

**BEFORE COMMISSIONERS  
APPOINTED BY WELLINGTON  
CITY COUNCIL**

**WELLINGTON CITY COUNCIL PROPOSED DISTRICT  
PLAN**

**IN THE MATTER** of hearing Stream 1 – Part 1,  
plan wide matters and strategic direction

**AND**

**IN THE MATTER** of a submission by Pukepuke Pari  
Incorporated

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**SYNOPSIS OF SUBMISSIONS IN SUPPORT OF PUKEPUKE PARI INC.**

**22 February 2023**

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**Counsel acting:** Ian Gordon  
Stout Street Chambers  
Level 6, Huddart Parker Building  
1 Post Office Square  
PO Box 117  
Wellington 6011  
T: 04 472 9026  
[ian.gordon@stoutstreet.co.nz](mailto:ian.gordon@stoutstreet.co.nz)

## **MAY IT PLEASE THE COMMISSIONERS:**

### **Introduction**

1. These submissions on behalf of the Pukepuke Pari Inc (the **Submitter**) are intended to assist the Panel with the matters raised by the Submitter and to give those issues appropriate legal context.
2. The NPS-UD 2020 and MfE Guidelines together with the s.42A report and s.32A and 32AA assessments collectively amount to a very significant body of work and it seems likely that those grappling with that material will miss some of the nuances.
3. Added to that complexity is the Council decision to extend the Walkable Catchment (the **Catchment**) from 10 minutes (from the Central Area Zone) to 15 minutes which has resulted in catchment mapping to include most of Hay Street and its private access leg known as the Hay Street extension.
4. The Submitter is an incorporated group of Hay Street residents with a range of concerns for the implementation of the NPS-UD. Those issues range from health and safety to access, and ultimately to the components that go to make up a well-functioning urban environment. Theirs' is not a focus on the preservation of private amenity.

### **Law**

5. At the core of the Submitter's proposition is that implementation of the NPS-UD is not a rigid or binary process but one with considerable scope for the application of discretion over a range of options. S32(1) RMA calls for the identification of *other reasonably practicable options for achieving the objectives* and it is this first principle in the journey to settling on the most appropriate provisions that is at risk of being overlooked in relation to the Council's preferred extension of the Catchment.
6. The task of considering *other reasonably practicable options* is discussed by the Environment Court in *Royal Forest & Bird Protection*

*Society v Whakatane District Council*<sup>1</sup> from [50]. At [51] the Court observed:

*Practicable has been held to mean "possible to be accomplished with known means or resource" and synonymous with "feasible", being more than merely a possibility and including consideration of the context of the proceeding, the costs involved and other matters of practical convenience. Conversely, "not reasonably practicable" should not be equated with "virtually impossible" as the obligation to do something which is "reasonably practicable" is not absolute, but is an objective test which must be considered in relation to the purpose of the requirement and the problems involved in complying with it, such that a weighing exercise is involved with the weight of the considerations varying according to the circumstances; where human safety is involved, factors impinging on that must be given appropriate weight.*

7. While this discussion was derived from the application of other Acts, the Court concluded that the approach was *analogous to the approach which may be taken to protecting, or otherwise dealing with adverse effects on, the environment under the Resource Management Act 1991*.<sup>2</sup>
8. The same approach can be adopted to what is and what is not walkable. It is an objective test as to the willingness of people (residents) to walk. However, in assessing the factors that go to *willingness* some element of subjectivity sensibly comes into play.
9. If the purpose of the exercise is to change peoples' behaviours to voluntarily achieve modal shift, the focus will need to be on the circumstances that people will be confronted with and those circumstance will need to be weighed up as described by the Court in *Royal Forest and Bird*.<sup>3</sup>

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<sup>1</sup> [2017] NZEnvC 051

<sup>2</sup> [2017] NZEnvC 051 at [52]

<sup>3</sup> *supra*

10. To ignore those circumstances in favour of a theoretical modelling exercise might be to evoke a “yeah, nah” response rather than behavioural change.

### **MfE Guideline**

11. The MfE Guideline provides a useful explanation of the intended approach to Policy 3(c). It speaks to there being options and a discretion as to the implementation of options. It records that a purpose is to achieve a modal shift to active transport – predominantly walking and cycling, – and how increased residential density with less or no private vehicle facilities will encourage that modal shift. The Guideline acknowledges that the distance to amenities will figure in people’s willingness to walk and that hills which take longer and more effort to negotiate can be an obstacle to walking:

*A walkable catchment is the area that an average person could walk from a specific point to get to multiple destinations. A walkable catchment of 400 metres is typically associated with a five-minute average walk and 800 metres with a 10-minute average walk. These distances are also affected by factors such as land form (eg, hills take longer to walk up and can be an obstacle to walking), connectivity or severance (eg, the lack of ease and safety of crossing roads, highways and intersections), and the quality of footpaths.<sup>4</sup>*

12. That the process of electing to walk or cycle is subjective and depends on a range of factors could not be clearer:

*While the 800-metre catchment may be a good starting point, the draw of certain amenities will influence how far people are willing to walk to access them, and is likely to influence the size of a walkable catchment.<sup>5</sup> (Emphasis added)*

13. Willingness infers that there will be a range of responses to a range of factors, including steepness, safety and climatic conditions. The

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<sup>4</sup> Understanding and implementing intensification provisions for the National Policy Statement on Urban Development 2020 at 5.5

<sup>5</sup> Supra

range of responses suggests that there will reasonably be a number of practicable options to consider in order to land on the most appropriate.<sup>6</sup>

### **Hay Street**

14. Before Oriental Bay was developed, Hay Street was an ephemeral stream. That water course is now piped beneath the carriageway.
15. Hay Street is said to be at the outer limit of a 10-minute walk from the Central Area Zone. An additional 5 minutes pitches walkers up an incline of 1:4.7, reported as the City's 13th steepest street<sup>7</sup>.
16. One of the members of the Submitter suggests that Google Earth indicates that the entrance to Hay Street is 13 Minutes from Chaffers' New World supermarket on the edge of the Central Area.
17. The people who regularly walk up and down Hay Street are well equipped to provide reliable evidence as to that experience and their willingness to repeat it. They will say:
  - a) The single footpath is narrow and partly obstructed by power poles, bins and dwellings that open onto the footpath.
  - b) For this reason, some pedestrians prefer the carriageway to the footpath.
  - c) The Street becomes less walkable as a journey from the city progresses. Getting to the top of the Council Planner's proposed boundary on Hay Street involves a vertical rise equivalent to around 13 flights of stairs.
  - d) Even anticipation of a climb equivalent to walking up 5 or 6 sets of stairs after a 10-minute walk is a disincentive.

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<sup>6</sup> In a section 32 RMA sense.

<sup>7</sup> <https://www.stuff.co.nz/dominion-post/news/114780462/wellingtons-steepest-streets-revealed-and-theyre-not-for-the-fainthearted>

- e) The Private Accessway known as the Hay Street extension is not designed to operate as a footpath or as a driveway to be shared between vehicles and pedestrians.
  - f) Cycling or wheeling a bike on Hay Street is hazardous.
  - g) Descending Hay Street in the wet can be hazardous and stormwater frequently flows down the footpath.
  - h) Exposure to wind- and wind-blown sea along Oriental Bay can be a tangible disincentive to walking.
18. This evidence suggests that willingness to overcome obstacles and disincentives currently plays a real part in decisions to walk to and from the less accessible parts of Hay Street. It also suggests that there will be other reasonably practicable options to including the lower part of Hay Street in the walkable catchment that have yet to be considered.
19. For all of the reasons set out at paragraph 17 above, the Submitter has submitted in support of a 10 minute catchment. However, if the walkable catchment is to be based on 15 minutes as a starting point, the lower reaches of Hay Street could well be within that catchment. It is accepted that the disincentive to walk to and from those lower slopes is considerably less than from the more elevated parts of Hay Street.
20. With that in mind, the Submitter suggests that a logical location for the transition from walkable to non-walkable is an elevation equivalent to 3 flights of stairs – 9 metres vertical – from the level of Oriental Parade. This is estimated to be a line across Hay Street at the approximate location of the upper boundaries of #5 Hay Street on the left and #6 on the right.
21. Such an option is an, *...other reasonably practicable option...* that warrants careful consideration based on the evidence you will hear. The question to be asked is, what is the real-world walkable catchment that will reasonably contribute to a positive modal shift and not just a line on a map?

22. Bearing in mind the objective to achieve a well-functioning urban environment<sup>8</sup>, the impacts of 6 floor apartment buildings on Wellington's steepest streets will need to be considered. How delivery and servicing vehicles might operate safely in such constrained environments are most like qualifying matters, but may also go to the health and safety of pedestrians.

### Conclusion

23. If, having considered the evidence, you conclude that the majority of Hay Street is in the margins of walkability, you might well ask yourselves whether, in light of climate change evidence and recent events, sustainable management will be achieved by provisions which enable the intensification of residential development on steep city slopes with access that could be challenging for a high percentage of occupants.
24. As identified by the MfE Guideline, modal shift requires willingness, and willingness depends on real, rather than theoretical or modelled circumstances. An objective assessment of those actual real-world circumstances is called for.
25. Allowing this Submitter's submission will give meaning to the s 32 requirement to consider options, examine efficiency,<sup>9</sup> identify the most appropriate outcome, and promote the purpose of the Act.<sup>10</sup>



IM Gordon  
Counsel for the Pukepuke Pari Inc.  
22 February 2023

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<sup>8</sup> NPS – UD Policy 1

<sup>9</sup> Resource Management Act 1991, section 32(1)(b)(ii).

<sup>10</sup> *Royal Forest and Bird Protection Society of New Zealand v Bay of Plenty Regional Council* [2017] NZHC 3080, at [59].