

## 9am Thursday 6 April 2023 Submitter presentation

### PREC03 Context

1. Wellington City Council has recognised the following as Qualifying Matters to which development restrictions would apply: Viewshafts, Heritage (excluding scheduled archaeological sites), Coastal hazards, Natural hazards, Character precincts (**MRZ-PREC-01** and **MRZ-PREC-02**), Air noise overlay, Operative District Plan national grid (high voltage transmission line) 32m buffer. (*emphasis mine*)
2. Oriental Bay is not subject to the above Qualifying Matters
3. PREC03 is not a Qualifying Matter. It is a precinct designation in response to an Environment Court decision.<sup>1</sup>
4. Furthermore, current District Plan provisions are not binding upon council when a higher level planning document gives clear direction.
5. The NPS-UD is a higher level planning instrument. The Oriental Bay Height Precinct PREC03 has been considered to be consistent with the NPS-UD in the s32 report (in *Section 32 - Part 2 - High Density and Medium Density Residential Zones*, pg 36-38)

### Councils s32 Assessment of Oriental Bay Height Precinct

6. The councils S32a report "*Section 32 - Part 2 - High Density and Medium Density Residential Zones*" has the Objective of PREC03 (at pg 36):

*Proposed Objective – Purpose*

*MRZ-PREC03-O1: The Oriental Bay Height Precinct accommodates medium to high density residential development and a range of compatible non-residential activities at ground floor that maintain or enhance the unique qualities of the Precinct.*

7. and at 11.2 *Evaluation of MRZ Oriental Bay Height Precinct – Objective 1* in its summary states:
  - *The Environment Court has determined that the Oriental Bay area is unique with special character and requires a special approach. The use of a precinct to manage this area is therefore appropriate and consistent with the National Planning Standards.*
  - *The absence of a specific objective in the operative plan does not address the identified resource management issue to provide clear direction on the need for increased housing in the residential areas of the city.*

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<sup>1</sup> *Foot v Wellington City Council* w73/98, 2 September 1998

- *The proposed objective addresses this issue and **gives effect to the NPS-UD** as it identifies the Oriental Bay Height Precinct as being appropriate for medium to high density residential development.*
- *The above analysis demonstrates that the proposed objective will achieve the purpose of the Act and the Council's functions under s31 RMA; gives effect to the higher-level planning instruments; aligns with best practice guidance; and it **will not result in additional administrative or compliance costs, or increase uncertainty and risk.***

1. The use of the Height Precinct PREC003 to manage the area allows for special height considerations that were awarded by the Environment Court in *Foot v WCC* whilst still achieving the intensification requirements of the NPS-UD.

## The NPS-UD Objectives & Policies

8. The NPS-UD Objectives & Policies are clear in relation to Amenity Values:

*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*

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

*(b) that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:*

- (i) **may detract from amenity values appreciated by some people** but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and*
- (ii) **are not, of themselves, an adverse effect** (emphasis mine)*

9. Allowing for the "Amenity protections" to apply outside of the specific PREC03 fails to realise Objective 4 that "...amenity values change over time..." and that Policy 6 (b) has already been accounted for in the Council's s32 Report. As mentioned above, the Oriental Bay Height Precinct PREC003 as notified already gives effect to the NPS-UD.
10. Modification to this in the form of height restrictions to sites abutting PREC03 fails to give effect to the express purpose of the NPS-UD to make sure that New Zealand's towns and cities are well-functioning urban environments that meet the changing needs of our diverse communities.

## If claims of Qualifying Matters are to be taken seriously;

11. WCC has already achieved the requisite assessment of PREC03 values in its s32 report & has provided for NPS-UD Objs & Pols. The s32 report did not identify Oriental Bay, PREC03 or any part of it as having Qualifying Matters.
12. Pukepuke Pari Residents Incorporated have asked you to recognise the “amenity of the area” as a qualifying matter under s771(j) of the RMA.
13. For you to change the PDP under the “Qualifying Matters” s771(j) would require s77L is satisfied.

### ***Further requirement about application of section 771(j)***

*A matter is not a qualifying matter under section 771(j) in relation to an area unless the evaluation report referred to in section 32 also—*

- (a) identifies 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; 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; &*
- (c) includes a site-specific analysis that—*
  - (i) identifies the site to which the matter relates; 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; and*
  - (iii) evaluates an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 while managing the specific characteristics*

14. Wellington City Council Officers have already achieved the requisite assessment of PREC03 values in the s32 report & has provided for NPS-UD Objectives and Policies. The s32 report did not identify Oriental Bay or the Precinct PREC03 as having Qualifying Matters.
15. Furthermore, the s32 assessment has been performed in respect of the Objective 4 & Policy 6 of the NPS-UD.

## Sites behind Oriental Bay Height Precinct - Hay Street sites

16. There has been suggestion the sites behind the Oriental Bay Height Precinct have their heights reduced to 13 meters. If they are zoned High Density Residential Zone, the standard height must be applied as per the NPS-UD.
17. There are no Qualifying Matters that apply to Hay Street, Oriental Bay. **(the Wellington City Council have confirmed this in writing).**
18. The purpose of the Oriental Bay Height Precinct: MRZ-PREC03-O1: The Oriental Bay Height Precinct accommodates medium to high density residential development and a range of compatible non-residential activities at ground floor that maintain or enhance the unique qualities of the Precinct.
19. The NPS-UD is a high-level planning instrument. This means that District Plans must give effect to this instrument.
20. The Height Precinct gives effect to the NPS-UD, as set out in the *Section 32 - Part 2 - High Density and Medium Density Residential Zones* report.
21. Objective 4 & Policy 6 of the NPS-UD give clear guidance upon the balancing of Amenity Values against the restrictions applied via Qualifying Matters. Namely that *Amenity values develop and change over time and that the planned built urban form... may detract from amenity values appreciated by some people...are not, of themselves, an adverse effect.*
22. As there are no qualifying matters on site, the underlying zoning controls should apply the requisite rule set.