

**BEFORE A PANEL OF INDEPENDENT HEARING COMMISSIONERS  
AT WELLINGTON**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHEKE WHANGANUI-A-TARA**

**UNDER** the Resource Management Act 1991 (**RMA**)

**IN THE MATTER** of the hearing of submissions on Te Manahere ā-Rohei  
Tutohua the Wellington City Proposed District Plan  
(**WCPDP**)

**HEARING TOPIC** Stream 1 – Strategic Direction

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**MEMORANDUM OF COUNSEL FOR KĀINGA ORA – HOMES AND  
COMMUNITIES (SUBMITTER 391; FURTHER SUBMITTER 89)  
In response to question from Commissioner Robinson**

**27 February 2023**

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## MAY IT PLEASE THE COMMISSIONERS

### 1. INTRODUCTION

1.1 During the appearance of Kāinga Ora before the Commissioners on Thursday 23 February 2023, counsel was asked by Commissioner Robinson to consider an analogy in relation to the evidential position taken by Mr Heale (the Kāinga Ora planning witness) regarding the most appropriate means of providing for walkable catchments in the WCPDP.

#### *Background – Mr Heale's evidence*

1.2 At paragraphs 4.14-4.22 of his evidence, Mr Heale expressed the view that a definition of "walkable catchment" (or "walking catchment" as recommended in the Council's Section 42A report) is not the best method for indicating where it may be appropriate for a walkable catchment ("and consequently medium and high density residential development") to apply.

1.3 By way of summary, he gave the following reasons for this view:

- (a) The term "walking or walkable catchment" is not currently used across the plan;
- (b) Definitions are static while walkable catchments will change over time as future connections and developments are established;
- (c) Walkable catchment criteria would better guide where the High and Medium Density Residential Zones (**HRZ** and **MRZ** respectively) should apply; and
- (d) This could be achieved by way of a policy in the MRZ and HRZ, which would provide clarity and strategic direction for the application of residential zones and walkable catchments in the Plan.

1.4 Mr Heale acknowledged that the relevant Kāinga Ora submission points proposed a table setting out the basis on which the HMDRZ should be applied in accordance with specific walkable catchment metrics for centres and rapid transit, and partially supported the Generation Zero submission seeking a definition of Walkable Catchment. The Kāinga Ora position also proposed maps setting out the delineated walkable catchments.

- 1.5 When setting out his updated drafting proposals at Appendix 5 to his evidence, Mr Heale proposed either amending the Walking Catchment definition in accordance with the Kāinga Ora submission points or amending HRZ and MRZ Policy 6.

*Commissioner Robinson's analogy question*

- 1.6 Commissioner Robinson referred to Mr Heale's preference for policy guidance over a walkable catchment definition and asked whether an analogy might be drawn with the approach to Outstanding Natural Landscapes (ONL). He noted that the Court of Appeal [*in Man O'War Station Ltd v Auckland Council*]<sup>1</sup> had provided guidance that identification of an ONL was a question of fact guided by professional opinion and that the planning consequences flow from that identification, rather than the identification of an ONL being influenced by the planning consequences.

*Counsel's response*

- 1.7 As a matter of principle, counsel accepts the Court of Appeal's observations (at paras 75 and 80) that the policies applying to (or activities contemplated within) ONLs in the relevant plan and the identification of ONLs are "conceptually separate ideas" that lack a "logical link".
- 1.8 However, counsel considers that the analogy has limited utility in the context of walkable catchments, for the following reasons:
- (a) The protection of outstanding natural features and landscapes from inappropriate use, development and subdivision is a matter of national importance pursuant to section 6(b) of the RMA.
  - (b) Careful and clear identification of ONLs is therefore essential in order to ensure that statutory planning instruments appropriately recognise and provide for that level of protection.
  - (c) In the wake of the Supreme Court's decision in *King Salmon*<sup>2</sup> the section 6(b) directive will generally give rise to stringent "avoid" policies in plans, with rules that provide for a limited range of

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<sup>1</sup> *Man O'War Station Ltd v Auckland Council* [2017] NZCA 24, [2017] NZRMA 121

<sup>2</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593

acceptable activities that are deemed appropriate. For this reason ONLs are typically mapped and are often the subject of an overlay to ensure that the spatial extent of policy protection and use/activity restrictions is clearly illustrated.

- (d) By contrast, walkable catchments as referred to in the *National Policy Statement on Urban Development 2020* (NPS-UD) are not outcomes in themselves that have specific value ascribed to them under the RMA (or indeed the NPS-UD itself). Rather, they are a mechanism by which greater intensification can be enabled to promote the development of well-functioning urban environments. While the spatial parameters of walkable catchments can be mapped, the purpose of illustrating those parameters is to indicate locations that are appropriate for greater height in accordance with the direction provided by Policy 3(c) of the NPS-UD.
- (e) Further, the spatial extent of the walkable catchments themselves are not solely determinative of the planning consequences that flow from their delineation; Policy 3(c) refers to building heights of six storeys within "at least a walkable catchment", and Policy 3(d) refers to buildings heights and densities "commensurate" with commercial activity and community services in zones "adjacent" to the walkable catchments established under Policy 3(c).
- (f) The NPS-UD contains no definition of "walkable catchment", and the Section 42A report writer acknowledges that there is no national or Wellington regional RMA direction that specifies their size.<sup>3</sup> The Council has therefore developed an approach to setting walkable catchments over time, and the Section 42A report briefly describes that methodology, commencing with the Draft Wellington City Spatial Plan (August 2020).<sup>4</sup>
- (g) The Section 42A report also refers to Ministry for the Environment guidance on walkable catchments<sup>5</sup> which adopts 800m as a starting point then identifies a number of local factors that may justify extending that threshold (including street layout,

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<sup>3</sup> Proposed Wellington City District Plan Section 42A Report: Part 1 Plan-wide matters and strategic direction, para 208.

<sup>4</sup> Section 42A report, paras 209-212.

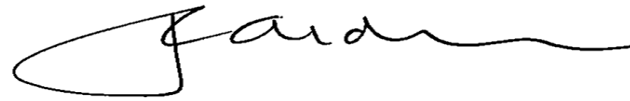
<sup>5</sup> Section 42A report, para 268. See Ministry for the Environment 2020 *Understanding and Implementing Intensification Provisions for the NPS-UD* section 5.5.

severance, topography, connectivity, urban amenity, street lighting, passive security and mobility needs). Contrary to the *Man O'War Station* proposition put to counsel by Commissioner Robinson, the Ministry appears to be comfortable in describing walkability and walkable catchments as "*a useful tool in thinking about what is accessible and locations that are likely to be appropriate for supporting intensification, as required under policy 5(a).*"

- 1.9 While there appears to be a broad consensus across a range of submitters as to the relevance of the factors referred in the MfE guidance, there remains scope for debate about what constitutes a "walkable" catchment in any particular context, and whether (and to what extent) an agreed starting point should be extended or retracted in light of local conditions. It is, to some extent, a subjective exercise that can be influenced by perspective and lived experience and can also respond differentially to what might be considered walkable in 2023 and what might be considered walkable 10, 20 or 30 years from now. A fixed definition will struggle to respond to these matters, while a policy framework has the potential to provide greater flexibility.
- 1.10 While the planning consequences of walkable catchment delineation may be "conceptually separate" from the delineation exercise, the way in which the NPS-UD is framed (around enabling intensification) inevitably results in an overlap between factors or criteria relevant to assessments of "walkability" and factors or criteria that will shape the final policy and rule framework for the MRZ and HRZ.
- 1.11 Ultimately the Commissioners will need to determine whether the Council's approach to the delineation of walkable catchments in relation to centres and rapid transit will better give effect to NPS-UD Policy 3(c), which directs the Council to ensure that the district plan enables "*building heights of at least 6 storeys within at least a walkable catchment of ... existing and planned rapid transit stops, the edge of city centre zones and the edge of metropolitan centre zones ...*", than those alternative approaches set out in submitter evidence.
- 1.12 In that regard, Kāinga Ora confirms indications given by its witness Mr Rae that further evidence will be provided at later hearing streams to

report on the "ground truthing" exercise undertaken to support the  
Kāinga Ora position on walkable catchments.

Dated 28 February 2023

A handwritten signature in black ink, appearing to read 'Jennifer Caldwell', written in a cursive style.

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**Jennifer Caldwell**  
Counsel for Kāinga Ora – Homes  
and Communities