WAIKATO DISTRICT COUNCIL

VARIATION 3 – ENABLING HOUSING SUPPLY

TO THE PROPOSED WAIKATO DISTRICT PLAN

RECOMMENDATIONS OF THE INDEPENDENT HEARING PANEL

Date: 22 March 2024

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Executive Summary

1. This Recommendation Report and its associated decisions on submissions is made by the Independent Hearing Panel (IHP) established by Waikato District Council (Council) pursuant to cl.96 of Part 6 Sch.1 of the Resource Management Act 1991 (RMA). It relates to Variation 3 – Enabling Housing Supply (Var 3); an Intensification Planning Instrument (IPI) under subpart 5A of the RMA.

2. The statutory requirements relating to an IPI were introduced by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the Amendment Act).

3. Our approach to the interpretation of the Amendment Act's requirements has been to err on the side of caution rather than to be as expansive as some submitters sought – particularly when it comes to the issue of what is within scope of an IPI plan change. While we accept that a more liberal interpretation is possible and could emerge from the High Court consideration of the *Waikanae* appeal,[1] at this juncture we have concluded that the absence of a merit appeal and the judicial direction of *Clearwater* and similar authorities suggests that a more conservative reading is appropriate.[2] Accordingly some submissions that certainly had planning merit on their face have been deemed out of scope and will, if further pursued, need to undertake a separate Schedule 1 process path.

4. We have also taken a 'real world' approach to these recommendations – as the superior courts have often urged with respect to planning matters.[3]

5. We also note that 3-storey walk-ups / townhouses, which was commonly agreed to be the most likely and realistic intensification typology, are positively enabled in the Medium Density Residential 2 (MRZ2) zone.

6. One of the benefits of having discontinuous hearings spread over a reasonable period of time is that many issues were able to be addressed by Council and its reporting officers and provisions revised before we closed the overall hearing. As such we have been able to accept and recommend most of the recommendations made by Council through its final hearing responses and reply.

7. References, and where relevant links, have been provided to key documents referred to in this report to avoid having to append those documents, and to avoid unnecessarily

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[1] *The Environment Court's decision in Waikanae Land Company Ltd v Kaapiti Coast District Council [2023] NZEnvC 056 (Waikanae) was appealed to the High Court and heard on 12 and 13 February 2024. A decision is now pending.*

[2] *Clearwater Resort Ltd v Christchurch City Council [2013] NZHC 1290 (Clearwater); Palmerston North City Council v Motor Machinists Ltd [2013] NZHC 1290 (Motor Machinists); Bluehaven Management Limited v Western Bay of Plenty District Council [2016] NZEnvC 191 (Bluehaven); and Albany North Landowners v Auckland Council [2017] NZHC 138 (Albany North).*

[3] *Royal Forest and Bird Protection Society of New Zealand v Buller Coal Ltd [2012] NZRMA 552 (HC).*

increasing the length of this report. All key documents can also be found on the Council's website.[4]

8. We note that, per cl.99(2)(b) Schedule 1 RMA, we have not exercised that discretion to make recommendations beyond the scope of submissions – in large part because of the position we took and refer to above in paragraph 3.

9. Furthermore, as we are making recommendations on a variation to the proposed Waikato District Plan (PDP), which is before the court on appeal, a question arises as to whether the variation (once decided) merges in the normal way with the PDP under cl.16B of Schedule 1 or, rather, independently becomes operative under cl.103(2)(b)(ii), cl.104(2)(b)(ii) or cl.105(7)(b)(ii) as the case may be.

10. We understand that, to the extent Council accepts the Panel's recommendations on Variation 3 and those recommendations are not impacted by any live appeals on the PDP then, on notification of the Variation 3 decisions, those provisions will become operative pursuant to clause 103(2) of Schedule 1.

11. We are also aware of the recent indication by government of its intention to allow councils a discretion regarding the inclusion of the Medium Density Residential Standards (MDRS) requirement, subject to satisfying the requirement for sufficient housing for the long-term. That requires amending legislation that, at the time our recommendations are due, is not currently before the House. We are therefore unable to take that matter into account.

12. Finally the Panel wishes to thank all those who assisted in the smooth running of this process, as well as all those who participated - whether successful or not in terms of the relief sought. The issues were not easy and, indeed, not welcomed by many. The Panel has endeavoured to accommodate both concerns and aspirations where that was possible or practicable under the amending legislation, whilst making appropriate provision for the expected enablement of increased housing supply.

[4] *https://www.waikatodistrict.govt.nz/your-council/plans-policies-and-bylaws/plans/waikato-district-plan/district-plan-review/variations/variation-3-enabling-housing-supply*.

1 Introduction

1.1 Intensification Planning Instrument & Intensification Streamlined Planning Process

1. The Council notified Var 3 on 19 September 2022. Appeals on the PDP were progressing through the Environment Court in parallel with this Intensification Special Planning Process (ISPP).

2. The Council is a Tier 1 territorial authority and Var 3 was notified in response to the Amendment Act. The Amendment Act required all Tier 1 territorial authorities to notify an IPI by 20 August 2022[5] to amend their district plans to incorporate the MDRS and give effect to Policy 3 of the NPS-UD.

3. Var 3 as an IPI, is required to follow the ISPP. This process has a number of key differences to a 'standard' RMA plan change process. We provide a summary of the key features in **Appendix 2**. That summary should be read in conjunction with cls.96-108 of Sch.1 of the RMA to appreciate all relevant procedural matters and legal requirements.[6]

1.2 Appointment of IHP

4. As required under cls. 99-100 of Subpart 6, Sch.1 RMA, councils must appoint an IHP to consider submissions made on their IPIs using the ISPP.

5. This report makes recommendations on the submissions received, and the content of Var 3.

6. The IHP is made up of the following independent accredited RMA hearings commissioners:

(i) David Hill (Chairperson)
(ii) Vicki Morrison-Shaw
(iii) Dave Serjeant
(iv) Nigel Mark-Brown.

1.3 Powers and Functions of IHP

7. The IHP is acting under delegated authority from the Council[7] in accordance with cl.96 of Sch.1 of the RMA, and has the duties and powers set out in cl.98 of Sch.1 of the RMA.

8. The Panel is required to provide its recommendations on the IPI in 1 or more written reports to the Council, after it has heard submissions, in accordance with the

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[5] *The Minister for the Environment approved a notification delay of 1 month by letter dated 29 August 2023.*

[6] *A summary of the process that the Council followed in the lead up to the Var 3 hearings is summarised in section 6.1 of the s.42A Report prepared for the hearings.*

[7] cl.93(3) of Sch.1 of the RMA required the Council to delegate all necessary functions to the IHP for the purpose of the ISPP.

provisions of cls.99-100 of Sch.1 of the RMA. For that purpose, submissions may be grouped by IPI provision or topic; must (among other things) identify any recommendations that are outside the scope of submissions made; include a s.32AA further evaluation if necessary; and may include alterations to the IPI arising from consideration of submissions or other relevant matters.

9. This report, together with its 5 Appendices, and the 24 Directions and 1 Minute we issued,[8] have been prepared to discharge these requirements.

10. As noted above, since the PDP appeals have been proceeding in parallel with this IPI process, the Panel has (with the assistance of Council) attempted to keep abreast of developments in that arena in order to avoid, as much as possible, contradictory or overlapping findings. At the same time the Panel is cognisant that its mandate is distinct, and no appeal to its recommendations lies with that Court.

1.4 MDRS and NPS-UD Policy 3

11. The Amendment Act (ss.77G and 77N) requires Tier 1 territorial authorities to use the IPI and ISPP to:

    a) incorporate MDRS into every relevant urban residential zone within the district plan; and

    b) amend every residential and non-residential zone in any urban environment to give effect to Policy 3 of the NPS-UD to enable the specified heights and density of urban form or heights in specified centre zones and within an undefined walkable catchment.

12. It is important to note that these are mandatory requirements. The Council must take these steps, except to the extent that a qualifying matter (QM) applies (as noted in the next section).

1.4.1 MDRS

13. The provisions set out in Sch.3A (the MDRS Schedule) must be inserted into the district plan. In addition, there is discretion to include:

    a) more lenient provisions (i.e., more enabling of development);[9]

    b) less enabling provisions - but only if a relevant QM applies and then only to the extent necessary to accommodate that matter;[10] and

    c) "*related provisions*" that support or are consequential on the MDRS.[11]

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[8] *A copy of all of our Directions and Minute are available from the Council website: https://www.waikatodistrict.govt.nz/your-council/plans-policies-and-bylaws/plans/waikato-district-plan/district-plan-review/variations/variation-3-enabling-housing-supply.*

[9] *RMA s.77H.*

[10] *Refer ss.77I and s77O of the RMA.*

[11] *RMA, s.80E(1)(b)(iii)).*

14. The proposed medium density residential zone under the PDP covers the six towns of Huntly, Pookeno, Tuakau, Ngaaruawaahia, Raglan and Te Kauwhata. However, only the first four of those towns were deemed by Council to qualify as urban environments to which the MDRS is to be applied. Var 3 therefore introduced a separate MRZ2 applicable to the four towns. Except for minor consequential changes, no amendments were proposed to the Medium Density Residential 1 (MRZ1) zone, which continues to apply to Raglan and Te Kauwhata.

1.4.2 NPS-UD Policy 3

15. Policies 3(a)-(c) of NPS-UD impose height and density requirements for city centre zones, metropolitan centre zones, and areas located within a walkable catchment of existing and planned rapid transit stops, or on the edge of city centre or metropolitan centre zones. Policy 3(d) relates to areas within and adjacent to neighbourhood, local and town centre centres and requires the enablement of building heights and densities commensurate with the level of commercial activity and community services. The s.42A Report identified Policy 3(d) as the relevant NPS-UD policy that must be given effect to through Var 3.[12]

16. The Council is able to make the requirement to give effect to Policy 3(d) of the NPS-UD less enabling of development in relevant urban residential and non-residential zones via the QMs,[13] provided specified evaluative requirements are met.[14]

17. Var 3 as notified proposed a number of QMs for specific reasons.[15] These QMs were all classified as new QMs (and subject to assessment in ss.77J and 77L), since the PDP is not yet operative and existing QMs are limited to QMs in an operative district plan at the date the IPI was notified.[16]

18. Some submissions requested the creation of additional QMs which were not notified as part of Var 3.[17]

19. We also note that in response to concerns raised by submitters regarding the legality of the Council's proposed Urban Fringe QM,[18] and our Interim Guidance,[19] the Council subsequently removed the Urban Fringe as a QM and proposed additional QMs in its place.[20]

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[12] *s.42A Report Version 2, 15 June 2023 (s.42A Report), at [30] – this report notes that it was reformatted and updated on 19 June 2023 (which is the reference date subsequently used by staff at Hearing).*

[13] *RMA, ss.77G, 77I, 77O and 77R.*

[14] *RMA, s.77L.*

[15] *Refer s.32 Evaluation Report, 2 September 2022, Volume 2 - QMs, section 14, p.114 for a list of all of the QMs included in Var 3 as notified.*

[16] *Council opening legal submissions, at [5.12] and referring to RMA s.77K(3).*

[17] *Refer s.42A Report, s.6.8 for a list of the new QMs sought by submitters.*

[18] *As noted in the s.42A Report, at [19].*

[19] *Interim Guidance #1, 14 March 2023, which concluded that the urban fringe was not a QM under s.77I(j) as it does not appear to satisfy the requirements of s.77L.*

[20] *As noted in the s.42A Report, at [22] these related to culturally significant landscapes, culturally significant viewshafts, natural hazards, mine subsidence, stormwater/flooding and reverse sensitivity.*

20. Our discussion and recommendations on QMs are contained in sections 7 and 8 below.

1.5 Sections 80E and 80G Limitations

21. The scope of matters to be included in an IPI are specified in s.80E.[21]

22. There are some limitations on what a territorial authority can do with an IPI. In particular (as per s.80G), only one IPI can be notified, it cannot be withdrawn, it must progress using the ISPP, and it may not be used for any purpose other than those set out in s.80E.

23. The Council's position was that the scope of the matters it had included in the IPI and the use of the ISPP are in accordance with the limitations and requirements of ss.80E and 80G of the RMA. That was not disputed by submissions - other than in relation to the Urban Fringe QM which was subsequently removed (as noted in para 18 above). Some submitters did however argue that further matters fell within the bounds of scope established by those provisions and should be included in Var 3. We address those matters in later sections of this report.

24. While we note that unlike the 'standard' plan change process, the IHP is not limited in making its recommendations by the scope of submissions,[22] as all legal submissions agreed, any recommendation must still fall within the permissible scope of an IPI. What is within the scope of the IPI was therefore an important fundamental to establish, and we received a range of submissions on that point. As we note later in this report, we are satisfied that all of our recommendations fall within the permissible scope of an IPI and, except for the limited consequential matters noted in section 9 below, we have not considered it necessary to make recommendations going beyond the scope of submissions.

1.6 Urban Environment and Relevant Residential and Non-Residential Zones

25. The Amendment Act required councils to identify their urban environments and then apply the MDRS and Policy 3 of the NPS-UD to the relevant residential and non-residential zones subject to QMs as necessary.

26. Council had determined that the four towns of Huntly, Pookeno, Tuakau and Ngaaruawaahia constituted urban environments as defined under s.77F RMA,[23] to which the requisite standards and policy were applied – including, subsequently, to those areas from which the notified Urban Fringe QM was "*removed*".

27. The smaller settlements of Raglan and Te Kauwhata were not considered to meet the required threshold.

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[21] *See Appendix 2 for the full text of this section.*

[22] *RMA, Sch.1 cl.99(2)(b).*

[23] *s.42A Report, section 4.*

28. Var 3 did not propose to change any non-residential zone provisions – with additional provisions relating to the Huntly Commercial Zone (COMZ) precinct being the one exception.

29. Var 3, as notified, did not change the spatial extent of the urban area or of MRZ1 in Raglan and Te Kauwhata. However, we note that following the later acceptance by Council that the rezoning request by Horotiu Farms Ltd (HFL) was within scope, the Council subsequently recommended rezoning 34 ha of HFL's land from General Residential Zone to MRZ2.[24]

1.7 Financial Contributions

30. Section 77E enables the Council to make rules requiring a financial contribution (FC) for any class of activity other than a prohibited activity, and s.77T and s.80E(1)(b)(i) provides a discretion that enables a council to include FC provisions or change existing provisions as part of its IPI.

31. As advised in the Joint Opening Legal Submissions[25] for Hearing 1,[26] the PDP does not currently include FCs, and the Council's notified IPI did not propose to include them. As issues were raised as to whether Council could introduce FCs in response to submissions, we address this issue in the scope section (section 4) below.

1.8 Papakaainga

32. Section 80E(1)(b)(ii) of the RMA similarly provides a discretion that enables an IPI to amend or introduce provisions to enable papakaainga housing in the district.

33. At Hearing 1, Mr Jim Ebenhoh, the Planning and Policy Manager for the Council, advised that papakaainga housing and development is already provided for in the PDP regardless of the zoning.[27]

34. Council therefore determined that there was no need to amend or introduce any further papakaainga housing provisions in Var 3.

1.9 Protected Customary Rights

35. In formulating our recommendations, we must be satisfied that ss.85A and 85B(2) of the RMA (which relate to protected customary rights) will be complied with.[28]

36. No party identified any relevant protected customary right to us or addressed us on compliance with such rights. However, given the areas subject to Var 3 (Ngaaruawaahia, Huntly, Pookeno and Tuakau) are not located in the marine or

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[24] *Council legal submissions, 21 November 2023, at [3]-[28].*

[25] *Joint Opening Legal Submissions for the Councils, 8 February 2023, at [10.3].*

[26] *Being the joint combined opening strategic and procedural overview hearing for the three Waikato IPI councils held on 15-17 February 2023.*

[27] *Ebenhoh, Statement of evidence, 20 December 2022, at [56].*

[28] *RMA, Sch.1, cl.99(3).*

coastal environment,[29] we are satisfied that the provisions we have recommended will not infringe ss.85A and 85B of the RMA.

1.10 Council Decision, Timing, Appeals and Judicial Review

37. Following the receipt of our recommendations, the Council is required to decide whether to accept each recommendation. The Council may provide an alternative recommendation for any recommendation that the Council does not agree with.[30] However, where the Council rejects a recommendation, it is required to refer this to the Minister for the Environment (Minister) together with:

    a) the Council's reasons for rejecting the IHP's recommendation; and

    b) any alternative recommendation the Council has provided.[31]

38. When making its decisions on the IHP's recommendations, the Council must not consider any submission or other evidence unless it was made available to the IHP before the IHP made its recommendations. However, the Council may seek clarification from the IHP on a recommendation to assist in making any such decision.[32]

1.10.1 If the Council accepts all recommendations

39. If all IHP recommendations are accepted by the Council, and those recommendations are not impacted by any live appeals on the PDP, then Var 3 is deemed to be approved and becomes operative upon Council publicly notifying its decisions.[33] Any recommendations that are impacted by live appeals cannot be treated as operative until those appeals have been resolved.

1.10.2 If the Council accepts some, or none, of the recommendations

40. If the Council does not agree with one or more of the IHP's recommendations it must follow the procedures set out in cls.104 to 106 of Sch.1. In summary, all affected parts of the plan change that are accepted and which are not impacted by any live appeals on the PDP are deemed approved and become operative upon public notification, and only those recommendations that are rejected (along with the reasons and any proposed alternative recommendation(s)) are referred to the Minister for decision.

41. Upon receipt of that information, the Minister must decide whether to accept or reject any or all of the (contested) IHP recommendations. For any IHP recommendation that the Minister rejects, the Minister must then decide whether

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[29] *Being the areas for which protected customary rights can be issued under the Marine and Coastal Area (Takutai Moana) Act 2011.*

[30] *RMA, Sch.1, cl.101(1)(a) and (b).*

[31] *cl.101(2)(a) and (b), Sch.1 RMA.*

[32] *cl.101(4)(b) and (c), Sch.1 RMA.*

[33] *cl.103, Sch.1 RMA.*

to adopt any alternative recommendation referred to the Minister by the Council.[34] The Minister may make minor amendments to any recommendation. The Minister's decision with reasons is then provided to the Council, which must then publicly notify it and the district plan as altered is deemed approved and becomes operative.

1.10.3 Timeframe for making a decision on Var 3

42. While there are no specified timeframes within which the Minister must make a decision, there is an overall date by which the IPI process must be completed. The Council is required to publicly notify its decisions on Var 3 by 31 March 2024.[35]

1.10.4 Appeals and judicial review

43. Unlike a 'standard' plan change process, there is no right of appeal to the Environment Court against any decision of the Council or the Minister on Var 3, however the right of judicial review is retained.[36]

2 Procedural Matters

2.1 Submissions, Further Submissions and Late Submissions

44. Council records that 117 submissions and 31 further submissions were lodged on Var 3.

45. Four late submissions were lodged. The Council recommended acceptance of those submissions as they were all received prior to the notification of, and included within, the summary of submissions – and therefore available for further submission. The Panel confirmed accepted of these late submissions in Direction #5.[37]

46. The s.42A Report summarised submission themes as follows:[38]

- fundamental opposition or support for the variation
- specific amendments to the MDRS provisions
- specific amendments to other PDP provisions
- the geographic extent of where the MDRS applies within the district
- the application of Policy 3(d) of the NPS-UD
- requests for rezoning of land
- implications of private covenants in Pookeno

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[34] *cl.105(1)(a) and (b), Sch.1 RMA.*
[35] *NZ Gazette notice 2022-sl2034, 14 May 2022.*
[36] *cls.107- 108, Sch.1 RMA.*
[37] *Direction #5, 23 December 2022.*
[38] *s.42A Report, at [32].*

- capacity of the infrastructure network to accommodate growth
- financial contributions/inclusionary zoning
- issues of significance to Maaori
- historic heritage
- Te Ture Whaimana o te Awa o Waikato – Vision and Strategy (Te Ture Whaimana)
- natural hazards and climate change
- nationally significant infrastructure
- the urban fringe qualifying matter
- reverse sensitivity
- enabling provisions for other uses.

47. While these themes were refined and further developed as the hearing proceeded, the above provides sufficient context at this point.

2.2 Hearings and Directions

48. The Panel held three hearings on Var 3:

    - Hearing 1 – Overview – combined with Hamilton City and Waipā District Councils: 15-17 February 2023.
    - Hearing 2 – Substantive topics except Horotiu and some miscellaneous matters: 26 July – 2 August 2023.
    - Hearing 3 – Horotiu and miscellaneous matters: 5 December 2023.

49. We received a significant number of legal submissions, expert evidence and submitter statements during the hearing process. A list of all of the submitters (and further submitters) is set out in s.42A Report.[39] A list of the persons appearing for submitters, and the persons appearing for the Council at each of the three hearing sessions is set out in **Appendix 3**.

50. In order to respond to matters arising both before and after each hearing session the Panel issued a total of 24 formal Directions.[40] The Panel wishes to record its appreciation to Council, submitters and their respective experts and counsel for the constructive and timely manner in which they responded to the Directions.

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[39] *s.42A Report, pp.3-8.*

[40] All of our Directions are available on Council's website.

2.3 Hearing Reports

51. A Joint Themes and Issues Report dated 15 December 2022 (Joint Opening Report) was prepared for the combined councils' Strategic issues Hearing 1. The Waikato District section was prepared by Fiona Hill (Principal Policy Planner at the Council) and reviewed the key issues raised under the following themes:

    - scope of Var 3 within the district
    - QMs
    - application and interpretation of Policy 3 of NPS-UD
    - betterment of Waikato River
    - effect of private covenants in Pookeno
    - infrastructure capacity.

52. The s.42A Report (dated 15 June 2023) was prepared by Fiona Hill, Karin Lepoutre (Planning Consultant) and Bessie Clarke (Policy Planner at the Council) for Hearing 2 and relied upon the following technical experts:

    - Susan Fairgray (Associate Director at Market Economics) in relation to population forecasts and property economic issues
    - Doug Johnson (Principal Consultant at Tonkin and Taylor) in relation to the Huntly mine subsidence risk area
    - Dr Ann McEwan (Heritage Consultant at Heritage Consultancy Services) in relation to heritage matters
    - Dave Mansergh (Landscape Architect, Recreation Planner and Director at Mansergh Graham Landscape Architects) in relation to viewshafts from Tuurangawaewae Marae
    - Andrew Boldero (Principal Stormwater Engineer at Te Miro Water Consultants Ltd) and Katja Huls (Senior Principal Planner at Stantec) in relation to stormwater matters
    - Keith Martin (Three Waters Manager for the Council), Mathew Telfer (Operations Manager – Waikato Contract for Watercare) and Katja Huls in relation to water and wastewater.

53. An Addendum to that s.42A Report dated 23 June 2023 (Addendum I) was issued by Ms Hill and Ms Lepoutre to address submission points that were not addressed (in whole or in part) in the earlier report. These points related to rezoning requests, retirement village provisions, issues of significance to Maaori, MRZ2 objectives and policies, supporting/opposing submissions, and towns to which the MDRS applies.

54. A s.42A Report Closing Statement (dated 5 September 2023) was prepared by Ms Hill and Ms Lepoutre in response to the evidence and submissions given at Hearing 2.

55. A further s.42A Report (dated 15 September 2023) was prepared by Ms Lepoutre for Hearing 3 with respect to the remaining matters of Horotiu, certain nationally significant infrastructure QMs, PDP appeals and flood mapping.

56. A s.42A Report entitled 'Rebuttal Evidence' was prepared by Ms Lepoutre on 14 November 2023 and addressed Horotiu West land, reverse sensitivity and ancillary Var 3 matters.

57. A final s.42A Report Closing Statement (dated 30 January 2024) was prepared by Ms Hill and Ms Lepoutre and contained a closing statement and update on issues that remained live following the earlier hearings.

58. The above reports were accompanied with a number of appendices and progressive provision revisions.

2.4 Preliminary Scope Issues

59. There were a number of preliminary scope issues raised, which we were required to address prior to the substantive hearings. These were:

    a) the Urban Fringe QM;

    b) inclusionary zoning / affordable housing; and

    c) specific rezoning submission points.

60. We summarise these issues and our response to them in the next three sub-sections. Other scope issues are dealt with in section 4 of this decision report.

2.4.1 Urban Fringe QM

61. As already briefly noted, the notified Var 3 included an Urban Fringe QM, – which, by the time of the hearing, Council no longer supported. The effect of the Urban Fringe QM was that the MDRS would not apply in those areas.[41]

62. As we recorded in our Interim Guidance,[42] we considered the Urban Fringe was not a QM under s.771(j) as it did not appear to satisfy the requirements of s.77L RMA. However, we left that matter on the table for the substantive hearing lest any party wished to dispute that interim position. In the event no party challenged that guidance, and we confirm our interim position on the matter.

63. As a consequence of that Interim Guidance and the Council not supporting the Urban Fringe QM, the MDRS was extended to apply to all the land zoned Medium

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[41] *s.32 Evaluation Report, section 11.1.*

[42] *Interim Guidance #1, 14 March 2023.*

Density Residential (MRZ) and General Residential within the four towns of Ngaaruawaahia, Pookeno, Tuakau and Huntly, subject to any additional QMs.

64. Additional QMs were subsequently identified by Council relating to:

- the protection of culturally significant landscapes with the Havelock Precinct
- the protection of culturally significant viewshafts from Tuurangawaewae Marae to Haakarimata and Taupiri
- the management of significant risks from natural hazards within the slope residential area of the Havelock Precinct
- the management of significant risks from natural hazards within the mine subsidence risk area in Huntly
- the management of significant risks from stormwater and flooding effects (related to natural hazards and giving effect to Te Ture Whaimana)
- minimising reverse sensitivity effects of residential activities on industrial operations within the Havelock Precinct.

65. These new QMs were only proposed to apply within the footprint (or parts of the footprint) of the former Urban Fringe QM. The new QMs propose more targeted (and therefore lesser) restrictions on the MDRS in those areas. On this basis the Council submitted there was scope for these new QMs.[43] No party raised scope issues with the introduction of these new proposed QMs, although there were differing views on the merits of and proposed wording for these QMs. We address these matters in a later section of this decision report.

2.4.1.1 Finding

66. We are satisfied for the reasons stated in our Interim Guidance #1 and paragraph 62 above, that there is no scope to include the proposed Urban Fringe QM as it does not comply with the mandatory requirements of s.77L.

67. However we consider that there is scope to consider the new proposed replacement QMs as they all fall within the footprint of the former Urban Fringe QM and propose more targeted/lesser restrictions on MDRS in those areas. Accordingly, we assess the merits of these proposed new QMs in a later section of this decision.

2.4.2 Inclusionary zoning / affordable housing

68. Directions were sought by the Adare Company Ltd on the scope for relief related to inclusionary zoning / affordable housing and associated FC provisions sought by some submitters including:

[43] *Council reply legal submissions, 29 September 2023, at [4].*

a) Waikato Community Lands Trust, Bridge Housing Charitable Trust, Waikato Housing Initiative, Habitat for Humanity Central Region, Momentum Waikato – submission #298.1; and

b) Waikato Housing Initiative – submission points #287.2 to #287.6;

(together, Waikato Housing Initiative and others).

69. The Panel provided opportunity for written submissions on the matter through Directions #6 and #10.[44]

70. Direction #11[45] records the Panel's conclusion on the question following receipt of legal submissions on both sides of the question. In short, the Panel concluded that inclusionary zoning and affordable housing submission requests were out of scope[46] and the respective submission points were accordingly struck out under s.41D(1)(b) RMA. No objection was filed in respect of that decision.[47]

2.4.3 Specific rezoning submission points

71. The Council identified the following submission points requesting rezoning as potentially out of scope and the Panel invited written submissions if any party took a contrary view through Directions #5 and #10:[48]

- Halm Fan Kong (#13.1)
- Greig Developments (#20)
- Howard Lovell (#27.1)
- Horotiu Farms Limited (HFL) (#49.1)
- Kāinga Ora (#106.15).

72. In the event no party (other than HFL)[49] lodged submissions to the contrary. However, Council indicated that it no longer challenged the Greig Development submission,[50] and Kāinga Ora withdrew its particular submission point.[51]

73. Direction #12[52] records that the Panel:

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[44] *Direction #6, 18 January 2023; and Direction #10, 3 March 2023.*

[45] *Direction #11, 11 April 2023.*

[46] *As they fell outside the ambit of the plan changes and their respective s.32 evaluations, were not reasonably and fairly raised by or in those notified documents, and not all potentially affected persons would have had the opportunity to make submissions.*

[47] *Noting that there is a right of objection under s.357(2) of the RMA.*

[48] *Direction #5, 23 December 2022; and Direction #10, 3 March 2023.*

[49] *HFL submissions on scope, 15 March 2023.*

[50] *Council submissions on scope, 24 March 2023, at [4].*

[51] *Council submissions on scope, 24 March 2023, at [3] and Annexure A.*

[52] *Direction #12, 11 April 2023.*

a) struck out the submission points of Halm Fan Kong and Howard Lovell under s.41D(1)(b) RMA (with no objection subsequently being received); and

b) allowed the submission by HFL to continue through to a substantive hearing with both scope and merits to be considered as part of that process.

74. We address the merits of the HFL rezoning request later in this decision.

3 Legal Framework

3.1 Relevant Law

75. The Amendment Act sets out the key elements of the legal framework that we must apply in reaching a decision on Var 3.

76. The Amendment Act does not however standalone. The standard RMA requirements for district plan changes (ss.75-76) continue to apply - unless and except to the extent they are altered by the Amendment Act.

77. Those requirements were helpfully set out in full in Appendix A to the Joint Opening Legal Submissions for the councils for Hearing 1 (8 February 2023).[53] We have reviewed and adopted that summary (as **Appendix 4**) for the purposes of this decision.

3.2 Relevant Policy and Planning Documents

78. The s.32 Evaluation Report identified the relevant RMA statutory and policy and plan documents and other relevant documents as comprising:[54]

- NPS-UD
- National Policy Statement for Freshwater Management 2020 (NPS-FM)
- National Policy Statement on Electricity Transmission 2008 (NPS-ET)
- Te Ture Whaimana
- National Planning Standards 2019 (NPStds)
- Waikato Regional Policy Statement (WRPS)
- Waikato Regional Land Transport Plan 2021
- Waikato Tainui Environment Management Plan 2018
- Maniapoto Iwi Environment Management Plan 2018
- Future Proof Strategy 2022

[53] These requirements drew on and updated well known case law summaries such as that contained in *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55.

[54] s.32 Evaluation Report, section 2.

- Waikato 2070 – Growth and Economic Development Strategy 2020 (Waikato 2070)
- Local Area Blueprints.

79. The s.42A Report added the following documents to the list of relevant considerations:[55]

- National Policy Statement for Highly Productive Land 2022 (NPS-HPL)
- Waikato Raupatu River Trust Joint Management Agreement 2010
- National Adaptation Plan 2022
- National Emissions Reduction Plan 2022.

80. For completeness, we would add to these lists the Waikato Regional Plan, the provisions of the ODP, the PDP and the Housing and Business Development Capacity Assessment 2021 (HBA), which were referred to by the Council and other parties throughout the hearings process.

81. No party appeared to disagree that these documents, either specifically or generally, were relevant considerations – however views differed on the weight to be given to the respective documents. We address that aspect in more detail when considering specific submission issues later in this report.

82. We also note that after Hearing 2 and prior to Hearing 3 the government released the proposed NPS for Natural Hazard Decision-making for consultation. We did not seek submissions on this proposed NPS as it is at an early stage, it does not yet have any legal effect, and based on the current wording, it does not apply to IPI plan changes.[56]

83. Further, and while we address aspects of the legal framework and the relevant policy and planning documents in the following subsections, we leave substantive discussion and assessment of Var 3 against these documents to later sections when we are considering the issues arising.

3.3 Amendment Act

84. The Amendment Act provides the Council with a discretion to include "*related* provisions". In terms of what falls within the scope of that term, the Council submitted that:[57]

a) s.80E(b)(iii) defined related provisions as those that "*support or are consequential on*" the MDRS or policies 3, 4 or 5 of the NPS-UD; and

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[55] *s.42A Report, 15 June 2023, section 3.*
[56] Proposed NPS for Natural Hazard Decision-making 2023, at [1.5].
[57] *Council legal submissions, 21 July 2023, at [196]-[201].*

b) while "*support*" is not defined in the Amendment Act its usual meaning is "*give assistance to*";

c) in reliance on the guidance provided by the High Court in *Albany North Landowners*,[58] a consequential related provision is one that is:

i) necessary and desirable to achieve the incorporation of the MDRS or give effect to Policies 3 and 4 of the NPS-UD;

ii) foreseen as a direct or other logical consequence of incorporation of the MDRS or giving effect to Policies 3 and 4 of the NPS-UD;

d) to determine whether a provision supports or is consequential requires consideration of the purpose of the MDRS and Policy 3(d):

i) the purpose of the MDRS is to enable housing supply (with no particular type of housing or group of people/communities prioritised); and

ii) the purpose of Policies 3 and 4 is focused on heights and densities of urban form.

85. In terms of the meaning of related provisions that "*support or consequential*", we are also aware that the Environment Court in *Waikanae* found that where a change "*precludes*" the operation of MDRS, it is not a related provision, as it does not support or follow on from the requirement to incorporate the MDRS.[59]

86. While no party appeared to disagree that related provisions included the matters identified by the Council and excluded changes which would preclude the operation of the MDRS, some submitters argued that a broader approach should be taken to what fell within the scope of a related provision as:[60]

a) the Council has an obligation to give effect to the NPS-UD as a whole (we address this issue in section 3.5.1 below); and

b) s.80E(2) states that related provisions also include provisions that relate to various areas "*without limitation*", clearly indicated Parliament's intention to not unduly constrain scope.

3.3.1 Determination

87. In approaching this issue we are mindful that the meaning of legislation is required to be ascertained from its text and in light of its purpose and context.[61] Taking those factors into account, we are satisfied that the Council's approach appropriately

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[58] *Albany North Landowners v Auckland Council [2017] NZHC 138, at [107] and [135]. While this was not an IPI case, the Council submitted the meaning of consequential was equally applicable in the context of s.80E.*

[59] *Waikanae Land Company Ltd v Kāpiti Coast District Council [2023] NZEnvC 056, at [30].*

[60] *See for example: Ara Poutama Aotearoa (Ara Poutama) legal submissions, 9 June 2023, at [3.10]; Kāinga Ora legal submissions, 21 July 2023, at [3.6]; Ryman/RVA legal submissions, 21 July 2023, at [41.4]; and Waikato Community Lands Trust, Waikato Housing Initiative, Habitat for Humanity and Bridge Housing Trust, 31 March 2023, at[3].*

[61] *Legislation Act 2019, s.10.*

reflects the text, purpose and context of the legislation, and that related provisions should not actively preclude the implementation of the MDRS.

88. Further, while we acknowledge that there is requirement to give effect to higher order policy and plan documents (such as the NPS-UD), we consider this requirement is necessarily limited by the scope of a particular plan change. Were it otherwise, every plan change would effectively become a full plan review. There would then be little point in the RMA streamlined plan process provisions or for implementation timeframes being included in higher order policy and plan documents.

89. We also do not accept that the reference to "*without limitation*" can be read as meaning the scope of related provisions is effectively unlimited. We consider s.80E makes it clear that in order to be considered a related provision, the provision must support or be consequential on the MDRS and Policies 3, 4 and 5 of the NPSUD. If it passes that threshold, then it will be considered a related provision whether or not it specifically relates to district wide matters, earthworks, fencing, infrastructure, QMs, stormwater management, subdivision, or some other provision.

3.4 Te Ture Whaimana

90. Te Ture Whaimana is the vision and strategy for the Waikato River, and an important guiding document for the Waikato region. It forms part of the WRPS and prevails over any inconsistent provision within:

    a) the WRPS

    b) any NPS

    c) the New Zealand Coastal Policy Statement and

    d) the NPStds.[62]

91. The s.42A Report described the purpose, intent and what Te Ture Whaimana is trying to achieve as follows:[63]

> *The overarching purpose and intent of Te Ture Whaimana is the restoration and protecting of the health and wellbeing of the Waikato River, as well as the enhancement of sites, fisheries, flora and fauna. In addition to the restoration of the Waikato River itself, and its associated catchments, Te Ture Whaimana also seeks to restore and protect iwi's relationship with the river, the application of maatauranga Maaori, access to the river and adoption of a precautionary decision-making approach to avoid serious or irreversible damage.*

92. The s.42A Report also advised that the Council and Waikato Tainui signed a joint management agreement in 2010 with the purpose of establishing an enduring

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[62] *Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, ss.11 and 12.*

[63] *s.42A Report, 15 June 2023, at [55].*

relationship to achieve the overarching purpose of the settlement – being the restoration and protection of the River.[64]

93. Te Ture Whenua is also relevant in terms of QMs. Under ss.77I(c) and s.77O(c), QMs are defined as including any matters "*required to give effect to Te Ture Whenua*".

94. While there was no dispute as to the important place that Te Ture Whaimana holds in the legal framework, there were different views on the scope and extent of QMs required to give effect to Te Ture Whenua. We address those in section 8 below.

3.5 NPS-UD Interpretation Issues

95. Two interpretation issues were raised at an early stage in relation to the NPS-UD. These were:

a) whether we are required to give effect to the NPS-UD in its entirety; and

b) the meaning of "*commensurate*" in Policy 3(d).

3.5.1 Giving effect to the NPS-UD

96. As we noted in our Minute dated 14 June 2023, there was general agreement between the parties that:[65]

a) while the Amendment Act specifically referred to Policies 3, 4 and 5 of the NPS-UD, that did not mean those were the only policies or provisions that were relevant, or that those policies required differential weighting;

b) the Panel is instead required to give effect to the NPS-UD in its entirety to the extent that the matters are within scope of Var 3; and

c) the decision of the High Court in *Southern Cross*[66] reinforces the correctness of that approach.

97. It was also generally agreed that, for the Waikato District, Policy 3(d) was the applicable policy[67] that was required to be given effect to under the Amendment Act.[68]

3.5.2 Meaning of commensurate

98. Policy 3(d) of the NPS-UD states:

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

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[64] *s.42A Report, 15 June 2023, at [56].*

[65] Submissions filed by the three councils, Ara Poutama, Kāinga Ora, Ministry of Housing and Urban Development, Ryman Healthcare Ltd and Retirement Villages of NZ Incorporated (Ryman/RVA) were all generally aligned on this issue.

[66] *Southern Cross Healthcare Limited v Eden Epsom Residential Protection Society Inc* [2023] NZHC 948 (*Southern Cross*).

[67] *Out of policies 3, 4 and 5 of the NPS-UD.*

[68] *Joint Opening Legal Submissions for Hearing 1, 8 February 2023, at [7.5].*

(d) within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and densities of urban form commensurate with the level of commercial activity and community services.

99. The issue arose as to whether the term commensurate related to existing or anticipated future levels of commercial activities and community services.

100. Kāinga Ora submitted that the only feasible reading of the provision relates to anticipated future levels as:[69]

a) current levels of commercial activity and community services are by definition already accommodated in each centre; and

b) the NPS-UD has been drafted to enable more people to live in, and more businesses and community services to be located within, urban environments.

101. Kāinga Ora also submitted that as the level of commercial activity and community services increase so too should the heights and densities, but that those heights and densities should provide a development envelope "*well beyond*" what is required to accommodate all activities anticipated for the centre. This was on the basis that not all sites would be developed to the plan enabled level, and constraints on development space supply would increase prices.[70]

102. The Council s.42A Report interpreted "*commensurate*" as "*corresponding or in proportion with*" and therefore concluded that building heights and densities had to be in proportion with the level of commercial activities and community services anticipated over the NPS-UD long term timeframe (i.e., up to 30 years).[71] The legal submissions for the Council confirmed support for this view.[72]

3.5.2.1 Finding

103. We accept that "*commensurate*" requires a forward-looking view over the long-term timeframe noted in the NPS-UD. We also accept that what is required are building heights and densities in "*proportion with*" those anticipated future levels of commercial activities and community services. While as noted earlier (paragraph 13 above), a local authority has a discretion to provide more enabling provisions, it is not required to do so. We leave discussion of the evidence on what heights and densities should be enabled to a later section of this decision.

3.6 Relationship between ODP, PDP appeals and Var 3

104. At the time Var 3 was notified, Waikato District had both an ODP (all the provisions

[69] *Kāinga Ora legal submissions, 21 July 2023, at [4.6].*
[70] *Kāinga Ora legal submissions, 21 July 2023, at [4.8].*
[71] *s.42A Report, 15 June 2023, at [642].*
[72] *Council legal submissions, 21 July 2023, at [41]-[42].*

of which were operative) and a PDP which was not operative.[73]

105. This meant that the Council was required to notify a variation to its PDP (rather than a plan change to its ODP) to incorporate the MDRS and give effect to Policy 3 of the NPS-UD.[74]

106. The Council advised us that unlike an IPI plan change, an IPI variation does not vary the provisions of the PDP upon notification,[75] and the Var 3 rules do not have legal effect until decisions on Var 3 are notified.[76]

107. The Council noted that the Amendment Act is however "*largely silent*" as to how the two processes (PDP and IPI) are intended to work alongside each other when relief sought in an unresolved PDP appeal overlaps with the IPI.

108. In terms of the scale of the overlap the Council advised that:[77]

    a) 19 of the 67 PDP appeals are impacted or potentially impacted by Var 3;

    b) those 19 appeals related to four topics – rezoning requests, higher density requests, amendments to QMs, and deletion of QMs; and

    c) all appellants (bar one) did not want their appeals placed on hold pending the outcome of Var 3.

109. In terms of jurisdiction on appeal issues the Council submitted that:[78]

    a) it is for the Environment Court to determine:

        i) the appropriate underlying zoning and rezoning requests raised in any PDP appeals and any site-specific QMs (or other non-density related controls) that would be necessary if residential rezoning is accepted;

        ii) whether any High Density Zone (HDZ) or commercial zone should be established (where the appellant is not relying on Policy 3 of the NPS-UD); and

        iii) the appropriateness of setbacks and other restrictions on development raised in appeals outside the relevant residential zones.

    b) it is for the Panel to determine:

        i) whether the areas zoned General Residential Zone (GRZ) should have the MDRS incorporated subject to QMs – the Council's view being that

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[73] *Although some provisions were to be treated as operative (since appeals had been resolved) and other provisions where appeals remained unresolved had legal effect.*

[74] *RMA, Sch.12, cl.33(2).*

[75] *Largely because on Council's interpretation cl.16B of Sch.1 does not apply to an IPI.*

[76] *Council opening legal submissions, 10 February 2023, at [8.3].*

[77] *Council opening legal submissions, 10 February 2023, at [8.7]-[8.10].*

[78] *Council opening legal submissions, 10 February 2023, at [8.14]-[8.28], and [8.33].*

Huntly, Ngaaruawaahia, Tuakau and Pookeno are the only relevant residential zones which are required to incorporate the MDRS; and

ii) the extent to which provisions can/should be less enabling of development in a relevant residential zone to accommodate a QM.

110. The Council further advised that:[79]

a) while the Panel had an ability to make recommendations beyond the scope of submissions, any recommendations still need to be 'on' Var 3; and

b) the Panel has no ability to reserve any aspect of its recommendations on Var 3 pending the outcome of the PDP appeals - with all decisions on Var 3 required by 31 March 2024.

111. The Council also helpfully provided a table of appeals showing which aspects of the relief were considered within scope of the IPI and what parts remain to be considered by the Environment Court.[80]

112. No parties substantially challenged this – other than in relation to scope for rezoning which we addressed earlier (section 2.4.3 above).

3.6.1 Finding

113. In the absence of any contrary submissions and based on our understanding of the scope of Var 3 (addressed elsewhere in this decision), we accept the Council's advice (paragraphs 109 and 110 above) on this issue and have used it to guide our consideration where overlapping issues have arisen.

3.7 NPS-IB

114. The NPS-IB was released part way through the hearings process and prior to the hearings being completed. The Panel sought comment from the parties as to how procedurally it could be best addressed – i.e., through inclusion in evidence and submissions for Hearing 2, or through a separate NPS-IB focused session.[81] The Council indicated it would address through Hearing 2, and as no other party specifically requested any other approach,[82] we were content to hear submissions and evidence as part of Hearing 2.

115. In its submissions for Hearing 2 the Council submitted that:[83]

a) the Panel was required to give effect to the NPS-IB where relevant within the scope of Var 3;

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[79] *Council opening legal submissions, 10 February 2023, at [8.33] and [8.35].*

[80] *Council opening legal submissions, 10 February 2023, Appendix 1.*

[81] *Direction #19, 11 July 2023.*

[82] *Noting that WRC responded saying it was not opposed to a separate process but not specifically requesting such a process, refer: WRC letter, 19 July 2023, at [4]-[6].*

[83] *Council legal submissions, 21 July 2023, at [29]-[36].*

b) SNAs are a QM under Var 3;

c) there were 42 residential zoned sites that included a mapped significant natural area (SNA) in the PDP;

d) for these sites, the existing PDP provisions would continue to apply and any application for resource consent would also need to be assessed against cl.3.10 of the NPS-IB (which seeks to avoid particular effects on the indigenous biodiversity values of the SNA);

e) for any SNAs not yet mapped, the NPS-IB directs that mapping occur as soon as reasonably practicable but at least within 5 years of the commencement date of the NPS-IB;

f) the Panel has no scope to introduce new SNAs through the Var 3 process; and

g) overall Var 3, when viewed in conjunction with the relevant PDP provisions and the application of cl.3.10 will give effect to the NPS-IB.

116. Ms Katrina Andrews, policy advisor for WRC, agreed with the Council points (a), (b) and (d) above, and expressed a preliminary view that the implications of the NPS-IB are limited (due to Var 3 applying within residential zones of four towns), and that it would be of greater relevance to the PDP appeals.

117. We received no other substantive comment or submissions on the NPS-IB.

3.7.1 Finding

118. We accept the submissions of the Council (summarised at paragraph 115 above) and confirm we have applied that approach when considering QMs later in this decision.

3.8 Private Covenants

119. The effect of private covenants in Pookeno and their inconsistency with the MDRS level of development was identified as an issue in the Joint Opening Report.[84]

120. The Council opening legal submissions noted that:

a) landowners were concerned that the application of the MDRS to the covenanted areas would undermine the character of the areas; and

b) developers cognisant of the covenant restrictions were concerned about further constraints outside of those areas (through the then proposed Urban Fringe QM).

121. The Council submitted that:[85]

[84] *Joint Opening Report, at [5.38] and [5.39].*

[85] *Council opening legal submissions, 10 February 2023, at [6.2]-[6.10].*

a) the existence of the covenants does not prevent the Council from applying the MDRS subject to any QMs;

b) the provisions of the district plan and any resource consents do not nullify the need to comply with any private covenants;

c) landowners subject to the covenants are required to comply with their terms or risk liquidated damages for breach;

d) enforcement of the covenants is a private matter between the parties subject to the covenant – it is not a matter to be addressed under the RMA;

e) the private covenants are only relevant to Var 3 if the characteristics sought to be protected under the covenants constitute a QM under s.77I; and

f) the private covenants do not satisfy any of the QMs in ss.77I(a) to (i) being matters of national importance and nor do they satisfy the additional requirements in s.77L to be an "*other*" QM under s.77(j).

122. We received no other legal submissions on this point.

3.8.1 Finding

123. We accept, for the reasons given by the Council (at paragraph 121 above), that private covenants are not QMs and are therefore not relevant considerations for us in reaching our decisions on Var 3. While we recognise that at a practical level the existence of such covenants may constrain intensification in the areas to which they apply, we received no evidence about the terms of the covenants or the properties to which they applied, we are therefore not able to take this issue further.

4 Scope Issues

124. During the hearing process, the Council and a number of submitters raised questions of scope. In particular, whether specific requested relief was within scope, and how any scope issues ought to be dealt with.

125. In determining those scope matters (and others subsequently arising), we were mindful that while the s.41D strike out powers have been expressly carried over as part of this IPI process,[86] strike out is a power which should be exercised sparingly and only in a clear case – particularly given the public participation provisions of the RMA.

126. We also paid careful attention to the line of relevant case authorities – being those colloquially referred to as *Clearwater*, *Motor Machinists, Bluewater* and *Albany North*[87] – and applied the conventional 2-limb test. That is, (in summary), a

[86] RMA, Sch.1, cl.98(1)(h).

[87] *Clearwater Resort Ltd v Christchurch City Council* [2013] NZHC 1290; *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290; *Bluehaven Management Limited v Western Bay of Plenty District Council* [2016] NZEnvC 191; and *Albany North Landowners v Auckland Council* [2017] NZHC 138.

submission needs to be 'on' the plan change, and the plan change must not be appreciably amended without real opportunity for those potentially affected to participate.

127. We also received submissions on the effect and relevance of the Environment Court's decision in *Waikanae* to issues of scope. There seemed to be general agreement that:

    a) while a territorial authority's powers under an IPI may seem broad they are not unlimited; and

    b) QMs and related provisions can reduce development to pre-MDRS levels but cannot remove or preclude existing permitted levels of development.

128. However, there were differing views on whether other changes to existing rights or provisions within the District Plan (such as a change to a more restrictive activity status) were out of scope.

129. We addressed some preliminary scope matters relating to the Urban Fringe QM, inclusionary zoning/affordable housing, and specific submission points in section 2.4 above.

130. The scope issues we address here and our findings on them are summarised in Table #1 below:

Table #1: Scope Issues and Findings

Section #	Scope Issue	Finding
4.1	MDRS - Raglan and Te Kauwhata	Out of scope
4.2	Financial contributions	Out of scope
4.3	Additional height in Huntly	Within scope
4.4	Gas transmission line setback	Out of scope
4.5	Historic heritage	Out of scope
4.6	Tuurangawaewae marae surrounds – Area D	Out of scope
4.7	Flood risk	Part out of scope Part within scope
4.8	Waterbodies buffer	Out of scope
4.9	Retirement villages in business zones	Out of scope
4.10	Residential definitions	Out of scope
4.11	Noise and vibration setbacks	Out of scope
4.12	Electricity line setbacks	Out of scope
4.13	Horotiu West rezoning	Within scope
4.14	Other rezoning (i) Kainga Ora rezoning requests (ii) 23A Harrisville Road and Johnson/Oak Street (iii) Tuakau Structure Plan and Waikato 2070 areas (iv) 40 and 45 Harrisville Road, Tuakau	 Out of scope Within scope Out of scope Out of scope

Section #	Scope Issue	Finding
	(v) 14 and 16 Herschel Street, Ngaaruawaahia	Out of scope
	(vi) Greenfield land in Ngaaruawaahia	Out of scope
	(vii) King Street, Ngaaruawaahia	Part out of scope
	(viii) 2D Ellery Street, Ngaaruawaahia	Out of scope
	(ix) 99a Ngaaruawaahia Road and 18 Rangimarie Road, Ngaaruawaahia	Within scope
4.15	Pookeno special character as a QM	Out of scope

131. Matters that we determine as being clearly out of scope are not addressed further in this decision. Where the scope issue is not clear-cut, or there remains some uncertainty around scope (such as the *Waikanae* issue regarding activity status noted at paragraph 128 above), we have taken a conservative approach and ruled the matter within scope, so that the merits of the issue can be assessed in later parts of this decision.

4.1 MDRS - Raglan and Te Kauwhata

132. The Joint Opening Report identified that issues had been raised as to whether the Council had correctly applied the MDRS to all relevant towns.[88]

133. In Var 3 as notified the Council had:

    a) applied the MDRS to the four towns of Huntly, Ngaaruawaahia, Pookeno and Tuakau through the creation of a new medium density residential zone (MRZ2); and

    b) not applied the MDRS to the towns of Raglan and Te Kauwhata, leaving these with the medium density zoning applied under the PDP but renaming the zone MRZ1.

134. There was generally no dispute that the towns of Huntly, Ngaaruawaahia, Tuakau and Pookeno[89] had been correctly identified as relevant residential zones.[90] However, Kāinga Ora and Ryman Healthcare Limited and Retirement Villages Association of New Zealand (Ryman/RVA) submitted that Raglan and Te Kauwhata also qualified as relevant residential zones. This was because, while both areas had a population of less than 5,000, they were areas that Council intended to become part of the "*urban environment*" as referenced in the Future Proof Strategy.[91]

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[88] *Joint Opening Report, at [5.4].*

[89] *Refer to the s.42A Report, 15 June 2023, at [89]-[96] for a summary of the reasons why these towns meet the definition of "relevant residential zone".*

[90] *Acknowledging there were some lay submitters who opposed the MDRS being applied to each of the four towns.*

[91] *Kāinga Ora (#106), RVA (#107) and Ryman (#108).*

135. In their joint opening legal submissions,[92] the councils noted that the MDRS is required to be applied to all "*relevant residential zones*",[93] being all residential zones with the exception of:[94]

> *a)* *a large lot residential zone:*
>
> *b)* *an area predominantly urban in character that the 2018 census recorded as having a resident population of less than 5,000, unless a local authority intends the area to become part of an urban environment:*
>
> *c)* *an offshore island:*
>
> *d)* *to avoid doubt, a settlement zone.*

136. The Council's (individual) opening legal submissions did not address the specifics of this definition, but simply expressed the view that there was no scope for the Panel to include the MDRS in Raglan or Te Kauwhata as both of those towns had an MRZ1 zoning as a result of the PDP panel accepting a submission from Kāinga Ora.[95]

137. The s.42A Report author did however subsequently provide a further explanation as to why the two towns did not qualify as "*relevant residential zones*". In essence:

    a) Raglan and Te Kauwhata have populations less than 5,000;

    b) for areas with populations of less than 5,000 to qualify as "*urban environments*" they must meet both arms of the definition in s.77F;

    c) this requires that an area is or is intended to be:

        i) predominantly urban in character; and

        ii) part of a housing and labour market of at least 10,000 people;

    d) while both towns are intended to be predominantly urban in character:

        i) they are not part of a housing and labour market of at least 10,000 people (both being located in hinterlands some distance from Auckland and Hamilton);

        ii) neither town is predicted to reach a population of 10,000 over the short, medium or long-term timeframes in the NPS-UD; and

    e) the Future Proof Strategy classifies Raglan and Te Kauwhata as locations where urban development should be enabled but not as "*urban environments*" under the NPS-UD.

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[92] *Joint opening legal submissions for the councils, 8 February 2023, at [6.10]-[6.15].*
[93] *RMA, s.77G(1).*
[94] *RMA, s.2(1).*
[95] *Council opening submissions, 10 February 2023, at [6.1(a)].*

138. This matter was not addressed further by Kāinga Ora, Ryman/RVA or any other submitter in their legal submissions.

4.1.1 Finding

139. We accept, for the reasons given by the Council (and as summarised at paragraphs 135 to 137 above) that the MDRS is not required to be applied to Raglan and Te Kauwhata. Those areas are not currently relevant residential zones, and nor are they urban environments. Accordingly, substantive changes to those zones, fall outside the scope of PC33.

4.2 Financial Contributions

140. At the end of Hearing 1, the Council indicated it was considering submissions requesting the introduction of FCs by Waikato Housing Initiative and others as well as Waikato Regional Council (WRC).[96]

141. Legal submissions were subsequently filed by Pookeno West Ltd and others challenging scope for the introduction of FC provisions and seeking an early determination of these matters.[97]

142. The Council provided detailed submissions on the issue of scope and noted that "*similar issues of scope may arise if financial contribution provisions were introduced by the Council at the section 42A stage*."

143. As noted in section 2.4.2 above, we struck out the submission points of Waikato Housing Initiatives and others having considered submissions from the parties.

144. However the issue of WRC's related submission point (#42.5),[98] was not addressed at that time.

4.2.1 Finding

145. For completeness, we find that there is no scope for the WRC submission point (#42.5) for the same reasons we provided when striking out the submission points by Waikato Housing Initiative and others in our Direction #11. In particular, the WRC submission point does not address the change to the status quo proposed by Var 3, and there is a real risk that people potentially affected by the submission would be denied an opportunity to participate. We therefore strike this WRC submission point (#42.5) out.

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[96] *Council legal submissions on inclusionary zoning, 24 March 2023, at [8].*

[97] *Pookeno West legal submissions, 28 February 2023.*

[98] *This submission point sought consideration of the use of FCs to address increased infrastructure costs or betterment activities to give effect to Te Ture Whaimana.*

4.3 Additional Height in Huntly

146. Var 3 as notified did not propose any additional height for either the Huntly Town Centre Zone (TCZ) or the Commercial Zone (COMZ).

147. Kāinga Ora in its submission sought an increase in height from the existing 12m to 24.5m. It later modified this to 24.5m in the TCZ and 22m in the COMZ.

148. Kāinga Ora provided general legal submissions on scope which addressed the two-limb test set out in *Clearwater* and *Motor Machinists* and in support of its view that Var 3 provided a wide scope.[99]

149. The Council provided brief legal submissions setting out why it considered there was scope for additional heights in Huntly as follows:[100]

> *(a) The additional height gives effect to policy 3(d) of the NPS-UD, as required by section 80E;*
>
> *(b) Despite the matter not being addressed in the section 32 report, the Council was required to give effect to Policy 3(d), and the assessment should have been undertaken;*
>
> *(c) The additional heights sought by Kāinga Ora were publicly notified in the summary of submissions, and members of the community had the opportunity to lodge a further submission supporting or opposing the relief.*

150. No other party expressly addressed the issue of scope for additional heights in Huntly.

4.3.1 Finding

151. We agree that there is scope for additional height in Huntly for the reasons given by the Council (as summarised at paragraph 149 above). Accordingly, we proceed to consider this issue on the merits in a later section of this decision.

4.4 Gas Transmission Line Setback

152. Var 3 as notified included a 6m setback from the centre of a gas transmission line through relevant residential zones in Tuakau.[101] First Gas Ltd submitted seeking a larger setback in the MRZ2 as well as a related matter of discretion (#117.2). In a further submission, First Gas also sought to extend its relief sought beyond the MRZ2 to all relevant residential zones that the pipeline traversed.

153. The s.42A Report for the Council noted that both the setback proposed in Var 3 and that sought by First Gas are more restrictive than the PDP, and that if *Waikanae* is applied, then the setback could not be considered as part of Var 3.[102]

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[99] *Kāinga Ora legal submissions, 21 July 2023, at [5.4]-[5.11].*
[100] *Council legal submissions, 21 July 2023, at [58].*
[101] *s.42A Report, 15 June 2023, at [564].*
[102] *s.42A Report, 15 June 2023, at [567].*

154. The Council's legal submissions agreed that *Waikanae* applied, and the setback should not be imposed. The submissions also noted that:

    a) a further submission cannot extend the relief sought in an original submission; and

    b) the related PDP appeal on setbacks (in other areas) had been resolved with the effect that those setbacks could be treated as operative.

155. In those circumstances the Council submitted it was not necessary to consider whether the setback had the effect of modifying the MDRS or limiting development capacity to be assessed as a QM.[103]

4.4.1 Finding

156. We accept the Council's view on this issue (as summarised in paragraphs 153 and 154) above. We consider there is no scope to include the setbacks in the relevant residential zones through Var 3, and we therefore strike this submission point (#117.2) out. However, we note that this does not foreclose such setbacks being pursued through a separate plan change process should that be considered appropriate.

4.5 Historic Heritage

157. Var 3 as notified did not make any changes to the 22 scheduled heritage items. This was because they had already been reviewed as part of the PDP process. Two submitters requested buffer areas around heritage items (#75.5),[104] and one submitter sought that development be limited to single storey housing around the Queen's Redoubt site (#115.1).[105]

158. The s.42A Report did not directly address the scope issue for the buffer areas,[106] but in relation to the Queen's Redoubt site noted that:[107]

    a) the properties in the areas where the limitation was sought had already been zoned medium density in the PDP process;

    b) the PDP medium density zone enabled 3 storey housing up to 11m in height as a permitted activity; and

    c) if *Waikanae* applied, Council could not use its IPI process to remove or restrict development rights that already exist in the district plan.

159. The Council legal submissions clarified that:[108]

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[103] *Council legal submissions, 21 July 2023, at [71]-[75].*

[104] *Being a submission point of Laura Kellaway and Bryan Windeatt.*

[105] *Being a submission point of the Queen's Redoubt Trust relating to areas in Selby Street and Walters Road.*

[106] *But did address the merits of such buffers, refer: s.42A Report, 15 June 2023, at [443]-[444].*

[107] *s.42A Report, 15 June 2023, at [447].*

[108] *Council legal submissions, 21 July 2023, at [81]-[82].*

a) as there were still live appeals on the PDP which relate to the PDP medium density zone it could not be said that the standard was beyond challenge and therefore it was at least arguable that *Waikanae* may not apply;

b) *Waikanae* was not however the only limitation on scope as plan amendments still had to meet the *Clearwater* tests;

c) reducing the height limit in the proposed buffer areas and around the Queen's Redoubt site would not meet the second limb of the *Clearwater* test as there is a real risk landowners in the area have not had a reasonable opportunity to participate; and

d) this concern was borne out by the lack of further submissions on these submission points (with only one further submission having been received).

4.5.1 Finding

160. We accept, for the reasons provided by the Council (paragraphs 158 and 159 above), that there is no scope for the relief sought by these submitters in this process. We therefore exercise our power under s.41D of the RMA and strike out submission points #115.1 and #75.5.

4.6 Tuurangawaewae Marae Surrounds – Area D

161. Submissions were lodged seeking to either rezone the land surrounding Tuurangawaewae marae or apply a QM to protect the cultural viewshafts from the marae to the Waikato awa, Haakarimata Range and Taupiri maunga.

162. Mr Mansergh assessed how the cultural viewshafts would be affected by Var 3 as well as the greater height previously (but no longer sought) by Kāinga Ora. Mr Mansergh recommended that to fully address the effects, development in areas close to the marae (referred to as Area D),[109] should be restricted to levels comparable to the GRZ in the ODP.[110] That is, generally 7.5m height, 40% building coverage and height control plane of 37 degrees.[111] Mr Mansergh, acknowledging that there may be scope issues associated with his recommendation, provided an alternative (but less preferred) QM envelope to partly address effects.[112]

163. The s.42A Report acknowledged the importance of maintaining the relationship between Tuurangawaewae marae and the places of cultural significance, but considered a future variation or plan change would be necessary to reduce development levels below the levels set out in the PDP.[113]

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[109] *Being the neighbourhood block bounded by Great South Road, Regent Street and River Road and properties adjoining River Road adjacent to the Marae.*

[110] *Mansergh, Statement of evidence, 20 June 2023, at [151].*

[111] *Council legal submissions, 21 July 2023, at [92].*

[112] *Mansergh, Statement of evidence, 20 June 2023, at [152], [157] and [158].*

[113] *s.42A Report, 15 June 2023, at [412].*

164. The legal submissions for the Council noted that:[114]

a) similar to the position on the historic heritage issue (noted in paragraph 159 above) it was at least arguable that *Waikanae* did not apply given there were unresolved PDP appeals that addressed the same plan provisions;

b) adopting Mr Mansergh's preferred recommendation for Area D would not meet the second limb of the *Clearwater* test as there is a real risk that landowners in the area have not had a reasonable opportunity to participate;

c) the summary of submissions would not have put a potential submitter on notice that development controls could have reverted back to ODP standards; and

d) the fact that only three further submissions were received across the five different submissions on these issues supported the view that potential submitters have been denied the opportunity to respond to Mr Mansergh's recommendation.

165. The Council did however later submit that there was scope for some additional assessment criteria in the TCZ and COMZ to require consideration of the impacts of additional height on the cultural viewshaft.[115]

166. No party took a contrary view on these scope issues.

4.6.1 Finding

167. We acknowledge the importance of Tuurangawaewae marae, Waikato awa, Haakarimata and Taupiri to Waikato Tainui. We agree that the protection of the viewshafts from the marae to these areas are matters of national importance under s.6(e). How those matters are appropriately provided for will be discussed in a later section.

168. However, the issue here, is whether there is scope for the Area D preferred relief as suggested by Mr Mansergh. Our view is that there is not, for the reasons provided by the Council (and summarised at paragraph 164 above). However, we note that Mr Mansergh has suggested alternative relief to which no scope issues have been raised, and the Council has also considered further changes in other areas (such as the TCZ and COMZ) to address these concerns, which we address later. To the extent concerns remain with the PDP level of development, these will need to be addressed either through PDP appeals (to the extent there is scope) or through a separate plan change process.

169. For completeness we note that as this issue arose in the context of a recommendation from Council's expert in response to submissions, our s.41D strike

[114] *Council legal submissions, 21 July 2023, at [105]-[107].*
[115] *Council reply legal submissions, 22 September 2023, at [22].*

out power is not relevant. Accordingly, we simply record our view here that the preferred relief of Mr Mansergh's for Area D is out of scope.

4.7 Flood Risk

170. The Council advised us that there were scope issues in seeking to take a comprehensive approach to flooding within Var 3. In particular the Council submitted that:[116]

    a) the *Waikanae* decision means that Council cannot disenable existing rights in the PDP, which enables 3 units as a permitted activity in the MRZ and one unit and a minor unit in the GRZ, except where a property in either zone is within a mapped high risk flood area;

    b) in terms of the *Clearwater* tests:

        i) no additional flood hazard restrictions were included in Var 3 as notified or addressed in the s.32 Evaluation Report; and

        ii) there is a real risk that members of the community would not be aware that changes were proposed to permitted development rights at this stage of Var 3;

    c) the existence of two PDP appeals (by WDC and Ms Noakes) means that the PDP provisions are not settled;

    d) there is no scope to disenable three residential units on properties rezoned from GRZ to MRZ2 in Var 3;

    e) there is no scope to amend district wide provisions that would have application beyond the relevant residential zone;

    f) but there is scope to limit density within the former proposed Urban Fringe QM area through the application of a stormwater constraints overlay (now referred to as the MRZ2 Flood Risk QM).

171. No party disagreed with these submissions on scope, although, as we address later, there were a number of submissions on the merits of such a QM.

4.7.1 Finding

172. We accept the Council's submissions on scope (as summarised in paragraph 170 above) and have approached our consideration of the merits of the proposed controls (section 8 below) with these constraints in mind.

[116] *Council legal submissions, 21 July 2023, at [149]-[150].*

4.8 Waterbodies Buffer

173. Ngaati Naho requested the inclusion of a 1.2km buffer zone along the Waikato River, Lake Waikare, and the Whangamarino and Mangataawhiri wetlands to exclude any medium or high-density housing in those areas in order to better protect the waterways (submission point #83.5).

174. Council considered there was no scope for this specific change as it would make development less enabling than the existing PDP (contrary to *Waikanae*) and would be unfair from a natural justice and fair process perspective (contrary to *Clearwater*).[117] The Council did however consider that there were other mechanisms within scope (such as smaller buffer areas from the river and other provisions) that they had recommended to protect waterbodies.

175. Mr Haydn Solomon appeared and gave oral evidence for Ngaati Naho at the hearing[118] but did not specifically address the issue of scope.

4.8.1.1 Finding

176. We accept that there is no scope for a buffer of this breadth within Var 3 for the reasons given by the Council (as summarised in paragraph 174 above). We therefore exercise our power under s.41D and strike this submission point (#83.5) out. We address the merits of the other measures that Council is proposing to address effects on waterbodies in a later section of this decision report.

4.9 Retirement Villages in Business Zones

177. Ryman/RVA sought a variety of changes in their submissions which they considered were necessary to better provide for the ageing population and retirement villages in both the MRZ2 and business zones.

178. While initially scope issues were raised by the Council regarding all of these zones,[119] the Council subsequently agreed that there was scope for changes sought in the MRZ2 zone. Council however maintained its view that the changes sought to the business zones - being the Local Centre Zone (LCZ), the TCZ and the COMZ - were outside scope.[120]

179. Ryman/RVA accepted that the changes it had sought within the LCZ[121] were not within the scope of Var 3 since there are no LCZ areas within the Waikato urban

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[117] *s.42A Report, 15 June 2023, at [533], [534] and [537]; and Council legal submissions, 21 July 2023, at [170].*
[118] *Remote appearance on 2 August 2023.*
[119] *s.42A Report, 15 June 2023, at [213]; and s.42A Report Addendum 1, 23 June 2023, at [20]-[21].*
[120] *s.42A Report Addendum 1, 23 June 2023, at [23]-[28].*
[121] *Being submission points #107.9 relating to the LCZ, #107.49 to #107.56, and related parts of #108.1.*

environment.[122] However, they maintained their view that the changes they had sought to the TCZ and COMZ[123] were within scope as:[124]

a) TCZ and COMZ areas were within the urban environments of the four towns;

b) Policy 3(d) of the NPS-UD was required to be given effect to in those areas;

c) Policy 3(d) should be interpreted broadly in light of the other objectives and policies of the NPS-UD (including Objective 3 and Policy 1);

d) the changes they were seeking were required to give effect to Policy 3(d) as urban form included residential and commercial activities;

e) the changes were also related provisions as they supported or were consequential on Policy 3;

f) while Var 3 did not propose to materially change provisions in the business zones and the s.32 analysis did not deal with such changes, they should have;

g) the Amendment Act was widely publicised;

h) Var 3 was publicly notified and Ryman/RVA's submissions were publicly available;

i) case law on scope needed to be applied with caution given the IPI context; and

j) the tests in the Amendment Act should be the focus for scope.

180. The Council disagreed and submitted that:[125]

a) the TCZ and COMZ are not relevant residential zones and are not required to have the MDRS incorporated;

b) residential use within the TCZ and COMZ is already a permitted activity;

c) amendments to refer to the requirements of the ageing population are not related provisions as:

i) the amendments do not support and are not consequential on the MDRS or Policies 3, 4 or 5 of the NPS-UD; and

ii) Policy 3(d) is limited in its scope to heights and densities of urban form and within that form all residential uses should be equally provided for.

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[122] *Ryman/RVA legal submissions, 21 July 2023, at [40]; and Ryman/RVA legal submissions, 22 August 2023, at [8].*

[123] *Being submission points #107.9 relating to the TCZ and COMZ, #107.57 to #107.60, #107.62 to #107.68, #107.70 to #107.72, and related parts of #108.1.*

[124] *Ryman/RVA legal submissions, 21 July 2023, at [41]-[42]; and Ryman/RVA legal submissions, 22 August 2023, at [10].*

[125] *s.42A Report, 15 June 2023, at [213], [220]; s.42A Report Addendum, 23 June 2023, at [26];*

4.9.1 Finding

181. We accept, as did both Ryman/RVA and the Council, that changes to the LCZ are not within scope as they are not located within the Waikato urban environment. We therefore exercise our discretion under s.41D and strike out these submission points (being #107.9 relating to the LCZ, #107.49 to #107.56 and related parts of #108.1).

182. We also accept that changes to the TCZ and COMZ are not within scope as:

    a) the TCZ and COMZ are not relevant residential zones and are not required to have the MDRS incorporated;

    b) the provisions of those zones were not materially amended by Var 3;

    c) the changes were not assessed as part of the s.32 analysis;

    d) the changes do not support and are not consequential on the MDRS or Policy 3(d);

    e) the changes go beyond seeking changes to building heights and densities instead being directed at enabling a particular type of residential use; and

    f) while the changes were clearly flagged in the submissions for Ryman/RVA, there may be potential submitters who would not have appreciated that Var 3 could give rise to such changes (given the absence of any material changes to those zones in the notified version of Var 3 and given the purpose of the Amendment Act being to enable more housing in relevant residential areas).

183. Accordingly, we also exercise our power under s.41D to strike out these submission points (#107.9 relating to the TCZ and COMZ, #107.57 to #107.60, #107.62 to #107.68, #107.70 to #107.72 and related parts of #108.1).

4.10 Residential Definitions

184. Two submitters sought changes to or the inclusion of new residential definitions:

    a) Ara Poutama sought the inclusion of a new definition of "*household*" and the amendment of the "*supported residential accommodation*" definition (#30.3 and #30.4); and

    b) Ryman/RVA sought the inclusion of a new definition of "*retirement units*" (#107.11).

185. The Council considered there was no scope for such amendments since they are not required to implement the MDRS, and were not related provisions (i.e., they are not required to support and are not consequential on the MDRS or Policies 3 and 4 of the NPS-UD.[126]

[126] *s.42A Report, 15 June 2023, at [335], and [356]; and Council legal submissions, 21 July 2023 at [209]-[212].*

186. Ara Poutama submitted that "*arguably*" its relief was within scope of s.80E because the purpose of Var 3 is to enable residential intensification in relevant residential zones and provide housing choice in line with the NPS-UD.

187. Ryman/RVA submitted that the its relief was within scope as it gives effect to Policy 3 and is a related provision.

188. In reply submissions the Council maintained its view that there was no scope for the Ara Poutama relief through this IPI process and a separate plan change or variation would be required if they were to be introduced.[127] The Council took a different approach to the Ryman/RVA relief setting out the reasons it considered such relief was not required, rather than addressing scope issues.[128]

4.10.1 Finding

189. We agree with the Council that there is no scope for the relief sought by Ara Poutama for the reasons summarised at paragraph 185 above. We also consider that there are scope issues with the relief sought by Ryman/RVA for similar reasons. Further, we are cognisant that as definitions apply across the district, any changes would potentially have implications beyond just those zones affected by PC33. We therefore exercise our discretion to strike out these submission points (#30.3, #30.4 and #107.11).

4.11 Noise and Vibration Setbacks

190. Var 3 proposed setbacks for sensitive land uses from the boundaries of national/regional arterials, the Waikato expressway, and the rail corridor based on the extent of setbacks included in the PDP.[129] Those setbacks were appealed by Waka Kotahi – New Zealand Transport Agency (Waka Kotahi) and KiwiRail Holdings Ltd (KiwiRail) and discussions on those appeals proceeded in parallel with the Var 3 process. Both Waka Kotahi and KiwiRail made submissions on the setbacks seeking alignment or similar relief to what was sought through the PDP appeal process (submission points #29.4, #54.2, #54.11 to #54.15). The parties subsequently reached an agreement through the PDP appeals process as to the appropriate extent of setbacks and associated provisions.[130]

191. In terms of scope for the changes sought in submissions on Var 3, we were informed that the parties had agreed that:[131]

    a) the noise and vibration setbacks sought (to the rail corridor and state highways):

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[127] *Council reply submissions, 22 September 2023, at [82].*
[128] *Council reply submissions, 22 September 2023, at [79].*
[129] *s.42A Report, 15 June 2023, at [554].*
[130] *s.42A Report, 15 September 2023, at [56].*
[131] *Council legal submissions, 21 November 2023, at [41]-[43].*

i) do not constitute a QM under s.77I as they do not affect density;

ii) do not constitute a related provision under s.80E as they do not support and are not consequential on the MDRS or Policy 3;

iii) are not required to be implemented through Var 3 as the changes agreed through the PDP process were district wide and would automatically apply to Var 3 zones once a consent order had been issued by the Court; and

b) the 2.5m safety setback from the rail corridor is a QM under s.77I(e) and needed to be appropriately provided for under Var 3.

192. No party disagreed with this position on scope, although there was some disagreement between the parties as to the most appropriate wording for the 2.5m safety setback.[132]

4.11.1 Finding

193. We accept, for the reasons summarised at paragraph 191 above, that there is no scope for the noise and vibration setbacks but that there is scope for the 2.5m safety setback. We therefore strike out submission points #29.4, #54.2, #54.11 to #54.15 to the extent they relate to noise and vibration setbacks. We proceed to consider the merits of the 2.5m setback in a later section of this decision.

4.12 Electricity Line Setbacks

194. WEL Networks Ltd's submission sought the inclusion of a new subdivision rule (#19.1) and an amendment to the MRZ2 setbacks rule (#19.3) to require compliance with the New Zealand Electrical Code of Practice NZECP 34 2001 (NZECP 34) which imposes mandatory setback distances from power lines.

195. The Council's legal submissions advised that as the provisions proposed by WEL Networks could be less enabling of development under the MDRS they would need to be supported by a QM. However the infrastructure QM under s.77I(e) only applied to nationally significant infrastructure, which according to the NPS-UD definition did not include WEL Network's assets.[133] Accordingly, the Council submitted that for the provisions to be included they would need to be assessed ad meet the requirements of an 'other' QM in s.77(j) as well as the additional requirements in s.77L. As no such assessment had been provided the most that could be offered was an advice note to act as an alert to landowners and developers.[134]

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[132] *As noted in the Council legal submissions, 21 November 2023, at [47].*

[133] *Council legal submissions, 21 July 2023, at [213].*

[134] *Council legal submissions, 21 July 2023, at [71]-[73]; and s.42A Report, 15 June 2023, at [340].*

196. WEL Networks disagreed and submitted that:[135]

a) the requirement to comply with NZECP 34 is mandatory and exists irrespective of the rules in Var 3 and it therefore cannot act to reduce capacity enabled by the MDRS;

b) Council had a broad discretion under s.80E to introduce new or alter existing provisions as "*related provisions*" subject only to those provisions supporting or being consequential on the mandatory requirements;

c) while the terms "*support*" or "*consequential*" are not defined, they must include provisions to manage the interface between intensification and infrastructure;

d) provisions to mitigate the effects of intensification are both necessary and appropriate to support the implementation of the MDRS and NPS-UD as well as being consequential to greater intensification; and

e) although it considered ss.77I(j) and 77L were not relevant to its relief, even if compliance with those provisions was required, the evidence of their in-house planner Sara Brown[136] satisfied those requirements.

4.12.1 Finding

197. We are not persuaded there is scope for the relief sought by WEL Networks for the reasons given by the Council (as summarised at paragraph 195 above).

198. We also disagree that ECP34's mandatory status means it cannot be said to reduce MDRS capacity. Including the proposed restrictions in the plan would reduce plan enabled capacity, which is clearly captured by s.77I. Accordingly, the restriction could only be applied if it qualifies as an "*other*" QM under s.77I(j). Section 77L is clear that a matter is not a QM under s.77I(j) unless a s.32 evaluation has been undertaken that identifies the specific sites affected and evaluates the characteristics of those sites as well as an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS while managing the specific characteristics. Ms Brown's evidence does not include such an evaluation, and nor was such an evaluation otherwise provided by WEL Networks.

199. We also consider that there are likely to be potentially affected people who have not been consulted nor had a reasonable opportunity to submit given the matter was requested through a submission and not supported by a s.77L evaluation identifying and assessing each site.

200. For these reasons we exercise our power under s.41D to strike out these submission points (#19.1 and #19.3). As a consequence, we have not included the advice note

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[135] *WEL Networks further legal submissions, 3 October 2023, at [4]-[9].*

[136] *Brown, Statement of evidence, 4 July 2023.*

regarding compliance with ECP34 (which was suggested by Council in response to this submission point) in our recommended provisions. However, we note that this does not alter the requirement to comply with ECP34. Nor does it prohibit the issues being considered in a future plan change, or WEL Networks and/or the Council making further information available to the public in the meantime about the need for compliance with ECP34.

4.13 Horotiu West Rezoning

201. HFL filed a submission seeking to rezone 34 hectares of its land between Great South Road and State Highway 1C in Horotiu (Horotiu West) from GRZ to MRZ2 (#49.1).

202. While Council's initial position was that the rezoning was out of scope[137]- a position strongly contested by HFL[138] - by the time of Hearing 3 the Council had reversed its position. In particular, the Council submitted that:[139]

    a) the Horotiu West land met the definition of an urban environment in s.77F as:

        i) the land is or is intended to be predominantly urban in character -with parts already residential, and other parts intended to have an urban character as shown on the development master plan; and

        ii) Horotiu's location on the edge of Hamilton City and its role in the productive economic corridor meant it was part of a housing and labour market more than 10,000 people;

    b) the GRZ in Horotiu is a relevant residential zone;

    c) there were unlikely to be any natural justice and fairness issues as:

        i) the Horotiu West land had been identified by the Council for residential zoning through the PDP process and no appeals had been filed contesting that zoning;

        ii) the recent extensive Te Awa Lakes private plan change process had confirmed the area as being appropriate for mixed residential/commercial and industrial uses;

        iii) there was an opportunity for further submissions through Var 3 and the existence of one further submission was evidence of that;

        iv) the fact that there were no other further submissions may be due to the fact it had recently been rezoned through the PDP process;

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[137] *Council legal submissions, 24 March 2023, at [30]-[35].*

[138] *HFL legal submissions, 15 March 2023, HFL reply legal submissions, 30 March 2023, and HFL submissions 21 November 2023, at [5].*

[139] *Council legal submissions, 21 November 2023, at [3]-[27].*

v) the developer had undertaken consultation with key stakeholders[140] since 2017 regarding its Horotiu West masterplan, and more recently on its decision to seek MDRZ through Var 3 – including an invitation to a consultation session prior to the close of further submissions; and

vi) the limitations of the IPI process meant that even if Var 3 had been notified to include Horotiu West, submissions could not prevent the application of the MDRS to the site (since it was a relevant residential zone).

203. In its final closing submissions, the Council confirmed that it remained of the view that the submission was within scope of Var 3 because it was both within the scope of an IPI under s.80E, and "*on*" the plan change in accordance with the bipartite *Clearwater* tests. The Council also noted that scope was not challenged by any party at Hearing 3.[141]

4.13.1 Finding

204. We are satisfied for the reasons given by the Council (and summarised at paragraph 202 above) that the submission and rezoning relief sought by HFL is within scope. We address the merits of the rezoning and the parties' views on appropriate provisions later in this decision.

4.14 Other Rezoning

4.14.1 Kāinga Ora rezoning requests

205. Kāinga Ora requested the rezoning of a large number of sites across the towns of Tuakau, Pookeno, Huntly, Raglan and Te Kauwhata (submission points # 106.10 to #106.16).

206. The s.42A Report raised scope concerns with this relief on the basis that:

a) for the large lot residential zoned land at Tuakau, the zone is not a relevant residential zone, the rezonings were not included in Var 3 as notified, and people may not be aware of the requests and therefore not have had a reasonable opportunity to participate;[142]

b) for the land at Pookeno:[143]

i) Var 3 did not rezone any MRZ2 to COMZ, the surrounding land had not been rezoned in any material way by Var 3, and there was a potential lack of consultation;

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[140] *Coventry, Statement of evidence, 7 November 2023, at [5.4] which referred to consultation with iwi, the tangata whenua working group, the Horotiu primary school and immediate neighbours.*

[141] *Council final reply submissions, 1 February 2024, at [3]-[4].*

[142] *s.42A Report, 15 June 2023, at [132]-[133].*

[143] *s.42A Report, 15 June 2023, at [126]-[129].*

ii) the PDP had not rezoned land from General Rural to GRZ, the property was not rezoned in Var 3, and it was not clear whether any consultation had occurred; and

c) for the General Rural zoned college site in Huntly, the land is not a relevant residential zone, is not a logical extension of a rezoning proposed in Var 3, and consultation may not have been undertaken.[144]

207. The legal submissions for the Council expressed the view that these zoning requests would fail at least the second *Clearwater* test as:[145]

> *The rezoning would impact a significant number of properties and there is a real risk that those owners are not aware that the zoning of their sites could be amended through Variation 3. As set out in Motor Machinists the fact that a summary of submissions was released does not automatically mean that owners should have been aware of the zoning request and the need to check the summary document, especially when there was no consideration of rezoning rural or LLRZ land in the section 32 report.*

208. In response, Kāinga Ora submitted that:[146]

a) the existence of a current non-residential zoning did not render the relief out of scope of Var 3;

b) there is no obligation on a submitter to consult with third parties on relief;

c) the land at Tuakau is very close to the town centre and a logical location for intensive residential development; and

d) the rezoning at Huntly will not affect the operation of the school, is consistent with the approach adopted in Auckland where public schools are subject to a zoning that reflects the adjacent land and is not opposed by education interests.

4.14.1.1 Finding

209. We have already addressed the reasons why we consider there is no scope for the MDRS to apply within Raglan and Te Kauwhata in section 4.1 above.

210. In relation to the rezoning requests in the other towns, we find that there is no scope for these changes for the reasons given by the Council (and as summarised in paragraphs 206 and 207 above). In particular we note that to be within scope such requests need to meet both limbs of *Clearwater,* and therefore even if some of the requests could be said to meet the first limb, they do not satisfy the second limb. Accordingly we exercise our discretion and strike out these submission points (# 106.10 to #106.16).

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[144] *s.42A Report, 15 June 2023, at [150].*
[145] *Council legal submissions, 21 July 2023, at [236(c)].*
[146] *Kāinga Ora legal submissions, 21 July 2023, at [5.13].*

211. As an aside we note that even if we had not reached this finding on scope, Kāinga Ora provided no independent expert evidence in support of its rezoning requests,[147] meaning we were not able to assess the requests on the merits.

4.14.2 23A Harrisville Road and Johnson/Oak Street, Tuakau

212. Harrisville Twenty Three Ltd (Harrisville 23) and Greig Developments No 2 Ltd (Greig Developments) sought to have their respective pieces of land (at 23A Harrisville Road and the corner of Johnson/Oak Street in Tuakau) rezoned from large-lot residential under the PDP to MRZ2 under Var 3 (submission #20).

213. The Council's s.42A Report for Hearing 2 noted that:[148]

    a) the land did not fall within a relevant residential zone (since it was zoned large lot residential);

    b) while Waikato 2070 identified additional residential land in this location, and the land was close to the town centre, any rezoning was at the discretion of the Council; and

    c) more evidence was necessary to support any such rezoning.

214. The Council's legal submissions advised that as Var 3 did not rezone any large lot residential land to MRZ2 it was necessary to consider whether the rezoning request was "*on*" Var 3 in accordance with the *Clearwater* tests. *Waikanae* was not relevant as the request related to enabling residential development as compared to the PDP.[149]

215. The Council submitted that the *Clearwater* tests were satisfied in this case as:[150]

    a) while the rezoning was not considered in the s.32 ER, it was an incidental extension to the MRZ2 which did not require substantial further analysis and was therefore permissible (as per *Motor Machinists*); and

    b) the rezoning was sought in the original submission, and the majority of adjoining properties are already adjoining or close to residential zoned land, potentially affected parties would have been on notice and therefore no natural justice issues arise.

216. Counsel for Harrisville 23 and Grieg Developments endorsed the Council's view that there was scope,[151] and we received no submissions to the contrary.

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[147] *The only evidence being provided by Mr Gurvinderpal Singh, the Team Leader of Development Planning at Kāinga Ora.*

[148] *s.42A Report, 15 June 2023, at [132]-[133].*

[149] *Council legal submissions, 21 July 2023, at [217].*

[150] *Council legal submissions, 21 July 2023, at [217].*

[151] *Harrisville 23 / Grieg Developments legal submissions, 24 July 2023, at [1.3].*

4.14.2.1 Finding

217. We agree that there is scope for the relief sought by Harrisville 23 / Grieg Developments for the reasons given by the Council (summarised at paragraph 215 above). We therefore proceed to consider this rezoning on its merits in a later section of this decision.

4.14.3 Tuakau Structure Plan and Waikato 2070 areas

218. Brett Titchmarsh sought that Var 3 be amended to include all areas identified to accommodate residential growth in the Tuakau Structure Plan and Waikato 2070 (#21.1).

219. The s.42A Report author noted that some land had already been rezoned through the PDP and that further rezoning (from General Rural or Future Urban to residential) was beyond the scope of Var 3, as those zones were not relevant residential zones, the areas of land were not included in Var 3 as notified, and there are likely to be natural justice considerations.[152]

220. No legal submissions directly addressed this submission point.

4.14.3.1 Finding

221. We accept, for the reasons given by the s.42A Report author (summarised at paragraph 219 above), that there is no scope to make such changes, and accordingly, we strike out this submission point (#21.1).

4.14.4 40 and 45 Harrisville Road, Tuakau

222. Nathan Harvey requested that the sites at 40 and 45 Harrisville Road in Tuakau, which had been rezoned MDRZ2 through Var 3, revert to GRZ (#34.3).

223. The s.42A Report noted that this submission could not be accepted given the mandatory directive in s.77G to incorporate the MDRS into every relevant residential zone.[153]

4.14.4.1 Finding

224. We agree with the reporting officer that there is no scope for this change given the directive in s.77G and we therefore strike this submission point (#34.3) out.

4.14.5 14 and 16 Herschel Street, Ngaaruawaahia

225. Jeremy Duncan sought that 14 and 16 Herschel Street Ngaaruawaahia be rezoned from COMZ to MDRZ2 (#14.1).

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[152] *s.42A Report, 15 June 2023, at [136]-[137].*
[153] *s.42A Report, 15 June 2023, at [144].*

226. The s.42A Report author considered the submission was not within scope as:[154]

    a) Var 3 did not rezone any properties from COMZ to MRZ2;

    b) adjacent properties were not rezoned in Var 3; and

    c) the adjacent owner/industrial zoned land could be denied the opportunity to participate given the change in zoning was not signalled in Var 3 as notified.

227. The s.42A Report author also provided reasons why the current zoning was more appropriate.[155]

228. Mr Duncan, while appearing at the hearing, did not address this scope issue.

4.14.5.1 Finding

229. We accept, for the reasons given by the s.42A Report author (as summarised at paragraph 226 above), that there is no scope for this relief. We accordingly strike submission point #14.1 out.

4.14.6 Greenfield land in Ngaaruawaahia

230. Mr S Upton and Ms B Millar sought that extent of the greenfield residential zoning in Ngaaruawaahia under the PDP be reviewed in light of the greater density of housing that will be enabled in central Ngaaruawaahia by Var 3 (#32.1).

231. The s.42A Report author considered the request to be out of scope given the mandatory directive in s.77G to apply the MDRZ to relevant residential zones and because the property owners affected by this submission are wide ranging and have not been consulted.[156]

232. Mr Eccles, (Principal Planner for Tonkin and Taylor) appeared and gave evidence for this submitter. In relation to scope, Mr Eccles opined that:[157]

    a) if the geographic extent of residential zoning to which the MDRS applies is not yet resolved through the PDP process then there is scope for Var 3 to consider it; and

    b) the Panel has the power to make recommendations going beyond the scope of submissions.

233. In response the s.42A Report author noted that determining the final extent of the residential zones in the PDP was for the Environment Court not this panel (for the reasons given by the Council in its February 2023 submissions).

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[154] *s.42A Report, 15 June 2023, at [154].*
[155] *s.42A Report, 15 June 2023, at [155].*
[156] *s.42A Report, 15 June 2023, at [159].*
[157] *Eccles, Statement of evidence, 27 July 2023, at [11]-[12].*

234. The reply legal submissions of the Council also noted that the relief would be contrary to *Waikanae*[158] – presumably as it would go beyond what is included in the PDP.

4.14.6.1 Finding

235. We find that there is no scope for this relief for the reasons given by the Council (and summarised by us at paragraphs 231 and 233-234 above). The extent of the residential zoning in this area is a matter for the Environment Court under the PDP appeals. Accordingly, we strike out this submission point (#32.1) and do not consider it further in this decision.

4.14.7 King Street, Ngaaruawaahia

236. Dominion Developments Ltd sought a change of zoning for 26 King Street, and all the GRZ properties on King Street from GRZ to MDRZ2, or in the alternative a controlled activity process to enable MDRS in the GRZ (#66.1).

237. The s.42A Report author noted that the change of zoning related to the Urban Fringe QM and with the removal of that QM MDRZ2 would apply to those properties. In terms of the alternative relief the author considered it was outside the scope of Var 3 as it could apply to other locations within the GRZ.[159]

4.14.7.1 Finding

238. We agree that the primary relief is addressed via the removal of the Urban Qualifying QM and no scope issue arises in that regard.

239. In terms of the alternative relief, we consider this goes beyond the scope of Var 3 since it would affect all GRZ – even those areas outside the defined urban environments. Accordingly, we strike out that part of the relief (#66.1).

4.14.8 2D Ellery Street, Ngaaruawaahia

240. Aaron Holland requested that all of 2D Ellery Street be rezoned from the current split MRZ/Industrial Zone to MDRZ2 (#104.1).

241. In response the s.42A Report author noted that:[160]

a) the property has had a split zoning in the ODP and the same zoning has been rolled over into the PDP;

b) rezoning of industrial land is outside the scope of Var 3 as it is not a relevant residential zone and Var 3 did not rezone any such land; and

c) natural fairness considerations arise for adjoining property owners.

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[158] *Council reply legal submissions, 22 September 2023, at [6(b)].*
[159] *s.42A Report, 15 June 2023, at [162]-[163].*
[160] *s.42A Report, 15 June 2023, at [168].*

242. No party filed any submissions to the contrary.

4.14.8.1 Finding

243. We accept, for the reasons given by the Council (summarised at paragraph 241 above), that there is no scope for this relief, and we therefore strike out this submission point (#104.1).

4.14.9 99a Ngaaruawaahia Road and 18 Rangimarie Road, Ngaaruawaahia

244. Next Construction and others[161] sought that their entire site, which was subject to a split zoning (half being General Rural Zone and half being GRZ), be zoned GRZ (#99.1).

245. The Council legal submissions noted that with the removal of the Urban Fringe QM, the part of the site zoned GRZ would become MRZ2.[162] While Var 3 did not generally rezone any General Rural zone land, the Council acknowledged there was legal scope for the submission, for the same reasons as applied to the requested rezoning of 23A Harrisville Road (and summarised at paragraph 215 above).[163]

246. No party contested this view.

4.14.9.1 Finding

247. We find that there is scope for this relief for the reasons given by the Council (and summarised at paragraphs 245 and 215 above). We therefore proceed to consider the merits of this request in a later section of our decision.

4.15 Pookeno Special Character as a QM

248. Pookeno Community Committee (#41.2) and Teresa Wine (#61.2) both sought that a new QM be added to recognise Pookeno's special character.

249. The s.42A Report author noted that special character did not fall within one of the QMs expressly referred to in s.77I(a)-s.77I(i) and that therefore it could only be a QM if it met the legal tests for a QM under s.77I(j) and s.77L. Those requirements had not been met and there was therefore no scope for such a QM to be imposed.[164]

4.15.1 Finding

250. We agree with the Council. Section 77L is very clear that a matter is not an "*other*" QM (under s.77I(j)) unless a site-specific s.32 assessment has been undertaken in compliance with the requirements of s.77L. In the absence of such an assessment there is no scope to consider the relief. We therefore strike out these submission points (#41.2 and #61.2).

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[161] *Being 61 Old Taupiri Ltd, Swordfish Projects Ltd, 26 Jackson Ltd, 99 Ngaaruawaahia Ltd and Next Construction Ltd.*
[162] *Council legal submissions,21 July 2023, at [226].*
[163] *Council legal submissions, 21 July 2023, at [227].*
[164] *s.42A Report, 15 June 2023, at [624]-[626].*

5 Var 3 – Overview

251. The s.42A Report summarised notified Var 3 as follows:[165]

- *Introduces a new zone (MRZ2) to the relevant residential zones within the Waikato. The relevant residential zones are located within Ngaaruawaahia, Pookeno, Tuakau and Huntly. MRZ2 is based on the MRZ zone of the decision version of the PDP with necessary amendments to incorporate the MDRS and associated objectives and policies.*
- *Amends the relevant planning maps to show the rezoning of the relevant residential zones to MRZ2.*
- *Amends the name of the MRZ to MRZ1 for the towns (Raglan and Te Kauwhata) outside Variation 3.*
- *Amends the strategic direction objectives and policies to incorporate a mandatory objective and policy relating to residential development.*
- *Amends the policies of the Subdivision chapter to provide for residential subdivision in accordance with the MDRS and incorporates the MDRS and consequential changes.*

252. The above overview description is sufficient for present purposes.

253. The s.32 Evaluation Report for Var 3 further noted a number of PDP matters that are not proposed to be amended by Var 3, including:[166]

a) the provisions for MRZ1 which will continue to apply to Raglan and Te Kauwhata;
b) the spatial extent of MRZ1 in Raglan and Te Kauwhata;
c) the provisions relating to District-wide overlays which are located in Part 2 of the PDP (other than updating references to zone names);
d) the spatial extent of the urban area (which is not expanded); and
e) properties will not be downzoned from their current zoning in the PDP decision.

254. For completeness we note that the s.32 Evaluation Report also identified that it was not proposed to amend the provisions of the GRZ because of the (then proposed but now abandoned), Urban Fringe QM.

255. In the Council's Hearing 2 legal submissions, it was also noted that:[167]

> *For clarification, Variation 3 does not:*
>
> *(a) Introduce any financial contributions provisions in the Proposed District Plan (PDP);*
>
> *(b) Propose any amendments to the papakaainga provisions in the PDP. As explained at the Opening Strategic Hearing, papakaainga housing and development is already provided for in the PDP Decisions Version (PDP-DV) regardless of the zoning;*

[165] *s.42A Report, 15 June 2023, section 2.2.*
[166] *s.32 Evaluation Report Volume 1, section 1.3.*
[167] *Council legal submissions, 21 July 2023, at [9].*

(c) Rezone any land which was not already zoned residential in Taukau, (sic) Huntly and Ngaaruawaahia; or

(d) Enable a greater level of development than provided for by the MDRS.

6 Council approach to growth

6.1 The District

256. In his evidence for Hearing 1 Mr Ebenhoh, noted that the Waikato District had experienced stagnant or declining growth over many decades but that had changed over the past 10 years, with between 1.5% and 4% growth year-on-year.[168]

257. Mr Ebenhoh noted that whilst the district is largely rural (90% rurally zoned), with its economy based around the primary sector, it has experienced high growth in parts of the district due to its proximity to Auckland and Hamilton and connection through the "*Golden Triangle*" with Tauranga. However, because of its rural base, Waikato towns are still predominantly characterised by lower-density, single storey, detached development and their commercial centres currently provide only limited employment opportunities, with many residents commuting to Hamilton or Auckland.

258. This is the context into which the present requirements must be applied – albeit anticipating and looking forward 30 years to the NPS-UD's required long-term.

6.2 The PDP

259. Mr Ebenhoh emphasised that long-term growth has been taken into account in the PDP which, at the time of writing this decision, is still progressing through Environment Court appeals. He also noted that the PDP was prepared in light of the predecessor NPS-UDC (2016)[169] and introduced a medium density residential zone within the walkable catchments of town centres.[170]

260. Mr Ebenhoh also noted that the PDP's plan-enabling provisions already exceed the market feasible demand such that there is no urgent need for additional housing capacity. He records that at the time the PDP was notified, it provided for an additional 14,000 residential dwelling[171] - the assessed demand for the entire District at that time was for 11,000 dwellings.[172]

261. Under the provisions of Var 3 he noted that the additional feasible capacity in the four towns (of 21,600 dwellings) exceeds the long-term demand by almost seven times.[173]

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[168] *Ebenhoh, Statement of evidence, 20 December 2022, Executive Summary.*
[169] *NPS Urban Development Capacity 2016.*
[170] *Ebenhoh, Statement of evidence, 20 December 2022, at [37]-[38].*
[171] *Ebenhoh, Statement of evidence, 20 December 2022, at [40].*
[172] *Ebenhoh, Statement of evidence, 20 December 2022, at [65].*
[173] *Ebenhoh, Statement of evidence, 20 December 2022, at [94].*

6.3 Residential Capacity and Demand

262. Ms Susan Fairgray, Council's urban economics consultant, gave evidence on the capacity and demand work she had undertaken as background to Var 3. That involved both residential capacity and QM effect modelling, and interpretation of different urban form scenarios arising.

263. In summary, since the modelled outputs were not subject to significant dispute, Ms Fairgray determined that in terms of capacity:[174]

    a) plan-enabled capacity under the Council-proposed scenarios ranges from 5 to 12 times the level of long-term demand;

    b) the proposed intensification provisions provide a wide development potential for the market to take up capacity;

    c) Var 3 with no QM reduction results in a plan-enabled 71,700 additional dwelling units and long-term feasible capacity of 47,600 dwelling units;

    d) Var 3 with the stormwater QM reduction results in 64,100 and 42,100 dwelling units respectively;

    e) all of the Council-proposed modelled scenarios allow for and encourage intensification to occur around the commercial centres;

    f) it is important to enable and encourage intensification to occur around inner areas surrounding commercial centres and reduce the potential for it to be diluted across wider outer urban areas;

    g) most of the intensification around centres occurs in typologies such as terraced housing with very limited higher density vertically attached apartment development;

    h) unfocussed provision for intensification would represent a less efficient urban form as it would dilute the intensification around centres thereby undermining the benefits that are generally associated with development around centres;

    i) it is important for a well-functioning urban environment that the *medium-density provisions* are appropriately scaled to this context through sufficiently differentiating between areas surrounding centres and the wider general suburban areas;

    j) it is important that the location, scale and spatial extent of intensification provisions are appropriate and relate to the level and nature of market demand within the local economic context; and

[174] *Fairgray, Statement of evidence, 20 June 2023, at [5], [11], Table A, [36], [49], and [107]-[113].*

k) Huntly is likely to form the most appropriate location for higher density residential development but there is only a limited market size for higher density development, combined with low commercial feasibility.

264. On the demand side, Ms Fairgray concluded:[175]

a) there is a total projected short-term demand for an additional 1,000 urban dwellings within the district's four main urban towns, and an additional 1,400 urban dwellings within the district's urban areas overall;

b) the projected medium-term demand is for an additional 2,700 urban dwellings in the four main towns, and 5,000 additional dwellings in the long-term (4,000 dwellings and 9,700 dwellings across the district's total urban areas in the medium and long-term respectively);

c) with a margin applied, there is demand for capacity to accommodate an additional 5,800 urban dwellings in the long-term in the four main towns, and 11,200 urban dwellings across the district's total urban areas; and

d) nearly two-thirds of the long-term growth is projected to occur within urban areas, increasing their share of the dwelling base from a current 40% to 48% in the long-term.

265. Ms Fairgray's overall conclusion is that commercially feasible capacity in Pookeno, Tuakau and Ngaaruawaahia substantially exceeds the projected demand across all scenarios. In short, demand for 5,800 urban dwelling units and feasible capacity for 42,100 urban dwelling units with the stormwater QM applied.[176]

266. With respect to the proposal by Kāinga Ora for a HDZ around centres, Ms Fairgray concluded that the limited market size and lower levels of commercial feasibility in the Waikato towns mean that the centres are unable to sustain consistent density gradients of higher density development to the proposed spatial extent.[177] She saw little justification for imposing such a zone, but accepted that if one was proposed then Huntly centre may be appropriate – although not at the scale proposed by Kāinga Ora (600m – 800 m extent from the centre).[178]

7 Qualifying Matters

7.1 QMs in the PDP

267. The s.42A Report notes that Part 2 of the PDP contains all the District-wide provisions which relate to matters in s.6 of the RMA (but only to the spatial extent

[175] *Fairgray, Statement of evidence, 20 June 2023, at [23]-[25].*
[176] *Fairgray, Statement of evidence, 20 June 2023, at Table A, [23] and [50].*
[177] *Fairgray, Statement of evidence, 20 June 2023, at [83].*
[178] *Fairgray, Statement of evidence, 20 June 2023, at [93]-[95], and [113].*

of the mapped overlays), such as:[179]

- Historic heritage
- Sites and areas of significance to Maaori
- Notable trees
- Ecosystems and biodiversity
- Natural character.

268. As a corollary, new MRZ2 rules impose setbacks or other restrictions within close proximity to those features, including:

a) setbacks from buildings, structures and sensitive land uses within the National Grid Yard;

b) subdivision within the National Grid Subdivision Corridor;

c) impermeable surface limits;

d) building setbacks for new buildings or alteration to an existing building for a sensitive land use from the:

i) designated boundary of the railway corridor;

ii) designated boundary of the Waikato Expressway;

iii) boundary of the Alstra Poultry intensive farming activities located on River Road and Great South Road, Ngaaruawaahia;

iv) centreline of the gas transmission line; and

e) setbacks from waterbodies including lake, wetland or rivers including the Waikato and Waipaa Rivers.

7.2 Other QMs

269. Other QMs proposed by Council following the decision not to pursue the notified Urban Fringe QM, include:[180]

a) Havelock Precinct QM[181];

b) Environmental Protection Area (EPA) QM;

c) Tuurangawaewae surrounds QM;[182]

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[179] *s.42A Report, 15 June 2023, section 4.4.*

[180] *s.42A Report, 15 June 2023, Appendices 5 and 6.*

[181] *Noting that this QM includes the residential slope area (natural hazard), the industry buffer (reverse sensitivity) and ridgeline (cultural) QMs.*

[182] *s.42A Closing Statement, 5 September 2023, section 14.*

d) Mine subsidence risk area QM;

e) MRZ2 Flood Risk QM.[183]

270. In addition, Council subsequently amended its earlier recommended acoustic Reverse Sensitivity QM for Havelock and Tuakau, which the s.42A Report authors decided should be considered "*related provisions*" under s.80E(2) rather than as a discrete QM.[184]

271. A brief summary of those proposed QMs follows.

7.2.1 Havelock Precinct QM

272. As noted in the s.42A Report for Hearing 2,[185] Havelock Villages Ltd (HVL) and Hynds Pipe Systems Ltd (Hynds) had reached an agreed position regarding the management of Area 1 of the Havelock Precinct. The agreed position was for the removal of the EPA from Area 1 and a height restriction of 5m in that area instead. The reduction in height from the MDRS standard was justified due to reverse sensitivity. That was supported by expert evidence, and the proposed amended provisions generally accepted by Council. That position was subject to further refinement prior to Hearing 3 and subject to final determination by the Environment Court in terms of the live PDP appeals.

273. On 16 January 2024 the Environment Court issued a PDP consent order for Havelock Village. Advice about that order and which provisions should or could be adopted through Var 3 was provided in *Appendix C – Marked-up Consent Order* to the s.42A Report Closing Statement of 30 January 2024 – and those provisions were then incorporated in the Council's recommended amendments. The authors of that closing statement also noted that the order contained PDP provisions (PREC33-O1 and PREC33-P1) that effectively rendered the reverse sensitivity amendments (to MRZ2-O6 and MRZ2-P11) sought by KiwiRail (and agreed with Kāinga Ora) redundant (since they were more specific). The authors therefore recommended[186] that reference to Havelock Precinct be deleted from the previously recommended amendment.

7.2.2 Environmental Protection Area (EPA) QM

274. The EPA QM was proposed because it is part of the suite of existing provisions related to the Havelock Precinct at Pookeno. By the end of the hearings it had been agreed that the EPA QM was no longer necessary as far as the residential component (and therefore MDRS) of the precinct is concerned. The 16 January 2024

[183] *s.42A Report Closing Statement, 5 September 2023, at [70].*
[184] *s.42A Report, 15 September 2023, at [36].*
[185] *S.42A Report Closing Statement, 5 September 2023, at [6].*
[186] *S.42A Report Closing Statement, 30 January 2024, at [21].*

HVL Consent Order effectively deals with that matter and the Panel has no need to pursue the matter any further.

7.2.3 Tuurangawaewae Marae Surrounds QM

275. There was no dispute that the Tuurangawaewae Marae is a significant site for a number of reasons (social, cultural, historic, etc) and the associated QM clearly falls under the s.6 matters of national importance as a mandatory QM. The issue to be determined by the Panel was more about the *extent* of any QM and the restrictive provisions that should apply. We addressed the issue of scope for one of the council expert's recommendations in section 4.6 above. However, by the end of the hearing this had largely been resolved and a single agreed suite of recommendations put before the Panel.

7.2.4 Mine Subsidence Risk QM

276. On the basis of expert geotechnical advice relating to the on-going risk of subsidence from the old Huntly East mine, the Council proposed not applying the MDRS but retaining the existing GRZ provisions over the area defined by that report.[187] In effect that meant restricting development to one residential unit per site and a minimum site size of 450m^2.

7.2.5 MRZ2 Flood Risk QM

277. This QM, was renamed (twice)from the notified Stormwater Constraints Overlay QM and the Flood Density QM to the MRZ2 Flood Risk QM.

278. This QM adopts the existing PDP's mapped floodplain hazards – including the Flood Plain Management Areas, the Flood Ponding Area, the High-Risk Flood Area, and the Defended Area (all of which indicate areas that are subject to riverine flooding modelled by the WRC). In addition, the Council has included provisions that it considers better meet the objectives of Te Ture Whaimana.

279. During the hearing process the flood model and associated maps continued to be refined in response to submissions made – and a revised set were made available for submitter evidence in advance of Hearing 3.

8 Key Issues Heard and Findings

280. By the end of Hearing 3 the following matters remained for the Panel to determine:

    a) PDP QMs;
    b) New QMs:
        i) Havelock Precinct QM;
        ii) EPA QM;
        iii) Tuurangawaewae surrounds QM;

[187] *s.42A Report, 15 June 2023, Appendix 10.*

iv) Mine subsidence risk area QM; and
v) MRZ2 Flood Risk QM.

c) Stormwater;
d) Other matters comprising:
i) minimum vacant lot size, averaging and shape factor;
ii) Huntly Commercial Precinct – COMZ and TCZ;
iii) the railway safety setback; and
iv) retirement village provisions; and
e) Rezoning requests comprising:
i) Horotiu West;
ii) 23A Harrisville Road;
iii) 111 Harrisville Road; and
iv) 99A Ngaaruawaahia Road and 18 Rangimarie Road.

281. We address each of these matters in turn in the sections that follow.

8.1 PDP QMs

282. With respect to the PDP's QMs Mr Ebenhoh noted that:[188]

> *For the majority of qualifying matters, V3 carries forward the standards developed through the PDP process. The Enabling Housing Act allows Waikato DC to vary the MDRS to reduce the level of enabled development to the extent necessary to accommodate a qualifying matter. These standards, which in most cases are a setback between an important feature (for example wetland) or infrastructure with reserve sensitivity concerns (for example wastewater facilities), have been thoroughly tested through the PDP Schedule 1 process.*

283. However, Counsel for Council reminded us that because we are considering a proposed plan variation, all QMs are to be considered new QMs under s.77I as s.77K (existing QMs) only applies to operative plan provisions.[189] Counsel identifiedthe following QMs that are proposed to be incorporated from the PDP-Decisions Version:[190]

a) Te Ture Whaimana, the Waikato River, other waterbodies and margins;
b) Areas of significant indigenous vegetation and significant habitat of indigenous fauna;
c) Sites and areas of significance to Maaori;
d) Historic heritage;
e) Natural hazards;
f) Infrastructure;
g) Reverse sensitivity; and
h) Notable Trees.

[188] *Ebenhoh, Statement of evidence, 20 December 2022, at [81.*
[189] *Opening legal submissions, 10 February 2023, at [5.12].*
[190] *Opening legal submissions, 10 February 2023, at [5.15 – 5.8 (sic)]*

8.1.1 Finding

284. We agree with the Council and note that evidence on the above proposed QMs was subsequently produced.

285. For any of these QMs that we do not address further in subsequent sections, we confirm that accept the Council's evidence and submissions on the necessity for and appropriateness of these QMs.[191] We also accept, as the Council noted, that these QMs have been thoroughly tested through the PDP Schedule 1 process.

8.2 New / Additional QMs

8.2.1 Havelock Precinct QM

286. This matter was resolved through the 16 January 2024 consent order issued by the Environment Court as noted in section 7.2.1 above. We accept the Council's recommended provisions for the reasons noted in that section.

8.2.2 EPA QM

287. This matter was also resolved through the 16 January 2024 consent order issued by the Environment Court as noted in section 7.2.2 above. We accept that the EPA QM is no longer required for the reasons noted in that section.

8.2.3 Tuurangawaewae Marae Surrounds QM

288. The Tuurangawaewae Marae Surrounds QM was introduced in a submission by Council to protect the viewshafts from the Marae to areas which are matters of national importance under s.6(e) being Haakarimata Range and Taupiri Maunga. Mr Mansergh had analysed the effects of potential development provided for by Var 3, and the greater height proposed in submissions (but not pursued at the hearing) by Kāinga Ora. He recommended height, height in relation to boundary, and coverage standards to control these effects within a High Potential Effects Area close to the marae. He had also analysed the effects of individual buildings at greater distances from the Marae, within an area referred to as the Building Height Assessment Overlay Area.

289. The significance of the viewshafts between the matters of national importance and the Marae were emphasised in cultural evidence from Mr K Kukutai (cultural witness for Tuurangawaewae Marae) and Mr K Flavell (witness for Te Whakakitenga o Waikato) and supported by planning evidence from Mr G Boundy (principal consultant for GMD Consultants Ltd) for both parties. Mr Boundy acknowledged the scope issues with the principal relief sought detailed by Mr Mansergh but sought recognition of the Waikato awa as an equally important part of the cultural

[191] *As set out in the Council's s.32 Evaluation Report, s.42A Report relevant expert evidence and legal submissions.*

viewshaft and considered that the assessment of the effects of height over the TCZ and COMZ to be important.

290. The final position of the Council, accepting that the introduction of more restrictive provisions for MRZ2 were out of scope, was to suggest that the PDP provisions for the GRZ would apply to the MRZ2 within the Tuurangawaewae Marae Surrounds QM area (Area D), and that for development requiring consent beyond the permitted activity limits within the TCZ and COMZ, assessment criteria would apply if the site was within the High Potential Effects Area or Building Height Assessment Overlay Area. The detail of these proposals is:

    a) objectives and policies in relation to the outlook from the Tuurangawaewae Marae within the High Potential Effects Area and Building Height Assessment Overlay Area in the MRZ2, TCZ and COMZ;

    b) the areas of cultural significance and matters of national importance under s.6(e) are the Haakarimata Range, Taupiri Maunga and the Waikato Awa;

    c) matters of discretion in relation to potential adverse effects on the outlook from Tuurangawaewae Marae as a result of non-compliances with height, height in relation to boundary and site coverage within the MRZ2, TCZ and COMZ; and

    d) the identification of the High Potential Effects Area and Building Height Assessment Overlay Area on Planning Maps 28 and 29.

8.2.3.1 Finding

291. We accept that the cultural viewshafts identified in the submissions and evidence from Tuurangawaewae Marae and Te Whakakitenga o Waikato are matters of national importance, and that it is appropriate to apply the Tuurangawaewae cultural surrounds QM to protect these viewshafts.

292. However, on reviewing the Council's proposed provisions we consider some amendments are necessary to better reflect the spatial relationship between the Marae and each of the three features of national importance. We therefore make the following amendments:

    a) reference to the Waikato awa is to be included in MRZ2-P14(2) as it is a matter of national importance under s.6(e) and part of the cultural viewshaft;

    b) references to Taupiri Maunga in the TCZ and COMZ are to be removed because we find that neither of these zones are situated directly between the Marae and the Taupiri Maunga. Consequently, development in those zones does not lie within the viewshaft and therefore cannot adversely affect that cultural relationship; and

    c) for consistency, the wording of the matters of discretion for each of the relevant rules in the MRZ2 are to have the same construction, as follows:

The potential to adversely affect the cultural connection between Tuurangawaeawae Marae to Hakarimata Range, Taupiri Maunga, and Waikato Awa as a result of changing the existing outlook.

8.2.4 Mine Subsidence Risk Area QM

293. The removal of the Urban Fringe QM would extend the application of the MDRS to all land zoned GRZ or medium density residential within Pookeno, Tuakau, Huntly and Ngaaruawaahia, subject to any additional QMs.

294. An additional QM was subsequently identified by the Council for the management of significant risks from natural hazards within the mine subsidence risk area in Huntly and circulated to Var 3 submitters.

295. The management of significant risks from natural hazards is recognised in the RMA as a matter of national importance under s.6(h) and is therefore a QM under s77I(a). Volume 2 of the s.32A Evaluation Report specifically identifies the following existing relevant district wide rules in the PDP to manage the mine subsidence risk area: HG-R72, NH-R73, NH-R74.

296. Applying this QM aligns with the National Adaptation Plan 2022 by among other things, applying the appropriate QMs to areas with increased natural hazard risk. The Huntly mine subsidence area is a key natural hazard area near the Waikato River as identified in section 7.3 in Volume 2 of the s.32 Evaluation Report.

297. Parts of the mine subsidence area have an underlying GRZ. The Huntly mine subsidence risk area provisions are within the Natural Hazards (district wide) chapter of the PDP which imposes restrictions on development, earthworks and subdivision.

298. Doug Johnson, from Tonkin + Taylor was engaged by Council to provide advice regarding the implications of MDRS on the Huntly mine subsidence area. Mr Johnson concluded that:[192]

    a) the current PDP policies and rules that control development within the mine subsidence area are appropriate to ensure the likelihood of future development triggering settlement remain low; and

    b) while increased development enabled by MDRS is unlikely to increase subsidence, the additional number of dwellings would result in an increase in the risk of properties exposed to the risk of subsidence.

299. The s.42A Report recommended (on the basis of Mr Johnson's conclusions) that the existing exposure to subsidence should not be further increased by the application of the MDRS and that the existing provisions of the GRZ should be retained via a QM under s.77I(a). The reporting officer's view was that it is not appropriate to expose

[192] *s.42A Report, Appendix 10 – Huntly mine subsidence risk, section 4; and as summarised in the s.42A Report, 15 June 2023, at [468].*

further development and people to any level of risk, particularly when intensification in this area is not required for Council to meet its development capacity.

300. No other party made submissions disagreeing with these recommendations.

8.2.4.1 Finding

301. We agree, for the reasons given by Mr Johnson and the Council (paragraphs 298 and 299 above), that the existing zoning maps should be retained for the area covered by the new Mine Subsidence Risk Area QM. We have therefore included this QM in our recommended maps in **Appendix 5**.

8.2.5 MRZ2 Flood Risk QM

302. The management of significant risks from natural hazards is recognised in the RMA as a matter of national importance under s.6(h) and is therefore a QM under s.77I(a). There are a number of district wide rules and associated layers in the PDP to manage natural hazard flood risks as follows:[193]

- Flood plain management area NH-R10
- High risk flood area NH-R20, NH-R19
- Defended area NH-R25, NH-R24.

303. In general, the existing flood layers seek to manage floor levels, subdivision and establish permitted activity standards relating to earthworks. These current layers do not manage the density of residential units per site, the default rules in each zone apply. Under the MDRS, the default position is that all sites in the relevant residential zones will be allowed three units as a permitted activity.[194]

304. Urban intensification can have adverse effects on water quality, erosion and stability, and flooding.[195] This is because increased impervious surfaces generate greater stormwater volumes that move at greater velocities. It is also because additional buildings and structures in areas that are affected by flooding can divert flood water onto other properties and create cumulative flooding effects associated with the loss of storage areas for flood water. Over time, flood plains in and downstream of developed areas will become larger. Effects will be exacerbated unless the effects of development are appropriately mitigated.

305. The current Natural Hazard rules enable filling in the flood plain to provide a building foundation that is raised above the expected flood level. If filling associated with new dwellings is carried out for denser development styles, the cumulative effects on flood storage may contribute to flooding effects, including causing

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[193] *s.42A Report, 15 June 2023, at [455].*
[194] *s.42A Report Closing Statement, 5 September 2023, at [64].*
[195] *s.42A Report, 15 June 2023, at [495].*

flooding on sites that do not currently experience flooding.[196]

306. It is good practice to take a risk-based approach and avoid development in the current and future (modelled) flood plain where there is a high risk of flooding, and to avoid, remedy and mitigate effects where there is a medium-low risk of flooding. This is to avoid adverse effects associated with flooding including loss of life and damage to property, erosion and damage to natural environments. This approach is also supported by the objectives, policies and methods of the RPS.[197]

8.2.5.1 Introduction of MRZ2 Flood Risk QM

307. Given the scope limitations arising from both the *Waikanae* and *Clearwater* decisions, a flooding QM could only apply to the former Urban Fringe area (now referred to as the Outer Intensification Area) and the provisions could not be disenabling of the rights established by the PDP.[198]

308. Council identified that it is appropriate to manage intensification on sites that are subject to natural hazard risks within the Outer Intensification Area by a new flood density QM overlay, or as Council now proposes to call it, the "*MRZ2 Flood Risk QM*".[199]

309. The proposed overlay seeks to manage intensification within the scope available, acknowledging that there are sites within the existing PDP MRZ where three units are a permitted activity. In addition to the areas mapped in the PDP (flood plain management area, flood ponding area and the defended area) the modelling undertaken by Te Miro Water has identified other sites that are subject to the 1% AEP floodplain. Council's reporting officer considers that density controls should also apply to these sites in the Outer Intensification Area where there is scope to do so.[200]

310. There were a number of submissions related to the management of flood hazards, including to the introduction of a flood density QM and associated provisions.

311. Kāinga Ora submitted that the inclusion of any new rules relating to natural hazard risk should be introduced through a later standard (i.e. Schedule 1) plan change or variation process.[201] Mr Jaggard, (Director/Infrastructure Specialist Consultant at MPS Ltd), on behalf of Kāinga Ora raised concerns about what he considered the *ad hoc* nature of the proposed rules arising from scope constraints, contending that it was illogical for properties subject to the same flood risk to be treated differently depending on whether they were in the Outer Intensification Area or not.

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[196] *s.42A Report, 15 June 2023, at [496].*
[197] *s.42a Report, 15 June 2023, at [497].*
[198] *Council reply legal submissions, 26 September 2023, at[6].*
[199] *s.42A Report Closing Statement, 30 January 2024, at [37].*
[200] *s.42a Report Closing Statement, 5 September 2023, at [64].*
[201] *Jaggard, Statement of primary evidence, 4 July 2023, at [6.6].*

312. Expert conferencing on flood hazard matters and possible use of a flood density QM resulted in the following key points:[202]

    a) agreement that flooding/natural hazards were an applicable QM under s.771(a) – management of significant risks from natural hazards;

    b) agreement that urban development within an identified flood plain should trigger a resource consent to evaluate the effects; and

    c) all experts, except Mr Jaggard, agreed it is inappropriate to provide for the permitted yield of MDRS (3 units per site) within an identified floodplain, and therefore a flooding hazard constraints overlay is appropriate.

313. Further expert conferencing on the use of a flood density QM resulted in the following recommendations:[203]

    a) to make all subdivision under rule SUB-R153 a restricted discretionary activity, and on wording for matters of discretion (although there was not complete agreement on the proposed wording of the latter); and

    b) to amend rule SUB-R153 by requiring the provision of a building platform outside the MRZ2 Flood Risk QM, and to amend the associated matters of discretion to require avoidance or mitigation of natural hazards within that QM area.

314. In response to a suggestion from submitters that implementation of the MRZ2 Flood Risk QM should not apply until a comprehensive variation or plan change is undertaken, the Council reporting officer considered this was not appropriate as:[204]

    a) it does not implement Policy 1(f) of the NPS-UD;

    b) one house in the wrong location can cause significant issues; and

    c) the QM is a 'stop gap' measure which is needed because the IPI has mandatory intensification standards that can only be varied through QMs.

315. Council's legal submission was that:[205]

    a) the Panel must, to the extent possible, give effect to:

        i) The WRPS including objective HAZ-O1 "*the effects of natural hazards on people, property and the environmental are managed by reducing the risks from natural hazards to acceptable or tolerable levels…";* and

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[202] *Joint Witness Statement (JWS) Var 3 and planning (4), 11 July 2023.*
[203] *JWS Stormwater constraints overlay and planning, 13 July 2023.*
[204] *s.42A Report Closing Statement, 5 September 2023, at [72] and [73].*
[205] *Council reply legal submissions, 29 September 2023, at [8].*

ii) NPS-UD Objective 8 that urban environments are "*resilient to the current and future effects of climate change*"; and

b) this is achieved through the introduction of the MRZ2 Flood Risk QM area and resource consent being required for intensification.

8.2.5.2 Flood mapping and its method of use

316. A significant issue canvassed during the hearing was whether the new flood hazard modelling:

a) should be included within the PDP as a mapped overlay (statutory approach); or

b) could be provided through definitions based on the 1% AEP floodplain, with supporting maps included in a non-statutory layer.

317. Concerns were expressed by some submitters regarding the accuracy of flood modelling which has been carried out by Te Miro Water to support the proposed new MRZ2 Flood Risk QM.

318. Mr Boldero, Principal Stormwater Engineer at Te Miro Water, explained the modelling approach, rationale and limitations as follows:[206]

a) large scale urban models (such as the one Te Miro Water had undertaken) are not suitable for detailed design or determination of finished floor levels. They are suitable for identifying flood affected properties and undertaking catchment wide analysis for strategy assets planning (flood mitigation strategies) and zone planning;

b) the developer is required to assess and accurately determine the flood levels on their site so they can design an appropriate development. Responsibility for this should not lie with Council as it is not practical to create a large scale hydraulic model accurate enough for this purpose;

c) including smaller conveyance assets (<300mm piped network and catchpits) would have undiscernible impacts on the 100-year ARI flood levels due to the small percentage of flows this represents. This approach aligns with rapid flood modelling standard practice which excludes stormwater networks. The modelling provided is considered more accurate than rapid flood hazard mapping as it includes all critical culverts and critical pipe networks that are greater than 300mm diameter; and

d) the model includes the most up to date LIDAR,[207] hydrology data, climate change estimates, hydraulic modelling software and complies with the WRC modelling guidelines (2020) where appropriate.

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[206] *Boldero, Second statement of rebuttal evidence, 25 August 2023, at [19] and [22].*

[207] *LIDAR means light detection and ranging and is a remote sensing method that uses light to measure distances.*

319. Te Miro Water also subsequently undertook additional quality assurance work including sensitivity testing and comparing results to additional existing models, (such as the previous rapid flood models and WRC flood scheme maps). This work confirmed Mr Boldero's earlier view that the model was fit for purpose for identifying properties impacted by flood risk.[208]

8.2.5.3 Including the flood mapping in the plan or using a non-statutory approach

320. In response to concerns raised by submitters about its non-statutory approach, the Council submitted that:[209]

    a) accuracy of flood information is more important than the potential for different rules to be applicable to a property over time;

    b) the updating of flood information will be accompanied by community engagement, and there will be a clear and transparent work plan developed; and

    c) protocols will be put in place to provide recourse for affected landowners to challenge site-specific identification of their properties.

321. The final position of the Council reporting officer on the matter of statutory versus a non-statutory approach was:[210]

    a) Council has the capacity to host a non-statutory layer;

    b) the 'out of plan approach' is pragmatic and there are significant efficiency benefits in being able to update the maps without a plan change process; and

    c) the 'out of plan' approach is recommended to the Panel.

322. Council's reply legal submissions provided a comprehensive discussion of the statutory versus non-statutory approach including its lawfulness.[211] Council's position is that the non-statutory approach should be adopted noting that to address the concerns of Council's flood planning expert and reporting officer Council is:

    a) developing the necessary tools and systems to ensure a consistent experience for PDP users;

    b) planning internal training, in particular with the resource consents team; and

    c) developing protocols for the confirmation of the 1% AEP floodplain on a site-specific basis.[212]

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[208] *Boldero, Second statement of rebuttal evidence, 25 August 2023, at [24].*
[209] *Council reply legal submissions, 29 September 2023, at [38].*
[210] *s.42A Report Closing Statement, 30 January 2024, at [30].*
[211] *Council reply legal submissions, 29 September 2023, at [22] to [32].*
[212] *Council reply legal submissions, 29 September 2023, at [34].*

8.2.5.4 Provisions

323. A set of updated recommended provisions is included in the s.42A Report Closing Statement.[213] Changes are recommended to the Natural Hazard, MRZ and Subdivision chapters to assist with the implementation of Var 3.[214]

324. The recommended provisions now include:

a) the MRZ2 Flood Risk QM which:

i) identifies land in the MRZ2 where there is increased flood risk and where additional new residential rules NH-R26A to NH-R26E apply; and

ii) includes flood plain management areas, flood ponding areas, and the defended area;

b) a requirement that any new buildings within these flood risk areas comply with a minimum freeboard requirement of 0.5m above the 1% AEP (referred to as Floodplain management area 2), with any non-compliance assessed as:[215]

i) a non-complying activity in High risk flood area 2 - unless a detailed hydraulic analysis approved by Council determines that the site is not within the defined high risk flood area; and

ii) a restricted discretionary activity consent in other flood areas;

c) rule NH-R26C which provides for a minor residential unit as a permitted activity subject to meeting the minimum freeboard requirement[216] (with any non-compliance requiring a discretionary activity consent);

d) rule NH-R26D which enables subdivision creating one or more vacant lot as a restricted discretionary activity and provides related matters of discretion for vacant lots with a building platform outside the high risk flood area 2 and the 1% AEP (any non-compliance requires a full discretionary consent); and

e) rule NH-R26E which requires a restricted discretionary consent for earthworks for two or more residential units (excluding a minor residential unit) within flood risk areas, and provides associated matters of discretion for flood effects, flood mitigation and the extent to which any application enhances or benefits the Waikato River and its tributaries.

8.2.5.5 Findings

325. We find that the MRZ2 Flood Risk QM is necessary to give effect to Objective HAZ-O1 of the Waikato RPS and NPS-UD Objective 8 and Policy 1(f). We also find that it is

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[213] *S.42 Report Closing Statement 30 January 2024, at Appendix A.*
[214] *s.42 Report Closing Statement 30 January 2024, at [35]-[47] and Appendix E.*
[215] *Rules NH-R26A and NH-R26B.*
[216] *And the other applicable permitted activity standards.*

appropriate to manage intensification on sites that are subject to natural hazard risks within the Outer Intensification Area by implementation of the MRZ2 Flood Risk QM and amendments to a number of provisions as recommended by Council in paragraph 324 above.

326. We find that the flood mapping carried out by Te Miro Water is fit for purpose, noting that it is suitable for identifying flood affected properties and, further, that the developer is required to assess and accurately determine the flood levels on their site so that they can design an appropriate development.

327. In relation to flood mapping, we find that using a non-statutory (rather than a statutory) approach is appropriate as:

    a) Council has the capacity to host a non-statutory layer;

    b) it is pragmatic and there are significant efficiency benefits in being able to update the maps without the need for a Schedule 1 RMA plan change process;

    c) Council has committed to:

        i) developing the necessary tools and systems to ensure a consistent experience for Plan users;

        ii) planning internal training, in particular with the resource consents team; and

        iii) developing protocols for the confirmation of the 1% AEP floodplain on a site-specific basis.

328. In relation to the provisions we find that:

    a) the provisions recommended by Council for managing flood hazard, particularly in relation to future intensification, are appropriate;

    b) the exception proposed by the Council reporting officer to rule NH-R26A in the existing Natural Hazard chapter of the PDP (and as noted at paragraph 324(b)(i) above) is appropriate for the reasons set out in the evidence of Ms Lepoutre and Mr Boldero. In particular, we agree there is a need to ensure that a robust and workable process is in place for Council to approve the hydraulic analysis given the potentially serious implications of waiving the rule; and

    c) We consider the recommended provisions only restrict development to the extent necessary to accommodate this QM.

8.3 Stormwater

329. This section of the decision describes matters relating to effects on stormwater management of urban development enabled by Var 3. The term ‘stormwater management’ as used in this decision includes addressing

environmental effects of discharges, potential effects of development on aquatic ecological aspects of waterways and capacity of infrastructure such as stormwater pipes. It excludes consideration of flooding which is addressed in section 8.2 of this decision.

330. The primary RMA statutory documents relevant for managing environmental effects of stormwater discharges on receiving environments and potential effects of development on aquatic ecology of waterways are:

    a) Te Ture Whaimana;

    b) the NPS-FM which includes direction on how Te Mana o te Wai should be applied when managing freshwater;

    c) the WRPS; and

    d) the Waikato Regional Plan.

331. The effects the MDRS will have on stormwater management are described in the s.32AA Evaluation Report on three waters infrastructure.[217] This includes a report by Te Miro Water[218] which makes a number of recommendations on managing stormwater, including actions to meet the principles of Te Mana o te Wai. Some of these recommendations sit outside the legal scope of Var 3 and will require a separate plan change or variation if they are to be adopted.[219]

332. Each town (Tuakau, Pookeno, Huntly, Ngaaruawaahia and Horotiu) has its own discharge consent issued by WRC. These consents contain conditions that outline the requirements for stormwater management. One of the recommendations of the Te Miro Report[220] is that the Var 3 rules should ideally include standards or require a resource consent as additional development is undertaken, to ensure that the Council can comply with its stormwater discharge consents.

333. In relation to stormwater management, the approach in the PDP is to manage stormwater at the development stage with a permitted activity rule subject to a number of standards. The Te Miro Report indicated that assessing compliance with this permitted activity rule is difficult and requires an applicant to have engaged the appropriate experts.[221]

334. There are a range of controls on building setbacks, earthworks and

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[217] Huls, Statement of evidence, 20 June 2020, Annexure 1 - s.32AA Evaluation Report, Further Investigation into three waters infrastructure.

[218] Technical Review: Stormwater Draft Tuakau, Pookeno, Huntly and Ngaaruawaahia, Te Miro Water 20 June 2023 (Te Miro Report).

[219] Council Legal submissions, 21 July 2023, at [144].

[220] Te Miro Report, section 4.

[221] Huls, Statement of evidence, 20 June 2023, at [35].

subdivision that overall assist to manage stormwater. Implementation of such controls by way of new provisions is restrained as new rules will be ultra vires if they remove the rights that presently exist under the district plan.[222] These scope constraints mean that the Council cannot impose a district-wide consent requirement for stormwater management purposes. Ms Huls recommended that the Council consider whether a further variation or plan change should be undertaken to address any out-of-scope matters.[223]

335. There were a number of matters that attracted submissions relevant to stormwater management. These comprised:

a) Te Ture Whaimana;

b) setbacks from waterways;

c) impervious area standards;

d) stormwater infrastructure servicing;

e) green infrastructure and low impact development;

f) downstream impacts due to alteration of volume, frequency and duration of stormwater; and

g) miscellaneous issues.

8.3.1 Te Ture Whaimana

336. Section 77I(c) identifies a matter required to give effect to Te Ture Whaimana as a QM. Volume 2 of the s.32 Evaluation Report identifies the significance of Te Ture Whaimana and the relevant existing district-wide rules as QMs. These comprise:[224]

- setbacks of buildings from waterbodies;
- impervious surface standards; and
- ensuring subdivisions, can be appropriately serviced for water, wastewater and stormwater.

337. Council advised that its Var 3 assessment had been done with the protection and restoration of the Waikato River in mind, including specifically providing for a matter or matters required to give effect to Te Ture Whaimana as a QM. [225] The Council noted that the existing PDP already had some existing provisions, being the objectives and policies in the section MV - Maaori values and Maatauranga Maaori and the objectives and policies in the section TETW - Te Ture Whaimana – Vision and

[222] *Council opening submissions, 21 July 2023, at [24].*
[223] *Huls, Statement of evidence, 20 June 2023, at [37].*
[224] *s.42A Report, 15 June 2023, at [516].*
[225] *s.42A Report, 15 June 2023, at [58].*

Strategy, intended to give effect to Te Ture Whaimana.[226] As an example, TETW-P1 on implementing Te Ture Whaimana includes subparagraph (f) 'recognising and providing for application of maatauranga Maaori'.

8.3.1.1 Finding

338. We find that Te Ture Whaimana has been given effect to in Var 3 by way of addressing the three key stormwater management issues as set out in paragraphs 336 and 337 above and as discussed further in the following three sections (8.3.2 to 8.3.4).

8.3.2 Setbacks from waterways

339. The PDP includes a requirement for both earthworks and buildings to be set back from waterways:

a) earthworks require a resource consent when within 1.5m of a waterway, open drain or overland flow path, whether these are mapped or not;[227] and

b) buildings are required to be set back between 20m and 26.5m depending on the type of waterbody (MRZ2-S14).

340. In response to a submission from Waikato Tainui (#114.15), Council recommended amending policy TETW-P1 to include reference to 'residential development' as follows:

(1) To restore and protect the health and wellbeing of the Waikato River including by;
(g) Managing the effects of subdivision, use and development including those associated with:
(v) <u>Residential development</u>

341. In response to submissions from Ngaati Naho (and others), the Council has recommended additional matters of discretion in MRZ2-S14 as follows:

a) in the Waikato River catchment, the extent which the application enhances or benefits the Waikato River and its tributaries including groundwater resources;

b) effects on cultural values identified in Maaori Values and Maatauranga Maaori Chapter; and

c) the objectives and policies in Chapter 2-20 of the District Plan – Te Ture Whaimana - Vision and Strategy.

342. Council considered that items (a) and (b) in paragraph 341 above will promote a fuller consideration of principles raised in the Ngaati Naho submission.[228] Item (c) in

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[226] s.42A Report, 15 June 2023, at [387].
[227] s.42A Report, 15 June 2023, at [493].
[228] s.42A Report 15 June 2023, at [389]-[390]

paragraph 341 above appears to have been recommended in response to the acknowledgement of the planning and engineering experts that Te Ture Whaimana is the direction setting document and provisions need to give effect to it.[229]

8.3.2.1 Finding

343. We find that the changes proposed by the Council in paragraphs 340 and 341 above have satisfactorily addressed issues raised in submissions regarding the health of downstream waterways and will (along with other measures in the PDP and Var 3) give effect to Te Ture Whaimana.

8.3.3 Impervious area standards

344. Var 3 as notified included a permitted activity standard (MRZ2-S11) that impervious surfaces on a site must not exceed 70%, with a restricted discretionary activity consent being required for any exceedance.

345. Submissions were filed by WRC and Ryman/RVA (and supported by others by way of further submission) in relation to these rules.

346. WRC 's submission supported the retention of the impervious surface standard of 70% in MRZ2-S10 but sought a new matter of discretion relating to effects on waterways and/or the use of low impact design technologies.[230]

347. Ryman/RVA sought to add a matter of discretion to this rule, acknowledging "*the effects of any on-site stormwater retention or detention devices*."[231]

348. In response, the Council recommended retention of the maximum impervious area of 70% in MRZ2-S11 and amendments to the matters of discretion as follows:

> *(a) Site design, layout and amenity; and*
>
> *(b) The effectiveness of the stormwater system to manage flooding (including safe access and egress), nuisance or damage to other infrastructure, buildings and sites, including the rural environment;*
>
> *(c) Stormwater management and the use of Low Impact Design methods; and*
>
> *(d) Whether there is sufficient space on site for a stormwater treatment device and infrastructure.*

349. Council noted that impervious surface control is important for stormwater management and that development proposals seeking to exceed the control need to assess the effects of the additional impervious surfaces in terms of stormwater management and the effects on waterways and flooding.[232] Council also noted that

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[229] *Joint Witness Statement - Planning (4), 11 July 2023.*
[230] *s.42A Report, 15 June 2023, at [484].*
[231] *s.42A Report, 15 June 2023, at [678].*
[232] *s.42A Report 15 June 2023, at [485].*

onsite retention and detention is an important part of managing stormwater.[233]

8.3.3.1 Finding

350. We find that the impervious surface rule as amended by the Council will (along with other measures in Var 3 and the PDP) protect the health of downstream waterways as MDRS level intensification occurs.

8.3.4 Stormwater infrastructure servicing

351. Ensuring that subdivisions can be appropriately serviced for stormwater is addressed through Rule WWS-R1 "*Stormwater systems for new development or subdivision*".

352. Var 3 proposes a new rule WWS-R1A which requires preparation of a Stormwater Management Plan for development of four or more residential units, or subdivision of four or more lots in the MRZ2 zone. Council recommended this new rule to ensure that minimum stormwater quality standards set in the Council's relevant discharge consents will be achieved.[234]

353. Proposed new rule WWS-R1B is recommended in response to a request by Mr Telfer for Watercare that infill site developments provided for by Var 3 as a permitted activity are able to be serviced appropriately (including for stormwater).[235] Council recommended this rule based on the expert engineering advice of Mr Telfer.

8.3.4.1 Finding

354. We find that the provisions with the changes proposed by the Council (WWS-R1, WWS-R1A and WWS-R1B), will ensure stormwater servicing for new development and subdivision is appropriately provided for, while constraining MDRS development to the least possible extent.

8.3.5 Green infrastructure and low impact design

355. Ngaati Naho Trust's submission included a request to amend Var 3 by including requirements for green infrastructure and low impact design. WRC also sought a similar amendment to add a new matter of discretion relating to the use of low impact design technologies.

356. The s.42A Report author agreed that the principles of low impact design, which include the use of green infrastructure, contribute positively to Te Ture Whaimana, the management of flood risk and stormwater outcomes among other things.[236] The Council therefore recommended new matters of discretion as follows:

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[233] *s.42A Report 15 June 2023, at [487].*
[234] *s.42A Rebuttal Evidence 19 July 2023, at[68].*
[235] *Telfer, Statement of evidence, 21 June 2023, at [78]-[81].*
[236] *s.42A Report, 15 June 2023, at [486].*

a) Rules WWS-R1A, SUB-R152, SUB-153 and MRZ S5: "*the extent to which low impact design principles and approaches are used for stormwater management*"; and

b) for Rules MRZ2-S5a Building coverage at Tuurangawaewae and MRZ2-S11 Impervious surfaces: "*Stormwater management and Low Impact design methods*" and "*whether there is sufficient space on site for a stormwater treatment device and infrastructure*".

8.3.5.1 Finding

357. We find the changes proposed by the Council (as summarised in paragraph 356 above) appropriate. We agree with the s.42A Report author that provision for green infrastructure and low impact design for stormwater management will contribute positively to Te Ture Whaimana, flood risk and stormwater management.

8.3.6 Downstream impacts due to alteration of volume, frequency, and duration of stormwater

358. Ms Noakes, the owner of a general rural zoned property, in Tuakau was concerned about the impacts that upstream residential development on an adjacent greenfield property had had on her land, as well as the potential effects of further residential development enabled by Var 3.

359. Mr Davis, a civil engineer with significant experience in water, environment and infrastructure matters, gave evidence about the hydrological features and recent changes on Ms Noakes property. Mr Davis' evidence was that urban development (Dines Stage S) currently being constructed upstream of Ms Noakes property is altering stormwater runoff and adversely affecting the economic viability of the Noakes Property due to stormwater ponding limiting access and the ability to undertake farming activities on the full property.[237] Ms Noakes, in her written evidence, also noted the beginning of damage (erosion) to farm drainage and infrastructure on her property.[238]

360. Mr Davis' expectation is that additional stormwater discharge from more intense development enabled under Var 3 will exacerbate the current urban stormwater runoff situation on the Noakes Property.[239] Mr Davis added that in his opinion, the Council/WRC assessments to date (consenting of Dines Stage 5, s.42A Report, s.32AA Evaluation Report, and supporting stormwater technical documentation) inadequately address current and anticipated effects due to alteration of volume, frequency, and duration of stormwater runoff on the Noakes Property and more generally other downstream farms and land uses.[240] Mr Davis considered that

[237] *Davis, Statement of evidence, 7 July 2023, at [9].*
[238] *Noakes, Statement of evidence, 4 July 2023, at Annexure 5.*
[239] *Davis, Statement of evidence, 7 July 2023, at [13].*
[240] *Davis, Statement of evidence, 7 July 2023, at [16].*

additional plan amendments were required to address those effects.[241]

361. Discussion of Mr Davis' evidence about potential stormwater impacts on downstream rural land and his suggested changes to provisions occurred through expert conferencing. While some changes to provisions were agreed between the experts, complete agreement was not achieved at the conferencing.[242]

362. Mr Boldero considered that the remainder of the issues raised by Mr Davis are adequately covered within the WRC stormwater guidelines. Mr Boldero agreed with Mr Davis that additional provisions would be beneficial if added to the PDP and Var 3 to assist in compliance with the guidelines and to minimise effects.[243]

363. Mr Davis presented a number of revised provisions at the hearing, adding "remedy and mitigate" to the effects management hierarchy. In response to the request for additional provisions requested by Mr Davis, Council has recommended changes to rules WWS-R1A, SUB-R152 and SUB-R153 to include reference to the WRC stormwater guidelines and to address downstream environmental effects of stormwater discharges.

8.3.6.1 Finding

364. We find that the changes proposed by the Council and in particular to rules WWS-R1A, SUB-R152 and SUB-R153 will appropriately manage anticipated effects due to alteration of volume, frequency, and duration of stormwater runoff from MDRS development on downstream farms and other land uses. We agree with Mr Boldero that the WRC Stormwater Guidelines, properly implemented, can and should address these issues.

365. Our observation from the evidence of a number of stormwater engineers who gave evidence for submitters is that they were not conversant with the WRC guidelines and how they can be used to avoid such effects. They were also not cognisant of the potential effects on downstream land due to alteration of volume frequency and duration of stormwater runoff for the smaller more frequent events. We also note that the WRC guidelines methods for addressing these issues are complex and that a simpler approach, such as that provided for in the Auckland Council Unitary Plan may be more effective to address this issue. We recommend that the Council considers providing training for consultants and Council staff on the effects and management of volume frequency and duration of stormwater runoff for the smaller more frequent events.

366. Overall, we find that the Council's recommendations address these issues to the extent possible given the scope of Var 3.

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[241] *Davis, Statement of evidence, 7 July 2023, at [24].*
[242] *JWS constraints overlay and planning (5), 13 July 2023, at [3.5] and [3.6].*
[243] *Boldero, Statement of rebuttal evidence, 19 July 2023, at [9(i)].*

8.3.7 Miscellaneous issues

367. There were three other issues raised in submissions that have not been covered above (or elsewhere in this decision).

368. Firstly, WRC sought that a matter of discretion be included in SUB-R153 related to stormwater management (#42.20). The provisions recommended by Council now include assessment criteria (m), (n) and (o) which address the stormwater system, potential for adverse effects from stormwater, and the extent to which low impact design principles and approaches are used for stormwater management.

369. Secondly, Ngaati Naho's submission included a request to add Te Mana o te Wai principles relating to the roles of tangata whenua and other New Zealanders in the management of freshwater (#83.3).

370. The Council reporting officer opined that there is existing policy direction that goes some way to achieve the matters raised by the Ngaati Naho submission.[244] This includes existing provisions in the PDP - being the objectives and policies in the section MV - Maaori values and Maatauranga Maaori and the objectives and policies in the section TETW - Te Ture Whaimana – Vision and Strategy.

371. Thirdly, Ngaati Naho (#83.21-83.23) requested provisions to mitigate the impact of existing roads and new roads. Council understood this to relate to the increase in private vehicle use from intensification resulting in increased contaminant loads entering the stormwater system. [245]

372. Council commented that for larger subdivisions proposing new roads, these effects are assessed through the subdivision process. For smaller developments and potentially permitted intensification, Council must comply with the conditions of its comprehensive stormwater discharge consent, which includes water quality standards from road surfaces discharging to the environment.[246]

373. Council will need to apply for replacement comprehensive stormwater consents in the next year or two and this matter will be considered through that process. WWS-R1 contains stormwater treatment requirements for all new developments, which the Te Miro Water review recommended for revision.[247]

374. As noted earlier above, proposed rule WWS-R1A requires the preparation of a Stormwater Management Plan for development of four or more residential units or subdivision of four or more lots in the MRZ2 zone. Also as noted earlier, new matters of discretion are proposed in Rules WWS-R1A, SUB-R152, SUB-153 and MRZ

[244] *s.42A Report, 15 June 2023, at [387].*
[245] *s.42A Report , 15 June 2023, at [543].*
[246] *s.42A Report , 15 June 2023, at [543].*
[247] *s.42A Report , 15 June 2023, at [544].*

S5: including "*the extent to which low impact design principles and approaches are used for stormwater management*".

8.3.7.1 Findings

375. We accordingly find that the proposed provisions discussed in this section have appropriately addressed the issues arising.

8.3.8 Overall Findings

376. We find that overall, given the legal scope constraints, the amendments proposed by the Council to address stormwater management issues arising from the proposed implementation of MDRS through Var 3, are appropriate.

377. We note that some of the principles of Te Mana o te Wai which have not been able to be incorporated within this plan change will require a separate plan change or variation.

8.4 Other Matters

8.4.1 Minimum vacant lot size, averaging and shape factor

378. Having withdrawn the Urban Fringe QM, the question arose as to whether there should be a minimum vacant[248] lot size (with or without averaging or shape factors) in order to ensure that subsequent site redevelopment for a more intensive housing typology was not precluded. It was generally agreed that the existing 450m^2 lot size would not secure that outcome.

379. In particular this was a matter between Council (Mead , Fairgray and Hill) and several submitter parties including Kāinga Ora (Messrs Campbell and Wallace), HVL (Mr Tollemache), and Pookeno West (Messrs Munro and Oakley).

380. This question had also been addressed by the respective planning witnesses in expert conferencing (JWS 18 July2023), which rehearsed the various arguments, but a number of participants reserved their right to consider the issues raised further and to present their conclusions later in filed evidence.

381. From an economic perspective, in her first statement on the issue, Ms Fairgray noted that the vacant minimum lot size has an important influence on how an urban area develops.[249] She considered that a lot size greater than the 200m^2 – 240m^2 initially favoured by Kāinga Ora and Mr Tollemache (and later revised to 300m^2), provided greater long-term flexibility for re-development to the intensification sought - given currently assessed demand across the typology spectrum. She also favoured a mechanism to ensure that sufficient lots are created and agreed that an averaging metric could perform that role. She agreed that the 450m^2 as proposed by

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[248] *Subdivision of vacant lots, in the absence of a concurrent land use consent application, requires resource consent and is not exempt under MDRS subdivision standard 8, Schedule 3A RMA.*

[249] *Fairgray, Statement of rebuttal evidence, 19 July 2023, at (24]-[30].*

Council might be appropriate subject to further analysis. Ms Fairgray also noted that different minimum vacant lot sizes would be appropriate depending on the distance from the main urban and commercial centres in order to better focus intensification.

382. The position of the respective planning experts is accurately summarized in section 11 of the s.42A Report Closing Statement. This records, the submitter witnesses generally (though not all), favoured a variation of shape factor ranging from 8m x 15m to 13m x 19.5m, with minimum road frontage (9m) and garage and access restrictions depending on whether they were front or rear lots. Minimum vacant lot sizes between 250m^2 and 350m^2 were proposed. Kāinga Ora initially supported a shape factor only approach based on architectural testing of an 8m x 15m rectangle, which enables a 2-storey, 2 bedroom, dwelling of 94m^2 on a 120m^2 site.[250]

383. For Council, Mr Mead concluded in favour of a 300m^2 minimum vacant lot size in the proposed Minimum Lot Size Restriction Area (MLSR Area).[251] Whilst Mr Mead considered that he was unable to recommend a shape factor size for scope reasons,[252] he did express the opinion that a minimum 15m x 20m would be necessary to accommodate an 11m tall building.[253] However, he noted that the PDP has provision in the GRZ requiring:[254]

    a) a circle with a diameter of at least 18m exclusive of yards; or

    b) a rectangle of at least 200m^2 with a minimum dimension of 12m exclusive of yards.

384. In her second rebuttal statement, Ms Fairgray changed her position slightly having considered the evidence further. She tested a range of potential average vacant lot sizes in the developmental context of the Pookeno and Tuakau property markets. She concluded that both a minimum and an average lot size would be required to ensure a mix of housing / dwelling typologies at different price points over time. That led her to conclude that a 300m^2 minimum net vacant lot size with an average of 375m^2 should apply in the MLSR Area for subdivisions of 5 or more lots.[255]

385. In her closing statement, Ms Hill agreed with Mr Mead and Ms Fairgray that a minimum lot size should be set *net* of any other constraints (e.g. outside of floodplains). Having reviewed all the evidence on this matter she concluded that in the Outer Intensification Area (by which we presume she meant the MLSR Area) we should:[256]

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[250] *Campbell. Statement of evidence, 4 July 2023, at [7.21].*

[251] *That is, the GRZ land that was previously to be subject to the Urban Fringe QM, and which was proposed to remain at the operative plan 450m^2 vacant lot size.*

[252] *Noting that no party addressed us on this scope issue.*

[253] *Mead, Rebuttal evidence, 19 July 2023, at [82].*

[254] *Mead, Rebuttal evidence, 19 July 2023, at [89].*

[255] *Fairgray, Further rebuttal statement, 25 August 2023, at [28]-[29].*

[256] *S.42A Report – Closing Statement, 5 September 2023, at [62].*

a) retain the 300m^2 minimum net lot area;

b) decrease the average lot area to 375m^2;

c) increase the number of lots required to 9, before the average net lot area rule applies;

d) increase the area of the lot to be excluded from the average calculation to 5,000m^2;

e) include a building platform requirement for rear lots of a rectangle of at least 200m^2 with a minimum dimension of 12m excluding setback;

f) amend assessment criterion (3) to insert the word "*all*" to make it clear that all lots are required to accommodate a practical building platform including geotechnical stability; and

g) amend SUB-R158 to increase the minimum frontage area requirement to 11m as recommended by Mr Mead and to require a single driveway width for lots with a minimum frontage between 11m and 12.5m.

8.4.1.1 Finding

386. The Panel accepts that for an urban area in which demand is likely to accelerate over the longer-term, consideration needs to be given as to how development will transition from present market preferences for single, one-storey dwellings to more intensified forms. In other words, to set vacant lot subdivision rules that best enable that transition to occur once the market matures. The expert discussion, whilst occurring at quite a late stage, has been extremely helpful in teasing out the options and we find the summary position advanced by Ms Hill persuasive in terms of capturing a sensible way forward. We therefore adopt her proposal, as indicated above, for present purposes. We were initially attracted to a shape-factor requirement but think that this is no longer necessary with the suite of provisions now proposed by Council. However, should that conclusion prove unduly optimistic in practice, Council may choose to introduce such a requirement by way of subsequent plan change.

8.4.2 Huntly Commercial Precinct – COMZ and TCZ

387. The PDP had increased the maximum building heights for Huntly's TCZ and COMZ from 10m to 12m (with some additional allowance for structures such as chimneys and hose drying towers). Those provisions were maintained by the notified Var 3. But, in response to submissions, a new Huntly Commercial Precinct provision (PREC5-SX) was proposed within the COMZ. This introduced a maximum building height of 22m (and allied provisions including side and rear boundary setbacks above 12m and outlook and acoustic controls) as a restricted discretionary activity. No change was proposed for Huntly TCZ.

388. The maximum height (and associated provisions) for buildings in the Huntly Commercial Precinct and Town Centre were matters of disagreement – particularly between Council (Fairgray, Mead and Hill) and Kāinga Ora (Wallace, Campbell and Osborne).

389. Kāinga Ora sought a 24.5m height maximum in the Huntly TCZ[257] and some amendments to the ancillary provisions in the Huntly COMZ – such as deletion of the height plane setback requirement for buildings over 12m and reliance instead on the outlook control for residential units. Kāinga Ora agreed with the amended 22m maximum height for the Huntly COMZ. Kāinga Ora considered that a graduated height from the town centre gave better effect to the NPS-UD non-residential zone Policy 3 requirement. Kāinga Ora was also concerned about the risk to the economic viability of Huntly town centre from providing a significant height differential in favour of the COMZ.

390. Council's justification for its position on the Huntly TCZ was based on two matters – the question as to what "*commensurate*" means in that context, and how to give effect to the proximity of the Waikato River and the planned intention to focus the township on the River.

391. NPS-UD Policy 3(d) requires *building heights and densities of urban form commensurate with the level of commercial activity and community services*. Ms Fairgray's analysis had underlined the somewhat static nature of Huntly but, while she agreed with Mr Osborne (and others) that a 30-year planning horizon is required, saw no immediate merit in providing for more than the 12m height proposed in the TCZ (and by the PDP). Indeed, from the Panel's site visit it is very obvious that 1 and 2-storey retail or commercial developments are the norm with very few 3-storey developments. Furthermore, Ms Fairgray pointed out that additional height would primarily serve a residential purpose, retail essentially being a ground floor activity, and there is no market demand (or immediately foreseeable demand) for apartments in Huntly.

392. Allied to that response, Mr Mead[258] considered the potentially adverse effect that greater height along Main Street would have on the character and amenity of the town centre, and on the relationship with the Waikato River (itself a Te Ture Whaimana consideration). He also underscored the important public and community values associated with the centre. It is those considerations that led him to support higher building provisions in the adjacent COMZ – in summary because more "*housing*" can be accommodated there without risk to those existing amenity and community values but still well within a walkable proximity to the town centre. Mr Mead also responded to the risk that the COMZ would adversely affect the retail viability of the TCZ. He noted that the COMZ provides permitted activity status only to retail tenancies with a minimum 350m^2 GFA (i.e., much larger than typically found

[257] *Campbell, Statement of evidence, 4 July 2023, at [5.4] and Appendix A.*
[258] *Mead, Statement of rebuttal, 19 July 2023.*

in the Huntly town centre) and that the TCZ is likely to be inherently more attractive for retail because of its location on the main road and being in the centre of its catchment.[259]

393. It is also important to note, as Ms Hill does in her Closing Statement that:[260]

> *… the amended provisions submitted as part of this reply only apply the additional height to multi-unit development which is a defined term in the PDP and relates to residential development only. For any commercial development, the same standards as currently exist in the PDP will continue to apply.*

394. In other words, an assessment of potential effects on the town centre will be required.

395. In passing we note that in the s.42A Report Closing Statement, the authors recommended[261] a minor amendment to the previously recommended COMZ-R17(1)(g),[262] which included the term "*height plane*". They note that term is not used in the PDP in the context of the height in relation to boundary control and recommend clarification for consistency with the PDP. We agree that would be helpful and have included the proposed wording in the final COMZ-R17(1(g).

8.4.2.1 Finding

396. The Panel accepts that context, market feasibility and what is reasonably expected to be realised are particularly relevant considerations under the NPS-UD (and indeed are requirements of its HBA process). That consideration has been carefully analysed and presented by Ms Fairgray and Mr Mead and runs counter to the more 'in principle' argument for height and density in the town centre put forward by Kāinga Ora. While we acknowledge that in much larger town centres one would expect to find the taller buildings, in line with Kāinga Ora's argument, we agree with Mr Mead that is not necessarily the case in smaller towns – or even necessarily required since the walkable catchment covers a higher proportion of the overall area in such instances. The proposition that Huntly's COMZ can better absorb taller buildings than the TCZ aligns with that reasoning – which we find both persuasive and, indeed, commensurate.

397. We find that the existing PDP Huntly TCZ height provisions are appropriate and require no material amendment through this process.

8.4.3 Railway safety setback

398. As noted at paragraph 191(b) above, Council, KiwiRail and Kāinga Ora had agreed that the rail corridor was a QM per s.77I(e) and that a 2.5m safety setback from the corridor was appropriate.

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[259] *Mead, Second statement of rebuttal, 25 August 2023, at [14].*
[260] *s.42A Report Closing Statement, 5 September 2023, at [39].*
[261] *s.42A Report Closing Statement, 30 January 2024, at [34].*
[262] *s.42A Report Closing Statement, 5 September 2023, at [43].*

399. The only remaining issue was whether the setback should be a separate standard (Ms Butler for KiwiRail) or included as a matter of discretion in *MRZ2-S15 Building setback – sensitive land use* (Council). Ms Butler suggested[263] that this should follow similar examples under the PDP, and that as it was intended as a general setback it needed to apply to all buildings and structures, not merely sensitive land uses.

400. In the final set of recommended provisions provided with the 30 January 2024 s.42A Report Closing Statement, the authors propose a new standard MRZ2-S17 which is specific for the rail corridor and not confined to sensitive land uses. That would appear to resolve the matter.

8.4.3.1 Finding

401. We find the proposed new standard MRZ2-S17 is an appropriate QM response.

8.4.4 Retirement village provisions

402. There was no dispute regarding the importance and relevance of the retirement sector, its demographics, accommodation and health needs, as argued in the detailed evidence of the Ryman/RVA witnesses and legal submissions from Mr Hinchey.

403. The two key issues related to scope and the wording of the relevant Var 3 provisions. We addressed the issue of scope in sections 4.9 and 4.10 above.

404. In terms of the relevant provision wording, while the retirement village provisions had undergone significant discussion and amendment throughout the Var 3 process – particularly between Council (Hill and Lepoutre) and Ryman/RVA (Ms Williams) – agreement on the detailed provisions was not reached. The nub of the disagreement was over whether the plan should have generic provisions (Council) or a more nuanced, and therefore detailed, set of provisions (Ryman/RVA)[264]. A full, detailed, set of alternative provisions was provided by Ms Williams along with her summary s.32AA evaluation.[265]

405. While accepting a number of the amendments proposed by Ms Williams to the MDRZ2,[266] the s.42A Report authors' maintained the overall position that most of the provisions sought by Ryman/RVA did not support or were not consequential on the MDRS or Policies 3-5 of the NPS-UD, as is required.[267] This was particularly true for the proposed amendments to the business zones which we found to be out of scope in section 4.9 above.

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[263] *Butler, Statement of evidence, 20 October 2023, at [4.13].*
[264] *See, for example, Addendum 1 to the s.42A Report, 23 June 2023, at [section 3.2].*
[265] *Williams, Statement of evidence, 7 July 2023, Appendix C.*
[266] *See for example, Hill and Lepoutre, s.42A Report Closing Statement, 5 September 2023, section 4.*
[267] *s.42A Report Addendum 1, 23 June 2023, at [20] and section 3.2.*

406. As noted by the s.42A Report authors:[268]

(x) MRZ2-O1 seeks to provide for a variety of housing types that respond to housing needs and demands -this includes housing for the elderly and retirement villages.

(xi) MRZ2-P3 relates to housing design that meets the day-to-day needs of residents - this is relevant to retirement villages and the range of needs of its residents.

(xii) New retirement villages or alterations to existing retirement villages are provided for as a permitted activity subject to a range of standards. Where these standards are not met, retirement villages become a restricted discretionary activity.

407. Those MRZ2 provisions were considered to provide an appropriate balance between enabling retirement village establishment and discretion to consider external resource management effects.

408. The two amendments proposed by RVA that Council did accept were:[269]

a) the exclusion of the MRZ2 minimum residential unit size standard for retirement villages; and

b) the inclusion of the MRZ2 impervious surfaces standard for retirement villages.

8.4.4.1 Finding

409. The Panel acknowledges the substantial effort made by Ryman/RVA in pursuing its IPI submissions across NZ with the objective of facilitating the more efficient planning and delivery of retirement facilities through district plans. The detailed consideration and presentation of what Ryman/RVA considers appropriate and effective regulatory provisions is clearly evident.

410. However, at the end of the day, we are constrained by the scope of Var 3 (as noted in sections 4.9 and 4.10 above). We accept that the changes proposed by the Council to Var 3 (as summarised at paragraph 408 above) together with the other provisions of Var 3 do appropriately provide for retirement villages within the permitted scope of this IPI. Accordingly, we have included these changes in our recommended provisions in **Appendix 5**.

8.5 Rezoning requests

411. In the sections that follow we address the remainder of the rezoning requests where we have determined there is scope for the relief sought (refer section 4 above).

412. For completeness we also note that there were a number of other rezoning requests that were subsequently resolved by the withdrawal of the Urban Fringe QM, and accordingly we do not address those further in this decision report.

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[268] *Addendum 1 to the s.42A report, 23 June 2023, at [31].*

[269] *s.42A Report Closing statement, 5 September 2023, at [15].*

8.5.1 Horotiu West

413. As already noted, HFL lodged a submission seeking to rezone 34 ha of its Horotiu West land from GRZ to MRZ2. That land forms part of the wider Te Awa Lakes master-planned development at Horotiu.

414. The s.42A Report noted that the Horotiu West land is subject to PDP overlays / features as follows:[270]

    a) GRZ;

    b) Acoustic area – Horotiu;

    c) Flood plain management area and high risk flood area (both limited to the northern-most part of the site);

    d) Gas transmission line;

    e) Outstanding natural landscape (limited to the northern-most part of the site – the Waikato River); and

    f) Designations: MEDU-21 (Horotiu Primary School), NZTA-1 (State Highway 1), NZTA-6 (Waikato Expressway - State Highway 1 (Ngaaruawaahia section)), NZTA-7 (Waikato Expressway – State Highway 1 (Te Rapa section)).

415. The Council after satisfying itself there was scope for the submission (which we addressed at section 4.13 above), considered there was merit in the rezoning as:[271]

    a) the land is location within a relevant residential zone;

    b) the land is intended to become part of an urban environment (WRPS Policy UFDF-P11 and proposed Change 1); and

    c) Future Proof 2022 shows Horotiu as an "*urban enablement area*".

416. There was general agreement between the Council and HFL on the amendments required to give effect to the rezoning of Horotiu West. The only exception being the treatment of high risk flood areas at Horotiu West.

417. As noted earlier (in section 8.2 above), the PDP incudes maps of high risk flood areas, with Te Miro having undertaken additional high risk flood area mapping through the Var 3 process. In the final flood maps (dated November 2023), areas of high flood risk were identified within the Horotiu West land.

418. Mr Aaron Collier, Consultant Planner and Director of Collier Consultants Ltd, gave planning evidence on behalf of HFL. He stated that:[272.]

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[270] *S.42A Report, 15 September 2023, at [12].*
[271] *S.42A Report, 15 September 2023, at [23].*
[272] *Collier, Statement of evidence, 7 November 2023, at [6.3], [6.4], [6.6] and [6.7].*

- Var 3 does not define high risk flood areas and such areas can be remedied through filling;
- he does not support the non-complying activity status for subdivision, earthworks and development within the high risk flood areas on the Horotiu West Land; and
- a new rule should be included that assigns a restricted discretionary activity status for development within the Horotiu West high risk flood areas with no requirement for an approval by Council, subject to an appropriate report being prepared by a suitably qualified person.

419. To respond to the matters raised by Mr Collier, the Council reporting officer recommended an exception to rules NH-R19, NH-R20 and NH-R21 in the existing Natural Hazard chapter of the PDP as follows:[273:]

> *This rule does not apply where a detailed hydraulic analysis undertaken by suitable qualified person, and approved by Council, determines that the site is not within the definition of a High Risk Flood Area.*

420. HFL and Council did not reach agreement on the wording of this proposed exemption. Mr Collier, sought to remove the requirement that the hydraulic analysis be "*approved by Council*" and replace it with a requirement that the analysis instead be "*prepared by a suitably qualified person*".[274]

421. Ms Lepoutre did not support this change for the detailed reasons outlined in paragraphs 10 and 11 of the s.42A Closing Statement dated 30 January 2024. Ms Lepoutre's position is supported by Council's Stormwater Expert, Mr Boldero, who was of the view that a non-complying activity for residential development within the higher flood risk areas reflects the seriousness of such an activity. The Council further submitted that it is appropriate, and indeed effective and efficient, that any exemption from the non-complying status be properly considered and approved by Council.[275]

422. The Council reporting officer has also advised that Rules NH-R19, NH-R20 and NH-R21 are the incorrect location for the exemption, which should instead be applied to NH-R26A. This is because the exemption can only affect MRZ2 land and NH-R26A relates to the high risk flood areas identified through Var 3. This correction is included in the Council's final set of recommended provisions.[276]

8.5.1.1 Finding

423. We are not persuaded that the mere filing of a qualified hydraulic analysis is sufficient in every conceivable instance without any consideration by Council. While

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[273] *s.42A Report Rebuttal Evidence, 14 November 2023, at [15].*
[274] *Reporting Officer Summary Statement –Horotiu and ancillary matters, 30 November 2023, at [6].*
[275] *Council reply legal submissions, 1 February 2024, at [7].*
[276] *s.42A Report Closing Statement, 30 January 2024, at [12].*

we accept that there will be many instances where this is clear cut, it is those that are not that create potential problems downstream. We therefore prefer Council's exemption and adopt the proposed exemption wording for rule NH-R26A.

8.5.2 23A Harrisville Road, Tuakau

424. The s.42A Report authors changed their opinion on the appropriateness of rezoning this 2.6ha of land from Large Lot Residential in the PDP to MRZ2. In the s.42A Report Closing Statement the authors indicated that they could support the rezoning in principle for the reasons detailed in paragraph 133 of that Report, subject to following three matters being addressed:

    a) infrastructure capacity;

    b) a QM related to the geotechnical constraints on the site; and

    c) consultation with Ngaati Tamaoho on the rezoning of the site.

425. Those matters were subsequently discussed between Ms Addy and Council and a Joint Statement submitted noting that:[277]

    a) the matters were satisfactorily resolved;

    b) the rezoning to MRZZ2 was recommended;

    c) provided there was an addition of a geotechnical hazard QM on the planning map and a consequential amendment to MRZ-R12.

8.5.2.1 Finding

426. The Panel agrees with the conclusion that the identified land should be rezoned to MRZ2 with the QM amendment recommended (in paragraph 425 above).

8.5.3 111 Harrisville Road

427. GDP Developments Ltd requested that 111 Harrisville Road be rezoned from General Rural Zone to MDRZ2 or GRZ, and sites accessed off Percy Graham Drive and Gordon Paul Place be rezoned from GRZ to MDRZ2 (#100.1).

428. The s.42A Report author noted that:[278]

    a) the relief in relation to 111 Harrisville Road had been sought through the PDP process and was the subject of an appeal being considered by the Environment Court; and

    b) the other sites had already been zoned GRZ through the PDP.

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[277] *Joint Statement of Fiona Hill and Vanessa Addy, 5 December 2023, and at [15].*
[278] *s.42A Report, 15 June 2023, at [140]-[141].*

429. The Council submitted that the rezoning of 111 Harrisville Road was more appropriately addressed by the Environment Court,[279] but agreed with a subsequent request from GDP Developments[280] that the hearing should remain open for a further period to allow an update on that appeal to be provided.[281] We subsequently issued Direction #24 confirming that the hearing would remain open pending a further report from the parties on 26 February 2024.

430. On 27 February 2024, we were advised that a consent order had issued on 19 February 2024, rezoning the site residential, together with controls to address potential reverse sensitivity effects on the neighbouring Harrisville Motorcross Track.

431. As a result of this rezoning, Ms Hill had also determined that the following applied:[282]

    a) the Flood Density QM area and Higher Risk flood area;

    b) the Outer Intensification Area overlay; and

    c) the new noise rule NOISE-R46 and associated Noise control boundary areas.

432. We were also advised that GDP Developments confirmed that they accepted those QMs.

8.5.3.1 Finding

433. The Panel accepts that with the consent order rezoning the site to residential, it is appropriate to rezone the land at 111 Harrisville Road, Tuakau to MRZ2 with the QM and related provisions identified.

8.5.4 Corner of Johnson and Oak Street, Tuakau

434. This Greig Development land is subject to a PDP rezoning appeal to GRZ; MRZ2 is sought under Var 3.

435. We were told that Council supported the rezoning in principle but that this was subject to the Court agreeing to the rezoning.[283] While the Council's recommendation was to reject the relief sought as the Court had yet to determine the matter (and was the appropriate decision-maker on this matter), Mr Fuller sought that we "*parked*" the matter until the final hearing (Hearing 3) in 2023.

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[279] *Council legal submissions, 21 July 2023, at [232]-[233].*
[280] *GDP Developments Memo dated 30 January 2024, at [1] and [7].*
[281] *Council final reply submissions, 1 February 2023, at [13].*
[282] *Planning memo to Var 3, 27 February 2024, at [13].*
[283] *Fuller, Legal submissions, 24 July 2023, at [2.2].*

8.5.4.1 Finding

436. As at the time of writing, this matter remains unsettled before the Environment Court, we accept Council's position and find that this rezoning submission should be rejected.

8.5.5 99A Ngaaruawaahia Road and 18 Rangimarie Road

437. Next Construction and others sought MRZ2 for its two land parcels (approximately 6.7 ha) for residential subdivision purposes. The parcels are currently zoned rural in the ODP but have a split rural / residential zoning under the PDP.

438. Council's response was that:[284]

a) while the land was identified for urban development in the 2017 Structure Plan for Ngaaruawaahia, the timing for that development was indicated as 2036-2046, outside the 10-year period provided for;

b) the land was not identified in any Future Proof maps (which do not provide that level of detail); and

c) the land is subject to the NPS-HPL, for which no assessment had been provided;

439. The Council therefore submitted that the rezoning must be rejected.[285]

8.5.5.1 Finding

440. While Next Construction and others contested Council's position, the Panel does not consider it appropriate at this time to anticipate the Court's decision on the zoning. In addition, and for the reasons identified by Council in paragraph 438 above, we find that the proposed rezoning to MRZ2 should be rejected.

9 Consequentials

441. Council identified a small number of consequential amendments to the Subdivision (**SUB**) and Water, wastewater and stormwater (**WWS**) chapters that flow logically from the decisions and provisions recommended. Those are as follows:

- **SUB-R152(1)** – include the term "or where 1(b) and 1(c) are complied with" in the preamble to the rule and include "and" at the end of 1(b); and delete the term "provided that other standards in the district plan are met" from 1(l) and include the phrase in 1(j) and 1(k) instead – for greater clarity.
- **SUB-R153(1)** – delete reference to "Ngaaruawaahia, Huntly, Tuakau and Pookeno and Horotiu" in 1(a)i. The reference to the towns is not needed as the MRZ2 only applies within those areas.

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[284] *s.42A Closing statement, 5 September 2023, at [section 21].*
[285] *Hearing 2 reply legal submissions, 22 September 2023, at [87].*

- **SUB-R157(1)** – use brackets instead of commas in the activity standard to provide greater clarity of the exceptions to this rule.
- **WWS-R1A 1(d)** – include the term "*stormwater flow rate*" as a matter of discretion relating to potential adverse stormwater effects. While stormwater volume is generally provided for, differentiating between volume and flow rates is appropriate as the effects of these differ.
- **WWS-R1B 2(a)** – include an ability for Council to consider the "location" of infrastructure in addition to the provision of infrastructure generally. This could circumvent instances where infrastructure is provided in a manner that could restrict future subdivision (i.e. directly across allotments).

442. We have accepted those relatively minor changes in the interest of greater consistency and clarity and are satisfied that these fall within the scope of consequential changes authorised by cl.100(3) of Sch.1 of the RMA, and that no prejudice arises therefrom.

10 Statutory Assessment

443. The RMA sets out a range of matters that must be addressed when considering a plan change or variation. These matters have been identified, correctly in our view, in both the s.32 ER and the relevant s.42A Reports and Addenda. A summary of those requirements is attached as **Appendix 4**. We note that Var 3 was considered to satisfy those requirements.

444. We also note that s.32 clarifies that the analysis of efficiency and effectiveness is to be at a level of detail that corresponds to the scale and significance of the effects that are anticipated from the implementation of the proposal.

445. Having considered the evidence, submissions, legal advice, and relevant background documents, we are satisfied that, overall, Var 3 has been developed in accordance with the relevant statutory and policy matters with regard to the Council's s.31 functions and the Amendment Act. Var 3 incorporates the MDRS, gives effect to Policy 3(d) of the NPS-UD, and only reduces such development to the extent necessary to provide for QMs.

11 Summary of Conclusions and Recommendations

11.1 Introduction and Scope

446. The full text of our recommendations is attached as **Appendix 5**.

447. While as previously noted, the Panel has the power to make recommendations going beyond the matters raised in submissions provided they were within the

scope of IPI itself,[286] we found that we had no need to do so, and accordingly, confirm we have not made any such recommendations.

11.2 Conclusion on Var 3 Provisions

448. For the reasons given earlier in this report, we have largely accepted the Council's final version of the Var 3 proposed provisions. The further amendments made by the Panel are therefore primarily editorial.

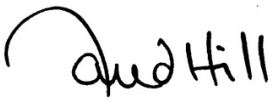
11.3 Recommendation

449. Having considered all of the submissions, presentations, evidence and legal submissions before us, and for the reasons we have set out above, we recommend (pursuant to cl.99 of Sch.1) that the Council:

    a) accept our recommendations on Var 3;
    b) accept, accept in part, or reject the submissions on Var 3 consistent with our recommendations; and
    c) approve Var 3 to the PDP as set out in **Appendix 5**.

450. The reasons for the decision are that Var 3 to the PDP:

    a) will assist the Council in achieving the purpose of the RMA;
    b) is consistent with the provisions of Part 2 of the RMA;
    c) will give effect to the Amendment Act, Policy 3 and the other relevant provisions of the NPS-UD, as well as other relevant higher order RMA policy and plans;
    d) is supported by necessary evaluation in accordance with s.32;
    e) accords with s.18A of the RMA; and
    f) will better assist the effective implementation of the (proposed) Waikato District Plan.



David Hill
Chairperson

22 March 2024

and on behalf of:
Commissioners Vicki Morrison-Shaw, Dave Serjeant and Nigel Mark-Brown.

[286] RMA, cl.99(2)(b) of Sch.1.

Appendix 1 – Glossary of Abbreviations

1% AEP means there is a 1% chance in any given year of an event occurring.

100-year ARI means a flood that will occur on average once every 100 years.

AEP means the annual exceedance probability.

Amendment Act means the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

Area D means the neighbourhood block in Ngaaruawaahia bounded by Great South Road, Regent Street and River Road and properties adjoining River Road adjacent to Tuurangawaewae Marae.

ARI means the average time period between floods of a certain size.

Cl. means clause.

COMZ means the Commercial zone.

Council means the Waikato District Council.

ECP 34 means the New Zealand Electrical Code of Practice for Electrical Safe Distances – NZECP 34:2001.

EPA means the Environmental Protection Area.

ER means the Evaluation Report required under s.32 and ss.77J & 77P RMA.

FC means a financial contribution.

Forest and Bird means the Royal Forest and Bird Protection Society Incorporated.

Future Proof means the Future Proof Strategy 2022.

Grieg Developments means Grieg Developments No 2 Ltd.

GRZ means the General Residential Zone.

Harrisville 23 means Harrisville Twenty Three Ltd.

HBA means the Housing and Business Development Capacity Assessment 2021 required by subpart 5 of the NPS-UD.

HDZ means the proposed High Density Zone originally sought by Kāinga Ora.

Hearing 1 means the combined opening strategic and procedural overview hearing with Waikato District, Hamilton City and Waipā District Councils held on 15-17 February 2023.

Hearing 2 means the substantive hearing for topics other than Horotiu and some miscellaneous matters which was held on 26 July-2 August 2023.

Hearing 3 means the substantive hearing for Horotiu and other miscellaneous matters held on 5 December 2023.

HFL means Horotiu Farms Ltd.

Horotiu West means a 34 hectare block of land between Great South Road and State Highway 1C in Horotiu owned by HFL.

HVL means Havelock Villages Ltd.

Hynds means Hynds Pipe Systems Ltd.

IHP or Panel means the Independent Hearing Panel.

IPI means the Intensification Planning Instrument.

ISPP means Intensification Streamlined Planning Process.

Joint Opening Report means the Waikato Region Intensification Planning Instruments Themes and Issues Report for the Joint Opening Hearing, dated 15 December 2022.

JWS means a Joint Witness Statement of experts following expert conferencing.

KiwiRail means KiwiRail Holdings Ltd.

LCZ means the Local Centre Zone.

LGA means the Local Government Act 2002.

MDRS means the Medium Density Residential Standards.

Minister means the Minister for the Environment.

MLSR Area means the proposed Minimum Lot Size Restriction Area.

MRZ1 means the Medium Density Residential 1 Zone that applies to Raglan and Te Kauwhata.

MRZ2 means the Medium Density Residential 2 Zone that applies to Huntly, Pookeno, Tuakau, and Ngaaruawaahia.

Next Construction and others means 61 Old Taupiri Ltd, Swordfish Projects Ltd, 26 Jackson Ltd, 99 Ngaaruawaahia Ltd and Next Construction Ltd.

NPS means National Policy Statement.

NPStds means the National Planning Standards 2019.

NPS-ET means the National Policy Statement for Electricity Transmission 2008.

NPS-FM means the National Policy Statement for Freshwater Management 2020.

NPS-HPL means the National Policy Statement for Highly Productive Land 2022.

NPS-IB means the National Policy Statement for Indigenous Biodiversity 2023.

NPS-UD means the National Policy Statement for Urban Development 2020.

NZCEP 34 means the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001).

ODP means the Operative Waikato District Plan.

Outer Intensification Area means the area in which the former Urban Fringe QM applied.

PDP means the Proposed Waikato District Plan.

QM means a qualifying matter under s.77I or s.77O of the RMA.

RER means reasonably expected to be realised development.

RITS means the Regional Infrastructure Technical Standards.

RMA means Resource Management Act 1991.

Ryman/RVA means Ryman Healthcare Limited and Retirement Villages Association of New Zealand.

s.32 Evaluation Report or **s.32 ER** means the evaluation reports dated September 2022 prepared by the Council to fulfil their obligations under s.32 of the RMA for Var 3.

Sch. means Schedule.

TCZ means the Town Centre Zone.

Te Ture Whaimana means Te Ture Whaimana o te Awa o Waikato – the Vision and Strategy for the Waikato River.

Var 3 means Variation 3 – Enabling Housing Supply to the proposed Waikato District Plan.

Waikato 2070 means the Waikato District Council Growth and Economic Development Strategy 2020.

Waka Kotahi means Waka Kotahi – New Zealand Transport Agency.

Waikato Housing Initiative and others means Waikato Housing Initiative, Waikato Community Lands Trust, Bridge Housing Charitable Trust, Habitat for Humanity Central Region, and Momentum Waikato.

WRC means Waikato Regional Council.

WRPS means the Waikato Regional Policy Statement.

Appendix 2 – Summary of IPI and ISPP

Scope of an IPI

451. *The scope of matters to be included in an IPI are specified in s.80E of the RMA* as follows:

> ***80E Meaning of intensification planning instrument***
>
> *(1) In this Act,* ***intensification planning instrument*** *or* IPI *means a change to a district plan or a variation to a proposed district plan—*
>
> *(a) that must—*
>
> *(i) incorporate the MDRS; and*
>
> *(ii) give effect to,—*
>
> *(A) in the case of a tier 1 territorial authority, policies 3 and 4 of the NPS-UD; or*
>
> *(B) in the case of a tier 2 territorial authority to which regulations made under section 80I(1) apply, policy 5 of the NPS-UD; or*
>
> *(C) in the case of a tier 3 territorial authority to which regulations made under section 80K(1) apply, policy 5 of the NPS-UD; and*
>
> *(b) that may also amend or include the following provisions:*
>
> *(i) provisions relating to financial contributions, if the specified territorial authority chooses to amend its district plan under section 77T:*
>
> *(ii) provisions to enable papakāinga housing in the district:*
>
> *(iii) related provisions, including objectives, policies, rules, standards, and zones, that support or are consequential on—*
>
> *(A) the MDRS; or*
>
> *(B) policies 3, 4, and 5 of the NPS-UD, as applicable.*
>
> *(2) In subsection (1)(b)(iii),* ***related provisions*** *also includes provisions that relate to any of the following, without limitation:*
>
> *(a) district-wide matters:*
>
> *(b) earthworks:*
>
> *(c) fencing:*
>
> *(d) infrastructure:*
>
> *(e) qualifying matters identified in accordance with section 77I or 77O:*
>
> *(f) storm water management (including permeability and hydraulic neutrality):*
>
> *(g) subdivision of land.*

452. Section 80G of the RMA sets out the limitations on IPIs and the ISPP as follows:

> ***80G Limitations on IPIs and ISPP***
>
> *IPIs*
>
> *(1) A specified territorial authority must not do any of the following:*
>
> *(a) notify more than 1 IPI:*

(b) use the IPI for any purpose other than the uses specified in section 80E:

(c) withdraw the IPI.

ISPP

(2) A local authority must not use the ISPP except as permitted under section 80F(3).

Appendix 3- List of Submitters and Other Appearances

Organisation	Represented by:
Waikato District Council	Bridget Parham & Jill Gregory Jim Ebenhoh Fiona Hill Karin Lepoutre Bessie Clarke Susan Fairgray Dave Mansergh Dr Ann McEwan Matthew Telfer Keith Martin Andrew Boldero Katja Huls
Ara Poutama - Department of Corrections	Heather Phillip Monique Thomas Andrea Millar Sean Grace
J&P Boyson	Nathan Harvey
CSL Trust / Top End Properties / Pokeno West	Peter Fuller Adam Thompson Jijnesh Patel James Oakley Ian Munro
Dominion Developments	James Whetu
	Jeremy Duncan
Greig Group & Harrisville 23	Peter Fuller Duncan McNaughton Adam Thompson Warren Boag Kelly Hayhurst Vanessa Addy Sally Peake Robert Tilsley Dougal Tilsley
GDP Development	Sarah Nairn
Havelock Village Ltd	Matthew Gribben & Vanessa Evitt Mark Tollemache Bridget Gilbert Ryan Pitkethly Jon Styles Leo Hills
Horotiu Farms	Thomas Gibbons Kate Barry-Piceno Richard Coventry Justin Adamson

	Aaron Collier
Hynds Pipe Systems	Warren Bangma Sarah Nairn
Kainga Ora	Douglas Allen Brendon Liggett Philip Osbourne Philip Jaggard Cam Wallace Michael Campbell Gurv Singh Claire Moore
Kiwirail	Taylor Mitchell Taylor Power Pam Butler
Ngati Naho	Hayden Solomon Jeremy Duncan
Next Construction and others	Charlotte Muggeridge Andrew Wood
Anna Noakes & MSNCA Fruhling	Joanna Beresford Anna Noakes Matthew Davis
Queens Redoubt	Jennifer Hayman Dr Neville Ritchie
Pokeno Village Ltd	Steph Macdonald Melissa McGrath
RVA / Ryman Healthcare	Luke Hinchey Matthew Brown John Collyns John Kyle Prof Ngaire Kerse Nicola Williams
Synlait Ltd	Jamie Robinson Yves Dencourt Jake Deadman Nicola Rykers
S Upton & B Miller	Grant Eccles
Te Whakakitenga O Waikato	Kahurimu Flavell Giles Boundy
Tuurangawaewae Marae	Hinerangi Raumati Karu Kukutai Giles Boundy
Waikato Regional Council	Katrina Andrews Hannah Craven
WEL Energy	Daniel Minhinnick & Kristen Gunnell Sara Brown

Appendix 4 – Summary of Plan Change Requirements

A. General requirements - district plan (change)

1 A district plan (change) should be designed to **accord with**[1] — and assist the territorial authority to **carry out** — its functions[2] so as to achieve the purpose of the Act[3].

2. The district plan (change) must also be prepared **in accordance with** any national policy statement, New Zealand Coastal Policy Statement*, a national planning standard,[4] regulation[5] and any direction given by the Minister for the Environment[6].

3. When preparing its district plan (change) the territorial authority **must give effect** to[7] any national policy statement (including Policies 3 and 4 of the NPS-UD), New Zealand Coastal Policy Statement*, and national planning standard.[8]

4. When preparing its district plan (change) the territorial authority shall:

   (a) **have regard to** any proposed regional policy statement (change);[9]

   (b) **give effect** to any operative regional policy statement.[10]

5. In relation to regional plans:

   (a) the district plan (change) must **not be inconsistent** with an operative regional plan for any matter specified in section 30(1) or a water conservation order*;[11] and

   (b) the district plan (change) **must have regard** to any proposed regional plan (change) on any matter of regional significance etc.[12]

6. When preparing its district plan (change) the territorial authority must also:

   - **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the New Zealand Heritage List/Rārangi Kōrero and to various fisheries regulations* and to any relevant project area and project objectives (if section 98 of the Urban

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[1] RMA, section 74(1).
[2] As described in section 31 of the RMA.
[3] RMA, sections 72 and 74(1).
[4] RMA, section 74(1)(ea).
[5] RMA, section 74(1).
[6] RMA, sections 74(1)(c) and 80L.
[7] RMA, section 75(3).
[8] The reference to "any regional policy statement" in the Rosehip list here has been deleted since it is included in (4) below which is a more logical place for it.
[9] RMA, section 74(2)(a)(i).
[10] RMA, section 75(3)(c). Section 77G(8) provides that the requirement in section 77G(1) to incorporate the MDRS into a relevant residential zone applies irrespective of any inconsistent objective or policy in a regional policy statement.
[11] RMA, section 75(4).
[12] RMA, section 74(2)(a)(ii).

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Development Act 2020 applies)*[13] to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities[14] and to any emissions reduction plan and any national adaptation plan made under the Climate Change Response Act 2002*[15];

- **take into account** any relevant planning document recognised by an iwi authority;[16] and
- not have regard to trade competition or the effects of trade competition:[17]

7. The formal requirement that a district plan (change) must[18] also state its objectives, policies and the rules (if any) and may[19] state other matters.

B. Objectives [the section 32 test for objectives]

8. **Examine** the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the Act.[20]

C. Policies and methods (including rules) [the section 32 test for policies and rules]

9. The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies;[21]

10. Whether the provisions (the policies, rules or other methods) are the most appropriate way to achieve the purpose of the district plan change and the objectives of the district plan by:[22]

    (a) identifying other reasonably practicable options for achieving the objectives;[23] and

    (b) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:[24]

        i. identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:

            - economic growth that are anticipated to be provided or reduced;[25] and

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[13] RMA, section 74(2)(b).
[14] RMA, section 74(2)(c).
[15] RMA, section 74(2)(d) and (e).
[16] RMA, section 74(2A).
[17] RMA, section 74(3)
[18] RMA, section 75(1).
[19] RMA, section 75(2).
[20] RMA, section 74(1) and section 32(1)(a).
[21] RMA, section 75(1)(b) and (c).
[22] See summary of tests under section 32 of the RMA for 'provisions' in *Middle Hill Limited v Auckland Council* Decision [2022] NZEnvC 162 at [30].
[23] RMA, section 32(1)(b)(i).
[24] RMA, section 32(1)(b)(ii).
[25] RMA, section 32(2)(a)(i).

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- employment that are anticipated to be provided or reduced;[26]

ii. if practicable, quantifying the benefits and costs;[27] and

iii. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions;[28]

- Summarising the reasons for deciding on the provisions;[29]
- If a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances.[30]

D. Rules

11. In making a rule the territorial authority must **have regard to** the actual or potential effect of activities on the environment.[31]
12. Rules have the force of regulations.[32]
13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive[33] than those under the Building Act 2004.
14. There are special provisions for rules about contaminated land.[34]
15. There must be no blanket rules about felling of trees[35] in any urban environment.[36]

E. Other statues:

16. Finally territorial authorities may be required to comply with other statutes (which within the Waikato Region includes the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010).

F. Requirements relating to Medium Density Residential Standards (**MDRS**)

17. Every residential zone of a specified territorial authority must have the MDRS incorporated into that zone except to the extent that a qualifying matter is accommodated.[37]

G. Specific requirements relating to Policy 3 and Policy 5 of the NPS-UD

18. Every residential zone in an urban environment of a specified territorial authority must give effect to policy 3 or policy 5, as

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[26] RMA, section 32(2)(a)(ii).
[27] RMA, section 32(2)(b).
[28] RMA, section 32(2)(c).
[29] RMA, section 32(1)(b)(iii).
[30] RMA, section 32(4).
[31] RMA, section 76(3).
[32] RMA, section 76(2).
[33] RMA, section 76(2A).
[34] RMA, section 76(5).
[35] RMA, section 76(4A).
[36] RMA, section 76(4B).
[37] RMA, section 77G(1).

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the case requires, in that zone,[38] and every tier 1 specified territorial authority must ensure that the provisions in its district plan for each urban non-residential zone within the authority's urban environment give effect to the changes required by policy 3 or policy 5, as the case requires, except to the extent that a qualifying matter is accommodated.[39]

H. Additional requirements for qualifying matters[40]

19. In relation to a proposed amendment to accommodate a qualifying matter,[41] the specified territorial authority must:

(a) **demonstrate** why the territorial authority considers—

(i) that the area is subject to a qualifying matter;[42] and

(ii) in residential zones that the qualifying matter is incompatible with the level of development permitted by the Medium Density Residential Standards (**MDRS**) (as specified in Schedule 3A of the RMA) or policy 3 for that area[43] or in non-residential zones that the qualifying matter is incompatible with the level of development as provided for by policy 3 for that area;[44] and

(b) assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity;[45] and

(c) assess the costs and broader impacts of imposing those limits.[46]

(d) **describe** in relation to the provisions implementing the MDRS—

(i) how the provisions of the district plan allow the same or a greater level of development than the MDRS;[47]

(ii) how modifications to the MDRS as applied to the relevant residential zones are limited to only those modifications necessary to accommodate qualifying matters and, in particular, how they apply to any spatial layers relating to overlays, precincts, specific controls, and development areas, including—

- any operative district plan spatial layers; and
- any new spatial layers proposed for the district plan.[48]

I. Alternative process for existing qualifying matters

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[38] RMA, section 77G(2).
[39] RMA, section 77N(2).
[40] The evaluation report for an IPI may, for the purpose of section 77J(4), describe any modifications to the requirements of section 32 necessary to achieve the development objectives of the MDRS.
[41] As defined in section 77I(a) -(i)/77O(a)-(i) of the RMA.
[42] RMA, section 77J(3)(a)(i)/77P(3)(a)(i).
[43] RMA, section 77(3)(a)(ii).
[44] RMA, section 77J(3)(a)(ii)/77P(3)(a)(ii).
[45] RMA, section 77J(3)(b)/77P(3)(b).
[46] RMA, section 77J(3)(c)/77P(3)(c).
[47] RMA, section 77J(4)(a).
[48] RMA, section 77J(4)(b).

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20. When considering existing qualifying matters,[49] the specified territorial authority may:

(a) **identify** by location (for example, by mapping) where an existing qualifying matter applies;[50]

(b) **specify** the alternative density standards proposed for the area or areas identified;[51]

(c) **identify** why the territorial authority considers that 1 or more existing qualifying matters apply to the area or areas;[52]

(b) **describe** in general terms for a typical site in those areas identified the level of development that would be prevented by accommodating the qualifying matter, in comparison with the level of development that would have been permitted by the MDRS and policy 3 in residential zones[53] and by policy 3 in non-residential zones.[54]

J. Further requirements for 'other' qualifying matters under section 77I(j)/77O(j)

21. A matter is not a qualifying matter under section 77I(j)/77O(j) unless an evaluation report:

(a) **identifies** for residential zones the specific characteristic that makes the level of development provided by the MDRS (as specified in Schedule 3A or as provided for by policy 3) inappropriate in the area[55] or for non-residential zones **identifies** the specific characteristic that makes the level of urban development required within the relevant paragraph of policy 3 inappropriate;[56] and

(b) **justifies** why that characteristic makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD;[57] and

(c) includes a site-specific analysis that—

(i) **identifies** the site to which the matter relates;[58] and

(ii) **evaluates** the specific characteristic on a site-specific basis to determine the geographic area where intensification needs to be compatible with the specific matter;[59] and

(iii) **evaluates** an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS (as

[49] Being a qualifying matter referred to in sections 77I(a)-(i)/77O(a)-(i) that is operative in the relevant district plan when the IPI is notified.
[50] RMA, section 77K(1)(a) / 77Q(1)(a).
[51] RMA, section 77K(1)(b) / 77Q(1)(b).
[52] RMA, section 77K(1)(c) / 77Q(1)(c).
[53] RMA, section 77K(1)(d).
[54] RMA, section 77Q(1)(d).
[55] RMA, section 77L(a).
[56] RMA, section 77R(a).
[57] RMA, sections 77L(b)/77R(b).
[58] RMA, sections 77L(c)(i)/77R(c)(i).
[59] RMA, sections 77L(c)(ii)/77R(c)(ii).

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specified in Schedule 3A)[60] or as provided for by policy 3[61] while managing the specific characteristics.

[60] RMA, section 77L(c)(iii).
[61] RMA, section 77L(c)(iii)/77R(c)(iii).
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Appendix 5 – Variation 3 Recommended Provisions