

Under the Resource Management Act 1991

In the matter of hearings of submissions and further submissions on the Proposed Wellington City District Plan

By **Wellington's Character Charitable Trust Inc**
Submitter

**LEGAL SUBMISSIONS BY WELLINGTON'S CHARACTER CHARITABLE TRUST FOR
HEARING STREAM FOUR
20 JUNE 2023**

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Introduction

1. Wellington's Character Charitable Trust (WCCT) is scheduled to make a presentation to the Panel on Wednesday 5 July 2023 at 9am as part of Hearing Stream 4. WCCT's presentation will be made jointly with Historic Places Wellington (HPW).
2. The Hearing Stream 4 topics that WCCT wishes to address the Panel on are as follows:
 - (a) The City Outcomes Contributions Policy (CCZ-P11) and related provisions;
 - (b) Maximum height limits in the City Centre Zone (CCZ-S1);
 - (c) The zoning for Khandallah Village;
 - (d) The zoning for the Newtown centre;
 - (e) The zoning for Portland Crescent and Hawkestone Street, Thorndon; and
 - (f) The section 42A report's proposed "split trigger height" for wind assessments.
3. These submissions expand WCCT's position on these six topics.

City Outcomes Contributions

4. WCCT has submitted expert evidence from Stuart Niven, an urban designer.
5. Mr Niven does not support the use of the city outcomes contribution policy (CCZ-P11) in the city centre zone. In his view, experience shows that these sorts of "public goods" incentives programmes are flawed. If the provision of public goods is desirable then it should occur in a centrally coordinated and strategic manner, and not be bartered for in a haphazard manner through an incentives/points programme.
6. Mr Niven recommends that the City Outcomes Contribution mechanism is removed from the plan, and replaced by a robust and comprehensive set of design rules and design guidance, including involvement of an urban design panel.

7. WCCT supports his proposals.

Height limits for the CCZ

8. WCCT lodged a further submission in opposition to submissions from Kainga Ora (391.734) and Precinct Properties (139.52) seeking to remove the maximum height control (CCZ-S1) from the city centre zone.
9. Mr Niven's evidence supports the retention of CCZ-S1 as a maximum height limit for the city centre zone. In his view, it is problematic to delete that standard because this means that the corresponding assessment criteria are also deleted. The assessment criteria in the notified plan are:¹
 - (a) Streetscape and visual amenity effects;
 - (b) Dominance and privacy effects on adjoining sites; and
 - (c) The extent to which taller buildings would substantially contribute to increasing residential accommodation in the city.
10. These assessment criteria reflect that there are likely to be effects that flow from the construction of tall buildings, and that those effects ought to be assessed above a certain height limit as part of a resource consent application.
11. Mr Liggett's evidence for Kainga Ora is to similar effect: he notes a concern that the City Outcomes Contribution policy is inappropriate in that it results in an assessment which does not address the actual or potential effects of building height.²
12. The need to assess the effects of over-height buildings is supported by CCZ-P12, which relates to managing adverse effects. Specifically, this policy contemplates managing "the impacts of building dominance and the height and scale relationship", "building mass effects", and "the impacts on sunlight access to identified public space". All of those effects may flow from construction of a tall building. It is therefore not consistent or appropriate

¹ CCZ-S1 (assessment criteria), which are within the restricted discretion prescribed by (eg) CCZ-R20.2.2.

² Statement of Brendan Liggett (12 June 2023) at [7.4(c)].

from a policy standpoint to remove CCZ-S1 from as a “height limit” standard with corresponding assessment criteria.

13. WCCT opposes the recommendation in the s 42A report to change CCZ-S1 from a maximum height standard to a threshold for triggering a need for city outcomes contributions. It supports the retention of CCZ-S1 as a maximum height limit per the notified plan.

Khandallah village — NCZ not LCZ

14. WCCT is concerned about the PDP's proposed zoning of Khandallah Village as a local centre zone (LCZ).
15. The inclusion of Khandallah Village as a LCZ is an anomaly compared with the nearby Ngaio Village, which is a Neighbourhood Centre Zone (NCZ). Khandallah and Ngaio have a similar scale of shopping and services.
16. Both villages have a similar level of small-scale commercial and community activities. Both have a library, with Ngaio's library being larger. Ngaio has two creches and a bicycle shop, while Khandallah has a vet clinic.
17. Both villages have a medical centre and a chemist. Khandallah has a physiotherapist and podiatrist, whereas Ngaio has a chiropractor and an oral surgeon. Both centres have a small number of takeaway stores, vehicle servicing garages, and a butcher.
18. It is unclear why the PDP draws a difference between Khandallah and Ngaio. The only difference of any scale between Khandallah and Ngaio is that Ngaio has a petrol station — used by some residents from outside of Ngaio — whereas Khandallah has a small (2500m²) supermarket that is primarily used by Khandallah residents. Those minor differences do not justify different treatment.
19. While Khandallah Village is slightly bigger in area, this is balanced by Ngaio's petrol station, bigger library, and two creches. Neither centre provides services to residents from outside the suburb to any significant extent, which is a feature required or expected of a LCZ.³

³ See for example LCZ-O1 as notified, which refers to local centre zones meeting the needs of “the surrounding residential catchment and neighbouring suburbs in a manner that supports the City's compact urban growth objectives and its role and function in the City's hierarchy of centres”.

20. The PDP's Introduction to the NCZ describes the zone as:
- (a) Including a range of small commercial centres that provide a neighbourhood function;
 - (b) Servicing the surrounding residential neighbourhood and offering small-scale convenience based retail for day-to-day needs; and
 - (c) Having easy pedestrian access for locals and some community services and small-scale offices.
21. This aligns with the definition of a NCZ in the National Planning Standards as an "area used predominantly for small-scale commercial and community activities that service the needs of the immediate residential neighbourhood".
22. These features of a NCZ are all present in the Khandallah and Ngaio Village centres to a similar scale and extent. Both should therefore be NCZs.
23. By contrast, if Khandallah Village remains as a LCZ, then it is in the same category as the Karori, Miramar, Newtown and Tawa centres. Those centres have a much greater level and diversity of shopping and services than Khandallah and Ngaio. It is not appropriate for Khandallah to be grouped with these larger scale centres.
24. The section 42A report discusses this issue, and states that the Khandallah centre "has a village feel", with one to two storey buildings, and a supermarket that is not visually dominant within the streetscape. Despite these points, the officer considers that the centre provides a wide range of services that are accessible to a wide catchment.⁴
25. WCCT does not agree that Khandallah Village has a sufficient range of services to qualify as a LCZ. As already discussed, the range of services is similar in scale and significance to Ngaio which is a NCZ. The section 42A report does not attempt to explain why Ngaio and Khandallah centres should be in different categories.

⁴ Section 42A report – Hearing Stream 4 – Local Centre Zone at [56].

26. A related point is that the height restrictions in Khandallah village and surrounding area need to be reconsidered in two respects.
27. First, the proposed maximum height standard of 22 metres in the Khandallah Village centre is not appropriate in light of (a) the current scale of commercial activity in the village and (b) the demand for additional commercial activity that could feasibly be generated by Khandallah residents.
28. The building heights and densities within and adjacent to a NCZ (or LCZ) are required to be “commensurate with the level of commercial activity and community services”.⁵ WCCT submits that in relation to Khandallah, the Panel will need to consider the current level of commercial activity and community services provided in the Khandallah Village centre. There is no suggestion on the wording of the NPSUD that you can take into account future or planned changes or development over time in the level of commercial activity and community services over time.
29. A maximum height standard of 22 metres for Khandallah Village is well beyond what is commensurate with the level of commercial activity and community services in the village.
30. An illustrative example of the problems with a 22 metre height standard is the controversial construction of the building at 15–19 Ganges Road in 2010. This is the only 3-storey building in Khandallah Village, and it has a scale and bulk that is considerably larger than other buildings on Ganges Road. It has changed the look and character of the village in a manner not commensurate with its level of commercial activity. The character of the village was previously centred on the historic and heritage-listed Khandallah Town Hall (11 Ganges Road). Any further buildings with 3+ storeys would further detract from the heritage value and prominence of the Khandallah Town Hall.
31. The section 42A report acknowledges this concern to some extent, by recommending that the Khandallah centre should be assigned to Height Control Area 2 and have an 18m height limit (rather than the notified 22m limit).

⁵ NPSUD, policy 3(d).

32. It is submitted that a height standard of 12 metres would be more appropriate and in keeping with the character and scale of the Khandallah Village. 12 metres is the default height limit for NCZ (Height Control Area 1 in NCZ-S1).
33. Secondly, the proposed maximum height of 14 metres in the residential area surrounding Khandallah Village is anomalous.
34. Compare Crofton Downs, which has a much larger supermarket (8,400m² compared with Khandallah's 2500m²) but only an 11 metre height control in the surrounding residential area.
35. WCCT submits that a 11 metre height control in the residential area around Khandallah Village is more appropriate and "commensurate" with relative demands for housing and the level of commercial activity and community services.⁶ There is no good reason why housing demand would be lower at Crofton Downs when it has a larger supermarket. An 11 metre height limit around Khandallah Village would also provide a better 'step down' from the section 42A officer's proposed 18m height limit for the village centre.

Zoning for the Newtown centre

36. WCCT opposes the proposal by Kainga Ora to create a new category in the centres hierarchy of a Town Centre Zone (TCZ), and to apply their proposed TCZ provisions to the Newtown centre.
37. WCCT agrees with the Council officers that an additional level in the hierarchy of centres adds undue complexity to the framework and is not necessary for a medium sized city such as Wellington.⁷
38. When considering Newtown, it is clear that Kainga Ora's proposed TCZ provisions would result in building heights and densities that are well beyond what is commensurate with the current level of commercial activity and commercial services in Newtown. Newtown has a relatively limited range of retail and hospitality services, with most shops having fairly small floor areas. The shopping area is a scheduled heritage area and has limited heights and potential for development. Newtown is overall a good fit with a local centre

⁶ NPS-UD, Policy 3(d).

⁷ Section 42A report — Hearing Stream 4 – Overview and General Matters at [106]–[108].

zone that “meets the needs of communities, businesses and residents in the surrounding residential catchment and neighbouring suburbs”.⁸ Its significance and scale of activity does not extend beyond that.

39. WCCT therefore supports the current LCZ treatment of the Newtown centre, with the height controls in the notified plan.
40. The section 42A report recommends increasing the height control in Newtown from 22m to 27m.
41. WCCT opposes this change. It submits that those heights:
 - (a) go beyond what is required to achieve height levels that are commensurate with the level of services in Newtown; and
 - (b) are well above what is necessary to provide sufficient development capacity.

Thorndon areas (Portland Crescent, Hawkestone Street) — residential not CCZ

42. Another significant zoning decision that WCCT opposes is the inclusion of Portland Crescent and Hawkestone Street, Thorndon, within the CCZ.
43. The residential areas of these streets are zoned Inner Residential under the ODP. This reflects their current and established land use.
44. WCCT submits that the Council has not put forward any persuasive justification to rezone these areas as CCZ. On the other side of the ledger, the plan already enables more than sufficient business land and housing capacity without these confined areas being added to the CCZ.

Wind provisions — split trigger height for assessments

45. The section 42A report recommends a “split trigger height” for requiring a wind assessment for new buildings. In the CCZ (and similar zones), it recommends that above 20m, a new building needs a qualitative wind assessment; and that above 25m a more onerous quantitative wind study is required.⁹

⁸ LCZ-O1 (as notified).

⁹ Section 42A report – wind at [102].

46. The split trigger requirement effectively is a height threshold that determines whether a qualitative or quantitative wind assessment is required. A qualitative wind assessment is cheaper and less robust than a quantitative study.
47. WCCT opposes the new proposal for a split trigger height for the different types of wind assessment.
48. The section 42A proposal is a change from the notified plan, which requires that where a new building is above a certain height or does not comply with relevant standards, there is a need for the consent applicant to provide:
 - (a) A quantitative wind study if the building is in city centre, stadium, port, multi-user ferry, inner harbour, waterfront or some metropolitan centre zones; or
 - (b) A qualitative wind assessment if the building is in the local centre, neighbourhood centre, some (other) metropolitan centres, hospital and tertiary education zones.
49. That is, the PDP as notified has a zonally differentiated requirement for which type of wind assessment is required for new buildings above certain thresholds. This presumably reflects that the potential wind effects of wind are potentially greater or riskier in the city centre and similar zones and require a more robust analysis.
50. There were no submissions on the zonally differentiated information requirement.¹⁰ Kainga Ora's submission requested that the trigger heights in WIND-R1 be amended to align with the heights sought in its other submission points, but it did not submit on the requirements for qualitative or quantitative wind assessments.¹¹
51. The s 42A report officer's proposal for a split trigger height is therefore out of scope.

¹⁰ I have reviewed the summary of submissions on the wind chapter and the submissions referred to in the s 42A report – wind at [85]–[88].

¹¹ Kainga Ora submission table at 176 (submission point 391.306 and 391.307).

52. This is because it could not have been reasonably foreseen as a direct or otherwise logical consequence of a submission point.¹² A submitter reading Kainga Ora's submission could not have anticipated that it could result in qualitative (only) wind assessments being acceptable for new buildings in the city centre and similar zones.
53. It would not be fair to WCCT or other parties to now include a split trigger height. There has not been a fair opportunity to consider the differences between quantitative and qualitative wind assessments and the impacts of imposing different height triggers for each type of assessment for the CCZ, or to obtain expert input on that issue.
54. WCCT is concerned about the potential for the proposed increases in building heights (compared with the ODP) to generate unsafe wind conditions. Mr Locke's evidence for the Council notes that the general consequence of having higher buildings across the city is an increase in the likelihood of dangerous wind speeds.¹³ These dangers should be assessed by way of robust quantitative reports at the building height thresholds in the notified plan for the city centre zone (and similar zones).

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¹² *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [115].

¹³ Statement of evidence of Nick Locke for WCC at [18].