

Before the Hearings Panel  
Appointed by Hutt City  
Council

**IN THE MATTER OF**

the Resource Management  
Act 1991

**AND**

**IN THE MATTER OF**

Hutt City Plan Change 56

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**SUPPLEMENTARY STATEMENT OF EVIDENCE OF DAVID BATCHELOR ON BEHALF OF RLW  
HOLDINGS**

**HUTT CITY PROPOSED PLAN CHANGE 56**

**HERITAGE AND URBAN DESIGN STATEMENT**

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24 April 2023

## EXECUTIVE SUMMARY

1. The hearing commissioners requested supplementary evidence regarding how the recommendations in the initial evidence would integrate with the Permitted, Restricted Discretionary, Discretionary, and Non-Complying Activity rules and associated sections in Chapter 5B Petone Commercial Activity Area as amended.
2. This evidence supplements the initial evidence dated 6 April in support of the submission by RLW Holdings, submission reference 238, which sought clarification in the district plan on how properties within the Petone Commercial Area 1 but outside the Jackson Street Heritage Precinct would be impacted under the plan change.
3. It is recommended to sustain the Restricted Discretionary Activity status for all construction, redevelopment, alterations, repairing or modifications of any building or structure, except internal development and minor external repair, alterations, and maintenance per the amended wording of 5B 2.1.2 rule. However, to explicitly preclude building height and density up to 22 metres from the current matters in which council has restricted its discretion and standards and terms, with specific reference in (i) building shape.
4. It is also recommended to explicitly preclude building height and density up to 22 metres in the Appendix Petone Commercial 1 design guide through text changes, and to change the current Non-Complying Activity status of developments that do not satisfy the Restricted Discretionary Other Matters in 5B 2.1.2.2 to that of a Discretionary Activity under 5B 2.1.3.
5. No changes to the current Permitted and Non-Complying Activity rules other than Amendments 264–270 made in *Appendix 1: Officers' recommended amendments to Plan Change 56*.

6. The intended outcome is to provide clarity for decision-makers, landowners, and developers about how the effects of building height and density including and under 22 metres in height are to be assessed in a resource consent application. It is considered appropriate to assess the effects of building height and density from above 22 metres in height through the resource consent application process.

#### **SCOPE OF EVIDENCE**

7. The scope of this supplementary evidence is how the recommended amendments in the initial evidence would integrate with the Permitted, Restricted Discretionary, Discretionary, and Non-Complying Activity rules and associated sections in Chapter 5B Petone Commercial Activity Area as amended.
8. The following sections deliver this evidence:
  - a. 5B 2.1.1 Permitted Activities and 5B 2.1.1.1 Area 1 Permitted Activities – Conditions;
  - b. 5B 2.1.1 Restricted Discretionary Activities, 5B 2.1.2.1 Matters in which Council has Restricted its Discretion and Standards and Terms, and 5B 2.1.2.2 Other Matters; and
  - c. Recommended amendments to the Chapter 5b Petone Commercial Activity Area.

#### **A. 5B 2.1.1 PERMITTED ACTIVITIES AND 5B 2.1.1.1 AREA 1 PERMITTED ACTIVITIES – CONDITIONS**

9. The current permitted rules and conditions with Amendments 264–270 made in *Appendix 1: Officers' recommended amendments to Plan Change 56* allow properties within the Petone Commercial Area 1 but outside the Jackson Street Heritage Precinct

to have specific arrangements of activities, such as retail on ground levels, and residential activities above the ground floor level, and retail, health care services, and commercial activities not exceeding 1,000m<sup>2</sup>. These rules only regulate what activities occur on land or within existing buildings.

10. I support these specific arrangements of activities as it encourages an active street frontage and a scale of activities that is in keeping with the conservation values of the area. No changes to these rules apart from the amendments are recommended.
11. It is important to highlight that the current 5B 1.2.1 Permitted Activities rule and the amendments do not permit construction, redevelopment, or non-minor repair of buildings. For example, the construction of a building that would contain a retail activity of less than 1,000m<sup>2</sup> is not a permitted activity. As such, there is no permitted baseline for construction or redevelopment in the zone.
12. Activities, i.e., the use of buildings, that do not comply with these use arrangements are Discretionary Activity.

**B. 5B 2.1.1 RESTRICTED DISCRETIONARY ACTIVITIES, 5B 2.1.2.1 MATTERS IN WHICH COUNCIL HAS RESTRICTED ITS DISCRETION AND STANDARDS AND TERMS, 5B 2.1.2.2 OTHER MATTERS, AND 5B 2.1.4 NON-COMPLYING ACTIVITIES**

13. The current Restricted Discretionary Activity rule and conditions with Amendments 271–272 require resource consent for all construction, redevelopment, alterations, repairing or modifications of any building or structure, which is not listed as a Permitted Activity. It is noted that Permitted Activity rule 5B 2.1.1 does not allow for the construction or redevelopment of any property within the zone; it only permits the use of land and existing buildings for activities.

14. 5B 2.1.2.1 Matters in which Council has Restricted its Discretion and Standards and Terms limits the council's matters of discretion and standards and terms to those in the Appendix Petone Commercial 1 design guide and specify nine matters: (i) Building shape; (ii) Buildings on corner sites; (iii) Building modulation; (iv) Wall materials and openings; (v) Silhouette, parapets and cornices; (vi) Decoration and colour; (vii) Verandahs; (viii) Under verandahs; and (ix) Signs and lighting.
15. There is incongruity between the amended rules and design guidance and the 22-metre (understood to be interpreted as six storeys) building height and density requirements of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the Act).
16. The current 5B 2.1.2.1 Matters in which Council has Restricted its Discretion and Standards and Terms (i) Building shape is not explicit whether the council can or cannot consider the effects of building heights and densities that are under the statutory minimum required by the Act. Building shape is generally interpreted as building height, bulk, and form in the resource consent process, which suggests that the council can consider building heights and densities under the statutory minimum.
17. Amendment 284 in the Appendix Petone Commercial 1 design guide states:
- For buildings within Area 1 outside the Jackson Street Heritage Precinct, building heights may be up to six storeys, but should be designed to mitigate visual dominance and provide a coherent and definite transition in height occurring outside the boundaries of the Heritage Precinct.*
18. Under this matter of discretion and amended design guidance, the council has the discretion to consider the effects of building heights and densities under statutory minimum due to the vagueness of 'building shape' and the word 'may' in the amended

design guide. The phrase 'up to six storeys' suggests that this is to be the maximum height of buildings in the zone outside of the heritage precinct and is in conflict with the 22-metre height in 5B 2.1.1.1 Area 1 Permitted Activities – Conditions. Therefore, this amended design guidance could be contrary to the council's intended outcomes and discourage decision-makers from granting resource consent for 22-metre-tall buildings. For example, the council and their design consultants could determine that a proposed building of 22-metres tall is not compatible with the adjacent building heights in the Jackson Street Heritage Precinct and, subsequently, require the applicant to reduce the building height and density to address their concerns about building shape and its impact on the Heritage Precinct. The substantial shape difference between a 22-metre building and the predominant two-storey height of buildings on Jackson Street and the subjective quality of defining character compatibility increases the likelihood that such determinations would occur in the determination of resource consent applications.

19. In my professional capacity as an urban designer and a planner, I have witnessed council design consultants withholding approval via issuing s92 requests in order to seek design changes to proposed developments which comply with the bulk and density permitted standards currently. They openly withhold their approval on the grounds that the development would be incompatible with the bulk and density of adjacent buildings. Without clear direction from rules and design guidance, there is little that applicants and their consultants can utilise in these situations to counter these opinions in a timely manner, and they must adopt the under-optimised design or have their resource consent applications refused. The absence of clarity on design matters is one reason causing the delays in the resource consent processing in Lower

Hutt. Research by the Ministry for the Environment confirms that poor design guidance and council design consultants not having formal urban design-related qualifications are contributing to processing delays and inconsistent determinations.<sup>1</sup> Therefore, the explicit preclusions of 22-metre building heights and densities to clarify the decision-making process for all parties is recommended to be adopted in 5B 2.1.2.1.

20. As a consequential change, Amendment 271, which adds the phrase 'which is not listed as a Permitted Activity' on the Restricted Discretionary Activity rule 5B 2.1.1 is needless and should be removed for clarity due to the Permitted Activity rule 5B 2.1.1 as amended not permitting construction activities.

21. 5B 2.1.2.2 Other Matters requires all Restricted Discretionary Activities, i.e., the construction and redevelopment of buildings, to comply with the Permitted Activity Conditions, which concern site coverage, maximum height of buildings, landscaping and screen, site abutting resident activity areas, and general rules in Chapter 14. If a development does not meet these standards, such as exceeding the amended 22m height limit, then it requires resource consent as a Non-Complying Activity.

22. As a consequential change, I recommend that the council consider amending the Non-Complying Activity status of developments that do not satisfy 5B 2.1.2.2 Other Matters. The consideration could be to amend this status to that of a Discretionary Activity under 5B 2.1.3. A Non-Complying Activity status risks being contrary to the statutory requirements of the Act, where the plan change must enable building heights and density of urban form to reflect the demand for housing and business use. A

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<sup>1</sup> Ministry for the Environment. 2010. *Urban Design Panels: a national stocktake*. <https://environment.govt.nz/assets/Publications/Files/urban-design-panels.pdf>; Ministry for the Environment. 2021. *Building competitive cities: Reform of the urban and infrastructure planning system - A technical working paper*. <https://environment.govt.nz/publications/building-competitive-cities-reform-of-the-urban-and-infrastructure-planning-system-a-technical-working-paper/>

Discretionary Activity status is more enabling than a Non-Complying Activity status, which is arguably a non-enabling status. Depending on the council's views, the demand for housing and business uses the zone may be above the capacity that 22-metres in building height provides and they could determine that a change of activity status is necessary to meet their obligations under the Act. It is understood that some submitters hold the view that a demand for buildings above 22-metres in building height exist in the zone.

### **C. RECOMMENDED AMENDMENTS TO THE CHAPTER 5B PETONE COMMERCIAL ACTIVITY AREA**

23. The following pages detail the amendments sought to address the matters raised in the above sections.

#### **KEY**

##### **EXISTING**

Black text: Existing text in the district plan

*Red italic text:* Reference text from the *Appendix 1: Officers' recommended amendments to Plan Change 56*

Red underlined text: Text recommended for insertion in the *Appendix 1: Officers' recommended amendments to Plan Change 56*

~~Red struck through text:~~ Text recommended for deletion in the *Appendix 1: Officers' recommended amendments to Plan Change 56*

##### **PROPOSED**

*Green italic text:* Explanation text not proposed for adoption

Green underlined text: Text proposed for insertion by David Batchelor

~~Green struck through text:~~ Text proposed for deletion by David Batchelor

OFFICER AMENDED TEXT	RECOMMENDED TEXT
<b>5B PETONE COMMERCIAL ACTIVITY AREA</b>	
<p><b>5B 2.1.1 Permitted Activities</b></p> <p>(a) In that area of Jackson Street generally bounded by Victoria and Cuba Streets, shown as Area 1, all retail activities with a gross floor area not exceeding 1,000m<sup>2</sup>.</p> <p>(b) Commercial activities with a gross floor area not exceeding 1,000m<sup>2</sup>.</p> <p>(c) Residential activities above ground floor level.</p> <p>(d) Health care services with a gross floor area not exceeding 1,000m<sup>2</sup>.</p> <p>(e) Licensed Premises with a gross floor area not exceeding 1,000m<sup>2</sup>.</p> <p><u>(f) Redecoration, repair or alterations which are internal and not visible from the road or from the road frontage.</u></p> <p><u>(g) Minor repair, alterations, and maintenance to the existing facade of a building or structure that does not require building consent;</u></p> <p><u>(h) Signs that are temporary for a period of no more than 3 months.</u></p>	<p>Support council Amendments 264, 265, and 266.</p> <p>No further amendments recommended.</p>
<p><b>5B 2.1.1.1 Area 1 Permitted Activities - Conditions</b></p> <p><del>(a) Site Coverage: Site Coverage: Up to a maximum of 100%.</del></p> <p>(b) Maximum Height of Buildings and Structures: <del>Maximum Height of Buildings and Structures: 10.0m.</del></p> <p><u>(i) 10m within the Jackson Street Heritage Precinct</u></p> <p><u>(ii) 22m where not within the Jackson Street Heritage Precinct</u></p> <p>(c) Landscaping and Screening:</p> <p>(i) All outdoor storage and servicing areas must be screened so that they are not visible from a road or public place.</p> <p>(ii) At least 5% of car parking areas not contained within a building and adjoining roads must be landscaped and screened.</p> <p><u>(iii) Car parking areas must be screened from Jackson Street.</u></p> <p>(d) Sites abutting residential activity areas: Where a site abuts a residential activity area the following conditions shall apply:</p> <p>(i) <del>The maximum height of buildings is 10 metres.</del> All buildings and structures shall comply with the recession plane requirements of the abutting residential activity area.</p> <p>(ii) Side yard - minimum depth of <del>3 metres where the</del> <u>1m on boundaries with a site abuts</u> in a residential activity area.</p>	<p>Support council Amendments 267, 268, 269, and 270.</p>

<p>(iii) Rear yard - minimum depth of <del>8 metres where the 1m on boundaries with a site abuts</del> in a residential activity area. This may be reduced if there is a service lane to the rear of the site.</p> <p>(iv) <del>Where a site abuts a residential activity area</del> All outdoor storage and servicing areas must be screened <del>by a</del> <u>from the abutting residential activity area by a building or</u> close-boarded fence or a fence made of solid material with a minimum height of 1.2m and a maximum height of 1.8m.</p> <p>(v) All car parking areas, not contained within buildings, which abut a residential activity area shall be screened by <u>building or</u> a close-boarded fence or a fence made of solid material with a minimum height of 1.2m and a maximum height of 1.8m.</p> <p>(vi) <del>Where a site abuts a residential activity area, servicing</del> <u>Servicing</u> of activities must not occur between the hours of 10.00pm and 7.00am.</p> <p>(e) General Rules: Compliance with all matters in the General Rules - see Chapter 14.</p>	
<p><b>5B 2.1.2 Restricted Discretionary Activities</b></p> <p>(a) All <u>construction</u>, redevelopment, alterations, repairing or modifications of any building or structure, <del>except the following which is not listed as a Permitted Activity:</del></p> <p style="padding-left: 20px;"><del>(i) Redecoration, repair or alterations which are internal and not visible from the road or from the road frontage; and</del></p> <p style="padding-left: 20px;"><del>(ii) Minor repair or alterations or maintenance to the existing facade of a building or structure which does not require any building consent; which are Permitted Activities.</del></p> <p><del>(b) All signs, except those that are temporary for a period of three months which are Permitted Activities.</del></p> <p><u>Public and limited notification is precluded for applications under Rule 5B 2.1.2(a).</u></p>	<p>Support council Amendments 272.</p> <p>Change Amendment 271 to the following:</p> <p>(a) All <u>construction</u>, redevelopment, alterations, repairing or modifications of any building or structure, <del>except the following</del> <u>which is not listed as a Permitted Activity.</u></p> <p><i>Reasoning:</i>  <i>The proposed amendment clarifies that the permitted activities only permit activities and not the construction or redevelopment of buildings.</i></p>

<p><b>5B 2.1.2.1 Matters in which Council has Restricted its Discretion and Standards and Terms</b></p> <p>The matters that Council has restricted its discretion are specified in Appendix Petone Commercial 1. These relate to the following matters:</p> <ul style="list-style-type: none"> <li>i. Building shape;</li> <li>ii. Buildings on corner sites;</li> <li>iii. Building modulation;</li> <li>iv. Wall materials and openings;</li> <li>v. Silhouette, parapets and cornices;</li> <li>vi. Decoration and colour;</li> <li>vii. Verandahs;</li> <li>viii. Under verandahs; and</li> <li>ix. Signs and lighting.</li> </ul> <p>All resource consent applications will be assessed in accordance with the Standards and Terms specified in Appendix Petone Commercial 1.</p>	<p>Amend with the following:</p> <p>The matters that Council has restricted its discretion are specified in Appendix Petone Commercial 1, <u>precluding any effects of building heights and density of urban form up to 22-metres in building height</u>. These relate to the following matters:</p> <ul style="list-style-type: none"> <li>i. Building shape <u>22-metres in building height</u>;</li> <li>ii. Buildings on corner sites;</li> <li>iii. Building modulation;</li> <li>iv. Wall materials and openings;</li> <li>v. Silhouette, parapets and cornices;</li> <li>vi. Decoration and colour;</li> <li>vii. Verandahs;</li> <li>viii. Under verandahs; and</li> <li>ix. Signs and lighting.</li> </ul> <p>All resource consent applications will be assessed in accordance with the Standards and Terms specified in Appendix Petone Commercial 1.</p> <p><i>Reasoning:</i>  <i>The proposed amendment makes explicit in the district plan text that building heights up to 22-metres tall are not subject to the council's discretionary; the council must enable buildings of at least six storeys (understood to be interpreted as 22-metres) per Policy 3 in the NPS-UD.</i></p>
<p><b>5B 2.1.2.2 Other Matters</b></p> <p>All Restricted Discretionary Activities must comply with other relevant Permitted Activity Conditions.</p>	<p>No amendment sought.</p>
<p><b>5B 2.1.3 Discretionary Activities</b></p> <p>(a) Except where stated in the General Rules, any Permitted Activity which fails to comply with any of the Permitted Activity Conditions.</p> <p>(b) Residential activity on the ground floor of buildings.</p> <p>(c) Brothels and commercial sexual services on the ground floor of buildings.</p>	<p><b>5B 2.1.3 Discretionary Activities</b></p> <p>(a) Except where stated in the General Rules, any Permitted Activity which fails to comply with any of the Permitted Activity Conditions.</p> <p>(b) Residential activity on the ground floor of buildings.</p> <p>(c) Brothels and commercial sexual services on the ground floor of buildings.</p>

<p>(d) Brothels and commercial sexual services on a site abutting or directly across the road from schools, pre- school facilities, churches and other similar religious establishments or a residential activity area.</p>	<p>(d) Brothels and commercial sexual services on a site abutting or directly across the road from schools, pre- school facilities, churches and other similar religious establishments or a residential activity area.</p> <p><u>(e) All construction, redevelopment, alterations, repairing or modifications of any building or structure that does not comply with 5B 2.1.1.1 Permitted Activity Conditions</u></p> <p><i>Reasoning:</i> The demand for housing and business uses the zone may be above the capacity that 22-metre tall buildings provide and the proposed amendment might be required to meet the statutory requirements in the Act to satisfy this demand.</p>
<p><b>5B 2.1.3.1 Assessment Matters for Discretionary Activities</b></p> <p>(a) The matters contained in sections 104 and 105, and in Part II of the Act shall apply. (b) The degree of compliance or non-compliance with any relevant Permitted Activity Conditions.</p>	<p>No amendment sought.</p>
<p><b>5B 2.1.4 Non-Complying Activities</b></p> <p>(a) All other activities not listed as a Permitted, Restricted Discretionary or Discretionary Activity.</p>	<p>No amendment sought.</p>
<p><b>APPENDIX PETONE COMMERCIAL 1</b></p>	
<p><b>Part 1: Building Shape</b></p> <p><b>1.1 Background</b></p> <p>Given the quality of old building stock <del>fronting Jackson Street</del> <u>within the Jackson Street Heritage Precinct</u>, refurbishments or new developments should reinforce the visual cohesion of the existing facades. Refurbishment or renovation of existing buildings should relate to the historical design traditions within the street.</p> <p>4. <u>For buildings within the Jackson Street Heritage Precinct itself</u>, the extent to which the new building is compatible with adjacent building heights.</p>	<p>Support with the following change to (5):</p> <p><u>For buildings within Area 1 outside the Jackson Street Heritage Precinct, 22-metre tall buildings are acceptable but should be designed to maintain the compatibility of cornice lines, floor to floor heights, and the street frontage and other façade elements where these are strongly expressed in adjacent buildings, and, on sections of building above 22-metres in height, provide a sympathetic built form and facade detail in favour of the properties within the Heritage Precinct.</u></p> <p><i>Reasoning:</i></p>

5. For buildings within Area 1 outside the Jackson Street Heritage Precinct, building heights may be up to six storeys, but should be designed to mitigate visual dominance and provide a coherent and definite transition in height occurring outside the boundaries of the Heritage Precinct.

*The above amendment makes explicit that buildings up to 22-metres tall are acceptable and that the matters of discretion are restricted to architectural styles rather than the development capacity or form per Policy 3 in the NPS-UD. It provides the council with discretion over the height above this statutory threshold. In this instance, the council may determine that no additional height is acceptable or that a setback or transition in height is necessary for additional storeys above 22-metres tall.*