

SECTION 42A REPORT

Report on submissions and further submissions on the
Proposed Waikato District

Hearing 25: Zone Extents – Thematic Issues, Future Urban Zone and Medium Density Residential Zone

Report prepared by: Jonathan Clease

Date: 16 April 2021



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List of submitters and further submitters addressed in this report

Original Submitter	Submission number
Balle Bros Group Ltd	466
Blue Wallace Surveyors Ltd	662
EnviroWaste NZ Ltd	302
Future Proof Implementation Committee	606
Hamilton City Council	535
KiwiRail Holdings Limited (KiwiRail)	986
Don Jacobs	768
McCracken Surveys Limited	943
Peter & Janette Middlemiss	354
Property Council New Zealand	198
Waikato District Health Board	923
Waikato Regional Council	81

Further Submitter	Submission number
<i>Bowrock Properties Ltd</i>	<i>FSI197</i>
<i>Annie Chen</i>	<i>FSI261</i>
<i>Ethan & Rachel Findlay</i>	<i>FSI311</i>
<i>Hamilton City Council</i>	<i>FSI379</i>
<i>Havelock Village Ltd</i>	<i>FSI377</i>
<i>Heritage New Zealand Pouhere Taonga</i>	<i>FSI323</i>
<i>Horticulture New Zealand</i>	<i>FSI168</i>
<i>Housing New Zealand Corporation</i>	<i>FSI269</i>
<i>Mercury NZ Ltd for Mercury C</i>	<i>FSI386</i>
<i>Mercury NZ Ltd for Mercury D</i>	<i>FSI387</i>
<i>Mercury NZ Ltd for Mercury E</i>	<i>FSI386</i>
<i>NZ Transport Agency</i>	<i>FSI202</i>
<i>Perry Group Ltd</i>	<i>FSI313</i>
<i>The Surveying Company</i>	<i>FSI308</i>
<i>Tuakau Proteins Ltd</i>	<i>FSI353</i>

Please refer to Appendix I to see where each submission point is addressed within this report.

I Introduction

I.1 Qualifications and experience

1. My full name is Jonathan Guy Clease. I am employed by a planning and resource management consulting firm Planz Consultants Limited as a Senior Planner and Urban Designer.
2. I hold a Bachelor of Science (Geography), a Master of Regional and Resource Planning, and a Master of Urban Design. I am a Full Member of the New Zealand Planning Institute.
3. I have twenty-three years' experience working as a planner, with this work including policy development, providing s.42A evidence on plan changes, the development of plan changes and associated s32 assessments, and the preparation and processing of resource consent applications, including of particular relevance to this report numerous applications for medium density housing for both social housing providers and private developers. I have worked in both the private and public sectors, in both the United Kingdom and New Zealand.
4. I am the author of the s42A reports for the Village Zone subdivision policy and rule frameworks (Hearing 6) and the Rural Zone policy and land use rule frameworks (Hearing 18).
5. I have also recently been involved in the review of the Christchurch District Plan and presented evidence on the notified provisions on behalf of submitters on commercial, industrial, Lyttleton Port, natural hazards, hazardous substances, and urban design topics. I have likewise been recently involved in the development of the second generation Timaru, Selwyn and Waimakariri District Plans, and the preparation of s42A reports processing private plan change applications. These topics have included rural-residential housing, commercial, urban design, and signage matters.

I.2 Code of Conduct

6. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 and that I have complied with it when preparing this report. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
7. I am authorised to give this evidence on the Council's behalf to the Proposed District Plan hearings commissioners.

I.3 Conflict of Interest

8. To the best of my knowledge, I confirm that I have no real or perceived conflict of interest.
9. Planz Consultants Ltd have undertaken work in the past for Kainga Ora through the preparation of resource consents for new social housing units in Christchurch. This consenting work has been geographically limited to Christchurch only. Planz have likewise not provided any advice to Kainga Ora on District Plan or policy matters, either in Christchurch or in the North Island. As such I do not consider that a conflict of interest is created in assessing submissions lodged by Kainga Ora regarding the potential zone frameworks in Waikato District.
10. Other than the above submitter, Planz do not have any clients that have made submissions on the topics dealt with in this report.

1.4 Preparation of this report

11. I am the author of this report which has been prepared in accordance with section 42A of the RMA.
12. The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence. Where I have set out opinions in my evidence, I have given reasons for those opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

2 Scope of Report and topic overview

2.1 Hearing structure and process

13. The assessment of submissions seeking rezoning is being undertaken on a township basis to both manage reporting officer workloads and to assist the Panel and submitters by focussing the reports on townships that submitters have a specific interest in.
14. In addition to these geographically based reports, Council issued in January 2021 two separate reports that address thematic matters. The first of these is a 'Framework Report' prepared by Dr Mark Davey. In response to directions from the Hearings Panel¹, to assist both submitters and ultimately the Panel, Council officers were to prepare a Framework Report that addresses the higher order planning framework established through documents including the National Policy Statement on Urban Development ('NPS-UD'), the Waikato Regional Policy Statement ('WRPS'), and the District-wide Growth and Economic Development Strategy ('Waikato 2070'). The Framework Report also sets out the background to the suite of zones included in the Proposed Plan, the historic growth of the District, and the extent of capacity required to adequately meet the needs of a growing District population.
15. The second report ('Thematic Issues') was authored by myself and considered the merit of submissions seeking greater integration of growth areas with both infrastructure and with adjacent urban form. The outcome of this assessment was a recommendation that a Future Urban Zone ('FUZ') be added to the suite of zones available to the Panel. The Thematic Issues report included a recommended policy and rule framework for the FUZ, and included recommendations regarding the range of circumstances where its application might be appropriate.
16. The Thematic Issues report also considered the merit of introducing a Medium Density Residential Zone ('MDRZ') to the suite of zones available, as sought by several submitters, with Kainga Ora² providing a further refined set of zone provisions and a s32AA assessment to Council in November 2020. Unlike the FUZ, my recommendations did not include a detailed policy or rule framework for the MDRZ, and instead simply identified the outcomes that a MDRZ ought to achieve. It was anticipated that submitters would put forward a proposed zone framework in evidence, using the November 2020 Kainga Ora provisions as a starting point.

¹ https://wdcsitefinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/hearings/hearings-panel-directions/directions-for-rezoning-hearings-12-may-2020.pdf?sfvrsn=89b188c9_2

² Submitter #749, noting that the submission is in the name of 'Housing New Zealand Corporation' which has since been rebranded as 'Kainga Ora'.

2.2 Matters addressed by this report

17. In the process of reviewing submissions, it was identified that whilst the majority of submissions seek the rezoning of specific blocks of land, a number of submissions addressed non-geographic themes or topics that are of relevance across a number of townships.
18. This report is broken down into several sections. The first three sections address the remaining thematic issues raised by submitters. The assessment of these submissions draws on the conclusions reached in Dr Davey's Framework Report, and also draws on the township-based recommendations reached by the various s42A authors considering specific rezoning proposals.
19. Key thematic matters considered include:
 - Provision of sufficient development capacity to meet National Policy Statement – Urban Development ('NPS-UD') direction;
 - The extent of the Country Living and Village Zones;
 - General matters.
20. The final two sections address evidence received from submitters responding to my earlier recommendations in the first Thematic Issues report on the FUZ and MDRZ concepts respectively. For these last two sections, this report therefore takes the form of rebuttal evidence. It also includes a recommended 'red line' version of the MDRZ policy and rule packages.

2.3 Statutory requirements

Resource Management Act 1991

21. As noted in the introduction of the s42A report by Mr Matheson³, sections 1.1 and 1.2 of *Chapter 1 - introduction* of the Proposed Plan set out the relationship between s5, s32, and s72 of the Resource Management Act 1991 ('RMA'), which are respectively:
 - The purpose of the RMA;
 - The functions of a territorial authority; and
 - The purpose of a district plan.
22. As set out in the various sections within *Chapter 1 – Introduction*, and also in the Framework Report, there are a number of guiding RMA documents such as the NPS-UD, WRPS, strategies such as Waikato 2070, the Future Proof Growth Strategy and associated Implementation Plan, and agreements such as the Waikato River Joint Management Agreement 2010 that provide guidance for the preparation and content of the Proposed Plan. The direction contained in these higher order documents which are of relevance to urban growth management are also discussed in the Framework Report prepared by Dr Davey and are addressed by the various township rezoning authors as appropriate.
23. District Plans are required to 'give effect to' the WRPS, and likewise must give effect to National Policy Statements. Both the WRPS and the NPS-UD are discussed in more detail below insofar as they relate to these two topics. These documents are likewise discussed more broadly in the Framework Report.

³ Section 42A Report Hearing 3 Strategic Objectives, Alan Matheson (30 September 2019)

24. The structure of a district plan is required to be consistent with the National Planning Standards ('NPS') that seek to provide a common format for district plans across the country, including the potential use of a FUZ and MDRZ.
25. Section 32 of the RMA requires that the objectives of the proposal be examined for their appropriateness in achieving the purpose of the RMA, and the provisions (policies, rules or other methods) of the proposal to be examined for their efficiency, effectiveness and risk. The effects of new policies and rules on the community, the economy, cultural matters and the environment need to be clearly identified and assessed as part of this examination. The analysis must be documented, so stakeholders and decision-makers can understand the reasoning behind policy decisions. Where changes are proposed to the as-notified provisions, a further assessment⁴ needs to be undertaken to confirm that the new provisions are appropriate.
26. The statutory framework was considered by the Panel in a recent pre-hearing conference on 5th March 2021. Following this pre-hearing conference the Panel issued a minute dated 15 March 2021 regarding the s42a Framework Report and provided further direction regarding the correct statutory tests for District Plan development. The minute includes reference to the tests set out in Appendix I to Council's opening legal submissions. This Appendix has since been updated by Counsel and has been used to guide the drafting of this report.

2.4 Procedural matters

27. At the time of writing this s42A report there have not been any pre-hearing conferences, correspondence or meetings with submitters and there are no procedural matters to consider for this hearing on this topic. No other pre-hearing meetings, Clause 8AA meetings, or further consultation on the submissions were held prior to the finalisation of this s42A report.

⁴ As set out in s32AA, RMA

3 Provision of sufficient industrial, commercial, and residential land

3.1 Submissions

28. Eight submission points were received that relate to the provision of sufficient development capacity. These submissions are supported by ten further submissions in support, with the only further submissions in opposition being five submission points from Mercury Energy.

Submission point	Submitter	Summary of submission
81.15	Waikato Regional Council	Amend Policy 4.6.3 Maintain a sufficient supply of industrial land by specifically referencing the National Policy Statement-Urban Development Capacity.
<i>FS1168.2</i>	<i>Horticulture New Zealand</i>	<i>Support submission 81.15</i>
<i>FS1313.3</i>	<i>Perry Group Ltd</i>	<i>Support submission 81.15</i>
198.12	Property Council New Zealand	Amend the Proposed District Plan to align the supply of industrial land with the Auckland Unitary Plan.
302.32	EnviroWaste NZ Ltd	Retain the identification of new and expanded areas of Industrial Zones on the Planning Maps.
<i>FS1386.348</i>	<i>Mercury NZ Ltd for Mercury E</i>	<i>Oppose submission 302.32</i>
302.34	EnviroWaste NZ Ltd	Retain Rule 4.6.3 Maintain a sufficient supply of industrial land insofar as it gives effect to the relief sought.
<i>FS1353.5</i>	<i>Tuakau Proteins Ltd</i>	<i>Support submission 302.34</i>
<i>FS1386.350</i>	<i>Mercury NZ Ltd</i>	<i>Oppose submission 302.34</i>
535.33	Hamilton City Council	Amend the Proposed District Plan to reflect and relate to sub-regional growth data including the National Policy Statement on Urban Development Capacity. AND Any consequential amendments and/or additional relief required to address the matters raised in the submission.
<i>FS1269.145</i>	<i>Housing New Zealand Corporation</i>	<i>Support in part submission 535.33</i>
<i>FS1377.130</i>	<i>Havelock Village Ltd</i>	<i>Support in part submission 535.33</i>
<i>FS1388.704</i>	<i>Mercury NZ Ltd</i>	<i>Oppose submission 535.33</i>
606.17	Future Proof Implementation Committee	Amend Chapters 4, 5, 14, 16 - 24 and Planning Maps following a review of provisions relating to cross boundary integration to ensure that

		pressures from Auckland and Hamilton are managed. AND Any consequential amendments to any other provisions.
<i>FSI202.23</i>	<i>NZ Transport Agency</i>	<i>Support submission 606.17</i>
<i>FSI379.205</i>	<i>Hamilton City Council</i>	<i>Support submission 606.17</i>
768.3	Don Jacobs	No specific decision sought, but the submission objects to the current location, allocation and distribution of the district's residential zones as proposed in the Proposed Waikato District Plan.
<i>FSI387.1162</i>	<i>Mercury NZ Ltd</i>	<i>Oppose submission 768.3</i>
923.100	Waikato District Health Board	Amend Chapter 1 (and/or s32 Analysis) to show the requirements of the 2017 National Policy Statement for Urban Development Capacity have been considered, which may include the following: Identifying which of the District's towns and villages are to be the focus for urban growth and development; Indicating the extent to which each of these areas are currently serviced with necessary infrastructure to protect and promote health and wellbeing, e.g. potable water; Clarifying whether structure/master planning or other detailed investigations have been done for these areas, and if not, when this is expected to occur; Addressing the issue of how areas identified for growth that currently have no supporting infrastructure (including community infrastructure) are to be sustainably managed through the plan provisions to ensure health and wellbeing is not negatively impacted.
<i>FSI261.2</i>	<i>Annie Chen</i>	<i>Support submission 923.100</i>
<i>FSI202.31</i>	<i>New Zealand Transport Agency</i>	<i>Support submission 923.100</i>
<i>FSI308.166</i>	<i>The Surveying Company</i>	<i>Support submission 923.100</i>
<i>FSI387.1526</i>	<i>Mercury NZ Ltd</i>	<i>Oppose submission 923.100</i>

3.2 Assessment – development capacity

29. The above submissions generally seek that the District Plan effectively manages and provides for the urban growth pressures facing the District. Submissions were lodged several years ago and as such pre-dated the NPS-UD, which itself has superseded the NPS-Urban Development Capacity. Since submissions were lodged, regional growth management collaborative processes such as the Hamilton to Auckland corridor ('H2A'), Future Proof update, and Waikato 2070 have all been progressed. The H2A and Future Proof updates are ongoing work programmes with the intention being that the collaborative approach between the various local Councils, Government Agencies, and mana whenua will continue.

30. These various collaborative processes, combined with the monitoring requirements imbedded in the NPS-UD and its precursor NPS-UDC, mean that the provision of sufficient capacity for both business and residential needs underpins the District Plan as originally notified, Waikato 2070 as a non-statutory tool that was developed mid-Plan review, and the more recent Framework Report. At the time of writing, the various s42a reports on individual townships were still being finalised. It is understood that a s42A report will be provided to the Panel prior to the commencement of Hearing 25 that will set out the capacity provided by the recommendations in the various s42A reports on zoning. At a minimum it is expected that the District Plan will provide the short-medium term capacity necessary to cover the coming ten years. There is of course no impediment to the District Plan also delivering the additional capacity needed to meet long-term needs, provided the locations of such growth are capable of achieving the well-functioning urban environments that are the focus of the NPS-UD and appropriate mechanisms are in place to ensure they are able to be serviced with reticulated infrastructure and integrated with adjacent existing communities.
31. It is understood that the Future Proof partner agencies are working together to develop the Future Development Strategy ('FDS') and Housing and Business Development Capacity Assessment ('HBA') as required by subparts 4 and 5 of the NPS-UD for the Waikato Region. The FDS and HBA in tandem provide an assessment of both the capacity required to meet growth (with appropriate buffers built in), and the spatial location of where such capacity is to be geographically located. If, over the next few years, the HBA identifies a short-fall in capacity then the Council is obliged to review the District Plan to ensure it continues to be a 'living document' that is sufficiently nimble to respond to changing circumstances such as higher than anticipated growth. Policy 8 of the NPS-UD likewise provides a 'relief-valve' mechanism whereby private plan changes can be brought forward for blocks that would deliver significant development capacity and achieve a well-functioning urban environment, even if such areas are not identified in a District or Regional Policy Statement.
32. In summary, the Proposed Plan as notified was informed by capacity assessments undertaken some five years ago. These assessments have since been revised through the recent W2070 process with the Future Proof partner agencies currently developing a HBA. Capacity modelling has also been undertaken to inform the Framework Report. Significant additional capacity over and above that provided in the existing Operative Plan is provided through greenfield growth areas identified in the Proposed Plan as notified. Further opportunities can be delivered through the proposed Medium Density Residential Zone sought by submitters and recommended to be approved in the first Thematic Report and individual township reports. Further capacity is also recommended in response to submitter evidence across the various township reports in locations that align with the higher order growth directions set out in the WRPS and W2070. It is anticipated that the capacity provided through the township recommendations is sufficient to, at a minimum, meet short-to-medium needs, with this capacity to be documented in the upcoming s42a report to be released in late April. Long-term needs will be informed through the HBA and FDS processes mandated by the NPS-UD and underway by the Future Proof partners. In the event that a long-term shortfall is identified then future plan changes can be undertaken to ensure the District meets its obligations in terms of the NPS-UD and continues to provide appropriately located and serviced land to meet the growth needs of the community for both housing and business purposes.

Recommendations

33. It is recommended that the above submissions be **accepted in part**, to the extent that the capacity required under the NPS-UD will be provided in appropriate locations for the short-medium term.

4 Extent of Country Living and Village Zones

4.1 Submissions

34. Two submissions were received seeking the retention of the Country Living and Village zones. One further submission was received in support and four further submissions were received in opposition.

Submission point	Submitter	Summary of submission
535.86	Hamilton City Council	Retain the extent of Country Living Zone as notified on the Planning Maps.
FS1197.23	Bowrock Properties Ltd	Oppose submission 535.86
FS1311.18	Ethan & Rachel Findlay	Oppose submission 535.86
FS1202.134	New Zealand Transport Agency	Support submission 535.86
FS1388.716	Mercury NZ Ltd	Oppose submission 535.86
943.73	McCracken Surveys Limited	Retain Village Zones
FS1387.1594	Mercury NZ Ltd	Oppose submission 943.73

4.2 Assessment – Retention of Country Living and Village Zones

35. Hamilton City Council [535.86] and McCracken Surveys [943.73] seek the retention of the boundaries of the Country Living and Village Zones respectively. The reasons underpinning the outcome sought by the submitters is however somewhat different in that Hamilton City Council's primary relief is to limit the further expansion for Country Living Zones i.e. retain what was notified but do not further extend the zone boundary. The further submitters in opposition to Hamilton City Council's submission are parties seeking an extension of the Country Living Zone.
36. McCracken Surveys conversely are supportive of the proposed Village Zone and want to see this retained (noting in particular that the notified Plan included several large Village-Zoned greenfield growth areas). They are not necessarily seeking to limit further expansion.
37. The role of the Country Living and Village Zones has been canvassed in detail in earlier hearings⁵ on the policy and rule frameworks for these two zones. In summary, Country Living provides for large 5,000m² lots where the primary land use is residential dwellings set within large landscaped gardens. The Village Zone (as notified) has a split function with the majority of the zone applying to the District's small rural villages and settlements in recognition that these areas do not have a good fit with the outcomes and rule frameworks applying to the Rural Zone. These small villages are generally unserved and as such further growth is expected to be limited to infill of existing vacant lots i.e. the Village Zone is a tool to recognise the status quo environment. The second role of the Village Zone in the notified Plan is as a greenfield growth tool for several large blocks of land on the outskirts of Tuakau and Te Kowhai, with low density unserved lots able to transition to residential densities once reticulated services become available. The s42a recommendations to Hearing 6 expressed concern regarding the consistency of a large lot, unserved, growth area with the WRPS

⁵ Hearing 12 (Country Living Zone) and Hearing 6 (Village Zone)

directions and the practical challenges with successfully retrofitting reticulated services and increased density. At the conclusion of Hearing 6 the Panel sought further consideration of a Future Urban Zone as an alternative growth management tool, with that consideration forming part of the first Thematic Issues Report issued in January.

38. The extent of both Country Living and Village Zones was likewise considered in the Framework Report, with that report providing a general direction that further expansion of these two zones was not the preferred method for accommodating the District's growth, relative to expansion of the larger townships to Residential Zone densities in locations where reticulated services could be made available.
39. The recommendations in these earlier reports establish the following broad outcomes:
 - (a) Existing Operative Plan Country Living Zones are retained, reflecting the well-established expectations of land owners and the generally existing built form;
 - (b) Existing small rural villages have a Village Zone to reflect existing levels of built form and generally unserviced lots as a method for recognising the status quo whilst providing for very limited further intensification;
 - (c) Large new greenfield areas are to be developed to Residential Zone densities with reticulated services. Where such services are not yet provided, a Future Urban Zone is an option to provide a clear signal that urbanisation is anticipated, and therefore services can be programmed, and that future development will be to suburban densities rather than as a transition from unserviced lifestyle blocks.
40. Large new greenfield growth areas of Country Living or Village Zone are not therefore anticipated as appropriate methods for giving effect to the urban growth directions set out in the NPS-UD or the WRPS.
41. Within this broad direction, it is recognised that individual s42a authors have been examining the merit of submissions seeking zone boundary changes to individual townships. These authors have the benefit of (in some cases) detailed evidence provided by submitters, thereby enabling a more fine-grained assessment of the appropriateness of rezoning and the specific location of zone boundaries. At the time of writing these township-specific reports were still being finalised. It is my understanding that the recommendations generally align with those set out above i.e. submissions seeking large new greenfield areas of either Country Living or Village Zones are generally recommended to be rejected. Conversely, existing Country Living and Village zoned areas are generally recommended to be retained (or in the case of Te Kowhai changed to a FUZ). There are a number of recommendations across the reports that recommend accepting submissions which seek relatively minor refinements to the location of zone boundaries or changes in existing Operative Plan zoning from Country Living to Village Zone⁶.

4.3 Recommendations

42. It is recommended that Hamilton City Council [535.86] and McCracken Surveys [943.73] both be **accepted in part**, insofar as the extent of Country Living and Village Zones as shown in the Proposed Plan are generally retained, with further expansion of these zones limited in nature and extent.

⁶ See for example the recommendations in the 'Rest of District' report regarding Glen Massey.

5 Other Matters

5.1 Submissions

43. Five submission points were received on discrete thematic issues concerning urbanisation of high quality soils, the number of rural zones, the location of roads on structure plans, clarification regarding the status of the Hamilton Urban Expansion Area ('UEA'), and the appropriate underlying zoning for the designated rail corridor.

Submission point	Submitter	Summary of submission
576.13	Transpower New Zealand Ltd	Amend the planning maps/legend to clarify if the zoning of the Urban Expansion Area is Rural Zone. AND Amend the Proposed District Plan to make consequential amendments to address the matters raised in the submission.
<i>FS1388.828</i>	<i>Mercury NZ Ltd</i>	<i>Oppose submission 5376.13</i>
<i>FS1388.920</i>	<i>Mercury NZ Ltd</i>	<i>Oppose submission 5376.13</i>
662.49	Blue Wallace Surveyors Ltd	Amend structure plans to avoid placing roads that will span different boundaries.
466.76	Balle Bros Group Ltd	No specific decision sought, but submission considers the rezoning of High Class Soils for residential use may be inconsistent with the policies and objectives of the Proposed District Plan in some instances.
354.1	Peter & Janette Middlemiss	Amend the Rural Zone to have three sub-zoning categories to accommodate the diversity of the area rather than just one blanket zone.
<i>FS1379.92</i>	<i>Hamilton City Council</i>	<i>Oppose submission 351.1</i>
<i>FS1386.506</i>	<i>Mercury NZ Limited for Mercury C</i>	<i>Oppose submission 351.1</i>
986.127	KiwiRail Holdings Limited (KiwiRail)	Amend all Planning Maps where KiwiRail's designations apply to change the underlying zoning from "Rural" to "unzoned" (or similar amendments to achieve the requested relief) AND any consequential amendments to link and/or accommodate the requested changes.
<i>FS1323.178</i>	<i>Heritage New Zealand Pouhere Taonga</i>	<i>Oppose submission 986.127</i>

5.2 Assessment – Hamilton Urban Expansion Area Overlay

44. Transpower NZ Ltd [576.13] sought confirmation that the Hamilton Urban Expansion Area forms part of the Rural Zone (rather than being a zone in its own right). The Hamilton UEA

purpose and provisions were considered in detail as part of Hearing 3 (Strategic Objectives, Hearing 12 (Country Living Zone), and Hearing 18 (Rural Zone). The Hamilton UEA is an area of land located on the 'inside' of the Hamilton Expressway, and is essentially an overlay which sits over an underlying zone of Rural or Country Living Zone. It is intended that this land will in time transfer to form part of Hamilton City Council's territorial boundary. Whilst urbanisation of this land is anticipated in the medium to long term, such urbanisation will ultimately be managed by Hamilton City Council. In the meantime, the Rural Zone provisions apply (apart from the small areas with a Country Living Zone), with the rule and policy framework designed to limit activities from establishing in the interim that would unduly prejudice or frustrate coherent urban expansion.

45. It is therefore confirmed that the Hamilton UEA is an overlay that applies over the Rural Zone (and a small part of the Country Living Zone). The objective and policies for the Hamilton UEA are located within the Rural Zone policy framework set out in Chapter 5 and the rules are located within the Rural and Country Living Zone provisions (Chapters 22 and 23 respectively). It is understood that at the conclusion of the hearings process, the Proposed Plan will be reformatted to ensure that it aligns with the requirements of the National Planning Standards which is a national direction to ensure consistency in the structure and appearance of all District Plans throughout New Zealand. The 'look' of the planning maps will therefore align with the NPS requirements, including clear differentiation between zones and overlays.
46. It is therefore recommended that the submission from Transpower NZ Ltd [576.13] be **accepted**.

5.3 Assessment – Structure Plans and Road Alignment

47. Blue Wallace Surveyors Ltd [662.49] have sought that structure plans avoid placing roads that span different boundaries. The Proposed Plan as notified includes a very limited number of structure plans, with these plans consisting of 'roll-overs' from the Operative Plan for private plan changes that have been approved relatively recently. As such alignment of roads on structure plans does not appear to be an issue with the Proposed Plan.
48. My earlier Thematic Issues report released in January identified that structure plans can be a useful tool in ensuring new growth areas are properly integrated with existing urban areas. It is anticipated that through evidence submitters will put forward structure plans to demonstrate that such integration is indeed possible for the blocks in question. One of the key purposes of structure plans is to demonstrate how new urban areas are to connect with existing townships, therefore roads will invariably cross or connect across cadastral boundaries and indicate connections across structure plan boundaries. Such connections between blocks in different ownership is likewise one of the key roles of a structure plan to ensure that a large growth area that will be developed in stages by different developers still results in a coherent, connected piece of urban development.
49. I agree that where roads are shown on structure plans running parallel to cadastral/ ownership boundaries, it makes sense for that road to be located within a block under single ownership as this will make construction of the road more straight forward. Determining how the costs of local infrastructure are subsequently equitably funded between different developers can be challenging, regardless of road alignment. Ultimately the inclusion of structure plans in the Proposed Plan will be led primarily by submitters in evidence, and therefore presumably they will be comfortable with the location of the roads shown in any structure plans put forward. In the event that minor changes to alignment are subsequently determined to result in a more effective urban form, then the merits of such can be resolved through the subdivision consent process.
50. It is not considered that any amendments are necessary to the Proposed Plan as a result of the submission, and therefore it is recommended that the submission from Blue Wallace

Surveyors Ltd [662.49] be **accepted in part** insofar as the structure plans (if any) put forward by submitters will include logical road alignments.

5.4 Assessment – High Class Soils and Rural Zoning

51. Balle Bros Group Ltd [466.76] sought that zoning decisions, and in particular the location of new growth areas, consider the protection of high class soils, and to this end they consider that some of the growth areas shown in the Proposed Plan as notified may conflict with policies in the Proposed Plan to protect such soil from urbanisation.
52. As a general proposition, I agree with the submitter that all else being equal, urban growth should avoid areas of high class soil. There can be a tension in regions such as the Waikato where urban growth is best located adjacent to existing larger townships where reticulated services are able to be made available, yet such townships are in turn invariably located in productive rural areas (which gave rise to these town's origins as rural service centres). Productive farmland also tends to be located on flatter slopes that are also suited to urban development, especially compared to steeper hill country or low lying areas that are prone to flooding. The draft NPS on highly productive soils started to wrestle with the tension of how best to retain the productive potential of such soils whilst concurrently enabling growth in urban areas surrounded by such soils, however such direction is yet to be finalised.
53. The issue of urban growth and high class soils is addressed in the WRPS, and has been considered in length in an assessment of the subdivision provisions applying to the Rural Zone (Hearing 18⁷). The recommended provisions in the Rural Zone policies and rules clearly articulated a need to protect high class soils and limit fragmentation of the soil resource through lifestyle block development.
54. The location of growth areas at a District-wide level is also discussed in the Framework Report, noting in particular the growth areas identified through strategies such as Future Proof (and subsequent WRPS maps and policies), and Waikato 2070. These growth strategies have sought to balance competing outcomes, and to locate growth in areas where important natural values are able to be maintained. The retention of high class soils for horticultural activity was one of the criteria used in developing these strategies, with growth areas shown in the WRPS considered to be consistent with the WRPS directions regarding high class soils.
55. As a generalisation, the Future Proof 2017 growth pattern has been developed to provide for growth in appropriate locations, including consideration of productive soil values. Rezoning of areas identified within FP2017 is therefore considered to align with WRPS directions on this matter. Where officers have recommended rezoning beyond FP2017 boundaries in response to site-specific evidence, this has included consideration of productive soil values, especially for urban growth proposals in proximity to Tuakau where there are large areas of high class soils.
56. It is recommended that the submission from Balle Bros Group Ltd [466.76] be **accepted in part** insofar as the recommended areas for urban growth have been considered against a suite of at times competing policy outcomes, with the maintenance of the productive potential of versatile soils one of the key matters considered.
57. Peter and Janette Middlemiss [354.1] sought that the Rural Zone have three sub-zoning categories to better recognise the geographic diversity of the area rather than a single blanket zone. The submission is opposed by Hamilton City Council [FS1379.92]⁸ who are concerned

⁷ S42a report by Ms Overwater

⁸ The submission is also opposed by the generic Mercury Energy further submissions [FS1386.506]

that sub-zones could result in increased subdivision and residential lifestyle block development in the Rural Zone rather than consolidating such growth in and around townships.

58. The issue of the Proposed Plan having a single Rural Zone was canvassed in some depth in my s42a⁹ report on the Rural Zone objectives and policies. I agree with the submitters that a single Rural Zone must necessarily cover a wide range of farming environments and landscapes and therefore a ‘one size fits all’ approach can be a somewhat blunt tool for guiding land use outcomes. I recommended a more detailed Policy 5.3.1 on the elements that contribute towards rural character and amenity values to provide more specific policy direction regarding the differing rural environments found in the District. The rule package recommended in Hearing 18 was likewise nuanced to reflect stricter subdivision provisions for areas containing high class soils. The related overlays identifying areas with high landscape, ecological, and cultural values, along with aggregate extraction, the Hamilton Urban Expansion Area, and natural hazards, likewise provide nuance to the general zone rules in terms of the type and nature of landuse and subdivision activities that can occur.
59. Ultimately I recommended in Hearing 18 that the notified plan approach of a single Rural Zone be retained, with a more descriptive policy framework acknowledging differing characteristics and with differing rules depending of the protection or management of any special values or attributes found in the rural area.
60. It is therefore recommended that a single Rural Zone be retained and the submission of Peter and Janette Middlemiss [354.1] be **rejected**.

5.5 Assessment - Rail Corridor Zoning

61. KiwiRail [986.127] have requested that the zoning of the rail corridor be amended from Rural Zone to ‘un-zoned’. This is the approach that the Council have taken to roads¹⁰. The submitter also seeks that the following new condition be added to their existing designations:
- where designated land is un-zoned, activities not covered by the designation will be subject to the rules of the adjacent zone. If there are two different zones, the adjacent zone extends to the centre line of the designated land.*
62. Under the Operative District Plan, the rail corridor is not zoned, and is managed by Designations L1, L2, L3 and L4, as well as Chapter 8 – Land Transport Network. Under the Proposed Plan, the rail corridor is zoned Rural, and is managed by Designations L1, L2, L3 and L4, as well as the provisions in Chapters 6 and 14 – Infrastructure and Energy, with no specific rules in the Rural Zone Chapter 22 relating to the rail network (other than setbacks from it).
63. KiwiRail submit that a Rural Zoning could lead to perverse outcomes for a number of their tenants who are undertaking non rail-related activities and therefore are not covered by the rail purposes designation and must instead rely on the underlying zoning. It is important to emphasise that KiwiRail’s designation is the primary regulatory tool by which rail-related activities are managed and provided for. The underlying zoning is not therefore of any particular relevance for KiwiRail’s core operations. I accept however that the designated rail corridor in places widens out to include marshalling yards and associated areas that are used for a wide range of activities. I agree that where these sites are located within urban areas, compliance with the Rural Zone policy direction and associated rules seems to be unduly onerous and not particularly relevant or appropriate.

⁹ See discussion on Rural Objective 5.3.1 and associated policies on rural character and amenity, s42a Rural Zone report, Hearing 18.

¹⁰ Proposed District Plan, Chapter 12, 12.1(h), page 3 of 7.

64. Section 176 of the RMA deals with the effect of designation, stating:

176 Effect of designation

- (1) *If a designation is included in a district plan, then—*
- (a) *section 9(3) does not apply to a public work or project or work undertaken by a requiring authority under the designation; and*
 - (b) *no person may, without the prior written consent of that requiring authority, do anything in relation to the land that is subject to the designation that would prevent or hinder a public work or project or work to which the designation relates, including—*
 - (i) *undertaking any use of the land; and*
 - (j) *subdividing the land; and*
 - (k) *changing the character, intensity, or scale of the use of the land.*
- (2) *The provisions of a district plan or proposed district plan shall apply in relation to any land that is subject to a designation only to the extent that the land is used for a purpose other than the designated purpose.* [emphasis added]

65. The RMA therefore anticipates that appropriate provisions will exist in a District Plan to manage activities located within an area covered by a designation, but where such activities are not related to the purpose of that designation.

66. The National Planning Standards direct that ‘a district plan...must only contain the zones listed in table 13...except for a special purpose zone when direction 3 is followed...’¹¹. Table 13 does not appear to provide a Transport Zone, as is common in a number of District Plans¹². It likewise does not appear to provide for ‘un-zoning’.

67. Direction 3 states:

3. *An additional special purpose zone must only be created when the proposed land use activities or anticipated outcomes of the additional zone meet all of the following criteria:*
- a. *are significant to the district, region or country*
 - b. *are impractical to be managed through another zone*
 - c. *are impractical to be managed through a combination of spatial layers*

68. It would appear that a ‘un-zoned’ approach for roads and rail corridors, as sought by the submitter, is not consistent with the National Planning Standards direction. As such the Panel have the option of either creating a Special Purpose Zone for the transport corridors, or alternatively determining what the most appropriate alternative zone is from the existing suite of zones available.

69. I am likewise cautious regarding the legal effect of a condition on a designation that seeks to control or direct the regulatory environment applying to activities that do not fall within the purpose of the designation. In my experience designations (and conditions) guide the scale and nature of activities that are within the purpose of the designation. Where activities fall outside this purpose then they are not subject to the designation and the designation does not apply to them¹³. They instead simply default to being considered against the underlying zone framework.

70. I agree that having a Rural Zone strip running through the middle of townships along the rail corridor results in a somewhat incongruous zone pattern and associated set of policy

¹¹ National Planning Standards, Zone Framework Standard, Mandatory directions, page 36

¹² For example the AUP, Hamilton City Plan, and Christchurch District Plan all zone roads and rail corridors as a Transport Zone.

¹³ Noting that activities for non-designated purposes still require the written consent of the requiring authority prior to undertaking activities located within the designation under s176(1)(b) RMA

outcomes and rules that have little utility when applied to what are typically industrial activities within urban environments. I am likewise mindful that where the rail corridor adjoins Rural or Residential Zones that permitting a wide range of industrial activities may not be appropriate. As such I do not consider rezoning the entire corridor to an Industrial Zone to be appropriate.

71. This leaves me with a recommendation that the rail corridor be zoned to whatever the adjacent zone is, measured to the centreline of the corridor in instances where there are different zones on either side of that corridor. I accept that this may make for some challenging zone boundary alignments in the limited number of places where the corridor is irregularly shaped. These areas are however in the minority, and often have the same zoning on either side so in practice the identification of zone boundaries should not prove insurmountable.
72. It is therefore recommended that the submission by KiwiRail [986.127] be **accepted in part**, insofar as it is recommended that the underlying zoning be changed from Rural Zone to instead align with whatever the adjacent zone is. Those elements of the submission seeking that the rail corridor be 'un-zoned' with a condition applied to the KiwiRail designation are rejected.
73. Given the geographic extent of the rail corridor, the recommended changes to the District Plan maps are not shown in this report.
74. Whilst not a matter raised in the scope of this submission, the approach to 'un-zoning' roads may need to be revisited by the Panel as part of the process of aligning the District Plan with the National Planning Standards which were gazetted after the District plan had been prepared and notified.

6 Future Urban Zone – Response to Submitter Evidence

6.1 Assessment

75. Submitter evidence on the proposed FUZ concept and provisions set out in my earlier Thematic Report is relatively limited. Evidence on behalf of Hamilton City Council¹⁴, Waikato Regional Council¹⁵, Genesis Energy¹⁶ and NZTA¹⁷ all support the concept of a FUZ. Such support notes the role of a FUZ especially where there is currently insufficient evidence regarding effects on matters such as the transport network, and/ or insufficient certainty regarding the provision of reticulated services or structure plans to ensure integration with adjacent urban areas. In supporting the concept, these parties have not sought any specific changes to the proposed policy and rule framework.
76. Several submitters¹⁸ have likewise sought the application of a FUZ as an alternative to their original relief (which was generally a 'live' zone), as a secondary option should the Panel not agree to a live zone. Where submitters have opposed a FUZ, such opposition is limited to the application of a FUZ to their specific block rather than a live zone, rather than opposition to the concept in general.

¹⁴ Planning evidence of Ms Laura Gault, 10th March 2021

¹⁵ Planning evidence of Ms Marie-Louise Foley, Section 12, 10th March 2021

¹⁶ Planning evidence of Mr Richard Matthews, 10th March 2021

¹⁷ Planning evidence of Mr Michael Wood, application of the FUZ to various blocks, 10th March 2021

¹⁸ See for example evidence of Mr Mathew Twose on behalf of Ohinewai Lands Ltd [428]; and evidence of Mr Nicholas Grala on behalf of Thorntree Orchards [54], C&T Young [735] and Parkmere Farms [696] in Pokeno East

77. From my review of the evidence, the only party seeking amendments to the FUZ provisions is a grouping of submitters in the Pokeno East area. Planning evidence for these parties was provided by Mr Nicholas Grala. The merit of any change in zoning for these parties is considered in detail in the s42a report on Pokeno. I will focus on the FUZ policy amendments sought by Mr Grala, noting that no amendments were sought to the rule framework.
78. Mr Grala is generally supportive of the FUZ as a zoning option available to the Panel. He makes the valid point that the proposed FUZ policies in part guide where FUZ should be located, and in part then also guide the use and development that occurs within the FUZ. My earlier recommendation kept all the FUZ policies together. An alternative structuring approach would be to relocate those FUZ provisions focussed on the role of the FUZ and its locational attributes to Chapter 4, where they would form part of the policies providing more strategic direction on urban growth, rather than being located in a zone-based chapter. I have some sympathy with such an approach and note that structuring of plan provisions, and in particular the alignment of the Plan with the National Planning Standards framework, is a final 'tidy-up' exercise that is to be undertaken at the conclusion of the hearings process. For now I have focussed on having the appropriate content in the proposed policies, with where that content ultimately ends up a matter for later resolution.
79. Mr Grala likewise makes the valid observation that future plan changes (as anticipated to change from a FUZ to a live zone) will be assessed primarily against the strategic directions in the Plan (and the direction provided in the higher order documents such as the NPS-UD and WRPS). The policies that direct what will happen within the FUZ as a holding pattern are less important when considering plan changes, as the point of a plan change is to shift to a different set of outcomes enabled by which ever replacement zone is sought.
80. Mr Grala's observations largely reflect the direction of the Panel in their recent directions issued on 15th March 2021. I would note that the FUZ does differ from typical zones in that its explicitly purpose is to enable a transition to a different zone and built outcome, as opposed to other zone frameworks where the zone and associated outcomes are the 'end state'. As a transitional zone where the purpose of the zone is to establish the framework by which a future 'end-state' zone will be determined, the FUZ policies will necessarily be somewhat operational/ process-focussed in nature.
81. Mr Grala has put forward¹⁹ an alternative policy framework as a complete replacement for my recommended provisions. In my view they traverse similar ground to the provisions recommended in my earlier report, albeit with less process-related direction. On balance I prefer my earlier recommended wording, noting that ultimately the optimal structuring (and wording) of the policy framework will turn primarily on the Panel's conclusions regarding the strategic directions in Chapters 1 and 4 and how best to articulate the overall approach to urban growth management. Once this more fundamental decision is made, the location and level of detail of policies for individual zones will become clearer.
82. The concept of a FUZ and associated provisions as set out in the earlier Thematic Report therefore remains an option available to the Panel, with no evidence received to date that is opposed to the concept in general. The provisions themselves likewise appear to be generally supported. From my review of evidence, Mr Grala is the only expert who has sought amendment to the policies (but not the rules), and even then is generally supportive of the intent of the zone with his evidence focused on an alternative means of structuring and articulating this intent.

¹⁹ Para. 43 and 44 of Mr Twose evidence

7 Medium Density Residential Zone – Response to Submitter Evidence

7.1 Introduction

83. By way of a quick recap, my earlier Thematic Report considered a group of submissions seeking the introduction of a Medium Density Residential Zone ('MDRZ') as an additional zone to add to the 'toolbox' of zoning options available to the Panel. I considered the merit of such a zone and agreed in principle that such a zone would assist the District Plan in giving effect to the NPS-UD and WRPS directions regarding growth management, capacity, housing choice, and good quality urban outcomes.
84. As the zone was sought by submitters rather than being a zone put forward in the Proposed Plan as notified, the onus is on submitters to develop a coherent policy and rule framework for the MDRZ. My earlier Thematic Report set out a number of principles or outcomes that such a policy and rule framework should deliver. I also had the benefit of being able to review an initial package of provisions developed by Kainga Ora and circulated in November 2020 to the Council and other submitters who had expressed an interest in this topic.
85. As with the FUZ concept, submitter evidence on the proposed MDRZ concept is relatively limited. Evidence on behalf of Hamilton City Council²⁰ and the Waikato Regional Council²¹ support the concept of a MDRZ as an effective method for delivering additional capacity in appropriate locations and providing a range of housing choice to meet differing community housing needs.
86. The key body of evidence on the MDRZ has been provided by Kainga Ora. Its evidence has addressed the concept of a MDRZ, has provided a set of policies and rules to deliver the zone outcomes sought by the submitter, is supported by urban design evidence regarding both the appropriateness of the proposed rule package and the geographic application of the zone across the District's larger townships, includes transport and economic evidence, and is accompanied by a detailed s32AA assessment.
87. No rebuttal evidence has been received that challenges the proposed MDRZ policy and rule framework or that seeks amendments to the proposed provisions put forward by Kainga Ora. The only further submitter evidence received was provided on behalf of Genesis Energy [FS1345]²² who have sought changes to the geographic extent of the MDRZ in Huntly in order to manage reverse sensitivity issues potentially generated by enabling more people to live in close proximity to the Huntly Power Station. The geographic extent of the MDRZ in Huntly is considered in the evidence of Ms Lily Campbell who is the s42a report author on zones in Huntly.

7.2 Assessment

88. I have reviewed the comprehensive evidence package put forward by Kainga Ora. In general there is a high level of agreement between myself and Kainga Ora's experts. As such I will summarise below the areas of agreement, and where I adopt or rely on Kainga Ora's evidence and/or proposed MDRZ provisions. I will then focus the discussion on the areas where there is a difference in view (primarily in relation to the bulk and location rules controlling internal boundary interface/ amenity).

²⁰ Planning evidence of Ms Laura Gault, 10th March 2021

²¹ Planning evidence of Ms Marie-Louise Foley, Section 13, 10th March 2021

²² Planning evidence of Mr Richard Matthews, 10th March 2021

89. In summary, I agree with and adopt the Kainga Ora evidence and associated MDRZ provisions²³ in relation to the following matters:

- That there is merit in a MDRZ as part of the suite of District Plan zones, and that such a zone assists in giving effect to the NPS-UD and WRPS regarding growth management and urban outcomes;
- I agree with the policy framework put forward by Kainga Ora, both in terms of the amendments sought to Chapter 4 policies²⁴, and in terms of the objectives and policies for the MDRZ. The policy provisions put forward by Kainga Ora achieve the principles set out in my earlier Thematic Report.
- I note that the application of a MDRZ is sought by submitters²⁵ as part of a large new greenfield area in Pokeno. If the Panel are minded to approve this rezoning, then an additional policy may also be required as a consequential amendment to provide direction for MDRZ located as part of a comprehensively planned greenfield area, rather than a town centre-adjacent location. I have suggested minor amendments in Appendix 3 to the proposed zone statement and Policy 4.2A.4 to provide for MDRZ as part of a master-planned growth area. I have identified the potential merit in MDRZ being integrated into large master-planned growth areas in my earlier Thematic Report;
- I agree with the rules controlling activities within the MDRZ (section 16A.1), including the limited provision for community facilities and the management of non-residential activities;
- I agree with the rules controlling thematic amenity-related effects (section 16A.2) relating to noise, glare, earthworks, signage, notable trees, and indigenous vegetation clearance. It is noted that these rules largely mirror the equivalent rules set out in the Proposed Plan Residential Zone²⁶;
- I agree with the need for Rule 16A.3.1 which requires a restricted discretionary resource consent be obtained for developments containing four or more units. This rule enables a qualitative urban design assessment to be undertaken. In my experience such qualitative assessments/ consent triggers are common for higher density residential zones in District Plans across New Zealand. I agree that the proposed matters of discretion provide sufficient coverage of the key matters to consider in undertaking such an assessment, subject to three discrete additions discussed below;
- I agree with the built form rules and associated matters of discretion controlling minimum dwelling size (16A.3.2), road boundary fencing (16A.3.4), building coverage (16A.3.6), Impervious surfaces (16A.3.7); Building setbacks from road boundaries (16A.3.9.1(P1)(a)(i)), building setbacks from water bodies (16A.3.9.2), and historic heritage (16A.3.10.1-5).
- I agree with the Subdivision rules, noting that for medium density typologies it is common for landuse consent to be obtained first, the works undertaken to the point that the building is enclosed, and then the units are surveyed to enable a unit title subdivision to be undertaken. As such, it is common for subdivision to follow building

²³ Provisions as set out in Philip Stickney planning evidence, 17th February 2021, Appendix 1

²⁴ Philip Stickney supplementary planning evidence 19th February 2021

²⁵ Planning Evidence of Mr James Oakley on behalf of Pokeno West Ltd [97]

²⁶ It may be that the Residential Zone thematic rules will be amended as a result of the evidence and recommendations presented at the Residential Zone Hearing 10. If this is the case then there may be a need for consequential amendments to the MDRZ provisions to be consistent with the Panel's decisions on appropriate thematic rule packages for residential areas.

commitment rather than subdivision occurring first which is typical in low density residential zones.

90. In addition to reviewing the proposed MDRZ policy and rule framework, I have also reviewed the methodology underpinning the revised zone boundaries now sought by Kainga Ora²⁷. I agree that the methodology and associated criteria for determining zone boundaries is generally appropriate.
91. Whilst I am broadly familiar with the District's main townships, I have not undertaken a detailed context assessment or site visits to determine specific zone boundaries. Individual township s42a report authors have the primary responsibility for assessing the appropriateness of the zone boundaries sought by Kainga Ora, including identification of any township-specific reasons as to why different zone boundaries (or provisions) might be necessary. The application of a MDRZ to new greenfield growth areas (if sought by submitters) is likewise a matter to be considered by individual township s42a authors.
92. An example of a township-specific recommendation on MDRZ extent is found in section 6 of the s42a report for Raglan prepared by Ms Emily Buckingham. She has recommended that either the application of the MDRZ in Raglan be deferred, or if accepted be limited in its geographic extent to exclude the Raglan town centre expansion area identified in Waikato 2070 (so as to better preserve the future development opportunities in this area for commercial activities). I defer to Ms Buckingham's township-specific recommendations on this matter. If the Panel accept Ms Buckingham's recommendation, then the specific reference to the 'Bankart/ Wainui Street business Area Overlay' in the MDRZ policy and rule package will no longer be needed as this area will not form part of the MDRZ. I have shown these references as being deleted in **Appendix 3**, so the Panel has a consolidated set of provisions reflecting Council recommendations.

7.3 Rule package controlling internal boundary interface

93. Whilst generally in agreement with the submitter regarding the proposed MDRZ rule package, I am concerned whether the proposed rule package will deliver acceptable amenity outcomes along the internal boundary interface with neighbouring properties. The next section of evidence focuses on this area of disagreement and sets out recommended amendments to ensure a good quality urban outcome is able to be delivered.

7.4 Context and transition

94. In terms of urban form, Waikato District comprises of a series of relatively modestly scaled townships that have their origins either as rural service centres supporting the farming hinterland and/or supporting industry focussed on mining/ electricity generation or the processing of rural produce such as freezing works and dairy factories. The residential parts of these townships are uniformly suburban in density and scale, with the common housing typology being single storey, detached dwellings set within spacious gardens. Both Franklin and Waikato sections of the Operative Plan do not contain MDRZ as a widespread zone option, although some discrete areas of medium density have been enabled through plan changes such as the Residential 2 Zone in Franklin. with this lack of regulatory opportunity, combined with the modest scale of townships, resulting in a notable absence of smaller units, townhouses, and low-rise apartments.
95. Resolving this absence of choice in housing typology is one of the benefits identified in my earlier Thematic Report of introducing a MDRZ. It does however mean that unlike intensification around the commercial centres in large cities, there is limited existing precedent for such typologies in Waikato's townships. As such, a shift to MDRZ typologies will result in

²⁷ As set out in Section 6 of the urban design evidence of Mr Cameron Wallace, 17th February 2021.

significant contrast in built scale and design relative to the current housing stock in existing neighbourhoods where MDRZ is now proposed. This contrast is likely to remain for a considerable length of time as sites are incrementally redeveloped over several decades.

96. Clearly the introduction of a MDRZ will result in a shift in typologies and an increase in built mass. The NPS-UD likewise anticipates that an increase in density will result in a change in amenity²⁸. Whilst a different level of amenity is therefore inherent in a change in zoning, the resultant built environment still needs to deliver acceptable outcomes for both existing residents in adjacent low density dwellings, and also for the occupants of what will become over time a higher density neighbourhood.
97. As an aside, in my experience changes in zoning that enable increased built mass can often result in push-back from the community when developments start to be built. This adverse community reaction can place considerable pressure on elected members to initiate a plan change to 'wind-back' the zoning. In order to deliver the benefits anticipated by a higher density zone, it is important that the contrast in built form and the changes in amenity levels are not so severe as to generate significant adverse community reactions.

7.5 Amenity and boundary interface outcomes sought

98. Before considering the built form rules in detail, it is helpful to set out the outcomes sought for the MDRZ in terms of amenity and boundary interface. In summary, the policy package seeks the following:
- a. A level of amenity commensurate with a medium density environment (Objective 4.2A.6);
 - b. Manages daylight access (Policy 4.2A.7(a)(i));
 - c. Achieves a reasonable standard of privacy (Policy 4.2A.7(a)(i));
 - d. Manages visual dominance effects on adjoining sites (Policy 4.2A.7(a)(ii));
 - e. Requires sufficient side yard setbacks to provide for privacy, sunlight and daylight, and useable and accessible outdoor living space (Policy 4.2A.8(b)(ii, iii, iv));
 - f. Recognises that the planned urban built form may result in changes to the amenity values and characteristics of the urban character over time (Policy 4.2A.9).
99. The amenity outcomes are therefore inherently contextual in nature. Change is anticipated, and the new levels of amenity will be different to that delivered in a low-density suburban environment. That said, in order for the policy outcomes sought for the MDRZ to be delivered, we need to be confident that the proposed rule package will be effective in managing and providing for a reasonable level of privacy, sunlight, outdoor living space, and building mass that is not overly dominant when viewed from adjoining sites.

7.6 Key density and mass controls

100. The proposed rule framework works as a package to both control the overall building mass across the site, and to manage effects experienced along the interface with neighbours. Because the rules work as a package, care needs to be taken that changing one element of the package does not unduly frustrate the overall zone outcomes or create a tension with the other rules. For example, the recession plane controls should reasonably enable the height limit to be achieved on typical sites, and it is helpful if the road boundary setback dimension aligns with the outdoor living court dimension to readily enable the space between the dwelling and road to achieve both purposes.

²⁸ NPS-UD, Policy 6(b)

101. As a generalisation, overall built mass across various types of residential zone is primarily controlled through subdivision rules on minimum site size per unit, and controls on building site coverage and height. The proposed MDRZ sets the following limits:
- a. No limit on minimum site size per unit;
 - b. 45% building coverage and 70% impervious;
 - c. 11m height limit.
102. These rules in combination enable considerable flexibility in how developments are arranged and the number of units that can be established. This is a positive attribute of the rules and readily differentiates MDRZ packages from low density residential zones which invariably control the number of units through requiring a minimum site area per unit.
103. The built mass controls proposed by Kainga Ora are reasonably common across MDRZ in my experience. Whilst 45% site coverage sounds modest, in reality it enables development which can visually appear to be quite dense. Such density is however appropriate in a MDRZ context. An 11m height limit provides for three stories (approximately 3m per floor with an additional 2m for a shallow pitched roof). I am comfortable that these key building mass/ density controls are appropriate for a MDRZ.
104. I note that Ms Buckingham's s42a report²⁹ for Raglan includes a recommendation that if the MDRZ sought by Kainga Ora for this township is accepted, then the height limit for Raglan should be limited to 7.5m to reflect this township's special character. Her recommendation of a lower height limit is to better give effect to the Special Character Area outcomes sought for Raglan through the Hearing 16 process which gave rise to recommended Objective 4.8.1.1 and associated policies to protect Raglan's special character. I defer to Ms Buckingham's specific assessment on this matter as it applies to Raglan. I have included a 'Raglan-specific' height limit in the recommended MDRZ provisions set out in **Appendix 3**, should the Panel be minded to adopt Ms Buckingham's recommendations.
105. In summary, I am comfortable that the overall building mass envelope provided by rules controlling dwelling density, site coverage, and height, is appropriate for a MDRZ.

7.7 Key internal boundary amenity controls

106. Internal boundary amenity matters relating to sunlight, privacy, and visual dominance are conversely controlled by the following rules:
- a. Daylight admission/ recession planes. Proposed to be measured as a 45° angle into the site starting at a point 3m above existing ground level along internal boundaries;
 - b. Internal boundary setback for buildings of 1m;
107. In my experience it is common for MDRZ rule packages to also include minimum boundary setbacks for balconies and habitable room windows located at first floor level and above to better provide for privacy and visual dominance. In this regard it is noted that the proposed rule package has a strong degree of overlap with the Mixed Housing Urban Zone provisions in the Auckland Unitary Plan ('AUP'). The AUP provisions also include controls on landscaping³⁰, outlook from habitable room windows³¹, daylight access into internal living

²⁹ Ms Buckingham s42a report on Raglan, Section 6.

³⁰ Rule H5.6.9 impervious maximum of 60% of site rather than 70% as proposed by Kainga Ora; Rule H5.6.11 requires a minimum of 35% of the site be landscaped and at least 50% of the front yard.

³¹ Rule H5.6.12 requires a 6m setback between principle living room windows and internal boundaries and a 3m setback for bedroom windows.

areas³², and the location of outdoor living space areas³³. These additional controls have not been carried through to the package proposed by Kainga Ora i.e. the proposed rule package adopts the enabling building mass provisions of the AUP, whilst omitting a number of the provisions aimed at appropriately managing the effects of this mass.

108. The rules relating to the provision of outdoor living courts, whilst at first glance have a focus on the amenity of the future occupants of the new units, in practice are also a strong driver of site layout design decisions and the proximity of buildings to internal boundaries. Requirements that developments have a certain percentage of ground floor building as habitable space (rather than just being used as garaging) likewise drive design outcomes and the practical distance by which dwellings are set back from internal boundaries, which in turn have implications of internal boundary amenity.
109. It is this latter package of rules that drive both typology and layout that I focus on below.

7.8 Adequacy of qualitative assessment to secure policy outcomes

110. Built form rules are only one part of the rule package (albeit a significant one). As noted above, the proposed rule package also includes a requirement through Rule 16A.3.1 for a qualitative urban design assessment for developments providing four or more units. The matters of discretion put forward by Kainga Ora include consideration of the following matters:
- (i) *Intensity of the development;*
 - (ii) *Design, scale and layout of buildings in relation to the planned urban character of the zone;*
 - (iii) *The relationship of the development with adjoining streets or public open spaces;*
 - (iv) *Privacy and overlooking within the development and on adjoining sites, including the orientation of habitable rooms and outdoor living spaces;*
 - (v) *Provision of infrastructure to individual units; and*
 - (vi) *Where on-site car parking is provided, the design and location of car parking (including garaging) as viewed from streets or public open spaces.*
111. On its face, the proposed rule provides a ‘backstop’ tool for ensuring acceptable design outcomes are achieved for privacy, visual dominance, and overall mass and layout of the site. Because of this backstop, the testing of the proposed rule package undertaken by Mr Wallace for Kainga Ora only examines the outcomes possible under a permitted scenario i.e. three or less units. In my view this has resulted in the testing being done on what is very much the more benign end of the potential scale of development possible through the proposed rule package. I understand³⁴ that the significantly greater mass and density enabled through the built form rules was not tested by Mr Wallace on the basis that if the design of four or more units results in any unanticipated or undesirable outcomes, then the qualitative urban design rule will enable such issues to be readily resolved (or alternatively the consent declined).
112. Whilst the approach adopted by Kainga Ora is superficially attractive as an effective backstop, in practice it is my experience that such a backstop can be challenging to action in the event that significant revision of the site design is required to achieve acceptable outcomes. This is especially the case where the built mass is fully compliant with the rules controlling bulk and location.

³² Rule H5.6.13 contains a relatively complex formula for ensuring minimum access to daylight between principal living room and bedroom windows and adjoining buildings.

³³ Rule H5.6.14(3) which controls the location of outdoor living spaces on the south side of buildings.

³⁴ Appendix 2 ‘Assumptions’, evidence of Mr Cameron Wallace

113. It is not unreasonable for applicants to expect the rule package to be both able to be readily understood and to provide certainty regarding development outcomes and the amount of building anticipated as being acceptable in any given zone. Specific rules address specific matters, for example the daylight admission rule sets an envelope within which building is acceptable in terms of what is a reasonable amount of shading. Where this rule is breached, the matters of discretion specific to this rule enable consideration of shading and visual dominance. For applications where the design complies with the daylight admission rule, yet qualitative urban design direction is received from Council to set the building further back because of privacy and daylight concerns, the applicant will understandably make the point that the District Plan provisions anticipate shading and overlooking up to the permitted limit as being an acceptable outcome in the MDRZ.
114. In my experience, qualitative urban design rules are useful tools in balancing what can be at times competing design outcomes and can assist in moderating or refining applications. Whilst theoretically capable of providing the regulatory 'teeth' necessary to decline an application, in practice this is asking a lot of council planners and decision makers. This is especially the case where the reasons for seeking to decline the application are because of design outcomes that are wholly compliant with the built form rules.
115. In my view the built form rules need to work as a package to generally deliver acceptable outcomes without having to rely on a backstop urban design rule to moderate the adverse effects facilitated by an otherwise unduly liberal rule package. The role of the urban design rule should instead be assisting to refine the design outcomes of developments whose overall massing is generally within acceptable bounds.
116. My other key concern with over-reliance on the urban design rule to deliver acceptable outcomes is that the rule only applies to developments of four or more units. For three unit developments, the built form rules are the only control on outcomes and therefore a high degree of confidence needs to be had in their effectiveness on their own to deliver the policy outcomes sought.
117. I note that the proposed subdivision rules enable the typical 828m² site used as the basis for Kainga Ora's testing to be subdivided into two lots of some 380m² each plus driveway. This subdivision could be undertaken as the first stage of site redevelopment. The two lots could then be on-sold and each developed as separate three unit developments. This would enable an outcome of a six unit development on the hypothetical development site, without recourse to the need for a qualitative urban design assessment. Even where such subdivision is not undertaken, applicants can readily point to such a 'work around' process to demonstrate a permitted baseline in response to any Council urban design requests seeking significant design changes.
118. In short, whilst the urban design rule is a useful tool that can assist in refining design outcomes, it should not be relied upon to drive significant site layout changes, especially where such layouts are otherwise permitted by the built form rules. Conversely, the built form rules need to work effectively as a package to deliver generally acceptable outcomes.

7.9 Content of Urban Design Matters of Discretion

119. I agree with the matters of discretion for the urban design Rule 16A.3.1 put forward by the submitter. I consider there is merit in adding three further matters of discretion. The first is in regard to the placement of outdoor living courts and balconies to enable explicit consideration as to whether they will receive a reasonable degree of sunlight i.e. are not located on the south side of a two storey unit, and are located directly adjacent to an internal living area i.e. off the main lounge room. This ensures these spaces are functional and located so as to provide adequate levels of amenity for future occupants. I consider a matter of discretion is as effective as an additional built form rule, and for developments of three or

fewer units (where the urban design rule will not apply) there is generally sufficient space around the dwellings that daylight can be readily achieved.

120. The second additional matter of discretion is the provision of landscaping and tree planting across the site to ensure a balance is achieved between building mass and landscaping commensurate with a medium density environment. Again this is considered to be more effective as a matter of discretion than a rule, with less dense developments more readily capable of providing space for landscaping, in combination with the rule limiting impervious surfacing to no more than 70%, thereby ensuring at least 30% of the site is available for green landscaping and lawn.
121. The third additional matter of discretion is in regard to the location and size of service spaces for recycling bins and washing lines. Whilst perhaps a matter of detail, in my experience multi unit complexes can be developed to considerable density and the placement of service areas is important in both providing functional spaces for occupants i.e. again not locating washing lines on the south side of units, and in the overall visual appeal of the development from the street i.e. not locating bin store areas between the units and the road boundary. For larger multi-unit complexes waste and recycling areas can be more appropriately designed as larger communal mini-skip areas with the body corporate managing a private contractor for waste removal. The location of these larger skip-based communal areas is important to resolve to ensure that small truck access and manoeuvring is possible and that they do not create an odour or amenity issue for near neighbours.

7.10 Testing of proposed rule package

122. Kainga Ora's evidence included urban design evidence and an associated graphics package that presented a series of hypothetical outcomes to illustrate the scale and nature of development that could occur under the proposed rule package³⁵. In order to better understand the possible design outcomes enabled through the rule package sought by Kainga Ora, I have undertaken further testing of the rule package. Assistance was sought from David Compton-Moen of DCM Urban with both the preparation of graphics attached as **Appendix 2**. The graphic attachment includes a statement of Mr Compton-Moen's qualifications and experience.
123. In undertaking the testing, a hypothetical site was used of the same size and dimensions as that used by Mr Wallace, namely a flat 828m² rectangular site with a street frontage of 18m and a depth of 46m. Similar floor-to-ceiling heights and parking space dimensions have likewise been used, as these appear reasonable assumptions³⁶.
124. As noted above, Kainga Ora's testing also included some significant exclusions. These include not testing the design outcomes of a three storey, stand alone typology as such outcomes were considered economically unfeasible. I agree that stand-alone three story dwellings are uncommon, however three storey terraces are a relatively common feature of medium density environments. The other key assumption was that any development with more than three units would be subject to a qualitative urban design assessment (such as longer three storey terraces) and therefore the built outcomes were not considered further. These are significant assumptions. All three scenarios modelled for a hypothetical 828m² site show only three units on the site. Two of the scenarios are single storey, and a third scenario is two stories in height. These assumptions combine to result in modelling based on benign outcomes. They also significantly under-represent the extent of built form and density possible through the proposed built form rule package.

³⁵ Urban Design evidence of Mr Cameron Wallace, with assessment of rule package effectiveness in Section 5 and a graphic package attached as Appendix 2.

³⁶ Whilst Mr Wallace also tested a 660m² lot, in general the smaller the site the more benign the outcome as layout options and yield reduce commensurate with site size.

125. The first scenario examined further was Scenario I as presented by Mr Wallace. The outcome was presented graphically by Mr Wallace as an oblique aerial view of the massing. This perspective is helpful for understanding the overall building envelope, however it does not represent how the development will be experienced by neighbours or occupants 'on the ground'. Mr Wallace's modelling likewise focussed on just the application site and therefore does not test the outcomes resulting from a plausible real-world interface between the hypothetical development and established residential neighbours, be they an existing single storey detached dwelling, or a similar three unit townhouse development.
126. The proposed rule package and associated modelled outcome enables first floor balconies set just over 1m from the internal boundary. This is the unit's primary outdoor living space and as such can be expected to be intensively used. A balcony set 1m off the boundary, 3.5m above ground level, provides direct and unobscured overlooking into the neighbouring property. Under an 'in-fill' scenario such overlooking is likely to be directly into the rear garden and principle outdoor living space of the neighbouring property. Under a scenario where the neighbouring property has already been redeveloped for townhouses, it enables facing balconies looking directly at one another or directly into bedroom windows, with a separation of only 2-3m. Such separation again provides negligible privacy. The minimal internal boundary setbacks are not considered to be effective in achieving the policy outcomes sought for the MDRZ regarding the management of reasonable levels of privacy and the lack of overlooking.
127. The lack of adequate protection of privacy outcomes is principally caused by the lack of control on balcony location. First floor windows can likewise give rise to overlooking, and loss of privacy, however the daylight admission control means that first floor windows (and more importantly the walls that they are set within) have to be set back approximately 3.5m from internal boundaries. Whilst some overlooking will still occur, a minimum of a 3.5m setback is considered appropriate in a medium density context. The rectangular shape of typical lots likewise means that requiring significantly further setbacks at first floor level has significant implications on the massing and therefore unit yield that is able to be achieved, especially on a site-by-site infill redevelopment environment. Where windows potentially give rise to overlooking occupants are able to manage privacy through various window treatments such as frosted glass in bathrooms and the use of blinds and curtain for bedrooms and living areas.
128. The proximity of first floor balconies is exacerbated by the ability for townhouses to provide for their outdoor living needs solely through just a first floor balcony. Where ground floor courtyards are required by District Plans, invariably the driveway is located on the southern or eastern side of the townhouses (depending on whether the site is located on a road with general north-south or east-west alignment), and the courtyards on the northern or western sides of the units. This means that the buildings themselves are in practice typically set 4m back from the internal boundaries on both sides in order to provide sufficient width for driveways and useable courtyards.
129. The modelled scenario by Mr Wallace shows the three units having their principal outdoor living space provided by an 8m² balcony. For units with gross floor areas of some 200m², these would typically be four-bedroom family homes (or potentially homes with multiple occupants in a flatting arrangement). I do not consider that for a household of this size a single 8m² balcony is adequate to effectively deliver the policy outcomes sought for the MDRZ in terms of occupant amenity. The modelled layout does include some additional greenspaces between the three units (rather than between the units and internal boundaries), however side-on courtyards become less of an option where the number of units is increased – for example a 828m² MDRZ site would in my experience typically be expected to yield five to six units in a terraced arrangement.
130. As noted above, whilst the provision of ground level courtyards is at first glance an outcome associated with the on-site amenity of future occupants, the provision (or requirement) that

such courtyards be provided is in practice a strong driver of appropriate overall massing and layout outcomes through forcing building mass away from internal boundaries. Where the principle outdoor living court is provided at ground level it also reduces the need to provide balconies at first floor level, thereby further reducing the potential for overlooking.

131. In essence I have four overlapping concerns. These concerns apply regardless of the efficacy of the qualitative urban design assessment as the modelled scenarios are for three unit developments with the built form rules providing the only tool to achieve the outcomes sought in the policies.
- a. The first concern is that the ability to provide balconies set back a little over 1m from an internal boundary can in no way deliver acceptable privacy and overlooking outcomes for either neighbours or future occupants.
 - b. The second concern is that whilst balconies can be an appropriate outdoor living solution for upper-level apartment typologies, a single 8m² balcony as the only or primary outdoor living option for townhouses in a Waikato township context (as opposed to a city centre environment) is not considered to be adequate in achieving policy outcomes regarding occupant amenity.
 - c. A third concern is that the lack of any requirement to provide ground level courtyards has a direct effect in enabling significant and continuous building mass close to internal boundaries, particularly when sites are developed for a higher unit yield. Where ground level courtyards are provided it reduces the demand for upper level balconies, and where such balconies are provided their use is less as they are a secondary space off a bedroom rather than the primary outdoor living space. Overlooking is therefore further reduced.
 - d. The fourth concern is that by enabling outdoor living to be delivered solely through an upper level balcony, it incentivises a typology of garaging only at ground floor level with two stories above and minimal ground level landscaping beyond a narrow strip around the site perimeter.

7.11 Proposed Solutions

132. The above concerns can be readily resolved without significant reworking of the rule package. In my view the key changes required are:
- a. Require balconies located at first floor level and above to be set back a minimum of 4m from internal boundaries. This enables a minimum of 8m to be achieved between balconies facing each other on neighbouring sites, and 7m or so between balconies and first floor bedroom or living room windows on adjoining sites. It also generally aligns with the internal boundary setback achieved for first floor windows and walls (through the application of the daylight admission angles). A 4m setback will still result in some overlooking, however the angle becomes more oblique the further back the balcony is set;
 - b. Require all units to be provided with a ground floor outdoor courtyard, unless the internal habitable space (living areas and bedrooms) of the unit is wholly contained at first floor level or above i.e. a low-rise apartment. The 4m minimum dimension required for such courtyards likewise aligns with the daylight angles and balcony setback proposed above i.e. the main side wall of the unit is set 4m in from the boundary;
 - c. Require at least 50% of the ground floor building area to be habitable space. Obviously for single or two storey scenarios (such as those modelled by Mr Wallace), this imposes no additional obligation as such townhouses invariably include habitable space at ground level. It likewise does not particularly affect apartment typologies where

some units are located at ground level. What it does do is avoid typologies of a long row of garages only at ground floor, with the site dominated by asphalt, manoeuvring space, and narrow open space strips around the building perimeter. Such a typology is a means of maximising yield in a zone that permits three storey buildings whereby the ground floor is laid out as a row of double garages, with first floor living and second floor bedrooms above. In my experience in Christchurch, such typologies were enabled for a decade or so in the late-90s and resulted in extremely poor built environment outcomes. A rule change introduced in 2007³⁷ and carried forward in the new post-quake recovery plan has proven effective in ensuring that MDRZ outcomes are not dominated by garaging and vehicle manoeuvring at ground level.

7.12 Recommended amendments

133. The following text changes to the MDRZ rule package are recommended:

16A.3.1 Dwellings

PI	Up to three residential dwellings per site.
RDI	<ul style="list-style-type: none"> (a) Four or more residential dwellings per site. (b) Council's discretion shall be restricted to any of the following matters: <ul style="list-style-type: none"> (i) Intensity of the development; (ii) Design, scale and layout of buildings in relation to the planned urban character of the zone; (iii) The relationship of the development with adjoining streets or public open spaces; (iv) Privacy and overlooking within the development and on adjoining sites, including the orientation of habitable rooms and outdoor living spaces; (v) Provision of infrastructure to individual units; and (vi) <u>Location of outdoor living spaces regarding access to sunlight;</u> (vii) <u>The provision of landscaping and tree planting across the site;</u> (viii) <u>Location and size of service spaces for clothes drying and waste and recycling bin storage;</u> (ix) Where on-site car parking is provided, the design and location of car parking (including garaging) as viewed from streets or public open spaces; and (x) <u>Where located in Raglan, the degree to which the development achieves the special character values set out in the Raglan policies in Chapter 4³⁸.</u>

16A.3.3 Height

Rule 16A.3.2.1 Height – Building general provides permitted height limits across the entire Medium Density Residential Zone.

16A.3.3.1 Height - Building General

PI	<ul style="list-style-type: none"> (a) The permitted height of any building is 11m above ground level; (b) <u>In Raglan, the permitted height of any building is 7.5m above ground level³⁹.</u>
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³⁷ Plan Change 53 to the Christchurch City Plan, of which I was the primary author of the report assessing rule package effectiveness

³⁸ As recommended in the s42a report on Raglan by Ms Buckingham

³⁹ As recommended in the s42a report on Raglan by Ms Buckingham

RDI	<p>(a) Any building that does not comply with Rule 16A.3.2.1 PI.</p> <p>(b) Council's discretion shall be restricted to any of the following matters:</p> <ul style="list-style-type: none"> (i) Height of the building; (ii) Design, scale and location of the building; (iii) Extent of shading on adjacent sites; (iv) Privacy and overlooking on adjoining sites.
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16A.3.8 Outdoor Living Court

PI	<p>(a) An outdoor living court must be provided for each dwelling that meets all of the following conditions:</p> <ul style="list-style-type: none"> (i) It is for the exclusive use of the occupants of the dwelling; (ii) It is readily accessible from a living area of the dwelling; (iii) <u>Where the residential unit contains an internal habitable space (excluding garages, bathrooms, laundries, and hall or stairways) on the ground floor, an outdoor living court shall be provided and shall have</u> When located on the ground floor, it has a minimum area of 20m² and a minimum dimension of 4m in any direction; and or (iv) <u>Where the residential unit has its internal habitable space (excluding garages, bathrooms, laundries, and hall or stairways) wholly at first floor level or above, a balcony shall be provided and shall have</u> When located on a balcony of an above-ground apartment or terraced house, it must have a minimum area of 5m² for studio and one-bedroom dwellings, or 8m² for two or more bedroom dwellings and a minimum dimension of 1.5m. (v)
RDI	<p>(a) An outdoor living court that does not comply with Rule 16A.3.7 PI</p> <p>(b) Council's discretion shall be restricted to any of the following matters:</p> <ul style="list-style-type: none"> (i) Design and location of the building; (ii) Provision for outdoor living space including access to sunlight and open space and the usability and accessibility of the outdoor living space proposed; (iii) Privacy and overlooking on adjoining sites; and (iv) The proximity of the site to communal or public open space that has the potential to mitigate any lack of private outdoor living space.

16A.3.9 Ground floor Internal Habitable Space

<u>PI</u>	<u>Garages shall occupy less than 50% of the ground floor space internal to buildings on the site.</u>
<u>RDI</u>	<p>(a) <u>A building that does not comply with Rule 16A.3.8.1 PI.</u></p> <p>(b) <u>Council's discretion shall be restricted to any of the following matters:</u></p> <ul style="list-style-type: none"> (i) <u>The visual dominance of garaging at ground floor level and the balance across the site of internal habitable space, outdoor living courts, and landscaping;</u> (ii) <u>The design and location of garaging as viewed from streets or public open spaces. Potential to mitigate adverse effects on the streetscape through use of other design features.</u>

16A.3.9 Building Setbacks

Rules 16A.3.8.1 to 16A.3.8.2 provide the permitted building setback distances for buildings from site boundaries, specific land use activities and environmental features.

Rule 16A.3.8.1 'Building setbacks – All boundaries' provides permitted building setback distances from all boundaries on any site within the Medium Density Residential Zone. ~~Different setback distances are applied based on the type of building.~~

Rule 16A.3.8.2 'Building setback – water bodies including lake, wetland, river and coast.

16A.3.9.1 Building Setbacks – All Boundaries

PI	<p>(a) The finished external walls (excluding eaves) of a building must be set back a minimum of:</p> <ul style="list-style-type: none"> (i) 3m from the road boundary (excluding state highways – refer to rule 16.3.9.2); (ii) 3m from the edge of an indicative road (as demonstrated on a structure plan or planning maps); (ii) 1m from every boundary other than a road boundary; (iv) Balconies shall be set back a minimum of 4m from internal boundaries.
RD1	<p>(a) A building that does not comply with Rule 16A.3.8.1 PI.</p> <p>(b) Council's discretion shall be restricted to any of the following matters:</p> <ul style="list-style-type: none"> (i) Road network safety and efficiency; (ii) Potential to mitigate adverse effects on the streetscape through use of other design features (iii) Daylight admission to adjoining properties; an (iv) Privacy overlooking on adjoining sites.

7.13 Section 32AA evaluation

134. As set out above, there is a high degree of agreement between myself and the evidence provided by Kainga Ora regarding the role and appropriateness of introducing a MDRZ to the Proposed Plan. As such I generally adopt the evidence of Kainga Ora and the associated comprehensive s32AA assessment provided by the submitter. The only points of difference are in regards to the efficacy of the proposed built form rule package to deliver the policy outcomes sought of the MDRZ. As such I have focussed the below s32AA on these points of difference and the amendments recommended above.

135. It is noted that the above assessment provides overall direction regarding matters such as effectiveness and the risk of acting or not acting. As such the below assessment relies on rather than repeats the above discussion.

7.14 Effectiveness and efficiency

136. The policies and rules need to be effective at achieving the objectives sought for the zone. The built form rule package put forward by Kainga Ora is considered to be ineffective in delivering the objective and policy outcomes sought for the MDRZ in terms of internal boundary interface outcomes and reasonable expectations of amenity commensurate with a medium density environment. It is noted that the need to balance such outcomes is an integral component of the equivalent MDRZ rule frameworks expressed in the City Plans for other

larger metropolitan centres such as Auckland and Christchurch where the enablement of increased massing is managed through effects-based rules.

137. The qualitative urban design assessment is important for helping to refine proposals, however it is unrealistic to expect it to be effective in driving significant revision of site layout and unit yield, especially where the proposal complies with the built form standard controlling matters such as boundary setbacks, shading and overlooking. A setback of little more than 1m for balconies from internal boundaries cannot be an effective method for delivering privacy and overlooking outcomes.
138. The proposed requirement that upper-level balconies be set back a minimum of 4m from internal boundaries is considered to be more effective in delivering privacy and overlooking outcomes commensurate with a MDRZ environment. Overlooking will still occur, and there will remain a significant contrast with the level of overlooking reasonably anticipated under the current Operative Plan suburban residential environment i.e. neighbours will experience a noticeable reduction in privacy, even with a 4m setback. Some reduction in amenity is anticipated in the NPS-UD as a consequence of increasing density. Such a reduction should not however be to the extent that it results in the complete absence of any privacy whatsoever. A 4m setback is more effective than a 1m setback in delivering acceptable interface outcomes.
139. A simple 4m setback requirement is considered to be easier to administer and therefore more efficient than replicating the equivalent setback rule in the AUP which contains a reasonably high level of complexity.
140. In enabling the positive outcomes sought through a MDRZ including greater housing choice, access to town centre services, facilities, and in time rapid public transport, and a reduction in urban sprawl, some decline in existing levels of amenity are expected. The proposed 4m setback still enables townhouse typologies to be readily delivered, and as such does not significantly reduce yield. It will reduce some design and layout options, however this trade-off is considered to be acceptable, noting that if particularly creative designs can be proposed that result in acceptable outcomes on a site-specific basis then a restricted discretionary resource consent pathway is available.
141. A single 8m² balcony for units up to some 200m² in size is not considered to be an effective tool for delivering the amenity outcomes sought by the policies. The requirement for townhouses with internal habitable space on the ground floor to also be provided with an outdoor living court is conversely effective in ensuring that both an adequate level of amenity is provided for future occupants, and that a reasonable level of open space and built setbacks are delivered. Experience has shown that under a site-by-site redevelopment context (such as will be the case in the Waikato where the MDRZ is not being applied to large greenfield or comprehensive redevelopment such as that occurring in places such as Hobsonville or Tamaki in Auckland), a row of townhouses is the most likely site layout option, with a driveway down one side and outdoor living courts along the other.
142. Experience in Christchurch has shown that typologies with solely garaging at ground level produce particularly poor design outcomes. The proposed requirement that at least 50% of the ground floor of buildings is used for habitable space, with a concurrent requirement that outdoor living courts be provided, is effective in ensuring that developments are not overly dominated by garaging and manoeuvring areas at ground level and that conversely a mix of garaging, living areas, and courtyard gardens are delivered.

7.15 Costs and benefits

143. The proposed amendments readily enable the lower density three unit scenarios modelled by Mr Wallace and found to be acceptable by Mr Stickney to occur (subject to modest changes in dwelling layout), whilst mitigating privacy and visual dominance effects. There is therefore

little cost in terms of either unit yield or reduction in site layout options at the lower end of the redevelopment spectrum.

144. The proposed amendments help to avoid the costs associated with poorly designed developments and associated low levels of amenity from occurring. They bring benefits for both future occupants and neighbours through delivering greater levels of privacy, reduction in overlooking and visual dominance, and greater provision of appropriately sized outdoor living courts commensurate with a medium density residential environment.
145. Costs are limited to a small reduction in development layout options, however as noted above the typical typologies of townhouse or smaller single storey units modelled by Mr Wallace will still be enabled. As the yield and density of development increases, the requirement for habitable space on the ground floor and associated provision of courtyards will limit very dense developments, however whilst this is a 'cost' from a development perspective, it is a 'benefit' in terms of the overall outcomes the MDRZ policies are seeking to achieve.

7.16 Risk of acting or not acting

146. The risk of acting i.e. approving the recommended amendments, is that there may be a small reduction in development potential relative to that sought by the submitter (but still a significant increase relative the current Operative Plan zone framework). Conversely it is considered that there is a significant risk in not acting i.e. confirming the rule package as proposed by the submitter, in that there is significant potential for poor design, amenity, and privacy outcomes to be delivered, which in turn can rapidly lead to community opposition to further intensification initiatives and pressure on elected members to revisit the MDRZ through a further plan change.

7.17 Decision about most appropriate option

147. For the reasons set out above, the proposed amendments are considered to be the more appropriate option relative to the rule package as proposed by the submitter.

8 Conclusion

148. Submissions on the thematic topic traverse a wide range of matters. Overall the extent of land zoned for business and residential activities (as recommended across the suite of s42a reports on rezoning) is considered to be sufficient to meet the short to medium term needs of the District and this will be confirmed by the subsequent s42A report which collates all the recommendations of the s42A reports on zoning. For some townships the extent of zoned land will also be sufficient to meet long-term needs. The recommendations therefore enable the District Plan to fulfil its obligations under the NPS-UD, noting that any shortfall in long-term needs identified through a HBA can be addressed through subsequent plan changes over the coming decade. NPS-UD Policy 8 likewise provides an alternative mechanism for considering 'out of sequence' proposals looking to bring forward significant capacity in locations that will result in a well-functioning urban environment.
149. My earlier s42a Thematic Report assessed the merit and role of a Future Urban Zone. The use of such a zone is provided for in the National Planning Standards. A FUZ provides a mechanism for clearly signalling the long-term use of a given block of land, preserving the development potential of the block in the interim, whilst enabling any outstanding issues such as the provision of reticulated infrastructure, design of a structure plan, and/or further investigation of site-specific matters to be resolved prior to the block being live-zoned.
150. Submitter evidence was received in support of the concept as being a useful additional the suite of zoning options available. Limited evidence was received seeking amendments to the

policy and rule framework put forward in my earlier Thematic Report. As such the zone package recommended in my earlier Thematic Report remains unchanged.

151. The application of the FUZ to specific blocks of land is a matter that has been considered by various individual s42a report writers. A number of reports have included recommendations that a FUZ be applied to various blocks of land. Ultimately the Panel will need to determine the appropriate zoning for these blocks, having had the benefit of considering presentations by submitters at the upcoming hearing.
152. My earlier Thematic Report likewise considered the merit and role of a Medium Density Residential Zone, as sought by submitters. Kainga Ora has provided a comprehensive body of evidence on this zone, including a proposed set of policies and rules, and a detailed assessment of where the MDRZ boundaries are appropriately located. No submitter evidence was received seeking amendments to the policy and rule framework presented by Kainga Ora, although consequential amendments to the zone statement and policy framework are considered to be necessary to reflect the evidence of Pokeno West Ltd [97] regarding the inclusion of MDRZ areas within comprehensively planned greenfield growth areas.
153. There is a high level of agreement between myself and Kainga Ora's planning and urban design experts regarding the role of the zone, the policy framework, the rule package, and the criteria for determining zone boundaries.
154. Differences in opinion are limited to the efficacy of the rule package in delivering acceptable design outcomes along the internal interface between sites, and consequently appropriate levels of amenity for both future occupants and existing neighbours.
155. The proposed rule package is based on the AUP Mixed Housing Urban Zone, especially in terms of the enablement of building mass. The proposed rule package has however omitted a number of the AUP rules aimed at managing the effects of this massing. The proposed rule package has been tested, and several inter-related issues identified regarding the setback of buildings and balconies from internal boundaries, the adequate provision of outdoor living courts, and resultant building typologies.
156. I have recommended a discrete package of amendments to resolve these issues, whilst still enabling the medium density built outcomes (and benefits) sought by the MDRZ to be delivered. The recommended rule package is considered to be a more effective and efficient tool for achieving the proposed policies for the zone, will not unduly affect unit yield or capacity outcomes, and will result in improved design and amenity outcomes for both occupants and neighbours.

Appendix I: Table of submission points

Submission number	Submitter	Support / oppose	Summary of submission	Recommendation	Section of this report where the submission point is addressed
81.15	Waikato Regional Council		Amend Policy 4.6.3 Maintain a sufficient supply of industrial land by specifically referencing the National Policy Statement-Urban Development Capacity.	Accept in part	3
<i>FS1168.2</i>	<i>Horticulture New Zealand</i>	<i>Support submission 81.15</i>		Accept in part	3
<i>FS1313.3</i>	<i>Perry Group Ltd</i>	<i>Support submission 81.15</i>		Accept in part	3
198.12	Property Council New Zealand		Amend the Proposed District Plan to align the supply of industrial land with the Auckland Unitary Plan.	Accept in part	3
302.32	EnviroWaste NZ Ltd		Retain the identification of new and expanded areas of Industrial Zones on the Planning Maps.	Accept in part	3
<i>FS1386.348</i>	<i>Mercury NZ Ltd for Mercury E</i>	<i>Oppose submission 302.32</i>		<i>Accept in part</i>	3
302.34	EnviroWaste NZ Ltd		Retain Rule 4.6.3 Maintain a sufficient supply of industrial land insofar as it gives effect to the relief sought.	Accept in part	3
<i>FS1353.5</i>	<i>Tuakau Proteins Ltd</i>	<i>Support submission 302.34</i>		<i>Accept in part</i>	3

Submission number	Submitter	Support / oppose	Summary of submission	Recommendation	Section of this report where the submission point is addressed
<i>FS1386.350</i>	<i>Mercury NZ Ltd for Mercury C</i>	<i>Oppose submission 302.34</i>		<i>Accept in part</i>	3
535.33	Hamilton City Council		Amend the Proposed District Plan to reflect and relate to sub-regional growth data including the National Policy Statement on Urban Development Capacity. AND Any consequential amendments and/or additional relief required to address the matters raised in the submission.	<i>Accept in part</i>	3
<i>FS1269.145</i>	<i>Housing New Zealand Corporation</i>	<i>Support in part submission 535.33</i>		<i>Accept in part</i>	3
<i>FS1377.130</i>	<i>Havelock Village Ltd</i>	<i>Support in part submission 535.33</i>		<i>Accept in part</i>	3
<i>FS1388.704</i>	<i>Mercury NZ Ltd for Mercury E</i>	<i>Oppose submission 535.33</i>		<i>Accept in part</i>	3
606.17	Future Proof Implementation Committee		Amend Chapters 4, 5, 14, 16 - 24 and Planning Maps following a review of provisions relating to cross boundary integration to ensure that pressures from Auckland and Hamilton are managed. AND Any consequential amendments to any other provisions.	<i>Accept in part</i>	3

Submission number	Submitter	Support / oppose	Summary of submission	Recommendation	Section of this report where the submission point is addressed
FS1202.23	NZ Transport Agency	Support submission 606.17		Accept in part	3
FS1379.205	Hamilton City Council	Support submission 606.17		Accept in part	3
768.3	Don Jacobs		No specific decision sought, but the submission objects to the current location, allocation and distribution of the district's residential zones as proposed in the Proposed Waikato District Plan.	Accept in part	3
FS1387.1162	Mercury NZ Ltd for Mercury D	Oppose submission 768.3		Accept in part	3
923.100	Waikato District Health Board		Amend Chapter 1 (and/or s32 Analysis) to show the requirements of the 2017 National Policy Statement for Urban Development Capacity have been considered, which may include the following: Identifying which of the District's towns and villages are to be the focus for urban growth and development; Indicating the extent to which each of these areas are currently serviced with necessary infrastructure to protect and promote health and wellbeing, e.g. potable water; Clarifying whether structure/master planning or other detailed investigations have been done for these areas, and if not, when this is expected to occur; Addressing the issue of how areas identified for growth that currently have no supporting infrastructure (including community infrastructure) are to be sustainably managed through the plan provisions to ensure health and wellbeing is not negatively impacted.	Accept in part	3

Submission number	Submitter	Support / oppose	Summary of submission	Recommendation	Section of this report where the submission point is addressed
<i>FS1261.2</i>	<i>Annie Chen</i>	<i>Support submission 923.100</i>		<i>Accept in part</i>	<i>3</i>
<i>FS1202.31</i>	<i>New Zealand Transport Agency</i>	<i>Support submission 923.100</i>		<i>Accept in part</i>	<i>3</i>
<i>FS1308.166</i>	<i>The Surveying Company</i>	<i>Support submission 923.100</i>		<i>Accept in part</i>	<i>3</i>
<i>FS1387.1526</i>	<i>Mercury NZ Ltd for Mercury D</i>	<i>Oppose submission 923.100</i>		<i>Accept in part</i>	<i>3</i>
535.86	Hamilton City Council		Retain the extent of Country Living Zone as notified on the Planning Maps.	<i>Accept in part</i>	4
<i>FS1197.23</i>	<i>Bowrock Properties Ltd</i>	<i>Oppose submission 535.86</i>		<i>Accept in part</i>	<i>4</i>
<i>FS1311.18</i>	<i>Ethan & Rachel Findlay</i>	<i>Oppose submission 535.86</i>		<i>Accept in part</i>	<i>4</i>
<i>FS1202.134</i>	<i>New Zealand Transport Agency</i>	<i>Support submission 535.86</i>		<i>Accept in part</i>	<i>4</i>

Submission number	Submitter	Support / oppose	Summary of submission	Recommendation	Section of this report where the submission point is addressed
FS1388.716	Mercury NZ Ltd for Mercury E	Oppose submission 535.86		Accept in part	4
943.73	McCraken Surveys Limited		Retain Village Zones	Accept in part	4
FS1387.1594	Mercury NZ Ltd for Mercury D	Oppose submission 943.73		Accept in part	4
576.13	Transpower New Zealand Ltd		Amend the planning maps/legend to clarify if the zoning of the Urban Expansion Area is Rural Zone. AND Amend the Proposed District Plan to make consequential amendments to address the matters raised in the submission.	Accept	5
FS1388.828	Mercury NZ Ltd for Mercury E	Oppose submission 5376.13		Reject	5
FS1388.920	Mercury NZ Ltd for Mercury E	Oppose submission 5376.13		Reject	5
662.49	Blue Wallace Surveyors Ltd		Amend structure plans to avoid placing roads that will span different boundaries.	Accept in part	5
466.76	Balle Bros Group Ltd		No specific decision sought, but submission considers the rezoning of High Class Soils for residential use may be inconsistent with the	Accept in part	5

Submission number	Submitter	Support / oppose	Summary of submission	Recommendation	Section of this report where the submission point is addressed
			policies and objectives of the Proposed District Plan in some instances.		
354.1	Peter & Janette Middlemiss		Amend the Rural Zone to have three sub-zoning categories to accommodate the diversity of the area rather than just one blanket zone.	<i>Reject</i>	5
<i>FS1379.92</i>	<i>Hamilton City Council</i>	<i>Oppose submission 351.1</i>		<i>Accept</i>	5
<i>FS1386.506</i>	<i>Mercury NZ Limited for Mercury C</i>	<i>Oppose submission 351.1</i>		<i>Accept</i>	5
986.127	KiwiRail Holdings Limited (KiwiRail)		Amend all Planning Maps where KiwiRail's designations apply to change the underlying zoning from "Rural" to "unzoned" (or similar amendments to achieve the requested relief) AND any consequential amendments to link and/or accommodate the requested changes.	<i>Accept in part</i>	5
<i>FS1323.178</i>	<i>Heritage New Zealand Pouhere Taonga</i>	<i>Oppose submission 986.127</i>		<i>Accept in part</i>	5

Appendix 2. MDRZ Rule Package Modelling

Appendix 3. Recommended text changes – MDRZ