

**BEFORE THE INDEPENDENT HEARING PANEL  
APPOINTED BY UPPER HUTT CITY COUNCIL**

**IN THE MATTER** of the Resource Management  
Act 1991 (**RMA**)

**AND**

**IN THE MATTER** of the Intensification  
Planning Instrument change  
to the Operative Upper Hutt  
District Plan

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**STATEMENT OF EVIDENCE OF ANDREW BROWN CUMMING**

**PLANNING**

**14 APRIL 2023**

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## **INTRODUCTION**

1. My full name is Andrew Brown Cumming.

### *Qualifications and experience*

2. I am self-employed as a planning consultant. I hold the qualifications of Bachelor of Science (Zoology) from Massey University and Master of Science (Environmental Science and Zoology) (First Class Honours) from the University of Auckland.
3. I have worked in resource management and planning in both the public and private sectors for more than 25 years. My experience includes senior management and policy experience at district councils and policy experience at a regional council as well as 12 years of private resource management practice. My most recent role at a council was as District Plan Manager at Hutt City Council from 2015 until 2019.
4. I have been involved in a wide range of projects and tasks including preparing regional and district plans, reviewing district plan changes and policy documents, identifying implications for clients and preparing formal submissions, preparing applications for consent for a variety of subdivision and land use projects, and commissioning and reviewing specialist inputs (e.g. ecologists, surveyors, geotechnical engineers, traffic engineers, noise specialists, landscape architects and archaeologists).
5. I am a full member of the New Zealand Planning Institute.

### *Code of Conduct*

6. I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and confirm that I have complied with it in preparing this evidence. I confirm that the issues addressed in this evidence are within my area of expertise, except where I have indicated that I am relying on others' opinions. I have not omitted material facts known to me that might alter or detract from my evidence.

## CONTEXT FOR MY EVIDENCE

7. This statement of evidence is in respect of three submissions to the Upper Hutt City Council Intensification Planning Instrument change to the Upper Hutt District Plan (**IPI**). The three submissions have aligned interests in that they each request a site to be rezoned to Mixed Use Zone (**MUZ**). The three submissions are as follows:
  - (a) CBDI Ltd and CBD Land Ltd (**CBD Ltd**) (Submission 70);
  - (b) The Heretaunga Company Ltd and The Heretaunga Company No.2 Ltd (**Heretaunga Company**) (Submission 71); and
  - (c) Gillies Group Management Trust Ltd (**GGMT**) (Further Submission 9) in support of Racing at Awapuni and Trentham Combined Enterprises Incorporated (**RACE Inc**) (Submission 69).
  
8. I have read the section 42A report prepared by Upper Hutt City Council insofar as it relates to the matters discussed here.
  
9. I have also read the submissions and further submissions and I comment on the following submissions:
  - (a) Further Submission 7 lodged by Summerset Group Holdings Ltd (**Summerset**) in opposition to RACE Inc (Submission 69); and
  - (b) Further Submission 13 lodged by New Zealand Defence Force (**NZDF**) in opposition to RACE Inc (Submission 69).
  
10. In this statement I set out the following:
  - (a) The background of the IPI and the National Policy Statement on Urban Development (**NPS-UD**);
  - (b) A discussion of each of the three submissions, including:
    - (i) The affected sites;
    - (ii) The current and requested site zoning of each site;
    - (iii) Comments on the Summerset and NZDF submissions;
    - (iv) Recommendations; and
  - (c) Consolidated conclusion and recommendations.

## THE BACKGROUND - THE IPI AND THE NPS-UD

11. On 17 August 2022 Upper Hutt City Council publicly notified the IPI. The purpose of the IPI is to enable housing and business capacity by incorporating the Medium Density Residential Standards (**MDRS**) into the District Plan, and giving effect to Policies 3 and 4 of the National Policy Statement on Urban Development 2020 (**NPS-UD**). The IPI sets out to achieve these things via the following key elements:
- (a) The incorporation of the Medium Density Residential Standards (MDRS) into all relevant residential zones in accordance with section 77G(1) of the RMA;
  - (b) To give effect to the heights and densities of urban form required by Policy 3(a), (c)(i) and (ii), and (d) of the National Policy Statement on Urban Development 2020 (NPS-UD);
  - (c) Introduction of new High Density Residential, Town Centre, Local Centre, Neighbourhood Centre and Mixed Use zones with new objectives, policies and rules for these zones;
  - (d) Rezoning of St Patrick's Estate Area to High Density Residential Zone;
  - (e) Introduction of a Papakāinga Chapter with objectives, policies, and rules;
  - (f) Amendments to the City Centre zone and General Residential zone to enable intensification of housing and remove the building height limit from the City Centre Zone;
  - (g) Introduction of new definitions associated with these changes;
  - (h) Changes to financial contributions to ensure that contributions can be collected for the new housing enabled by this change.
  - (i) Introduction of hydraulic neutrality provisions; and
  - (j) Make consequential amendments across the District Plan and amend or include provisions that support or are consequential on the MDRS or Policies 3 and 4 of the NPS-UD.
12. Tier 1 territorial authorities including Upper Hutt City Council (**UHCC**) are required by the Resource Management Act – Enabling Housing Supply to incorporate the MDRS - specified residential bulk and location standards - into every relevant residential zone in their district plan.

- 13.** Policies 3 and 4 of the NPS-UD require UHCC to enable housing and business capacity as follows:

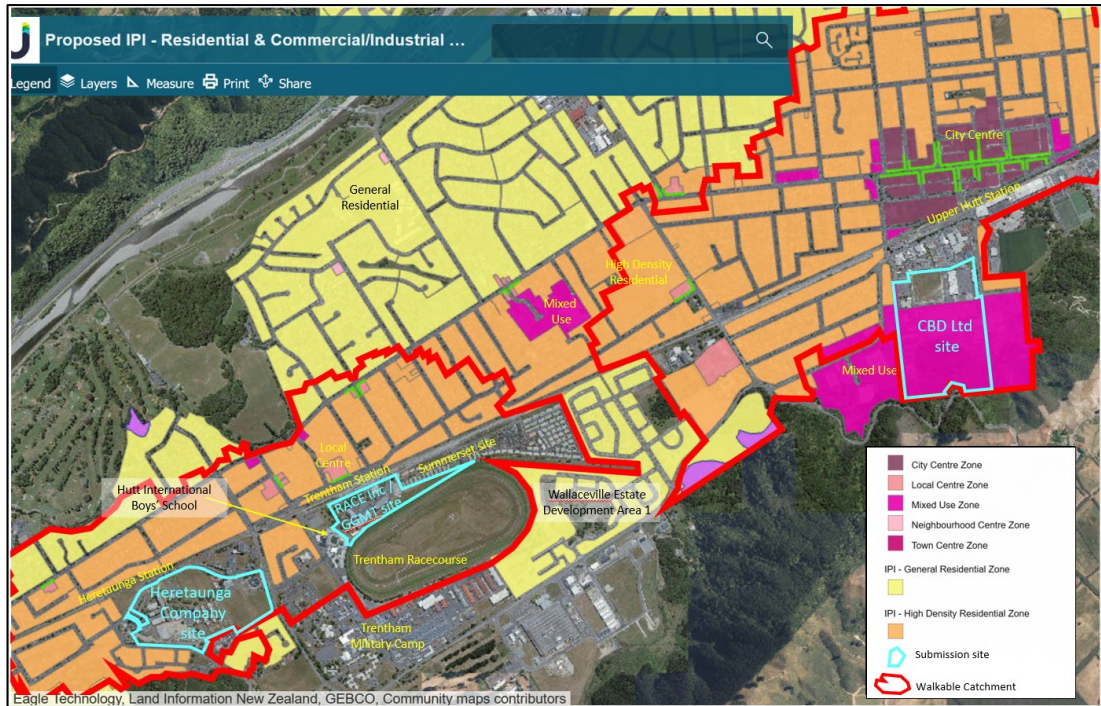
**Policy 3:** *In relation to tier 1 urban environments, regional policy statements and district plans enable:*

- (a) *in city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification; and*
- (b) *in metropolitan centre zones, building heights and density of urban form to reflect demand for housing and business use in those locations, and in all cases building heights of at least 6 storeys; and*
- (c) *building heights of least 6 storeys within at least a walkable catchment of the following:*
  - (i) *existing and planned rapid transit stops*
  - (ii) *the edge of city centre zones*
  - (iii) *the edge of metropolitan centre zones; and*
- (d) *in all other locations in the tier 1 urban environment, building heights and density of urban form commensurate with the greater of:*
  - (i) *the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or*
  - (ii) *relative demand for housing and business use in that location.*

**Policy 4:** *Regional policy statements and district plans applying to tier 1 urban environments modify the relevant building height or density requirements under Policy 3 only to the extent necessary (as specified in subpart 6) to accommodate a qualifying matter in that area.*

## **THE SUBMISSIONS**

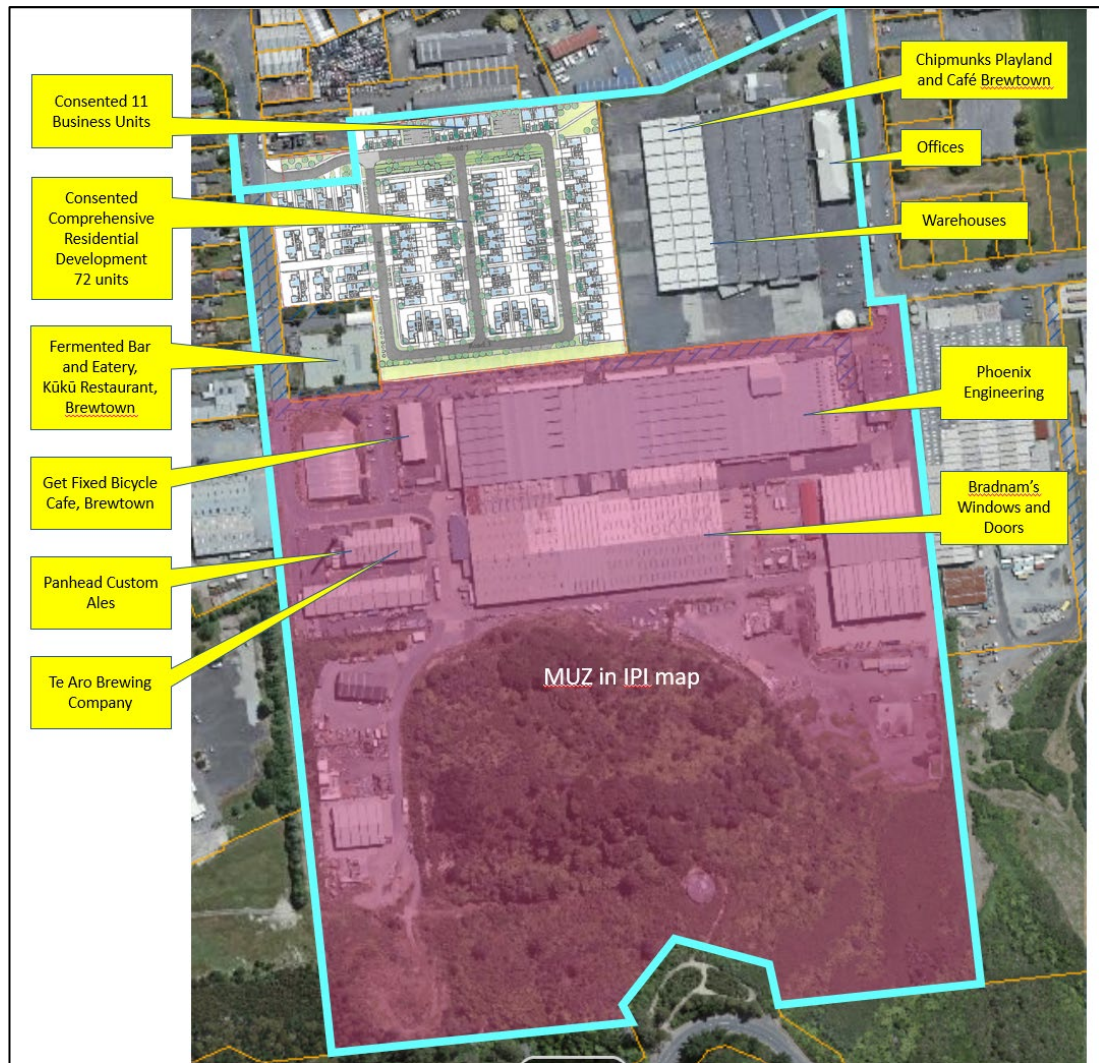
- 14.** The submission site locations are indicated in light blue on the annotated IPI map at Figure 1 below and attached at A3 size (Attachment 1). I have also sketched the UHCC walkable catchment boundaries onto the map. I understand the walkable catchments to relate to walkability from rapid transit (the railway stations) and the City Centre.



**Figure 1 Annotated IPI map showing submission sites and walkable catchments.  
(An A3 version of this map is available at Attachment 1)**

***CBD Ltd***

15. CBD Ltd (Submission 70) seeks the rezoning of the site comprising Lots 1-3 DP456184 and Lot 2 DP452529 from General Industrial Zone to Mixed Use Zone. CBD Ltd is the owner of the site, which is approximately 22ha in area.
  
16. The submission notes that the site has transitioned from heavy industrial use (South Pacific Tyre Factory) to a mixed use precinct with a range of land uses including recreation, *Brewtown* hospitality and brewing, *Maidstone Quarter* residential (consented but not yet constructed), offices and light manufacturing. Figure 2 shows the location of some of the uses.



**Figure 2 CBD Ltd submission site – current land use**

17. The IPI as notified proposes the rezoning to MUZ although there appears to be a discrepancy between the extent of the MUZ shown on the IPI map and that indicated on pages 343-344 of the Proposed IPI Provisions<sup>1</sup>. The IPI map does not show the northern part of the site as MUZ, as also indicated in Figure 2. The submitter had interpreted pages 343-344 as identifying the entire site as going to MUZ. I confirm that the submission seeks MUZ over the full extent of Lots 1-3 DP456184 and Lot 2 DP452529.
18. The s42A Report accepts the CBD Ltd submission and does not recommend any changes to the MUZ as notified. However, the s42A Report has not picked up the anomaly over the extent of the MUZ on the CBD Ltd site.

<sup>1</sup> <https://www.upperhuttcity.com/files/assets/public/districtplan/ipi/uhcc-proposed-ipi-provisions.pdf>

19. In my assessment, the full site is clearly mixed use and lends itself well to the National Planning Standards definition of MUZ:
- Areas used predominantly for a compatible mixture of residential, commercial, light industrial, recreational and/or community activities.*
20. The site is well-located close to the City Centre and the Upper Hutt Railway Station, which is reflected in the site's inclusion in the walkable catchment (Figure 1).
21. The General Industrial Zoning (**GIZ**) is no longer fit for purpose for the site because it is insufficiently enabling for the type of activities seeking to establish on the site.
22. I therefore recommend that the Hearing Panel accepts the relief sought in the submission, as clarified in this evidence, and rezones the full site to MUZ.

***Heretaunga Company***

23. Heretaunga Company (Submission 71) seeks the rezoning of the site comprising Lot 100 DP544244 and Lot 1 DP544244 from Special Activity Zone (**SAZ**) to MUZ. Heretaunga Company is the owner of the site, which is now known as the NZ Campus of Innovation and Sport (**NZCIS**) and Sports Hub. The site, which is approximately 17ha in area, is shown in Figure 1 and Attachment 1.
24. The SAZ provided for the former use of the site, the Central Institute of Technology, an educational facility that was mothballed by Government in 2001 and sold to Heretaunga Company in 2015.
25. The site contains substantial re-purposed and refurbished buildings associated with the former education facilities and campus. There is a large complex of joined and separate tower blocks up to five storeys in height on the north-western portion of the campus grounds, which were previously used for lecture theatres, teaching facilities and offices. They have been internally stripped and refurbished into modern office space. The current tenants include:
- (a) Department of Corrections (3,791m<sup>2</sup>);
  - (b) New Zealand Defence Force (1,228m<sup>2</sup>);



- (c) Ministry of Justice (809m<sup>2</sup>);
- (d) Upper Hutt City Council (809m<sup>2</sup>);
- (e) Wellington Rugby Football Union (708m<sup>2</sup>);
- (f) Wellington Phoenix (311m<sup>2</sup>);
- (g) The Heretaunga Hospo Company Ltd (1,148m<sup>2</sup>);
- (h) Gillies Group (980m<sup>2</sup>);
- (i) Quest Integrity Laboratory (1000m<sup>2</sup>);
- (j) Rheinmetal Defence (129m<sup>2</sup>);
- (k) Tactical Solutions (498m<sup>2</sup>);
- (l) The Way Studios (200m<sup>2</sup>); and
- (m) Government Department in negotiation (4,500m<sup>2</sup>).

**26.** The campus also contains several medium-rise residential tower blocks at the centre of the site. The blocks were formerly student Halls of Residence with associated kitchen, dining hall and lounge facilities, and now contain short term residential accommodation for central government staff attending training courses at the NZCIS campus.

**27.** Three single storey buildings are located at the north-eastern end of the site adjoining Somme Road. The buildings house the Farmyard Childcare Centre (664m<sup>2</sup>), the YMCA gym (1,245m<sup>2</sup>) and the NZ Defence Force's 90 bed youth development unit.

**28.** The Sports Hub was authorised via resource consent. It currently comprises the following buildings and facilities:

- (a) Three large, open-air, artificial-turf sports fields with light towers;
- (b) Athletes Village – new on-site residential accommodation for teams and persons attending sports training and sports events at the NZCIS;
- (c) Sports Hub building of 7,800m<sup>2</sup>, which provides covered and enclosed facilities for excellence in sports training for professional and amateur sports comprising:
  - (i) A 70m x 50m internal covered artificial pitch sports field;
  - (ii) Hydro-therapy pools;
  - (iii) Humidity chamber (for recovery and recuperation);
  - (iv) Gym (for professional and recreational use);

- (v) Spin room;
- (vi) Stretching room;
- (vii) Sauna;
- (viii) Changing rooms, showers and toilets;
- (ix) Meeting room (30-40 people);
- (x) Offices for coaches, physiotherapists and doctors;
- (xi) Reception and administration offices, and
- (xii) Storerooms.

- 29.** The submitter has further development plans for the site and intends to add additional multi-storey commercial and retail facilities including a café/restaurant/bar at ground level to improve amenities for office workers and other workers on-site as well as for residents of the local neighbourhood. Above ground floor would be unit titled residential accommodation.
- 30.** With the current and proposed developments, the site will make a strong contribution to the housing and business capacity of Upper Hutt City.
- 31.** The SAZ objectives and policies were prepared according to the planning practice that prevailed in 2004 and fall short of modern plan drafting norms. The objectives fail to state any desired outcomes for the SAZ, although the explanations to the objectives imply that the zone groups substantial numbers of bulky Government buildings and seeks to protect the amenity of neighbouring sites. The policies provide for “operation and development” without specific guidance. The policy explanation suggests that the “range of activities” are related to primary uses, which can presumably be inferred from “military camp”, “prison” and “educational facility”. The policies are also protective of the amenity of neighbouring sites.
- 32.** On the Heretaunga Company site, building bulk and location is, for a site anticipated to be for substantial numbers of large buildings, relatively restrictive. The building height standard is 15m, building coverage is limited to 40% and the height to boundary control is 2.5m vertically at the boundary with a recession plane of 35 or 45 degrees depending on the aspect. The permitted land uses are still more restrictive, being limited to:

- (a) “Activities relating to educational functions”;
- (b) “Active and passive recreation and ancillary activities and buildings”;
- (c) Removal of buildings; and
- (d) Minor Structures.

- 33.** Relocated buildings are a controlled activity.
- 34.** A breach of the permitted activity standards leads to an activity becoming fully discretionary.
- 35.** An activity not specifically provided for in the SAZ is non-complying.
- 36.** The SAZ is no longer fit for purpose for the site. SAZ is insufficiently enabling for the type of activities that are established or are seeking to establish on the site. I would go as far as saying the site suffers from planning blight. That is, the site’s planning framework does not provide for its reasonable use. The site’s previous primary use simply no longer exists. Few activities are enabled and the objectives and policies do not provide satisfactory direction or certainty for resource consent applicants or decision makers. This imposes significant transactional costs, and potentially opportunity costs, on the landowner and the council.
- 37.** In my assessment, the site is clearly mixed use and lends itself well to the National Planning Standards definition of MUZ.
- 38.** The site is well-located close to the Heretaunga Railway Station, which is reflected in the site’s inclusion in the walkable catchment (Figure 1).
- 39.** The MUZ planning framework expressed in the IPI is fit for purpose for the site. It provides an appropriate level of permitted building bulk and location and enables a range of activities that are compatible with each other in a mixed use setting. The objectives and policies express the outcomes desired for the zone and provide direction and guidance for consent applicants and decision makers.

40. The site was not proposed to be rezoned in the IPI. The Section 32 Report *Volume 3 Commercial and Mixed Use, Section 1 Introduction*, identifies consideration of the SAZ as being “out of scope” of the IPI. No reasons are stated.
41. The section 42A report suggests that rezoning of the site may be best considered in a future plan change process following the preparation of UHCC’s Future Development Strategy, although the s42 Report suggests that:
- The submitter may wish to provide additional information at the hearing to supplement the limited information provided with the submission, as this may enable the consideration of the requested rezoning with the benefit of more information.*
42. Additional information on the site’s actual and planned development is provided above at paragraphs 25-29.
43. In my opinion, the IPI’s initial approach, and the s42A Report’s willingness to defer rezoning, is not consistent with the UHCC duty set out in section 77N of the Resource Management Act to give effect to NPS-UD Policy 3 in non-residential zones. Section 77N states:
- 77N Duty of specified territorial authorities to give effect to policy 3 or policy 5 in non-residential zones**
- (1) *When changing its district plan for the first time to give effect to policy 3 or policy 5, and to meet its obligations under section 80F, a specified territorial authority must use an IPI and the ISPP.*
- (2) *In carrying out its functions under subsection (1), the territorial authority must ensure that the provisions in its district plan for each urban non-residential zone within the authority’s urban environment give effect to the changes required by policy 3 or policy 5, as the case requires.*
- (3) *In carrying out its functions under subsection (1), a specified territorial authority—*
- (a) may create new urban non-residential zones or amend existing urban non-residential zones:*
- (b) may modify the requirements set out in policy 3 to be less enabling of development than provided for by policy 3, if authorised to do so under section 77O.*
44. The site is an urban non-residential zone within the urban environment. In terms of NPS-UD Policy 3, the site is in a walkable catchment of a rapid transit stop (Heretaunga Railway Station) and therefore must be enabled for at least six

storey buildings that cater for residential and business demand. The demand is reflected in the site's actual and planned business and residential use.

- 45.** I have been advised by barrister James Winchester, whose advice is attached (Attachment 2) that UHCC is obliged by Section 77N to give effect to NPS-UD Policy 3 on the Heretaunga Company site in the IPI. This would mean providing appropriately for built development and residential and business use on the site. As I have said, in my opinion, appropriate provision for the clearly mixed use environment would be best achieved through rezoning the site to MUZ.
- 46.** I therefore recommend that the Hearing Panel accepts the relief sought in the submission and rezones the Heretaunga Company site to MUZ.

***GGMT***

- 47.** GGMT (Further Submission 9) supports the submission of RACE Inc (Submission 69), which seeks the rezoning of the site comprising Lot 4 DP522882 and Part Lot 2 DP527769 from SAZ to MUZ. The site, which is approximately 6ha in area, is part of the Trentham Racecourse and is shown in Figure 1 and Attachment 1.
- 48.** GGMT has a commercial relationship with RACE Inc, the site owner, for the proposed redevelopment of the site.
- 49.** The RACE Inc / GGMT site currently contains several substantial multi-storey buildings including the grandstand. The buildings are aged and earthquake-susceptible and require further assessment of their potential for refurbishment.
- 50.** The site has the potential for extensive redevelopment into a modern, multipurpose facility that can host a range of events and activities beyond horse racing. By way of comparison, the Ellerslie Racecourse has been redeveloped in recent years to include an events centre with a range of functional spaces, a hotel, residential apartments and a public plaza with a playground, seating areas and public art. The Ellerslie site is able to host concerts, festivals and sporting events. The redevelopment has helped to secure the future of the racecourse while also providing new opportunities for the local community and visitors. Similar racecourse transformations are occurring in other parts of the world.

- 51.** The shortcomings of the SAZ objectives and policies identified in paragraph 28 above are also relevant to the RACE Inc / GGMT site except that the policy guidance is even less clear because the Trentham Racecourse is not specifically mentioned. The policies remain protective of the amenity of neighbouring sites.
- 52.** On the RACE Inc / GGMT site, the building bulk and location standards are as described earlier. The building height standard is 15m, building coverage is limited to 40% and the height to boundary control is 2.5m vertically at the boundary with a recession plane of 35 or 45 degrees depending on the aspect. The permitted land uses are highly restrictive, being limited to:
- (a) “Active and passive recreation and ancillary activities and buildings”;
  - (b) Removal of buildings; and
  - (c) Minor Structures.
- 53.** Relocated buildings are a controlled activity.
- 54.** A breach of the permitted activity standards leads to an activity becoming fully discretionary.
- 55.** An activity not specifically provided for in the SAZ is non-complying.
- 56.** The SAZ is no longer fit for purpose for the site. SAZ is insufficiently enabling for the intended redevelopment of the site. The site’s planning framework does not provide for its reasonable use. The site’s primary use is not stated. Few activities are enabled and the objectives and policies do not provide satisfactory direction or certainty for resource consent applicants or decision makers. This imposes significant transactional costs, and potentially opportunity costs, on the landowner and the council.
- 57.** As with the other SAZ site, the RACE Inc / GGMT site was not proposed to be rezoned in the IPI. In my opinion, as with the Heretaunga Company site, UHCC has an obligation under Section 77N to give effect to NPS-UD Policy 3 on the site in the IPI. This would mean providing appropriately for built development and

residential and business use on the site. Again, appropriate provision would be achieved through rezoning the RACE Inc / GGMT site to MUZ.

- 58.** The section 42A report considers the RACE submission and associated further submissions in detail. I generally concur with the s42A report's assessment and findings.
- 59.** In my assessment, the site is clearly appropriate for mixed use development and lends itself well to the National Planning Standards definition of MUZ.
- 60.** The site is well-located close to the Trentham Railway Station, which is reflected in the site's inclusion in the walkable catchment (Figure 1). The redevelopment of the site will make a strongly positive contribution to the City's housing and business capacity.
- 61.** I agree with the s42A Report that the levels of amenity on the Summerset site should be protected as per the s42A Report's recommendations.
- 62.** Further Submission 13 lodged by NZDF opposes in part the rezoning to MUZ as follows:
- Development of the land as anticipated by a Mixed Use zoning, inside the hatched area illustrated in RACE's submission, could potentially give rise to reverse sensitivity effects due to the proximity of the area to Trentham Military Camp. NZDF opposes this submission in part subject to the development of adequate controls to manage reverse sensitivity effects on Trentham Military Camp.*
- If the relief is successful, ensure adequate controls are in place so that potential reverse sensitivity effects on Trentham Military Camp are appropriately managed.*
- 63.** I note that the RACE Inc / GGMT site is over 100m from the Trentham Military Camp (Figure 3). In my opinion the likelihood of reverse sensitivity issues arising is extremely low. I concur with the s42A Report position that the provisions of the MUZ are satisfactorily able to address reverse sensitivity.



Figure 3 Approximate distance from RACE Inc / GGMT site to Trentham Military Camp

64. I therefore recommend that the Hearing Panel accepts the relief sought by the RACE Inc and GGMT submissions and rezones the site to MUZ.
65. I also recommend that the Hearing Panel accepts in part the relief sought by Summerset and applies specific controls to the boundary between the RACE Inc/GGMT site and the Summerset site as set out in the s42A Report.
66. I also recommend that the Hearing Panel rejects the relief sought by NZDF.

## CONCLUSION AND RECOMMENDATIONS

67. In my opinion the three requests for rezoning to Mixed Use Zone are compelling and offer strongly positive, high quality contributions to the housing and business capacity of Upper Hutt City. I also consider that the rezoning requests would



enable Upper Hutt City Council to fully and effectively comply with its legal duty to provide for intensification requirements in non-residential zones, as it is directed by the RMA to do in this planning instrument.

**68.** I recommend that the Hearing Panel:

- (a) Accepts the relief sought by CBDI Ltd and CBD Land Ltd (Submission 70), as clarified in this evidence, and rezones the full CBD Ltd site to Mixed Use Zone;
- (b) Accepts the relief sought by The Heretaunga Company Ltd and The Heretaunga Company No.2 Ltd (Submission 71) and rezones the Heretaunga Company site to Mixed Use Zone;
- (c) Accepts the relief sought by the RACE Inc (Submission 69) and GGMT (Further Submission 7) and rezones the RACE Inc / GGMT site to MUZ;
- (d) Accepts in part the relief sought by Summerset (Further Submission 9) and applies a Specific Control so that MUZ-S2 Height in Relation to Boundary applies to the boundary between the RACE Inc/GGMT site and the Summerset site.

**DATED** this 14th day of April 2023



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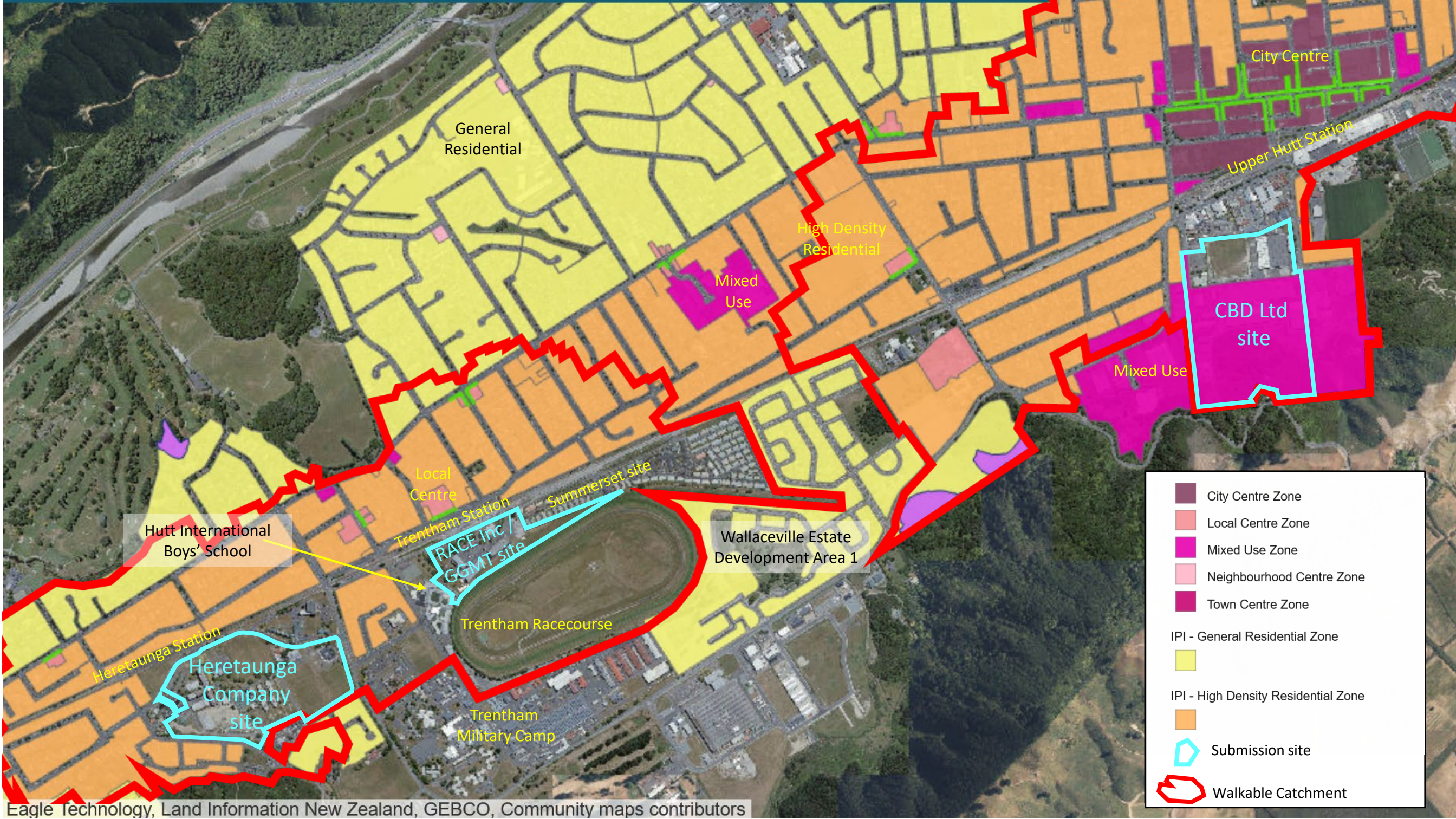
Andrew Cumming





# Attachment 1 Annotated IPI Map

Legend Layers Measure Print Share



	City Centre Zone
	Local Centre Zone
	Mixed Use Zone
	Neighbourhood Centre Zone
	Town Centre Zone
	IPI - General Residential Zone
	IPI - High Density Residential Zone
	Submission site
	Walkable Catchment



**Attachment 2**  
**Legal Advice**

13 April 2023

Mr Andrew Cumming  
Planning Consultant  
AC Planning

By e-mail: [acplanning@outlook.co.nz](mailto:acplanning@outlook.co.nz)

**Upper Hutt City Council - Intensification Planning Instrument – Advice on Legal Duties**

1. You have sought my advice in relation to three submissions to the Upper Hutt City Council (**UHCC**) Intensification Planning Instrument (**IPI**) change to the Upper Hutt District Plan. The three submissions have aligned interests in that they each request a site to be rezoned to Mixed Use Zone (**MUZ**). The three submissions are as follows:
  - (a) CDBI Ltd and CBD Land Ltd (Submission 70);
  - (b) The Heretaunga Company Ltd and The Heretaunga Company No.2 Ltd (Submission 71);  
and
  - (c) Gillies Group Management Trust Ltd (Further Submission 9) in support of Racing at Awapuni and Trentham Combined Enterprises Incorporated (Submission 69).
2. The specific issue that you have sought my advice about relates to the approach adopted by Upper Hutt City Council in its IPI with regard to compliance with its statutory duties to provide for intensification requirements in non-residential zones. In this instance, all three submissions relate to rezoning of identified non-residential land as MUZ when in all instances the sites are located in close proximity to stations on the Upper Hutt railway line and/or the Upper Hutt CDB, and are within an identified “walkable catchment” of one or both.
3. I understand that an approach adopted by UHCC in its IPI and related section 42A report is to effectively defer consideration of intensification rezoning of some of the relevant sites to a future “standard” plan change process and to treat some of the submissions seeking a MUZ as “out of scope”.
4. Intensification requirements were introduced in the Resource Management Act 1991 (**RMA**) by amendments in the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Enabling Act**). The Enabling Act has directed the preparation of IPIs in order to give effect to identified policies in the National Policy Statement on Urban Development 2020 (**NPS-UD**) to enable greater building heights and hence increased development capacity for both residential and business activities in urban environments.
5. Upper Hutt City is identified in the Appendix to the NPS-UD as being a Tier 1 local authority and part of a Tier 1 urban environment.

# JAMES WINCHESTER

## BARRISTER

6. The requirements of the Enabling Act, now included in the RMA, are highly directive for Tier 1 local authorities. For residential zones, UHCC and other Tier 1 territorial authorities are under a duty to incorporate Medium Density Residential Standards into residential zones<sup>1</sup>. The language used is mandatory and directive, in that every residential zone in an urban environment of a Tier 1 territorial authority *must* give effect to policy 3 of the NPS-UD<sup>2</sup>.
7. The requirements about when and how this is done are similarly directive and provide no discretion for a Tier 1 local authority, in that when changing its district plan for the first time to incorporate the MDRS and to give effect to policy 3 and to meet timing obligations, a Tier 1 local authority *must* use an IPI and the Intensification Streamlined Planning Process (ISPP)<sup>3</sup>.
8. While the Enabling Act was largely focused on enabling greater development capacity in residential zones, it also had a similar goal and requirement for non-residential zones. Accordingly, the RMA now includes largely identical statutory directions to give effect to the relevant NPS-UD policies in non-residential zones. In my view, it is an invalid approach and would be in breach of its legal duty under the RMA for UHCC to defer giving effect to the intensification requirements for non-residential zones and seek to address these obligations in a later process.
9. This position is entirely clear from reading section 77N of the RMA, which uses mandatory and directive language which requires:
  - (a) when changing its district plan for the first time to give effect to policy 3 of the NPS-UD, a UHCC *must* use an IPI and the ISPP<sup>4</sup>; and
  - (b) UHCC *must* ensure that the provisions in its district plan for each urban non-residential zone within its urban environment give effect to the changes required by policy 3 of the NPS-UD<sup>5</sup>.
10. In short, there is no discretion for UHCC to defer complying with its legal duty under section 77N, or to use a different or later process. Stepping through what section 77N obliges UHCC to do in this instance:
  - (a) it has notified its IPI and is using the ISPP to change its district plan for the first time to give effect to policy 3 of the NPS-UD;
  - (b) it can only notify one IPI<sup>6</sup>;
  - (c) every Tier 1 local authority needs to notify its IPI by 20 August 2022<sup>7</sup>;
  - (d) an IPI must, in the case of a Tier 1 territorial authority, give effect to policies 3 and 4 of the NPS-UD<sup>8</sup>;
  - (e) relevant to the present circumstances, policy 3 of the NPS-UD requires that district plans enable building heights of at least 6 storeys within at least a walkable catchment of existing and planned rapid transit stops and/or the edge of city centre zones;
  - (f) under the NPS-UD, a “rapid transit stop” is defined as a place where people can enter or exit a rapid transit service, whether existing or planned and, in turn, a “rapid transit

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<sup>1</sup> Section 77G(1) of the RMA

<sup>2</sup> Section 77G(2)

<sup>3</sup> Section 77G(3)

<sup>4</sup> Section 77N(1)

<sup>5</sup> Section 77N(2)

<sup>6</sup> Section 80G(1)

<sup>7</sup> Section 80F(1)

<sup>8</sup> Section 80E(1)(a)(ii)(A)

# JAMES WINCHESTER

## BARRISTER

service” means any existing or planned frequent, quick, reliable and high-capacity public transport service that operates on a permanent route (road or rail) that is largely separated from other traffic; and

- (g) there is no dispute as a matter of fact or interpretation that the Upper Hutt railway line is a rapid transit service and the areas of land identified in the submissions are non-residential zones within the walkable catchments<sup>9</sup> of rapid transit stops and/or the city centre zone.

11. In my opinion, there is no doubt that UHCC has no discretion and, by virtue of section 77N of the RMA, is under a legal duty to address intensification requirements for non-residential zones through the present ISPP process and this IPI. The only area where it has some discretion is as to how (in a plan drafting or planning response sense) it complies with its obligations in terms of section 77N, but even that matter is subject to a relatively high level of prescription in terms of the approach introduced by the Enabling Act.
12. I trust that this advice is of assistance. If you have any queries about this advice or require clarification of any issue, please do not hesitate to get in touch.

Yours sincerely



James Winchester

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<sup>9</sup> Each of the areas of land subject to the submissions seeking a MUZ are already identified by UHCC as being within walkable catchments