BEFORE THE INDEPENDENT HEARINGS PANEL

AT THE NZCIS CONFERENCE CENTRE: 48 SOMME ROAD, TRENTHAM

UNDER PART 6 OF SCHEDULE 1 OF THE RESOURCE MANAGEMENT ACT 1991 – INTENSIFICATION STREAMLINED PLANNING PROCESS

IN THE MATTER OF	The Intensification Planning Instrument (IPI)
BETWEEN	Various submitters
AND	Upper Hutt City Council
	Respondent

COUNCIL REPLY ON ALL MATTERS RAISED DURING THE IPI HEARING - MATTHEW JAMES MUSPRATT ON BEHALF OF UPPER HUTT CITY COUNCIL

Date: 9 June 2023

Contents

INTRODUCTION

1. My full name is Matthew James Muspratt. I am an independent consultant planner engaged by Upper Hutt City Council.

2. I have read the evidence, tabled statements, legal submissions, and supplementary evidence provided by submitters on the IPI.

3. I have prepared this Council right of reply on behalf of Upper Hutt City Council (the Council) in respect of matters raised during the hearing.

4. I am authorised to provide this evidence on behalf of the Council.

QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

5. Section 5 of the Council's evidence report sets out my qualifications and experience.

6. I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2014, including the 2022 update to Part 5.

SCOPE OF REPLY

7. This reply follows the hearing held on 26 - 28 April, and 8, and 12 May 2023.

8. Minute 1 from the Panel dated 28 February 2023 provides the Council with a right to reply to matters raised in submitter evidence and during the hearing.

9. Minute 6 from the Panel dated 18 May 2023 requests specific responses to matters raised in submitter evidence. This reply addresses the Panel's requests contained in Minute 6.

10. This reply also addresses questions asked of me by the Panel during the hearing, and any additional corrections to the IPI provisions that have been identified since the opening of the hearing.

11. If I have not addressed a matter in this reply that was raised by a submitter throughout the hearings process, I have no further reply to add to what I have set out in the Council's evidence report or evidence given at the hearing.

12. This reply relates to the list of materials provided by submitters including expert evidence, legal submissions, submitter statements etc. These materials are available on the Council's IPI webpage at https://www.upperhuttcity.com/Your-Council/Plans-policies-bylaws-and-reports/District-Plan/Intensification-Planning-Instrument-IPI .

13. **Appendix 1** contains the final recommended amendments to IPI provisions, with updated recommendations differentiated from those made in **Appendix 2** of the Council's evidence report via blue text.

14. Where I am recommending further amendments to the IPI, I include a section 32AA evaluation within the body of this right of reply, or within specified appendices.

15. For ease of reference, I have shown all recommended changes within this right of reply in blue text as follows: ~~deletions~~/insertions. Recommendations in response to submissions from the Council's evidence report remain in red text.

16. Other appendices are used for specific matters addressed in the body of this right of reply.

CORRECTIONS TO IPI

17. As a mandatory MDRS provision, Policy GRZ-P1E should include the following notation:

    [s80H(1)(a)(ii) note: this provision incorporates the policies in clause 6 of Schedule 3A.]

18. It has been brought to my attention by the Council's resource consents team that an unintended consequence has occurred resulting from deletion of an exemption for non-enclosed and uncovered decks in a number of GRZ standards including GRZ-S3, GRZ-S4, and GRZ-S5.

19. If left uncorrected, this would mean that non-enclosed and uncovered decks would be a discretionary activity, as they are not currently included in the definition for *building* or *minor structure*.

20. To correct this, I recommend the following amendment to the definition for minor structures:

Minor structures	means any **structure** of less than 5m² in area with a **height** of less than 1.2m.
	• Any fence or wall with a **height** of less than 2m.
	• Any retaining wall with a **height** of less than 1.5m above the finished **ground level**.
	• Any tank or pool, and any structural support:
	  • Which has a capacity of less than 25,000 litres and is supported directly by the ground.
	  • Which has a capacity of less than 2,000 litres and is supported at a **height** of less than 2.0 metres from the base of its **structure**.
	  • Which has a capacity of less than 500 litres and is supported at a **height** of less than 4.0 metres from the base of its supporting **structure**.
	• Any non-enclosed and uncovered decks with a **height** of 1.0m or less above **ground level**.

21. All corrections are included in **Appendix 1**.

Section 32AA evaluation

In my opinion, the recommended amendments to the IPI in to correct errors and address unanticipated consequences as a result of implanting the MDRS are more appropriate in achieving the objectives of the IPI than the notified provisions. In particular, I consider that:

1. The recommended corrections will improve plan implementation by ensuring that any non-enclosed and uncovered decks are not excluded from the provisions that manage minor structures. This will result in a more efficient and effective method to achieve the IPI objectives.

2. The recommended amendment will not have any greater environmental, social, economic, or cultural effects than the notified provisions.

QUESTIONS FROM THE PANEL DURING THE HEARING

Question 1

Please prepare a draft of the stand-alone High-Density Residential Zone provisions to pre-circulate by the second week, prior to the 8th.

Regretfully, despite my best endeavours I was unable to complete this task by the date requested by the Panel. Please find attached the recommended stand-alone High Density Residential Zone chapter which is included in the final recommended version of the IPI within **Appendix 1**.

Question 2

Please provide information from the Council's resource consent's team on how potential reverse sensitivity effects are currently addressed as part of the consideration of a resource consent application.

I have confirmed with the Council's resource consents manager that reverse sensitivity effects are addressed at both the notification and the substantive assessment and decision on a resource consent application.

Typically, mitigation measures to address reverse sensitivity effects are sought though mitigation measures proffered by the applicant. The resource consents manager confirmed the use of reverse sensitivity covenants are considered a civil matter, and therefore they are not imposed via conditions of consent or used as a basis for making notification decisions.

Examples of mitigation measures to address reverse sensitivity effects include:

a. The provision of buffer areas such as residential unit setbacks and no-build areas.

b. Landscaping and noise-mitigation fencing.

c. The requirement to install higher specification insulation and glazing treatment to address noise and vibration effects.

d. The requirement to install alternative means of ventilation in bedrooms, so that ventilation is not reliant on opening windows.

e. Specifying the location of windows.

In my opinion, this demonstrates the Council is successfully addressing reverse sensitivity effects as part of the resource consent process despite the absence of clear direction in the District Plan on how to address reverse sensitivity effects.

I consider that applicants and the Council would benefit from clearer direction on the requirement to consider and address potential reverse sensitivity effects and the potential methods that can be employed. I provide specific recommendations to achieve this under question 3 below.

Question 3

Please consider suitable additional amendments to policies that may provide decision makers with

additional direction when considering potential reverse sensitivity effects. Please consider approaches in other District Plans in the region.

I have considered making additional amendments to IPI provisions to provide greater direction to decision makers with respect to addressing potential reverse sensitivity effects. As part of this exercise I have considered the content of other district plans, proposed district plans and IPIs in the Wellington region comprising KCDC, PCC, and HCC.

I have found that the proposed district plan of PCC in particular includes more direction on the type of methods that may be employed to address potential reverse sensitivity effects than the Upper Hutt District Plan.

The below table identifies examples of reverse sensitivity provisions found within the three other district plans and proposed district plans that are at a more advanced state than those contained in the Upper Hutt District Plan.

Both the Kapiti Coast District Plan and the Proposed Porirua City District Plan include specific provisions for the management of potential reverse sensitivity effects associated with the operation of the state highway network and rail network. Although the Upper Hutt District Plan includes provisions that manage reverse sensitivity effects on regionally significant infrastructure, the plan provides little in terms of specific direction on:

1. Development setbacks where reverse sensitivity effects are most likely to require specific design interventions;
2. Specific design interventions that apply within the identified setbacks.

The Porirua City Proposed District Plan also refers to specific potential methods to address reverse sensitivity effects such as noise insulation, screening, and the use of alternative technologies and materials.

For addressing reverse sensitivity effects in general, such as those that may affect existing lawfully established activities in an adjoining rural zone or within a residential zone, the policy direction points to the consideration of separation distances and the internalisation of effects, however in my opinion none of the plans address the type of potential reverse sensitivity effects very well with respect to addressing the concerns raised by the Fuel Companies and Z Energy.

With respect to commercial and mixed use zones, the other district plans and proposed plans reviewed take a similar approach (excluding HCC) to that proposed by the Upper Hutt IPI i.e. the imposition of noise and ventilation standards to achieve specified performance levels to mitigate potential reverse sensitivity effects.

Other District Plan/ Proposed District Plan / IPI Examples	**Provision addressing reverse sensitivity effects**	**Comments**
Porirua City Proposed District Plan	**REG-P3 - Reverse sensitivity** Require new sensitive activities to be designed and located to avoid conflict with, including reverse sensitivity effects on, any established or consented renewable electricity generation activities.	Addresses the consideration of reverse sensitivity effects generally.
	NOISE-O2 - Reverse sensitivity The function and operation of existing and permitted noise generating activities	Reverse sensitivity effects with respect to noise sensitive activities. No specific mitigation measures referred to.

Other District Plan/ Proposed District Plan / IPI Examples	Provision addressing reverse sensitivity effects	Comments
	are not compromised by adverse effects, including reverse sensitivity effects, from noise-sensitive activities.	
	NOISE-P4 - Reverse sensitivity from State Highways and Rail Network Enable noise-sensitive activities and places of worship locating adjacent to existing State Highways and the Rail Network that are designed, constructed and maintained to achieve indoor design noise levels and provide for other habitable rooms when they minimise the potential for reverse sensitivity effects from noise, having regard to: 1. The outdoor amenity for occupants of the noise-sensitive activity; 2. The location of the noise-sensitive activity in relation to the State Highway or Rail Network; 3. The ability to appropriately locate the activity within the site; 4. The ability to meet the appropriate levels of acoustic insulation through screening, alternative technologies or materials; 5. Any adverse effects on the State Highway or Rail Network; and 6. The outcome of any consultation with the New Zealand Transport Agency or KiwiRail.	This policy links directly with the mapped transportation noise effects corridor provisions for new noise sensitive activities.
	NOISE-P5 - Reverse sensitivity in the Commercial and Mixed Use Zones and Industrial Zones Require new residential activities and visitor accommodation locating within the City Centre Zone, Large Format Retail Zone Neighbourhood Centre Zone, Local Centre Zone, Mixed Use Zone or General Industrial Zone to design and locate habitable rooms to minimise any adverse effects on the health and wellbeing of people from noise and the potential for reverse sensitivity effects from noise.	Relevant rules within centres zones require residential activities to be located above the ground floor or be separated from all street frontages by retail activities. No specific additional noise mitigation is required unless located within a mapped transportation noise effects corridor.
	GRUZ-P9 - Effects on adjacent zones Require an adequate separation distance for non-residential activities located on sites in the General Rural Zone that are adjacent to Residential Zones, where these may result in conflict and/or potential reverse sensitivity effects.	

Other District Plan/ Proposed District Plan / IPI Examples	Provision addressing reverse sensitivity effects	Comments
Kapiti Coast District Council District Plan 2021	**DO-O15 - Economic Vitality** To promote sustainable and on-going economic development of the local economy, including the rural sector, with improved number and quality of jobs and investment through: a. encouraging business activities in appropriate locations within the District, principally through differentiating and managing various types of business activities both on the basis of the activity, and the potential local and strategic effects of their operation; b. reinforcing a compact, well designed and sustainable regional form supported by an integrated transport network; c. enabling opportunities to make the economy more resilient and diverse; d. providing opportunities for the growth of a low carbon economy, including clean technology; e. minimising reverse sensitivity effects on business activities, including primary production activities; and f. enhancing the amenity of Working Zones;	Clause e) of the objective applies across many district plan chapters, however many chapters do not include specific reverse sensitivity policies.
	Subdivision rules within working zones includes a matter of discretion that retains the Council's discretion on measures to avoid or mitigate potential reverse sensitivity effects.	No additional direction provided via polices or matters of discretion on potential methods to address potential reverse sensitivity effects.
	GRZ-P8 - Reverse Sensitivity New residential subdivision and development will be located away from lawfully established industrial or intensive rural activities, or areas zoned for these activities, to minimise reverse sensitivity effects. Residential activities (excluding visitor accommodation other than temporary residential rental accommodation) located at the urban-rural interface will be undertaken in a manner which is compatible with the activities undertaken in the Rural Zones.	Includes a reverse sensitivity-specific policy that applies within the GRZ, but this is focused on the industrial or intensive rural activities rather than lawfully established non-residential activities within the GRZ.
	Includes specific noise mitigation requirements within mapped	

Other District Plan/ Proposed District Plan / IPI Examples	Provision addressing reverse sensitivity effects	Comments
	transportation noise corridors for the state highway and rail networks.	
	TR-P4 - Effects of Transport on Land Use/Development The potential adverse effects of development, operation, maintenance and upgrading of the transport network on land use and development will be avoided, remedied or mitigated by: 1. ensuring that new habitable buildings and future noise sensitive activities within close proximity to roads identified as a transportation noise effect route and the rail corridor as identified on the District Plan Maps are protected from the adverse effects of road traffic and rail noise; **…**	This policy links directly with the mapped transportation noise effects corridor provisions for new noise sensitive activities.
	NOISE-P4 - Noise from the Transport Network All noise sensitive activities in close proximity to a transportation noise effect route or the designated rail corridor must be protected by the building owner from adverse effects of noise through the adoption of acoustic mitigation measures.	Rules in the Noise chapter set out the noise mitigation requirements for buildings comprising noise performance standards. The transportation noise effect route is mapped on the district plan maps to ensure efficient plan implementation.
Kapiti Coast District Council IPI – PC2 (recommendations from s.42A reporting planner)	**UFD-P1 – Growth Management** Proposes to include reference to the management of reverse sensitivity effects on existing lawfully established non-residential activities. Restricted discretionary rule **GRZ-Rx6** – Buildings that do not comply with permitted standards. This rule includes the listing of reverse sensitivity effects as a matter of discretion.	The KCDC IPI takes a similar approach to that of the Upper Hutt IPI with reference to reverse sensitivity effects but adds little additional direction for applicants and decision makers on potential methods to avoid, remedy or mitigate reverse sensitivity effects
Hutt City District Plan (currently under full review with early engagement being carried out early 2023).	**Central Commercial Activity Area Policy:** a. Provide for and encourage a wide range of activities within the Central Commercial Activity Area, provided their adverse effects are compatible with other activities and the character and amenity values for the area. b. Ensure that activities are managed to avoid, remedy or mitigate adverse effects (including reverse sensitivity effects) in the Central	Clause b) addresses reverse sensitivity within and adjacent to the Central Commercial Activity Area. No specific mitigation direction is included.

Other District Plan/ Proposed District Plan / IPI Examples	Provision addressing reverse sensitivity effects	Comments
	Commercial Activity Area or on properties in nearby residential areas. c. Restrict certain activities which may be incompatible with other activities and/or degrade the character and amenity values of the Central Commercial Activity Area.	
	Includes regionally significant infrastructure and renewable energy generation reverse sensitivity provisions similar to those in the Upper Hutt District Plan.	Reverse sensitivity effects provisions are similar to the Upper Hutt District Plan provisions.
	Objective To encourage residential activity within the Central Commercial Activity Area and ensure that it recognises and provides for the potential effects of other activities in the area. **Policy** a. Provide for and encourage residential activities within the Central Commercial Activity Area, provided they adopt on-site measures to mitigate potential incompatibility issues with other activities. b. Ensure residential activities and development are designed and constructed to provide an attractive and liveable environment for occupants, and meet the service needs of this type of activity.	The explanation to the policy refers to external noise insulation as a method to address incompatibility issues.
	5B 1.1.2A - Area 2 - Petone Mixed Use - Area Generally Bounded by Hutt Road, Petone Avenue, Campbell Terrace, Victoria Street, Sydney Street and The Esplanade – Activities **Policy** a. Provide for a range of … b. … c. … d. Provide for residential activities which have quality living spaces for residents, meet the service needs of this type of activity, and adopt on-site measures to mitigate potential incompatibility issues with other activities.	Clause d) of the policy refers to on-site measures to mitigate potential incompatibility issues between residential activities and other activities in the Mixed Use area.

Other District Plan/ Proposed District Plan / IPI Examples	Provision addressing reverse sensitivity effects	Comments
Hutt City IPI (PC56)	Reverse sensitivity is not specifically addressed; however it has been raised by submitters. The section 42A reporting planners have committed to respond to additional information provided by KiwiRail in the written right of reply – which was not available at the time of preparing this right of reply.	At the time of preparing this right of reply it was unknown what the S42A reporting planner would recommend with respect to the inclusion of additional reverse sensitivity provisions.

Having considered alternative approaches to addressing potential reverse sensitivity effects, I maintain the recommendation I made on day 1 of the hearing to insert a policy 'hook' into the HRZ and GRZ policies to provide greater direction on the potential methods that could be employed to address reverse sensitivity effects.

I limit these recommendations to the GRZ, HRZ, SUB-RES, and SUB-HRZ chapters on the grounds that I consider reverse sensitivity effects are already addressed effectively within the proposed Centres and Mixed Use Zones and subdivision chapters via the noise and ventilation provisions.

Having considered the existing recommended GRZ, HRZ, SUB-RES, and SUB-HRZ policies, I consider that the most effective and efficient method to include policy direction on addressing potential reverse sensitivity effects is via the inclusion of a new specific policy into all three chapters.

I consider this additional policy direction will improve plan implementation through the provision of examples of the type of methods available to address reverse sensitivity effects as a matter of discretion. Examples of the potential methods that could be employed include:

- Noise mitigation, vibration, insulation, and ventilation requirements for residential units;
- The location of private and communal outdoor living spaces;
- The location and function of windows;
- The provision of buffer areas, setbacks, and no-build areas;

Including these potential methods within a policy that links with matters of discretion within relevant rules will provide increased certainty for applicants that reverse sensitivity needs to be considered and addressed as part of the preparation of a resource consent application.

This will also assist the Council in making its notification decision under sections 95-95G of the RMA. The policy direction will also be applied when the Council decides what (if any) conditions to impose on a resource consent under section 108, and when making its substantive decision under section 104(1)(b)(vi) of the RMA.

I also recommend the addition of reverse sensitivity effects as a matter of discretion to rule SUB-RES-R6.

Recommendations:

1. I recommend the following policies be inserted into the GRZ, HRZ, SUB-RES, and SUB-HRZ chapters:

GRZ-P12	*New residential **subdivision** and **buildings** will avoid, remedy, or mitigate potential **reverse sensitivity effects** on existing lawfully-established non-residential activities. Potential methods include but are not limited to:*

	*a. Requiring **noise** mitigation, vibration, insulation, and ventilation for **residential units**;* *b. Specifying the location of private and communal **outdoor living spaces**;* *c. Specifying the location and function of windows;* *d. Requiring the provision of buffer areas, setbacks, and no-build areas;* *e. Specifying fencing and landscaping **requirements**.*
HRZ-P17	*New residential **subdivision** and **buildings** will avoid, remedy, or mitigate potential **reverse sensitivity effects** on existing lawfully-established non-residential activities. Potential methods include but are not limited to:* *a. Requiring **noise** mitigation, vibration, insulation, and ventilation for **residential units**;* *b. Specifying the location of private and communal **outdoor living spaces**;* *c. Specifying the location and function of windows;* *d. Requiring the provision of buffer areas, setbacks, and no-build areas;* *e. Specifying fencing and **landscaping** requirements.*
SUB-RES-P9	*New residential **subdivision** and **buildings** will avoid, remedy, or mitigate potential **reverse sensitivity effects** on existing lawfully-established non-residential activities. Potential methods include but are not limited to:* *a. Requiring **noise** mitigation, vibration, insulation, and ventilation for **residential units**;* *b. Specifying the location of private and communal **outdoor living spaces**;* *c. Specifying the location and function of windows;* *d. Requiring the provision of buffer areas, setbacks, and no-build areas;* *e. Specifying fencing and **landscaping** requirements.*
SUB-HRZ-P9	*New residential **subdivision** and **buildings** will avoid, remedy, or mitigate potential **reverse sensitivity effects** on existing lawfully-established non-residential activities. Potential methods include but are not limited to:* *a. Requiring **noise** mitigation, vibration, insulation, and ventilation for **residential units**;* *b. Specifying the location of private and communal **outdoor living spaces**;* *c. Specifying the location and function of windows;* *d. Requiring the provision of buffer areas, setbacks, and no-build areas;* *e. Specifying fencing and **landscaping** requirements.*

2. I recommend the matters of discretion within rule SUB-RES-R6 are amended to include reverse sensitivity effects as follows:

Restricted Discretionary Activities			**Zones**
SUB-RES-R6 ~~*Policies SUB-GEN-P2, SUB-GEN-P3, SUB-GEN-P4, SUB-RES-P1, SUB-RES-P4, SUB-RES-P5, SUB-RES-P7, SUB-RES-P8, SUB-RES-P9, SUB-GEN-P9,*~~	**Subdivision** that is not a controlled activity under rule SUB-RES-R1; and **subdivision** that does not comply with one or more of the standards under SUB-RES-S1 (1). **Council** will restrict its discretion to, and may impose conditions on: (1) Design~~, appearance~~ and layout of the **subdivision**. ~~(2) **Landscaping**.~~ (~~3~~2) Provision of and **effects** on **network utilities** and/or services. (~~4~~3) Standard, construction and layout of vehicular access. (~~5~~4) **Earthworks**.	**RDIS**	*General Residential*

~~*SUB-GEN-P10,*~~ ~~*SUB-GEN-P12,*~~ ~~*NATC-P1*~~	(~~6~~5) Provision of **esplanade reserves** and **esplanade strips**. (~~7~~6) Protection of any special amenity feature. (~~8~~7) Financial contributions. (~~9~~8) The outcome of consultation with the owner of operator of **regionally significant network utilities** (excluding the National Grid) located on or in proximity to the **site**. Note: Rule SUB-RES-R7 covers **subdivision** within the Electricity Transmission Corridor. (~~10~~9) The outcome of consultation with the owner or operator of consented or existing **renewable electricity generation activities** located on or in proximity to the **site**. (10) The matters contained within the Council's **Code of Practice for Civil Engineering Works.** (11) **Reverse sensitivity effects.** ~~around any existing lawfully established **residential unit** that does not result in the creation of any new undeveloped **site** that contains no **residential unit**, that does not comply with the access standards of SUB-RES-S3~~ ~~**Council** will restrict its discretion to, and may impose conditions on:~~ ~~(1) The extent to which the **activity** will adversely affect traffic and pedestrian safety.~~ ~~(2) The extent to which the **activity** will adversely affect the efficient functioning of the roading network.~~ ~~**Council**'s restriction is also restricted to the matters listed in SUB-RES-R1~~		

Section 32AA evaluation

In my opinion, the recommended amendments to the IPI in response to matters raised by submitters with respect to reverse sensitivity effects are more appropriate in achieving the objectives of the IPI than the notified provisions. In particular, I consider that:

3. The recommended amendment to include specific policy direction on addressing reverse sensitivity effects including potential methods will improve plan implementation by ensuring applicants and the Council consider potential reverse sensitivity effects, and appropriate methods to address them. This will result in a more efficient and effective method to achieving the IPI objectives.
4. The recommended amendment will not have any greater environmental, social, economic, or cultural effects than the notified provisions. There may be costs savings to the Council and developers as a result of more efficient plan implementation due to the clarity provided regarding the necessity to consider and address potential reverse sensitivity effects.

Question 4

Please provide advice on whether there would be a benefit in providing a policy specific to the consideration of resource consent applications on 'larger sites' where the permitted baseline cannot be applied – e.g. proposed retirement villages. Please also provide advice on whether a specific

policy for retirement villages that provides the ability to consider the permitted baseline for residential development would be appropriate.

I have considered the policy context that would be applied for all sites including ''larger sites''. The policy focus is generally directed toward the consideration of the planned urban built form, and that amenity values will change over time in response to the changing needs of people and communities. These areas of focus are intended to contribute towards the maintenance and creation of well-functioning urban environments.

I have considered the reasoning provided in at paragraph 79 of Dr Mitchell's evidence for the request to include a policy specific to the consideration of resource consent applications on 'larger sites'. I have also considered the section 32AA attached as Appendix C to Dr Mitchell's evidence. I do not recommend the inclusion of any specific policy for the consideration of resource consent applications on "larger sites" on the basis that "larger sites" is not a defined term, and the existing policy direction is relevant regardless of the size of a site. As I have expressed previously, in my opinion the inclusion of policy direction for 'larger sites' would be likely to result in greater uncertainty and a more contested resource consenting process on account of different opinions on what constitutes a 'larger site'. I note this likely outcome is not identified as a risk, or a potential negative impact on the effectiveness and efficiency of plan implementation in the section 32AA evaluation included with Dr Mitchell's evidence.

I retain my opinion that it is neither necessary or appropriate to specifically provide policy direction to apply a permitted baseline for the activities where the permitted baseline cannot be applied - including for discretionary or restricted discretionary activities such as retirement villages. Taking into account that retirement villages are present in Upper Hutt, and these have been successfully established via resource consent, I remain unconvinced that policy direction on the application of a permitted baseline for retirement villages is necessary or appropriate.

Question 5

Please review the evidence of Dr Mitchell for the Retirement Villages Association of New Zealand (S57) and form a view with respect to the requests for retirement village-specific provisions prior to providing the Council's right of reply, and prior to hearing from Dr Mitchell on 8 May. Please also review other Tier 1 IPIs to identify retirement village-specific provisions and provide these to the Panel.

Regretfully, I was not able to consider all the relevant evidence submitted by Retirement Villages Association of New Zealand and provide my view prior to hearing from Dr Mitchell (who was replaced by Ms Williams) at the hearing on 8 May.

Dr Mitchell's evidence refers to the evidence submitted by other experts for the Retirement Villages Association of New Zealand. Therefore, in order to be able to form a view on Dr Mitchell's evidence prior to hearing from the submitter on 8 May I would have needed to review some 200+ pages of evidence including planning and economic evidence, and the legal submission prepared by Mr Hinchey.

My best endeavours were hampered by addressing a number of other questions raised by the Panel, and considering the expert evidence and legal submissions of the other submitters prior to hearing their presentations to the Panel.

I provide my final view and recommendations in response to the evidence and legal submission provided for the Retirement Villages Association of New Zealand in the right of reply under the Retirement Villages Association of New Zealand topic below.

With regard to other Tier 1 IPIs provisions that are specific to retirement villages, I have reviewed all Tier 1 IPIs in the region and section 42A reporting planner recommendation (where available). I provide a summary of my findings in the table below, however in summary none of the IPIs provide for retirement villages in the way requested by the Retirement Villages Association of New Zealand, and the section 42A reporting planners have raised similar concerns as I have with respect to much of the requested policy direction and the request for permitted activity status for retirement villages.

A Comparison of Tier 1 Wellington Territorial Authority Intensification Planning Instruments & Retirement Villages is summarised as follows:

Tier 1 territorial authority	**Summary of retirement village provisions**
Wellington City Council IPI	The Proposed District Plan and the IPI are progressing at the same time, with the IPI component following the ISPP: The PDP specifies retirement villages as a restricted discretionary activity within the following zones: - MRZ (rule MRZ-R8) - Rule MRZ-R14 for buildings associated with a retirement village. - HRZ (rule HRZ-R8) - HRZ - rule HRZ-R14 for buildings associated with a retirement village. The ISPP provisions will not be heard until the Wrap up hearing scheduled for 19 September 2023[1], therefore it is not possible to comment on the opinion of the section 42A reporting planner at the time of preparing this right of reply.
Porirua City Council IPI	The IPI was prepared as Variation 1 to the Proposed District Plan. The Proposed District Plan provides for retirement villages as a restricted discretionary activity within the following zones: - GRZ (rule GRZ-R21) - MRZ (rule MRZ-R19) - LCZ (rule LCZ-R14) - MUZ (rule MUZ-R15) - CCZ (rule CCZ-R18) Retirement villages are provided for as a discretionary activity within the NCZ (rule NCZ-R16), and Large Formal Retail Zone (rule LFRZ-R20). The IPI (Variation 1) does not make any changes to the retirement village provisions. The section 42A reporting planner does not recommend including retirement village-specific provisions such as the requested policies and changes in activity status to permitted activity[2].

[1] https://wellington.govt.nz/your-council/plans-policies-and-bylaws/district-plan/proposed-district-plan/hearings-information/hearings-topics-and-schedule#ispp

[2] Section 42A Report - Residential Zones and General Topics.pdf (storage.googleapis.com)

Hutt City Council IPI	Site-specific provisions for retirement village activities is included as a restricted discretionary activity. High Density Residential Activity Area includes a restricted discretionary activity rule for retirement villages (Rule 4G 4.1.7). The section 42A reporting planners do not recommend providing for retirement villages via a specific rule framework[3].
Kapiti Coast District IPI	No retirement village-specific provisions included in IPI. Section 42A reporting planner does not recommend providing for retirement villages as a permitted or restricted discretionary activity within residential zones or centres and mixed use zones (Council evidence report[4]).

Question 6

Please confirm that the reference to 'Silverstream' that is opposed by submission 58.325 should refer to objective CMU-O3 or CMU-O4.

The correct reference is CMU-O4.

Question 7

Please review the matters raised by Ngāti Toa in its submission with a fresh perspective that is separate from their relationship with Proposed RPS Change 1. Please provide recommendations on whether any additional amendments may be made to the IPI to address the matters raised by Ngāti Toa.

I have reconsidered the matters raised by Ngāti Toa, and considered the evidence presented by Ngāti Toa during the hearing. I have also considered this matter in response to submission and evidence provided by Greater Wellington Regional Council, and whether any actions or provisions from the Whaitua could be incorporated into the IPI separate from Proposed RPS Change 1.

In short, I consider the freshwater matters raised by Ngāti Toa Rangatira, and the provisions of the Whaitua are inseparably linked with the content of Proposed RPS Change 1. I retain my view that the most practicable time to amend the District Plan to address freshwater matters would be when clarification is provided on roles and responsibilities following Proposed RPS Change 1 being is made operative.

This is not to say that I consider this to be the best resource management outcome, only that there is a regrettable timing and certainty issue with respect to the potential inclusion of freshwater provisions into the IPI within the mandatory IPI timeframes.

Question 8

Please provide an update on the Council's future plan change work for historic heritage and provide advice whether there is a 'gap' in the historic heritage listings. If there is considered to be a gap, how significant is it?

[3] https://hccpublicdocs.azurewebsites.net/api/download/7210cb015bf3423eb849e753bed7dbae/_districtplan/b636dbb428182517a45848d56a7d00b578420

[4] https://www.kapiticoast.govt.nz/media/vxmgkhkv/pc2_planningevidence_report-3.pdf

The Council is undertaking a review of historic heritage. A list of potential features and areas that may be added to the existing list within the District Plan is being investigated as part of the District Plan rolling review. I am advised it is the Council's intention to begin consultation with affected landowners over the next few months.

With respect to district plan listings for Sites and Areas of Significance to Māori (SASMs), the Council agrees with my observation that the existing listings in the District Plan represents a gap. I am advised that the Council is currently undertaking research into new listings and to date has identified ten potential SASMs. The spatial extents of these potential new SASMs are currently unspecified; however it is acknowledged they may impact on a limited amount of General Residential Zone sites.

There is still a significant amount of work to be carried out before any new historic heritage listings and SASMs could be added to the District Plan and be applied as qualifying matters.

Question 9

Please advise whether the wording of policy GRZ-P4 should be amended with respect to 'amenity'.

In addition to proposed buildings, policy GRZ-P4 also applies to activities within the GRZ that are not relevant to incorporating the MDRS or giving effect to policy 3 of the NPS-UD. Such activities may include commercial and retail activities in the GRZ. As the potential amenity effects of these activities do not arise from the *planned urban built form* of the GRZ, I do not consider it appropriate to remove the consideration of amenity effects for all activities within the GRZ from policy GRZ-P4.

On my reading, policy 6 of the NPS-UD directs the consideration of amenity effects with respect to the planned urban built form that is anticipated by the District Plan provisions that have been amended to give effect to the mandated requirements of the NPS-UD, such as the increased building heights within walkable catchments. I do not consider it appropriate to extend the interpretation of policy 6 of the NPS-UD to include all amenity effects within the GRZ, such as the potential amenity effects arising from commercial or retail activities within the GRZ. The recommended amendments to policy GRZ-P4 have been prepared to provide for both scenarios – i.e. the consideration of amenity effects that relate to the *planned urban built form*, and amenity effects that are unrelated to the planned urban built form.

Question 10

Please review the Whaitua implementation plan[5] and programme and provide advice on whether there are any other matters that would be appropriate to include in the IPI.

Please see comments under Question 7 above.

Question 11

Is the extent of walkable catchments sufficient to take into account potential future developments and physical/infrastructure improvements to walkability? And would a larger extent of walkable catchments be better to future-proof the IPI provisions?

The recommended extent of walkable catchments give effect to the requirements of NPS-UD Policy 3. In some instances, the spatial extent of walkable catchments have been amended to extend beyond the walked and measured walkable catchments – therefore going beyond the minimum requirements

[5] Te Whaitua te Whanganui-a-Tara Implementation Programme.
Whaitua Te Whanganui-a-Tara Committee, September 2021.

of policy 3.

When considering whether the special extent of walkable catchments is sufficient for potential future development or infrastructure improvements, it is necessary to consider this in light of the fact that the IPI does not present the only opportunity for the Council to review and implement the spatial extent of walkable catchments in the future to ensure the District Plan continues to give effect to NPS-UD requirements. Should a future plan change be required to ensure the District Plan continues to give effect to the requirements of policy 3, then the RMA provides the ability for the Council to do so.

Section 77G(3) states that when Council changes the District Plan *the first time* to give effect to policy 3 of the NPS-UD, it must use an IPI and the ISPP. My reading of section 77G is that the Council may prepare an IPI and use the ISPP for future for amendments to the District Plan to update the plan to ensure it continues to give effect to policy 3. The restriction on the matters that can be included in an IPI continue to be limited by sections 80E and 80G of the Act, however the number of future IPI's is not restricted by the RMA.

On this basis I am satisfied the spatial extent of walkable catchments gives effect to policy 3 of the NPS-UD, and is the most appropriate spatial extent in the Upper Hutt context. Future plan changes or Intensification Planning Instruments can be initiated by the Council should there be an identified need to make amendments to the spatial extent of walkable catchments to ensure continued consistency with policy 3. This would capture any scenarios where future physical or infrastructure changes improve or detract from walkability within the walkable catchments.

Question 12

What are the key differences between the existing (but now defunct) Residential Centres Precinct Design Guide and the proposed Medium and High Density Design Guide?

I have not sought urban design advice to assist in answering this question. However, in my opinion the key differences are:

1. The now obsolete Residential Centres Precinct Design Guide includes character and amenity assessments for specific areas within Upper Hutt including the Central Area, Trentham, and Wallaceville. A component of the design guide aimed at the retention of the identified character values that were valued by the community. These character assessments included assessment of the following characteristics of the areas:
    a. Setting including sight lines, views of the hills between residential units, and the presence of signage.
    b. Connections including public transport links, road layout and legibility, carriageway width, footpaths.
    c. Building architectural style and materials.
    d. Dwelling type and size.
    e. Building setbacks from the front boundary
2. The proposed Medium and High Density Design Guide does not include these amenity and character assessments, details, or encouragement to retain existing levels of amenity and character.

3. The Residential Centres Precinct Design Guide provided guidance on comprehensive residential developments within walkable catchments of centres to the heights specified within the underlying zoning provisions. This is typically up to two stories in height. These heights were considerably lower than those contained in the proposed Medium and High Density Design Guide which provides guidance on residential development to the greatly increased building heights enabled by the IPI of 11m in the GRZ and up to 20m in the HRZ as a permitted activity.

4. In terms of similarities both design guides include a focus on well-established urban design principles for the creation of urban environments such as the ideal orientation of buildings with respect to the sun, private outdoor areas etc.

Question 13

Please provide urban design advice on the practical application of the recommended 8m diameter requirement for communal open space within the Centres and Mixed Use Zones.

I have confirmed the intent and sought clarification from Mr Coolen of Boffa Miskell Ltd on the practical application of the 8m communal open space standard. Mr Coolen advises it would be appropriate to specify the 8m requirement as a minimum diameter requirement to improve clarity.

Mr Coolen advises that this minimum dimension applies for communal open space regardless of the number of units provided. This means the minimum 8.0m diameter dimension will not increase if the development provides for 10 or 15+ residential units.

The main purpose of this is to ensure that the open space is usable and practical and that it allows for sufficient space that can be used for outdoor recreation, landscaping and circulation, and can accommodate furniture.

Further to Mr Coolen's advice, I note:

i The communal area standard does not require the communal area to be provided by a single space; and
ii The communal area(s) could be provided via balconies, the roof, at ground level, or a combination of all three.

To provide clarity and assist plan implementation I recommend the following amendment to the recommended Outdoor Living Space standards NCZ-S7(3), LCZ-S7(3), TCZ-S7(3), CCZ-S10(3), and MUZ-S5(3):

3. Where communal outdoor living space is provided it does not need to be in a single continuous space, but it must be:

    i Accessible from the residential units it serves;

    ii Of the minimum area and dimension specified in the table below; and

    iii Free of buildings, parking spaces, and servicing and manoeuvring areas.

Living Space Type	**Minimum area**	**Minimum dimension**
1. Private		

i Studio unit & 1 bedroom unit ii 2+ bedroom unit	5m² 8m²	1.8m 1.8m
1. Communal		
For every 5 units	10m² (per residential unit)	8m diameter

Section 32AA Evaluation

In my opinion, the recommended amendments to the IPI in response to matters raised by submitters with respect to determining compliance with the communal outdoor living space permitted activity standard are more appropriate in achieving the objectives of the IPI than the notified provisions. In particular, I consider that:

1. The recommended amendment to include reference to a diameter requirement for the 8m communal private outdoor living space standard will ensure the provision can be clearly interpreted. This will result in a more efficient and effective method to achieving the IPI objectives.
2. The recommended amendment will not have any greater environmental, social, economic, or cultural effects than the notified provisions. There may be costs savings to the Council and developers as a result of more efficient plan implementation due to the clarity provided regarding the interpretation of the standard.

Question 14

Please provide a response to the Retirement Villages Association opposition to the financial contributions provisions.

At the time IPI was notified the Council did not have an urban development contributions policy in place. The financial contributions in the operative plan are limited to Reserve Contributions. The provisions in the IPI were developed to fill the gap in funding the Council faced in light of the significant amount of permitted activity development enabled by the MDRS and giving effect to policy 3 of the NPS-UD.

The Council has recently released its Development and Financial Contributions Policy for consultation to be included in the Annual Plan[6]. Consultation opened on 20 April 2023 and closed on 21 May 2023. Hearings are planned from 31 May 2023, with the policy to be operative by 1 July 2023.

The policy proposes development contributions based on an equivalent household unit basis (EHU) that will be applicable from 1 July 2023 as follows:

- $2,382 (including GST) per equivalent household unit (EHU) district wide for transport.
- $6,199 (including GST) per EHU for district wide community infrastructure. This will apply only to residential developments.

[6] https://letskorero.upperhuttcity.com/dfc-policy

Paragraph 43 of the draft policy states:

> *Retirement units and visitor accommodation units will be assessed as 0.5 EHUs for each service including community infrastructure.*

The draft policy states that the Council intends to fund a proportionate share of cost of infrastructure through:

a. Development contributions under the LGA for transport and district-wide benefitting community infrastructure, and

b. Financial contributions under the RMA to help fund growth related reserve and local leisure facilities such as playgrounds.

Upper Hutt City Council does not charge development contributions for water, wastewater, or stormwater as these are primarily funded via a combination of targeted rates, fees, and charges[7].

The policy clarifies that the Council intends to charge financial contributions for reserves and local leisure facilities, but a future change to the District Plan will be carried out to reflect that community-wide community infrastructure for growth, such as the expansion of H2O Extreme, will be funded via development contributions[8]. In my opinion, as the evidence prepared by Mr Akehurst seeks a number of amendments to the IPI to provide this distinction, it would be appropriate to recommend such amendments as part of the IPI process.

Based on the information contained in the proposed Development Contributions and Financial Contributions Policy, the new proposed rule FC-R2A included the IPI for infrastructure and transport will be partially superseded by the Development Contributions and Financial Contributions Policy with respect to districtwide transport infrastructure once it is made operative from 1 July 2023. It may therefore be appropriate for the Panel to recommend to the Council that rule FC-R2A be amended to delete reference to transport infrastructure if the proposed development contributions for district wide transport is retained in the operative version of the Development Contributions Policy that will apply from 1 July 2023.

Proposed IPI rule FC-R2A requires a financial contribution of up to 4% or the value of each new residential unit or allotment, up to a maximum of $10,000 per residential unit or allotment. For retirement units and visitor accommodation units, the proposed Development Contributions and Financial Contributions Policy would charge half of the proposed $2,382 transportation contribution, and half the $6,199 district-wide community infrastructure contribution for a total of $4515.50 per retirement unit or visitor accommodation unit.

As the Development Contributions Policy will be made operative prior to the IPI being made operative, I consider it would be appropriate for the Panel to make a recommendation that should the proposed development contributions described above for district wide transport infrastructure be retained in the operative policy, then IPI rule FC-R2A should be amended to remove reference to transport infrastructure. I have not gone so far as to recommend specific amendments as there is still too much uncertainty on the final development contributions policy provisions.

With respect to the suggestion in the evidence of Mr Akehurst that the Council will 'double dip' financial contributions where a development contribution has already been charged for the same matter, I do not consider this outcome to be likely for the reasons I specify in my answer to the Panel's

[7] See UHCC long term plan: Long term plan 2021-2031.
[8] At paragraph 95.

question 'm' from Minute 6 below. Double dipping is specifically precluded by section 200 of the LGA. I also note that in the unlikely event that doubling dipping has occurred or is alleged to have occurred, there are a number of statutory avenues to challenge this and have the facts independently considered and determined. However, I do agree with Mr Akehurst that it would be beneficial for the IPI to provide more direction to reduce the likelihood of double dipping. I make recommendations below to achieve this.

Paragraph 13 of Mr Akehurst's evidence expresses a concern that the methodology for charging FCs is unclear. It is Mr Akehurst's opinion that this lack of clarity provides little certainty for developers and potentially delays activity resulting in reduced economic activity. Mr Akehurst considers the financial contribution provisions have not been prepared in accordance with the requirements of section 106 of the LGA on the basis that usage and load differences, such as those present in retirement villages (on a per dwelling basis) have not been calculated. Mr Akehurst considers that retirement villages that they use consumption of water and generation of wastewater is significantly lower, on a per capita basis, than residents in general due to efficient commercial kitchens and laundries in retirement villages, as many of the residents do not cook their own meals or use their own washing machines.

Upon considering Mr Akehurst's evidence and the other evidence submitted on behalf of the submitter, it is unclear to me what the total water consumption and wastewater generation are from commercial kitchens, laundries, and other activities in retirement villages is, and how this compares to the water consumption and wastewater generation that would be generated by residents in the absence of these facilities, or by traditional forms of housing.

In my opinion, claims that retirement villages use less water and generate less wastewater compared to other forms of residential development should be supported by technical data demonstrating this. I have not identified any such technical evidence provided by the submitter. This leaves me in the position of considering an opinion on the total use of water and generation of wastewater from a retirement village from all activities within a retirement village compared to other forms of residential development. In order for me to agree with Mr Akehurst I require technical evidence that supports his opinion.

Finally, Mr Akehurst raises a general concern with respect to the method of calculating financial contributions and ensuring they are calculated in a way that recognises the demand on infrastructure and services arising from a retirement village. I consider that the provisions are appropriate for their intended purpose. In my opinion, the provisions enable the case-by-case assessment of the level of contributions that would be appropriate taking into account the specifics of a site and the capacity of infrastructure in the area to accommodate the anticipated additional demand. I consider this is consistent with the evidence-based and case-by-case approach promulgated by Mr Akehurst. I consider that it would not be possible or reasonable to attempt to prescribe a formula to calculate financial contributions for these matters to take into account the specific demands of retirement villages because the nature of the requirement cannot be determined in advance of a case-by-case consideration of the existing infrastructure, the scale of a retirement village, and the costs of any necessary improvement works to enable the development.

I have considered the requested changes to the financial contribution provisions included in the supplementary evidence of Ms Williams. I consider that with the exception of a number of amendments to provide greater clarity on avoiding the likelihood of double dipping, the remainder of the requested changes would reduce certainty in the identification and application of who pays the actual costs associated with development.

As a whole, I consider that the likely outcome of the majority of the requested changes to the financial contribution rules would result in the community having to pay a proportion of the actual costs of providing infrastructure for development. In my opinion, the most appropriate method to consider a 'fair and reasonable' contribution towards financial contributions, as opposed to the actual and full costs, is via the resource consent process. The resource consent process enables the consideration of site-specific and activity-specific matters via the provision and consideration of evidence to support claims of reduced demand on infrastructure by retirement village activities.

On my reading of Ms Williams' supplementary evidence, all other requested amendments to the financial contribution provisions support the request to eliminate the necessity for development to pay the full costs associated with necessary works to infrastructure. For the reasons I have already expressed I do not recommend any amendments to the IPI provisions in response to these matters.

I recommend the following:

1. That the Panel recommend to Council that rule FC-R2A be amended to remove reference to transport infrastructure if the proposed development contributions for district wide transport infrastructure is retained in the operative version of the Development Contributions Policy that will apply from 1 July 2023.

2. Amend Introductory text as follows:

Section 77E(1) of ~~t~~The Act authorises rules requiring a ~~empowers **Council** to impose~~ financial contribution~~s~~ for any class of activity other than a prohibited activity.

Section 108 (9) defines ~~The types of possible~~ financial contributions ~~are described in **the Act**~~ as

(a) money, or

(b) **land**, *including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent), but excluding Māori land within the meaning of the Te Ture Whenua Maori Act 1993 unless that Act provides otherwise;* or

(c) a combination of money and **land**.

This ~~part of the Plan~~ chapter ~~sets out the objective, policy, methods and rules relating to the imposition of financial contributions for reserves and leisure facilities~~ contains the requirements for financial contributions which can be imposed for subdivision and development of land. Financial Contributions referred to in this Chapter are different from, and have a different purpose than Development Contributions imposed under the Local Government Act 2002. Under section 200 of that Act, the Council cannot collect financial contributions for the same development and for the same purpose as a development contribution (and vice versa). Financial contributions are assessed, calculated, and directly related to the effects of subdivision and development of land.

Purpose of Financial Contributions

Financial contributions received for reserves and local leisure facilities may be used anywhere in the City. The allocation of such contributions is made through the Annual Plan process.

The purposes for which reserves and local leisure facilities contributions may be used are as follows:

- The provision for **community facilities**, reserves, amenities and open space. Contributions toward large city-wide community infrastructure will be obtained via development contributions under the Local Government Act 2002.
- The protection and **conservation** of **amenity values**, and the life supporting capacity of ecosystems and **waterbodies**.

- The provision of access to identified **rivers**, streams or **lakes**.
- The protection of historical, scientific, cultural or aesthetic values of landscape features, landforms, places or **buildings**.

Financial contributions received for water, …

3. Amend policy FC-P6 as follows:

~~D~~FC-P6 To ensure that developers make a fair and reasonable financial contribution to manage or mitigate adverse transportation or infrastructure effects arising from residential intensification activities where such costs are not otherwise addressed by development contributions collected under the Local Government Act 2002.

4. Amend rule DC-R1 as follows:

Financial Contributions	
Reserve and Local Leisure Facilities Contribution	
~~D~~FC-R1 *Policy DC-P1*	A Reserve and Local Leisure Facilities Contribution is required where: (1) Any additional **site** is created as part of a subdivision; (2) Two or more **residential units** are erected on a vacant **site**; (3) One or more additional **residential units** are erected on a **site**. A Reserves and Local Leisure Facilities Contribution will be required in the form of money, land or a combination of money and land in accordance with the following table: **Reserves and Local Leisure Facilities Contribution (All Zones)** **Money** 4% of the market … …

Section 32AA Evaluation

In my opinion, the recommended amendments to financial contribution provisions are more appropriate in achieving the objectives of the IPI than the notified provisions. In particular, I consider that:

1. The recommended amendments to refer to the development contributions collected under the Local Government Act 2002, and references to local leisure facilities will reduce the likelihood of double dipping of financial contributions and development contributions. This will result in clear plan implementation and a more efficient and effective method to achieve the IPI objectives.
2. The recommended amendments will not have any greater environmental, social, economic, or cultural effects than the notified provisions.

Question 15

Please provide an update on the Council's future plan change work on SNAs and any other similar features and topics.

Regarding the Council's SNA work, although dialogue with affected property owners is ongoing,

decisions on policy direction and draft provisions is on hold pending the anticipated gazettal of the NPS-IB in 2023[9]. The Council does not consider that allocating further resources on implementing a policy direction and rule framework that may change in the near future to be a responsible use of resources.

With respect to other similar features and topics for future plan changes, the Council is carrying out a continuous rolling review. This provides many opportunities to address new resource management issues as they arise.

The Council already has the following future plan changes scheduled for progression via ordinary RMA Schedule 1 processes. Work on these topics is underway to varying degrees:

a. Industrial Zone and Special Activity Zone review.

b. Infrastructure and transport review.

c. Noise and vibration review.

d. Sites and areas of Significance to Māori review.

e. Historic heritage review.

f. Review of the Council's Code of Practice for Civil Engineering Works.

g. Significant Natural Areas review.

h. Rural review.

i. Landscapes review.

I consider this to be a comprehensive list that provides an opportunity to address and consider in more detail a number of the key matters outstanding by submitters on the IPI including:

a. Requests to rezone Special Activity zoned sites, and Industrial Zoned sites to Mixed Use Zone or other zones.

b. Requests for new provisions (including new qualifying matters) that address potential reverse sensitivity effects such as noise and vibration effects that may arise within proximity of the state highway network, the rail line, and Trentham Military Camp.

c. Requests for new listings for Sites and Areas of Significance to Māori, and associated provisions that may have the effect of new qualifying matters to address cultural matters.

d. Requests to include additional Significant Natural Areas and associated provisions.

e. The request to include specific provisions for fire and emergency vehicle access.

f. Requests that relate to the matters contained within the civil engineering code of practice such as stormwater management and earthworks.

g. Requests to rezone non-urban zoned land to urban land such as Large Lot Residential Zone.

Although not included in the above list I consider that the Council will be required to implement future plan changes to:

[9] The anticipated gazettal date is still listed as 2023 on the Ministry for the Environment's website: Proposed national policy statement for indigenous biodiversity | Ministry for the Environment

a. Give effect to any other matters that are required by the NPS-UD such any necessary amendments to deliver the Future Development Strategy, and any other amendments necessary to ensure demand identified in the HBA is plan-enabled;

b. Give effect to RPS Change 1 once is it made operative with respect to climate change, freshwater, urban development, indigenous biodiversity, and natural hazards. This will include any relevant matters of the Whaitua.

Question 16

Please review the Upper Hutt and Wellington Regional HBA and advise the status of long-term supply of industrial land.

The Council is in the process of updating the HBA, however it is still subject to review and finalisation. It is not anticipated that the updated HBA will be available to inform the Panel's recommendations on the IPI and submissions.

Key Findings

a. The 2019 HBA included Upper Hutt City Council, Hutt City Council, Kapiti Coast District Council, and Wellington City Council.

b. The 2019 regional HBA did not include Porirua City Council or the Wairarapa councils.

c. Porirua City Council conducted a separate HBA process to the other Councils but some data from the PCC work was included in the UHCC 2019 HBA.

d. Industrial land and floorspace demand for the region and Upper Hutt (with a 20% short and medium term, and 15% long term competitiveness margin as required by clause 3.22 of the NPS-UD) was 595,766m² for the four HBA 2019 Councils and 194,700m² for Porirua.

e. Whilst the demand for industrial land in the region declines over time Upper Hutt showed positive demand in the short term, with this vastly reducing over the medium term and then receding over the long term (see **table one** below). A large proportion of the overall short term commercial floor space demand for Upper Hutt was anticipated to come from industrial floor space.

f. Capacity across all types of sites (vacant, infill and redevelopment) was a total of 19,887,128m² (1,988.7 ha) for the four HBA Councils and Porirua. Specifically for Upper Hutt City Council it was 1,392,379m² (139.2 ha).

g. Regionally and locally capacity was sufficient to accommodate demand.

Demand

Table One: 2019 HBA Industrial Land and Floor Area Demand

Area	2017 to 2020	2020 to 2027	2027 to 2047	Total
UHCC, HCC, KCDC, WCC				
Land	444,268 sqm	-560,484 sqm	-479,551 sqm	-595,766 sqm
Floor Area including NPS 20% uplift short term and 15% long term.	253,562 sqm	-207,812 sqm	-186,376 sqm	-140,626 sqm

UHCC Only				
Land	95,915 sqm	1,746 sqm	-1,506 sqm	96,155 sqm
Floor Area NPS 20% uplift short term and 15% long term.	38,366 sqm	698 sqm	-602 sqm	38,462 sqm
PCC				
Land	1 ha	7 ha	26 ha	34 ha
Land including TG Scenario	2 ha	19 ha	63 ha	84 ha
Floor Area	93,500 sqm	101,150 sqm	142,600 sqm	337,250 sqm
Floor Area including NPS 20% uplift short term and 15% long term.	6,600 sqm	19,200 sqm	69,000 sqm	94,800 sqm
Floor Area including TG	93,500 sqm	101,150 sqm	142,600 sqm	337,250 sqm
Floor Area including TG & NPS 20% uplift short term and 15% long term.	5,500 sqm	42,500 sqm	146,700 sqm	194,700 sqm

Capacity

The 2019 HBA identified that:

a. Existing business floorspace of all types across the five Councils measured 3.1 million square metres (3,100 ha).

b. Infill development of existing business sites to the maximum expected extent under District Plan standards could provide for an additional 3.3 million square metres (3,300 ha) of floor space.

c. Redevelopment of all business zoned sites across the five Councils would provide for 14.4 million square metres (14,000 ha) of floor area.

d. The assessment of feasibility of business areas was undertaken by way of a Multi Criteria Analysis. All of the Councils show above average feasibility scores based on the assessment undertaken.

Table two below shows specific UHCC capacity and regional (UHCC, HCC, WCC, PCC, and KCDC) total.

Table Two: 2019 HBA Capacity (Floor Area)

Capacity Type	**4 HBA Councils and Porirua**	**Upper Hutt**
Vacant	2,159,223 sqm	161,753 sqm
Infill	3,297,347 sqm	336,175 sqm
Redevelopment	14,430,558 sqm	894,451 sqm

At a regional level, this was an aggregate of commercial demand and it was not broken down further into activity type e.g. industrial.

When considering overall capacity, the HBA shows Upper Hutt is able to meet the anticipated business demand.

Table Three: 2019 HBA UHCC Land Sufficiency (Floor Area sqm)

	Short Term: 2017-2020		Medium Term: 2020-2027		Long Term: 2027-2047	
Business Type	**Demand**	**Net Capacity**	**Demand**	**Net Capacity**	**Demand**	**Net Capacity**
Commercial Business	11,677	319,982	6,365	313,617	19,514	294,103
Industrial Business	38,366	127,903	698	127,205	-602	127,807
Total Business	50,043	447,885	7,063	440,822	18,911	421,911

QUESTIONS FROM THE PANEL VIA MINUTE 6 DATED 18 MAY 2023

a. The submission from Kainga Ora proposes substantial changes to either the notified zonings of certain land parcels in Upper Hutt and/or an alteration to height limits that may apply through its submission. Can the s42A author comment on whether there was any process to specifically notify landowners of the extent of the changes requested during the further submission process.

I confirm that there was no process carried out by the Council during the further submission process to specifically notify landowners of the extent of the changes requested by submitters. The Council did not deviate from the legal requirements of Schedule 1 of the RMA for the notification of the summary of decisions requested on the IPI.

b. In terms of long term housing and business land supply in Upper Hutt City and the evidence of Mr Cullen on behalf of Kainga Ora, whether there is a need to provide for additional density and capacity at the scale proposed by in the submissions of Kainga Ora over and above the notified provisions of the plan change.

I am not aware of any evidence that supports Mr Cullen's opinion that there is a need to provide for additional density and capacity at the scale proposed in the submission of Kainga Ora over and above the recommended provisions of the IPI.

The Council is in the process of updating the HBA which will identify the increased housing and business capacity that will result from the IPI as notified. However, the findings of this work will not be available in time to inform the Panel's recommendations to the Council.

The requirements of the NPS-UD to provide sufficient plan-enabled capacity for anticipated housing and business demand over the short, medium and long term will remain a requirement following the IPI being made operative. If a need for additional housing or business capacity is identified by the updated HBA, the Council will be required to address the shortfall via a plan change or plan changes. In my opinion, it would not be appropriate for the IPI to attempt to anticipate any capacity shortfalls based on the opinion of Mr Cullen in the absence of an evidence base to support it.

c. Provide more comment on the methodology behind the identification of walking catchments required under Policy 3 of the National Policy Statement on Urban Development.

The extent of walkable catchments delineated by the proposed High Density Residential Zone have been identified firstly using the distance travelled by a 10 minute 'walk' from the edge of the City Centre Zone and the passenger rail stations in the City.

I have been informed that the Council used a community accessibility group for this purpose. Group members had a variety of mobility levels including those who were not mobility impaired, a member who required the assistance of a walking cane, and a member who required use of a wheelchair. All group members 'walked' the same routes from the edge of the City Centre Zone and rapid transit stops for ten minutes. The Council used the average of the distance covered by all accessibility group members to identity a real-world walkable catchment that would be accessible to all members of the community.

The spatial extent of walkable catchments was then refined by the Council to identify a practical boundary that provides an appropriate opportunity to mitigate potential height transition impacts on existing residents at the interface of the proposed High Density Residential Zone with the General Residential Zone. In some instances, such as a strip along the western side of Fergusson Street, this exercise resulted in a strip of properties being removed from the proposed HRZ, while in other areas it resulted in many properties being included within the HRZ to provide a more rationale consolidated shape to the High Density Residential Zone.

d. Consider the implications for Mixed Use Zoning supply in Upper Hutt if additional areas were to be rezoned City Centre Zone. The evidence of Mr Rae, on behalf of Kainga Ora in Attachment C, identifies the areas in question.

I am not aware of an evidence base supporting the need for additional City Centre Zone land to provide for a mix of uses.

Mr Rae's evidence is, on my reading, based on his opinion regarding improved urban design outcomes. I consider a more appropriate evidence base for the consideration of whether additional City Centre Zone land is needed is the Council's HBA. With respect to existing business capacity the HBA states[10]:

1. Upper Hutt has a large amount of available business development capacity, with only 44.3% of its 894,451m^2 business floor area capacity currently occupied.
2. Almost 80% of commercial business capacity is within the CBD. A significant proportion of this capacity lies in infill opportunities being taken up (upwards), with only limited opportunities for vacant land development.

Based on the findings of the HBA, I consider that there is no identified demand or capacity evidence to support the requested rezoning of additional land to provide for a mix of uses within the City Centre of Upper Hutt.

The recommended rezoning of a number of General Industrial Zone sites to Mixed Use Zone under the IPI will, in my opinion, further increase the availability of land that is zoned for mixed use activities and development. The effect on business capacity of this will be considered alongside updated demand data, and set out in the next update to the HBA later in 2023.

[10] HBA Section 9: https://www.upperhuttcity.com/files/assets/public/districtplan/ipi/appendix-c-hba-2019.pdf

Considering the findings of the 2019 HBA on existing business capacity in the City Centre Zone, I do not consider there is a supply issue that would require the rezoning of additional land to City Centre Zone as suggested by Mr Rae.

In my opinion, it would be inappropriate to rezone privately owned land to City Centre Zone on the basis of Mr Rae's urban design evidence. I consider that should the Council identify the need for a larger City Centre Zone, this could be pursued via a non-IPI Schedule 1 RMA plan change that is supported by an appropriate evidence base. This would also enable consultation to be carried out with the community and directly affected property owners.

e. In respect of walkable catchments to the City Centre provide comment on the necessity for a substantial increase in both the spatial extent of the High Density Residential Zone and the increase in height limits to 36 metres closer to the City Centre proposed by Kainga Ora through the evidence of Mr Rae.

I do not consider there to be any planning-based necessity or evidence base for the increase in spatial extent of the High Density Residential Zone or the increase in height limits to 36 metres closer to the City Centre proposed by Kainga Ora.

The extent of walkable catchments as notified and recommended give effect to the requirements of policy 3 of the NPS-UD. The height limits within walkable catchments as recommended give effect to the requirements of the NPS-UD to enable building heights of at least six stories. In addition, I note the extent of walkable catchments and building heights are consistent with what the Upper Hutt community is anticipating seeing as the outcome of the IPI.

Mr Rae is suggesting changes to the extent of walkable catchments and increased permitted activity heights. These changes are not required to give effect to the NPS-UD. Should the Council and the community decide there is a demonstrated need or a desire to extent the spatial extent of walkable catchments or increase permitted building heights beyond those it has set out in the IPI, this can be pursued via a future plan change. I note section 77G(3) of the RMA indicates that the Council may have the discretion to use the ISPP for future plan changes that give effect to policy 3 of the NPS-UD. Alternatively, the Council may pursue such a plan change via the typical Schedule 1 plan change process.

None of the evidence presented by Kainga Ora, including the evidence of Mr Rae, points to a demonstrated failure of the IPI to give effect to the requirements of the NPS-UD, or a housing and business capacity shortfall with respect to the findings of the HBA that demonstrates that the changes sought by the submitter are necessary. The submitter requests a significant increase in the extent of walkable catchments and building heights in the absence of considering the significant uplift in housing and business capacity that will already result from the IPI as notified and recommended. It was also apparent from the Panel's questions of the experts for Kainga Ora that some of the wider potential community consequences that would likely arise should the increased heights and resulting greatly increased population close to the City Centre Zone be enabled such as the necessity and costs to the community of having to purchase additional land for the use of public open space. I share the Panel's concerns on this matter as it demonstrates that the submitter has not considered all the potential costs, benefits, and effects of the requested amendments at a community level.

My recommendation is to retain the extent of walkable catchments and building heights as currently recommended as these comply with the requirements of the NPS-UD and closely align with community expectations of what the IPI will enable. I recommend any increases to the spatial

extent of walkable catchments, excluding any minor amendments that may address site-specific matters, and any increase in building heights be considered by the Council in consultation with the community in the future should this be desired or deemed necessary.

f. Comment on the defensibility or desirability of the High Density Residential Zone/General Residential Zone boundary being on the western (or northern side) of Fergusson Drive from Silverstream to the City Centre as identified by Mr Rae.

I have sought urban design evidence from independent urban design expert Mr Jos Coolen of Boffa Miskell Ltd to consider Mr Rae's evidence and provide a response for the Panel.

Mr Coolen's evidence is included as **Appendix 2**. In summary, Mr Coolen disagrees with Mr Rae that the western (or northern) side of Fergusson Drive should be included in the High Density Residential Zone. Please see Mr Coolen's evidence for his analysis.

g. In respect of Design Guides and whether they are fit for purpose, Mr Rae is critical of their content and their applicability, particularly in the proposed High Density Residential Zone. We would appreciate comment on this from an urban design expert.

Firstly, as an observation with respect to the principle of the use of design guides within a district plan, I note Mr Rae has submitted expert evidence for Kainga Ora that is generally supportive of the design guidelines for the hearing of the Kapiti Coast District Council IPI[11] , with the exception of two matters which he suggests improvements.

The KCDC design guides were also prepared by Boffa Miskell Ltd with the express purpose of supporting the IPI, and in many respects they are similar to the design guide contained in the Upper Hutt IPI. Contrary to the view of Kainga Ora with respect to the appropriateness and effectiveness of the use of design guides as a regulatory tool within district plans, Mr Rae does not appear to oppose their use as a regulatory method.

I have sought the advice of Mr Jos Coolen of Boffa Miskell Limited to specifically provide an urban design response to the matters raised by Mr Rae regarding the design guide. Mr Coolen's advice is contained in **Appendix 2**. In summary, Mr Coolen recommends a number of amendments to the design guide, but clearly recommends they be retained in the IPI.

In response to the evidence provided by Mr Coolen on the matters raised by Mr Rae, I make the following recommendations with respect to the Medium and High Density Design Guide:

1. That the design guide be amended as set out in Mr Coolen's evidence at **Appendix 2.**
2. That the submission points of Kainga Ora: Homes and Communities requesting that the design guide be reviewed are accepted in part, on the basis that the design guide has been reviewed but is retained as a regulatory method in the IPI.

Section 32AA evaluation

In my opinion, the recommended amendments to the IPI in response to matters raised by submitters and recommended by Mr Coolen are more appropriate in achieving the objectives of the IPI than the notified provisions. In particular, I consider that:

[11] Paragraph 6.2 of Mr.. Rae's evidence on KCDC IPI: https://www.kapiticoast.govt.nz/media/vfbjsvrd/s122-and-s122-fs-1-kainga-ora-nick-rae-statement-of-evidence-10-03-2023.pdf

3. The recommended amendment to the design guide will improve plan implementation by removing reference to mixed use development, and providing clear direction on the necessity to prepare a design statement to support a resource consent application. This will result in a more efficient and effective rule in achieving the IPI objectives.

4. The recommended amendment to the design guide will not have any greater environmental, social, economic, or cultural effects than the notified provisions. There may be costs savings to the Council and developers as a result of more efficient plan implementation due to the clarity provided on the purpose and content of a design statement as part of a resource consent. This may reduce the necessity for the Council to request additional information on urban design matters during the consideration of a resource consent application.

h. In addition to the Design Guide issue, we would appreciate comment from an urban design expert on the remainder of Mr Rae's evidence, particularly the Planning Maps in Attachment C and the montages contained within Attachment D of this evidence.

I have sought expert urban design evidence from Mr Jos Coolen of Boffa Miskell Ltd to provide comment on the Planning Maps in Attachments C and D of Mr Rae's evidence. Mr Coolen's advice is attached as **Appendix 2**.

In short, Mr Coolen does not recommend any amendments to the IPI in response to these aspects of Mr Rae's evidence.

i. In relation to the Silverstream Land Holdings Ltd (St Patrick's Estate) evidence, provide comment on the preferred land use provisions proposed, particularly in light of the planning history, the special activity classification in the Operative District Plan and the traffic and transport environment. Mr Lewandowski on behalf of the submitter and Mr Muspratt on the behalf of the Council are directed to conference in this regard.

Mr Lewandowski and I have carried out expert conferencing and have reached agreement on a recommended zoning, bespoke provisions, and consequential amendments on matters outstanding with respect to the matters raised by the submitter.

The signed joint witness statement confirming the recommended provisions is attached as **Appendix 3.**

I have also prepared a section 32AA evaluation for the recommendations for the Panel's consideration as **Appendix 4.**

j. In a similar manner provide comment on the preferred plan provisions raised in the submission of Blue Mountains Campus Development Ltd Partnership.

Mr Lewandowski and I have carried out expert conferencing. Despite our best endeavours we were unable to reach agreement on the amendments requested by the submitter. Please see the joint witness statement at **Appendix 3**.

I have also provided specific responses to a number of matters raised in the evidence of Mr Lewandowski and raised during the hearing. Please see below for the response to the matters raised by the submitter.

k. Respond to the matters raised in the submissions of Silver Stream Railway Inc which were omitted from the s42A report.

Please see below for the response to the matters raised by the submitter.

l. Discuss the evidence of KiwiRail and Waka Kotahi in respect of acoustic and vibration controls and a mandatory 5 metre setback for building development from the Railway Purposes Designation.

Please see below for the response to the matters raised by the submitters.

m. Respond to the detailed evidence of Mr Akehurst for Ryman Healthcare Ltd and The Retirement Villages Association of NZ Inc in respect of the principle of 'double dipping' in relation to Financial Contributions provisions.

In relation to Mr Akenhurst's concerns about the possibility of 'double dipping', I note this is expressly precluded by section 200(1)(a) of the Local Government Act 2002. This preclusion is also directed via policy DC-P2 of the IPI.

I therefore consider the likelihood of this occurring to be extremely low in practice. I also note that should the scenario envisioned by Mr Akenhurst arise in practice, both the RMA and the LGA provide procedural mechanisms to resolve any instances of alleged or actual 'double dipping' including:

1. Section 199A of the LGA provides the right to reconsider the requirement for a development contribution;
2. Section 199C of the LGA provides the right to object to the amount of development contributions;
3. An appeal to the Environment Court on the level of financial contribution determined and applied via condition(s) on a resource consent.

In summary, I do not consider double dipping to be a likely outcome of the IPI financial contribution provisions. Any alleged or legitimate instances of double dipping may be resolved via existing statutory processes that are in place for this purpose.

RESPONSE TO MATTERS RAISED BY SUBMITTERS

In order of appearance:

Mr Bob Anker (S5)

(A) Verbal presentation by Mr Anker

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22. I do not make any changes to my recommendations in response to My Anker's verbal presentation, however I would like to note Mr Anker's verbal presentation was useful in highlighting:

    a. The breadth of concerns raised by submitters on Proposed RPS Change 1 provisions with respect to matters including 'nature-based solutions', climate change, and the effects of urban development on water quality.

b. That Upper Hutt City Council's notified proposed Plan Change 47 – Natural Hazards[12] addresses matters such as development on steep land such as gully heads, and therefore the requested provisions put forward by Ms Guest and Mr Shield's may have unintended consequences for Plan Change 47 provisions.

The New Zealand Defence Force (S53 & FS13)

(A) Planning Evidence of Mikayla Woods dated 14 April 2023

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23. I have read the planning evidence of Mikayla Woods.

24. I agree with the evidence of Mikayla Woods at paragraph 25 that there is an increased risk of reverse sensitivity arising as a result of intensification of urban areas surrounding the Trentham Military Camp. This opinion is consistent with my opinion expressed at paragraph 266 of the Council's evidence report.

25. I acknowledge the shift in focus and the practical approach taken by the submitter via the new specific requested amendments to the IPI as shown in Appendix A to the Ms Woods' evidence.

26. I have considered the specific requested amendments to strengthen reference to reverse sensitivity effects within the following provisions:

    (i) SUB-RES-MC1(6).

    (ii) SUB-RES-R6 to include reverse sensitivity effects as a matter of discretion.

    (iii) GRZ-P1 and HRZ-P5.

    (iv) A new HRZ objective to protect the Camp from incompatible subdivision, use and development, and reverse sensitivity effects.

    (v) GRZ-MC2 or GRZ-MC3

27. I agree adding policy reference to potential reverse sensitivity effects within policies GRZ-P1 and HRZ-P1 would strengthen the connection between relevant provisions that refer to reverse sensitivity effects – such as matters of discretion. I also agree that adding reverse sensitivity effects as a matter of discretion to SUB-RES-R6 would be consistent with how I have addressed reverse sensitivity effects within other rules.

28. I specifically address the policy guidance and direction for the consideration of potential reverse sensitivity effects under the Panel's question 3 above. My recommendations in response to question 3 include the inclusion of a reverse sensitivity-specific policy into the GRZ and HRZ chapters. I consider those recommendations will address the reverse sensitivity policy direction sought by the New Zealand Defence Force to a greater degree than the amendments requested in the evidence of Ms Woods.

29. I do not agree a specific Trentham Military Camp objective is necessary or appropriate within the proposed High Density Residential Zone. I note there are no specific objectives for all other nationally or regionally significant infrastructure that may be affected by reverse sensitivity effects from residential use and development within the proposed High Density Residential

[12] https://www.upperhuttcity.com/Your-Council/Plans-policies-bylaws-and-reports/District-Plan/PC47

Zone. In my opinion, adding references to policies and matters of discretion to reverse sensitivity effects is a more appropriate method to address reverse sensitivity effects in general.

30. With respect to the requested amendments to the 'matters for consideration', as addressed in the Council's evidence report I consider 'matters for consideration' to be guidance material. I do not consider them to have status as matters of discretion unless they are specifically referred to within rules. I therefore do not recommend adding reverse sensitivity effects to 'matters for consideration'.

31. I therefore recommend changes to the recommendations in the Council's evidence report as follows set out below – noting that in some instances I recommend different wording to that requested.

A. Add a new matter of discretion to rule SUB-RES-R6 as follows:

(11) **Reverse sensitivity effects**.

Section 32AA Evaluation

32. In my opinion, the recommended amendments to the IPI in response to matters raised by submitters are more appropriate in achieving the objectives of the IPI than the notified provisions. In particular, I consider that:

1. The recommended amendment to rule SUB-RES-R6 to add the reverse sensitivity effects to the matters of discretion will ensure that the implementation of the IPI will provide appropriate discretion to the Council to identify and address potential reverse sensitivity effects on existing lawfully established non-residential activities from increased residential densities resulting from subdivision and associated residential development within the residential zones. This will result in a more efficient and effective rule in achieving the IPI objectives.
2. The recommended amendment to SUB-RES-R6 will not have any greater environmental, social, or cultural effects than the notified provisions. There may be additional economic costs to developers associated with implementing methods necessary to address reverse sensitivity effects, however this may be offset by the economic benefits of providing a residential development with a higher level of amenity for residents.
3. There will be social and economic benefits resulting from the provision of a residential environment that provides a higher level of amenity via the mitigation of potential reverse sensitivity effects, and as a result of reduced complaints from residents on existing lawfully established non-residential activities within or adjacent to residential zones.

Mr Stephen Pattinson (S65)

(A) Statement of Stephen Pattinson dated 14 April 2023;
(B) Multiple attachments to Stephen Pattinson's statement;
(C) Statement of Stephen Pattinson dated 17 April 2023; and
(D) Verbal presentation to the Panel by Mr Pattinson on 26.04.23.

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33. I have read the statements of Mr Pattinson and the multiple attachments supplied with the written statements.

34. I do not recommend any changes to the Council's evidence report in response to the matters raised by Mr Pattinson.

35. It is my understanding the matter of flood hazard modelling and mapping in the Pinehaven catchment was the subject of an appeal to the Environment Court with respect to Upper Hutt City Council's Plan Change 42. It is also my understanding the appeal was resolved via a consent order on 24.07.2019[13].

36. I have given the information contained in Mr Pattinson's statement careful consideration. I am of the opinion that the matter of whether or not the Council's modelled and mapped flood hazard in the Pinehaven catchment requires review would need to be addressed via the review of existing flood hazard data by a suitably qualified person. I also consider such a review should include input from, or preferably be led by Greater Wellington Regional Council.

37. Notwithstanding Mr Pattinson's evident concerns with the inputs into the relevant flood hazard model and his desire to see the model reviewed, I do not consider the IPI offers an appropriate method to conduct such a review which will, in my experience, involve considerable resourcing and time to complete. I do not have an opinion on the merit or otherwise of the concerns raised by Mr Pattinson regarding the flood hazard model outputs. I also consider it is the role of GWRC to consider and respond to the concerns of Mr Pattinson in the first instance on the basis that Mr Pattinson's concerns relate to a flood hazard model that, as I understand it, is owned by GWRC.

38. Mr Pattinson provided a second statement dated 17 April 2023. In that statement Mr Pattinson requests, amongst procedural requests to the Hearings Panel, a request to remove the Silverstream Spur from the General Residential Zone.

39. I confirm the area referred to by Mr Pattinson is zoned General Residential Zone within the Operative District Plan. A precinct titled Residential Conservation Precinct overlays the General Residential Zone.

40. The zoning of the Silverstream Spur is being considered via a separate non-IPI plan change process via Variation 1 to the Council's Proposed Plan Change 49 – Open Spaces[14]. Plan Change 49 was publicly notified on 11 August 2021. As a result of submissions relevant to the zoning of the spur, the Council prepared and publicly notified a variation to Plan Change 49 on 4 November 2022.

41. The IPI proposes the removal of the Residential Conservation Precinct in its entirety as it conflicts with the requirements of the MDRS[15], but the IPI excludes the zoning of the spur from the IPI on the basis the Council is addressing the zoning of the site via a separate plan change process that was initiated prior to the notification of the IPI.

42. I have reviewed the Council's Plan Change 49 and Variation 1 webpage and note the plan change and variation have attracted some 94 submissions – many which appear to be directly

[13] *Alan Dennis Jefferies v Upper Hutt City Council (ENV-2018-WLG-000039)*

[14] Plan change 49 – Open Spaces, and Variation 1 web page: https://www.upperhuttcity.com/Your-Council/Plans-policies-bylaws-and-reports/District-Plan/PC49

[15] As discussed in section 12 of the Council's evidence report with respect to submission S6.1 - Darren Walton which requests the retention of the Residential Conservation Precinct.

relevant to the zoning of the Spur. The webpage states that the further submission period on Variation 1 closed on 22 February 2023. A total of 25 further submissions were received.

43. I recommend the IPI retains the existing approach of not addressing the zoning of the spur. This approach will avoid the creation of complications for Plan Change 49 and Variation 1 Schedule 1 RMA processes.

CBDI Ltd and CBD Land Ltd (S70), The Heretaunga Company Ltd and The Heretaunga Company No.2 Ltd (S71), Gillies Group Management Trust Ltd, Racing at Awapuni and Trentham Combined Enterprises Incorporated (RACE Inc) (S69)

(A) Planning evidence of Andrew Cumming dated 14 April 2023

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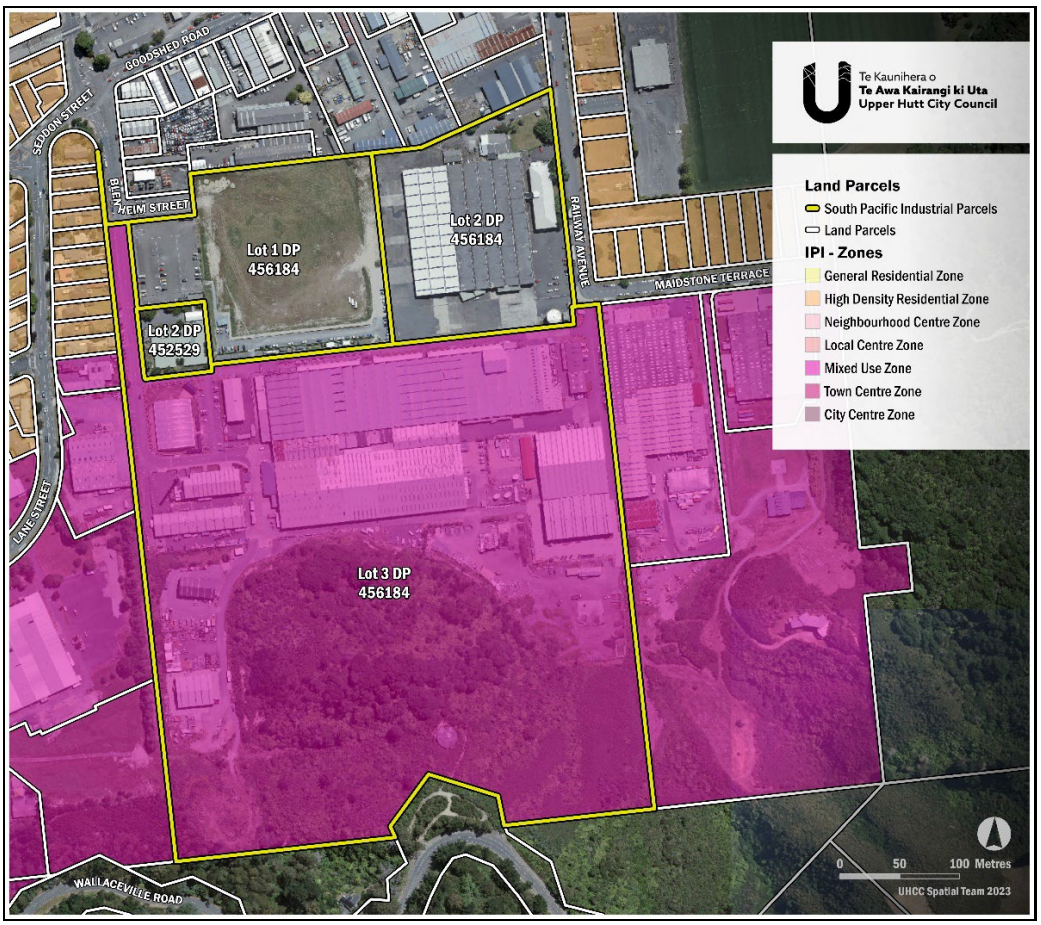
44. I have read Mr Cumming's statement of evidence.

45. In respect of submitter S70 - CBDI Ltd.'s request to rezone the site comprising Lots 1-3 DP456184 and Lot 2 DP452529 from General Industrial Zone to Mixed Use Zone, I agree my evidence report did not identify the discrepancy in the legal descriptions referred to in the submission compared to the rezoning shown on the IPI maps.

46. For context, the proposed Mixed Use Zone and relevant allotments with legal descriptions are as follows:



47. The submission by CBDI Ltd supported the proposed rezoning from Industrial Service to Mixed Use Zone. As the submission did not request any changes to the mapped extent of the proposed rezoning, my assumption was the submission was in support of the proposed rezoning as shown on the IPI maps as notified.

48. The IPI mapping as notified proposes to rezone only Lot 3 DP 456184 from General Industrial Zone to Mixed Use Zone. Lots 1 and 2 DP 456184 and Lot 2 DP 452529 are not proposed to be rezoned, and are to be retained as general industrial zoned land.

49. I have considered the additional information provided by Mr Cumming with respect to existing and consented uses and development on Lots 1 and 2 DP 456184 and Lot 2 DP 452529, including:

    (i) the consented commercial units and comprehensive residential development within Lot 1 DP 456184 (reference number RM 1010154);

    (ii) the Chipmunks Playland and Café Brewtown, offices, and warehousing within Lot 2 DP 456184; and

    (iii) the bar and eatery, and restaurant within Lot 2 DP 452529.

50. With respect to the consented comprehensive residential development on Lot 1 DP 456184, I confirm the following background and current status of the consent:

    (i) A resource consent was granted via a Consent Order issued by the Environment Court on 26 June 2012, (following an appeal on the publicly notified resource consent application) approving a residential development comprising 123 dwellings and 10 business units and associated subdivision. A consent duration of 10 years was provided, with the lapse date being 26 June 2022.

    (ii) A subsequent variation was granted on 15 October 2018 to amend the development to reduce the number of residential units to 72 and 11 business units, and other associated changes to the development.

    (iii) A number of other variations to the consent have been issued with respect to design elements, composition of activities, and staging of the proposed development.

    (iv) The first stage of the subdivision has commenced, with section 224(c) certification for stage 1 being sought at the time of preparing this reply. This stage is for the business unit component only.

    (v) Building consent has been lodged for the commercial units.

    (vi) It is not known if or when the residential component of the resource consent will be given effect to, however the overall resource consent has been given effect to via the s.224(c) certification and associated physical works for stage 1. Therefore, the resource consent for stage 2 will not lapse.

51. I agree that some of these uses, in particular the commercial units and comprehensive residential development and uses consented on Lot 1 DP 456184, would be more appropriately provided for via the mixed use zone provisions.

52. Residential accommodation within the General Industrial Zone is a discretionary activity under rules GIZ-R19 (at ground level) and GIZ-R20. The proposed Mixed Use Zone provisions enable

residential activities as a permitted activity where no more than six residential units occupy a site under rule MUZ-R16.1, or a restricted discretionary activity where this is exceeded under MUZ-R16.2.

53. The warehouses located on Lot 2 DP 456184 described in Mr Cumming's evidence are provided for as a permitted activity under rule GIZ-R4. Other activities such as the restaurant, eatery, bar, café, offices, and Chipmunks Playland are a permitted activity under rule GIZ-R1 where they meet the standards specified for permitted activities.

54. On this basis, I do not consider there to be a compelling planning rationale for the requested rezoning of Lot 2 DP 456184 from General Industrial Zone to Mixed Use Zone based on their existing uses. I do not agree with Mr Cumming that the General Industrial Zone is no longer fit for purpose for the type of activities described by Mr Cumming as seeking to establish on Lot 2 DP 456184.

55. Another relevant matter to the consideration of the request to rezone Lot 2 DP 45684 from General Industrial Zone to Mixed Use Zone is the concerns identified in the section 32 evaluation[16] regarding potential adverse effects on cultural values as a result of further intensification and development of land around sites of cultural significance including Ōrongomai Marae. In my opinion, the potential rezoning of this site should be considered in via a future plan change process as part of the District Plan rolling review. Taking into account the potential adverse effects on cultural activities carried out on the Ōrongomai Marae, I consider this would need to be progressed with direct involvement of mana whenua.

56. I also consider that unlike the commercial and residential development that is consented and commenced on Lot 1 DP 456184, the activities that are established on Lot 2 DP 456184 and Lot 2 DP 452529 may change in the future either as a permitted activity or via resource consent in accordance with the General Industrial Zone rules and standards.

57. With respect to Lot 2 DP 452529, this is a small site that is used in association with the adjacent mix of activities associated with the operation of Brewtown. Should this site remain zoned GIZ, it would be an isolated GIZ site if Lot 1 DP 456184 is rezoned to Mixed Use Zone as recommended. I therefore consider it would be appropriate to also rezone Lot 2 DP 452529 to MUZ if the Panel agrees with my recommendation to rezone Lot 1 DP 456184 to MUZ.

58. I have therefore changed my recommendation from my evidence report as follows:

    (i) I recommend submission S70.1 - CBDI Limited and CBD Land Limited be **accepted in part**, and that Lot 1 DP 456184 and Lot 2 DP 452529 are also rezoned from General Industrial Zone to Mixed Use Zone.

59. With respect to Heretaunga Company (S71) request to rezone the site comprising Lot 100 DP544244 and Lot 1 DP544244 from Special Activity Zone (SAZ) to MUZ, although I acknowledge the reasons provided by Mr Cumming for the request to rezone the site to Mixed Use Zone, I do not change my recommendation on rezoning from my evidence report. The request to rezone these sites is not supported by any evidence such as transportation evidence, economic evidence, or a development plan setting out the most likely location of future activities. This makes the consideration of the environmental effects and policy implications difficult to determine. I note the site will be included as part of the review of all

[16] See section 3.6: https://www.upperhuttcity.com/files/assets/public/districtplan/ipi/s32-volume-3-commercial-and-mixed-use.pdf

Special Activity Zone sites under the District Plan rolling review programme. I consider this to be the most appropriate method to consider the zoning and mix of activities for the future development and use of the site.

60. I do not agree with opinion expressed at paragraph 43 of Mr Cumming's evidence. I do not consider the recommendation to defer rezoning pending the preparation of further evidence to be contrary to section 77N of the Act. Section 77N(3) of the Act provides the Council with the discretion to create new zones or amend existing non-residential zones when changing the district plan for the first time to give effect to policy 3 of the NPS-UD and to meet its obligations under section 80F. It is plain on my reading of section 77N that the Act does not require the Council to rezone non-residential zoned land via the IPI.

61. With respect to the enablement of at least six stories on the site as directed by NPS-UD Policy 3(c)(i), the maximum permitted activity building height is 15m within the Special Activity Zone under rule SAZ-S6, and a discretionary activity where 15m is exceeded under rule SAZ-R27. I agree with Mr Cumming that the IPI is required to enable at least six stories within a walkable catchment of Heretaunga rail station, and that the site falls within this walkable catchment.

62. I have considered the legal advice provided by Mr James Winchester at attachment 2 to Mr Cumming's evidence and I concur with the findings of Mr Winchester with respect to the requirement to enable at least 6 stories on the site to give effect to the requirements of section 77N and policy 3 of the NPS-UD. I note that Mr Winchester's advice does not identify any requirement to rezone the site to give effect to these requirements.

63. I consider that discretionary activity status provided for buildings greater than 15m in height in the Special Activity zoned sites that are within walkable catchments of the City Centre Zone or rapid transit stops does not provide the degree of 'plan enabled' building height required by policy 3 of the NPS-UD for the site.

64. As a refinement to Mr Winchester's legal submission, I consider that the Council only has the authority to enable building heights of at least 6 stories as a restricted discretionary activity within Special Activity Zoned sites that are within the spatial extent of the walkable catchment from the edge of the City Centre Zone and rapid transit stops. The application of policy 3 of the NPS-UD does not, in my opinion, extend beyond these spatial extents.

65. Regretfully, this results in the need for a more complicated response to give effect to the heights required within the SAZ chapter, as only those SAZ sites within walkable catchments may be amended under NPS-UD policy 3. I have considered the possibility of simply changing the SAZ provisions that would apply to all SAZ zoned sites across the City, however I do not consider such an approach would be authorised by policy 3 of the NPS-UD.

66. I therefore recommend an amendment to the SAZ rules to change the activity status from discretionary to restricted discretionary for buildings exceeding 15m in height under permitted standard SAZ-S6 where the site is within a walkable catchment of the edge of the CCZ or a rapid transit stop. This approach is consistent with the legal submission provided by Mr Winchester and aligns with my interpretation of 'plan enabled' taken from clause 3.4 of the NPS-UD. Subclause (2) of clause 3.4 specifies that 'plan enabled' means that uses are provided for via permitted, controlled, or restricted discretionary activity on the relevant land.

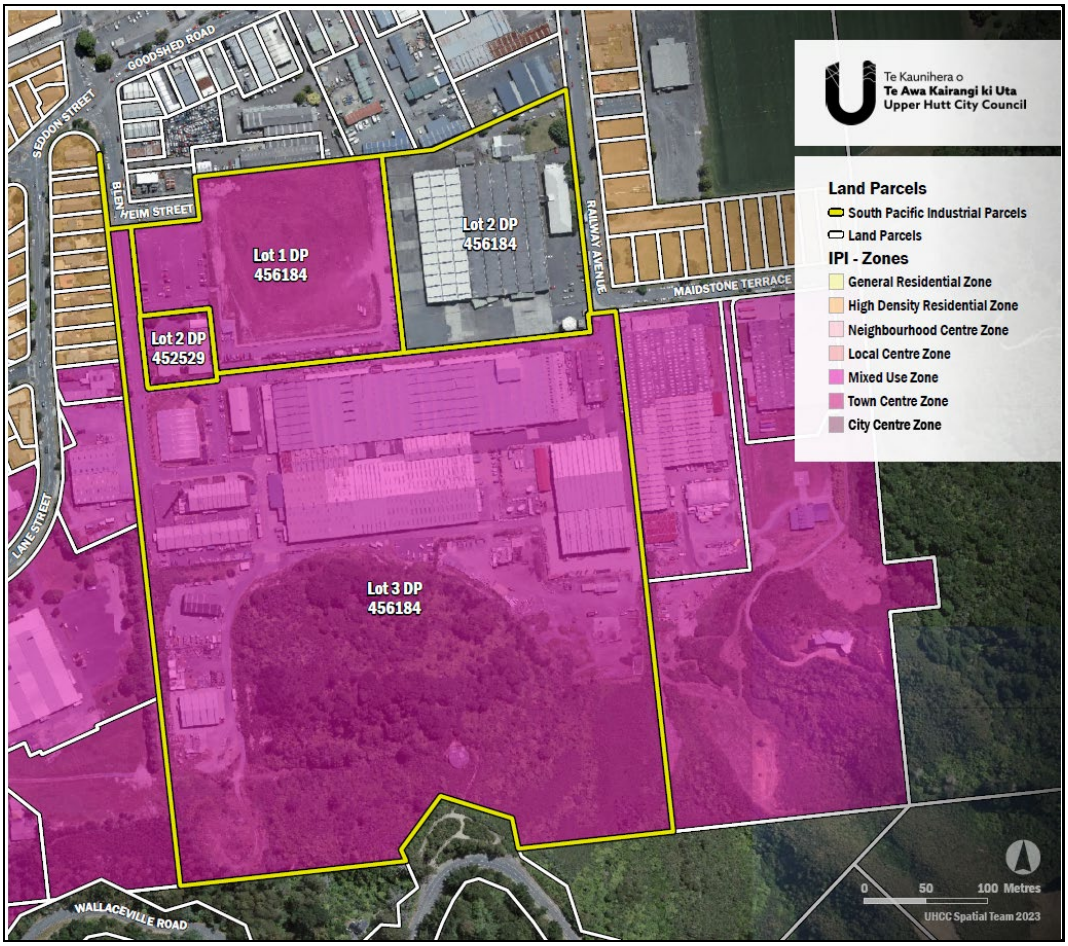
67. I therefore recommend the insertion of a new restricted discretionary activity rule SAZ-R26A to manage buildings that do not comply with SAZ-S6 for specifically identified SAZ sites that are within walkable catchments. To ensure ease of implementation of this recommended rule

a map overlay has been prepared to identify the relevant SAZ sites. I note that existing discretionary rule SAZ-R27 will not require any consequential amendments, and it will continue to apply to all SAZ sites that are not within a walkable catchment.

68. I have checked the other non-residential zones that are within walkable catchments of the City Centre Zone and rapid transit stops. I have not identified any similar issues with respect to the activity status of buildings that exceed the maximum permitted activity standards.

69. I recommend submission S70.1 CBDI Limited and CBD Land Limited be **accepted in part**, and that the IPI be amended as follows:

(A) That Lot 1 DP 456184 and Lot 2 DP 542529 are rezoned from General Industrial Zone to Mixed Use Zone as shown in the plan below:

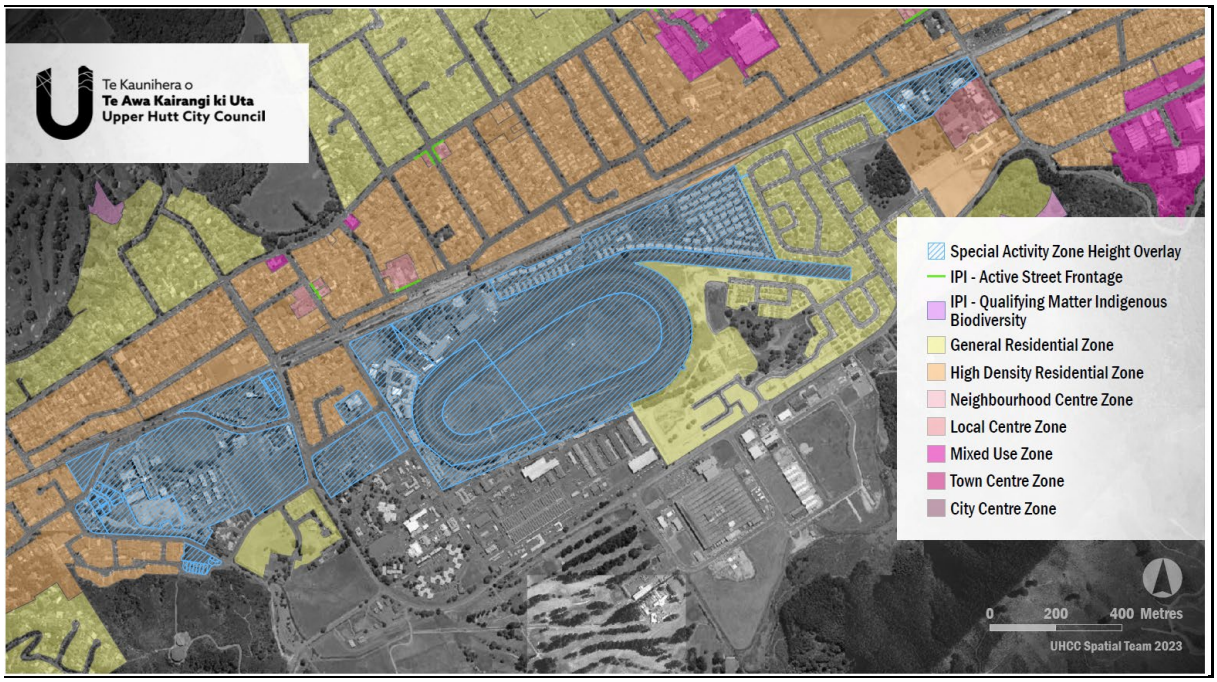


(B) Insert new rule SAZ-R26A as follows:

SAZ-R26A	**Buildings** that do not comply with SAZ-S6 within the Special Activity Zone Height Overlay. **Council** will restrict its discretion to, and may impose conditions on: 1. The location, design and appearance of the **building** or **structure**. 2. Any adverse **effects** on the streetscape.	**RDIS**

	3. Visual dominance, shading and loss of privacy for adjoining Residential or Open Space and Recreation zoned **sites**. 4. Compatibility with the planned built urban form of **buildings**, **structures** and **activities** in the surrounding area. 5. Whether an increase in **building height** results from a response to **natural hazard** mitigation. 6. Whether topographical or other **site** constraints make compliance with the standard impractical. 7. **Reverse sensitivity effects**.	

(C) That the IPI maps are amended to include the identification of all SAZ sites that fall within a walkable catchment of the edge of the CCZ, and rapid transit stops as identified as the *Special Activity Zone Height Overlay* as follows:



Section 32AA Evaluation

70. In my opinion, the recommended amendments to the IPI in response to matters raised by submitters with respect to giving effect to the NPS-UD policy 3 requirements for SAZ sites within walkable catchments of the CCZ and rapid transit stops are more appropriate in achieving the objectives of the IPI than the notified provisions. In particular, I consider that:

    1. The recommended amendment to ensure building heights of at least six stories as restricted discretionary activity for the SAZ sites that fall within walkable catchments as identified by the Special Activity Zone Height Overlay will ensure the IPI gives effect to the NPS-UD . This will result in a more efficient and effective method to achieving the IPI objectives, and will ensure the IPI complies with legal requirements.

    2. The recommended amendment will not have any greater environmental, social, economic, or cultural effects than the notified provisions. The recommended matters

of discretion are consistent with restricted discretionary rules for buildings that exceed maximum permitted heights within other zones, thus ensuring that the actual and potential adverse effects on the environment are appropriately considered and addressed as part of the resource consent process.

Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited (The Fuel Companies) (S33); and Z Energy Limited (S32)

(A) Planning Evidence of Jarrod Dixon dated 14 April 2023

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71. I have read the planning evidence of Mr Dixon.

72. As described above in response to the planning evidence of Mikayla Woods for The New Zealand Defence Force (S53 & FS13), I have reconsidered the benefit of policy direction with respect to reference to reverse sensitivity effects. I make recommendations to change the recommendations contained in the Council's evidence report to make appropriate amendments to GRZ and HRZ policies to include reference to reverse sensitivity effects.

73. Although I do not recommend including the two policies requested by Mr Dixon for the GRZ and HRZ chapters, I consider that my recommended amendments to policies GRZ-P1 and HRZ-P5 in response to Mikayla Woods' evidence achieves the same general outcome sought by Mr Dixon to include reverse sensitivity effects within GRZ and HRZ policies.

74. At paragraph 6.4 Mr Dixon expresses his opinion on the impact of the landscaping standard MUZ-S6 on the visibility of signage and vehicle crossings with respect to traffic movement and safety. Mr Dixon requests standard MUZ-S6 be amended to exclude service stations from having to include trees in the landscaping.

75. As Mr Dixon raises potential transportation safety matters, I discussed the matter of landscaping and vehicle and pedestrian sightlines with Mr Wignall. Mr Wignall advised that any potential transportation safety issues or visibility of signage can be addressed via appropriate species selection and maintenance of vegetation to ensure sightlines are maintained.

76. On this basis I disagree with Mr Dixon that it would be appropriate or necessary to exclude service stations from having to include trees in landscaping standards.

77. I do not recommend any changes to the Council's evidence report in response to the matters raised by Mr Dixon.

Greater Wellington Regional Council

(A) Planning evidence of Richard Shield dated 28 April 2023 (sic); and Mr Shield's undated 'Reply Evidence' provided on 9 May 2023.

(B) Evidence of Ms Pamela Anne Guest dated 19 April 2023, and Ms Guest's supplementary evidence dated 8 May 2023.

(C) Ecological engineering evidence of Mr Stuart James Edgar Farrant dated 19 April 2023.

(D) Legal submission prepared by Ms Kerry Anderson & Ms Emma Manohar - Counsel for Wellington Regional Council (Presented by Ms Kate Rogers)

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78. I have read the planning evidence of Richard Shield, the evidence of Ms Guest, the evidence of Mr Farrant, and the legal submission prepared by Kerry Anderson and Emma Manohar. I have also considered the supplementary evidence provided by Mr Shield and Ms Guest.

79. Firstly, as I have set out in the Council's evidence report, I agree with the Regional Council that freshwater quality, climate chance, biodiversity, and natural hazards are significant resource management issues that require planning intervention as soon as possible. However, I do not agree that the IPI provides an appropriate method to address these matters due to the fact that how these matters are to be addressed, and the allocation of responsibilities is not settled in the Wellington Region.

80. Whilst I agree with Mr Shield that addressing freshwater issues and giving effect to the NPS-FM are highly important resource management issues, I do not agree the IPI is an appropriate method to achieve this for the reasons specified in the Council's evidence report. Nor do I agree with Mr Shield's statement during the hearing that the IPI provides an appropriate opportunity to 'get ahead of the game' to incorporate Proposed RPS Change 1 provisions into the District Plan with respect to achieving target attribute states for freshwater.

81. Contrary to Mr Shield's opinion, I consider that should the Proposed RPS Change 1 provisions be incorporated into the IPI, this may have the effect of setting the Upper Hutt District Plan 'behind the game', as it may have incorporated proposed freshwater provisions that are either significantly altered or removed as part of the Freshwater Planning Process (FPP). As Mr Sheild is not a decision maker under the FPP, I consider that there can be little confidence in the final form of Proposed RPS Change 1 freshwater provisions.

82. I have considered the request in Appendix 1 to Mr Shield's evidence to include three specific new policies and three new matters of discretion into multiple chapters and rules within the IPI. I have also considered the amendments presented in Mr Sheild's supplementary evidence dated 9 May 2023.

83. I confirm the requested new provisions are not contained within the operative Regional Policy Statement for the Wellington Region. These matters are proposed by Proposed RPS Change 1. On my reading of proposed RPS Change 1, the content of the requested new provisions set out in the evidence of Mr Shield are contained across a number of Proposed RPS Change 1 provisions.

84. I do not recommend their inclusion for the same reasons specified in the Council's evidence report with respect to Proposed RPS Change 1 provisions. With respect to the additional information provided in Mr Shield's supplementary evidence regarding the Te Whanganui a Tara WIP, I maintain my opinion that it is premature to include the provisions requested by Mr Shield. Many of the matters identified in the WIP have not been finalised and agreed to by the territorial authorities in the Region, and are still yet to be confirmed in the Regional Council's statutory planning documents. In my opinion, the specific provisions may look considerably different upon the conclusion of the RPS plan change process.

85. In response to questioning during the hearing by Commissioner Daysh, Mr Shields was asked to consider amendments to the requested provisions to provide clarify to applicants and

decision makers on when matters of discretion addressing freshwater matters would be met to a level that would enable a consent to be granted, or conversely, not met to require refusal.

86. I acknowledge Mr Sheild's efforts to address this in his supplementary evidence, however in my opinion the underlying primary concerns identified by Commissioner Daysh remain. Of particular concern to me is the requested matters of discretion that would require city and district councils to manage adverse effects on gully heads, rivers, lakes, wetlands, springs, riparian margins and estuaries, drinking water sources, and ecosystem values in order to *achieve any relevant water qualify attribute in a regional plan*. My understanding is that this requested approach to managing freshwater quality appears to intend to direct territorial authorities to carry out section 30 RMA functions with respect to managing discharges to water. This is but one specific example of one of the many significant concerns raised by territorial authorities in their submissions on Proposed RPS Change 1.

87. It is unclear to me at this time how a territorial authority could manage adverse effects of these activities on water quality attribute states, when territorial authorities do not manage discharges to water or have any legal (or technical) ability to consider the effects of activities on freshwater quality or the attribute states for freshwater set by the Regional Council. It is possible that clarity on this matter may arise as an outcome of the FPP hearing. I understand this is a key area of contention that is yet to play out through the proposed RPS plan change process, and accordingly I do not recommend the inclusion of the provisions set out in Mr Sheild's evidence or supplementary evidence.

88. Paragraph 33 Mr Shield's evidence identifies and alleged error in the Council's evidence report with respect to the intent of the GWRC submission requesting Proposed RPS Change 1 be given effect to through the IPI. Paragraph 28 of Ms Guest's evidence points to a similar opinion on the intent of the GWRC submission.

89. I maintain a contrary view to Mr Shields and Ms Guest on this point. My opinion is based on the effect of the requested amendments to the IPI that relate to Proposed RPS Change 1. Notwithstanding the term *have regard to* is used by GWRC in its submission and reiterated in the evidence of Mr Shield and Ms Guest, upon the consideration of the requested amendments it is evident that the effect of the requested relief would result in the IPI giving effect to the specific Proposed RPS Change 1 provisions as set out in the submission and evidence submitted for GWRC.

90. In my opinion, simply prefacing the requested relief with a request to *have regard to* Proposed RPS Change 1, while clearly requesting specific amendments to the IPI to include RPS Change 1 provisions demonstrates a disconnect between the stated intent of the submission, with its' actual intent.

91. Notwithstanding the statements in the GWRC submission and evidence that the IPI *has regard* to Proposed RPS Change 1, the effect of the relief requested with respect to the inclusion of Proposed RPS Change 1 provisions within the IPI has the effect of requesting the IPI *gives effect* to Proposed Change 1. It is for this reason that I carefully considered and detailed in Appendix 1 to the Council's evidence report the following matters:

    i the stage of the planning process Proposed Change 1 is at and the resulting uncertainty in the final operative provisions;

ii the content of submissions from territorial authorities (including Upper Hutt City Council), and other parties on Proposed Change 1 which specifically address matters of merit and potential lawfulness of Proposed Change 1 provisions; and

iii the appropriateness and potential implications that may arise should the IPI include the requested provisions including the potential necessity to initiate another formal plan change process to delete or amend Proposed RPS Change 1 provisions that have been deleted or amended through the RPS change and appeals processes.

92. I do not share the opinion expressed during the hearing by Ms Guest that the principles of RPS Change 1 will not change through the plan change process. In my experience of conducting district plan reviews and processing plan changes in general, I consider it more likely than not that the provisions of RPS Change 1 will be amended via the hearings and appeals processes in response to evidence and legal submissions presented to the Hearings Panels and the courts.

93. I have considered the matters raised in the legal submission prepared by Ms Anderson and Ms Manohar, most notably the advice at paragraph 3.7 that:

> *In order to 'have regard' to Change 1 to the RPS, the Panel is required to give genuine thought and attention to Change 1 and cannot simply disregard it based on where it is currently at in the Schedule 1 process, or simply because there are submissions in opposition to it.*

94. I confirm I have given genuine thought and attention to all Proposed RPS Change 1 provisions requested by Greater Wellington's Regional Council to be included in the IPI. I have many planning-based concerns and questions with respect to a disproportionate number of the proposed RPS provisions. For those provisions where I do not have significant concerns, I still do not recommend their inclusion in the IPI for the same reasons I provide in the Council's evidence report, Appendix 1 to the Council's evidence report, and above.

95. To a large extent my opinion on the merit of the requested Proposed RPS Change 1 provisions are echoed within submissions on the proposed RPS provisions made by territorial authorities in the Region including the submissions of:

i. The Kapiti Coast District Council;

ii. Porirua City Council; and

iii. Upper Hutt City Council.

96. To assist the Hearings Panel in understanding the nature and content of these submissions regarding the merit of Proposed RPS Change 1 provisions, and to address the potential legal matter addressed in the legal submissions I attach these submissions as **Appendix 5**.

97. I do not repeat the content of these submissions in this right of reply; however I consider the content of these submissions provide justification for the Panel taking a precautionary approach when considering whether to include any of the provisions of proposed RPS Change 1 in the IPI.

98. I retain my recommendation that the Council let the RPS plan change process run its statutory plan change process rather than attempting to predetermine the merit of the provisions, and incorporate any provisions from the proposed plan change.

99. Turning to the specific requested amendment to the definition for hydraulic neutrality, Ms Guest's evidence seeks the following amendments:

> **Hydraulic neutrality** means managing stormwater runoff from all new subdivision and development through temporary storage and controlled release ~~either on-site disposal or storage~~, so that stormwater is released from the site at a rate that does not exceed the predevelopment peak stormwater runoff for the 10% and 1% rainfall Annual Exceedance Probability event.

100. I have considered the requested amendments in light of the direction provided by operative RPS Policy 42. Policy 42 is a policy which must be considered when changing a district plan. It is not a mandatory policy which must be given effect to. Policy 42 is as follows:

> ***Policy 42: Minimising contamination in stormwater from development – consideration***
> *When considering an application for a resource consent, notice of requirement, or a change, variation or review of a district plan, the adverse effects of stormwater run-off from subdivision and development shall be reduced by having particular regard to:*
>
> *(a) limiting the area of new impervious surfaces in the stormwater catchment;*
> *(b) using water permeable surfaces to reduce the volume of stormwater leaving a site;*
> *(c) restricting zinc or copper roofing materials, or requiring their effects to be mitigated;*
> *(d) collecting water from roofs for domestic or garden use while protecting public health;*
> *(e) using soakpits for the disposal of stormwater;*
> *(f) using roadside swales, filter strips and rain gardens;*
> *(g) using constructed wetland treatment areas;*
> *(h) using in situ treatment devices;*
> *(i) using stormwater attenuation techniques that reduce the velocity and quantity of stormwater discharges; and*
> *(j) using educational signs, as conditions on resource consents, that promote the values of water bodies and methods to protect them from the effects of stormwater discharges.*

101. I consider that clauses (e) - (i) to be of most relevance to determining the most appropriate definition for hydraulic neutrality. Although I consider the additional wording requested in Ms Guest's evidence gives effect to clause (i) of Policy 42, in my opinion the requested deletion of reference to *on-site disposal or storage* would result in the definition being less consistent with clauses (e), (g), and (h), and therefore less consistent with Policy 42 of the operative RPS.

102. I consider that the requested insertion of reference to *temporary storage and controlled release* duplicates the latter part of the definition that requires stormwater release from a site to be at a rate that does not exceed the predevelopment peak stormwater runoff for the 10% and 1% Annual Exceedance Probability event. In order for a development to achieve this, I consider it would be necessary to temporarily store and release stormwater at a controlled rate.

103. I therefore do not recommend any amendments to the definition for hydraulic neutrality. However, in conducting this analysis I have identified the need to delete the existing definition for hydraulic neutrality which is to be replaced by the definition contained in the IPI. I

therefore recommend the following consequential amendment to delete the existing definition for hydraulic neutrality as follows:

~~**Hydraulic Neutrality**~~	~~the principle of managing **stormwater** runoff from all new allotment or development areas through disposal or stored on-site and released at a rate that does not exceed the peak **stormwater** runoff when compared to the pre-development or **subdivision** situation~~

104. Finally, as requested by Commissioner Faulkner, I have turned my attention to whether there are any matters in the Whaitua with respect to stormwater that could be reasonably and practicably included in the IPI.

105. Having completed this exercise I maintain my opinion that the content of the Whaitua is inseparably linked with the content of Proposed RPS Change 1, and that the most appropriate time to amend the District Plan to address the matters contained in the Whaitua would be when clarification is provided on roles and responsibilities of territorial authorities once Proposed RPS Change 1 is made operative.

106. I do not recommend any changes to the Council's evidence report.

Silver Stream Railway Incorporated (S48)

(A) Statement of Simon Edwards dated 2023, including historical acoustic evidence prepared by Marshall Day Acoustics dated 9 December 2014.

(B) Verbal presentations to the Panel by Mr Edmonds and Mr Durry for Silver Stream Railway Incorporated on 28.04.23.

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107. I have read the statement and accompanying information provided by Mr Edmonds.

108. Although I agree with Mr Edmonds that it is likely residents in the area proposed to be rezoned to High Density Residential Zone will be living with the existing effects of noise generated by activities within the Silver Stream Railway Inc site, I do not consider a 'no complaints' covenant to be an appropriate mechanism to address this situation. Notwithstanding Mr Edmonds' affirmation that sites developed for residential use in the area proposed for rezoning are already subject to such a covenant, I make my opinion on the inappropriateness of the Council using such instruments clear in the Council's evidence report. I have not changed my opinion on this matter.

109. I state in the Council's evidence report that in the event of adverse noise effects on residents becoming an issue in the future, I do not consider the assumption that the operations of Silver Stream Railway are carried out under existing use rights provides an exclusion for the submitter's duties under sections 16 and 17 of the RMA. I have not changed my opinion on this matter. It is also my experience that existing use rights must be demonstrated with supporting evidence rather than assumed, and that they are not open-ended with respect to the scale, intensity, and character of effects on the environment.

110. Notwithstanding my opinion on the use of private 'no complaints' covenants on the titles of allotments, I note that any existing restrictive covenants placed on the titles of properties in the vicinity of the Silver Stream Railway Incorporated site will continue to be subject to those

restrictions. It is my understanding that any future subdivision creating new allotments will pass on any such restrictions onto newly created allotments from the parent allotment (unless they are surrendered), pursuant to section 307 or section 307F of the Property Law Act 2007, and section 116 of the Land Transfer Act.

111. During the verbal presentation to the Panel by Mr Edmonds and Mr Durry I became aware that my advice to the Panel in the Council's evidence report did not address the submitter's concerns regarding the proposed rezoning of 44 Kiln Street (Lot 1 DP 85787) from Industrial Zone to High Density Residential Zone. I acknowledge I overlooked this site during the preparation of the evidence report. The advice in the Council's evidence report is specific to the residentially developed area to the north-east of this site. As Lot 1 DP 85787 is still in industrial use, I committed to revisiting the site to reconsider my advice with respect to this site, and to provide an update to the Panel in the Council's right of reply.

112. I have revisited the area and viewed from the road the activities carried out on Lot 1 DP 85787. I confirm the activities carried out on the site are industrial in nature including a haulage yard and the storage of heavy machinery.

113. In considering my advice on this site I am mindful that the owner of the site has not made a submission or further submission on the IPI. However, I can confirm that the site owner provided feedback on draft Plan Change 50[17] in support of the proposed the rezoning of the site to High Density Residential Zone[18]. In the feedback on the draft plan change the owner describes the planned residential development of the site in conjunction with other sites in the vicinity.

114. I acknowledge this information sits in the background to the preparation of the IPI, and the earlier support of the owner was not followed through with a submission on the IPI. However, as the only indication of the position of the owner of the site with respect to the proposed rezoning, I consider it carries relevance to the Panel's consideration of whether to rezone the site to High Density Residential Zone and therefore attach their feedback at **Appendix 6.** I confirm that Council records show that the site was in the same ownership at the time of preparing this right of reply.

115. Based on the previous support of the owner to rezone the site to High Density Residential Zone, and my opinion on the ability of the Council to consider and address potential reverse sensitivity effects via the imposition of conditions on resource consent applications, I recommend the proposed rezoning of the site to High Density Residential Zone be retained. I note that my recommendations in response to the Panel's Question 3 above to include more direct policy direction on the potential methods to address reverse sensitivity effects may also help address the concerns raised by Mr Edmonds and Mr Durry.

116. I do not recommend any changes to the Council's evidence report.

[17] Draft plan change 50 was prepared by Upper Hutt City Council to give effect to the NPS-UD policy 3 requirements prior to the release of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

[18] See section 3 of **Appendix 6**.

Ryman Healthcare Ltd (S57 & FS15), and The Retirement Villages Association of New Zealand Incorporated (S64 & FS14)

(A) Evidence of Philip Hunter Mitchell dated 14 April 2023;
(B) Evidence of Ngaire Margaret Kerse dated 14 April 2023; and
(C) Economic evidence of Gregory Michael Akehurst dated 14 April 2023.
(D) Statement of Matthew Glen Brown dated 17 April 2023.
(E) Statement of John Nicholas Charles Collyns dated 17 April 2023.
(F) Legal submissions prepared by Luke Hinchey - Counsel for Ryman and the Retirement Villages Association dated 19 April 2023.
(G) Supplementary evidence of Nicola Marie Williams dated 17 May 2023.
(H) Supplementary evidence of Gregory Michael Akehurst dated 17 May 2023.

117. I have read the evidence, statements, legal submission, and supplementary evidence provided by the respective experts and representatives for the submitter.

118. The evidence of Dr Mitchell requests a suite of amendments to specifically provide for retirement villages. Some of the requested amendments differ to those requested in the submission of the Retirement Villages Association of New Zealand, however on my reading, the general intent of the requested new provisions is consistent with that requested in the submission.

119. The submitter raises specific concerns regarding the proposed financial contribution provisions.

120. I have considered Dr Mitchell's evidence in detail. My review of the submitter's planning evidence has identified a number of significant technical issues and potential unanticipated outcomes which have not been identified or discussed by Dr Mitchell in his evidence, or by Ms Williams during her oral presentation to the Panel. I demonstrate below that the requested provisions for retirement villages are not appropriate when they are considered in detail and scenario tested. I also set out my reasoning for why the case law cited in the evidence of Dr Mitchell and the legal submission of Mr Hinchey is not relevant to how retirement villages should be provided for in the IPI.

121. After addressing the primary planning matters relevant to the submitter's requested retirement village-specific provisions below, I address the matter of financial contributions.

122. It is evident that Dr Mitchell, Ms Williams, and I have very different professional opinions regarding the most appropriate provisions for retirement villages within the IPI. To assist the Panel in making its recommendations on the requested amendments sought by the submitter, I have focused my advice on:

a. the technical planning implications of the requested relief;

b. the relevance of the caselaw cited by Dr Mitchell and Ms Williams; and

c. identifying other important matters for the Panel's consideration.

123. Important points of difference between how I have considered the potential effects, costs, and benefits of retirement villages, and the effects of the requested retirement village-specific provisions versus how Dr Mitchell and Ms Williams have considered them arises from:

a. In addition to how retirement villages are currently developed and managed, I have also considered the implications of future retirement villages that may be developed by potential future retirement village providers in accordance with the National Planning Standards definition for *retirement village*.

b. Dr Mitchell has focused his opinion on the interpretation of retirement villages from case law that confirmed retirement villages are residential activities, however neither Dr Mitchell's evidence or the legal submission of Mr Hinchey acknowledge or discuss the implications of the mandatory National Planning Standards definition for retirement villages. I consider that the mandatory definition is broader than that considered by the courts. I include my specific findings following a review of the case law below.

c. Dr Mitchell's evidence appears to be based on an assumption that retirement villages will be provided in the future in the same manner as they have been provided by existing providers historically. Dr Mitchell's evidence has not scenario tested other interpretations of the relatively new and compulsory definition for *retirement village*, and has not sought to identify any potential unintended consequences that may arise from the requested permitted activity status for all activities that may be carried out as part of a retirement village under the definition – including unspecified non-residential activities.

d. Dr Mitchell's evidence considers, erroneously in my view, that any potential adverse environmental effects that may arise from the activities within a proposed retirement village can be considered and appropriately avoided, remedied or mitigated via permitted activity status for all activities within a retirement village, while only the buildings within a retirement village require resource consent. In my experience, it is the activities on a site, rather than the buildings themselves that generate potential adverse effects such as transportation effects, noise, cumulative effects, and effects on the role and function of the relevant centres zones.

124. I provide more detail on the above matters, and identify other issues in my analysis and advice below. As part of my review of Dr Mitchell's evidence I have considered the section 32AA evaluation included at Appendix C to Dr Mitchell's evidence prepared in support of the requested amendments. My observation is the section 32AA evaluation has been carried out at a high level only, and has not identified or evaluated any of the potential costs, adverse effects, consequences or risks I identify in my discussion above and below.

125. The planning evidence of Dr Mitchell focuses on the positive effects and benefits of retirement villages, and their importance in the provision of housing for older people. Although I agree that providing housing for an ageing population is important, I also consider there to be a number of costs and potential adverse effects associated with the activities that may be included under the definition for *retirement village* that Dr Mitchell either does not identify, or only addresses at a high level.

126. Dr Mitchell's evidence with respect to the identification and management of potential adverse effects that may arise from a retirement village focuses on the effects of buildings associated

with retirement villages, rather than the wide variety of activities that could be established under the definition for retirement village, and their potential effects including cumulative effects. I consider Dr Mitchell's evidence is based on the incorrect application of the applicability of case law, which is then used inappropriately as the basis for considering the potential adverse effects of the activities that fall under the definition for retirement village. Specific matters that I consider are overlooked in the evidence of Dr Mitchell include:

a. Retirement villages by their very nature provide an exclusive private residential environment that, in my experience, do not provide open spaces, roads, facilities, commercial and non-residential activities that are lawfully accessible to the surrounding community. At large scale, and as the number of retirement villages increases in the future to meet demand, the cumulative loss of urban zoned land for housing and other activities that is available for all members of a community is likely to increase. At paragraph 23 of Dr Mitchell's planning evidence, he takes a contrary view to mine on the potential policy implications of such an outcome. I consider the opinion expressed by Dr Mitchell represents a snapshot in time which does not take into account the potential cumulative effects and unanticipated outcomes of the requested provisions. I consider that the potential cumulative effect of the requested provisions may prove to be contrary to objective 1 of the NPS-UD. I note that well-functioning urban environments enable *all* people and communities to provide for their social, economic, and cultural wellbeing, now and into the future. The exclusive and private use of large areas of urban zoned land for one particular age and economic demographic may, over time, result in the cumulative loss of large areas of urban zoned land to the exclusive occupation and use by one age and economic demographic group of a community. I consider such an outcome would be contrary to the NPS-UD directive with respect to a well-functioning urban environment. I consider that the likelihood of such an outcome would increase over time should the Panel consider that permitted activity status is the most appropriate method to provide for retirement villages.

b. In my experience, retirement villages generally do not provide any public roads or pedestrian linkages through a site, or any public open space. This can result in desired community roading and active transportation infrastructure and connections not being provided as part of the development of large urban zoned sites. This can also result in the lost opportunity for the provision of additional community public open space that is available to the surrounding community. I note the requested matters of discretion put forward by Dr Mitchell in his evidence would not enable the consideration of the actual and potential effects of these matters unless they are specifically listed as matter of discretion. I note Dr Mitchell has not proposed such matters of discretion. I also consider it would only be possible to consider such matters under Dr Mitchell's requested provisions if the effects could be attributed to a proposed building. I have not identified any rational or justifiable matters of discretion that could be applied to address the issues I identify above to the consideration of the effects of buildings within a retirement village.

c. At paragraph 14.1 Dr Mitchell points to the increasing demand for retirement villages outstripping supply, but then does not make a connection between the anticipated future increase in the use of large urban zoned sites for retirement villages with *any* consequential costs or adverse effects such as:

(i) Potential opportunity costs and cumulative effects that may arise from the continued loss of large areas of urban zoned land for other uses such as private housing, commercial activities, and other businesses that are available for all members of a community. The potential effect of this on achieving the relevant objectives of the GRZ, HRZ, and the role of the Commercial and Mixed Use Zones is also not considered. In addition, the links to community outcomes under the LGA as specified in Council strategies such as the Open Space Strategy 2018-2028, and the Land Use Strategy 2016-2043 are also not considered. I note the Council is required to have regard to these matters when changing a district plan under section 74(2)(b)(i) of the RMA.

(ii) Potential social costs resulting from the exclusive and private use of large sites that are not accessible to the public. In my experience of processing and reviewing resource consent applications for retirement villages, I am yet to see an application for a retirement village that proposes the creation of public open spaces, public roads, or other public facilities and activities that are available to the surrounding community. In my experience, retirement villages provide an exclusive and private residential and non-residential environment that is not accessible to the surrounding community.

(iii) Potential adverse environmental effects that may result from non-residential and commercial activities within retirement villages such as noise from the use of bowling greens, restaurants or bars positioned near the boundaries of a retirement village. I note the provisions requested by Dr Mitchell would not enable the Council to manage the location, size, number, or hours of operation of these activities. The planning justification for treating these activities in a different way to how the same activities are treated outside of a retirement village is not a matter addressed by Dr Mitchell in his planning evidence, apart from expressing an opinion that all these activities would be deemed a residential activity. This is also not a matter addressed by Mr Akehurst in his economic evidence. I consider the potential adverse effects of these activities would be the same or similar regardless of whether they are located within a retirement village or on another site. I consider that the matters of discretion that would be necessary to appropriately address these matters would comprise a long list, such that I consider discretionary activity status for retirement villages is more appropriate.

d. Potential adverse effects on the role and function of Commercial and Mixed Use Zones where demand for commercial and other non-residential activities are met via facilities, commercial activities, and other services within a retirement village. The potential effect of this is not addressed by the planning evidence of Dr Mitchell, or the economic evidence of Mr Akehurst. In addition, the requested matters of discretion in Dr Mitchell's evidence for buildings within a retirement village would not enable the consideration of these potential effects.

e. Potential reverse sensitivity effects associated with the requested permitted activity non-residential and commercial activities within retirement villages are not (and in

my opinion, cannot be) addressed by the requested restricted discretionary activity rule and matters of discretion for buildings within a retirement village.

f. The definition for retirement village is broad, and subject to interpretation as follows:

> ***Retirement village*** *means a managed comprehensive residential complex or facilities used to provide residential accommodation for people who are retired and any spouses or partners of such people. It may also include any of the following for residents within the complex: recreation, leisure, supported residential care, welfare and medical facilities (inclusive of hospital care) and other non-residential activities.*

In my opinion, the matters that are open to interpretation and yet to be settled through plan implementation include:

i Reference to *other non-residential activities*. Non-residential activities could include any form of activity that falls into the non-residential category. Neither the National Planning Standards nor the District Plan provide a definition for non-residential activity, therefore compounding this interpretation issue.

ii Reference to *people who are retired* is not defined. This is not linked with any other definition that may refer to the age of residents, their superannuation status, or any other definition from relevant legislation. The term "retired" can simply mean having left one's job and ceased to work (for the time being). In my view, it is not necessary to be of retirement age, or to have permanently ceased to work for a proposed "retirement village" to comply with this definition.

iii Reference to "… may also include any of the following for residents within the complex". In my opinion, this does not limit the list of activities and any other non-residential activities to the *exclusive* use of residents.

In my experience, this level of uncertainty and openness to interpretation can result in unanticipated consequence of activities that are not intended to fall under the definition, such as a mixed-use development that includes residential activities, being able to demonstrate compliance with the definition for retirement village. In my opinion, the possibility for misuse of the definition for *retirement village* would be likely to increase significantly should retirement villages be provided for via permitted activity status due to the notable difference in activity status for similar non-residential activities that include residential activities available for 'people who are retired'.

g. Retirement villages and the associated listed activities, in addition to the potential additional unspecified non-residential activities will generate vehicle movements. In my experience, and as confirmed though my discussions with Mr Wignall, retirement villages generally result in fewer vehicle movements than a traditional residential environment, however they do generate vehicle movements nonetheless from:
   (i) residents who still use a private motor vehicle.
   (ii) family members and friends visiting residents.

(iii) employees associated with supported residential care, welfare, medical facilities (including hospitals), restaurants, and administrative services for the retirement village.
(iv) Services and delivery of supplies.
(v) Rubbish collection.
(vi) taxis and other alternative transport vehicles (such as minivans) for residents who no longer drive.

I consider these vehicle movements arise from the *activities* carried out within a retirement village as opposed to being the result of *buildings*. Depending on the access point from a retirement village to a legal road, and the safety and capacity of the receiving road, the adverse transportation effects from a retirement village may be significant enough that it would be appropriate for the Council to consider the effects via a resource consent, and potentially a notified resource consent. I consider it would not be possible to consider such effects under the permitted activity regime for retirement villages, or the restricted discretionary regime for buildings put forward in Dr Mitchell's evidence.

h. The effect of providing for retirement villages, and all associated non-residential activities as a permitted activity would significantly shift the permitted baseline for other similar activities and developments within the General Residential Zone, High Density Residential Zone, and the Commercial and Mixed Use Zones. Although applying the permitted baseline is a discretionary power granted to the Council, this may lead to an increase in environmental outcomes that are inconsistent with the relevant objectives.

127. I do not agree with the premise put forward by Dr Mitchell and Ms Williams that retirement villages must be provided for as a permitted activity, nor do I agree that retirement villages are currently required to obtain approval via a notified resource consent - although I note a notified or limited notified outcome may be appropriate on a case-by-case basis. There are retirement villages currently located within Upper Hutt that have been successfully established via the existing district plan provisions and resource consent process. I therefore consider the district plan provisions do not prejudice or treat proposed retirement villages in an inappropriate way.

128. During his verbal presentation to the Panel, Mr Collins acknowledged that some resource consent applications for retirement villages are processed by way of notification. As notification decisions are based on adverse effects, I consider this demonstrates that the activity of a retirement village itself can result in effects on the environment that are either no more than minor, or more than minor. In my experience, notification decisions on resource consent applications are based on the adverse effects or potential adverse effects generated by the activities within a retirement village, such as adverse transportation effects. I note that such effects are not the result of buildings within the retirement village, but are rather the result of the use of buildings and other areas within a proposed retirement village.

129. As I detail above, in the consideration of the most appropriate district plan provisions for retirement villages, I have applied a wider lens than that applied in the submitter's planning evidence, and I have considered the relevance of the cited caselaw. I have considered a wider range of matters with respect to the potential benefits, costs, and effects of retirement villages. I have also identified a potential unanticipated outcome with respect to policy

direction as a result of the potential cumulative effects of retirement villages over the life of the District Plan, and potential misuse or misinterpretation of the definition for retirement village. I remain unconvinced that permitted activity status for retirement villages is appropriate, or that the requested restricted discretionary activity rule for buildings is sufficient to enable the Council to consider and address all the actual and potential effects of retirement villages.

130. I consider that a number of Dr Mitchell's requested matters of discretion for buildings associated with a retirement village are not valid as they relate to potential effects that would be relevant to the consideration of the *activities* proposed within a retirement village rather than effects that may result from the number, bulk and location of proposed buildings. An example of this can be seen at paragraph 97 of Dr Mitchell's evidence where new retirement village-specific matters of discretion for proposed buildings are proposed as follows:

> ***GRZ / HRZ – RX Retirement Villages***
>
> *a. The effects arising from exceeding any of the relevant density standards.*
> *b. The effects of the retirement village on the safety of adjacent streets or public open spaces.*
> *c. The effects arising from the quality of the interface between the retirement village and adjacent streets or public open spaces.*
> *d. The extent to which articulation, modulation and materiality addresses adverse visual dominance effects associated with building length.*
> *e. The matters in [GRZ P1A-E, P1, P2, P4, P5, P6, P7, P8, P9, P11 and PX (New policies)] and / or [HRZ P1 – P8 and PX (New policies)] (insert as required).*
> *f. The positive effects of the construction, development and use of the retirement village.*
> *g. For clarity, no other rules or matters of discretion relating to the effects of density apply to buildings for a retirement village.*

131. In particular, clauses b), c), and f) of the requested new matters of discretion above include the effects of a retirement village itself rather than any specific building. Clause b) relates to the design and layout of a proposed retirement with respect to adjacent streets or public places. A resource consent for buildings within a retirement village would not, in my view, enable the consideration of the effects of a retirement village on the safety of adjoining streets, such as adverse effects on transportation safety. Clause f). relates to the positive effects of the operation of *activities* within the retirement village rather than the positive effects associated with buildings within a retirement village.

132. In my opinion, sound resource management practice reserves permitted activity status for activities where the council is confident that compliance with any permitted activity requirements, conditions, and permissions will adequately manage the effects expected (including cumulative effects). I have no such confidence in permitted activity status for retirement villages. Based on my observations as a result of scenario testing the requested permitted activity approach put forward by Dr Mitchell and Ms Williams, it is clear to me that permitted activity status is not appropriate for the unspecified non-residential activities that may be associated with a retirement village.

133. I also observe that the evidence of Dr Mitchell does not acknowledge or discuss the possibility that the effects of a retirement village may result in outcomes that are contrary to the purpose of a residential zone, or a Centres and Mixed Use zone such as the loss of a centre zone for its

intended role and function of providing services and facilities to the community. This potential outcome, and the associated costs to the community that may arise from permitted activity status is not acknowledged in either the body of Dr Mitchell's planning evidence or the section 32AA evaluation prepared to support the requested provisions.

134. With respect to the requested new policies put forward in Dr Mitchell's evidence for an ageing population, "larger sites", the application of a permitted baseline, and the changing diverse residential needs of communities, I remain unconvinced these policies would add value to decision makers during the consideration of a resource consent for retirement villages. I agree with Ms Williams' observation during her presentation to the Panel that the requested policies contain much duplication. I assume Ms Williams was referring to duplication between the requested policies, however I would take this a step further by highlighting the duplication between the requested policies and the direction and requirements of the policies of the NPS-UD. I have addressed this matter in the Council's evidence report.

135. I have reviewed the existing district plan and IPI provisions for all zones. I have not identified any policies that would prejudice the consideration of the development of 'larger sites'[19], or prevent the consideration of the changing and diverse residential needs of communities including an ageing population. With respect to the requested policy addressing the changing and diverse residential needs of communities , on my reading it simply rewords and repeats the requirements of policies 1 and 6 of the NPS-UD, which decision makers must already have regard to under section 104(1)(b)(iii) of the RMA.

136. I also remain of the view that the permitted baseline for building height, setbacks, height in relation to boundary, and other Medium Density Residential Standards can be applied on a discretionary basis to buildings within retirement villages should the Council be of the view it would be appropriate to apply a permitted baseline in this scenario. Within the General Residential Zone this would include the effects of three residential units up to 11 metres in height, and all other associated MDRS density standards. I remain of the view that the Council's discretion on whether to apply a permitted baseline should be informed by the site-specific circumstances, and only where:

    a. The permitted baseline comprises a non-fanciful activity.

    b. The application of a permitted baseline would not be inconsistent with objectives and policies in the plan.

    c. The application of a permitted baseline would not be inconsistent with Part 2 of the RMA, as specified in the statutory relevant planning documents.

137. In my opinion, this direction is sufficient for the Council in its decision on whether or not to apply a permitted baseline for buildings associated with retirement villages. I consider the RMA already enables the Council to consider the MDRS building height, yards, and other density standards as a permitted baseline for buildings within a retirement village. I do not consider additional policy direction to be necessary or appropriate for what the RMA intends to be a case-by-case discretionary decision by the Council.

138. I also have concerns that the additional policies requested in Dr Mitchell's evidence would apply to all resource consent applications within the relevant zones. Although this outcome is

[19] The term 'larger sites' is not defined. This would lead to uncertainty and debate on the applicability of the requested policy e.g. at what point (m²) does a site become a "larger site"?

acknowledged by Dr Mitchell in his evidence, the potential unanticipated consequences of this do not appear to have been tested. An example is the resulting uncertainty in making a determination on what constitutes a 'larger site' within the General Residential Zone.

139. With respect to the request for a new definition for 'retirement unit', upon close inspection it appears this request has not been tested for unintended consequences across the district plan. I discuss examples of these unintended consequences below. I also consider the requested new definition to be somewhat contradictory to the assertion by Dr Mitchell, Ms Williams, and Mr Hinchey that all activities within a retirement village are 'residential activities'.

140. I note a key component of this requested definition is to ensure 'retirement units' are not considered to be residential units, even if they contain all necessary components to be deemed as such under the definition for *residential unit*. I have reviewed the implications of the requested new definition and have found that it would result in contradiction and uncertainty in the application of numerous provisions across the district plan that refer to the definitions for *residential unit, habitable room, net site area, outdoor living space,* and *urban environment allotment.* These unintended consequences would result in multiple provisions no longer applying to residential units within retirement villages, such as rules that manage natural hazards (including rules NH-R4, NH-R10, NH-R11, NH-R15, NH-R20, and standards NH-S9).

141. I also note the requested new definition would have the effect of ensuring the financial contribution provisions do not apply to residential units within a retirement village. I have reviewed the evidence of Dr Mitchell, for example from paragraph 58, and I have not found any reference to these outcomes regarding the applicability of existing and proposed district plan provisions, nor are they identified in the section 32AA evaluation attached to Dr Mitchell's evidence. It is important to note that these are only samples of unintended consequences that would result from the requested new definition for 'retirement unit'. I have not identified all the consequences across the district plan and IPI, however I consider the above examples provide sufficient resource management justification for rejecting the requested new definition.

142. I have considered the matters raised in the legal submissions prepared by Mr Hinchey. I do not contend that the requested relief is within scope of the IPI. As I detail in the Council's evidence report and above, my recommendations with respect to the requested amendments to the IPI sought by the Retirement Villages Association of New Zealand are based on my professional opinion and experience on planning matters.

143. I note that at paragraph 53 of Dr Mitchell's evidence, it is asserted that the Courts have confirmed that retirement villages are residential activities. Paragraph 58 of the legal submission prepared by of Mr Hinchey provides more detail on the relevant case law. On my reading, Dr Mitchell's evidence relies heavily on his opinion on the applicability of this case law to the consideration of retirement villages, as defined by the National Planning Standards, within the IPI. I have carefully considered this case law, and I note:

    a. In the case *Te Rūnanga o Ngāti Awa v Whakatāne District Council* [2022] NZHC 819, the Court considered a definition of *dwellinghouse*, and its' applicability to provisions within the 'Lifestyle and Retirement Precinct' under the Whakatane District Plan. The court did not apply or discuss the National Planning Standards definition for retirement village, which includes specific reference to other *non-residential*

activities. On my reading of this case, it is specific to the provisions of the Whakatane District Plan, and it would not be appropriate to apply the Court's findings to retirement villages as defined by the National Planning Standards.

b. In the case *Hawkesbury Avenue, Somme Street and Browns Road Residents Association Inc v Merivale Retirement Village Ltd, AP 139/98,* a declaration was sought that the *rest home* activities applied for in a 1997 resource consent application comprising 48 rest home beds, 18 studio beds, nursing care, and associated facilities was a residential activity under the definitions contained in the Christchurch City Council Proposed District Plan. I note the Court's decision applied to the specifically above listed activities within the resource consent application for a rest home rather than a retirement village, and only with respect to definition for *residential activity* that was contained in the Christchurch City Proposed District Plan at the time. On my reading, the Court did not apply a definition for *retirement village* that is consistent with or similar to the National Planning Standards definition. Further to this, *rest homes* are provided for as permitted activities within the GRZ and HRZ on account of their effects being consistent with residential activities.

144. Having considered the specific circumstances of the caselaw cited by Dr Mitchell and Mr Hinchey, I consider the caselaw to be irrelevant to the consideration of provisions for retirement villages under the IPI.

145. Mr Hinchey's legal submission does not identify or discuss the implications of the National Planning Standards definition to the applicability of the cited case law. My findings having read the two cases is that both are specific to the relevant definitions and precincts provided in the Whakatane District Plan and the Christchurch City Proposed District Plan at the time. I did not identify any matters of relevance to how retirement villages are to be provided for within residential and commercial and mixed use zones in Upper Hutt via the IPI under the National Planning Standards definition for retirement village.

146. Contrary to Mr Collins's statement to the Panel, I reiterate that I have acknowledged in the Council's evidence report that retirement villages *include* residential activities. I have not stated that they *are* residential activities. Due to the wording of the definition for *retirement village*, I remain of the view that they cannot be considered solely as residential activities on account of the definition referring to *other non-residential activities*[20]. For the reasons I described above, the case law cited by Dr Mitchell and Mr Hinchey has not changed my opinion. I consider the case law identified by Mr Hinchey and cited in Dr Mitchell's evidence to be irrelevant to the consideration of retirement villages under the IPI. The case law simply does not refer to retirement villages under the National Planning Standards definition.

147. I consider that if it was the intent of the National Planning Standards that retirement villages were to be considered as residential activities, the National Planning Standards definition for *residential activity* would refer to retirement villages, and there would be no separate definition for retirement village. This is not the case. I consider that from a resource management effects-based perspective, this separation is intentional and appropriate.

[20] The definition for *retirement village* makes it clear that they include residential accommodation and other *non-residential activities*. Thus, they cannot be considered solely as *residential activities* under the National Planning Standards definitions for *retirement village*, or *residential activity*.

148. With respect to the potential evolution of the unspecified 'other non-residential activities' within a retirement village in the future in response to the changing preferences of residents, it is clear that the definition for retirement village allows for any non-residential activity that is available (but not exclusively) to residents. Mr Collins acknowledged that existing non-residential activities such as gyms, swimming pools, cafes, and restaurants are available and used by visitors such as grandchildren or other relatives and friends of residents. Mr Collins also acknowledged that some retirement villages include facilities such as cafes that are open to the public.

149. Mr Hinchey stated that in such circumstances, it is his understanding that this would trigger the requirement for a resource consent. Having considered the broad definition for *retirement village*, and the requested provisions and assertion Dr Mitchell's evidence that 'all activities within a retirement village are residential activities', it is unclear to me what the rule trigger would be under the submitter's requested permitted activity rule. Mr Hinchey contended that under the scenario where a non-residential activity within a retirement village is made available to non-residents, a rule would be triggered and a resource consent required. On my reading of the planning evidence of Mr Mitchell, this outcome is not demonstrated. In my opinion, a scenario under the submitter's requested permitted activity status where a non-residential activity within a retirement village is made available to residents *and* non-residents, it would be difficult for the Council's enforcement section to take enforcement action, regardless of the environmental effects. In such cases, in my opinion it would be up to the Council to take action under sections 16 and/or 17 of the RMA, and potentially take legal action to ensure adverse effects are appropriately addressed. I do not recommend such an outcome.

150. Whilst answering the Chair's question regarding the future activities that may be made available to non-residents of a retirement village and how these could be managed, Mr Hinchey acknowledged that "there is a line somewhere where it may turn into a village centre". Mr Hinchey then contended that these matters have all been considered and settled already by the courts as detailed in the cited case law. As I outline above, I do not agree with Mr Hinchey or Dr Mitchell on the direct relevance of the caselaw to the consideration of retirement villages under the IPI, nor under the National Planning Standards definition for *retirement village*.

151. With respect to the matters raised in the economic evidence and supplementary evidence of Mr Akehurst with respect to the IPI financial contribution, I have specifically addressed the financial contributions provisions in response to the Panel's Question 14 above.

152. Setting aside any recommended changes to the financial contribution provisions which I address in response to Question 14 above, I do not change my recommendations within the Council's evidence report.

Silverstream Land Holdings Ltd (S62)

(A) Planning evidence of Maciej (Mitch) Wiktor Lewandowski dated 14 April 2023;
(B) Infrastructure evidence of Michael Matt Clarke Flannery dated 14 April 2023;
(C) Landowner statement of Brian McGuinness dated 14 April 2023; and
(D) Transport evidence of Mark Grant Georgeson dated 14 April 2023.

153. I have read the planning evidence of Mr Lewandowski.

154. I would like to clarify a preliminary matter that is raised in both the evidence of Mr Lewandowski and the legal submission of Mr Conway. Both Mr Lewandowski and Mr Conway correctly note that the Mixed Use Zone for the St Patrick's Estate site was not considered as an option in the section 32 evaluation.

155. Although both Mr Lewandowski and Mr Conway identify this as a shortcoming of the section 32 evaluation, I would like to clarify why the Mixed Use Zone was not identified as an option for the St Patrick's Estate site in the section 32 evaluation. This matter was not addressed in the Council's evidence report, however with the benefit of hindsight, I consider it consider it would have been helpful if I had.

156. All pre-notification correspondence provided to me between representatives of the landowner and the Council on draft plan change 50[21] are consistent with the proposed rezoning of the site for residential use.

157. During the development of the IPI provisions I was in contact with the planner representing the landowner of the St Patrick's Estate site. This planner was not Mr Lewandowski. I provided the planner representing the landowner with an outline of the draft High Density Residential Zone provisions for feedback prior to notification on 10 May 2022.

158. I received a response from the planner representing the landowner on 12 June 2022 asking for details on the date for public notification of the IPI. No concerns were raised with the proposed High Density Residential Zone applying to the St Patrick's Estate Site. There was no suggestion of the Mixed Use Zone being applied to the site.

159. On 13 June 2022 I again emailed the planner representing the landowner advising of the statutory notification date of 20 August 2022, and advised that notification may occur prior to this date. I also requested information with respect to the earthworks that are being carried out within the St Patrick's Estate site to create a flood-free building area for future development.

160. I received a response on 11 July which included details of the relevant Upper Hutt City Council resource consent decision that approved a subdivision and a cleanfill activity for the site (RM2010104). Once again, no concerns were raised with the proposed High Density Residential Zone applying to the St Patrick's Estate Site, and there was no suggestion of the Mixed Use Zone being applied to the site.

161. I received an email from the planner representing the landowner on 15 September 2022 following the notification of the IPI on 17 August 2022. The email signalled that it was likely the landowner would be seeking amendments that would, in addition to high density residential development, the opportunity to establish appropriate non-residential activities as

[21] The now defunct draft plan change that was intended to give effect to the requirements of policy 3 of the NPS-UD prior to the surprise release of the Resource Management (Enabling Housing and Other Matters) Amendment Act 2021, and the associated requirement to incorporate the MDRS and give effect to the amended policy 3 of the NPS-UD: https://www.upperhuttcity.com/Your-Council/Plans-policies-bylaws-and-reports/District-Plan/PC50

part of the overall development of the 'urban precinct', with the ability to expand educational and related facilities in the 'college precinct'.

162. As this correspondence was post-IPI notification, the finalisation of proposed IPI provisions and the section 32 evaluation proceeded on the understanding that the landowner and the Council were of the view that the most appropriate future zoning of the site was High Density Residential Zone to provide a significant contribution toward housing capacity in Upper Hutt. Further, it was considered that there was no desire from the landowner to pursue other activities in a different way to how they are to be provided for in residential zones.

163. It was only via the post-IPI notification email from the planner representing the Landowner, and the formal submission on the IPI by Silverstream Land Holdings Ltd that was prepared by Mr Lewandowski that dissatisfaction was raised with the proposed High Density Residential Zone, and a preference for the Mixed Use zoning in combination with the proposed High Density Residential Zone subdivision provisions also applying.

164. As directed by the Panel verbally during the hearing, and confirmed via the Panel's Minute 6 dated 18 May 2023 Mr Lewandowski and I carried out expert conferencing on the most appropriate provisions for the St Patrick's Estate Precinct.

165. Mr Lewandowski and I have reached agreement on a bespoke set of provisions that address:

    a. the key matters of concern I raised in the Council's evidence report with respect to:

        (i) the most appropriate zoning for the site;

        (ii) provisions to address potential adverse effects arising from large format retailing and retailing on the role and function of the centres zones;

        (iii) transportation effects; and

        (iv) the inclusion of an indicative structure setting out the general location and extent of residential and non-residential activities.

    b. the most appropriate zoning for the St Patricks College site;

    c. the transportation effects concerns raised by Waka Kotahi in the planning evidence of Ms Heppelthwaite for NZ Transport Agency Waka Kotaki.

166. The provisions Mr Lewandowski and I have reached agreement on are attached alongside our signed Joint Witness Statement as **Appendix 3**. There are no outstanding matters. In summary, the recommended provisions comprise:

    a. The rezoning of the non-college area of the St Patrick's Estate Precinct from Special Activity Zone to Mixed Use Zone;

    b. The retention of the Special Activity zoning for the St Patrick's College site to enable the most appropriate zoning and provisions to be considered as part of the Council's District Plan rolling review of all Special Activity Zone sites;

    c. The inclusion of a Precinct structure plan;

    d. Two precinct objectives;

    e. Four precinct policies;

f. A restricted discretionary activity rule for activities or a combination of activities that would generate more than 100 vehicle movements per hour;

g. A restricted discretionary activity rule for new vehicular access to a road;

h. A restricted discretionary activity rule for large format retail, supermarkets, and retail activity;

i. A restricted discretionary activity rule for activities in the Precinct to require the location and extent of activities, landscaping, and active transport routes to be in general accordance with a St Patrick's Estate Precinct Structure Plan;

j. Consequential district plan-wide amendments necessary to:

(i) change the zoning of the Precinct to MUZ;

(ii) retain the St Patrick's College site as Special Activity Zone;

(iii) remove the notified HRZ provisions that proposed to rezone the St Patrick's Estate Precinct from SAZ to HRZ;

k. Amendments to the SUB-MUZ chapter to include a precinct-specific policy; and

l. Amendments to District Plan maps to achieve the above.

167. I recommend the IPI be amended as set out in **Appendix 1.**

Section 32AA Evaluation

168. Please See **Appendix 4.**

Blue Mountains Campus Development Limited Partnership (S46)

(A) Planning Evidence of Maciej (Mitch) Wiktor Lewandowski dated 14 April 2023; and
(B) Landowner statement of David Ian McGuinness dated 14 April 2023

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169. I have read the planning evidence of Mr Lewandowski and the landowner statement of Mr McGuinness.

170. As directed by the Panel's Minute 6 dated 18 May 2023, Mr Lewandowski and I have conducted expert conferencing. Despite out best endeavours, Mr Lewandowski and I were unable to reach agreement on amendments to the provisions for the Blue Mountains Campus site, as confirmed by the Joint Witness Statement included as **Appendix 3**.

171. I do not recommend any amendments to the recommendations in the Council's evidence report in response to the matters raised by Mr Lewandowski or the landowner statement of Mr McGuinness.

172. Turning to the matters raised in the evidence of Mr Lewandowski, I do not agree with the assertion at paragraph 3.8 that states:

> *3.8 Because the provisions of the Wallaceville Structure Plan Development Area prevail over zone based provisions, these are the only permitted activity rules applicable to the Gateway Precinct.*

173. My reasons for disagreeing with Mr Lewandowski on this point is that the wording that sits above the permitted activity rule table for the Gateway of the Gateway Precinct states:

> ***Gateway Precinct***
>
> *The following provisions apply to the Gateway Precinct of the Wallaceville Structure Plan Development Area. They apply in addition to the provisions of the underlying ~~Commercial~~ Local Centre Zone. Where there is any conflict between the provisions the Wallaceville Structure Plan Development Area provisions shall prevail.*

174. My interpretation of this is that the permitted activity rules of the Local Centre Zone apply unless they conflict with the Wallaceville Structure Plan Development Area provisions. This interpretation is shared by Mr Lewandowski at paragraph 3.4 of his evidence.

175. The Gateway Precinct provisions are more restrictive than the Local Centre Zone provisions with respect to the location of residential units where not located on an active frontage under LCZ-S5. I agree with Mr Lewandowski that there are no active frontages identified within the Gateway Precinct. I consider this situation of more restrictive provisions to be a deliberate outcome of the bespoke provisions for the site.

176. I note that at paragraph 3.6 of Mr Lewandowski's evidence where the relevant Gateway Precinct policies are identified, the explanatory text accompanying the policies has not been included. Although it is my opinion that explanatory text has no legal status unless referred to in the policy, this text is relevant to the 'above ground' residential discussion. For policy DEV1-P8 the explanatory text states (emphasis added):

> *The Wallaceville Structure Plan identifies the Gateway Precinct as the location of a local centre incorporating retail, commercial and **above ground level residential uses**. It also establishes intention and outcome expectations based on an analysis of site values, constraints and opportunities. Requiring development to be consistent with the Structure Plan will ensure that future development of the local centre represents sustainable management of the land resource.*

177. As I have detailed in the Council's evidence report, there are a number of discrepancies between the Gateway Precinct provisions, and the explanatory text contained within the Wallaceville Structure Plan. Although I agree with Mr Lewandowski that these discrepancies are unhelpful for plan implementation, I do not change my opinion with respect to the objectives, policies, and rule wording overriding explanatory text within the structure plan.

178. My opinion on the most appropriate method to address these discrepancies is at odds with the requested approach expressed by Mr Lewandowski. I consider the most appropriate method to correct the discrepancies would be to make corrections to the structure plan to ensure consistency with the Gateway Precinct objective, policies (including their explanatory text), and rules. Rather than via the IPI, I consider this would best be achieved via a separate plan change process.

179. As a private plan change with the application of site-specific provisions that differ to the underlying Local Centre Zone provisions, my assumption is the specificity of the Gateway Precinct policies, rules description, and rules are an intentional method to achieve the

Gateway Precinct objective DEV1-O2. I note objective DEV1-O2 does not make reference to the anticipation of ground floor residential activities within the Precinct, nor does it make reference to the Wallaceville Structure Plan.

180. I note that residential activities within the Gateway Precinct may be pursued via discretionary activity resource consent under rule DEV1-R6. Under this scenario, it is my opinion that the structure plan would play an important role in the consideration of the anticipated built urban form within the Precinct. I hold a different view to that of Mr Lewandowski's as expressed at paragraphs 6.9 and 6.10 of his evidence as I do not consider this to be an impediment to obtaining resource consent for housing typologies that differ to those anticipated by policy DEV1-P8 and rule DEV1-R2. I consider that the role of the structure plan is to inform the consideration of resource consent applications rather than direct or support permitted activity uses or development.

181. Paragraphs 4.12 and 4.17 of Mr Lewandowski's evidence notes that there are no policy provisions that would support any other activity aside from residential activity in the HRZ. This is correct and intentional. I consider that the cross-referencing in the HRZ to the relevant rules and standards of the GRZ for all other non-high density residential matters would logically lead plan users to the relevant objectives, policies, rules, and standards of the GRZ for the consideration of resource consent applications for other activities in the HRZ – such as proposed commercial activities.

182. Although I have drafted the IPI in this way to avoid unnecessary duplication, as indicated during the opening day of the hearing I have prepared a complete standalone HRZ chapter which is included within the final recommended IPI provisions within **Appendix 1**.

183. I do not agree with Mr Lewandowski's opinion expressed in paragraph 6.27 of his evidence that the HRZ zoning of the Urban Precinct is inconsistent with the direction of the NPS-UD. The Urban Precinct is an existing residential zone within a walkable catchment of a rapid transit stop. As such, the HRZ zoning has been applied to give effect to the requirements of policy 3(c) of the NPS-UD.

184. I have considered the future development preferences for the Urban Precinct expressed within the landowner statement of Mr McGuiness dated 14 April 2023. Although I appreciate the desire for flexibility, in my opinion the site is an important future source of additional housing and the requested rezoning to enable other uses may undermine this role.

185. Finally, I note the request to rezone the Urban Precinct to Mixed Use Zone is not accompanied by any transport evidence. I have reservations recommending rezoning residential land to a zone that enables a wide range of commercial and other non-residential activities to become established as a permitted activity in the absence of a transportation assessment. In my experience, commercial and other non-residential activities typically generate more vehicle movements per hour compared to residential activities. I note the presence of the controlled railway crossing near the site on Ward Street, and this adds to my reservations regarding the lack of transportation evidence to support the rezoning request.

186. Setting aside any additional consequential amendments to the structure plan to remove references to the now defunct Residential Centres Precinct Design Guide, I do not change my recommendations within the Council's evidence report.

Kāinga Ora: Homes and Communities (S158)

(A) Planning evidence of Alice Jane Blackwell dated 14 April 2023;
(B) Urban economics evidence of Michael John Cullen dated 14 April 2023;
(C) Corporate evidence of Gurvinderpal Singh dated 14 April 2023; and
(D) Urban Design Evidence of Nicholas James Rae dated 19 April 2023 (sic).

187. I have read all the evidence submitted for Kāinga Ora: Homes and Communities.

188. As requested by the Panel at the conclusion of the submitter's presentations at the hearing and as requested in the Panel's Minute 6 dated 18 May 2023, I have sought additional expert urban design advice to respond to the matters raised in the urban decision evidence of Mr Rae.

189. Urban design evidence of Mr Jos Coolen of Boffa Miskell Limited is included as **Appendix 2**. This responds to all urban design questions raised by the Panel via Minute 6.

190. I address all urban design matters raised by Kainga Ora when answering the relevant Panel questions above.

191. I provide a number of responses to matters raised by Kainga Ora during the presentation of evidence and legal submissions as follows:

a. In response to a question posed by Commissioner Daysh regarding the legal requirements of heights in the area surrounding the City Centre Zone, Mr Whittington advised that the areas around the City Centre Zone fall under the requirements of NPS-UD policy 3(a). It is my understanding that this implies that it is Mr Whittington's opinion that the areas around the City Centre Zone must enable building heights and density of urban form to realise as much development capacity as possible. This is incorrect. The heights and density of urban form requirements within areas around the City Centre Zone fall under policy 3(c)(ii) of the NPS-UD. This requires that the IPI enables building heights of at least six stories within a walkable catchment of the edge of the City Centre Zone. The IPI as notified gives effect to this requirement as described in Appendix M to the section 32 evaluation.

b. During his opening legal submission to the Panel, Mr Whittington stated that the recommendation in the Council's evidence report to reject Kainga Ora's request to rezone sites surrounding the City Centre Zone "undermines the NPS-UD". I disagree. I confirm that there are no provisions in the NPS-UD that require the Council to rezone any sites, and there is certainly no requirement to rezone sites as part of the IPI under the NPS-UD or the RMA. Rezoning to achieve identified desirable urban development outcomes as part of the IPI is at the Council's discretion.

c. In response to a question asked by Commissioner Faulkner asking for more information on Kainga Ora's opposition to the spatial extent of walkable catchments, Mr Whittington confirmed that the concerns were focused on a lack of evidence to support the spatial extent, and uncertainty regarding the method used. Mr Whittington pointed to a separate evaluation exercise described in the section 32 evaluation that referred to measuring walkability using Google Maps, and confirmed that he was unaware of any

further methodology used by the Council to identify the spatial extent of walkable catchments. This is a view shared by Ms Blackwell. I confirm the methodology used by the Council has been identified and discussed in number of documents including:

(i) The discussion and recommendations within the section 32 evaluation with respect to the proposed extent of the High Density Residential Zone[22];

(ii) Appendix A to the overview section 32 evaluation report, where a response was made to feedback from Kainga Ora on the draft IPI with respect to the identification of walkable catchments;

(iii) Paragraphs 554 and 556 of the Council's evidence report in response to matters raised by submissions S14.1 – Duncan Cameron, and S51.1 – Waka Kotahi; and

(iv) Discussion in the Council's evidence report at paragraph 1238 with respect to submission S5.4 – Bob Anker;

d. During his presentation to the Panel, Mr Singh outlined the housing needs in Upper Hutt and stated that Kainga Ora is seeking greater flexibility in how resource consents for additional housing are processed in Upper Hutt. Mr Singh stated that in Upper Hutt a discretionary activity resource consent is required, and this "generally moves to non-complying when proposing smaller dwellings". I note this is incorrect. Resource consent applications for multi-unit residential development under the existing (non-IPI) Upper Hutt District Plan requires a restricted discretionary activity resource consent. There is no rule pathway to non-complying activity status. Further to this, I have obtained the following information from the Council's Resource Consents Team that specifies the resource consents processed for Kainga Ora since September 2022 providing a net increase of 27 residential units in the General Residential Zone:

Ref.	Date lodged	Address	Net site area of parent allotment	IPI Zone	Proposed development, no of residential units and levels.
2210153	20/09/2022	9 Rimutaka Street	923m²	General Residential	1 x existing single residential unit retained. 1 x new single storey residential unit.
2210073	09/11/2022	36 McHardie Street	819m²	General Residential	1 x existing single residential unit retained. 1 x new single storey residential unit.
2210174	09/11/2022	39 McHardie Street	867m²	General Residential	1 x existing single residential unit retained. 1 x new single storey residential unit.
2210175	09/11/2022	632 Fergusson Drive	732m²	General Residential	1 x existing single residential unit retained. 1 x new single storey residential unit.

[22] See the recommendation for "Option 2" on page 25: s32-volume-2-residential-zones.pdf (upperhuttcity.com)

2210176	09/11/2022	26 & 28 Bristol Street	816m^2 & 807m^2	General Residential	2 x existing single storey residential units retained. 2 x new two storey residential units.
2210179	21/11/2022	15 Bristol Street	810m^2	General Residential	1 x existing single storey residential unit retained. 1 x new single storey residential unit.
2210181	25/11/2022	47 & 49 McHardie Street	919m^2 & 919m^2	General Residential	2 x existing single storey residential units retained. 3 x new single storey residential units.
2310008	25/01/2023	44 Miro Street &	816m^2 & 60m^2	General Residential	1 x existing single storey residential unit retained (1 to be demolished). 5 x new residential units = 1 x 2 storey & 2 x duplex (4 residential units).
2310011	03/02/2023	44 McHardie"	858m^2	General Residential	Demolish existing residential unit. 4 x new (2 x 2 storey duplexes)
2310012	03/02/2023	34A Whakatiki Street	858m^2	General Residential	Demolish existing residential unit. 4 x new (2 x 2 storey duplexes).
2310014	13/02/2023	48 Whakatiki Street	780m^2	General Residential	Demolish existing residential unit. 3 x new = 1 x 2 storey & 2 x 2 storey duplexes.
2310016	15/02/2023	22 Totara Street	922m^2 & 940m^2	General Residential	Demolish 2 existing residential units. 7 x new = 1 x 2 storey & 3 x 2 storey duplexes.

In my opinion, this information demonstrates that the District Plan provisions are not proving to be a significant impediment to Kainga Ora in obtaining resource consent for the redevelopment of existing residential sites in Upper Hutt to provide increased heights and densities of housing for Kainga Ora's customers. It is also my opinion that once the proposed High Density Residential Zone provisions have legal effect, the consent path for providing additional housing within Upper Hutt will provide even greater flexibility.

e. In response to a question by Commissioner Daysh asking Mr Cullen whether he would acknowledge that the IPI provides a significant uplift in housing capacity, Mr Cullen stated that he acknowledges this but supports more capacity being provided. I note Mr Cullen did not point to any evidence that demonstrates demand for additional capacity beyond the significant uplift already provided by the notified IPI.

f. As a general observation of the relief sought by Kainga Ora with respect to the increased building heights, such as the 36m heights requested, there appears to be a lack of acknowledgement by the submitter and its experts that it is not a requirement that the IPI provides for such heights as a permitted activity to be considered 'plan enabled under the requirements of the NPS-UD'. I have made this point on multiple occasions in the Council's evidence report.

g. In response to a question asked of Ms Blackwell by Commissioner Daysh regarding Kainga Ora's request to delete provisions that require the consideration of reverse sensitivity effects within residential zones, Ms Blackwell expressed her opinion that the purpose of a residential zone is for residential activities and perhaps the zone is not suitable for non-residential activities. Further to this, Ms Blackwell expressed an opinion that existing lawfully-established non-residential activities have a responsibility to stop creating reverse sensitivity effects. I do not share Ms Blackwell's opinion for the following reasons:

(i) Non-residential activities at the zone boundary interface will be lawfully operating under the provisions that apply to the adjacent non-residential zone;

(ii) Lawfully established non-residential activities operating within residential areas under an approved resource consent are lawfully entitled to operate in accordance with the conditions of the resource consent. However, like all activities, this may be overridden by their duty to avoid, remedy, or mitigate adverse effects under section 17 of the RMA. I consider that it is appropriate to address reverse sensitivity effects to reduce the likelihood of incompatible activities becoming established near each other, therefore reducing future compliance and enforcement costs on the Council and the operators of the relevant non-residential activities.

192. With the exception of urban design matters relevant to the design guides which I address above in response to the Panel's questions asked of me, I do not make any changes to the recommendations contained in the Council's evidence report.

Ara Poutama Aotearoa The Department of Corrections (S28)

(A) Planning evidence of Maurice Dale dated 14 April 2023.
(B) Legal submissions by Rachel Murdoch - Counsel for Ara Poutama Aotearoa, the Department of Corrections dated 19 April 2023.

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193. I have read Mr Dale's statement of evidence and the legal submissions prepared by Ms Murdoch.

194. Neither Mr Dale's evidence nor Ms Murdoch's legal submissions contest the findings of the Council's evidence report that there is no technical need for the requested new definition for ‘household’.

195. In preparing the Council's evidence report I discussed the submitter's requested new definition for 'household' with the Council's Resource Consents Manager to determine whether there were any gaps or any interpretation issues with District Plan implementation as a result of the lack of a definition for 'household'. The Resource Consents Manager confirmed there are no known gaps or interpretation issues.

196. I therefore maintain my view expressed at paragraphs 1243 and 1244 of the Council’s evidence report that the existing definition for *community care housing* clearly provides for Ara Poutama activities within the residential zones, and that a new definition is not necessary.

197. Should the Panel come to a different conclusion on the request for a new definition, please note that that the undefined term 'household' is used within the definition for *Small Scale Renewable Energy Generation*. I have not tested the potential consequential implications of this on the basis that I consider the requested new definition is unnecessary. However, in the event the Panel has a different view to mine, I recommend the Panel turns its mind to this to ensure no unintended consequential changes are made to the interpretation of the definition for *Small Scale Renewable Energy Generation*.

198. I confirm I have checked for any other consequential implications across the district plan that may arise from the new definition, and apart from some explanatory text to issues statement for hazardous substances (HS-I1), I have not found any other references to 'household'.

199. With respect to the legal submission prepared by Rachel Murdoch, I note that although I signalled scope as a potential issue with respect to the submitters' request for a new definition for 'household', I did not draw any conclusions on this or use it to base my recommendation to reject this requested amendment. I accept Ms Murdoch's advice on this point.

200. I acknowledge the submitter's support for the recommended amendments to include specific provisions for 'community corrections activities'. Although Mr Dale has expressed concern that I have recommended community correction activities be provided for via their inclusion within rules that manage education activities, I do not share his concerns with respect to the potential misinterpretation of education activities and community corrections activities. Both these terms are separately defined, and are identified in the IPI as being defined terms.

201. I do not recommend any amendments to the recommendations in the Council's evidence report in response to the matters raised in the evidence of Mr Dale or the legal submissions of Ms Murdoch.

Ngāti Toa Rangatira (S72

(A) Verbal presentation by Ms Onur Oktem-Lewis; and
(B) Speaking notes of Ms Onur Oktem-Lewis.

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202. I have carefully considered the content of the verbal presentation and the speaking notes provided by Ms Oktem-Lewis with the intent of identifying specific amendments to the IPI I could recommend that may address the concerns expressed by Ngāti Toa Rangatira.

203. Firstly, I address Ms Oktem-Lewis's opinion that I have misinterpreted section 77G(1) of the RMA with respect to the ability to make amendments to the mandatory MDRS objectives and policies.

204. Section 77G(1) of the RMA places the duty on the Council to incorporate the MDRS into every relevant residential zone. The MDRS comprises all the content of Schedule 3A of the RMA which includes:

    a. Permitted activity rules for buildings that comply with the density standards;

    b. Controlled activity subdivision rule requirements;

    c. Restricted discretionary rule requirements for the construction of 1 or more residential units that do not comply with the density standards;

d. Specific notification preclusion requirements;

e. Two objectives and five policies;

f. Additional rules about subdivision requirements;

g. Rules about common walls; and

h. Nine density standards for the construction of buildings.

205. Section 77I enables the Council to make the MDRS and the relevant building height or density requirements under policy 3 of the NPS-UD less enabling of development to the extent necessary to accommodate one or more of the specified qualifying matters. Section 77I does not limit the ability to make the MDRS less enabling of development to only the MDRS density standards. Therefore, although it would be possible for the Council to amend the MDRS objectives and policies to specifically address the matters specified in Section 77I as a qualifying matter, this could only be carried out if the amendment had the effect of making the MDRS less enabling of development.

206. The question of how amendments to the objectives and policies would make them less enabling of development, and how to test the appropriateness and necessity of the amendments to accommodate one or more of the specified qualifying matters under section 77I is not a task I am able to carry out in the absence of specific requested amendments to objective and policy wording.

207. I have re-examined the Ngāti Toa Rangatira submission and the speaking notes of Ms Oktem-Lewis for specific requested amendments to the wording of provisions. I regret that although I have identified topics of concern and general requests to make amendments to address the identified concerns, I have not identified any specific wording amendments to consider and make recommendations on.

208. An example of this is the request to amend NCZ-S2 – Height in Relation to boundary to add to the matters of discretion the consideration of adjoining sites and areas of significance to Māori. Firstly, neither the District Plan or the IPI identify SASMs or have provisions that protect or manage SASMs. Therefore, it is unclear how the requested addition to the matters of discretion could be considered by applicants and decision makers on resource consents, and how it would meet the requirements of section 77I by making the district plan less enabling of development.

209. I consider that once the Council prepares a future plan change to identify and protect SASMs, preparation of the plan change will need to identify provisions across the district plan that require amendment to appropriately give effect to the requirements of 6(e) and (f) of the RMA. It is possible that NCZ-S2 may require amendment at that time. I also consider that this future plan change process may require other provisions, such as design guides, to be amended to appropriately address SASMs and other matters of importance to Ngāti Toa Rangatira.

210. This will require the preparation of an evidence base and a significant amount of technical analysis, plan drafting, and working in partnership with mana whenua. I do not consider this work can be carried out within the mandated IPI timeframes.

211. For these reasons I do not change my recommendations within the Council's evidence report.

KiwiRail Holdings Limited (S43 & FS12), and NZ Transport Agency Waka Kotahi (S50 & FS10)

(A) Statement of Michael James Brown dated 19 April 2023;
(B) Statement of planning evidence of Catherine Lynda Heppelthwaite dated 19 April 2023; and
(C) Statement of noise and vibration evidence of Dr Stephen Gordon Chiles dated 19 April 2023.

212. I have read the statement of Michael Brown on behalf of KiwiRail Holdings Limited, the statement of planning evidence of Catherine Heppelthwaite, and the noise and vibration evidence of Dr Stephen Chiles.

213. In the Council's evidence report I recommended rejection of the relevant submission points of Waka Kotahi and KiwiRail that sought the addition of new qualifying matters to address potential reverse sensitivity effects for a number of reasons as follows:

i The lack of evidence accompanying the submissions that demonstrate an adverse effect exists in Upper Hutt that requires the application of a new qualifying matter;

ii The lack of technical evidence to support the requested qualifying matter such as noise evidence;

iii The lack of any spatial information identifying the mapped extent of the proposed new qualifying matters; and

iv The fair process and natural justice issues that may occur as a result of directly affected property owners not being notified of proposed new qualifying matters affecting their properties, and their inability to test such provisions through the plan change and appeals processes.

214. In the Council's evidence report I state that I consider the most appropriate and fair approach to the consideration of the requested new qualifying matter would be via a non-IPI plan chance process to enable the testing of the supporting evidence and consultation with affected property owners to be carried out.

215. I have considered the additional technical information provided by Waka Kotahi with respect to the requested noise buffer area. I consider the mapping provides a good starting point for progressing this work to strengthen the existing district plan provisions that manage potential reverse sensitivity effects on regionally significant infrastructure.

216. I have reservations regarding the accuracy of the mapping on account of the speed at which it has been prepared, and the lack of independent technical peer review. Notwithstanding these concerns, I agree with Waka Kotahi and KiwiRail that addressing potential reverse sensitivity effects is an important resource management issue that requires a specific planning response to ensure human health.

217. The management of potential reverse sensitivity effects on regionally significant infrastructure is a requirement of policy 8 of the Operative RPS, which states:

Policy 8: *Protecting regionally significant infrastructure – regional and district plans*

District and regional plans shall include policies and rules that protect regionally significant infrastructure from incompatible new subdivision, use and development occurring under, over, or adjacent to the infrastructure.

218. Currently, the District Plan gives effect to this requirement via the reverse sensitivity effects within the District-Wide Matters chapter for Network Utilities. Although these provisions do not include the mapping sought by Waka Kotahi, the provisions are given effect to in the consideration of resource consent applications for subdivision, use and development in close proximity to regionally significant infrastructure such as the rail line. In my opinion, the District Plan would be improved through a more consistent approach complete with mapping and specific provisions.

219. I have checked the District Plans and Proposed District Plans of the Kapiti Coast District Council and Porirua City Council. I have chosen these district plans on the basis that they are of a similar size to Upper Hutt and both have the North Island Main Trunk (NIMT) railway designation and state highway designation passing through with development in close proximity to the designation boundaries.

220. The operative Kapiti Coast District Plan 2021 includes mapped Transportation Noise Effects Route for the management of sensitive activities within a mapped 80 metre setback from the state highway network, and via an unmapped 40m setback from the boundary of the railway designation (rule NOISE-R4). The permitted activity standards require noise mitigation and ventilation design for habitable rooms. There is also a requirement for maximum outdoor noise levels measured at the nearest outside wall of a building containing a sensitive activity where the building is within 40m of the nearest edge of the carriageway of the state highway. There are no specific requirements that differentiate the level of noise mitigation required for different vehicle speeds.

221. By contract, the Porirua City Proposed District Plan 2020 includes a mapped Noise Corridor, with accompanying rules that manage new buildings containing a noise sensitive activity within specified distances from the state highway which differentiates the requirements based on the speed limit of the adjoining state highway. There are also specific requirements for buildings within a variety of setbacks from the centre of the NIMT track ranging from within 30 metres (restricted discretionary) and from 30m out to 100 metres (permitted subject to standards). This approach is more refined than the approach contained in the Kapiti Coast District Plan.

222. Notwithstanding the additional planning, noise, and vibration evidence provided by the submitter, due to the time constraints under the IPI to test the evidence base prepared by Waka Kotahi and the suitability of the requested provisions in the Upper Hutt Context, I maintain my view that a non-IPI plan change process would be the most appropriate and fair method to progress this work. I am informed by the Council that an identified upcoming topic of the District Plan Rolling Review includes a review of noise and vibration provisions. I consider this would be the most appropriate opportunity to progress the provisions sought by the submitters.

223. Although I acknowledge there is legal scope to include the requested provisions in the IPI in response to the submissions, the lack of consultation with directly affected property owners, their inability to test the additional evidence now provided by the submitter via their own experts, and the inability for directly property owners to appeal decisions on the IPI continues to concern me. My concerns were not allayed when upon questioning by the Panel it was

confirmed by Dr Chiles that the mapping and supporting methodology had been prepared in haste and has not been independently peer reviewed for suitability and accuracy.

224. I acknowledge the modelling and GIS mapping work carried out by Waka Kotahi both pre and post hearing. I consider the additional information provided by the submitters is most valuable in providing evidence, local context, and greater justification for the requested new qualifying matters. I consider it provides a basis for the Council to investigate and pursue the requested new qualifying matters in the future via a non-IPI plan change process as part of the District Plan rolling review of the noise provisions. I note that a future plan change process would enable the rigorous testing of the submitter's requested provisions and the noise evidence upon which it is based. I consider that reverse sensitivity effects to address transportation noise is an important resource management issue that should be looked at comprehensively across the District Plan, including the consideration of effects on the zones that fall beyond the scope of the IPI such as the rural zones.

225. With respect to the requested 5m building setback for sites that adjoin the railway designation, I note that buildings being also able to locate closer to the boundary than 5m is an existing situation. The purpose of the railway designation is to provide sufficient operational space to ensure the safe and efficient operation and maintenance of the railway infrastructure. Adjoining sites have no legal right to encroach or use the designated land unless specifically authorised by the requiring authority. In my opinion, the evidence of Mr Brown does not demonstrate a clear resource management issue that requires intervention in the IPI via a new qualifying matter.

226. Finally, Ms Heppelthwaite provides recommended amendments to the St Patrick's Estate provisions that require an ITA, and provides a list of matters of discretion to ensure the safe and efficient operation of the state highway network.

227. I have considered the provisions put forward in Ms Heppelthwaite' s evidence during the expert conferencing between Mr Lewandowski and I on the St Patrick's Estate provisions. I confirm that I have endeavoured to address the specific concerns raised in Ms Heppelthwaite's evidence within the bespoke set of St Patrick's Estate provisions recommended in **Appendix 3**.

228. For these reasons I do not change my recommendations from those contained in the Council's evidence report.

Transpower New Zealand

(A) Tabled evidence outlining Transpower's position in response to the Council's recommendations on Transpower New Zealand's submissions and further submission dated 14 April 2023.

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229. I have read Transpower's tabled evidence.

230. With respect to Transpower's continued request to amend SUB-RES-P6 to include reference to qualifying matters, I maintain my opinion that the requested amendment is not necessary.

231. Provisions that address existing qualifying matters are clearly identified and referenced within relevant chapters and rules. I consider it unlikely that plan users would be unaware of any

specific qualifying matter applying to a site due to the fact that qualifying matters are not referred to in Policy SUB-RES-P6.

232. On this basis I do not change my recommendations from those contained in the Council's evidence report.

Fire and Emergency New Zealand

(A) Written statement of Fleur Rohleder on behalf of Fire and Emergency New Zealand dated 21 April 2023

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233. I have read the statement of Fleur Rohleder.

234. I do not consider the additional information provided in the statement justifies the introduction of the new qualifying matter requested by the submitter.

235. With respect to the requested restricted discretionary activity rule for emergency facilities, whilst I do not dispute that restricted discretionary status can provide greater certainty for applicants, I do not change my recommendations on activity status for the reasons provided in the Council's recommendation report.

236. I note the Council's District Plan rolling review intends to review the Council's Code of Practice for Civil Engineering Works. I consider this would be an appropriate time to consider the submitter's requested relief in a holistic manner. This would also enable the Council to consider best practice and regional consistency in addressing the matters raised by Fire and Emergency New Zealand.

237. In summary, I do not recommend any changes to my recommendations contained in the Council's evidence report.

Recommendation

1. I recommend the IPI be amended as described in this right of reply, and as set out in Appendix 1 to this right of reply.

   Note: Not all recommended mapping amendments described in this right of reply are shown in Appendix 1.

Signed:

Name and Title	Signature	Date
Matthew Muspratt Consultant Planner		9.06.2023

Appendix 1: Reporting Planner's Final Recommended IPI Provisions

Appendix 2: Urban Design Evidence of Mr Jos Coolen of Boffa Miskell Limited

Appendix 3: Joint Witness Statement on Planning Matters for Silverstream Land Holdings Ltd (S62), and Blue Mountains Campus Development Ltd Partnership

Appendix 4: Section 32AA Evaluation for St Patrick's Estate Precinct Provisions

Appendix 5: UHCC, PCC, and KCDC submissions on Proposed RPS Change

Appendix 6: 44 Kiln Street – Landowner feedback on draft rezoning to HRZ