

## **Attachment E - Accept/Reject Hearings Panel Findings I-22**

Note: IHP Recommendations and associated lettering is shown in bold italics text.

- 1. There is no scope to include the Proposed Urban Fringe QM as it does not comply with the mandatory requirements of section 77L of the RMA<sup>1</sup>.**

This finding relates to the Urban Fringe QM that was proposed as part of the notified variation. The Urban Fringe QM sought to restrict the Medium Density Residential Standards to areas within walking distance of the town centres of Pookeno, Huntly, Ngaaruawaahia and Tuakau. The QM had the effect of retaining the General residential zone to the “urban fringe” areas of those towns. The legality of the QM was raised by submitters and Council subsequently removed the Urban Fringe as a QM.

**Staff recommendation:** That finding 1 is accepted by Council.

- 2. The term “commensurate” requires a forward-looking view over the long-term timeframe noted in the NPS-UD. What is required are building heights and densities in “proportion with” those anticipated future levels of commercial activities and community services. While a local authority has a discretion to provide more enabling provisions, it is not required to do so<sup>2</sup>.**

This finding relates to the requirement under Policy 3d of the National Policy Statement on Urban Development to enable building heights and densities within and adjacent to neighbourhood, local and town centres that are commensurate with the level of commercial activity and community services. This recommendation is related to finding 14 which relates to the building heights within the Huntly Commercial Precinct.

**Staff recommendation:** That finding 2 is accepted by Council.

- 3. Council’s advice regarding the relationship between the ODP, the PDP and Variation 3 is accepted and is used to guide the IHP’s considerations where overlapping issues have arisen. The advice outlines the jurisdiction on appeal issues including the matters that are for the Environment Court to determine and for the IHP to determine<sup>3</sup>.**

This finding relates to the jurisdiction on appeal issues. The PDP has appeals that overlap with Variation 3. The Amendment Act does not provide clear direction on how the IPI and PDP processes are intended to apply when there is an overlap with a Variation 3 provision and an unresolved appeal. This finding from the panel aligns with Council’s Legal Counsel’s position.

**Staff recommendation:** That finding 3 is accepted by Council.

- 4. Council’s submissions regarding the NPS-IB are accepted and the approach for considering QMs relating to biodiversity is applied. Council’s submissions on the NPS-IB are summarised in paragraph 115 of the IHP decision<sup>4</sup>.**

The NPS-IB was released part way through the hearings process and prior to the hearings being completed. At Hearing 2, Council’s legal counsel submitted that the existing mapped

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<sup>1</sup> Section 2.4.1.1 of the IHP decision

<sup>2</sup> Section 3.5.2.1 of the IHP decision

<sup>3</sup> Section 3.6.1 of the IHP decision

<sup>4</sup> Section 3.7.1 of the IHP decision

significant natural areas (SNAs) are provided for as QMs and that there is no scope for the Panel to introduce new SNAs through the Variation process. This Panel agreed with Council's position.

**Staff recommendation:** That finding 4 is accepted by Council.

**5. Private covenants are not QMs and are therefore not relevant considerations in reaching decisions on Variation 3<sup>5</sup>.**

This finding relates to the effect of private covenants in Pookeno. This was addressed comprehensively in Council's legal submissions in the February hearing. These covenants typically restrict development to a degree that is inconsistent with the development outcomes of MDRS (i.e. lower density). Private covenants are not a RMA matter and do not satisfy the QM tests under Section 77 of the RMA.

**Staff recommendation:** That finding 5 is accepted by Council.

**6. The following issues are considered to be within scope<sup>6</sup>:**

- **The requirement for additional building height in Huntly.**
- **Additional controls to manage flood risk within the area formerly notified as the 'Urban Fringe'.**
- **The rezoning of the area known as Horotiu West.**
- **The rezoning of 23 Harrisville Road, Tuakau.**
- **The rezoning of King Street, Ngaaruawaahia (partially within scope).**

**The following issues are considered to be out of scope:**

- **The application of the MDRS to Raglan and Te Kauwhata (i.e. it is not required to be applied within to those areas.**
- **The requirement for financial contributions to cover infrastructure costs or betterment activities to give effect to Te Ture Whaimana.**
- **Gas Transmission line setback within relevant residential zones.**
- **Additional controls to protect heritage items.**
- **Additional provision to protect the area identified as the Tuurangawaewae marae surrounds – Area D.**
- **Additional controls to provide increased water body buffers.**

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<sup>5</sup> Section 3.8.1 of the IHP decision

<sup>6</sup> Addressed in Paragraphs 120-250 of the IHP decision

- ***Tuakau structure plan and Waikato 2070 areas.***
- ***Retirement villages in the business zones.***
- ***Residential definitions.***
- ***The requirement for noise and vibration setbacks.***
- ***The requirement to include additional setbacks from electricity lines.***
- ***Kāinga Ora rezoning requests.***
- ***Rezoning of 14 and 16 Herschel Street Ngaaruawaahia.***
- ***Rezoning of greenfield land in Ngaaruawaahia.***
- ***Rezoning of 2D Ellery Street, Ngaaruawaahia.***
- ***Rezoning of 99a Ngaaruawaahia Road and 18 Rangimarie Road, Ngaaruawaahia.***
- ***The consideration of the special character of Pookeno as a QM.***

This finding relates to the broad nature of the submissions that were received and whether the Panel had scope to address certain matters. From the outset, the panel acknowledged that while the scope of an IPI is broad, it is not unlimited. They further acknowledged that QMs and related provisions can reduce development to pre-MDRS levels but cannot remove or preclude existing permitted levels of development.

**Staff recommendation:** That finding 6 is accepted by Council.

**7. *The QMs that are proposed to be incorporated from the PDP-Decisions version and are not addressed in other parts of the decision are considered appropriate<sup>7</sup>.***

This finding relates to the requirement by the panel to consider all QMs as new QMs under s77I and 77K. This is different to a plan change to an operative plan. The provisions contained in the PDP that were proposed as QMs in Variation 3 related to Te Ture Whaimana, Areas of significant indigenous vegetation and significant habitat of indigenous fauna, sites and areas of significance to Maaori, historic heritage, natural hazards, nationally significant infrastructure, reverse sensitivity and notable trees.

**Staff recommendation:** That finding 7 is accepted by Council. The district wide provisions that provide for and protect the identified QMs will continue to be relied upon as proposed provisions with legal effect.

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<sup>7</sup> Section 8.1.1 of the IHP decision

8. ***The recommended provisions for the Havelock Precinct (referred to by the IHP as ‘Havelock Precinct QM’) are acceptable. There is no QM required for Environmental Protection Areas (EPAs) <sup>8</sup>.***

The Havelock Precinct provisions were largely agreed through a consent order that was issued prior to the close of the hearing. The recommended provisions reflect the consent order provisions that were issued by the Environment Court. One additional provision (SUB-R20) was identified by staff as needing to be made operative as part of Variation 3 to provide for the Residential Slope Area (Natural Hazard QM). This additional provision is included in the suite of the Havelock Provisions in Attachment C.

**Staff recommendation:** That finding 8 is accepted by Council.

9. ***It is appropriate to include the Tuurangawaewae cultural surrounds QM (excluding Area D) subject to the following amendments<sup>9</sup>:***

- ***Inclusion of a reference to the Waikato awa in MRZ2-PI4(2)***
- ***Removal of references to Taupiri Maunga in the TCZ and COMZ.***
- ***Rewording of the matters of discretion (for consistency).***

This finding relates to the protection of cultural viewshafts from the Tuurangawaewae Marae to the Waikato awa, Haakarimata Range and Taupiri maunga. The Panel in paragraph 167 of their decision acknowledged the importance of Tuurangawaewae Marae, Waikato awa and Haakarimata and Taupiri to Waikato Tainui. The Panel agreed the viewshafts from the marae to these areas are a matter of national importance under s.6(e). In order maintain the view / outlook to the extent possible under Variation 3 the Panel agreed with the recommendation to include:

- Tuurangawaewae Marae surrounds QM
- Tuurangawaewae Marae outlook high potential effects area
- Tuurangawaewae Marae building height assessment overlay

In paras 288 to 292 the Panel recommended to make changes to the provisions recommended by the S42A reporting officers. The changes are to assist plan implementation and provide consistency

**Staff recommendation:** Accept finding 9 in part.

It is recommended:

- To accept the changes to the MRZ2-PI4(2) and remove the references to Taupiri Maunga in TCZ and COMZ;
- To accept the amended assessment criteria with a minor change;

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<sup>8</sup> Section 8.2.1 of the IHP decision

<sup>9</sup> Section 8.2.3.1 of the IHP decision

- That the assessment criteria should retain the words “In Ngaaruawaahia” as recommended by the S42A report. This amendment will assist in plan implementation and is a minor amendment that can be made under Clause 102.

**10. It is appropriate to include the Mine Subsidence Risk Area QM and the existing zoning maps should be retained for the area covered by this QM<sup>10</sup>.**

This finding relates to a residential area in north-east Huntly that is at potential risk of subsidence due to the former Huntly mine. To reduce the risk of exposing additional dwellings to the risk of subsidence (if MDRS was enabled) the Panel found that there should be no change in the zoning and therefore no change to the existing risk. This recommendation was based on independent expert geotechnical advice.

**Staff recommendation:** That finding 10 is accepted by Council.

**11. The following findings are made in relation to the MRZ2 Flood Risk QM:<sup>11</sup>**

- **The MRZ2 Flood Risk QM is necessary to give effect to higher order planning documents (for hazards and resilience).**
- **The flood mapping carried out by Te Miro Water is fit for purpose (identifying flood affected properties).**
- **The use of a non-statutory flood mapping approach is appropriate.**
- **The provisions recommended by Council (including the exception proposed to rule NH-R26A<sup>12</sup>) for managing flood hazard, particularly in relation to future intensification are appropriate.**

This finding relates to a QM for Flood Risk Areas within the former urban fringe area. Throughout the Variation 3 process the QM was also referred to as the Stormwater Constraints Overlay QM and the MRZ2 Flood Risk QM. The three key components considered by the panel were: where the QM should apply, how the QM should apply and through what mechanism the QM should be applied.

In relation to where the QM should apply the Panel acknowledged the constraints imposed by the Court's decision in *Waikanae* (cannot remove existing development rights) and found that the QM could only be applied to the area that was formerly identified as the Urban Fringe (i.e. the outer areas of the Variation 3 towns).

In relation to how the QM should apply, the panel found that the flood mapping carried out by Te Miro Water to identify the areas of risk is appropriate and fit for purpose. The Panel further found that the restrictions on residential dwelling density within QM recommended by the s42A reporting officers were appropriate. In relation to the most appropriate mechanism to implement the QM the panel found that the inclusion of the Te Miro maps as a non-statutory layer would be the most efficient and effective.

**Staff recommendation:** That finding 11 is accepted by Council.

**12. Te Ture Whaimana has been given effect to in Variation 3 by addressing<sup>13</sup>:**

<sup>10</sup> Section 8.2.4.1 of the IHP decision

<sup>11</sup> Section 8.2.5.5 of the IHP decision

<sup>12</sup> Further addressed in 8.5.1.1 of the IHP decision

<sup>13</sup> Sections 8.3.1.1 - 8.3.8 of the IHP decision

- **Setbacks of buildings from waterbodies;**
- **Impervious surface standards; and**
- **Ensuring subdivisions can be appropriately serviced by three-water infrastructure.**

This finding relates to how Variation 3 gives effect to Te Ture Whaimana o Te Awa o Waikato – The Vision and Strategy for the Waikato River (Te Ture Whaimana). The panel found that the recommendations from the S42A reporting officers regarding building setbacks from waterbodies, impervious surface standards, stormwater infrastructure servicing, green infrastructure and low impact design, downstream impacts are appropriate. Since the time of the hearing further work has been carried out to better manage Council's infrastructure connection process. The changes to the process will become effective upon notification of the Variation 3 decision.

**Staff recommendation:** That finding 12 is accepted by Council.

**13. The inclusion of a vacant lot subdivision rule will best enable the transition from present market preferences for single, one-storey dwellings to more intensified forms. The proposed recommendations by the Council officer regarding minimum lot subdivision rules are appropriate<sup>14</sup>.**

This finding relates to whether there should be a minimum requirement for vacant lot sizes within the MRZ2 in the outer intensification layer. There can be no minimum lot size for proposed dwellings that comply with the relevant MRZ2 standards and there is an existing minimum vacant lot size of 200 square metres within the MRZ1. The panel considered that the minimum lot size of the MRZ1 should not be uniformly applied to the MRZ2 area and that, instead, a more nuanced and bespoke vacant lot subdivision approach should be taken to better control urban form outcomes. The Panel ultimately agreed with the S42A recommendations which included a minimum 300 square metre minimum net lot size, an average lot size of 375 square metres for land that is less than 5,000 square metres and will consist of more than nine allotments.

**Staff recommendation:** That finding 13 is accepted by Council.

**14. Enabling increased heights (as provided for by the Council officer recommendations) within the Huntly Commercial Precinct is appropriate. The existing PDP Huntly TCZ height provisions are appropriate.<sup>15</sup>**

This finding relates to whether the proposed increase in the maximum building height from 12 metres to 22 metres (and supporting provisions) is appropriate. The Panel considered the height increase within the planning context of the NPS-UD and the physical context of Huntly. The Panel further considered whether the increased height was “commensurate” with the level of commercial activity and community services and whether increased heights were also required within the Huntly Town Centre Zone. The Panel ultimately decided that the increase in height to 22 metres was appropriate and that no increased height limits were necessary within the Huntly Town Centre Zone. The Panel heard planning and economic evidence on this matter.

**Staff recommendation:** That finding 14 is accepted by Council.

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<sup>14</sup> Sections 8.4.1 of the IHP decision

<sup>15</sup> Section 8.4.2.1 of the IHP decision

**15. It is appropriate to include a 2.5m setback standard for rail corridors for safety reasons. The proposed standard outlined in MRZ2-S17 in the 30 January 2024 s42A report is appropriate<sup>16</sup>.**

This finding relates to setbacks from the boundaries of the rail corridor. The setbacks proposed were reflective of the existing setback requirements of the PDP, however, those provisions were under appeal by KiwiRail and Kāinga Ora. The appeal was resolved and amended setbacks of 2.5 metres (consistent with the Environment Court consent order) were subsequently recommended by the S42A reporting as a standard within the MRZ2.

**Staff recommendation:** That finding 15 is accepted by Council.

**16. The changes recommended by the Council officer along with the other provisions of Variation 3 provide appropriately for retirement villages within the scope of Variation 3<sup>17</sup>.**

This finding relates the Panel's consideration of whether the PDP sufficiently provides for retirement villages and whether the Variation 3 process could be used to refine the existing PDP provisions. The Panel ultimately found that a number of the changes sought by Ryman/RVA did not support or were not consequential on the MDRS or Policies 3-5 of the NPS-UD and were therefore out of scope (as addressed in finding 6). In relation to the application of the MDRS to retirement village developments, the Panel decided that the minimum residential unit size should not be applicable and impervious surface standards should be applicable.

**Staff recommendation:** That finding 16 is accepted by Council.

**17. The exemption to rule NH-26A recommended by the Council officer is appropriate<sup>18</sup>**

This finding relates to an exemption to the high risk flood rules within the MRZ2 to acknowledge that the high risk areas shown within the flood maps do not necessarily present a high flood risk on the ground. This scenario is particularly relevant in instances where the previously mapped high risk flood areas have been mitigated/removed. The exemption is intended to provide greater flexibility to Council and applicants and enable a more efficient resource consenting process.

**Staff recommendation:** That finding 17 is accepted by Council.

**18. It is appropriate to rezone the land at 23A Harrisville Road to MRZ2 with the addition of a geotechnical Hazard QM<sup>19</sup>.**

This finding relates to 23A Harrisville Road in Tuakau which was zoned Large lot residential in the PDP and was therefore not a relevant residential zone to which the MDRS should be applied. The site is located close to the town centre and was generally considered by the Panel and the S42A reporting officers as suitable to accommodating more intensive residential development subject to the management of an identified building line restriction (identified as a geotechnical hazard QM).

**Staff recommendation:** That finding 18 is accepted by Council.

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<sup>16</sup> Section 8.4.3.1 of the IHP decision

<sup>17</sup> Section 8.4.4.1 of the IHP decision

<sup>18</sup> Section 8.5.1.1 of the IHP decision

<sup>19</sup> Section 8.5.2.1 of the IHP decision

**19. It is appropriate to rezone the land at 111 Harrisville Road to MRZ2 with a Flood Density QM and Higher Risk flood area, the Outer Intensification Area Overlay and new noise rule R-46<sup>20</sup>.**

This finding relates to a 111 Harrisville Road in Tuakau, which was zoned General rural zone in the PDP and was therefore not a relevant residential zone to which the MDRS should be applied. The zoning of the site was subject to an Environment Court appeal which was resolved prior to the release of the Panel's decision. The Environment Court determined that the site should be rezoned General residential zone, subsequently, the Panel decided that the MDRS should therefore apply subject to provisions to manage flooding and reverse sensitivity effects from the Harrisville Motorcross Track.

**Staff recommendation:** That finding 19 is accepted by Council.

**20. It is not appropriate to rezone the land on the corner of Johnson and Oak Street as part of the Variation 3 process<sup>21</sup>.**

This finding relates to a site in Tuakau located on the corner of Johnson and Oak Streets. The site was zoned Large lot residential in the PDP and was therefore not a relevant residential zone to which the MDRS should be applied. The zoning of the site was subject to an Environment Court appeal which was not yet resolved at the time that the Panel released its decision. The Panel therefore found that the matter should be determined by the Environment Court.

**Staff recommendation:** That finding 20 is accepted by Council.

**21. It is not appropriate to rezone the rural zoned portion of the land at 99A Ngaaruawaahia Road and 18 Rangimarie Road, Ngaaruawaahia as part of the Variation 3 process<sup>22</sup>.**

This finding relates to a land on the south west of Ngaaruawaahia at 99A Ngaaruawaahia Road and 18 Rangimarie Road. The land is part zoned General residential zone and part General rural zone. The IHP found it was not appropriate to zone the land at this time because it would anticipate the Court's decision on the zoning and for the reasons identified by the Council. These reasons are the land is rural zoned land is subject to the NPS-HPL and no assessment has been provided, the 2017 structure plan identified the land as being outside of the 10-year period provided for, and the land was not identified in any Future proof maps (which do not provide the level of detail). Staff note the land is not subject to an appeal to the Environment Court.

**Staff recommendation:** That finding 21 is accepted by Council for the reasons listed in para 438 of the IHP recommendations. Staff note the existing area of GRZ will be rezoned MRZ2.

**22. The consequential amendments identified by the Council officer to SUB-R152(1), SUB-R153(1), SUB-R157(1), WWS-RIA 1(d) and WWS-RIB 2(a) are acceptable<sup>23</sup>.**

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<sup>20</sup> Section 8.5.3.1 of the IHP decision

<sup>21</sup> Section 8.5.4.1 of the IHP decision

<sup>22</sup> Section 8.5.5.1 of the IHP decision

<sup>23</sup> Paragraph 442 of the IHP decision



This finding relates to some minor changes to words in the subdivision and Water, wastewater and stormwater chapters to provide for a more logical flow and usability of the PDP. The Panel found that the S42A reporting officer recommendations for those consequential amendments should be included in the final PDP provisions.

Since reviewing the IHP decision, additional consequential amendments have been identified by the S42A reporting officers and are recommended to be included in addition to the provisions referenced by the Panel in this finding. Those recommendations are recommended as Clause 16 corrections and detailed in Attachment I.

**Staff recommendation:** That finding 22 is accepted by Council and that the additional consequential amendments described in Attachment I to this report are made under Clause 16.