr Davis in the Council Officers Reply Statement,<sup>136</sup> RVA and Ryman Healthcare<sup>137</sup> sought a package of amendments to PC56 to further enable retirement villages in the applicable residential zones. This included the addition of a standalone retirement village-specific objective and policy, refined matters of discretion and a number of miscellaneous changes and consequential amendments to support these requested changes.

*Evaluation and recommended decision*

- 3.6.89 Mr Davis alluded to matters of scope, in relation to these submission points, in the Council Officers Reply Statement and as addressed by Mr Quinn for the Council in his closing legal submissions.
- 3.6.90 We have already addressed and settled matters of scope in **Section 3.3** of our report. We make it clear there that we agree with Mr Quinn’s assessment that the submission points and further submissions in question raise matters out of scope and are not ‘on’ the plan change and that we are therefore obliged to reject them on that basis. Specifically these points include the entirety of the relief sought by RVA and Ryman Healthcare in relation to provision for retirement villages. We concur with Mr Quinn’s submission that “*a whole new suite of provisions (from higher to lower order) for a new category of activity must logically be outside scope of a focused plan change such as PC56.*”<sup>138</sup>
- 3.6.91 As requested by us, Mr Davis went on to provide a merits assessment with respect to above submission points.<sup>139</sup> However, and while we do wish to acknowledge Mr Davis’s efforts in this regard, as we have determined that the matters concerned are out of scope, we have no need to consider this evaluation further.
- 3.6.92 Notwithstanding the above, Mr Davis did agree that retirement villages are most appropriately located within the residential zones and that they could be better

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<sup>135</sup> Legal submissions and supplementary dated 18 April 2023 and 28 April 2023, Planning evidence and supplementary evidence dated 29 March 2023 and 28 April 2023 respectively.

<sup>136</sup> Council Officers Reply Statement, paras 169-170

<sup>137</sup> Submissions 211 and 204, respectively

<sup>138</sup> Legal submissions on behalf of Hutt City Council addressing matters raised by the hearings panel, dated 25 May 2023, paras 16-23 and specifically para 19

<sup>139</sup> Council Officers Reply Statement, paras 172-180

recognised at a policy level within MDRAA and HDRAA.<sup>140</sup> For the comfort of RVA and Ryman Healthcare, and based on the comprehensive case presented by all of their witnesses, we also agree with Mr Davis. It is the scope issues that prevents us from considering and recommending on the merits of these matters any further at part of this IPI / ISPP process. The exception to this is the Panel's agreement to delete references to the Medium Density Design Guidelines in relation to retirement villages and housing for the elderly (Rule 4F 4.1.7 and Rule 4F 5.2.1.1).

- 3.6.93 Finally, while the policy requested by RVA and Ryman Healthcare and as amended by Mr Davis in the Council Officer Reply Statement makes some sense to us, the issue of scope discussed above remains. Furthermore, in our minds it is not appropriate to 'slice and dice' provisions and therefore it is our recommendation that the entire package requested by the RVA and Ryman Healthcare is best left for consideration as part of the whole District Plan review.

*Commercial and other non-residential Activity Areas and associated chapters*

*Overview of relevant provisions*

- 3.6.94 PC56 proposes changes to objectives, policies and rules (including standards and matters of discretion) of the Operative District Plan relating to commercial and other non-residential activity areas provisions. The affected chapters discussed in this section are:
- a. Chapter 5: Commercial;
  - b. Chapter 5A: Central Commercial Activity Area;
  - c. Chapter 5B: Petone Commercial Activity Area;
  - d. Chapter 5C: Suburban Commercial Activity Area (proposed for deletion);
  - e. Chapter 5D: Special Commercial Activity Area (proposed for deletion);
  - f. Chapter 5E: Suburban Mixed Use Activity Area;
  - g. Chapter 6A: General Business Activity Area;
  - h. Chapter 9A: Community Health Activity Area; and
  - i. Chapter 10A: Community Iwi Activity Area.

- 3.6.95 The proposed amendments embodied in PC56 primarily seek to incorporate the density standards of the MDRS, give effect to Policies 3 and 4 of the NPS-UD, and accommodate qualifying matters. In this section of our report however we focus upon the submissions to the commercial imperatives embodied in the NPS-UD.

*Matters raised by submitters*

- 3.6.96 As with submissions on residential provisions, many submitters sought changes to provisions so as to be more enabling of intensification and urban development within the commercial and non-residential parts of the City while others sought specific carve-outs and protections in those zones for various matters. These requests largely related to:
- a. changes to zoning and extent of specified heritage precincts;
  - b. review of the centres hierarchy;

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<sup>140</sup> Council Officers Reply Statement, para 182



- c. enabling non-residential land uses;
- d. specific changes to objectives, policies, rules (including standards and matters of discretion);
- e. substantial review of design guides;
- f. removal of design guides from the District Plan; and
- g. preclusion from notification for certain activity standards.

*Evaluation and recommended decision*

3.6.97 Mr Davis set out recommended amendments to PC56 based on the above submissions in the Council Officers Evaluation Report.<sup>141</sup> It is noted that Council Reporting Officers considered zoning requests and review of the centres hierarchy to be out of scope of PC56 and these matters were not pursued further.

3.6.98 In addition, the following matters remained uncontested through the hearings process:

- a. amendments to zone descriptions;
- b. clarification of the approach to adjoining residential areas;
- c. preclusion of public and limited notification;
- d. deletion of redundant natural hazard matters of discretion; and
- e. provision for taller buildings in Naenae and Waterloo commercial areas.

3.6.99 We adopt the relevant recommendations on the matters above for the reasons set out in the Council Officers Evaluation Report and adopt the accompanying s32AA evaluation provided in the Evaluation Report in this regard.

3.6.100 We also note that amendments to the extent of heritage precincts are discussed under **Section 3.7** of this report and matters related to retirement villages are discussed in paragraphs 3.6.88 to 3.6.93 above.

3.6.101 In terms of the provisions that remained contested at the close of the hearing, these were as follows:

- a. provision for community corrections facilities;
- b. design guides for commercial areas;
- c. height limits in Petone Commercial Activity Area 2; and
- d. viewshafts in Petone.

3.6.102 As noted above, the Department of Corrections sought amendments to provide for **community corrections facilities** in all relevant zones. Council staff sought legal advice regarding scope prior to the hearing which set the foundation for Mr Davis's recommendation to reject these submission points in the Council Officers Evaluation Report.<sup>142</sup>

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<sup>141</sup> Council Officers Evaluation Report, paras 649-824

<sup>142</sup> Council Officers Evaluation Report, para 659

- 3.6.103 Notwithstanding this scope issue, we requested Council staff consider the merits of the proposed changes in their Council Officers Reply Statement and we acknowledge their efforts in that regard. We also requested further legal assessment of the scope issue. Mr Quinn retained his position that these requests are out of scope of PC56.<sup>143</sup>
- 3.6.104 We consider the matter would benefit from more dialogue between the Council and the Department of Corrections. However; with reference to the legal advice set out in **Section 3.3** of this report, we consider requests to provide for community corrections are out of scope of PC56.
- 3.6.105 Some submitters requested amendments to the **design guides for commercial areas**, and submitted on whether the design guides should sit 'in' or 'out' of the plan. It is noted that Residential Design Guides sit outside the plan, while the commercial area design guides sit inside the plan. This inconsistency is explained in the Evaluation Report.<sup>144</sup>
- 3.6.106 RLW Holdings had sought greater clarity in the Petone Commercial 1 design guide, and on the submitter's behalf Mr Batchelor proposed changes to the rule structure of the Petone Commercial chapter. We accept Mr Davis's reasons for recommending the rejection of changes to the structure and limiting modifications to the wording only, to enable buildings up to 22m.<sup>145</sup> We also agree with Mr Davis<sup>146</sup> that to remove the commercial design guides via PC56 would require significant restructuring of the District Plan; an undertaking that would be inefficient at this time. We do consider that the Council should adopt a consistent approach to the location of design guides for all zones and areas while undertaking a substantial review of all design guides through the full District Plan review process.
- 3.6.107 In relation to **height limits in Petone Commercial Activity Area 2** submitters, including the Petone Historical Society, questioned whether unlimited height is appropriate for this area. We acknowledge this concern but also understand that the Council has chosen a higher height limit to encourage growth in this area, reflecting its well-suited location.<sup>147</sup> The Panel agrees that the proposed approach to height is appropriate, given the area is located outside the existing historic precinct in Petone and provides for big box retail.
- 3.6.108 The Petone Historical Society also sought the reinstatement of building heights in Petone Commercial Activity Area 2 to protect **viewshafts**. Viewshafts are not a qualifying matter and the submitter has not provided sufficient evidence or a suitable assessment to justify the inclusion of viewshafts as qualifying matters in accordance with sections 77I(j) and 77J.
- 3.6.109 As we make clear in **Section 1.2** of this report, the Panel is not carrying out separate s32AA assessments where the assessment of the s32 report prepared by the Council at the time of PC56's notification still applies. In this regard, the Panel adopts the s32 assessment in relation to height changes to the Petone Commercial 1 design guides.

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<sup>143</sup> *Legal submissions on behalf of Hutt City Council addressing matters raised by the Panel*, dated 25 May 2023, paras 24-29

<sup>144</sup> Council Officers Evaluation Report, para 155-157

<sup>145</sup> Council Officers Reply Statement, paras 234-237

<sup>146</sup> Council Officers Reply Statement, paras 232-233

<sup>147</sup> Council Officers Reply Statement, para 238

## Subdivision

### *Overview of relevant provisions*

3.6.110 As noted in the relevant section of the Council Officers Evaluation Report prepared by Mr Hamish Wesney,<sup>148</sup> most changes to the **Subdivision chapter**<sup>149</sup> in the Operative District Plan proposed by PC56 are either consequential amendments arising from the changes to the residential or commercial zones, or minor updates including the zone (Activity Area) names.

3.6.111 Other changes to the Subdivision chapter are more substantive in nature and relate to the objective, policy and rule framework for managing natural hazards, including coastal hazards, and also historic heritage, which PC56 otherwise identifies as qualifying matters in relation to the IPI. Submissions on these matters are dealt with directly in **Section 3.7** of our report.

### *Matters raised by submitters*

3.6.112 As noted above, aside from new or amended provisions relating to natural hazards and historic heritage, changes to the Subdivision chapter are largely consequential and/or minor in nature. It is therefore perhaps not surprising that issues of scope arose with some submissions that sought to comment on or raise matters about subdivision generally.

3.6.113 This included a submission from the Regional Council<sup>150</sup> that sought to further amend the District Plan to address efficient water use and introduce unspecified provisions dealing with 'nature-based solutions'. We have dealt with the fundamental issues of scope and whether submission points such as these are admissible within the constraints of an IPI and 'on' PC56 in **Section 3.3** of our report, although we address the Regional Council's request further below in acknowledgement that this particular matter remained in contention at the hearing. We note that the Regional Council also submitted that PC56 should provide greater recognition and provision for subdivision design that supported model shift in transport and reductions in greenhouse gas emissions.<sup>151</sup>

3.6.114 The Regional Council's requests for new provisions relating to the above matters were not supported by Mr Wesney in advance of the hearing as, in his view, they would sit in isolation, unsupported by either an objective and policy framework above or means of implementation below.<sup>152</sup>

3.6.115 Aside from the Regional Council's requests, other submissions on changes to the Subdivision chapter sought to, variously:

- a. retain the provisions as notified;
- b. strengthen consideration of matters relating to heritage, character, trees, sites and areas of significance to Māori, Community Iwi Activity Areas/Marae, enabling tino rangatiratanga, reverse sensitivity, and adequate water supplies for fire-fighting purposes;

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<sup>148</sup> Council Officers Evaluation Report, para 834

<sup>149</sup> Chapter 11

<sup>150</sup> Submission point 149.66

<sup>151</sup> Submission point 149.67

<sup>152</sup> Council Officers Evaluation Report, para 854

- c. better align the subdivision provisions with land use provisions and external standards;
- d. include a new non-notification clause relating to controlled activity subdivision proposals;
- e. alter specific subdivision standards and applicable default consent status where non-compliance results; and
- f. address errors and inconsistencies.<sup>153</sup>

3.6.116 The Council Officers Evaluation Report recommended a series of changes in relation to these submissions that were focused around expanding consideration of and/or correcting cross-references to heritage values, reverse sensitivity, and sites and areas of significance to Māori, for the reasons outlined in the report. Mr Wesley did not recommend any additional changes in response to other submission points on the general grounds that adequate provision was already made in the District Plan or PC56, the relief sought would introduce uncertainty, or that they would not represent an effective means of achieving the new objectives introduced by PC56.<sup>154</sup>

*Evaluation and recommended decision*

3.6.117 We accept the Reporting Officer's recommendations for further amendments to the plan change provisions for the reasons set out in the Council Officers Evaluation Report. In doing so we adopt the s32AA evaluation set out in that report and agree that the recommended changes would better give effect to the purpose of the RMA among other benefits.<sup>155</sup> The only exception we would make in this respect would be amendments to include cross-references to new heritage precincts,<sup>156</sup> which we have recommended should not proceed (refer **Section 3.7** in our report).

3.6.118 We note that Mr Wesley returned to a number of subdivision-related matters in the Council Officers Reply Statement. In relation to the Regional Council's request that PC56 address efficient water use and nature-based solutions (refer paragraph 3.6.113 above), Mr Wesley remained of the view that it was not clear how the provisions requested would integrate and not conflict with existing District Plan provisions not part of PC56, including which existing objectives they could contribute to achieving and, on this basis, recommended no amendments to the plan change.<sup>157</sup>

3.6.119 In our view, this primarily relates to a matter of scope, as we set out in **Section 3.3** of our report. That aside, it is our finding that, notwithstanding the evidential contributions of Ms Pam Guest and Mr Richard Sheild during the hearing on behalf of the Regional Council,<sup>158</sup> the requested provisions remained insufficiently developed for the purposes of our evaluation.

3.6.120 This leads us to a broad observation, which is that submission points that go to the heart of the District Plan's policy framework without clearly articulating what is desired put us (and Council officers) in an invidious position. Practically, we can do little with requests

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<sup>153</sup> As set out in greater detail in the Council Officers Evaluation Report, paras 834-840, 845-852, 856-871

<sup>154</sup> Council Officers Evaluation Report, paras 841-844, 853-855, 872-883

<sup>155</sup> Council Officers Evaluation Report, paras 884-894

<sup>156</sup> As sought by the Petone Historical Society (163.37-163.39) and addressed in *Reporting Officers' Written Response to Hearing – District Plan Change 56*, 9 June 2023, para 246

<sup>157</sup> Council Officers Reply Statement, paras 240-243

<sup>158</sup> *Speaking Notes of Pam Guest for HCC Plan Change 56 hearing*, 12 April 2023 and *Statement of evidence of Richard Cameron Sheild on behalf of Wellington Regional Council*, 29 March 2023

that would have significant implications for the direction of the plan change and the District Plan to which it relates, when these requests lack detail and are not supported by a robust s32AA evaluation. Such requests raise issues around natural justice also, in that no other (potentially affected) party could be expected to fully understand their import and implications.

- 3.6.121 It is evident to us that nature-based solutions have the potential to become a vital means of giving full effect to the NPS-FM and addressing infrastructure capacity issues in the light of climate change drivers. But to succeed, the resulting provisions must be technically and legally robust, and closely tied to and integrated with infrastructure and asset management plans. They cannot simply be shoehorned into District Plans at a relatively late stage in their development without being thoroughly tested and proofed. As we have already observed in **Section 3.3** and specifically in paragraph 3.3.16, while we have determined that the matters raised fall outside the scope of PC56, we would encourage the two councils to further develop this nature based approach, where practical and achievable, for inclusion in the full District Plan review.
- 3.6.122 In the Council Officers Reply Statement, Mr Wesley gave further consideration to Kāinga Ora's request that a non-notification clause be added to controlled activity subdivisions (Rule 11.2.2). He did so having considered the evidence of Ms Karen Williams on behalf of the housing agency.<sup>159</sup> Mr Wesley concluded that the addition of such a clause would be consistent with the outcome of clause 5(3) of Schedule 3A of the RMA, which precludes public and limited notification where residential developments catered for by the MDRS are concerned.<sup>160</sup> We agree and adopt the recommendation and associated s32AA evaluation<sup>161</sup> relating to the addition of the clause for the reasons Ms Wesley sets out in the Council Officers Reply Statement.
- 3.6.123 The final subdivision-related matter that Mr Wesley addressed in the Council Officers Reply Statement responds to evidence presented by Ms Sylvia Allan,<sup>162</sup> on behalf of her own and Mr Bill Allan's submission,<sup>163</sup> raising serious concerns about intensification of development in areas subject to coastal hazards. Specifically, she drew our attention to what she considered was a mismatch between a 'no increased risk' policy framework and the restricted discretionary / discretionary activity consent status for subdivision in the Medium and High Coastal Hazard Area Overlays, respectively.
- 3.6.124 Commensurate with recommended changes to permitted densities in the overlays together with their geographical extent,<sup>164</sup> Mr Wesley concluded that subdivision in the High Coastal Hazard Area Overlay should be made a non-complying activity.<sup>165</sup> Further, in his view, a restricted discretionary activity status should be retained for the Medium Coastal Hazard Area Overlay as it would not increase risk above the current baseline set by the Operative District Plan, and could be reviewed as part of the full District Plan review.<sup>166</sup> We agree with Mr Wesley's conclusions in this respect and recommend the adoption of the further amendments he proposes together with his s32AA evaluation.

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<sup>159</sup> *Statement of primary evidence of Karen Tracy Williams on behalf of Kainga Ora – Homes and Communities (Planning)*, 29 March 2023

<sup>160</sup> Council Officers Reply Statement, paras 244-245

<sup>161</sup> Council Officers Reply Statement, paras 254-255

<sup>162</sup> *Speaking notes – Plan Change 56, Sylvia and Bill Allan, Submission No. 168*, undated

<sup>163</sup> Submission 168

<sup>164</sup> Refer to **Section 3.7** of our report

<sup>165</sup> Council Officers Reply Statement, para 252

<sup>166</sup> Council Officers Reply Statement, para 253

### *Financial contributions*

#### *Overview of relevant provisions*

3.6.125 The approach of PC56 on financial contributions is as summarised in the Council Officers Evaluation Report:<sup>167</sup>

- a. to contain requirements for financial contributions which can be imposed for resource consents for all developments, not (as is the case in the operative District Plan) just developments that involve subdivision;
- b. to ensure financial contributions can cover the full and actual costs of upgrading transport facilities;
- c. to clarify when payments for financial contributions under these rules are to be paid; and
- d. some changes to **Chapter 12 Financial Contributions** for the purpose of relocating rules only, rather than introducing amendments.

3.6.123 The Council Officers Evaluation Report covered submissions relating to financial contributions, including all submissions on Chapter 12 Financial Contributions and financial contribution provisions in **Chapter 11 Subdivision**.

#### *Matters raised by submitters*

3.6.124 Several submitters raised concerns about the matters a. to d. above. In summary, the submissions requested that developers carry the cost burdens associated with infrastructure and upgrades, that a method for determining the costs of a financial contribution be included, that amendments be made to ensure that 'double dipping' did not occur, and also to provide a retirement village specific regime.<sup>168</sup>

3.6.125 Our further discussion of these submissions, together with our evaluation and recommended decision in each case, are arranged under the following headings below:

- a. financial contributions – overall; and
- b. requested changes to specific provisions.

#### *Financial contributions - overall*

3.6.126 The RVA and Ryman Healthcare were the only submitters that provided further evidence at the hearing. They sought greater clarity on the provisions and specific recognition for retirement villages. The Panel asked for specific amendments to the wording of the PC56 provisions to be provided during the hearing and this was provided by the submitters' planning witness, Dr Mitchell, in supplementary evidence as discussed below.

3.6.127 Also, Mr Akehurst (on behalf of RVA and Ryman Healthcare) asserted that because retirement villages have lower demand on Council facilities and reserves, can generate lower traffic volumes, consume less water and generate less wastewater compared to

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<sup>167</sup> s42A para 898

<sup>168</sup> s42A paras 898 - 902

other forms of residential development, the provisions governing financial contributions should be differentiated to reflect this. He also considered that there should be a more robust methodology for determining financial contributions that does not overlap with development contributions, i.e., does not 'double dip'.

3.6.128 The Council Officers Evaluation Report featured the explanation for the Council's Development and Financial Contributions Policy 2021-2031, which sits outside of the Plan and is reviewed every three years.<sup>169</sup> Mr Wesley considered that, based on the policy explanation and the additional text to be added to the Introduction to the Chapter in the Plan (discussed below), there was no 'double dipping' or overlap between the development contributions and financial contribution regimes, and we concur.

*Changes to specific provisions*

3.6.129 Several submitters requested changes to the Chapter 12 provisions amended by PC56, as detailed and considered in the Council Officers Evaluation Report.<sup>170</sup> Ultimately many of the requested changes were considered to be unnecessary or out of scope as the notified changes to the financial contributions chapter are limited to consequential amendments. A minor correction to change 'Transit New Zealand' to 'New Zealand Transport Agency (Waka Kotahi)' was accepted.

3.6.130 Dr Mitchell gave planning evidence supporting Mr Akehurst's evidence and provided supplementary evidence with specific changes to the provisions as requested by the Panel. The changes requested amendments to the Introduction, Policies and Rules.

3.6.131 Mr Wesley responded to each of the proposed changes specifically in the Council Officers Reply Statement.<sup>171</sup> Mr Wesley considered that the majority of the proposed changes suggested by Dr Mitchell were appropriate as they provided greater clarity and certainty. Furthermore, they would be predominantly consistent with the Council's Development and Financial Contributions Policy 2021-2031.

3.6.132 In relation to the Introduction, Mr Wesley recommended that it use the same text as in the Council's Development and Financial Contributions Policy (as referenced above).

3.6.133 In relation to the requested amendments to the notified Policies 12.1.1(b) to (d), Mr Wesley generally considered that they were appropriate but did propose some further clarifications and minor wording changes to 'not over-state the situation'. For Policy 12.1.1(b) he considered that, as there were two potential scenarios, the policy should reflect that. The two scenarios relate to upgraded or new services:

- a. solely for an individual subdivision or development; or
- b. where they would service multiple subdivisions or development.

3.6.134 Mr Wesley agreed that the amendments to Rules 12.2.1.1, 12.2.1.4 and 12.2.1.5 (relating to transport, water supply, wastewater and stormwater contributions) were generally appropriate. However, for Rule (b) in each of the above-mentioned rules he recommended that they reflect the two scenarios discussed in paragraph 3.6.136 above. Other minor deviations from the wording proffered by the submitter that Mr Wesley

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<sup>169</sup> Council Officers Evaluation Report, para 903

<sup>170</sup> Council Officers Evaluation Report, paras 906 - 916

<sup>171</sup> Council Officers Reply Statement, para 259

recommended included addressing potential duplication with other provisions and some softening of wording.

3.6.135 We agree with the conclusions of Mr Wesley and adopt his s32AA evaluation in the above respects.<sup>172</sup> For the reasons set out above, we agree that the additional text will clarify the difference between development contributions and financial contributions and avoid double-dipping. The additional and amended policies and rules will reflect that financial contributions should be proportionate to the demand on services.

3.6.136 Overall, we consider that the recommended amendments are a more appropriate way to achieve the objectives of PC56 and the purpose of the RMA than the notified provisions, because the new and amended provisions ensure developers and the Council make fair and reasonable contributions for the provision of utility services and land for reserves.

#### *District-wide matters*

##### *Overview of relevant provisions*

3.6.140 All changes to the **Network Utilities, Noise and Hazardous Facilities chapters**<sup>173</sup> in the Operative District Plan proposed by PC56 are consequential in nature only, and involve deleting or amending Activity Area names and adding references to new heritage precincts, as Mr Wesley noted in the Council Officers Evaluation Report.<sup>174</sup>

##### *Matters raised by submitters*

3.6.141 As with submissions to the Subdivision chapter,<sup>175</sup> some issues of scope arose with those submissions that sought to raise issues with the District-wide chapters that went beyond the scope of PC56. These included the relief sought with respect to the identification of significant natural areas, as summarised in the Council Officers Evaluation Report.<sup>176</sup>

3.6.142 Other submissions sought to:

- a. retain the district-wide provisions as notified;
- b. provide for an increased number of small green local spaces;
- c. provide for cycle parking and end of trip facilities in new developments; and
- d. provide access and water supplies for firefighting purposes.<sup>177</sup>

3.6.143 With respect to above requests, Mr Wesley indicated that he considered no further amendments to the District-wide provisions are warranted, largely on the grounds that the outcomes sought, while appropriate, are already provided for by way of Operative District Plan provisions.<sup>178</sup>

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<sup>172</sup> Council Officers Reply Statement, paras 260-261

<sup>173</sup> Chapters 13, 14C and 14D, respectively

<sup>174</sup> Council Officers Evaluation Report, para 919

<sup>175</sup> Refer to paragraphs 3.6.110 to 3.6.124 in our report

<sup>176</sup> Council Officers Evaluation Report, paras 921-924

<sup>177</sup> As set out in greater detail in the Council Officers Evaluation Report, paras 921, 926-927, 931-934

<sup>178</sup> Council Officers Evaluation Report, paras 925, 930, 935-938



*Evaluation and recommended decision*

- 3.6.144 We accept Mr Wesley's findings in the above respects and agree that no further amendments to the District-wide provisions are necessary. We recommend that amendments to include cross-references to new heritage precincts do not proceed, for the reasons set out in **Section 3.7** of our report.
- 3.6.145 We do note that Mr Davis did latterly turn his mind to evidence presented by KiwiRail at the hearing in support of its submission<sup>179</sup> seeking to modify and strengthen the operative District-wide provisions relating to the State Highway and Railway Corridor Buffer Overlays. Essentially, KiwiRail proposed changes that would broaden the extent of the overlay and expand the range of and tighten the controls on 'noise sensitive activities' within the overlay.<sup>180</sup> The evidence on Dr Stephen Chiles on behalf of KiwiRail was directly relevant to the transport operator's case.<sup>181</sup>
- 3.6.146 Mr Davis addressed this matter in the Council Officers Reply Statement by reminding us that in his review KiwiRail's requests were out of scope of PC56 as notified.<sup>182</sup> For the reasons set out in **Section 3.3** of our report, we agree.
- 3.6.147 This makes any further consideration of KiwiRail's request moot. Nonetheless, we wish to acknowledge the effort that Mr Davis went to in preparing a thorough assessment of the merits of the submission,<sup>183</sup> on the basis of a request from us and were we minded to conclude otherwise as to scope. We also acknowledge Dr Chiles' evidence without needing to proffer an opinion as to its merits. We do not consider that the work of Mr Wesley and Dr Chiles to be wasted in this regard, as it provides a useful steer to both parties and other interested persons within the context of the forthcoming District Plan review.

*Wind**Overview of relevant provisions*

- 3.6.148 PC56 would consolidate operative District Plan provisions, which relate to the management of wind effects associated with buildings in order to ensure pedestrian comfort and safety, in a new **Wind chapter**.<sup>184</sup> The effect of the amendments would be that the conditions requiring wind assessments would apply to additional developments enabled by PC56 and/or as a consequence of that consolidation exercise. The amendments would also update performance standards and assessment processes in light of the technical review accompanying the s32 report.<sup>185</sup>

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<sup>179</sup> Submission points 188.1, 188.11, 188.12, 188.13

<sup>180</sup> As summarised in the Council Officers Reply Statement, para 262

<sup>181</sup> *Statement of evidence of Stephen Chiles on behalf of Kiwirail Holdings Limited (Noise and Vibration)*, 29 March 2023

<sup>182</sup> Council Officers Reply Statement, paras 263, 292

<sup>183</sup> Council Officers Reply Statement, paras 264-291, 293-296

<sup>184</sup> Chapter 14M

<sup>185</sup> *Lower Hutt District Plan Wind Rules*, Memorandum prepared by Nick Locke and Neil Jamison, WSP, dated 26 May 2022

*Matters raised by submitters*

3.6.149 As summarised in the Council Officers Evaluation Report,<sup>186</sup> submissions on this topic sought:

- a. higher building height thresholds for triggering wind assessments;
- b. the removal of considerations of pedestrian comfort and a sole focus on safety;
- c. the extension of consideration to SASM; and
- d. the retention of the provisions as notified or minor points of clarification.

3.6.150 As the Council's Reporting Officer on this topic, it was Mr Davis's view that no further amendments to the relevant provisions were warranted, as the provisions delineated an appropriate split in assessment requirements where public places requiring consideration of safety or comfort were concerned, were based on technical advice regarding wind generation in association with building heights, and were consistent with controls in other jurisdictions (to the extent that they should be).<sup>187</sup>

*Evaluation and recommended decision*

3.6.151 No new expert evidence, other relevant information or consequential changes pertaining to this topic were presented at the hearing.<sup>188</sup>

3.6.152 Accordingly, we accept the officer's recommendation that no further amendments are warranted and his reasoning in that regard, as set out in the Council Officers Evaluation Report.

### **3.7 Qualifying matters**

*Introduction*

3.7.1 We now turn to our consideration of qualifying matters as specified in the notified version of PC56 and the submissions made on these matters, together with those submissions seeking the incorporation of other qualifying matters into the plan change.

3.7.2 To focus our ensuing evaluations and inform our decisions on specific qualifying matters, we first describe the broad approach taken by HCC in specifying those matters in the notified plan change. Our evaluations of individual qualifying matters and attendant submissions then follow in respect to:

- a. Heritage buildings, structures, areas and precincts;
- b. Natural hazards;
- c. Sites and areas of significance to Māori (SASM);
- d. The National Grid;
- e. Public open space; and

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<sup>186</sup> Council Officers Evaluation Report, paras 943-951

<sup>187</sup> Council Officers Evaluation Report, paras 952-967

<sup>188</sup> Council Officers Reply Statement, para 297

- f. Other matters that could be qualifying matters.

*Broad approach taken by HCC*

3.7.3 In **Section 2.2** of our report, we set out the statutory requirements and pathways that apply with respect to the specifying of qualifying matters. There are essentially three pathways:

- a. The **'alternative' approach** for existing, qualifying matters explicitly listed in s77I(a) to (i) or s77O(a) to (i) and already contained in the operative District Plan when the IPI (in this case, PC56) was notified. As the matters were already contested and settled as part of the development of the District Plan a more truncated evaluation process to justify inclusion as a qualifying matter is required, as specified in s77K and s77Q, respectively.<sup>189</sup>
- b. The **'standard' approach** for new qualifying matters explicitly listed in s77I(a) to (i) or s77O(a) to (i), not already contained in the operative District Plan and proposed to be introduced at the time of the notification of the IPI. As the matters concerned are new and 'untested' in the public realm a more comprehensive evaluation process inclusive of a cost benefit analysis, is required, as specified in s77J and s77P.
- c. The **'standard-plus' approach** for 'other' qualifying matters as provided for in s77I(j) and s77O(j) and not specifically listed in the legislation. As the matters concerned are not specifically provided for in the legislation the comprehensive evaluation process described in (b) above applies, together with additional requirements (inclusive of a site-specific analysis) specified in s77L and s77R. These requirements apply whether or not the matter concerned is existing or new, in terms of the 'parent' District Plan.

3.7.4 The above pathways and attendant evaluation requirements are also set out in clauses 3.32 and 3.33 of the NPS-UD.

3.7.5 Where HCC's process in developing PC56 is concerned, all existing qualifying matters essentially 'rolled over' from the operative District Plan without substantive change have been considered under the 'alternative' pathway referred to in a. above. All matters involving a mix of existing and new (extended) areas or substantively modified provisions as well as entirely new qualifying matters proposed for inclusion have been considered under the 'standard' pathway referred to in b. above.

3.7.6 In line with the Council's acknowledged 'minimalist' approach<sup>190</sup> it has not proposed the inclusion of any 'other' matters catered for under pathway c. above. In other words, the 'standard-plus' approach has not been employed. We note that this is notwithstanding the Council's consideration as to whether 'residential character', which is a feature of operative District Plan provisions relating to Special Residential Activity Areas, might not constitute a qualifying matter under the pathway we describe in c. above. In this respect,

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<sup>189</sup> Noting that s77I (and s77K) caters for qualifying matters in applying MDRS and NPS-UP Policy 3 in relevant residential zones, whereas s77O (and s77Q) caters for qualifying matters in applying intensification policies to urban non-residential zones.

<sup>190</sup> For more on this approach, refer to **Section 3.2** in this report.

Council officers concluded during the development of PC56 that while certain residential areas in Lower Hutt were highly valued by part of the community, they did not meet the threshold of a qualifying matter. Consequentially this character Activity Area has not been carried forward into PC56 and, along with other areas, have been subject to rezoning to either MDRAA or HDRAA, depending on their proximity to commercial centres and train stations.<sup>191</sup> However, the matter of 'character' remains pertinent to our findings with respect to the proposed residential heritage precincts (refer paragraphs 3.5.20 to 3.5.30).

- 3.7.7 The Council's broad approach to selecting evaluation pathways is illustrated in the following **table**. For each topic the relevant qualifying matter listed under either s771 or s770 and assigned by the Council for the purposes of its subsequent evaluation is referenced. For route-finding purposes, we have also noted the topics under which the qualifying matters have been considered in our report.

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<sup>191</sup> Refer *Proposed District Plan Change 56, Enabling Intensification in Residential and Commercial Areas, Volume 2 of 2, Section 32 Evaluation and Attachments, Section 7.2.3.3*

Alternative pathway for existing matters	Assigned qualifying matter	Report topic	Standard pathway for existing/new matters	Assigned qualifying matter	Report topic	Standard-plus pathway for other matters	Assigned qualifying matter	Report topic
<b>Significant cultural resources overlay</b>	s771(a) matter of national importance – s6(e) and (f)	Other matters that could be qualifying matters	<b>Sites adjacent to marae and urupā</b>	s771(a) matter of national importance – s6(e)	Sites of significance to Māori (SASM)	None	N/A	N/A
<b>Heritage buildings, structures and areas</b>	s771(a) matter of national importance – s6(f)	Heritage buildings, structure, areas and precincts	<b>Historic residential precincts</b>	s771(a) matter of national importance – s6(f)	Heritage buildings, structure, areas and precincts			
<b>Fault hazard</b>	s771(a) matter of national importance – s6(h)	Natural hazards	<b>Flood, coastal (tsunami), coastal (inundation) hazards</b>	s771(a) matter of national importance – s6(h)	Natural hazards			
<b>National Grid</b>	s771(e) matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure	The National Grid						
<b>Recreation activity areas</b>	s770(f) open space provided for public use, but only in relation to land that is open space	Public open space						

3.7.8 Further information regarding Council's approach to selecting evaluation pathways and undertaking the requisite evaluations for relevant qualifying matters is contained in the s32 report accompanying PC56.<sup>192</sup> We can say at this point before turning to the specific matters in question that we have no broad issue with the general approach that HCC has taken to selecting appropriate pathways for evaluative purposes. It is apparent that neither did submitters.<sup>193</sup> We do have concerns though around the selection of a pathway and the robustness of the ensuing evaluation in one particular instance relating to residential heritage precincts, as we canvass at an appropriate point in the relevant qualifying matter topic-based sub-section of our report below.

*Heritage buildings, structures, areas and precincts*

*Overview of relevant provisions*

3.7.9 As illustrated in the **table** above, and as further explained in the Council Officers Evaluation Report,<sup>194</sup> where the application of heritage as a qualifying matter is concerned, the Council proposes to:

- a. roll-over provisions relating to **individually listed heritage items** (buildings and structures);
- b. roll-over provisions relating to **existing heritage areas** centred around Jackson Street, Patrick Street and Riddlers Crescent involving their reconstitution as standalone heritage precincts and some relatively minor modifications involving renaming, the contraction of boundaries in certain areas and more clearly delineating between historic heritage values (as a qualifying matters) and amenity values (not qualifying matters); and
- c. insert new provisions restricting building height and density in newly identified '**residential heritage precincts**' centred around Hardham Crescent, Hutt Road Railway, Moera Railway, Petone Foreshore, Petone State Flats and Wainuiomata Terracrete Homes.

*Matters raised by submitters*

3.7.10 Broadly speaking, it is the rolled-over provisions (largely operative, albeit with some modification) that have drawn the majority of submissions, although those provisions relating to new precincts *per se* did also attract submissions in both support and opposition.

3.7.11 Submissions received generally fell into the following spectrum of relief:<sup>195</sup>

- a. general submissions relating to the development, scope and expression of provisions;

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<sup>192</sup> Proposed District Plan Change 56, Enabling Intensification in Residential and Commercial Areas, Volume 2 of 2, Section 32 Evaluation and Attachments, Section 7.2.3 Qualifying matters and Appendix 5 – Additional Information for Qualifying Matters

<sup>193</sup> Refer para 17, Officer's Verbal Right of Reply, 28 April 2023

<sup>194</sup> Council Officers Evaluation Report, paras 968 – 971

<sup>195</sup> For a more detailed description of submissions on heritage matters refer to Council Officers Evaluation Report, paras 973 – 1029

- b. those seeking a 'voluntary' approach to heritage whereby individual buildings and properties and heritage areas and precincts would not be listed/identified without the consent of the owner;
- c. those seeking changes to provisions to, for example, introduce demolition controls in the residential heritage precincts;
- d. requests to create 'buffer' areas adjacent to heritage areas within which building heights are also controlled;
- e. requests to extend heritage areas or precincts beyond their notified footprint;
- f. requests to contract the boundaries of heritage areas (i.e., exclude certain properties);
- g. requests to exclude certain properties from residential heritage precincts; and
- h. requests to remove heritage areas and precincts and rely instead on an individual approach to listing properties.

3.7.12 The commensurate part of the Council Officers Evaluation Report in relation to these matters was authored by Mr Davis, who in turn relied on the technical evidence of Ms Stevens<sup>196</sup> to support some of his recommendations.

3.7.13 In all but the following circumstance, Mr Davis considered that either the requested changes were out of scope<sup>197</sup> or that no change to the provisions as notified were required:

- a. some alterations to boundaries of certain heritage areas and precincts to include or exclude specific properties.<sup>198</sup>

*Evaluation and recommended decision*

3.7.14 During the hearing, we heard submissions and evidence on heritage matters from a number of witnesses including Mr Shayne Hodge, Mr Dean Raymond, Mr Reuben Daubé, Ms Sylvia Allan, Mr David Pearson, and Mr Neil Kemp,<sup>199</sup> amongst others. Messrs Raymond and Daubé, for Heritage NZ Pouhere Taonga, largely agreed with Mr Davis's recommendations. Ms Allan, for the Petone Historical Society, took issue with Mr Davis's recommendation relating to the exclusion of certain properties from heritage areas in Petone.

3.7.15 To assist us in our evaluation of these matters, we sought some further clarification from Council officers during the course of the hearing. Specifically, and with respect to **existing heritage sites and areas**, we asked Council officers to clarify:

- a. whether they had been proposed as qualifying matters under s77K;
- b. the nature of spatial changes (if any) to these areas;
- c. whether any increase or decrease in individual listed sites was proposed (from that prior to notification); and

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<sup>196</sup> Principal Conservation Architect and Heritage Consultant, WSP

<sup>197</sup> Our findings and recommendation in relation to matters of scope are set out in **Section 3.3** of this report.

<sup>198</sup> Council Officers Evaluation Report, paras 1009 – 1011, 1014 – 1015, 1019, 1021 – 1022

<sup>199</sup> Representing himself, Heritage NZ Pouhere Taonga, Petone Historical Society, Kāinga Ora and the Voluntary Heritage Group, respectively.

- d. for any changes arising from b. and c. above, where the appropriate s32 evaluation could be found.
- 3.7.16 With respect to **new heritage precincts and proposals for new inclusions in existing heritage areas**, we also asked Council officers to report back on the notification process, including whether property owners were individually notified and whether the public could realistically have known that new areas were being proposed for inclusion.
- 3.7.17 Council officers addressed our queries as well as the evidence presented by the submitters referred to in paragraph 3.7.14 above in their Council Officers Reply Statement provided to us on 9 June 2023.<sup>200</sup> It is apparent from the Council's response that with respect to proposed inclusions and the new heritage precincts there was some level of engagement with affected property owners during the March – August 2022 period, although it remains unclear to us whether any property owners and occupiers, particularly those affected by the new heritage precincts, were formally notified<sup>201</sup> or whether the broader public could have reasonably known that these properties and areas were proposed for inclusion in PC56, given the size and complexity of the plan change.
- 3.7.18 On that basis, we find we can support Mr Davis's limited recommendations for further changes to the provisions relating to existing heritage sites and areas (but not new heritage precincts) as a qualifying matter as summarised in paragraph 3.5.13 above together with his associated s32AA evaluation.<sup>202</sup> The practical effect of this is that the qualifying matters and attendant provisions relating to existing heritage buildings, structures and areas are carried through to PC56 subject to the recommended changes identified by Mr Davis.
- 3.7.19 These recommended amendments include the inclusion of 5 Riddlers Crescent and 354, 358 and 362-364 Jackson Steet within the Riddlers Crescent Heritage Precinct and Jackson Street Heritage Precinct, respectively, in response to submissions from the Petone Historical Society and Living Streets Aotearoa,<sup>203</sup> among others. These properties are included in the operative District Plan mapping of areas with identified heritage values. While they were excluded from the equivalent heritage precincts associated with PC56, on notification, it was the final recommendation of Council officers that the properties concerned be included in the precincts as they now stand. As this incorporation effectively involves a 're-inclusion' within areas previously subject to operative heritage controls, the issues around applicable IPI pathway tests and natural justice that arise where the new heritage precincts are concerned are not of relevance here. The relevant mapping changes are illustrated in **Appendix 4**.
- 3.7.20 The one heritage-related qualifying matter that we remain unconvinced about is the strength of the Council's case when it comes to the proposed inclusion of new residential heritage precincts in PC56 as qualifying matters. As noted in the **table** on page 68 above, the Council had assigned a RMA s6(f) level status to the values represented within those precincts; this is a dubious assignation in our observation.
- 3.7.21 In relation to this matter, we heard from Mr Kemp, an experienced Hutt City based architect for the Voluntary Heritage Group, who was of the opinion that the Council had

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<sup>200</sup> Council Officers Reply Statement

<sup>201</sup> Council Officers Reply Statement, Section 7.1.1

<sup>202</sup> Council Officers Evaluation Report, paras 1030 - 1039

<sup>203</sup> Submissions 163 and 227, respectively



not presented a convincing case that the areas proposed to be included in new residential heritage precincts are of significant heritage value. We agree with Mr Kemp's observation that Council's evidence in this respect blurs lines of evidence where matters of 'heritage' and 'character' are concerned.<sup>204</sup>

- 3.7.22 We did specifically ask Ms Stevens when she returned as part of the Council's verbal reply, at the end of the hearing if she had seen and considered the expert evidence of Mr Kemp. She said she had not, which was a surprise to us, given Mr Kemp's evidence is on topic. Ms Stevens told us that as this evidence was not submitted at the time that the Council Officers Evaluation Report was prepared, she was not clear whether the evidence submitted by Mr Kemp constituted expert evidence. She said in her view, Mr Kemp was "*not a heritage expert*" and that "*it is a problem that we face consistently, as specifically qualified heritage consultants*". Ms Stevens followed up by saying that "*[he] does not have decades of experience working with heritage building nor does he have a post graduate qualification in that area.*" The Panel queried Ms Stevens's approach as we were puzzled that such judgements could be made without her having first read Mr Kemp's evidence and supposedly being unaware of his background and experience. It is unfortunate that Ms Stevens had not taken time to appraise herself of other relevant expert evidence, when first addressing us with her opinion at the beginning of the Council case, or prior to the verbal reply, as this meant we did not have the opportunity to discuss with her the specific differences between her expert view and that of Mr Kemp, in any meaningful way. This matter relates to the responsibilities of expert evaluative witnesses set out under the Environment Court code of conduct for expert witnesses,<sup>205</sup> which Ms Stevens has ascribed to.
- 3.7.23 Mr Kemp's evidence and her response in this regard was attached to the Council Officers Reply Statement.<sup>206</sup> In that statement, Ms Stevens again took issue with Mr Kemp's heritage expertise. We ourselves do not dispute that Mr Kemp's architectural qualifications and long practical experience with Hutt City architecture qualify him as an expert in these hearings, and note that his architectural degree thesis does relate to heritage matters. It is Mr Kemp's concerns regarding the broad robustness of the Council's case that we find ourselves in agreement with as an opinion that we consider he legitimately holds as an experienced local architectural practitioner.
- 3.7.24 We also heard from Mr Hodge, who with his daughter Paige, owns 25 Buick Street, Petone which is proposed to be included in the new Petone Foreshore Residential Heritage Precinct. Mr Hodge was of the opinion that the Council's process for identifying the broader area as a residential heritage precinct was flawed, would not in practice protect heritage given the absence of controls on demolition rules and that it constitutes an unreasonable impost on property owners.<sup>207</sup> We have considerable sympathy for Mr Hodge's position as noted below.
- 3.7.25 To assist us in our evaluation of this matter, we have posed for ourselves some questions that we consider we need to satisfy ourselves about, as follows:

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<sup>204</sup> Proposed District Plan Change 56 in Lower Hutt, Expert Evidence: Neil Kemp, undated, para 25

<sup>205</sup> Environment Court of New Zealand, Section 9.2 Duty to the Court, Practice Note 2023

<sup>206</sup> Right of Reply of Chessa Stevens – Heritage Assessment, 7 June 2023, paras 40-50

<sup>207</sup> Tabled statement from Shayne Hodge, undated

- a. Were the residential heritage precincts proposed as qualifying matters under s771 or with recourse to some other pathway?
- b. If under s771, then as s771(a) assigned RMA s6-level historic heritage or as a s771(j) assigned 'other' heritage 'character' level (for example)?
- c. If under s771(a), then where can the appropriate s32 and NPS-UD clause 3.33(2) evaluations can be found?
- d. If under s771(j), then where can the appropriate s32 and NPS-UD clause 3.33(3) evaluations can be found?

3.7.26 In considering these questions, we observed that the new precincts as notified tend not to contain scheduled heritage items and are not 'gazetted areas' under the Heritage NZ Pouhere Taonga Act 2014. This was confirmed by Mr Raymond in his verbal response to questions of the Panel in respect to his evidence on behalf of Heritage NZ Pouhere Taonga at the hearing.

3.7.27 For us, this naturally raised the underlying question as to whether the areas concerned are really valued for heritage reasons as opposed to their character. If the latter, then in our view at least in terms of perceived value they would tend to resemble the Mt Victoria, Thorndon, Newtown and Mt Cook neighbourhoods in Wellington City, which the City Council there has assessed as 'character areas' with reference to the s771(j)/clause 3.33(3) pathway as part of its own IPI response. As such, this necessitates the additional 'standard-plus' tests including site-specific assessment referred to in paragraph 3.7.3 above. Crucially in our view, these have not been undertaken where the PC56 provisions relating to heritage precincts are concerned.

3.7.28 The essential difference between 'heritage' and 'character' was neatly addressed in Mr Davis's verbal reply statement,<sup>208</sup> but in relation to the precincts this issue remained unresolved at that point. Mr Davis latterly reconfirmed that the Council had discounted the inclusion of 'residential character' at the s32 stage.<sup>209</sup> Notwithstanding Mr Quinn's explanation of the distinction between historic heritage and 'special' character,<sup>210</sup> it is our finding after reviewing all of the evidence and following our site visits recorded in our Minute 4, that considerations of 'character' appear to have manifested and reappeared under the guise of residential heritage precincts in the notified version of PC56.

3.7.29 We are unable to accept that the new residential heritage precincts should go forward as qualifying matters for the following reasons:

- a. We are unconvinced that the precincts are qualifying matters in the context of the s771(a)/clause 3.33(2) pathway in that no credible evidence has been presented to us that they constitute RMA s6-level historic heritage.
- b. As such, the only remaining pathway available is via s771(j)/clause 3.33(3), which requires cost benefit and site-by-site analysis to be undertaken by the Council, when it has not.

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<sup>208</sup> Refer paras 55 - 58, *Officer's Verbal Right of Reply*, 28 April 2023

<sup>209</sup> Council Officers Reply Statement, Section 7.1.3

<sup>210</sup> *Legal submissions on behalf of Hutt City Council addressing matters raised by the hearings panel*, 25 May 2023, paras 65-67

- c. In response to submissions and evidence presented on behalf of the Voluntary Heritage Group and others, Mr Davis and Ms Stevens provided an explanation as to how areas could be said to have historic heritage values even if no individual buildings within them are specifically identified as historic heritage.<sup>211</sup> We do not find this to be a particularly convincing argument as it appears to put the (historic) cart before the horse, relies too heavily on broad areas (rather than site-by-site) assessments and appears to be a conflation of values above and beyond an area's constituent elements.
- d. In this respect, Council officers have made it clear that they have relied on Policy 21 of the operative RPS<sup>212</sup> to identify heritage values.<sup>213</sup> Policy 21 sets out the criteria that district and regional plans must apply in identifying 'significant' historic heritage values and it is the view of Council officers that only one criterion needs to be met provided that, in doing so, it contributes to an understanding or appreciation of history and culture in the district.<sup>214</sup> We are however of the view the application of Policy 21 necessitates a more nuanced approach. Policy 21 does not state that heritage values automatically attach themselves to a place or area as soon as one of the criteria is met. Our interpretation is that, assuredly, meeting at least one of the criteria in Policy 21 is a necessity. However, on its own it is not a sufficient basis for identifying *significant* historic heritage value. An evaluation as to whether the place or area is 'significant' still needs to be undertaken, and it is on this basis that we find the Council's evaluation to be wanting.
- e. Significantly, in our view, the Council is obliged to give effect to the NPS-UD, as a higher order document, together with its requisite evaluation pathways. In our view, by overly focusing on Policy 21, it has not done so, with respect to the precincts.
- f. Notwithstanding the above, it is not clear to us what the precinct-based controls would achieve. By the Council's own admission<sup>215</sup> they do not include controls on demolition or alteration and focus solely on limiting height and density. We do not agree with Mr Davis's view that 'the only realistic way' to deal with this issue is collectively through PC56 and the forthcoming District Plan review.<sup>216</sup> In fact, in our view the matter can and should be left entirely to the latter process. In practice, buildings in the proposed precincts may be demolished as of right. We appreciate that the Council may be inhibited in this respect by the scope of constraints available to it under the IPI process. However, this is likely to lead to a perverse outcome whereby demolition in these areas is unconstrained, but replacement buildings are subject to height and density controls; in no way ensuring the preservation of heritage (or character). We agree with Mr Hodge<sup>217</sup> that owners may be incentivised to demolish rather than refurbish or maintain the character of existing homes. PC56 provides no protection against this. The fact

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<sup>211</sup> Council Officers Reply Statement, Section 7.1.7 and *Right of Reply of Chessa Stevens – Heritage Assessment*, 7 June 2023, paras 6-9 and 37-39

<sup>212</sup> We note that the Wellington RPS is currently subject to PC1 but that no changes are proposed to Policy 21

<sup>213</sup> Council Officers Evaluation Report (Planning), para 972 and Council Officers Evaluation Report (Heritage), paras 11, 13

<sup>214</sup> *Right of Reply of Chessa Stevens – Heritage Assessment*, 7 June 2023, para 8

<sup>215</sup> Refer para 60, *Officer's Verbal Right of Reply*, 28 April 2023

<sup>216</sup> Council Officers Reply Statement, Section 7.1.5.1

<sup>217</sup> Tabled statement from Shayne Hodge, undated, refer para 44

that one outcome of this might be to maintain character (through height and density controls) rather than heritage building fabric to our mind betrays the underlying – or at the very least – unintended or unclear rationale for identifying these areas.

- g. In her written response, Ms Stevens expresses discomfort over the risk of heritage values being left exposed between the alerting of owners that PC56 represents and the advent of suitable demolition controls via the District Plan review.<sup>218</sup> All we would observe in this respect is that that risk would not be exacerbated were the heritage precinct provisions of PC56 not to proceed at this point, as they do not inhibit demolition in any case.
- h. Mr Davis is of the view that additional protections for these new areas (including a demolition control) can be addressed as part of the full District Plan review.<sup>219</sup> However, there is no guarantee at this point that such protections and controls will eventuate, particularly given the somewhat questionable nature of assigned heritage values in the precincts. In the interim and potentially foreseeable future this would place property owners somewhat in limbo; able to demolish and alter, and also only able to rebuild within the envelope permitted by PC56.
- i. We are also concerned about natural justice. It is apparent that some efforts at engagement were made during 2022, as noted in paragraph 3.7.17. However, there appears to have been some inadequacies in the consultation exercise as alluded to in Mr Hodge's evidence. Further, a number of submissions have sought that the heritage precincts as notified be extended to include additional properties, which the Council Reporting Officers have recommended the acceptance of.<sup>220</sup> Parties potentially affected by the proposed provisions may have independently digested the contents of PC56 and/or the summary of submissions but there is no guarantee of this.

3.7.30 For the above reasons, we are of the view that the broader issue of heritage protection beyond its confirmation as a valid qualifying matter (and/or the maintenance and enhancement of character) is best dealt with in a holistic, considered and fair manner through the on-going District Plan review, rather than through what we observe to be a somewhat *ad hoc*, pre-emptive and potentially duplicating approach to identifying heritage precincts.

3.7.31 On the above basis, we do not recommend carrying forward that part of PC56 which seeks to introduce new residential heritage precincts as qualifying matters with attendant controls on building height and density. We have not undertaken a s32AA evaluation as no new District Plan content is proposed, but having said that, we consider that the risk of 'not acting' (i.e. not including the precincts) is not significant (noting the absence of demolition controls in any case), and we are satisfied that the exclusion of the precinct-based provisions from PC56 will best give effect to NPS-UD Policies 2, 3 and 4.

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<sup>218</sup> *Right of Reply of Chessa Stevens – Heritage Assessment*, 7 June 2023, paras 31-32

<sup>219</sup> Council Officers Evaluation Report, paras 481, 492, 541

<sup>220</sup> Council Officers Evaluation Report, paras 1019, 1021 and Council Officers Reply Statement, Section 7.1.8

*Natural hazards**Overview of relevant provisions*

3.7.32 As explained in the Council Officers Evaluation Report,<sup>221</sup> where the application of natural hazards as a qualifying matter is concerned, the Council proposes to:

- a. insert new **Natural Hazard Overlays** and **Coastal Hazard Overlays** which identify areas at high, medium and low risk from particular natural and coastal hazards;
- b. insert **new provisions for managing various residential and non-residential activities** within different Natural Hazard Overlay and Coastal Hazard Overlay areas which require avoidance or mitigation measures to reduce the consequences of natural hazards;
- c. insert **new provisions for managing the subdivisions of land** within identified natural hazard areas; and
- d. insert **new provisions describing the 'risk-based' approach** to managing natural hazards.

3.7.33 Council Reporting Officers advised that these provisions had their genesis in the initial work undertaken as part of the District Plan review and that that technical expert information/modelling was generally 'massaged' and revised to inform the adoption of hazards as a s6 RMA qualifying matter as anticipated by that Act. We return to this theme later in this section.

*Matters raised by submitters*

3.7.34 The submissions received on the above provisions generally fit into the following seven categories:<sup>222</sup>

- a. **general submissions** relating to broad or fundamental concerns associated with natural hazards, urban intensification and managing risk;
- b. those seeking **changes to specific provisions**, including:
  - i. limits on the number of residential units per property in certain hazard overlays;
  - ii. whether development should be managed or limited within certain hazard overlays;
  - iii. risk management of permitted activities in Low Flood Hazard Overlay areas through finished floor levels.
- c. identification, mapping and management of land use activities within **Flood Hazard Overlays**;
- d. identification, mapping and management of land use activities within **Coastal Hazard Overlays**;

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<sup>221</sup> Council Officers Evaluation Report, paras 1040-1041

<sup>222</sup> For a more detailed description of submissions on natural hazard matters refer to Council Officer Evaluation Report, paras 1042-1123

- e. identification, mapping and management of lands use activities within **Fault Hazard Overlays**;
- f. identification, mapping and management of land use activities within **other natural hazard areas**; and
- g. management of **subdivision** in all natural hazard overlay areas.

3.7.35 GWRC was a key submitter in this space, seeking more nuanced and restrictive provisions to ensure development within high hazard overlays is limited and development in medium hazard overlays is appropriately managed.<sup>223</sup> Other submitters, including Kāinga Ora<sup>224</sup> and commercial operators (such as Stride, Argosy, Oyster and Investore<sup>225</sup>), sought amendments to provide clear pathways for developments, and for hazard overlays and controls to be more fully justified.

*Evaluation and recommended decision*

3.7.36 Applying the seven categories listed above as basis for grouping our evaluation, we make the following recommendations.

*General submissions on natural hazards, urban intensification and managing risk*

3.7.37 There were a number of general submissions relating to broad or fundamental concerns associated with natural hazards, urban intensification and managing risk. We accept the approach to managing natural hazards as described by Council Reporting Officers in the Evaluation Report and do not recommend changes to Chapter 14H Natural Hazards in this regard.<sup>226</sup>

3.7.38 Through his evidence presented during the hearing, Mr Joe Jeffries<sup>227</sup> challenged the categorisation of natural hazards into rankings (i.e., high, medium and low) on the basis that they have been applied inconsistently to tsunami hazard and coastal inundation. In his view, *“the natural hazard ranking table and overlays present a misleading and confusing picture of the nature of the different coastal hazards, particularly tsunami”*.<sup>228</sup> Dr Scott Stephens of NIWA also considered that nomenclature of ‘high’ and ‘medium’ coastal hazard area was confusing, and it would be clearer to use the descriptive names of the different scenarios applied in the 2022 interim guidance.<sup>229</sup>

3.7.39 We note that Council Reporting Officers acknowledged the limitations of categorising risks into low, medium and high, but considered it an efficient way of applying natural hazard provisions. A key reason provided by Council officers for retaining the proposed approach to categorisation was to maintain a level of consistency with other plans within

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<sup>223</sup> Submitter 149

<sup>224</sup> Submitter 206

<sup>225</sup> Submitters 275, 189, 179 and 258, respectively

<sup>226</sup> Council Officers Evaluation Report, paras 1055-1058

<sup>227</sup> *Statement of Evidence of Joe Jeffries on behalf of Stride Investment Management Limited, Investore Property Limited, Oyster Management Limited, and Argosy Property No 1 Limited*, 29 March 2023

<sup>228</sup> *Statement of Evidence of Joe Jeffries on behalf of Stride Investment Management Limited, Investore Property Limited, Oyster Management Limited, and Argosy Property No 1 Limited*, 29 March 2023, para 11.9

<sup>229</sup> *Statement of Evidence of Dr Scott Stephens on behalf of Hutt City Council*, dated 2 March 2023, para 18(e)

the Wellington region, including the Proposed Porirua District Plan and Proposed Wellington District Plan which both use similar categories to manage risk.<sup>230</sup>

3.7.40 Given the above, we adopt the recommendations of Council Reporting Officers for the reasons set out in the Council Officers Reply Statement. However, we recommend that the Council further consider adopting the naming conventions included in the 2022 interim guidance and recommended by Dr Stephens as part of the full District Plan review.

*Changes to specific provisions*

3.7.41 A number of submitters sought changes to specific provisions, including:

- a. Issue 14H 1.1.1;
- b. Policy 14H 1.2;
- c. Policy 14H 1.11;
- d. Rule 12H 2.2; and
- e. Rule 14H 2.6.

3.7.42 The recommended amendments to these provisions were not contested to any degree and as such are adopted for the reasons set out in the Council Officers Evaluation Report and we also accordingly adopt the s32AA evaluations provided there.<sup>231</sup>

3.7.43 Proposed amendments to specific provisions which remained contested by the close of the hearing related to those seeking that certain activities be 'managed' in a way which does not increase risk, rather than 'limited' to avoid or reduce risk. Evidence on behalf of Stride, Argosy, Oyster and Investore and Petone Historical Society indicated a need for greater clarity in Policy 14H 1.1, which sets out the overall policy direction for natural hazards. The commercial submitters also sought that the consideration of natural hazard risk be limited to the addition to the building, rather than the existing building located within a hazard overlay.

3.7.44 The commercial submitters provided recommended wording amendments and an associated s32AA evaluation, via the evidence of Mr Jeffries.<sup>232</sup> We adopt these wording amendments as summarised in the Council Officers Reply Statement, in so far as they align with our decisions on mapping coastal hazard mapping. These amendments are also considered in the context of coastal hazards, below.

*Flood Hazards Overlays*

3.7.45 In relation to **flood hazard areas**, the Panel heard submissions from a variety of submitters<sup>233</sup> along with evidence relating to the flood modelling and mapping, the terminology used for describing flood hazards, effects of flooding on access, and inclusion of flood hazard areas 'in' the District Plan.

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<sup>230</sup> Council Officers Reply Statement, Section 7.2.5, para 396

<sup>231</sup> Council Officers Evaluation Report, paras 1063-1066, 1127-1133

<sup>232</sup> *Statement of Evidence of Joe Jeffries on behalf of Stride Investment Management Limited, Investore Property Limited, Oyster Management Limited, and Argosy Property No 1 Limited*, dated 29 March 2023; Recommended amendments from submissions of Stride, Investore, Oyster and Argosy

<sup>233</sup> For example, private individuals, Kāinga Ora, Cuttriss Consultants and GWRC

3.7.46 The primary submission on this topic was from Kāinga Ora.<sup>234</sup> Ms Williams, on behalf of Kāinga Ora, recommended that the flood hazard maps be removed from the District Plan to reflect the dynamic nature of flood hazard information and enable the updating of flood hazard information outside of Schedule 1 processes.<sup>235</sup> Ms Williams considered that this approach would not preclude public engagement and gave examples of other councils which have adopted a similar approach to flood hazard mapping. Kāinga Ora also provided legal submissions regarding the lawfulness of the proposed approach and Mr Whittington (counsel for Kāinga Ora) maintained his view that whether maps are located 'in' or 'out' of the District Plan is essentially a contest of planning preference.<sup>236</sup>

3.7.47 In response, Council Reporting Officers noted that, while public engagement is part of flood hazard modelling process generally, the Hutt City Council is reliant on Greater Wellington Regional Council and Wellington Water to undertake modelling, mapping and associated public engagement.<sup>237</sup> We agree that public engagement during development of flood modelling and maps does not necessarily involve checks and balances equivalent to those required by an RMA Schedule 1 process, which is particularly important in the context of PC56 where flood hazard maps impose restrictions on land use.

3.7.48 Mr Quinn, for the Council, summarised this sentiment well in his closing submissions:

*Whilst we do not necessarily disagree that the approach proposed by Kāinga Ora may be available, we note that such an approach would mean that the provisions of the Plan which apply to individual sites would be subject to change without any notification to the owner of that site, and without any opportunity to have involvement in that change. Given this impact on members of the community, it is submitted that the more certain and appropriate method is as per the notified version of PC56<sup>238</sup>.*

3.7.49 We concur with Mr Quinn and the Council Reporting Officers that flood hazard information should be 'in' the District Plan.

3.7.50 Based on the remainder of the submissions and also through our own inquiries during the hearing, we queried a number of matters relating to flood modelling and mapping, including the status of flood models for different parts of the wider Hutt City area, consideration of climate change within flood models and whether any changes were recommended in light of the rapid study on Cyclone Gabrielle rainfall. Based on Mr Alistair Osborne's responses to these queries,<sup>239</sup> we agree with Council staff that these matters do not require further consideration through PC56; however, that finalised results of flood modelling currently underway should be considered through the full District Plan review process.

3.7.51 Other submitters focused on more specific/bespoke matters and our precis and evaluation of those is as follows:

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<sup>234</sup> Submitter 206

<sup>235</sup> *Statement of Primary Evidence of Karen Tracy Williams on behalf of Kāinga Ora – Homes and Communities*, 29 March 2023, section 11.

<sup>236</sup> *Supplementary Memorandum on behalf of Kāinga Ora – Homes and Communities*, Nick Whittington, dated 16 May 2023, paras 3.1-3.6.

<sup>237</sup> Council Officers Reply Statement, Section 7.2.4, para 879-385

<sup>238</sup> *Legal submission on behalf of Hutt City Council addressing matters raised by the hearings panel*, Stephen Quinn, dated 25 May 2023, para 86

<sup>239</sup> Council Officers Reply Statement, Appendix 4



- a. Mr Thornton, on behalf of Cuttriss Consultants, supported the use of annual exceedance probability (AEP) as a better method of identifying flood hazard risk than average re-occurrence interval (ARI), as he considered the former to be more readily understood by the general public.<sup>240</sup> Mr Osborne, on behalf of the Council, noted that the Wellington Water Regional Standard for Water Services refers to AEP when specifying level of service targets and considered that the preference for either term was a planning decision. On this basis, and in accordance with the Council Officers Reply Statement, we agree with Mr Thornton's evidence and recommend the use of AEP over ARI.<sup>241</sup> We adopt the recommended changes included in the Council Officers Reply Statement which explain the use of AEP, and replace references to ARI with AEP throughout the chapter.
- b. Mr Thornton also raised concerns relating to the consideration of flood hazard risk on pedestrian and vehicle access in accordance with Policy 51 of the Operative RPS.<sup>242</sup> Council Reporting Officers advised that, in their view, the wording of Rules 14H 2.3, 2.4 and 2.5 was not intended to relate to access to individual urban properties. We note that the approach requested by Mr Thornton would deviate from GWRC's modelling standard and agree with the Council Reporting Officers that the requested amendments would not be effective or efficient.<sup>243</sup> Accordingly we have not altered the PC56 provisions as requested by Mr Thornton.

#### *Coastal Hazard Overlays*

- 3.7.52 The primary matters of contention relating to **coastal hazard areas** related to the identification and categorisation of coastal hazards for land use purposes, and the appropriate planning approach for coastal hazards.
- 3.7.53 In considering various natural hazard matters, particularly those related to coastal hazards, we reflect on the Part 2 requirement of the RMA to recognise and provide for the management of significant risks from natural hazards as a matter of national importance, and to have particular regard to the effects of climate change.<sup>244</sup> Furthermore, there are two national and one regional, potentially conflicting, policy directives that are relevant:
- a. the **NZCPS** directs us to avoid increasing the risk of adverse effects from coastal hazards.<sup>245</sup> The Wellington RPS refers to reducing *and mitigating* the risks and consequences of natural hazards and making communities more resilient.<sup>246</sup>
  - b. The **NPS-UD** directs us to remove overly restrictive planning rules to enable urban intensification of residential and business areas, both up and out. Modification of building height and density requirements is only to occur to the extent required to accommodate qualifying matters, such as the management of significant risks from natural hazards.
- 3.7.54 In general, activities within the High Coastal Hazard Area are likely to require consent as a restricted discretionary activity, whereas activities may occur without consent in the

<sup>240</sup> *Supplementary Statement on behalf of Cuttriss Consultants Ltd*, 18 April 2023, paras 16-20

<sup>241</sup> Council Officers Reply Statement, Section 7.2.4, paras 367-371

<sup>242</sup> *Supplementary Statement on behalf of Cuttriss Consultants Ltd*, 18 April 2023, paras 21-30

<sup>243</sup> Council Officers Reply Statement, Section 7.2.4, paras 372-378

<sup>244</sup> RMA, sections 6(h) and 7(i)

<sup>245</sup> NZCPS, Policy 25

<sup>246</sup> Wellington RPS Objectives 19, 20 and 21 (note *emphasis* added)

Medium Coastal Hazard area if they meet permitted standards. Another key difference is the ability to intensify residential activities within the High Coastal Hazard Area is more limited than in the Medium Coastal Hazard Area. For example, proposals to have more than two residential units on a site or additions larger than 50m<sup>2</sup> would require restricted discretionary resource consent in the Medium Coastal Hazard Areas. Whereas *any* addition in the High Coastal Hazard Area requires restricted discretionary activity, and more than two residential units per site requires a resource consent as a non-complying activity.

- 3.7.55 The above PC56 provisions contrast with the Operative District Plan, where up to two dwellings per site are provided for as a permitted activity. Under those provisions, more dwellings require resource consent as a restricted discretionary activity, with one of the matters of discretion being the sites exposure to natural hazards.
- 3.7.56 In considering this differentiated approach between the Operative District Plan and PC56, we acknowledge that the latter provisions limit development to the permitted level of development under the Operative District Plan, therefore not increasing risk above the current baseline while providing a greater level of certainty for applicants regarding the management of natural hazard risk. Accordingly, we consider that the recommended provisions of PC56 for both High and Medium Coastal Hazard Areas are suitably different from each other and appropriately balance the policy directions of the NZCPS and NPS-UD.
- 3.7.57 To this effect, we adopt recommend changes that seek to improve clarity and understanding of PC56 in a manner consistent with avoiding, reducing and not increasing risks from natural hazards.<sup>247</sup>
- 3.7.58 After considering submissions on coastal hazard overlays, the Panel also conducted its own inquiry by interrogating the scenarios used to inform the spatial extent of coastal hazard mapping. As notified, PC56 includes maps showing the extent and depth of tsunami inundation with three different AEP (1:100, 1:500 and 1:1000), and coastal inundation from a storm tide and wave-setup event at a 1:100 AEP, incorporating sea level rise projections to 2130. Mapping of these layers was intended to align with government guidance, including the NZCPS' requirement to look at risk over a 100-year timeframe, and the Ministry for the Environment's (MfE) Coastal Hazards and Climate Change guidance (2017) to the degree possible.<sup>248</sup> We were advised by Council Reporting Officers that PC56 adopted the RCP5-8.5 model for coastal inundation modelling on the basis that PC56 is not a comprehensive review of coastal hazards, and a full assessment of coastal hazards would take place as part of the full District Plan review.
- 3.7.59 The Panel acknowledges that MfE also published Interim Guidance on the use of new sea-level rise projections in 2022 for councils which have not yet adopted a Dynamic Adaptive Policy Pathway (DAPP) strategy for coastal hazards. The Panel queried why coastal inundation maps had not been prepared in accordance with this guidance, and requested more information and clarity on this matter. In response, Dr Stephens prepared an addendum to his evidence where he set out the recommended modelling scenarios for sea-level projections, and noted that NIWA's modelling covered four of the five scenarios

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<sup>247</sup> Council Officers Reply Statement, Section 7.2.4, paras 403-404, 424

<sup>248</sup> Memorandum regarding Proposed District Plan Change 56: Enabling Intensification in Residential and Commercial Areas - Summary of Information for Natural Hazard Areas, Nathan Gerard, 18 August 2023

recommended for undertaking a DAPP.<sup>249</sup> In response to questions from us, he considered that the choice of which maps to adopt was a planning matter.

- 3.7.60 Based on Dr Stephens response and the 2022 MfE guidance, Council Reporting Officers recommended that the mapped Medium Hazard Area for coastal inundation be updated to reflect scenario 5 of the 2022 interim guidance (SSP5-8.5H+).<sup>250</sup> This scenario would result in approximately 700 additional properties, including a significant portion of Eastbourne and Eastern Bay suburbs, being included in the Medium Hazard Area for Coastal Inundation meaning subject to intensification.
- 3.7.61 We note that the recommended maps provided with the written reply appear to replace the Low and High Hazard Area overlays. We understand the intention of Council staff was only to show the full extent of the Medium Hazard Overlay, and that the Low and High Hazard areas were not shown as they were not proposed to change. We understand, and recommend that, Low and High Hazard Area Overlays will continue to apply as per the notified maps.
- 3.7.62 After careful analysis we consider that this recommendation extends beyond the scope of submissions on PC56. While a number of submitters sought greater controls on intensification in areas subject to coastal inundation, particularly Eastbourne, and some submitters sought a review of the modelling informing the coastal hazard maps, no submitters requested that the Medium Hazard Area for Coastal Inundation be increased or that it incorporates a more conservative sea level rise projection.
- 3.7.63 Given the importance of this issue, the evidential basis provided and thorough discussion that occurred during the hearing, we did consider the appropriateness of using our powers under s99(2) of Part 6 of Schedule 1 of the RMA to make a recommendation relating to a matter identified during the hearing but outside the scope of submissions on PC56. However, in our view, adopting the amended mapping would give rise to significant issues of natural justice for the over 700 properties to which controls on development and intensification would otherwise apply. Potential submitters would not have been aware of the potential impact of PC56 on their properties through the notified plan change or submission and further submission processes. We also note that the scope of PC56 is limited to giving effect to the NPS-UD, and was not intended to be a natural hazards plan change.
- 3.7.64 On balance, we are not comfortable exercising our powers under s99(2) due to this natural justice issue and consider the risk of not acting is mitigated by the full District Plan review, which is intended to incorporate further mapping and is to follow closely behind PC56. We also note that to reduce the length of the risk period associated with not acting now, the Council could give consideration to applying to the Environment Court, in accordance with RMA s86D, to seek an order that any new coastal hazard provisions contained in the proposed District Plan are to have legal effect from the date the proposed plan is publicly notified.
- 3.7.65 The above is merely an observation of the Panel and we accept that it is the Council that needs to make the call on this. That aside, we consider it fundamental that, without the

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<sup>249</sup> Addendum to Statement of Evidence of Scott Alexander Stephens, dated 18 August 2023

<sup>250</sup> Legal submission on behalf of Hutt City Council addressing matters raised by the hearings panel, Stephen Quinn, dated 25 May 2023, paras 73-82; and Council Officers Reply Statement, Section 7.2.4, para 389

outcomes of a DAPP process in place, scenario 5 of the 2022 interim guidance (SSP5-8.5H+) should be used in identifying coastal hazards in the full District Plan review.

- 3.7.66 Aside from the extent of mapping, we record that many submitters raised concerns with the single access route (Marine Drive) to the Eastern Bays and the vulnerability of those bays to coastal hazards and sea-level rise. Based on legal submissions provided by Mr Quinn and the Reporting Officers Reply Statement, we are satisfied that, for the remaining life of this District Plan, this access route provides sufficient resilience that it should not be considered a qualifying matter.<sup>251</sup> The longer term coastal hazard resilience and necessary adaptation responses associated with the Eastern Bays part of the City will need to be thoroughly tested through the DAPP process set out in the MfE Guidelines, when this is undertaken.

#### *Fault Hazard Overlays*

- 3.7.67 A limited number of submissions were received on matters related to fault hazard overlays. We concur with Council Reporting Officers that the notified approach to managing fault hazard is appropriate and note that other associated risks, such as subsidence risk, are to be included in the full District Plan review.<sup>252</sup> No changes are recommended to PC56 in this regard.
- 3.7.68 We accept the recommendations of Council Reporting Officers to ensure references to the Wellington Fault Rupture Hazard Overlay are consistent throughout Chapter 14H. We consider this change is minor and does not change the intent of the provisions, therefore no s32AA evaluation is required.

#### *Other natural hazard areas*

- 3.7.69 Regarding **other natural hazard areas**, we queried the approach for managing liquefaction risk in PC56. Council Reporting Officers confirmed that Hutt City Council predominantly deals with liquefaction risk through the building consent process and the Operative District Plan and PC56 include provisions to enable liquefaction to be considered in the context of some land uses and subdivision.<sup>253</sup>
- 3.7.70 We adopt the recommendation of Council Reporting Officers to insert new matters of control to ensure the broader issue of avoiding or mitigation natural hazard risk is appropriately considered through subdivision applications. We also agree with Council Reporting Officers that the likelihood and consequences of liquefaction should be considered further as part of the full District Plan review.

#### *Subdivision*

- 3.7.71 Kāinga Ora, GWRC and the Petone Community Board<sup>254</sup> were predominant submitters on matters pertaining to subdivision and managing natural hazards. We consider that the aforementioned amendments to Chapter 14H provide relief sought by these submissions, particularly that PC56 provisions manage development in the Medium Coastal Hazard Area and minimise intensification in the High Coastal hazard Area, and that drafting

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<sup>251</sup> Council Officers Reply Statement, Section 7.2.4, para 416

<sup>252</sup> Council Officers Evaluation Report, paras 1104-1108

<sup>253</sup> Council Officers Reply Statement, Section 7.2.2

<sup>254</sup> Submitters 206, 149 and 116, respectively

amendments be made to improve the clarity of Policy 14H 1.1. As discussed above, we consider these amendments to be appropriate and do not assess these further.

*Sites of significance to Māori*

*Overview of relevant provisions*

3.7.72 The relevant section in the Council Officers Evaluation Report in relation to SASM matters was authored by Mr Davis.<sup>255</sup> Ms Emily Campbell, Pou Whakamahere Kaupapa Here / Tikanga Māori Planner, peer reviewed this section of the report.<sup>256</sup>

3.7.73 As set out in the Council Officers Evaluation Report,<sup>257</sup> via PC56 the Council proposes to:

- a. roll-over provisions of the Significant Cultural Resources Chapter in the operative District Plan to provide for additional protection for SASM; and
- b. introduce a new suite of setbacks and recession planes that effectively retain the operative District Plan approach for sites bordering marae, with new objectives, policies, and matters of discretion to inform resource consent applications.

*Matters raised by submitters*

3.7.74 Submissions received can be grouped into the following two categories:<sup>258</sup>

- a. general submissions relating to Significant Cultural Resources / SASM; and
- b. protection of marae.

3.7.75 We evaluate and provide our decision on each of these two matters (a. and b.) below. Following this we then turn to matters that were expanded upon during the hearing by Te Rūnanga o Toa Rangatira and then provide our evaluation and decision on those.

*Outline of issue – general submissions*

3.7.76 The submissions and further submission in relation to a. above sought modification to zonings to take account of identified SASM, or that additional sites be identified.<sup>259</sup>

3.7.77 Mr Davis clarified the scope of PC56 in relation to SASM. He stated that the plan change focused on the direct impact of intensification on SASM, and that the introduction and protection of new sites and areas of significance was not considered to be within the scope of the IPI/ISPP process, except through limiting building height and density to provide for the protection of SASM.<sup>260</sup>

3.7.78 Notwithstanding this, Mr Davis did acknowledge that matters raised by submitters were valid and reiterated that identifying and protecting additional SASM is a major piece of

<sup>255</sup> Council Officers Evaluation Report, Section 6.3.3

<sup>256</sup> Council Officers Evaluation Report, para 25

<sup>257</sup> Council Officers Evaluation Report, paras 1134-1182

<sup>258</sup> For a more detailed description of submissions on SASM matters refer to Council Officers Evaluation Report, paras 1137-1172

<sup>259</sup> Submissions 119, 274, F24

<sup>260</sup> Council Officers Evaluation Report, paras 704 and 1157

mahi currently being undertaken by Council in partnership with mana whenua and is best dealt with in a holistic manner as part of the full District Plan review.

- 3.7.79 Only one modification sought by a submitter was considered within scope and recommended to be accepted by Mr Davis. That submission point related to the Korokoro urupā, which he stated should be treated as a SASM given it may be affected by the height of surrounding buildings.<sup>261</sup>
- 3.7.80 Generally, Mr Davis considered that the current discretionary activity status for any building development surrounding the Korokoro urupā would provide an appropriate process to enable an adequate assessment of effects on the urupā. However, Mr Davis recommended an interim measure to remove the 22 metre high Specific Height Control Overlay for 2 Pito-one Road which, in his view, would provide an appropriate level of protection from the effects of building height, whilst effectively still retaining the operative plan approach for this site.

*Evaluation and recommended decision*

- 3.7.81 We are cognisant of the limited scope of PC56 in relation to SASM; the only mechanism available is to limit building height and density to provide for the protection of SASM.
- 3.7.82 The Panel therefore supports the limited change to remove the 22 metre high specific height control overlay from 2 Pito-one Road, which adjoins the Korokoro urupā. We consider that this amendment is authorised by Section 77I(a) which in turn requires an evaluation report under s77J. We agree that Mr Davis's s32AA justifies the reduction in height provisions given that it is necessary to accommodate a matter of national importance,<sup>262</sup> in particular the proposed changes provide better certainty of the protection of the surroundings of a SASM.<sup>263</sup> The Panel considers this particular amendment provides further interim protection to the Korokoro urupā from development heights in the adjoining area and further satisfies the concern raised by Te Rūnanga o Toa Rangatira addressed in paragraphs 3.7.101 to 3.7.104 below.

*Outline of issue – protection of marae*

- 3.7.83 There were six submissions<sup>264</sup> and two further submissions<sup>265</sup> in relation to the protection of marae. Broadly, the submissions supported some or all of the proposed provisions.  
These submissions generally related to the following matters:

- a. extending the scope of the provisions;
- b. seeking exemptions for retirement villages;
- c. a more restrictive framework; and
- d. increased engagement and partnership with mana whenua.

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<sup>261</sup> Submission 119.1, 119.2

<sup>262</sup> s6(e), RMA

<sup>263</sup> Council Officers Evaluation Report, paras 1177-1182

<sup>264</sup> Submissions 116, 149, 163, 206, 211, 274

<sup>265</sup> Further submission, F2, F24

- 3.7.84 In response to a. above, Mr Davis considered that broadening the scope of protection to factors such as cultural safety and tikanga that are affected by the environment of the marae may have merit; however Mr Davis noted that submitters had not provided specific issues or matters they sought protection of.
- 3.7.85 With respect to b. above, Mr Davis considered that there was no good reason for retirement villages to be exempt from the provisions to protect marae.<sup>266</sup>
- 3.7.86 In relation to a more restrictive framework sought by submissions in c. above, Mr Davis stated that the proposed framework already limited building heights and considered that additional restrictions were not within the purpose of an IPI such as PC56. Furthermore, Mr Davis considered that a more restrictive rule framework would also not be a valid use of the ISPP process.
- 3.7.87 With respect to d. above, Mr Davis considered that it may be of benefit to explicitly acknowledge mana whenua within provisions but noted that not all marae are operated by mana whenua. However, given this matter was raised by a further submission he considered that representatives from marae should be involved in any resolution and therefore did not make a determination, reserving judgment pending potential further information being provided at the hearing.

*Evaluation and recommended decision*

- 3.7.88 Overall we agree with Mr Davis in terms of what is a valid use of the ISPP. He stated that for this plan change, the question is whether restrictions on building heights and density are necessary to provide for the protection of SASM. PC56 as notified continues the existing protection for SASM provided in the District Plan, and additionally limits building heights near marae. Mr Davis stated that providing additional restrictions would not align with the purposes of an IPI i.e., to implement NPS-UD Policies 3 and 4 and the MDRS.<sup>267</sup>
- 3.7.89 We also agree that there is no reason for retirement villages to be exempt from the protective measures for SASM. SASM are a matter of national importance and their protection is afforded because of this. Furthermore, and for completeness we agree with the Council Reporting Officers and Council's legal counsel that the submission of the RVA is out of scope (refer to **Section 3.3** in our report).
- 3.7.90 In relation to increased engagement and partnership with mana whenua, we address this more fully below in response to the matters raised at the hearing by Te Rūnanga o Toa Rangatira. Suffice to say at this point that we acknowledge the limited scope of the plan change and the reliance to address such matters more fully during the full District Plan review process.

*Outline of issues raised at the hearing*

- 3.7.91 During the course of the hearing we heard evidence from Te Rūnanga o Toa Rangatira, presented by Ms Onur Oktem-Lewis. The primary concern of Te Rūnanga o Toa Rangatira was in relation to process matters of timing and lack of resources to respond within the tight timeframes dictated by the IPI / ISPP streamlined process.

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<sup>266</sup> Council Officers Evaluation Report, para 1153

<sup>267</sup> Council Officers Evaluation Report, paras 1158-1160

3.7.92 At the hearing, the Panel heard and acknowledged that Te Rūnanga o Toa Rangatira are essentially overwhelmed and have limited resources to provide input during both the IPI and full District Plan review processes to the extent that they may wish. We also note that Hutt City Council is not the only agency that the iwi is obliged to engage with at present due to the IPI processes and that, individually and collectively, these processes provide significant challenges to them.

3.7.93 Ultimately, Te Rūnanga o Toa Rangatira rejected Mr Davis's position that SASM matters will be adequately and better dealt with during the full District Plan review. They set out seven key matters of concern:

- a. the lack of definite mapping of SASM;
- b. the impacts of intensification which occur during the transitional period on marae and their surroundings;
- c. the cultural impacts of intensification;
- d. that the identification of SASM did not constitute a partnership approach;
- e. that there was no particular regard given to Deed of Settlement land;
- f. that the Council, rather than iwi, should be responsible for identifying sites;
- g. that given the serious risk of not acting and the lack of information, the Council should refrain from applying Policy 3 and the MDRS.
- h. within the period between the IPI and a full District Plan review being notified, the transitional engagement provisions did not provide for a korero opportunity with mana whenua; and
- i. there is also a risk that the work programme for Te Rūnanga o Toa Rangatira for the District Plan review is unachievable and therefore may extend the interim provision timeframes.

3.7.94 To assist us in our evaluation of these matters above, we sought some further clarification from Council officers during the course of the hearing. This is canvassed below along with our associated evaluation commentary.

*Evaluation and recommended decision*

3.7.95 In terms of the above, we specifically asked Council officers to clarify the following:

- a. the nature of the carried over and introduced controls for SASM;
- b. whether any interim solutions for the protection of SASM are possible between PC56 and the eventual replacement to the operative District Plan being notified; and
- c. confirmation whether the s32 report included June 2022 correspondence from Te Rūnanga o Toa Rangatira.

3.7.96 Mr Davis canvassed each of these in the Council Officers Reply Statement but ultimately concluded that there is no possible interim solution, beyond what has already been recommended, without identifying specific additional sites.<sup>268</sup>

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<sup>268</sup> Council Officers Reply Statement, paras 442-451



3.7.97 We bear Mr Davis's findings on the above matters in mind, in considering the specific matters raised by Te Rūnanga o Toa Rangatira during the hearing in turn below.

*a. The lack of definite mapping of SASM*

3.7.98 The Panel agrees that the lack of definite mapping of SASM is a significant issue however, given that neither Te Rūnanga o Toa Rangatira nor the Council are in a position at this stage to provide those definite boundaries, this matter is best addressed at the full District Plan review stage.<sup>269</sup>

*b. The impacts of intensification which occur during the transitional period on marae and their surroundings*

3.7.99 We accept that there is a balancing role between protecting those sites while still providing reasonable development capacity as directed by the NPS-UD. However, we consider that the carried over provisions do provide for adequate protection of national importance, with respect to s6(e), by reducing building height or density of the sites currently identified in the operative District Plan.

3.7.100 The Panel sought further clarification of both the carried over and introduced provisions and whether there were any interim solutions to provide further protection, either through sites identified through submissions or on a district-wide basis.

3.7.101 Mr Davis concluded that he did not consider that there was any way to provide greater protection than what currently exists under the operative District Plan, with the exception of the proposed additional protection of reducing the height adjacent to Korokoro urupā as discussed above.

3.7.102 In respect to providing district-wide protection, Mr Davis did not consider there were any reasonable permitted activity conditions that could achieve protection and that it could only be achieved by a new objective, policy or rule or by expanding the notification requirements.

3.7.103 Furthermore, he considered that these options would impose significant costs on all parties. On balance, the Panel agrees with Mr Davis's assessment that there are no interim solutions to provide further protection, further to the changes already proposed through PC56.

3.7.104 In addition to the amendment to the height control to land which adjoins the Korokoro urupā, Mr Davis noted that matters in relation to s6(e) would be given immediate effect upon the future notification of the District Plan review and therefore we consider that PC56 has adequately assessed the impacts of intensification that may occur during the transition period between the notification of PC56 and the full District Plan review.

*c. The cultural impacts of intensification*

3.7.105 In the Council Officers Reply Statement, Mr Davis stated that it is possible for cultural impacts to form part of the Council's environmental monitoring.<sup>270</sup> We consider it would assist in building a better picture of the impacts overtime but concur with Mr Davis's

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<sup>269</sup> Council Officers Reply Statement, para 430

<sup>270</sup> Council Officers Reply Statement, para 434

assessment that cultural and demographic trends are not a qualifying matter where they do not relate to a specific place.

3.7.106 We acknowledge there is an information gap and encourage the Council to include cultural impact assessments within future HBAs as a non-statutory method.

*d. The identification of SASM did not constitute a partnership approach*

3.7.107 The Panel acknowledges that Council can only identify SASM by engaging tangata whenua with relevant expertise. Furthermore, we acknowledge that the existing identified sites in the operative District Plan are several decades old and require review. The Panel would also like to acknowledge the newly established Kahui Mana Whenua task group that the Council has set up as direct conduit in this review. We appreciate that there is a lot of mahi to be done in partnership with iwi in this space and the appropriate method to undertake this is via the District Plan review.

3.7.108 In conclusion, we consider that the establishment of the Kahui Mana Whenua task group is a positive step and will assist in the identification of SASM as part of the full District Plan review.

*e. There was no particular regard given to Deed of Settlement land*

3.7.109 Council officers addressed the fact that they gave no regard to whether land was covered by the Deed of Settlement but considered the practical impact of this to be low in the short term. The Panel accepts Mr Davis's assessment and recognises that the Deed of Settlement land is being considered as a significant factor in the assessment of SASM for the full District Plan review.

*f. That Council, rather than iwi, should be responsible for identifying sites*

3.7.110 Mr Davis agreed that the Council was responsible for identifying SASM in the general sense but acknowledged the need to engage with tangata whenua to achieve this. As set out in paragraph 3.7.107 above, the Panel appreciates the creation of the Kahui Mana Whenua task group and their future involvement in the full District Plan review to identify sites.<sup>271</sup>

*g. That given the serious risk of not acting and the lack of information, Council should refrain from applying Policy 3 and the MDRS*

3.7.111 Mr Davis considered the risks of acting or not acting and concluded that most of the SASM sites are likely to be on public land, Māori land, or already developed and therefore given this fact, the risk of waiting to the full District Plan review is reasonably low.<sup>272</sup>

3.7.112 The Panel agrees with Mr Davis's assessment and therefore does not consider that the Council should refrain from applying Policy 3 of the MDRS.

*h. Within the period between the IPI and a full District Plan review being notified, the transitional engagement provisions do not provide for a korero opportunity with mana whenua*

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<sup>271</sup> Council Officers Reply Statement, para 437

<sup>272</sup> Council Officers Reply Statement, para 440

3.7.113 Mr Davis stated that developments that border marae and urupā may be considered a boundary activity and that, therefore, this provides a strong impetus for engagement with mana whenua, while acknowledging that this does not necessarily provide certainty over the nature of that engagement. The Panel considered that the roll-over of the operative District Plan provisions effectively requires discretionary consent and at this point, the requirements of s95 of the RMA would prevail, obliging the Council to assess whether public or limited notification is required.

*i. There is also a risk that the work programme for Te Rūnanga o Toa Rangatira for the District Plan Review is unachievable and therefore may extend the interim provision timeframes*

3.7.114 The Panel acknowledges that there is a risk that the extensive work plan ahead of the Council and mana whenua to work together could be delayed. However, we also note that an inventory of SASM sites would provide protection that would have immediate effect once the proposed District Plan is notified.

*Overall recommended decision*

3.7.115 For the reasons set out above, the Panel finds it can support Mr Davis's recommendation for the rollover of the Significant Cultural Resources Chapter provisions to be included as a qualifying matter, under s771(a) of the Housing Supply Act. In addition, we accept Mr Davis's s32AA evaluation with respect to amending the height overlay adjoining Korokoro urupā.

3.7.116 Furthermore, we concur with Mr Davis's assessment that no new information was presented at the hearing that would suggest changing the balance for protection with marae and urupā from development on neighbouring sites.<sup>273</sup>

3.7.117 The Panel considered that the risk of 'not acting'<sup>274</sup> in relation to identifying additional SASM is not significant in this case given the transitional period between PC56 and the notification of the District Plan review would only be approximately 12 months. Moreover, any SASM proposed through that process would be given immediate protection on notification.

*The National Grid*

*Overview of relevant provisions*

3.7.117 All changes to the **Network Utilities, including the National Grid chapter**<sup>275</sup> in the Operative District Plan proposed by PC56 are consequential in nature only, and involve deleting or amending Activity Area names and adding references to new heritage precincts. Overall, the intention is that operative District Plan separation distances and building setbacks from National Grid infrastructure continue to act as a s771(e) qualifying matter (i.e. as required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure) as noted in the **table** under paragraph 3.7.7 of our report.

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<sup>273</sup> Council Officers Reply Statement, para 444

<sup>274</sup> RMA, s32(2)(c)

<sup>275</sup> Chapter 13

*Matters raised by submitters*

3.7.118 Given their relatively minor nature, the above changes drew little submitter interest. As noted in the Council Officers Evaluation Report,<sup>276</sup> only Transpower<sup>277</sup> submitted on the use of the National Grid as a qualifying matter, and largely supported the proposed approach. Consequentially, Mr Davis recommended the retention of this approach.<sup>278</sup>

*Evaluation and recommended decision*

3.7.119 We accept Mr Davis's finding in the above respects and agree that no further amendments to PC56 are necessary. We do however recommend that amendments to include cross-references to new heritage precincts not proceed, for the reasons set out in under the heritage topic is this section of our report.

3.7.120 Transpower did not attend the hearing but did table a statement in support of its submission.<sup>279</sup> It was Mr Davis's conclusion, having read the statement, that Transpower had identified a substantive issue that required a resolution. He recommended inserting a clarification in the explanation and reasons section of the Residential Activity chapter<sup>280</sup> that qualifying matters are set out in the Network Utilities chapter as well as in Chapter 14 and the Activity Area chapters.<sup>281</sup>

3.7.121 We agree with Mr Davis that, as this solely addressed a matter of plan legibility, a s32AA assessment was not required,<sup>282</sup> and consequentially we recommend the adoption of the relief requested by Transpower.

*Public open space**Overview of relevant provisions*

3.7.122 Changes to the Operative District Plan are proposed via PC56 to clarify the status of public open space as a s770(f) qualifying matter (i.e. open space provided for public use, but only in relation to land that is open space) as noted in the **table** under paragraph 3.7.7 of our report. In practice, this involves the inclusion of some additional references to public open space and recreational areas in policies and matters of discretion in the relevant Activity Area chapters.

*Matters raised by submitters*

3.7.123 The Council Officers Evaluation Report observed that no submissions were received on public open space in relation to land that is open space as a qualifying matter and consequentially recommended the retention of the proposed approach.<sup>283</sup>

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<sup>276</sup> Council Officers Evaluation Report, para 1183

<sup>277</sup> Submission 153

<sup>278</sup> Council Officers Evaluation Report, para 1184

<sup>279</sup> *For the Attention of the Hearing Panel on the Proposed City of Lower Hutt District Plan Change 56*, dated 29 March 2023

<sup>280</sup> Chapter 1.10.3

<sup>281</sup> Council Officers Reply Statement, para 452

<sup>282</sup> Council Officers Reply Statement, para 453

<sup>283</sup> Council Officers Evaluation Report, paras 1185-1186

*Evaluation and recommended decision*

3.7.124 This particular matter remained uncontested at the hearing<sup>284</sup> and therefore warrants no further attention from the Panel. We simply mention it here for completeness. We recommend that the changes contained in PC56 in relation to this topic proceed.

*Other matters that could be qualifying matters**Matters raised by submitters*

3.7.125 As set out in the Council Officers Evaluation Report,<sup>285</sup> a number of submissions were received on PC56 seeking the addition of further qualifying matters, or matters that could be qualifying matters. These matters can be summarised as follows:

- a. matters listed as statutory qualifying matters and potentially admissible via the 'standard' or 'alternative' approaches referred to in paragraph 3.7.3 of our report, but not proposed for inclusion by PC56, namely:
  - i. indigenous biodiversity; and
  - ii. natural character;
- b. 'other' matters not listed as statutory qualifying matters, but requested by submitters and potentially admissible via the 'standard-plus' approach also referred to in paragraph 3.7.3, namely:
  - i. residential and/or special character; and
  - ii. transport network and other infrastructure capacity issues.

3.7.126 With respect to the first of the matters listed in a. above, it was Mr Davis's view<sup>286</sup> that, while biodiversity was a relevant qualifying matter, restrictions on building height and density would not advance the protection of biodiversity values. With respect to the second matter, he concluded that areas of significant natural character identified by the Regional Council did not correspond with the zones identified for intensification via PC56 and are therefore irrelevant as a qualifying matter.<sup>287</sup>

3.7.127 With respect to the matters listed in b. above, and as noted in paragraph 3.7.6 of our report, the Council did not propose the inclusion of 'other' matters catered for by the 'standard-plus' pathway, inclusive of the matter of 'residential character', with existing character 'activity areas' not carried through into PC56. Mr Davis was of the view that 'residential and/or special character' was not a suitable qualifying matter.<sup>288</sup> Further, in Mr Davis's view, there was no evidence to suggest that the City's transport network faced broad capacity issues arising from intensification or that water supply and wastewater networks could not respond to growth pressures as they emerged and that, therefore these aspects did not meet the requirements for identification as a qualifying matter. On this basis, he recommended the retention of the proposed approach.<sup>289</sup>

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<sup>284</sup> Council Officers Reply Statement, para 454

<sup>285</sup> Council Officers Evaluation Report, paras 1187-1209

<sup>286</sup> Council Officers Evaluation Report, para 1188

<sup>287</sup> Council Officers Evaluation Report, para 1191

<sup>288</sup> Council Officers Evaluation Report, para 1202

<sup>289</sup> Council Officers Evaluation Report, paras 1205-1206, 1208-1209

3.7.128 We note at this point that, while they may not have explicitly requested that the following matters be identified as qualifying matters, some submitters also raised concerns regarding the impact of enabled intensification on existing trees and shrubs, road corridor encroachments and significant cultural and natural resources.<sup>290</sup> These are matters that we as a Panel sought clarification on from Council Reporting Officers during the course of the hearing, or that they otherwise offered in their Council Officers Reply Statement.<sup>291</sup> For the sake of completeness and convenience we address these matters here.

*Evaluation and recommended decision*

3.7.129 As we have already indicated in paragraph 3.7.6 of our report, we have no issues with the Council's approach in determining not to identify indigenous biodiversity, natural character, residential and/or special character, or infrastructure capacity as qualifying matters.<sup>292</sup> This determination remains entirely within the Council's discretion. These matters also touch on issues of scope, that we have addressed in **Section 3.3** of our report. Mr Davis indicated in his written response statement that he had not heard anything additional during the course of the hearing that would cause him to alter his position supporting this approach.<sup>293</sup> Neither have we. Accordingly, we agree that no further amendments to PC56 in these respects are warranted.

3.7.130 With respect to the additional matters addressed in the Council Officers Reply Statement and summarised in paragraph 3.7.126 above, we agree with the officers' that:

- a. existing District Plan rules relating to vegetation clearance and the retention of vegetation in outdoor living spaces and landscaped areas will continue to apply and remain the most appropriate approach within the legislative constraints of an IPI / ISPP process;<sup>294</sup>
- b. the Council evidently has adequate ability to deal with environmental and amenity issues through the encroachment licence process and there is no case for also requiring resource consent;<sup>295</sup> and
- c. District Plan provisions relating to 'significant natural, cultural or archaeological resources' are irrelevant where PC56 is concerned as the only circumstances where rules relating to significant natural areas apply on private land are in a limited number of instances in rural locations.<sup>296</sup>

3.7.131 Accordingly, we find that no further amendments to PC56 in these respects are warranted.

### **3.8 Rezoning requests**

*Introduction*

3.8.1 Several submitters sought rezoning requests and provided supporting evidence at the hearing. Recommendations on rezoning requests in the Council Officers Evaluation Report were informed by legal advice regarding the scope of PC56.

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<sup>290</sup> As summarised in the Council Officers Evaluation Report, paras 139, 498 and 923, 150-151, and 1137, respectively

<sup>291</sup> Council Officers Reply Statement, paras 483-509

<sup>292</sup> We also indicated we accepted the Council's position with respect to infrastructure capacity within the context of its overall broad approach in paragraph 3.2.7 of our report.

<sup>293</sup> Council Officers Reply Statement, para 456

<sup>294</sup> Council Officers Reply Statement, paras 502-509

<sup>295</sup> Council Officers Reply Statement, para 493

<sup>296</sup> Council Officers Reply Statement, paras 496-499

- 3.8.2 We requested that Council Reporting Officers consider each rezoning request on its merits and Mr Quinn, on behalf of the Council, provided further legal advice regarding issues of scope. Our recommendations as recorded below are informed by the evidence provided by submitters and consideration of merit and scope. The specific zoning requests we consider are:
- a. downzoning areas of Manor Park;
  - b. upzoning the area between Barber Grove and Randwick Road, Moera;
  - c. reviewing the zoning of individual York Bay residential sites;
  - d. spot zoning areas to or from Hill Residential Zone;
  - e. extending the HDRAA around the Naenae Centre; and
  - f. applying PC56-mandated zoning to an area in Kelson, Lower Hutt.
- 3.8.3 Submissions seeking changes to zoning in a generic sense, rather than site-specific zoning requests, are discussed in **Section 3.6** of this report.
- 3.8.4 Our recommendations on the specific zoning requests that are discussed below are illustrated in mapped form in **Appendix 4**.

#### *Manor Park*

- 3.8.5 Alison Thwaite<sup>297</sup> requested that the proposed HDRAA zoning of Manor Park be reconsidered given the fault hazard overlay across much of the suburb. In response, Council Reporting Officers considered that the natural hazards chapter and requirements imposed through building consents would appropriately mitigate earthquake risk without the need to 'down zone' the area.<sup>298</sup>
- 3.8.6 The Panel agrees that HDRAA zoning is appropriate for the area of Manor Park south of State Highway 2 as it is very walkable based on public transport connections. Also, and in general accordance with Policy 3(c) of the NPS-UD, it provides a good level of connectivity to open spaces in the area. We accept the advice of Council Reporting Officers that the presence of the fault hazard overlay nearby is not sufficient reason to down zone this part of Manor Park south of the highway due to the mitigation provided through the building consent process and the applicable provisions in the natural hazards chapter. However, Council Reporting Officers also acknowledged a potential conflict between zoning and hazard management which needs to be resolved through the full District Plan review.<sup>299</sup> In the meantime, we recommend that the HDRAA zoning be retained. Accordingly, there are no changes to the maps in **Appendix 4**.
- 3.8.7 Kāinga Ora requested that a small portion of Manor Park, located north of State Highway 2, be rezoned from HDRAA to MDRAA due to poor pedestrian connections adversely affecting the walkability of the area. We agree that the presence of State Highway 2 and an underpass between the northern part of this suburb and the train station make this part of Manor Park north of the highway more suitable for MDRAA, when compared to the southern part which we have recommended retain its HDRAA zoning. We accept the

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<sup>297</sup> Submitter 142

<sup>298</sup> Council Officers Evaluation Report, para 601; Council Officers Reply Statement, para 209

<sup>299</sup> Council Officers Reply Statement, para 209

assessment of Council Reporting Officers for these reasons and recommend this area be rezoned from HDRAA to MDRAA as requested as shown in **Appendix 4**.<sup>300</sup>

*Area between Barber Grove and Randwick Road, Moera*

- 3.8.8 Some submitters sought the rezoning of these areas from MDRAA to HDRAA on the basis that this zoning would be commensurate with the level of commercial activity and community services in accordance with Policy 3(d) of the NPS-UD.<sup>301</sup>
- 3.8.9 Council Reporting Officers recommended rezoning the area south of Barber Grove to HDRAA, but did not consider a change to the requested sites at 39-49 Randwick Road to be appropriate. We agree with the recommendations of Council Reporting Officers for the reasons set out in the Council Officers Reply Statement.<sup>302</sup> Accordingly, these changes are shown on the maps in **Appendix 4**.

*York Bay residential sites*

- 3.8.10 The submission from York Bay Residents' Association requested that the Council undertake a more careful analysis of individual sites when applying the MDRAA to properties. In particular, they noted unusual zoning patterns on Taungata Road and Kaitawa Road as a result of the Operative District Plan zoning some properties General Residential, while the majority of properties in the area are zoned Hill Residential.
- 3.8.11 In response, Council Reporting Officers considered that there is no identified qualifying matter within PC56 which would enable the down zoning these sites. Furthermore, we note the application of the Natural Hazards chapter to any properties subject to natural hazard overlays, and the legal advice of Mr Quinn, summarised below, that rezoning to Hill Residential is outside the scope of PC56. Accordingly, we concur with the assessment of Council Reporting Officers and do not recommend changes to the notified zonings at York Bay.<sup>303</sup> Accordingly, there are no changes to the maps in **Appendix 4**.

*Hill Residential Activity Area*

- 3.8.12 Some submitters sought rezoning of areas proposed to be MDRAA or HDRAA to Hill Residential, or questioned the rezoning of areas that had previously been zoned Hill Residential. The Hill Residential Activity Area is the main residential zone less intense than MDRAA and, as per the legal advice of Mr Quinn, the Hill Residential Activity Area is not considered to be a 'relevant' residential area, and is therefore outside the scope of PC56.<sup>304</sup> Despite this legal impediment, and for completeness, we have taken the time to make some comments below on the merits of the requests.

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<sup>300</sup> Council Officers Reply Statement, para 220(f)

<sup>301</sup> *Evidence in Chief of Joe Jeffries on behalf of Stride Investment Management Limited, Investore Property Limited, Oyster Management Limited, and Argosy Property No 1 Limited*, dated 29 March 2023, para 8.3

<sup>302</sup> Council Officers Reply Statement, para 212

<sup>303</sup> Council Officers Reply Statement, para 212

<sup>304</sup> *Legal submissions on behalf of Hutt City Council addressing matters raised by the hearings panel*, Stephen Quinn, dated 25 May 2023, para 42



3.8.13 The sites requested in this category are:

- a. Natusch Road;
- b. Korokoro;
- c. Normandale Road, Harbour View Road, and Tirohanga Road; and
- d. Hill Residential Activity Area generally.

3.8.14 Douglas Sheppard<sup>305</sup> requested that the northern side of **Natusch Road** be down zoned from the notified MDRAA to Hill Residential Zone due to access constraints and to be consistent with the southern side of Natusch Road given the topographical similarities. Council Reporting Officers considered this request to be out of scope of PC56 and recommended it be considered as part of the full District Plan review.<sup>306</sup> We agree and we also note that Natusch Road does not meet the walkability criteria and it is likely that the area was rezoned MDRAA due to the operative General Residential zoning on the northern side of the street. Accordingly, the MDRAA zoning is recommended to be retained and there are no changes to the maps in **Appendix 4**.

3.8.15 Kāinga Ora and Rebecca Leask and Mike Stewart<sup>307</sup> opposed the proposed HDRAA zoning over 28 properties and sought the retention of the Hill Residential zoning for these properties located in **Korokoro**. Council Reporting Officers recommended the rejection of this request as the area is identified as being within a walkable area in accordance with Policy 3(c) of the NPS-UD.<sup>308</sup> Therefore, the retention of the notified HDRAA zoning was supported by Council officers. Ms Leask and Mr Stewart considered these properties are subject to development and walkability constraints associated with slope instability and steepness.<sup>309</sup> Council Reporting Officer Ms Wheatley considered London Road to be within the walkable catchment of the Petone train station and, while steep, still walkable within the Lower Hutt context. Ms Wheatley considered it appropriate to retain the entire Korokoro area block as HDRAA to enable comprehensive development.<sup>310</sup>

3.8.16 We note that this area is zoned Hill Residential in the Operative District Plan. As per the legal advice of Mr Quinn, the Hill Residential Activity Area is not a relevant residential zone for the purposes of the MDRS. We recommend that for PC56 this area retain the Hill Residential zoning of the Operative District Plan. For completeness, and regardless of the legal position being the basis for retaining the Hill Residential zoning over these properties (and rejecting the HDRAA), in the absence of such a reason we note that the steepness of the land combined with what we consider to be a marginally walkable catchment would have been determinative anyway.

3.8.17 On the above basis, we recommend this area retain Hill Residential zoning, based on the evidence of submitters, as we accept the application of a negligible walkable catchment due to the topography of the site. We prefer the evidence of submitters that the area is not readily walkable. In addition, we also note that the redevelopment of the area would not contribute meaningfully to housing capacity as it would theoretically contribute only 28 allotments.

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<sup>305</sup> Submitter 254

<sup>306</sup> Council Officers Evaluation Report, para 556

<sup>307</sup> Submitters 206 and 160, respectively

<sup>308</sup> Council Officers Evaluation Report, para 556

<sup>309</sup> Presentation to the Independent Hearing Panel

<sup>310</sup> Council Officers Reply Statement, para 208

- 3.8.18 Kāinga Ora also sought that areas around **Normandale Road, Harbour View Road and Tirohanga Road** proposed to be zoned as HDRAA through PC56 instead be rezoned back to Hill Residential or MDRAA. Kāinga Ora considered that these areas are not walkable due to poor or unsafe pedestrian connections and that the Hutt River is a barrier to urban connection. We concur and also agree with the recommendation and reasons provided by Council Reporting Officers that these areas should not be zoned HDRAA. Some of these areas proposed to be HDRAA are zoned Hill Residential in the Operative District Plan and therefore requests to amend the zoning of these areas is considered out of the scope of PC56. We recommend these areas are either down zoned to MDRAA or that operative Hill Residential zoning is retained as shown on maps supplied by Kāinga Ora.<sup>311</sup> For completeness, we note that the recommended rezonings to MDRAA or Hill Residential for these locales are shown in **Appendix 4** to our report.
- 3.8.19 In addition to the aforementioned spot zoning requests from HDRAA and MDRAA to Hill Residential, several submitters also requested spot rezonings in the other 'direction'; namely, rezoning of areas currently zoned Hill Residential to MDRAA or HDRAA. Mr Thornton also provided evidence supporting the rezoning requests in Stokes Valley and Wainuiomata.<sup>312</sup> This included the Silverstream Park Christian Centre at 320 Eastern Hutt Road, Stokes Valley.
- 3.8.20 At our direction, Ms Wheatley considered the merits of each of these requests,<sup>313</sup> however the legal opinion provided by Mr Quinn confirmed that these site specific, spot zoning requests are out of the scope of PC56 and if they were ever pursued it should be through the full District Plan review.<sup>314</sup> We therefore accept the recommendations of Ms Wheatley, set out in the Council Officers Reply Statement. Accordingly, there are no changes to the maps in **Appendix 4**.

#### *Naenae Centre*

- 3.8.21 Kāinga Ora sought that the HDRAA be extended around the Naenae commercial centre to the south and east of the notified HDRAA. We accept the assessment of Ms Wheatley that areas to the east of Naenae Road, opposite HDRAA areas as notified, are appropriately located and within walkable catchments. The HDRAA rezoning sought to the south of the Naenae commercial centre are considered beyond walkable catchments and would not be consistent with the approach to identifying HDRAA elsewhere in the district. We therefore adopt the recommendations of Council Reporting Officers in this regard and recommend amendments as shown in **Appendix 4** to provide partial relief sought by Kāinga Ora.<sup>315</sup>

#### *Kelson, Lower Hutt*

- 3.8.22 Council Reporting Officers identified an area in Kelson, Lower Hutt, which had inadvertently been excluded during the preparation of PC56. This area was subject to District Plan Change 47 which rezoned 280 Major Drive, 50 Kaitangata Crescent and 204

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<sup>311</sup> Council Officers Reply Statement, para 220(c)

<sup>312</sup> *Supplementary Statement on behalf of Cuttriss Consultants Ltd*, dated 18 April 2023, paras 8-15

<sup>313</sup> Council Officers Reply Statement, paras 213-219

<sup>314</sup> *Legal submissions on behalf of Hutt City Council addressing matters raised by the hearings panel*, Stephen Quinn, dated 25 May 2023, para 42

<sup>315</sup> Council Officers Reply Statement, para 220(e)

Liverton Road to a combination of General Residential Activity Area and General Recreation Activity Area and was made operative on 13 April 2021.

- 3.8.23 The landowner sought that the areas zoned General Residential Activity Area be rezoned to MDRAA through their submission on PC56. We adopt the recommendation of Council Reporting Officers<sup>316</sup> that the area currently zoned General Residential Zone should be rezoned MDRAA for consistency with the city-wide approach to zoning residential land and that areas zoned General Recreation Activity Area be retained as such. The amendments are shown in **Appendix 4**.

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<sup>316</sup> Council Officers Evaluation Report, para 195-197

#### 4. OVERALL RECOMMENDATION

- 4.1 Based on our consideration of all the material before us, including the Council Officers Evaluation Report, Council Officers Reply Statement, submissions, further submissions, evidence presented at the hearing and following consideration of the requirements of section 32AA and other relevant statutory matters, and for the reasons we have set out above in **Section 3**, we recommend to the Council that:
- a. the plan change be **accepted** as notified, and as further amended prior to, during and subsequent to the hearing, as set out in **Appendices 2, 3 and 4**;
  - b. that all submissions on the plan change be accepted or rejected to the extent that they correspond with that conclusion and the matters we have set out in the preceding report sections (and as summarised in **Appendix 1**); and
  - c. pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991, Council give notice of its decision on submissions to Plan Change 56.

**DATED THIS 22<sup>nd</sup> DAY OF August 2023**



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SG Daysh  
Chair



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DJ McMahon  
Independent Commissioner



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EA Burge  
Independent Commissioner