

**BEFORE A HEARING PANEL
CONSTITUTED BY WELLINGTON CITY COUNCIL**

IN THE MATTER OF Proposed District Plan for Wellington
City by Wellington City Council – Stream
2 Hearing

IN THE MATTER OF Part 6 of the Resource Management Act
1991

STATEMENT OF EVIDENCE OF MILCAH VERATY XKENJIK

Table of Contents

Section A – Introduction	3
Name, qualifications and experience.....	3
Expert Code	3
Role in Project	3
Scope and purpose of Evidence	3
Section B – Executive Summary	5
Section C – Evidence.....	6
The Proposed District Plan Change.....	7
Statutory Framework – Legislation, Policies and Plans	10
National Policy Statement on Urban Development.....	11
Regional Policy Statement.....	14
Permitted Baseline.....	Error! Bookmark not defined.
Section 32 Review	17
Consideration of proposal against Purpose and Principles of Act 1991..	20
Section 42A reports	23
Consideration of submissions	24
Summary and conclusions.....	25

Section A – Introduction

Name, qualifications and experience

[1] My full name is Milcah Veraty Xkenjik. I am employed as an Intermediate Planner at Land Matters Limited in Ōtaki. I have been with Land Matters since 2022.

[2] I hold a Bachelors in Resource and Environmental Planning (Hons) from Massey University.

[3] I have been an Intermediate Member of the New Zealand Planning Institute since 2021. I have 7 years' experience as a planning and resource management professional in New Zealand.

[4] I have worked in regional government, local government, and private consultancy. I have been involved in preparing and processing resource consent applications for various greenfield residential developments, commercial activities, notice of requirements and infrastructure projects. I have also been involved in plan changes and plan development in the Horowhenua District.

Expert Code

[5] I have read the Code of Conduct for expert witnesses issued as part of the Environment Court Practice Note 2023 (Part 8). I agree to comply with the Code of Conduct. Except where I am stating that I am relying on the advice of another person, I am satisfied that the matters addressed in this statement of evidence are within my expertise. I am not aware of any material facts that have been omitted or might alter or detract from the opinions expressed in this statement of evidence.

Role in Project

[6] I have been engaged by Kilmarston Developments Limited and Kilmarston Properties Limited (KDL & KPL) to provide planning evidence in relation to the submission I also prepared for the PDP.

Scope and purpose of Evidence

[7] My statement of evidence provides an assessment of the proposed Residential zones - Medium Density Residential (MDRZ) that is the subject of this hearing against Schedule 1 of the Resource Management Act 1991 (RMA) referred to as Proposed District Plan (PDP).

[8] I include consideration of the proposed district plan changes against the relevant provisions of the National Policy Statement on Urban Development 2020 (NPS-UD), the Greater Wellington Regional Council (GWRC) Regional Policy Statement (RPS) and the Wellington City Council Operative District Plan (ODP).

[9] In preparing this evidence, I have reviewed, in particular, the following documents:

- a) NPS-UD;
- b) GWRC RPS
- c) GWRC PNRP;
- d) Reports prepared for Wellington City Council under Section 32A of the RMA 1991 on the PDP.
- e) Further submissions received in support of, and opposition to, the submitters submission; and,
- f) Reports prepared for Wellington City Council under Section 42A of the RMA on the PDP.

Background

[10] Wellington City Council (WCC) has notified the Proposed District Plan (PDP). As well as incorporating the Medium Density Residential Standards (MDRS) into the District Plan, the PDP also rezones some areas to Medium Density Residential Zone (MRZ) and High Density Residential Zone (HRZ).

[11] Kilmarston Developments Limited and Kilmarston Properties Limited ('Kilmarston', the Submitter) owns land located on the upper hills within the Ngaio suburb in Wellington City.

[12] The property currently benefits from subdivision consent (granted through resolution of a lengthy Environment Court proceeding) for 43 residential allotments on the site. The approved scheme plan contains residential lots focused around the eastern part of the site (closest to the existing residential area) with significant areas of reserve land proposed to be zoned Open Space and Special Amenity Landscape to the west within the more elevated parts of the site. The current subdivision consent (reference Environment Court proceedings ENV-2006-WLG-000487 & ENV-2006-WLG-000488 and Wellington City Council ref: SR106695) was granted on 1 October 2012 and has been given effect to.

[13] Associated with the subdivision consent, the Submitter holds regional permits and consents required to facilitate development. These consents authorize works in association with the consented subdivision, and a wider layout that incorporates the area currently zoned residential on the land.

[14] Kilmarnock seek the following general amendments to the PDP to better achieve the Purpose of the RMA:

- (a) Amendments to the planning maps to retain the proposed Medium Density Residential Zone (MDRZ) areas of the subject land; and,
- (b) To remove the proposed Special Amenity Landscape (SAL) overlay from this area.
- (c) If agreement cannot be reached with Council on appropriate tenure for the land currently identified as MDRZ, then the Submitter seeks Large Lot Residential for the remaining land and a portion of land comprising some 5,500m² next to Silverstream Road as Medium Density Residential Zone.

Section B – Executive Summary

[15] I have assessed the proposed district plan provisions against the RMA provisions I consider to be relevant. In my opinion the planning framework used to propose the SAL overlay over the medium density residential zone is contrary to the relevant objectives and policies of those documents.

[16] I conclude that the proposed district plan change is, in respect of the SAL, has not been adequately assessed at all nor does it achieve the outcomes of the NPS-UD and section 32 RMA and therefore the proposed SAL overlay over the submitters site should be removed and clipped to the boundaries so that an appropriate planning framework enables the density anticipated by the proposed Medium Density Zoning.

Section C – Evidence

[17] The primary issues covered in my evidence are:

- (a) From a planning point of view, will the SAL overlay result in a reasonable outcome for the Submitter and Wellington City as a whole as it relates to the current MDRZ?; and,
- (b) More specifically, will the proposed SAL overlay affect the ability for the submitters land to contribute to the anticipated housing yield that the MDRZ objectives and policies want to achieve?

[18] The proposed district plan changes provisions addressed in the submission documents and covered in this evidence include:

- Amendments to the planning maps to:
 - (a) Retain the proposed Medium Density Residential Zone (MDRZ) areas of the subject land; and,
 - (b) The removal of the propose Special Amenity Landscape (SAL) overlay from the areas of the subject land proposed as MDRZ, in order that there is an appropriate planning framework for the land. Kilmarston’s intent to address the s42 matters in appropriate hearing streams;
 - (c) That part of the subject land be rezoned to Large Lot Residential, so it is capable of reasonable use while still preserving the features of that land. Those matters will be addressed by Kilmarston in further hearing streams including the Open Space and Rural Hearings.

[19] The policy documents I consider to be of most relevance to these activities are:

- Resource Management Act 1991
- NPS on Urban Development 2020; and
- Regional Policy Statement for the Wellington Region 2013 (RPS).
- Operative District Plan

The Proposed District Plan Change

[20] In my opinion, the proposed MRZ is well researched, based on extensive consultation and has attempted to give effect to the NPS-UD in a balanced manner to meet the short- and long-term housing demands, and provide for increased housing opportunities for the district. It follows sound planning practice with a stated issue, objective and policy direction to give guidance on decisions to achieve intensification and different types of housing within the Wellington City. Of significance is that the proposed zoning objectives and policies recognise the need for changing urban environments instead of maintaining existing character and amenity values, the exception to this is where qualifying matters existing. I do not have any opposition to this approach. A framework to have enabled and managed intensive development concurrently is a sensible response to ready and available residential land in my opinion.

[21] In general terms, planning provisions can either enable (encourage) or restrict (discourage) an anticipated environmental result. However, under the NPS-UD, the legislation directs Tier 1 Territorial Authorities (TAs) to enable through zoning intensification and MRDS, unless qualifying matters apply.

[22] The proposed SAL overlay that encompasses the submitters MDRZ land restricts the ability for these objectives and policies to be effective from a planning perspective. My conclusion is that the proposed SAL overlay over the submitters land will not achieve the objective because nearly all applications will on the submitters land will default to a restricted discretionary or discretionary activity status.

[23] For a full understanding of the subdivision and medium density development of the proposed SAL overlay, it is essential to look at the planning implications on the submitters land if it were to be subdivided to facilitate medium density housing in accordance with the abovementioned objectives and policies.

[24] Proposed controlled activity Rule SUB-R1 specifically provides for subdivisions for the purpose of the construction and use of residential units in the MDRZ. This provision specifically precludes limited and public notification if the subdivision is associated with residential units that fully comply with all the relevant MRZ standards. The same notification preclusion applies to subdivisions associated with an application for the construction and use of 4 or more residential units that comply with the relevant MRZ standards. Notwithstanding, where the subdivision is associated with the construction and use of 1, 2 or 3 residential units that do not comply with 1 or more of the MRZ density standards, public notification is precluded.

[25] At the same time, proposed restricted discretionary activity Rule SUB-R12 specifically provides for the subdivision of land within SAL where the proposed development demonstrates that any future building platform is able to comply with the underlying zoning provision for buildings.

[26] The application of an SAL to this site would result in any intensification of the site being assessed as a restricted discretionary activity under Rule R12 with Council discretion being extended to matters relating to the SAL *to ensure that adverse effects of future use and development enabled by the subdivision on the identified values are avoided, remedied, or mitigated*, coupled with *ensuring that the identified landscape values and characteristics are maintained*.

[27] As will be discussed in detail below, by giving effect to the NPS-UD in principle, it is accepted that the form, appearance, and amenity of neighbourhoods within the MRZ will change over time.

[28] In order for the submitter to undertake a development that is in accordance with objectives and policies of MDRZ, any development within the submitters land will need to contend with values of the identified SAL.

[29] Furthermore, where any proposed multi-unit housing within the MDRZ do not meet the permitted activity standards, an assessment against the Residential Design Guide to demonstrate that it fulfils this statutory document intent is required (MRZ-P6). This adds another layer of complexity to achieving alignment with both the zoning and overlay provisions where existing amenity values are protected as opposed to being accepted to change under the MDRS provisions.

[30] Notwithstanding, provision *MRZ-P4 Medium density residential standards* reads as follows:

Apply the medium density residential standards across the Medium Density Residential Zone except in circumstances where a qualifying matter is relevant (including matters of significance such as historic heritage and the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga).

[31] The SAL overlay is not listed as a qualifying matter and therefore, as directed by this policy, the medium density residential standards are determined to be appropriate to manage development on the submitters land.

[32] Although the intensification planning framework seeks to enable medium density housing to meet the NPS-UD, (through permitted, controlled and restricted discretionary activity statuses), it is in my view that this may not eventuate for 3 reasons.

(a) The provisions of the SAL provide a more directive and restrictive style of development that may not realise or achieve densities or built form anticipated by the MDRZ; and,

(b) Creating a medium density development that will respect amenity values outside of those required though MDRS and associated guidelines, as well as achieving housing supply will result in additional costs to the submitter and/or future developer of the land; and,

(c) Making a planning decision with contending objectives and policies will prove to be challenging and will result in a poor planning outcome where the planning framework is inappropriate to manage any development on the submitters land.

Statutory Framework – Legislation, Policies and Plans

[33] In preparing this evidence, I have had regard to whether the proposed district plan zoning:

- (a) Has been designed to accord with s74(1) and assists the territorial authority to carry out its functions (s31) so as to achieve the purpose of the Act (s72).
- (b) Gives effect to any national policy statement (s75(3)(a));
- (c) Has had regard to any proposed regional policy statement (s74(2))
- (d) Gives effect to any operative regional policy statement (s75(3)(c))
- (e) Takes into account any relevant planning document recognised by an iwi authority;
- (f) Does not have regard to trade and competition (s74(3));
- (g) Has been prepared in accordance with any regulation (s74(1) and any direction given by the Minister *for the Environment* (s74(1));

[34] With particular regard to the issues raised in the s32 evaluation, I have evaluated;

- (a) The proposed objective by the extent to which it is the most appropriate way to achieve the purpose of the Act (s32(1)(b).
- (b) Whether the provisions are the most appropriate way to achieve the new objectives for medium density development.

[35] In carrying out my evaluation, I have taken into account:

- (a) The benefits and costs of the proposed provisions, including quantifying them where possible (s32(2)a and (b); and
- (b) The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods (s32(2)(c); and,

- (c) If a national policy statement applies and the proposed rule imposes a greater restriction than that, whether the greater restriction is justified in the circumstances (s32(4)).

[36] There is a natural hierarchy of planning documents established through resource management legislation in New Zealand. In general terms statutory documents descend in the following way with the most general (but authoritative) at the top and usually the more specific (and determinative ‘on the ground’) as one works further down the list: **RMA – National Policy Statement (NPS) – Regional Policy Statement (RPS) – Regional Plan (RP) – District Plan (DP)**. Beyond that are non-statutory documents which provide some context, guidance or detail on various matters or values for consideration.

National Policy Statement on Urban Development

[37] The NPSUD contains the policies intended to achieve the purpose of the RMA in relation to the urban environment and bears relevance to the proposed district plan change, given the proposed Medium Density Residential Zoning of the site.

[38] I provide an assessment of the proposed activities against the relevant objectives and policies of the NPSUD is provided below including:

Objective 1: New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.

Objective 2: Planning decisions improve housing affordability by supporting competitive land and development markets.

Objective 3: Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:

- (a) *the area is in or near a centre zone or other area with many employment opportunities*
- (b) *the area is well-served by existing or planned public transport*

- (c) *there is high demand for housing or for business land in the area, relative to other areas within the urban environment.*

Objective 4: New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.

Objective 8: New Zealand's urban environments: support reductions in greenhouse gas emissions; and are resilient to the current and future effects of climate change.

[39] As supplemented in my evidence and supported by the evidence of others, it is my view that the proposed MRZ over the submitters land achieves Objectives 1, 2, 3, 4 and 8 of the NPS-UD.

[40] However, the proposed SAL overlay over the submitters land may not result in these NPS-UD objectives being realised. Therefore, the SAL overlay should be removed if this higher level directives are to be achieved.

Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

- (a) *have or enable a variety of homes that:*
- (i) *meet the needs, in terms of type, price, and location, of different households; and*
 - (ii) *enable Māori to express their cultural traditions and norms; and*
- (b) *have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*
- (c) *have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport;*
- (d) *and support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and*

- (e) *support reductions in greenhouse gas emissions; and are resilient to the likely current and future effects of climate change.*

Policy 2: Tier 1, 2, and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.

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

- a) in city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification; and*
- b) in metropolitan centre zones, building heights and density of urban form to reflect demand for housing and business use in those locations, and in all cases building heights of at least 6 storeys; and*
- c) building heights of at least 6 storeys within at least a walkable catchment of the following:*
 - i. existing and planned rapid transit stops*
 - ii. the edge of city centre zones*
 - iii. the edge of metropolitan centre zones; and 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.*

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

Policy 6: When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:

- (a) the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement.*

(b) *That the planned urban built form in those RMA planning documents may have.*

Policy 8: Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to wellfunctioning urban environments, even if the development capacity is: unanticipated by RMA planning documents; or out-of-sequence with planned land release.

[42] It is shown throughout my evidence and in the evidence of other experts for Council that the proposed MRZ zoning over the submitters land has been undertaken in accordance with the NPS-UD policies.

[43] However, the proposed SAL overlay over the submitters land may result in an ineffective planning framework that will not provide for the short and medium term housing demand, urban built form, and housing variety.

[44] My assessment concludes that the proposed district plan SAL overlay over the submitters land is not appropriate to achieve the relevant objectives and policies of the NPS-UD which is a high level national direction document.

Regional Policy Statement

[45] My assessment and the relevant RPS objectives is provided below.

Objective 22

A compact well designed and sustainable regional form that has an integrated, safe and responsive transport network and:

- (a) a viable and vibrant regional central business district in Wellington city;*
- (b) an increased range and diversity of activities in and around the regionally significant centres to maintain vibrancy and vitality²;*
- (c) sufficient industrial-based employment locations or capacity to meet the region's needs;*
- (d) development and/or management of the Regional Focus Areas identified in the Wellington Regional Strategy³ ;*

(e) urban development in existing urban areas, or when beyond urban areas, development that reinforces the region's existing urban form;

(f) strategically planned rural development;

(g) a range of housing (including affordable housing);

(h) integrated public open spaces;

(i) integrated land use and transportation;

(j) improved east-west transport linkages;

(k) efficiently use existing infrastructure (including transport network infrastructure); and

(l) essential social services to meet the region's needs.

Objective 22A

To achieve sufficient development capacity to meet expected housing demand in the short-medium and long term in any tier 1 urban environment within the Wellington Region, the housing bottom lines in Table 9A are to be met or exceeded in the short-medium and long term in the tier 1 urban environment.

Note: *Objective 22A and Table 9A were inserted into the Regional Policy Statement directly under section 55(2)(b) of the Resource Management Act 1991, i.e. without reference to RMA Schedule 1, as directed by the NPSUD. The short-medium term (2021- 2031) and long term (2031- 2051) housing bottom lines are drawn from the Wellington Regional Housing and Business Development Capacity Assessment, Housing update – May 2022.*

[46] It is shown throughout my evidence and in the evidence of other experts for the Council that the proposed MRZ zoning over the submitters land will not be contrary to the Objectives specified within the RPS as directed by the NPS-UD and MDRS.

[47] I am aware that Regional Permits have been issued for the residential use of the land in consideration of both the RPS and the PNRP. The applications for the land use and disturbance activities provided detail that was accepted by the Regional Council from a regulatory and policy perspective. It is of note that the

Regional Council has not opposed (through) further submission the relief sought by Kilmarston. This is consistent with the regions approach that Residential development is appropriate for the land in accordance with the permit/consents granted.

[48] However, the proposed SAL overlay over the submitters land will not result in a planning outcome that is in alignment with the abovementioned RPS Objectives. As a result, I am of the opinion that the proposed SAL over the submitters land be removed to achieve Objectives 22 and 22A of the RPS.

Policy 31

Identifying and promoting higher density and mixed use development – district plans

District plans shall:

- (a) *Identify key centres suitable for higher density and/ or mixed use development;*
- (b) *Identify locations, with good access to the strategic public transport network, suitable for higher density and/ or mixed used development; and,*
- (c) *Include policies, rules and/ or methods that encourage higher density and/ or mixed use development in and around these centres and locations*

So as to maintain and enhance a compact, well designed and sustainable regional form.

Policy 55

Maintaining a compact, well designed and sustainable regional form

When considering ...review of a district plan for urban development beyond the regions urban areas (as at March 2009), particular regard shall be given to whether:

- (a) *the proposed development is the most appropriate option to achieve Objective 22; and*
- (b) *the proposed development is consistent with the Council's growth and/ or development framework or strategy that describes where and how future urban development should occur in that district; and/ or*
- (c) *a structure plan has been prepared*

[49] It is shown throughout my evidence and in the evidence of other experts for the Council that the proposed MRZ zoning over the submitters land will not be contrary to the policies specified within the RPS as directed by the NPS-UD and MDRS.

However, the proposed SAL overlay over the submitters land will not result in a planning outcome that is in alignment with the abovementioned RPS policies. As a result, I am of the opinion that the proposed SAL over the submitters land be removed to achieve Policies 31 and 55 of the RPS.

Consented Environment

[50] In addition to the consented environment outlined in paragraphs 12 to 13, there is an existing CoC issued by WCC under s139 of the RMA that provides for the clearance of vegetation from within the site consistent with the WCC subdivision consent and regional permits for the land. The CoC is relevant because it is consistent with the now proposed MDRZ. Council's draft Proposed District Plan identified part of the subject residential land as a SNA but then removed it given the MDRZ and the CoC. The same planning approach is relevant for the SAL in my view.

Section 32 Review

[51] Section 32(1) of the RMA sets out the following requirements

- a. examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
- b. examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
 - i. identifying other reasonably practicable options for achieving the objectives; and*
 - ii. assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - iii. summarising the reasons for deciding on the provisions; and*

- c. contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*

[52] I have undertaken an evaluation of Kilmarnock's land in accordance with the requirements of section 32(1). In understanding this evaluation, I have relied on information as set out in paragraph 9 of this evidence.

[53] Section 77J of the Act requires a territorial authority, in amending its district plan and as provided for in section 77G (i.e. giving effect to Policy 3 and the MDRS) to prepare an evaluation report on the proposed changes effectiveness in achieving the required outcomes. The evaluation report must, in addition to the matters set out in that section, identify any qualifying matters and the costs and impacts of those qualifying matters if recommended to be included. No new qualifying matters are proposed for this site.

[54] As discussed in the evaluation, in order for Wellington City to meet the projected population increase between 50,000 to 80,000 more people over the next 30 years, 10,222 dwellings will be required to meet the shortfall of housing in the City.

[55] I agree with the s32 planning officers zoning framework where the MRZ framework is considered to be the most appropriate zoning to cover the majority of the city's urban area as it provides for a wide range housing types and built forms to meet housing demand. The MRZ also provides an appropriate distinction from the areas of the city covered by the High Density Residential Zone, and the increased scale of development that is provided for in that zone.

[56] The proposed MDRZ objectives and their appropriateness have been based on Council's assessment against the following criteria:

- (a) *Relevance (i.e. Is the objective related to addressing resource management issues and will it achieve one or more aspects of the purpose and principles of the RMA?)*
- (b) *Usefulness (i.e. Will the objective guide decision-making? Does it meet sound principles for writing objectives (i.e. does it clearly state the anticipated outcome?)*

(c) *Reasonableness (i.e. What is the extent of the regulatory impact imposed on individuals, businesses or the wider community? Is it consistent with identified tangata whenua and community outcomes?)*

(d) *Achievability (i.e. Can the objective be achieved with tools and resources available, or likely to be available, to the Council?)*

[57] I agree that the proposed MRZ objectives are appropriate and meet the abovementioned assessment criteria. However, on balance, the proposed SAL overlay will make the proposed MRZ objectives:

(a) Less relevant for parts of the land – the resource management issue of providing sufficient housing capacity to meet the population increase to achieve the purpose of the Act to support people and their communities to meet their housing needs may not be achieved.

(b) Not as useful – With competing objectives, I do not believe that it will assist Council to undertake its functions under s31 of the RMA, particularly in relation to s31(aa) which requires Council to have objectives in place to ensure that there is sufficient housing development capacity to meet the expected demands of the district. In my opinion, Council processing officers will have difficulty making planning decisions as demonstrated in paragraphs 20 to 31.

(c) Not reasonable - As outlined under paragraphs 20 to 31, future development over the submitters land for the purpose of achieving MDRZ objectives may face unreasonable regulatory compliance when giving effect to the NPS-UD as a higher-level document weighed against the actual and potential effects on the identified SAL over the land when considering a resource consent under s104. While the proposed MDRZ objectives provide clear direction regarding the purpose and intended outcomes for the residential zones, when compared to the SAL objectives, the planning framework provides an unreasonable planning outcome, especially where the SAL is not considered a qualifying matter under s77I of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

(d) Not easily achievable – while I agree that the proposed MDRZ objectives are clear and enabling of change to meet housing needs, the added consideration of SAL objectives will likely result in significant additional compliance costs to achieve the outcomes sought. Furthermore, there is a level of planning uncertainty and risk on any development where there is no appropriate planning framework to determine an achievable planning outcome. Realistically, the level of uncertainty and risk associated with these competing objectives will result in decision making beyond the Council’s powers, skills and resources and make for a litigious process.

[58] In my opinion, the proposed confirmed residential zone and now MDRZ (IPI) provision of the submitters land achieves the objectives of the NPS-UD and contributes to the necessary development capacity required for Wellington City within the short and medium term. However, for this appropriate zoning and objectives to be realised over the submitters land, the SAL overlay needs to be removed from a planning perspective over the MRZ zoned land and clipped to the boundaries.

Consideration of proposal against Purpose and Principles of Act 1991

[59] Having considered the proposal against the specific requirements of Section 32 RMA, I now consider the proposal against the framework, subject to Part 2 of the RMA, for the consideration of plan changes. I consider the matters to be addressed in turn.

Part 2 – Purpose and Principles

Section 5 – Purpose

[60] Section 5 defines “sustainable management” as:

“managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enable people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while-

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

[61] It is shown throughout my evidence and in the evidence of other experts on behalf of WCC who have contributed to the proposed residential zones that the MRZ will not be contrary to the purpose of the RMA. The proposed MRZ zoning demonstrates sustainable use and development of the site, providing a range of positive outcomes for the site and the wider community.

[62] However, in my opinion the proposed zoning in isolation of the proposed SAL overlay will result in competing and sustainable management issues over the submitters land.

[63] On this basis, in order for the appropriate MRZ zoning to achieve the purpose and principles contained in Part 2 of the RMA, the proposed SAL overlay should be removed from the MRZ zone that is proposed over the submitters land.

Section 6 – Matters of National Importance

[64] In exercising its powers and functions under the RMA, territorial authorities are required to recognise and provide for the matters of national importance listed in Section 6 of the RMA.

[65] The s32 evaluation identifies s6(c), s6(f) and s6(h) to be specifically relevant to the residential zones.

[66] Of significance to the MRZ over the submitters land is the Wellington City Council Planning and Environment Committees resolved on 23 June 2022 to remove Significant Natural Areas (SNAs) from the residential zones until the National Policy Statement on Biodiversity has been gazetted and a SNA incentives programme has been developed and considered by Council. Notwithstanding, SNAs still apply to all other zones throughout the city.

[67] No sites of historic heritage have been identified on the submitters land.

[68] Furthermore, the submitters MRZ zoned land is not identified be subject to any natural hazard risks, including flooding, fault rapture, liquefaction, coastal inundation, and tsunami.

[69] SAL's have not been identified as qualifying matter specifically relevant to the proposed residential zones.

[70] Based on the above and the general assessment elsewhere in this report and its appendices, I consider the proposed MRZ zoning over the submitters land to be consistent with the provisions of Section 6 of the RMA.

[71] From a planning perspective and in order for the appropriate MRZ zoning to achieve consistency with the provisions of Section 6 of the RMA, the proposed SAL overlay should be removed from the MRZ zone that is proposed over the submitters land.

Section 7 – Other Matters

[72] The other matters the local authorities must have particular regard concerning managing the use, development and protection of natural and physical resources are listed in Section 7 of the RMA.

[73] Section 7 matters identified to be specifically relevant to the residential zone include s7(b), s7(c) and s7(f). The relevance of the proposed residential zoning will achieve an efficient use of land necessary to meet the strategic objectives and maintaining a compact urban for and providing new housing to help address the City's housing needs.

[74] Residential areas contain amenity values and environmental qualities that are valued by the community. As expressed by the s32 reporting officer, the maintenance and enhancement of these values and qualities needs to be managed in the PDP alongside the need for the efficient use of land to increasing housing supply and choice. However, Policy 6 of the NPS-UD requires that the increase be to the extent that it gives effect to the future planning outcomes proposed by MDRS provisions.

I consider the proposed MRZ zoning to be an efficient use and development of the submitters land. In terms of the proposed SAL provisions of the PDP, I am of

the opinion that this approach to giving effect to ss7(c) and 7(f) provides a planning framework that creates competing amenity values over the land where one has been accepted to change over time (i.e. MDRZ) and the other is required to be maintained and enhanced and any adverse effects avoided, remedied or mitigated (i.e. SAL).

[75] In order for the appropriate MRZ zoning to achieve consistency with the provisions of Section 7 of the RMA, the proposed SAL overlay should be removed from the MRZ zone that is proposed over the submitters land.

Section 8 – Principles of the Treaty of Waitangi

[76] Section 8 of the RMA requires the local authority to take into account the principles of Te Tiriti o Waitangi when considering applications for resource consent.

[77] As stated in the s32 evaluation, Council has undertaken significant engagement with its mana whenua partners (Taranaki Whānui ki te Upoko o te Ika and Ngāti Toa Rangatira) to actively protect their interests in the development of the PDP. This included specific engagement on the new residential zones, particularly in relation to the recognition and protection of sites and areas of significance within these zones. As the submitters land is not identified to be within the abovementioned sites, the land is considered appropriate for Medium Density Residential Development.

[78] In my opinion, the proposed MRZ zoning over the land is consistent with section 8 of the RMA.

Summary of Purpose and Principles of the RMA

[79] Based on the above and the general assessment elsewhere in this report and its appendices, while I consider the proposed MRZ zoning to be consistent with the relevant provisions of Section 6, 7 and 8 of the RMA, the SAL overlay will result in an inconsistent planning framework to achieve the relevant provisions of the purpose and principles of the RMA.

Section 42A reports

[80] I have reviewed the reports prepared for Wellington City Council under Section 42A. I agree with the majority of the planning report.

[81] The officer's recommendation accepts that the proposed Medium Density Residential Zoning of the submitters land is appropriate with no changes recommended to this zoning, objectives, and policies.

[82] The alternative option of rezoning the land large lot residential will be discussed in future hearing streams.

Consideration of submissions

[83] Further submissions were received Kilmarston Developments Limited and Kilmarston Properties Limited submission. Four submissions were received in support of the proposed district plan changes over the land, and six submissions were received in opposition to the proposed district plan changes over the land.

[84] I do not propose to address matters raised in the submissions in support of the proposal. The submissions in opposition of the proposed activities were received from:

- (a) Adam Groenewegen
- (b) Janine Hearn
- (c) Carol Anderson
- (d) Graeme Doherty
- (e) Forest & Bird
- (f) Jo McKenzie

[85] As the majority of the submissions in opposition of the PDP provisions over the submitters land will be addressed in Hearing Streams 6, 7 and 8, I have only considered the submission from Forest & Bird for Hearing Stream 2.

[86] Forest & Bird are concerned with the level of vegetation clearance to enable development of the proposed MRZ land as they deem this to be incompatible with s31(1)(b)(iii) of the RMA. As outlined under paragraphs 12 to 13 and 50, the

submitters land benefits from having a consented environment where vegetation clearance has been provided for as a permitted activity under a COC.

[87] I have summarised these matters in my evidence and provided an assessment of the proposed district plan change against relevant Part 2 matters, including Sections 6, 7 and 8.

Summary and conclusions

[88] In my view the proposed MRZ can achieve the purpose of the Act and the objective for medium density development if it is amended to be consistent with the relief sought in section 18 of my evidence.

[89] The amendments give effect to the NPS-UD and can assist in providing the housing supply contained within the MRZ provisions.

[90] Having regard to s32, I consider the amendments sought in Kilmarnock's submission are an appropriate way to achieve the objective and they will be effective in administration for Council.

[91] Given the evidence on behalf of the Submitter, I believe the amendments will allow for a housing supply that contributes to Wellington City's housing demand and choices.

[92] The provision of an SAL does not achieve the purpose of the NPS-UD from a planning perspective.

Dated 16 March 2023



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