TE KAUNIHERA O TE AWA KAIRANGI

4 March 2025

Order Paper for Council meeting to be held in the
Council Chambers, 2nd Floor, 30 Laings Road, Lower Hutt,
on:

Tuesday 11 March 2025 commencing at 4.00pm

The meeting will be livestreamed on Council's You Tube page.

Membership

Mayor C Barry (Chair)
Deputy Mayor T Lewis

Cr G Barratt	Cr J Briggs
Cr K Brown	Cr B Dyer
Cr S Edwards	Cr A Mitchell
Cr K Morgan	Cr C Parkin
Cr N Shaw	Cr T Stallinger
Cr G Tupou	

For the dates and times of Council Meetings, please visit www.huttcity.govt.nz

Have your say
You can speak under public comment to items on the agenda to the Mayor and Councillors at this meeting. Please let us know by noon the working day before the meeting. You can do this by emailing DemocraticServicesTeam@huttcity.govt.nz or calling the Democratic Services Team on 04 570 6666 | 0800 HUTT CITY

TE KAUNIHERA O TE AWA KAIRANGI | COUNCIL

Chair	Mayor Campbell Barry
Deputy Chair	Deputy Mayor Tui Lewis
Membership:	All Councillors (11) Refer to Council's Standing Orders (SO 31.10 Provisions for Mana Whenua)
Meeting Cycle:	Council meets on an eight-weekly basis (extraordinary meetings can be called following a resolution of Council, or on the requisition of the Chair or one-third of the total membership of Council)
Quorum:	Half of the members

POWER TO (BEING A POWER THAT IS NOT CAPABLE OF BEING DELEGATED)[1]:

- Make a rate.
- Make bylaws.
- Borrow money other than in accordance with the Long Term Plan (LTP).
- Purchase or dispose of assets other than those in accordance with the LTP.
- Purchase or dispose of Council land and property other than in accordance with the LTP.
- Adopt the LTP, Annual Plan and Annual Report.
- Adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the LTP or developed for the purpose of the Local Governance Statement.
- Appoint the Chief Executive.
- Exercise any powers and duties conferred or imposed on the local authority by the Local Government Act 1974, the Public Works Act 1981, or the Resource Management Act 1991, that are unable to be delegated.
- Undertake all other actions which are not capable of being delegated by law.
- The power to adopt a Remuneration and Employment Policy for Council employees.

DECIDE ON:

Policy and Bylaw issues:

- Adoption of all policies required by legislation.
- Adoption of strategies, and policies with a city-wide or strategic focus.
- Approval of draft bylaws before the consultation.
- Adoption of new or amended bylaws.

District Plan:

- Approval to call for submissions on any Proposed District Plan, Plan Changes and Variations.

1 Work required before the making of any of these decisions may be delegated.

- Before public notification, approval of recommendations of District Plan Hearings Subcommittees on any Proposed Plan, Plan Changes (including private Plan Changes) and Variations.
- The withdrawal of Plan Changes in accordance with clause 8D, Part 1, Schedule 1 of the Resource Management Act 1991.
- Approval, to make operative, District Plan and Plan Changes (in accordance with clause 17, Part 1, Schedule 1 of the Resource Management Act 1991).
- Acceptance, adoption, or rejection of private Plan Changes.

Representation, electoral and governance matters:

- The method of voting for the triennial elections.
- Representation reviews.
- Council's Code of Conduct for elected members.
- Hearing of and making decisions on breaches of Council's Code of Conduct for elected members.
- Elected members' remuneration.
- The outcome of any extraordinary vacancies on Council.
- Any other matters for which a local authority decision is required under the Local Electoral Act 2001.
- Appointment and discharge of members of committees when not appointed by the Mayor.
- Adoption of Terms of Reference for Council Committees, Subcommittees and Working Groups, and oversight of those delegations.
- Council's delegations to officers, community boards and community funding panels.

Delegations and employment of the Chief Executive:

Appointment of the Chief Executive of Hutt City Council.

Meetings and committees:

- Standing Orders for Council and its committees.
- Council's annual meeting schedule.

Long Term and Annual Plans:

- The adoption of the LTP and Annual Plans.
- Determination of rating levels and policies required as part of the LTP.
- Adoption of Consultation Documents proposed and final LTPs and proposed and final Annual Plans.

Council Controlled Organisations:

- The establishment and disposal of any Council Controlled Organisation or Council Controlled Trading Organisation.
- Approval of annual Statements of Intent and annual Statement of Expectation for Council Controlled Organisations and Council Controlled Trading Organisations.

Community Engagement and Advocacy:

- Receive reports from the Council's Advisory Groups.
- Regular reporting from strategic partners.

Operational Matters:

- Civil Defence Emergency Management matters requiring Council's input.
- Road closing and road stopping matters.
- Approval of overseas travel for elected members.
- All other matters for which final authority is not delegated.

Appoint:

- The non-elected members of the Standing Committees, including extraordinary vacancies of non- elected representatives.
- The Directors of Council Controlled Organisations and Council Controlled Trading Organisations.
- Council's nominee on any Trust.
- Council representatives on any outside organisations (where applicable and time permits, recommendations for the appointment may be sought from the appropriate Standing Committee and/or outside organisations).
- Council's Electoral Officer, Principal Rural Fire Officer and any other appointments required by statute.
- The recipients of the annual Civic Honours awards.

TE KAUNIHERA O TE AWA KAIRANGI | HUTT CITY COUNCIL

Ordinary meeting to be held in the Council Chambers,
2nd Floor, 30 Laings Road, Lower Hutt on
Tuesday 11 March 2025 commencing at 4.00pm

ORDER PAPER

PUBLIC BUSINESS

1. OPENING FORMALITIES - KARAKIA TIMATANGA

Whakataka te hau ki te uru
Whakataka te hau ki te tonga
Kia mākinakina ki uta
Kia mātaratara ki tai
E hī ake ana te atakura
He tio, he huka, he hau hū
Tīhei mauri ora.

Cease the winds from the west
Cease the winds from the south
Let the breeze blow over the land
Let the breeze blow over the ocean
Let the red-tipped dawn come with a sharpened air.
A touch of frost, a promise of a glorious day.

2. APOLOGIES

No apologies have been received.

3. PUBLIC COMMENT

Generally, up to 30 minutes is set aside for public comment (three minutes per speaker on items appearing on the agenda). Speakers may be asked questions on the matters they raise.

4. CONFLICT OF INTEREST DECLARATIONS

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as a member and any private or other external interest they might have.

5. LOCAL WATER DONE WELL - CONSULTATION ON WATER SERVICE DELIVERY MODEL

The report will be distributed separately.

6. RETROSPECTIVE ENDORSEMENT OF WELLINGTON'S JOINT SUBMISSION ON THE LOCAL GOVERNMENT (WATER SERVICES) BILL

Report No. HCC2025/1/58 by the Strategic Advisor 8

MAYOR'S RECOMMENDATION:

"That the recommendation contained the report be endorsed."

7. PROPOSED PRIVATE DISTRICT PLAN CHANGE 58: 12 SHAFTESBURY GROVE, STOKES VALLEY - REZONING TO MEDIUM DENSITY RESIDENTIAL ACTIVITY AREA

Report No. HCC2025/1/59 by the Policy Planning Manager 73

MAYOR'S RECOMMENDATION:

"That the recommendations contained in the report be endorsed."

8. RECOMMENDATIONS TO COUNCIL FROM THE POLICY, FINANCE AND STRATEGY COMMITTEE MEETING HELD ON 11 MARCH 2025

"That Council adopts the recommendations made on the following reports, and any amendments agreed at the Policy, Finance and Strategy Committee meeting held on 11 March 2025:

a) Urban Plus Limited Group Draft Statement of Intent 2025/26 to 2027/28; and

b) Seaview Marina Limited Draft Statement of Intent 2025/26 to 2027/28."

9. QUESTIONS

With reference to section 32 of Standing Orders, a member shall endeavour to obtain the information before putting a question. Questions shall be concise and in writing and handed to the Chair prior to the commencement of the meeting.

10. EXCLUSION OF THE PUBLIC

MAYOR'S RECOMMENDATION:

"That the public be excluded from the following parts of the proceedings of this meeting, namely:

11. TE WAI TAKAMORI O TE AWA KAIRANGI COMMERCIAL MATTERS

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

(A)	(B)	(C)
General subject of the matter to be considered.	Reason for passing this resolution in relation to each matter.	Ground under section 48(1) for the passing of this resolution.
Te Wai Takamori o Te Awa Kairangi Commercial Matters.	The withholding of the information is necessary to enable the local authority to carry out, without prejudice or disadvantage, commercial activities (s7(2)(h)). The withholding of the information is necessary to enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations) (s7(2)(i)).	That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding exist.

This resolution is made in reliance on section 48(1) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by section 6 or 7 of that Act which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public are as specified in Column (B) above."

Kate Glanville
SENIOR DEMOCRACY ADVISOR

Hutt City Council

25 February 2025

Report no: HCC2025/1/58

Retrospective endorsement of Wellington's joint submission on the Local Government (Water Services) Bill

Purpose of Report

1. To seek retrospective endorsement of the joint submission made by Wellington Councils and Iwi Mana Whenua Partners on the Local Government (Water Services) Bill.

Recommendation

That Council endorses its contribution to the joint submission from Wellington Councils and Iwi Mana Whenua Partners on the Local Government (Water Services) Bill as attached as Appendix 1 to the report.

Background

2. The Local Government (Water Services) Bill (the Bill) provides for:

   - arrangements for the new water services delivery system.
   - a new economic regulation and consumer protection regime for water services.
   - changes to the water quality regulatory framework and the water services regulator.

3. This is the third Bill that the government has produced as part of its "Local Water Done Well" policy programme. The first Bill repealed the previous government's water services legislation. The second Bill established the preliminary arrangements for the new water services system. This third Bill establishes the enduring settings for the water services system.

4. Read the Bill here: Local Government (Water Services) Bill 108-1 (2024), Government Bill Contents – New Zealand Legislation.

5. In 2024, an Advisory Oversight Group (AOG) was established for the Wellington region with the goal of working together on a water service delivery plan. The group is led by Dame Kerry Prendergast and consists of elected members and iwi representatives. It is supported by Chief Executives and a joint project team. Mayor Barry represents our Council within the AOG.

6. Councils provisionally decided that their preferred option for water services delivery under Local Water Done Well is a joint asset owning CCO owned by councils which would provide three waters services to nearly a half million people.

7. The joint submission is attached as Appendix 1 to the report. It was submitted to Parliament's Finance and Expenditure Committee on 21 February 2025.

Discussion

8. The joint submission focuses on achieving the objectives of Local Water Done Well.

9. The joint submission raises seven key matters:

   a. The Bill needs to set broader and stronger objectives for Water Safety Plans.

   b. The Bill gives territorial authority shareholders extensive controls over water organisations, which conflicts with the rationale for establishing a water organisation and blurs accountability to communities.

   c. The Bill needs to define the relationships all WSPs, including water organisations, are expected to have with iwi/Māori, and refer to the principles of Te Tiriti and Te Mana o te Wai.

   d. The Bill should strengthen its current protections against future privatisation of water services.

   e. The Bill should be simplified to reduce unnecessary complexity and compliance costs for WSPs and water organisations in particular.

   f. The Bill should not require Councils to enter into a transfer agreement with a water organisation within six months.

   g. The Bill's provisions regarding works on private land will hinder infrastructure provision.

Climate Change Impact and Considerations

11. There are no direct climate change implications or considerations in submitting this joint submission.

Consultation

12. The joint submission was a collaborative effort from all councils, with legal input from Simpson Grierson. There has been no public consultation in its drafting.

Legal Considerations

13. There are no legal considerations

Financial Considerations

14. There are no direct financial considerations with respect to the joint submission.

Appendices

No.	Title	Page
1⇩	Final Wellington Combined Submission on the LG Water Services Bill	11

Author: Bruce Hodgins
Strategic Advisor

Approved By: Alison Geddes
Director Environment and Sustainability

Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings
Wellington

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21 February 2025

Combined submission of Wellington City Council, Hutt City Council, Porirua City Council, Upper Hutt City Council, and Greater Wellington Regional Council (Councils) with Iwi mana whenua partners Te Rūnanga o Ngāti Toa and Taranaki Whānui ki Te Upoko o Te Ika / Port Nicholson Block Settlement Trust (Iwi Partners) on the Local Government (Water Services) Bill (Bill)

INTRODUCTION

The Councils and South Wairarapa District Council currently provide water services to their communities through a jointly-owned council-controlled organisation (**CCO**), Wellington Water Limited (**WWL**), in which they are each shareholders. This is the only joint water services CCO currently operating in New Zealand.

The Councils have provisionally decided that their preferred option for water services delivery under *Local Water Done Well* is a joint asset owning CCO owned by the Councils which would provide three waters services to nearly a half million people. This is subject to consultation which is scheduled to be carried out in March - April 2025. If this preferred option is confirmed, WWL in its current form will be disestablished and replaced by the new joint CCO. That CCO will be a water organisation (**WO**) as defined in the Bill.

This submission is made with a particular focus on the Bill's provisions as they will affect WOs. The submission is informed by the Councils' experience as the owners of WWL, and a significant programme of activity to develop a joint water services delivery plan and establish a new WO.

We are motivated to have simple, clear and manageable institutional arrangements, accountabilities, regulation and transitional arrangements. This is important not only for the success of the water reforms themselves, but also to enable our communities to thrive once the reforms are in place.

We thank the Finance and Expenditure Select Committee for the opportunity to submit on the Bill, and would appreciate the opportunity to address the Committee in person.

PART 1 – OVERVIEW AND KEY MATTERS

Part 1 of this submission summarises the seven key matters that the Councils wish to raise. Part 2 is a table which comments on the Bill clause-by-clause and contains recommended changes, including in relation to the key matters in Part 1.

While the Councils and their Iwi Partners generally support the Bill, drawing upon our practical experience we have a number of key concerns:

1. The Bill needs to set broader and stronger objectives for water services providers (WSPs) to reflect broader growth, environmental and social outcomes, as well as relationships with iwi/Māori;
2. The Bill gives territorial authority (TA) shareholders extensive control over WOs, which conflicts with the rationale for establishing a WO and blurs accountability to communities for the provision of water services;
3. The Bill needs to strengthen and define the relationships all WSPs, including WOs, are expected to have with iwi/Māori, and to give effect to the principles of the Treaty of Waitangi/Te Tiriti o Waitangi and Te Mana o te Wai;
4. The Bill should strengthen its current protections against future privatisation of water services;
5. The Bill should be simplified to reduce unnecessary complexity and compliance costs for WSPs, and WOs in particular;
6. The Bill should not require the Councils to enter into a transfer agreement with a WO within 6 months; and
7. The Bill's provisions regarding works on private land will hinder infrastructure provision.

The submission elaborates on these points below.

Achieving the objectives of Local Water Done Well (LWDW)

The Councils support the fundamental objectives of LWDW: namely to keep water assets in local ownership; give councils choice as to how they wish to organise their water service delivery going forward; and provide a clear regulatory framework within which all WSPs will operate.

The second step in this Government's reforms (after the repeal of legislation passed in the previous parliamentary term), was the Local Government (Water Services Preliminary Arrangements) Act 2024 (**Preliminary Arrangements Act**). The Preliminary Arrangements Act advanced LWDW objectives by establishing a process for communities to select, on an informed basis, their preferred water services delivery model or arrangements, and to prepare and adopt a water services delivery plan (**WSDP**). All possible delivery models – in-house council delivery, a CCO (single council or jointly owned), or a consumer trust – involve council or community ownership (either direct or indirect) of the water services infrastructure currently owned by TAs (and, in the case of the Wellington region, Greater Wellington Regional Council).

The Councils are concerned, however, that in several important respects the Bill is inconsistent with, and potentially undermines, the Government's own policy objectives for LWDW, and to some extent undoes what has already been legislated for in the Preliminary Arrangements Act.

If enacted in its current form, the Bill will have a significant negative impact on all WSPs but especially WOs and impair their ability to operate successfully and achieve their statutory objectives as stated in the Bill. The Councils urge a review of the Bill's overall approach to ensure alignment with the original objectives of LWDW and the Government's wider objectives, including supporting economic growth.

TA ownership of water services infrastructure in New Zealand has generally resulted in under-investment in water services, leading to myriad problems ranging from failure to provide safe drinking water, to recurring network failures and shutdowns, to planned urban development being stymied though lack of infrastructure. While LWDW relies, in part, on regulation through the Water Services Authority / Taumata Arowai (**WSA**) and the Commerce Commission to address these issues, before any regulatory intervention occurs, competent professional

governance of water services is also required. The Bill should restore an appropriate focus on delivering safe, reliable and financially sustainable water services by removing from the Bill unnecessary or excessive prescription and control of WOs by their shareholder councils as this will blur and undermine accountabilities. Local control over water services provision does not guarantee the provision of safe, reliable and financially sustainable water services: stronger provisions in the Bill are needed to help ensure that, whatever form of service provision has been chosen by TAs following consultation on their WSDP, these outcomes are achieved across New Zealand.

We now turn to the seven key matters the Councils wish to raise.

1. **The Bill needs to set broader and stronger objectives for WSPs**

The objectives in the Bill set out in cl 15 are much too narrow, and as outlined below, they omit important matters. Further, WSPs which are TAs will continue to be subject to the Local Government Act 2002 (**LGA**) and therefore the role and purpose of local government as stated in that Act, whereas other WSPs (WOs and any consumer trust providing water services) will not be. This creates a perverse distinction on this fundamental matter between WSPs which are TAs, and those which are WOs.

The statutory objectives of WSPs are fundamentally important, setting boundaries around the scope of the WSPs' operations and the matters which will be legally relevant to any actions which they take when providing water services. Statutory objectives are important for New Zealand as a whole, because they can help to ensure that all WSPs regardless of location achieve matters that are important in all communities, and act as a safeguard against TAs not providing for such matters either directly as WSPs, or as shareholders setting the direction for a WO that they have established. Broader objectives, that are also stronger because they "must" be complied with rather than being merely aspirational, are needed to ensure that "local water" is indeed "done well".

The Councils submit that the objectives of all WSPs should be the same and should cover the matters outlined below.

Supporting housing growth and urban development in their service area

The absence of this objective in the Bill is a significant omission, which stands to undermine the Government's primary focus on economic growth as stated in the Prime Minister's State of the Nation 2025 address (23 January 2025). It is also contrary to the Government's August 2024 policy announcements on water reform, and the Preliminary Arrangements Act. Under that Act (ss 8(1)(iv) and 15(1)(b)), a WSDP had to demonstrate the TA's commitment to supporting housing growth and urban development.

By contrast, under the Bill, WSPs *implementing* the WSDP have no statutory obligations in relation to housing growth and urban development. A TA providing water services in-house may decide that urban growth is simply not a priority, and not something it is prepared to raise revenue locally (through rates) to fund. Alternatively, where TAs have established a WO, it cannot be left to the shareholders to include support for housing growth and urban development within the expectations or priorities they set for a WO via the statement of expectations (**SOE**) under cls 187: put simply, the shareholders may decide not to do so. Again, what the TAs consider affordable (or unaffordable) in their community may be the overriding concern.

The objective of supporting housing growth and urban development must instead be universal and apply to all WSPs, rather than left as a matter to be raised by the shareholders of a WO through the SOE or comments on the draft water services strategy (**WSS**).

Safety should not be confined to drinking water

The reference in cl 15(1)(a)(i) to providing "safe drinking water to consumers" would not encompass the provision of safe wastewater or stormwater services to consumers. A failure to safely treat and dispose of wastewater can lead to severe adverse health effects in affected communities e.g. gastroenteritis, skin or respiratory infections; while the severe weather events of 2023 highlight the potentially life-threatening consequences of failing to properly operate and maintain urban stormwater networks. In short, all three water services (drinking water, wastewater and stormwater) need to be provided safely by WSPs, accepting that in the case of stormwater in particular, there may be matters outside the control of the WSP that influence whether that objective can be achieved.

It is anomalous that other objectives in cl 15 – for example the provision of a service which is reliable and of a quality that meets consumer expectations – apply to *all* water services, yet in the Bill as drafted, only the provision of drinking water needs to be "safe". Further, the current reference to providing "safe drinking water to consumers" does not meaningfully add to the obligation that a WSP will have already under s 21 of the Water Services Act 2021 (i.e. to ensure that the drinking water supplied by the supplier is safe).

Exhibiting a sense of social and environmental responsibility

The objectives of WOs should go beyond the interests of customers and shareholders. As significant public entities delivering water services on behalf of TAs, they should have commensurate obligations to the community more generally. Inexplicably, this responsibility which CCOs under the LGA have (see section 59) is not carried over to WOs under the Bill.

The Councils submit that the cl 15 objectives should include "to exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates." This objective will not dictate or constrain any behaviour by a WSP but will give balance to the other objectives in the Bill as currently drafted.

Relationships with iwi/Māori

It is insufficient for the Bill to leave a WSP's relationship with iwi/Māori to the particular WSP and its shareholders to determine. The Bill should include a universally applicable, high-level objective of performing its functions "in a way that partners and engages meaningfully with Māori in water services planning and implementation".

It is noted that even with the changes to the Taumata Arowai – the Water Services Regulator Act 2020 proposed by the Bill, the operating principles of the Water Services Authority (**WSA**) will still include "partnering and engaging early and meaningfully with Māori". It is consistent for a similar objective to apply to WSPs, who will be providing the water services regulated by the WSA. Again, leaving it to WSPs to decide how they will partner and engage with Māori creates a risk that this will be given insufficient emphasis, with iwi and hapu in some parts of New Zealand meaningfully engaged by their WSP, and others simply left out. While local variation in how to partner and engage early and meaningfully with Māori is both likely and appropriate, the Bill needs to set a minimum requirement or bottom line in this area.

Objectives are merely aspirational, and should become requirements

The Bill (cl 15) includes objectives of a WSP, but no requirements or principles as such. The objectives are aspirational and operate at a high level, whereas requirements or principles (appropriately qualified) would apply at the level of specific WSP decision-making. Under the current drafting, there is no requirement for a WSP to act in accordance with the objectives set out in cl 15 – unlike, for example, s57 of the Local Government (Auckland Council) Act 2009 which states that an Auckland water organisation (i.e. Auckland Council or Watercare) "must" do certain things and "is required" not to pay a dividend. Similarly, s60 of the LGA says that all decisions relating to the operation of a CCO "must be made" under the authority of its board and "in accordance with" its statement of intent and constitution.

The Select Committee is urged to recast the objectives in cl 15 (including the additional matters noted above) as obligations or requirements. This approach would also reduce the level of direction that shareholders need to set through the SOE and WSS (see next point).

2. **The Bill gives TA shareholders extensive controls over WOs, which conflicts with the rationale for establishing a WO and blurs accountability to communities**

Under the Bill, a significant level of control is given to a WO's shareholders. Combined with the extent of legislative compliance necessary, this may compromise the WO's ability to act successfully, and on a sound commercial basis. It also appears at odds with the Preliminary Arrangements Act and the policy positions expressed in LWDW.

The Preliminary Arrangements Act provides for communities to choose their preferred water services delivery option. This satisfies the first objective of LWDW. The process is well in train. Communities are presented with (broadly speaking) two options, with distinct and fundamental differences between them: continuing TA provision of water services; or provision by a "water services CCO", as defined in the Preliminary Arrangements Act.

The concept of a CCO is well understood: a stand-alone company separate to the TA, subject to limited shareholder oversight through high-level strategy documents but otherwise free to get on with its business in a commercial way, guided by competency-based board of directors. Primary accountability for the performance (or non-performance) of the CCO's activities rests with the CCO's board.

The Bill changes this model. The water services CCO option put forward as one of the service delivery options available under the Preliminary Arrangements Act is significantly different to a WO subject to the Bill. The distinction between in-house and CCO (WO) delivery is now unclear – and the differences between these two service delivery options are significantly less than established through the Government's policy announcements from August 2024.

Further, the level of control TA shareholders can exercise over the priorities and activities of the WO will in practice allow TA shareholders and the WO each to "point the finger" at the other, if the WO fails to comply with economic, consumer protection or environmental regulation, or there is low customer satisfaction with the WO's services.

When a WO is already subject to environmental and economic regulation designed to protect the interests of consumers, TA shareholders setting substantive expectations of the WO and

setting its strategic priorities for WO through the SOE (see cl 187) may affect the ability to attract competent and experienced professional directors to the WO's board.

3. **The Bill needs to define the relationships all WSPs, including WOs, are expected to have with iwi/Māori, and refer to the principles of Te Tiriti and Te Mana o te Wai**

The Bill needs much greater clarity on the role of, and relationship WSPs must have with, iwi/Māori when providing water services, and recognise that Iwi will be key stakeholders in water service planning and decision-making. This includes under existing Treaty settlement agreements and environmental co-management frameworks that already provide a model for collaborative approaches to freshwater governance.

The rationale for the Bill's minimalist approach to issues affecting Māori is that it should be up to local councils and iwi/Māori to determine how the relationships and partnerships with Māori work in practice, rather than having a "centrally prescribed model" in legislation. This is on the basis that councils will continue to be responsible for water delivery including existing obligations in the LGA setting out how iwi/ Māori interests will be considered as part of decision-making.[1] The Briefing Paper notes the Cabinet decision that existing council or CCO obligations relating to iwi/Māori interests under the LGA will continue to apply irrespective of service delivery model.

The Bill does not achieve this aim. It fails to take into account that if the WSP is a WO, then *none* of the LGA provisions relating to council decision-making affecting iwi/Māori interests will apply.[2] Contrary to the Briefing Paper, the Bill itself says that a transfer agreement transfers responsibility to the WO (cl 9(1)(b)), but more practically once such a transfer has occurred, the TA will no longer be making decisions about water services, and therefore the TA's own obligations to Māori will not be engaged.

This is an example of a perverse difference that the Bill creates between WSPs which are TAs, and those which are WOs.

Clause 41 should require a WSP to establish and maintain opportunities for Māori to contribute to the WSP's decision-making processes. WSPs that are territorial authorities already have this obligation under s81 of the LGA: the effect of cl 41 as amended would be to place WOs under the same obligation. It is anomalous that only some WSPs (ie TAs, or a regional council that provides water services) should be required establish and maintain opportunities for Māori to contribute to the WSP's decision-making processes.

Clause 41 as currently worded is also misdirected in its focus. The obligation it imposes on a WSP is to "act in a manner that is consistent with Treaty settlement obligations when performing and exercising functions, powers and duties under this Act". If obligations are already imposed on a WSP under Treaty settlements (which have their own legislation), then cl 41 is not required. On the other hand, obligations imposed on other parties (such as the Crown) under Treaty settlements will not generally be relevant to WSPs. Further, in some parts of the country Treaty settlements have not yet been reached: in those areas, cl 41 (because it relates to "Treaty settlement obligations" as defined in that clause) would impose no obligations on WSPs in terms of how they engage with or otherwise interact with iwi and hapu. A more appropriate direction

1 Briefing to the Minister of Local Government dated 3 October 2024 (**Briefing Paper**).

2 Section 60A, which also applies to CCOs, will apply. However, this is the only provision in Part 5 of the LGA imposing obligations on CCOs in relation to iwi/Māori interests, noting that a statement of expectations under s64B *may* address this matter.

under cl 41 would be to take appropriate account of the principles of the Treaty of Waitangi/ Te Tiriti o Waitangi (rather than "Treaty settlement obligations" as defined).

In addition, cl 41 should require a WSP to give effect to Te Mana o te Wai when performing its functions, power, or duties under the Act. This would be consistent with s14(2) of the Water Services Act 2021, which states that "when exercising or performing a function, power, or duty under this Act, a person must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the function, power, or duty". Importantly, however, it would go further insofar as the Water Services Act 2021 relates primarily to the obligations of *drinking water* suppliers, whereas WSPs under the Bill are also responsible for wastewater and stormwater services.

The Bill also fails to ensure that the mix of skills, knowledge, and experience required on the Board of a WO (see cl 40) includes knowledge and understanding of Te Mana o te Wai outcomes and Te Tiriti o Waitangi. Some TA shareholders of a WO may decide that these matters are important when appointing directors to the WO Board, while others may not. This approach risks these vital competencies not being present on the boards of some of New Zealand's new WOs. Amendments to cl 40 are required to make knowledge and understanding of Te Mana o te Wai outcomes and Te Tiriti o Waitangi a mandatory competency that must be held by at least some directors on a WO's board.

4. **The Bill should strengthen its current protections against future privatisation of water services**

A key aspect of the Government's August 2024 policy announcements was that the future Local Government (Water Services) Bill would contain protections against the privatisation of water services. The only provision in the Bill that reflects this policy position is cl 37(2), which states:

> (2) A water organisation must be wholly owned by—
> (a) 1 or more local authorities; or
> (b) 1 or more local authorities and the trustees of 1 or more consumer trusts; or
> (c) the trustees of 1 or more consumer trusts.

However, a TA may apply to the Secretary for Local Government under cl 55(5) for an exemption from this requirement, if it "intends to establish a water organisation that is owned by shareholders of a co-operative company". The ability to obtain an exemption opens to the door to the possible privatisation of water services, by allowing shares in a WO to be owned by an entity other than a TA or consumer trust. This is contrary to the policy direction signalled under LWDW.

The Councils therefore urge that:

- Clause 37(2) be supplemented by a new subclause (2A) which states that, for the avoidance of doubt, a local authority or trustee of a consumer trust is prohibited from transferring its shareholding in a WO to anyone other than another local authority or trustee of a consumer trust that owns or co-own a WO; and

- Clause 55(5), which provides for an exemption from the requirement of local authority or consumer trust ownership of a WO, be deleted.

5. **The Bill should be simplified to reduce unnecessary complexity and compliance costs for WSPs, and WOs in particular**

The Bill is extremely detailed and complex. This is contrary to the overriding purpose of the Bill (cl 3) which is to "establish a framework for local government to provide water services in a flexible, cost-effective, financially sustainable, and accountable manner". Flexibility and cost effectiveness in the delivery of water services are undermined by several aspects of the Bill.

For many issues it should be possible for WOs to be governed by the existing CCO provisions in the LGA, supplemented by minimal bespoke provisions that are necessary because of the special circumstances of WOs, as well as the general law which applies to all companies (including other utility providers).

By way of illustration, at present only 22 sections in the Local Government (Auckland Council) Act 2009, as well as the general CCO provisions in Part 5 of the LGA, apply to Watercare. There is no evidence that Watercare has been unable to effectively carry out its water services functions under its statutory regime. Watercare funds its operations from customer charges that have no statutory basis: the charges paid by its customers are purely contractual. These charges include both fixed and volumetric charges for the provision of water and wastewater services, and infrastructure growth charges in lieu of development contributions charged elsewhere in New Zealand by TAs under the LGA to fund capital expenditure on growth-related infrastructure. By contrast, the Bill contains detailed provisions relating to charges and development contributions, notwithstanding that as a legal person WOs would (like Watercare) be free to set charges of all types as a matter of contract.

For TAs which are WSPs, it should be possible to largely rely on existing LGA provisions which govern all activities of TAs rather than to create a parallel regime which increases the complexity of the TA's operations and compliance obligations. In many cases, the relationship between the LGA regime and the Bill's provision covering the same matter is unclear. For example, the Bill does not state that its provisions in relation to works on private land (see cl 115 to 120) apply in place of their LGA equivalents. That being so, it is unclear whether a TA WSP could simply bypass the regime in cls 116 to 120 of the Bill, and rely instead on the more favourable LGA regime in s181 and Schedule 12 of that Act (noting that a WO would not have this option).

Another example of unnecessary complexity relates to drinking water catchment plans (cl 143). It is not apparent why a TA should be responsible for preparing a drinking water catchment plan where a WO is providing drinking water services. A TA that has transferred its water services functions to a WO is likely to lack the capability to produce such a plan. While a TA can delegate the preparation of a drinking water catchment plan to the WO under cl 143(2), it is not required to do so. The responsibility to prepare the plan should automatically rest with the relevant WSP. Further, the drinking water catchment plan largely duplicates existing requirements under s 43 of the Water Services Act 2021 to prepare a source water management plan.

6. **The Bill should not require the Councils to enter into a transfer agreement with a WO within 6 months**

The definition of water organisation in cl 4 of the Bill includes a CCO that "immediately before the commencement of this Act, was providing water services", and "intends to continue to provide water services on and after the commencement date". On that basis, WWL is likely to be a WO once the Bill comes into force, even if in due course it is dis-established and a new WO

owned by the Councils is established in its place to provide water services in the relevant service area.

DIA's factsheet on the Bill states:

Council-controlled organisations (such as Watercare) that currently provide water services – and will continue to do so after the Bill is enacted – will automatically become water organisations, upon enactment. This means they will be subject to the new Act, and the responsibilities that apply to other water service providers.

Where a CCO becomes a water organisation and does not already meet the statutory requirements that apply to water organisations, it has six months following enactment to make the changes needed (or for territorial authority shareholders to obtain an exemption, if relevant). Similarly, a territorial authority that is a shareholder in a CCO that becomes a water organisation has six months in which to provide a transfer agreement, to formalise the responsibilities and other matters held by the organisation and the authority.

While WWL may be able to meet the statutory requirements that apply to WOs, it is not clear where/how the Bill requires a transfer agreement to be entered into between the Councils and WWL (or a new WO) within 6 months of the Bill coming into force. It would not be possible for the Councils to meet this timeframe. Urgent clarification has been sought from DIA about the basis for this statement in its factsheet.

7. **The Bill's provisions regarding works on private land will hinder infrastructure provision**

The regime proposed in the Bill for entry into private land (see cl 116 to 120) does not sensibly balance the rights and interests of the landowner with those of the WO and will be unworkable. If enacted, it will be a significant impediment to a WO's day-to-day operations, and make the delivery of water services infrastructure by WOs slower and more expensive than under the current LGA regime. As these costs and delays will ultimately be borne by the WO's customers (households and businesses), it will make water services less affordable and hinder economic growth.

The Bill contains no general power for a WO to enter land, even for non-intrusive actions. In every case the WO must go through a highly prescriptive notice procedure which, if consent is not given or unreasonable conditions are imposed, or agreement cannot be reached, escalates to the District Court. In the meantime, the land cannot be entered even, say, to carry out a visual inspection.

By contrast, currently under the LGA the consent process is only needed when physical works on the land are proposed. The LGA gives a general power of entry onto land (but not a dwellinghouse) in s 171 "for the purpose of doing anything that the local authority is empowered to do under this Act or any other Act". The Bill needs an equivalent provision: cl 116 and 117 processes are limited to entry for the purposes of carrying out physical works on the land.

Currently under the LGA, a landowner who does not consent to a local authority undertaking work on their private land that is necessary for water supply, wastewater or stormwater purposes has a right of objection to the TA, and after that a right of appeal to the District Court, whose decision is final: LGA s181 and Schedule 12. The current process in the LGA should also apply where a landowner does not give consent or imposes unacceptable conditions. It puts the

onus on the landowner, rather than the TA, to take the matter to the District Court. In practice this can act to filter out unmeritorious objections.

Under cl 120(5), on appeal to the District Court, the Court may authorise a WSP to carry out construction works or infrastructure placement only if satisfied that "no practical alternative exists". This sets the bar too high – notably higher than other equivalent requirements such as to give adequate consideration of alternatives – see s 204 of the now repealed Water Services Entities Act 2022, or s 171 of the Resource Management Act 1991. For example, there may be more than one route that a water or wastewater pipeline can take (i.e. a practical alternative *does* exist): however, every route involves private land, or only one of the routes allows conveyance entirely by gravity whereas the alternative routes require water or wastewater to be pumped (which is both more expensive and less resilient than using gravity). The test being set in this way under cl 120 is likely to prevent WSPs from being able to provide infrastructure on private land due to the inability to meet the "no practical alternative" requirement.

In general, the powers of entry provisions in the Bill are overcomplicated and in places confusing. It is unclear why the more straightforward regime under the LGA, which staff involved in water services are already familiar with, cannot be used rather than creating a more complex and less workable regime in the Bill.

Note regarding Greater Wellington's position on two areas

While Greater Wellington supports this joint submission, it will also provide its own submission to elaborate on two critical areas: the impact of water services organisations on te taiao / the natural environment and the positioning in relation to mana whenua partnerships. Greater Wellington will take a stronger position than that agreed by the joint councils. Greater Wellington will also submit in relation to how existing legislation relating to its powers and functions for water supply need to be addressed.

Conclusion

The Councils and our Iwi Partners are committed to a sustainable financial model for water services that can deliver network resilience, enable growth, improve harbour and catchment health, and provide excellent, affordable services to our community.

We want to work with Government to ensure that the new water services regime provides the right mechanisms for success. For these outcomes to be achieved, further consideration of the Bill as drafted is required, supported by a commitment to work with local government through the implementation process.

We would like to speak to the Finance and Expenditure Select Committee in support of our submission.

Ngā mihi

Kerry Prendergast

Dame Kerry Prendergast
Chair, Advisory Oversight Group (AOG)
Wellington metro water services delivery plan

For and on behalf of:

Council / organisation	**AOG Representative**
Chair	Dame Kerry Prendergast
Greater Wellington Regional Council	Cr Ros Connolly
Upper Hutt City Council	Mayor Wayne Guppy
Hutt City Council	Mayor Campbell Barry
Porirua City Council	Mayor Anita Baker
Wellington City Council	Mayor Tory Whanau
Te Rūnanga o Ngāti Toa	Helmut Modlik, Tumu Whakarae - Chief Executive Officer
Taranaki Whānui ki Te Upoko o Te Ika / Port Nicholson Block Settlement Trust	Kara Puketapu-DenticeTumu Whakarae | Chief Executive Officer

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Part 2 – detailed comments on specific clauses of the Bill

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
Part 1 – Preliminary provisions		
3.	The opening words in the primary purpose in cl 3(a) focus on the positive aspects of the proposed framework without any balance reflecting potential limits on achieving those matters. This would give rise to a one-sided assessment of whether any proposed action is consistent with the purposes of the Bill. Compare cl 3 with the obligations on Watercare under s 57(1)(a) Local Government (Auckland Council) Act 2009, which qualifies the positive obligation to provide services at minimum cost with the words "consistent with the effective conduct of its undertakings and the maintenance of the long-term integrity of its assets". That section also refers to "customers", who are not mentioned in cl 3. The purpose should include creating a framework that provides for customer-focused water services, in which case the reference to accountability can be removed. Nor is environmental sustainability mentioned, only financial sustainability. "Flexibility" relates more appropriately to the framework being established, not the way water services are provided.	Appropriately qualify purpose in cl 3(a) to take into account real life limits on achieving the purposes, and wider matters. Amend clause 3 as follows: (a) to establish a <u>flexible</u> framework for local government to provide water services in a ~~flexible~~ <u>customer-focused</u>, cost-effective, financially <u>and environmentally</u> sustainable~~,~~ ~~and accountable~~ manner
4.	<u>Definition of "overland flowpath"</u> The definition in the Bill is "any flow path taken by stormwater on the surface of land". This is so broad as to be impracticable and uncertain. The definition of overland flow path in the Auckland Council Unitary Plan, widely used and accepted by local government organisations, would provide certainty as to what is included in these paths.	The definition should be amended to provide that "overland flow path" means "low point in terrain, excluding a permanent watercourse or intermittent river or stream, where surface runoff will flow, with an upstream contributing catchment exceeding 4,000m².".

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	Definition of 'stormwater network' Subcl (b) of the definition of "stormwater network" includes an overland flow path, green water services infrastructure, and watercourses that are part of, or related to, the infrastructure referred to in subcl (a). This particular wording makes it unclear whether an overland flowpath on private land is to be regarded as part of the stormwater network. It is unlikely to be "part of" the infrastructure operated by the WSP referred to in subcl (a), but arguably it is "related to" that infrastructure if stormwater runs across an overland flowpath into a culvert or drain that is owned by the WSP. The importance of this is that a stormwater risk management plan under cl 167(1) must contain a map of the stormwater network (which on the interpretation above would include all overland flowpaths that "connect" in some way to a WSP drain). Clause 167(1) also includes a separate requirement to identify all overland flow paths and watercourses "that receive stormwater from, or take stormwater to, other infrastructure in the network". Reading clause 170 relating to stormwater network bylaws, it seems apparent that the intention is for an overland flowpath on private land to be part of the stormwater network. Clause 164 also states that a WSP's responsibility for management of the stormwater network "extends to overland flow paths and watercourses that are a part of (sic) network". The solution to resolve the uncertainty is to remove the link in subcl (b) to subcl (a), so that an overland flow path, green water services infrastructure, and watercourses are treated as part of the stormwater network regardless of whether or not they are "part of" or "related to" the physical infrastructure owned or operated by the WSP; or alternatively to use the more precise wording found in cl 167(1)(f). Definition of 'stormwater service'	Delete from subcl (b) of the definition the words "includes any of the following that is part of, or related to, the infrastructure referred to in paragraph (a)". Alternatively, replace these words with "any of the following that that receives stormwater from, or take stormwater to, other infrastructure in the network" (the form of words used in cl 167(1)(f)). An alternative is to use the following definition taken from the Auckland Council Stormwater Bylaw 2015: **stormwater network** means a set of facilities and devices, either natural or built components, which are used to convey run off of stormwater from land, reduce the risk of flooding, and to improve water quality, and includes: (a) open drains and watercourses, overland flow paths, inlet structures, pipes and other conduits, manholes, chambers, traps, outlet structures, pumping stations, treatment structures and devices; (b) the public stormwater network; and (c) private stormwater systems.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	The definition of "stormwater service" in subcl (b) expressly "does not include a service relating to a transport corridor". This exclusion is presumably designed to prevent roads and other transport corridors being treated as part of the stormwater network notwithstanding that they serve stormwater functions. But roads are often some of the most significant overland flow paths in any district, and in a functional sense are part of the stormwater network. The meaning of the exclusion is unclear: is only stormwater infrastructure (such as a drain) located *within* a road or other transport corridor excluded, or would the exclusion also cover say a stormwater pond that was located adjacent to the corridor but still providing a service "relating" to the corridor?	Clarify definition of "stormwater service" to address the point raised.
	<u>Definition of 'wastewater services'</u> Subcl (b)(i) of the definition of "wastewater services" implies that the boundary of the service provision and therefore the wastewater network (defined by reference to the wastewater service) is the customer's property boundary. However, the point of supply for wastewater may be inside or outside that boundary. It is suggested that, as with "point of supply" for water in the Water Services Act 2021 (**WSA**), the wastewater services are defined as being provided to the point where the WSP's network connects to the customer's network, but without specifying what that point is. This leaves flexibility to determine that point in any particular situation. Each WSP could publish information as to the point of supply in its supply area in various scenarios. The definition is also circular because "wastewater services" is defined by reference to the "wastewater network" which in turn is defined by reference to the "wastewater service".	Define wastewater services as being provided to the point where the WSP's network connects to the customer's network, but without specifying what the point is.
Part 2 – Structural arrangements for providing water services		

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
Subpart 1 – Responsibility for providing water services *Territorial authority's responsibility*		
8 and 9	The Bill needs greater clarity about what a TA's residual responsibilities, if any, are once it enters into a transfer agreement. Cl 8(1) says the TA is responsible for "ensuring" that water services are provided in its district. Cl 8(2) says it may transfer responsibility for "providing" water services to a WO. In combination this suggests the TA may retain some responsibility for ensuring the services are (properly) provided by the transferee. Clause 9(1) is to similar effect because it says the TA must ensure that water services are provided in its district in one of the listed ways, including through a transfer agreement. Arguably, the requirement to ensure the water services are provided (which may mean properly provided) remains with the TA even if there is a transfer agreement. The purpose in cl 3(a)(i) refers to TAs' responsibility for the provision of water services, and the "different methods by which they can structure service provision arrangements", implicitly to satisfy that responsibility i.e. not necessarily to remove the responsibility entirely. The fact the WO becomes the WSP (cl 12(2)) is not necessarily inconsistent with this. However, cl 9(3) an (4) imply, without stating directly, that where there has been a transfer agreement the TA is no longer responsible for "ensuring the provision" of water services. The precise effect of a transfer of responsibility may influence the relationship between a TA and a WO transferee and the TA's ongoing obligations following transfer.	Provide a clear statement of a TA's responsibilities once it has entered into a transfer agreement i.e. that it no longer has responsibility for providing water services itself. Expressly state that the obligations in cl (4) do not apply where there is a transfer agreement under cl 9(1)(b), rather than leaving that implicit (because transfer agreements are not referred to in cl 9(3)). The TA must have a responsibility to select and implement a delivery model. But where it does that through entering into a transfer agreement, the TA's responsibilities should be simply those of a contracting party (i.e. to enforce the contract at its discretion), together with the general rights and obligations as the shareholder of a CCO under the Bill.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	The position should be clarified by stating that once a TA has entered into a transfer agreement it no longer has responsibility for providing water services itself, or ensuring the WO transferee provides those water services. The obligations on the WO to do so could however (and probably would) be a term in the transfer agreement.	
8 and 9 and the Bill more generally	The Bill is silent on its overall relationship with the LGA. This produces uncertainty and anomalies. For example, a TA which decides to provide water services directly will still be subject to the LGA including the purpose, role and principles in Part 2 of the LGA, and, except where there is an exception in the Bill, the decision-making requirements in Part 6. The same will presumably apply where a TA enters into a contract or arrangement (other than a transfer agreement) where it legally remains the WSP (refer cl 9(4)). However, WOs will not be subject to the LGA. For TAs who will continue to be subject to the LGA when providing water services, there is significant scope for uncertainty as to what legislation will apply in particular scenarios.	Make the Bill a code (to the exclusion of the LGA) in relation to the provision of water services by TAs, perhaps with specified exceptions (for example, s57 re appointment of directors, or s74 re LGOIMA).
9(1)(e)	This paragraph says one of the ways in which a TA must ensure water services are provided in its district is by "becoming a shareholder in a water organisation established by another territorial authority". This is inaccurate as simply becoming a shareholder does not ensure water services are provided – obviously more is needed than that. Further, this paragraph adds nothing to paragraph (b) which says that the obligation to ensure the provision of water services may be satisfied by a transfer agreement.	Delete cl 9(1)(e).

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	Becoming a shareholder in a WO established by another TA is not relevantly different from the TA establishing (and becoming a shareholder in) its own WO. In both cases the services are provided by the WO through a transfer agreement.	
Transfer of responsibilities to a water organisation		
11 and Schedule 2 (contents of transfer agreements)	Section 11(1) says that the section "applies to a territorial authority that intends to transfer responsibility for providing water services to a water organisation". It requires there to be a transfer agreement between the TA and the WO. The section does not provide for the possibility of a transfer agreement between a CCO that provides water services on the date the section comes into force (such as Wellington Water Ltd) and a new WO. There will be existing assets and liabilities of the CCO that are appropriately the subject of a such transfer agreement. There does not appear to be any way for the organisation that is being transferred the responsibilities to confirm that it accepts them. They just need to be transparent to the water org Board (cl12(1)(a)). The only exception seems to be liabilities, where clause 12(3) says that Schedule 9 of the LGA 2002 applies and that Schedule says that a territorial authority can only transfer liabilities with the agreement of the CCO. The risk is that the new organisation is given responsibilities it is unable to fulfil or that carry high risks. Clause 13 does let the new organisation have the right to agree to any changes. There should be some wording around disputes, or what happens if either party does not fulfil its side of the agreement. For example, dispute resolution procedures could be mandatory content for a transfer agreement under Schedule 2. Clause 11(2) could be read as implying there is only one transfer agreement possible under clause 11. The Councils anticipate that, given the scale of the re-	Add a new subclause (8) as follows: (8) Where a council-controlled organisation established before the commencement of this section is responsible for providing water services, and the shareholders of that organisation intend to transfer responsibility for providing water services to a new water organisation: (a) the council-controlled organisation and water organisation must enter into a transfer agreement; and (b) subsections (2), (4) and Schedule 2 apply to the council-controlled organisation as if all references to a territorial authority were references to a council-controlled organisation. Add new clause to Schedule 2 to make dispute resolution procedures mandatory content for a transfer agreement.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	organisation of water services, they may require more than one transfer agreement to transfer specified responsibilities to a new WO, outside the circumstances of clause 13 in which a new transfer agreement is required. We recommend a subclause 11(8) to say that nothing in clause 11(2) – which says that a TA must enter into a transfer agreement with a WO – prevents the TA and WO entering into more than one transfer agreement under this clause.	Insert a new clause 11(9) stating that nothing in clause 11(2) prevents the TA and WO entering into more than one transfer agreement under this clause.
11(3)	The distinction drawn here and elsewhere in the Bill (see comment on cl 9(1) above)) between WOs the TA has established and those in which it is a shareholder is unnecessary and unduly complicating. The relevant prerequisite in both cases is that the TA is a shareholder in the WO. The distinction *is* relevant in the context of the mechanisms by which the WO can be established or the TA can become a shareholder, but not once that WO is established or the TA's relationship with the WO from that point on.	Amend cl 11(3) by deleting paragraph (a) i.e. to simply provide that a TA may enter into a transfer agreement with a WO in which it is a shareholder.
11(5)	This subclause prohibits one territorial authority entering into a transfer agreement unless "all of them do". This fails to recognise that in practice, the different TAs establishing (or that are shareholders in) a WO will enter into transfer agreements sequentially, rather than all at the same time. As drafted, Council A (which decides first) will be precluded from entering into a transfer agreement because Councils B and C have not already done so.	Reword cl 11(5) to state that if more than one territorial authority is a shareholder in a WO, a transfer agreement entered into by one territorial authority has no effect until all TAs that are shareholders in the organisation have entered into a transfer agreement. Alternatively provide that one TA may not enter into the transfer agreement until all of them have *resolved* to do so. Once resolutions have been passed there is very high degree of certainty that the agreements will be entered into.
12	Clause 12 sets out the purpose and effect of a transfer agreement, which must contain the matters in Schedule 2 (cl 11(6). Those matters include (cl 3(g) of Schedule 2) contracts, including service agreements with any other person.	Include in cl 12 a provision equivalent to s 35 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 stating that relevant

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	There is nothing in the Bill which says that such transferred contracts etc will automatically apply to the WO in the same way as they did to the TA. Indeed, Schedule 9 of the LGA, which applies (see cl 12(3)), says that liabilities are not transferred except with the agreement of the other affected parties. In practice this means that contracts will not transfer without third party agreement because it is not feasible to transfer the benefit but not the liabilities associated with a contract. This will create difficulties, as the TA will remain contractually responsible for performance but will no longer have legal responsibility for the provision of the water services. The Bill must include a deeming provision which says any transferred contracts etc have the automatic effect of substituting the WO for the TA in that contract. This was the approach successfully used on Auckland reorganisation in 2009, which also involved the transfer of assets and functions to CCOs: see s 35 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009. See also the comment on cl 39 relating to the identification of the contracts etc which are transferred.	contracts, agreements and other arrangements of a TA or council-controlled organisation that, on the date the section comes into force, provides water services in the service area of a WO become contracts, agreements and arrangements of the WO. Exclude the application of cl 12(3) of Schedule 9 of the LGA.
13(1)	The clause covers the circumstances and process where a new transfer agreement is entered into. Clause 13(1) is limited to a transfer agreement with a WO which the TA *has established* i.e. it does not include the alternative scenario of a TA acquiring shares in an existing WO. This is another example of the unnecessary distinction referred to in the comment under cl 11(3). It is unclear why the situations in cl 13(1)(c) and (d) (ceasing to be a shareholder and disestablishing the WO) are qualified as "if applicable". Each of the options only applies if the relevant decision has been made. The language of a "further" WO in cl 13(1)(e) is odd.	Amend cl 13(1) to delete the reference to establishment and provide that it applies where a TA has entered into a transfer agreement with a WO. Delete "(if applicable)" in cls 13(1)(c) and (d). Amend "further" to "different" in cl 13(1)(e).

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
13(3)	This subclause requires a territorial authority to obtain the agreement of non-territorial authority shareholders before entering into certain types of agreement (in subcl (1)(c) and (d)). However, cl 13(2)(b)(ii) already requires there to be agreement with all shareholders on "all relevant matters". Clause 13(3) therefore duplicates 13(2)(b)(ii) and introduces uncertainty about the scope of the "relevant matters" in cl 13(2). As a matter of principle, it should be a requirement that all shareholders in the WO consent to any of the matters in cl 13(1) (and not just those in cl 13(1)(c) and (d)), as they may all significantly affect the WO and its viability. Clause 13(3) is also premised on cl 13(1) applying only when the WO has been established by the TA (see previous comment).	Delete cl 13(3). If cl 13(3) remains in some form, amend to refer simply to "other shareholders in a water organisation", rather than "shareholders in a water organisation other than the territorial that established it".
Water service providers		
15	The clause sets out the objectives of WSPs. However, there is no corresponding obligation on the WSP to meet those objectives, with or without qualifications. This can be compared the obligations on Watercare in s 57 of LGACA, which uses the term "must". It can also be compared to: • cl 16, which states that a WSP "must act in accordance with the following financial principles"; • cl 186, which states that a WO must "give effect to a statement of expectations provided by the shareholders of the water organisation". Accordingly, the cl 15 objectives are subordinated to both the cl 16 principles and shareholder expectations in the SOE. The objectives in cl 15 will have little impact on WSP decision-making without obligations on the WSPs which are linked to the objectives.	Amend cl 15(1) as follows: (1) ~~The objectives of a~~ A water service provider ~~are :~~ must exercise its functions, powers and duties in accordance with the following objectives:

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
15(1)	The objectives of water services set out in this clause are framed too narrowly. Clause 12 may be compared with s 15 of the now repealed Water Services Entities Act 2012 (**WSEA**), which included objectives to "protect and promote public health", "protect and promote the environment", and to "support and enable planning processes, growth, and housing and urban development". In particular: • The reference in cl 15(1)(a)(i) to providing "safe drinking water to consumers" would not encompass the provision of safe wastewater or stormwater services to consumers or protecting people from the risks of flooding through stormwater. It is anomalous that other objectives - for example the provision of a service which is reliable and of a quality that meets consumer expectations - apply to all water services, yet only the provision of *drinking water* needs to be "safe". Further, the current reference to providing to providing "safe drinking water to consumers" does not meaningfully add to the obligation that a WSP will have already under s 21 of the Water Services Act 2021, whereas a wider reference to providing "safe water services" would extend that obligation. • The objective in cl 15(1)(a)(ii) of providing water services that "do not have adverse effects on the environment" is unrealistic, because the provision of water services (for example, the abstraction of source water from rivers or aquifers) will always have *some* adverse environmental effects. A more realistic objective would be to provide water services in a way that "minimises (so far as practicable)" or "aims to minimise" adverse effects on the environment. Note that Greater Wellington supports the government's approach to achieve no adverse effects, as outlined in its own submission.	Amend cl 15(1) to include the identified omissions within the statutory objectives of WOs, in particular: • In cl 15(1)(a)(i), replace the words "drinking water" with "water services"; • In cl 15(1)(a)(ii) replace the words "do not have" with "in a way that minimises (so far as practicable)"; • Add a new cl 15(1)(a)(vii) as follows: support the housing growth, urban development and economic development objectives of the territorial authorities in its service area; and • Add a new cl 15(1)(c)(iii) as follows: in a way that partners and engages meaningfully with Māori in water services planning and implementation • Add a new cl 15(1)(f) as follows: to exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates • Add a new definition in cl 15(2) as follows:

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	• There is no reference in cl 15 to providing water services in a way that supports housing growth and urban development, contrary to the government's August 2024 policy announcements. The water services delivery plan prepared under s 8 of the Local Government (Water Services Preliminary Arrangements) Act 2024 (**Preliminary Arrangements Act**) must demonstrate a commitment to deliver water services in a way the supports the TA's housing growth and urban development, and not carrying that aim through into the WSP's objectives in the Bill is a significant omission (the delivery plan will have no ongoing life once the delivery arrangements are established). It is insufficient to leave "supporting housing growth and urban development" as a matter that shareholders of a WO can raise through the SOE or in its comments on the draft WSS. • There is no reference in cl 15 to partnering and engaging meaningfully with Māori – compare this to the operating principle in s 14(g) of the now repealed WSEA. Legislative recognition be given to the role of iwi as key regional stakeholders in water service planning and implementation. • While some wording from s 59 of the LGA 2002 relating to objectives of CCOs has been carried over, there is no reference to exhibiting a "sense of social and environmental responsibility by having regard to the interests of the community in which it operates" (cf s 59(1)(c) of the LGA; nor is "good employer" (referred to in cl 15(1)(e)) defined, unlike in s59(2) of the LGA.	**good employer** has the same meaning as in clause 36 of Schedule 7 of the Local Government Act 2002.
16	The financial principles for water services providers currently only refer to revenue and expenses but there is nothing about paying off debt. Clause 16(1)(a) could be interpreted as saying you can only spend revenue directly on the services and not on debt repayments.	Amend cl 16(1)(a) as follows (a) the provider must spend the revenue it receives from providing water services on providing <u>or funding</u> water services

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
		(including expenditure on maintenance, improvements, and providing for growth):
17(1)	This subclause states that a WSP that provides water services in its service area must continue to provide water services "in accordance with this Act" and "maintain its capacity to meet its obligations under this Act". This wording does not (but should) recognise a TA's power to transfer its responsibility for providing water services to a WO under cl 11. Nor does cl 17 cover the reverse scenario of a WO ceasing to provide water services because the TA wishes to resume responsibility itself or wishes the services to be provided by a different WO. Clause 17 is based on s 130 of the LGA, but the exceptions to the s 130 obligations in ss 131 to 137 (for example, in relation to closing down small water services) are not carried over. There should be the ability to close down small water services if the WSP obtains a mandate to do so from the affected community as provided for under the current LGA provisions.	Amend cl 17(1) to explicitly recognise the possibility of transfer of responsibility either to or from a WO as exceptions. Add equivalent provisions to ss 131 to 134 of the LGA in relation to closing down small water services.
17(2)	Clause 17(2)(c) refers to an obligation to comply "with subsection (3)". There is no cl 17(3).	Delete cl 17(2)(c) or add the intended cl 17(3) (subject to what that clause says).
Limitations on transfer agreements, contracts, and joint arrangements		
18	It is suggested that any transfer of ownership by a WO, even within the limits of cl 18, should be subject to the consent of all shareholders. The effect of such a transfer may be to fundamentally change the basis upon which the WO was established and received the infrastructure. The relationship between cl 18(3) and the terms of a transfer agreement is also unclear e.g. even if the transfer agreement purported to prevent further transfer of ownership this may not prevail over cl 18 which arguably gives a WSP a statutory	Provide that cl 18(3), in the case of a WO, is subject to the consent of all of the shareholders and the provisions of any relevant transfer agreement.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	right to transfer its ownership of water services infrastructure in certain circumstances.	
Water supply ensured if supplier facing significant problem, etc.		
20	It is unclear whether this applies to any drinking water supplier within area that a water services provider is responsible for.	Amend cl 20(1)(a) (i) as follows: (i) becomes aware that ~~a~~ <u>any</u> drinking water supplier <u>in its service area</u> is facing a significant problem or significant potential problem in relation to drinking water supply;
Decision making by territorial authorities		
25	The relationship between cls 25 to 30 and Part 3 of the Preliminary Arrangements Act is not clear. In particular, cl 25(7) refers to the possibility of "inconsistency arising between any of the requirements in sections 26 to 30" and corresponding alternative requirements in Part 3 of the Preliminary Arrangements Act. There would be no inconsistency if the provisions in cls 26 to 30 of the Bill "take over" on the Bill's enactment, with the equivalent Preliminary Arrangements Act provisions being repealed at the same time. Then, they would never overlap in time. However, this may create difficulties for TAs who may be part way through the process at the time the Bill is enacted. Accordingly, the better way to ensure that the Preliminary Arrangements Act regime and clauses 26-30 do not operate concurrently is to delay commencement of clauses 26 to 30 to a later date such as 1 January 2016, to allow completion of Preliminary Arrangements Act processes. An alternative which would avoid this problem would be for the Bill to be clear that the change proposals covered by cls 26 to 30 of the Bill are changes from the initial water services arrangement determined under the Preliminary Arrangements Act. This approach would not require the repeal of the Preliminary	Clarify in cl 25 that a "change proposal" does not include a decision under the Preliminary Arrangements Act to establish a WO or become a shareholder in a WO. Delete cl 25(7).

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	Arrangements Act provisions; they simply would not apply to the decisions under the Bill. The "in the event of inconsistency" cl 25(7) could then be removed.	
25 to 30	These clauses set out the procedural requirements when a TA is proposing to make certain changes to the provision of water services (a change proposal). As worded, the provisions are directed at the TA(s) who is/are proposing the change, however all affected TAs (if there are other shareholders as well) must comply with cls 26 to 30 (cl 25(4)). It is not clear how cls 26 to 30 apply to such other TAs or indeed what their relevant decision is. Presumably their decision (if they are not one of the proposers) is whether to consent to the change, but if so that should be made clear. Also, as the proposal whether to consent or not is different to the change proposal, there need to be bespoke process requirements – for example, cl 26 cannot apply to that TA.	Redraft or add to cls 25 to 30 to specifically cover the situation of a shareholder who is not making the change proposal, including specifying what decision that TA is making.
26	Self-evidently the existing approach cannot be "an option for achieving the end intended to be achieved by the change proposal". It would be better for this clause to impose an obligation to identify the objective to be achieved by a change proposal, and the extent to which that objective is achieved by the existing approach to provide water services, the change proposal, and one further reasonably practical option, if available.	Reword cl 26 accordingly.
27	Clause 27(1)(b) imposes a requirement to consult on an amended proposal, if consultation on a change proposal "results in significant amendments to the proposal". However, cl 27(3) sets out matters a territorial authority **must** have regard to when "deciding whether to undertake further consultation under subsection (1)(b)". This is internally inconsistent, if cl 27(1)(b) applies consultation is mandatory, not discretionary.	Amend clause 27(1)(b)(ii) as follows: if the consultation results in a significant amendment to the proposal, ~~must~~ <u>may</u> consult on the amended proposal;

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	We question whether further consultation should be mandatory under cl 27(1)(b) even if consultation results in a significant amendment to the change proposal. So long as that amendment is "within scope", ie a foreseeable outcome of the consultation and "on the table" from the community's perspective, additional consultation seems unnecessary, cumbersome and time-consuming. The matters a council must have regard to under cl 27(3) make more sense if additional consultation on an amendment to a proposal is discretionary, rather than mandatory.	
28	Clause 28(1) requires the information made publicly available during consultation to include the proposal, an explanation of the proposal and the reasons for the proposal (para a); and an assessment of the identified options including "the option that the territorial authority prefers, and why (para b)". This option is the proposal, and hence para b duplicates the requirements of para a.	Reword cl 28(1)(b) as follows: an assessment of the other options identified under section 26 and explanation of why these are not preferred;
32(1)	Clause 32(1)(e) lists as one of the ways in which a regional council may provide water services, becoming a shareholder in a water organisation established by a territorial authority in the region. As with our comment in respect of cl 9, water services are not provided by becoming a shareholder in a WO – becoming a shareholder in a WO is likely to be associated with the transfer of the regional council's responsibilities to the WO.	Delete cl 32(1)(e).
33(2)	This clause says that a TA may not transfer responsibility for the provision of water services to the regional council for the region in which the district is located. It is not clear why this is necessary (especially in a clause headed "Transfer of responsibilities **to** territorial authorities"), when transfer to a regional council is not one of the permitted options for a TA's water services provision under cl 9.	Delete cl 33(2).
Subpart 2 – Regions in which regional councils also provide water services		

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
33(2)	This clause says that a TA may not transfer responsibility for the provision of water services to the regional council for the region in which the district is located. It is not clear why this is necessary (especially in a clause headed "Transfer of responsibilities **to** territorial authorities"), when transfer to a regional council is not one of the permitted options for a TA's water services provision under cl 9.	Delete cl 33(2).
Subpart 3 – Water organisations *Water organisations: establishment and ownership*		
37(2)	This subclause is the Bill's only protection against the possible future privatisation of water services. It states that a water organisation must be wholly owned by one or more local authorities; one or more local authorities and the trustees of one or more consumer trusts; or the trustees of one or more consumer trusts. It needs to be reinforced by a provision that expressly prohibits a local authority or trustee of a consumer trust from transferring its shareholding to a different type of entity.	Insert a new subclause (2A) which states that, for the avoidance of doubt, a local authority or trustee of a consumer trust is prohibited from transferring its shareholding in a WO to anyone other than another local authority or trustee of a consumer trust that owns or co-own a WO.
37(3)	This clause states that shares in a WO do not provide the shareholder with any right, title, or interest in the assets or liabilities of the WO. However, shareholding may confer a contingent right or interest: one purpose of a shareholding, or a particular class of shares, may be to determine what the respective interests of the shareholders are in the event that the company is wound up and the assets need to be distributed to the shareholders. This type of shareholding would recognise the unequal contributions (in terms of assets) between different sized shareholders of a multi-council CCO.	Delete cl 37(3).
39	Clause 38, which prohibits a WO from doing anything other than providing water services in accordance with the Act, is stated in absolute terms – whereas in fact it is subject to the ministerial exemption power in cls 55 to 58 of the Bill.	Clause 38 should be explicitly subject to cls 55 to 58.
39(1)	This clause provides that a territorial authority proposing to establish or become a shareholder in a WO must "consider how any existing contracts, agreements or	Include in cl 12 a provision equivalent to s 35 of the Local Government (Tamaki Makaurau

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	arrangements between the territorial authority and a third party [which includes an iwi, hapū or other Māori organisation] that relate to providing water services will apply in relation the water organisation". Clause 3 of Schedule 3 (Content of transfer agreements) says that the transfer agreement must specify, amongst other things, "contracts, including service agreements between the territorial authority and any other person". This overlaps with cl 39 because deciding whether to include a contract in the transfer agreement will necessary involve considering how the contract will apply. However, cl 39 goes further by referring also to other arrangements. In our experience, it will not be possible to comprehensively identify and assess a TA's existing contracts, agreements and or arrangements relating to the provision of water services. Not all such agreements will be known or readily obtainable, and some will be multifaceted, covering water services and other matters. Inevitably, therefore, the contracts etc considered under cl 39 and identified in the transfer agreement will be incomplete. The Bill should address this by setting out the default position that *all* contracts, agreements or arrangements relating to the provision of the water services and infrastructure transferred to the WO automatically become contracts etc of that WO. It could also provide for exceptions, to cover specific known contracts etc which the TA wishes to retain or are inappropriate for transfer. This issue is linked to that in cl 12 discussed above, about the automatic substitution of the WO for the TA in the contracts etc with third parties which are transferred. The model in s 35 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 can also be used here. It is logical to address both matters together, in cl 12.	Reorganisation) Act 2009 stating that relevant contracts, agreements and other arrangements of a TA or council-controlled organisation that, on the date the section comes into force, provides water services in the service area of a WO become contracts, agreements and arrangements of the WO.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
Governance of water organisations: general		
40(2)	Clause 40(2) requires that "the directors of a water organisation must collectively have an appropriate mix of skills, knowledge, and experience in relation to providing water services." It but does not, does not specify that this mix of skills, knowledge, and experience must include knowledge of te mana o te wai outcomes or Te Tiriti o Waitangi. Clause 40(5) states that cl 40 applies "in addition to "the relevant provisions in Part 8 of the Companies Act 1993 and Part 5 of the LGA 2002". This wording does not identify what those "relevant provisions" are, thereby creating uncertainty. For example, it could just be s 57 of the LGA which relates specifically to the *appointment* of directors, or it could be other provisions in Part 5 that relate to directors (such as s58 relating to the role of directors). Section 57(3) of the LGA, in particular, states: When identifying the skills, knowledge, and experience required of directors of a council-controlled organisation, the local authority must consider whether knowledge of tikanga Māori may be relevant to the governance of that council-controlled organisation. Assuming this section is made relevant via clause 40(5), it only requires *consideration* of whether knowledge of tikanga Māori may be relevant to the governance of that council-controlled organisation. It does not make knowledge of tikanga Māori, let alone te mana o te wai outcomes or Te Tiriti o Waitangi, a mandatory competency on the WO board.	Include a requirement that the directors have knowledge of te mana o te wai outcomes and obligations under Te Tiriti o Waitangi. This could be achieved by amending clause 40(2) as follows: (2) The directors of a water organisation must collectively have an appropriate mix of skills, knowledge, and experience in relation to providing water services, <u>including Te Mana o te Wai outcomes and the Treaty of Waitangi/Te Tiriti o Waitangi</u>. Amend cl 40(5) to specify which provisions in the Companies Act 1993 and LGA 2002 apply to the appointment of directors. These provisions should expressly include s57(3) of the LGA 2002.
41(1)	This clause imposes a positive obligation on a WSP to "act in a manner that is consistent with Treaty settlement obligations when performing and exercising	Clause requires redrafting. Possible options are set out under "issue/comment". These include replacing clause 41 as currently drafted with the following:

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	functions, powers and duties under this act". A Treaty settlement obligation may be an obligation in a Treaty settlement Act or a Treaty settlement deed. Clause 41 is in a part of the Bill dealing with the governance of WOs, and so it is unclear why the clause is drafted as applying to the wider category of WSPs (which will include TAs). Clause 40 should be amended accordingly, or the clause relocated. WOs (as opposed to the Crown) will not have obligations under either a Treaty settlement Act or a Treaty settlement deed, so it is unclear what the requirement to act consistently with Treaty obligations means in their case. TAs may sometimes have obligations under a Treaty settlement Act, but they are already required to comply with that legislation and it is difficult to see what cl 41 adds. The current wording, which focuses on "treaty settlement obligations", also excludes iwi and hapū who have not yet entered into Treaty settlements. This is anomalous. Further, in some parts of the country Treaty settlements have not yet been reached: in those areas, cl 41 (because it relates to "Treaty settlement obligations" as defined in that clause) would impose no obligations on WSPs in terms of how they engage with or otherwise interact with iwi and hapu. A more appropriate direction under cl 41 would be to take appropriate account of the principles of the Treaty of Waitangi/ Te Tiriti o Waitangi (rather than "Treaty settlement obligations" as defined). This clause (relating to Treaty settlement obligations) in insufficient recognition at the governance level of the importance of meaningful partnership between the WSP and Māori. The clause should be reframed as a general requirement for WOs (or WSPs) to act in a manner which is consistent with Treaty principles. Cluase 41 should also follow the precedent of s81 LGA which states that a local authority must establish and maintain processes to provide opportunities for	A water services provider must— (a) take appropriate account of the principles of the Treaty of Waitangi/te Tiriti o Waitangi and Te Mana o te Wai; and (b) establish and maintain opportunities for Māori to contribute to its decision-making processes.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	Māori to contribute to the decision-making processes of the local authority. WSPs that are territorial authorities already have this obligation under s81: the effect of cl 41 as amended would be to place WOs under the same obligation. It is anomalous that only some WSPs (ie TAs, or a regional council that provides water services) should be required establish and maintain opportunities for Māori to contribute to the WSP's decision-making processes. In addition, cl 41 should require a WSP to give effect to Te Mana o te Wai when performing its functions, power, or duties under the Act. This would be consistent with s14(2) of the Water Services Act 2021, which states that "when exercising or performing a function, power, or duty under this Act, a person must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the function, power, or duty". Importantly, however, it would go further insofar as the Water Services Act 2021 relates primarily to the obligations of *drinking water* suppliers, whereas WSPs under the Bill are also responsible for wastewater and stormwater services.	
Governance of water organisations: consumer trusts		
44(3)	This says that "a consumer trust exists for the sole purpose of the ownership for which it is established, and its trustees must not have any roles and responsibilities other than their roles and responsibilities as shareholders in a water organisation." Presumably the words "of the ownership" are a typo and should be deleted. The requirement that trustees not have any other roles or responsibilities would literally exclude anyone from being a trustee. Everybody has some roles or responsibilities. The apparent intention is for a trustee to only have one role vis-à-vis the WO. The reference to reference to roles and responsibilities of the trustees should therefore be amended to read "trustees must not have any roles	Clause 44(3) should be redrafted accordingly.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	and responsibilities in relation to a water organisation other than their roles and responsibilities as shareholders in a that water organisation."	
Exemptions relating to water organisations and consumer trusts		
55(2)	This subclause allows a TA to apply to the Secretary for Local Government for an exemption from the clause 37 requirement that WOs must be wholly owned by local authorities or a consumer trust, if it "intends to establish a water organisation that is owned by shareholders of a co-operative company". This ability to apply for an exemption goes against the Government's August 2024 LWDW announcements, which clearly stated that water services could not be privatised, and the rationale for it is unclear. The ability to obtain an exemption from these ownership restrictions opens to the door to the possible privatisation of water services, by allowing shares in a WO to be owned by an entity other than a local authority or consumer trust.	Delete clause 55(2).
55(4) and 55(6)	Clauses 55(4) and (6) appear to be duplications.	Remove duplication.
Part 3 – Provision of water services: operational matters		
Subpart 1 – Charges for water services		
60	Clause 60(1) states that a WO "may set and collect charges" for water supply, stormwater and wastewater services. It is unclear whether these charging powers are intended to be a code i.e. exclude non-statutory charges such as contractual charges. On the face of it, the wording is permissive ("may") which would not rule out contractual charging, but the fact that the subpart does not apply to Watercare, which uses contractual charges, suggests the regime in the Bill is intended to be instead of rather than in addition to contractual charging. Where	Assuming the intention is that WOs may not use contractual charging, cl 60(1) should be amended to state that a WO may only set or collect charges for water supply, stormwater and wastewater services in accordance with this Act. Alternatively, cl 60 should be amended to explicitly recognise a WO power to set both statutory and

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	contractual charging is permitted, e.g. in a development agreement, that is expressly authorised (cls 106 to 106).	contractual charges, and set out limitations (if any) applying to both types of charge (for example, the prohibition on property value-based charges in cl 60(6)). Presumably contractual charges would also have to be set uniformly across all contracting customers, rather than bespoke.
59 and 60(1)	Clause 60(1) states that a *WO* may set and collect charges for water supply services, stormwater services and wastewater services. Clause 60 does not apply to the wider category of "water service providers", which includes territorial authorities. It is not clear in policy terms why councils should not be subject to section 60, unless it is considered they already have adequate powers to fund water services through rates, charges to recover costs under s150 of the LGA, or contractual charges for goods and services supplied under s12 of the LGA. Those charging powers are not as clear as those specified in cl 60, and again it is not clear why in policy terms a TA WSP should have different charging powers to a WO.	Amend cl 60 so that it applies to all WSPs, not just WOs.
60(2)	Clause 60(2) sets out a non-exclusive list of the matters for which charges may be set. However, the charges for providing the specified services (water supply, stormwater or wastewater) in cl 60(2)(a)) are limited to charges for the initial connection and therefore that clause is too narrow. Presumably charges for water supplied to or wastewater discharged from a property are intended to be covered by the more general clause 60(2)(d) which refers to charges for meeting costs incurred by the WO in performing its functions. However, charges for, say, wastewater services provided to a property (or indeed all properties) in the service area may not precisely reflect the cost of providing that service. The reference to charges "meeting the costs" that the WO incurs may encourage customers to challenge certain charges on the basis that they are not demonstrably "cost-based". There should be a broader power to charge for water supply, wastewater and stormwater services that is not necessarily constrained by	Amend cl 60(2)(a) to read "any part of the services provided by the water organisation specified in subsection 1 (the **specified services**) including charges for the supply of water and for the connection to or disconnection from 1 or more of the water organisation's water services networks."

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	the cost of providing each service. Regulation by the Commerce Commission will provide protection against excessive charging. Clause 60(2)(a) should cover any services provided by the WO, including water services supplied and connection/disconnection to/from the WO's networks.	
60(2)(b)	This is presumably a reference to development contributions in which case there should be a bracketed cross-reference to subpart 2. Further, the same language – that in cl 78(1) – should be used when describing what the relevant charge is for.	Cross-reference to development contributions in part 3 subpart 2. Amend cl 60(2)(b)(i) to read "the additional or increased demand on water services infrastructure used for 1 or more of the specified services".
60(4)	This clause sets out various things that a WO may do "when determining whether to set a charge, or how a charge is to be collected". However, the matters listed in paragraphs (a) to (e) are not considerations relevant to deciding whether or not to set a charge – they are worded as different types of charges that may be imposed. There should be explicit recognition in cl 60 that A WO may which to set reduced charges for vulnerable customers, or remit charges payable by these customers (noting that if a TA was the WSP, such customers might qualify for rates relief).	Replace the opening words of cl 60(4) with "A water organisation may set (by way of example)…" Add a new para (f) to cl 60(4) as follows: (f) set reduced, or remit, charges payable by vulnerable customers.
62(2) and (4)	These clauses set out who is liable to pay a serviceability charge. This differs from (but is very similar to) the persons who are generally liable for water services charges under cl 67. It is unclear why a different formulation has been used in cl 62. Given that relevant billing information will come from the TA (cl 73), the cl 67 approach should be used for cl 62 as well. This is the information which will be held by the TA in its rating information database.	Amend cl 62(2) to read "The water organisation may set a charge (**serviceability charge**) for the property." Amend cl 62(3) to read "However, if the property is 50% non-rateable land specified in Part 2 of Schedule 1 of the Local Government (Rating) Act 2002, the charge for the property may be no more than 50% of

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
		the charge which would otherwise be set for the property."
63(1)(a)	This clause provides for a transition from property value-based rates charging to non-property-based charging under the Bill. We have a couple of drafting recommendations.	Delete "that is recently established" in cl 63(1)(a) (imprecise language and doesn't seem to add anything). Replace "on the basis of property valuation, including the annual value, land value, or capital value of their property" at the end of cl 63(1)(b) with "on the basis of the property's rateable value". Replace "property valuation" with "rateable value" throughout.
64	This clause requires a WO to publish a list of water service charges set under cl 60. See our comment on cl 60 above as to whether contractual charging is also permitted. If yes, these should also be posted on the WO's website.	If contractual charging is possible, amend cl 64 to refer to water services charges as meaning charges set under cl 60 or through a contract between a WSP and its customers.
64(1)(a)	This clause contains the first reference (in passing) to an "annual billing period". There seems to be no good reason for requiring a WO's charges to be fixed for 12 months. The purposes of the Bill include flexibility and WOs are not subject to the rating cycle of TAs.	Remove the reference to "annual billing period" in cl 64(1)(a). Amend cl 60 to expressly state that the charges can be set from time to time. Alternatively, if the intent is that charges must be annual, cl 60 should state that.
64(2)	This clause refers to "customised or otherwise unusual" charges. This implies that cl 60 charges can be individualised rather than uniformly applied. If so, this should be expressly stated in cl 60. The expression "customised or otherwise unusual" also requires clarification.	Clarify whether non-uniform charging is possible and if so provide for that expressly in cl 60. Use a more precise expression than "customised or otherwise

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
		unusual" charging, perhaps by reference back to the above addition to cl 60.
65	This clause prohibits double charging by a WO/TA for the same service. However, it is not clear how the WO and the TA could ever be providing the same service. Clause 66 covers the transitional period where there is transfer to a WO. Even if that situation can arise, the clause says the TA can't charge if the WO does (cl 65(1)) and the WO can't charge if the TA does (cl 65(2)). This creates a possible standoff or "first come first served" scenario. Assuming the possibility of double charging could arise, the clause needs to identify whose charges prevail.	Delete clause in its entirety unless it can be demonstrated that WO and TA could in theory both be providing the same water service. If that situation can arise, specify which charge takes precedence.
67(1), (4) and (5)	Clause 67 sets out who is liable for water services charges. It is modelled on the liability for rates under the LGRA. The identification of liable person in cls 67(1)(b) and (c), and applying cls 67(4) and (5), is complex and based on the LGRA provisions. These were required transitionally in 2002 when the LGRA moved from occupier to primarily owner liability, and existing leases had not been drafted in that context. There is a case for simplification given that, with the passage of time, most leases will now provide for who, as between lessor and lessee, is liable. However, as this information required for WO charging will come form the TA, the same approach as in the LGRA must be used. However, as that there are no material differences between cl 67(1) and the definition of "ratepayer" in the LGRA, it would be much more straightforward to say that the person liable for water services charges is the ratepayer of the property under the LGRA. If cl 61(1) is to remain in the present form, it should be made clear (as in the LGRA) that the persons liable in paras (a), (b) and (c) are alternatives rather than jointly	Amend cl 67(1) to say "The ratepayer of a property is liable to pay water charges (other than trade waste charges) in respect of the property", with a definition of "ratepayer" later in the clause. If, contrary to the above, the more detailed cl 67(1) is retained, add "or" at the end of cls 67(1)(a) and (b).

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	liable. Clause 67(2) indicates that in relation to cl 67(1)(c) but it needs to be stated throughout.	
70	The Bill does not contain any clauses dealing with the mechanics of invoicing and payment. This may be welcomed as giving flexibility for the WO to determine its own systems. However, one matter which should be in the Bill is to say **when** charges are payable before they became a debt. The Bill should impose an obligation on the liable person to pay the charges on or before the due date. This would most logically go between cls 69 and 70 or at the beginning of cl 70.	Add new cl 70(1) "A water services charge must be paid by the due date." This will probably require a definition of "due date" to be added in the Bill. The current cl 70 will then become cl 70(2).
Penalties on unpaid water services charges		
71	This clause authorises the addition of penalties on unpaid charges. The clause also refers to "charges for the financial year" – see comment on cl 64 that charges should not have to be annual. The clause requires the penalty regime to be authorised by the WO's board. The charges themselves do not specifically require board authorisation (cl 60) which seems to be inconsistent.	Delete reference to charges set for the financial year, and instead say the resolution must be made before or at the same time as the setting of the charges to which the penalties may be applied. Make cls 71 and 60 consistent as to whether a board resolution is necessary.
72	Clause 72 sets out the types of penalties which may be added, and when. It is based on the penalty regime in the LGA. The clause seems overly complicated for present purposes especially the timing requirements. The LGRA provision applies in the context of prescribed timing and other requirements for setting the rates, invoicing and payment which do not apply here. The clause should therefore be simplified so the penalty regime us more appropriate to charging by WOs.	Simplify and tailor to charging under the Bill. Suggest that that penalties should be able to be added: • on default in payment of a particular invoice (except an invoice for contributions) on or before the due date of that invoice;

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	It is suggested that penalties should be able to be added: • on default in payment of a particular invoice on or before the due date; • every 6 months thereafter, on the full amount of any outstanding payments at that date. Consider whether this should apply to development contributions - probably not but the terms of any requirement to pay interest on unpaid DCs should be in the contributions policy.	• every 6 months thereafter, on the full amount of any outstanding payments at that date.
Subpart 2 – Development contributions		
General	The Bill largely transposes the development contributions regime from the LGA. The Treasury is reviewing development contributions under the LGA on the basis that they have insufficiently recovered growth related capital expenditure.	Before the Bill is enacted, planned changes to the LGA development contribution regime should be carried over so that WOs (like TAs) benefit from simplification of the development contributions regime.
78(2)	This clause states that a WO "must only recover a cost under this subpart if it incurs the cost in relation to the water services infrastructure that it owns or will own". This would prevent recovery of costs through development contributions, where a predecessor to the WO, i.e. a TA, had incurred that cost. This will be a significant portion of the capital expenditure which should be funded through development contributions. The position taken in cl 78(2) seems to be inconsistent with other provisions in the Bill, for example, cl 84(2).	Amend cl 78(2) to refer (as well) to a cost that the WO or its predecessor (being the TA who transferred the infrastructure to the WO) has incurred.
80	The power to require development contributions in cl 80(1) is modelled on the equivalent power in s 198 of the LGA 2002. The triggers for requiring contributions are the granting of resource consent, building consent or service connections. This does not include a significant increase in demand for water or wastewater services above baseline demand (an important trigger for the charging of	Amend cl 80(1) of the Bill to add as a trigger for requiring a development contribution a significant increase in baseline demand for water and wastewater services, as defined in a publicly available policy of the WO. This would also require a corresponding widening of the definition of

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	infrastructure growth charges by Watercare). A significant increase in demand – for example, by adding an additional production chain in a high water-using factory, such as a brewery, would not necessarily require resource consent or building consent, and therefore trigger the power to require development contributions under cl 80 of the Bill.	"development" in cl 76 of the Bill to cover a significant increase in demand for water or wastewater services above baseline demand.
83(3)(b)	This refers to the amendment to a TA's development contributions policy not needing to follow the process in the LGA or the RMA. However, an "RMA process" could never be used to amend a development contributions policy.	Delete reference to the process in the RMA.
84	Clause 84 is a key provision setting out the circumstances in which development contributions may be required by a WO. Clause 84(1)(b) is limited to capital expenditure incurred by the WO, however cl 84(2) seems to envisage that the predecessor TA's capex may also be covered. In our view that is the appropriate policy position. The principle should be that all growth-related capital expenditure on water infrastructure, whether incurred by the predecessor TA or the WO, and either in the past in anticipation of development or in the future, is recoverable by the WO through development contributions. Clause 84(1)(b)(ii) refers to the situation of a WO being liable to pay a development contribution to a TA: it is unclear what issue is being addressed here as a WO is not typically liable to pay development contributions (developers are).	Add to clause 84(1)(b) the words, "a predecessor territorial authority or" before the words "the water organisation". Delete clause 84(1)(b)(ii).
85	Clause 85 states that a WO may develop a development contributions policy (**DCP**), and if it does it must consult under section 82 of the LGA. Although it would be expected that this consultation would include TAs, there is no specific requirement for the WO to consult with TAs, or for the WO to consider the content of a TA's DCP when developing their own to ensure alignment/integrated approach.	In cases where both a WO and a TA in the service area have their own DCP, require WO to specifically consult with TA and take into account its DCP when developing its own DCP.
Development contributions policy		

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
91(6)	In cutting and pasting the LGA provisions, the draftsperson has overlooked this reference to a TA.	Change "territorial authority" to "water organisation".
92(6)	This clause covers the situation where the WO and TA agree for the TA to administer some or all of the WO's DCP. This includes determining the level of contributions when one of the triggers for a development contribution is met. If the triggers are extended (see comment on cl 80), this new trigger will need to be covered in cl 92(6)	Include amongst the list of matters covered by the administration of a DCP "determining the level of development contributions a person is liable to pay when there is a significant increase in demand for water or wastewater services above baseline demand."
93	This clause authorises a TA to "extend" its DCP to cover the "operations" (which should be "infrastructure") of a WO, if the WO has not adopted its own DCP. The clause says that this extended policy must include the information required by cl 87 but is otherwise silent on whether the LGA or Bill provisions apply to the extension. The likely default position is that the LGA applies because it is still the TA's policy, however cl 93(4) suggests that the LGA consultation provisions will not automatically apply. This leaves uncertainty and risk of challenge.	Clarify the legal position when a TA extends its DCP in terms of the applicable legislation.
Development agreements		
104 to 106	These clauses relating to development agreements are cumbersome and unnecessary for commercially focused WOs, as distinct from local authorities. At present, Watercare enters into development agreements without relying on or requiring statutory provisions of this nature.	Delete cls 104 to 106.
Refund of development contributions, etc		
108	This clause sets out the circumstances in which the WO must refund a development contribution. Consistent with the principle in the comment on cl 84, there should also be a refund by a predecessor TA, in the same circumstances, to cover any contribution required and received by it.	Extend the clause to cover refunds by TAs as well.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
109	Clause 109 exempts the Crown (apart from some specific examples) from paying development contributions. Crown developments generate demand for water services infrastructure in the same way as other developments. Failure to recover development contributions from the Crown increases costs that need to be recovered from development contributions payable on non-exempt development (which is unfair on those developments). Alternatively, the WOs customer are left to carry the shortfall despite them not creating the need for, or benefitting from, the additional capex.	Delete clause 109.
Subpart 3 – Water services networks: connections		
113	This sets out the 3 steps in the approval process for connections. Step 1 refers to the WSP being satisfied "in theory" that there is network capacity. "In theory" introduces uncertainty and seems unnecessary.	Delete "in theory".
Subpart 4 – Accessing land to carry out water services infrastructure work		
General requirements		
116	This clause specifies the WSP's powers to enter land to carry out works, and the process for that. The process is unworkable, especially for reactive repair work such as fixing leaks. The Bill does not give a general power to enter land, even for non-intrusive actions, without going through the formal notice process in cl 117. Operationally, this will be extremely inconvenient. Under the LGA, the consent process is only needed when works on the land are proposed. The LGA gives a general power of entry onto land (but not a dwellinghouse) in s 171 "for the purpose of doing anything that the local authority is empowered to do under this Act or any other Act". The Bill needs an equivalent provision, with the cl 116 and 117 processes limited to entry for the purposes of carrying out physical works on the land.	Add a general power of entry equivalent to s 171 LGA. Limit cls 116 and 117 to entering land for the purpose of carrying out physical works on the land. In relation to cl 116(4): • Delete "(whether new or existing)" as redundant. Amend "relating to water services" with "relating to access to or carrying out work on the land".

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	Clause 116(4) deals with the situation where there is an agreement in place. We recommend some minor drafting changes.	
118	Once notice of the proposed works is given, the owner may give consent subject to reasonable conditions. The WSP may not enter the land or carry out the works except in accordance with those reasonable conditions (cl 116(3)(a)). However, cl 118(3) says that if the owner fails to comply with subcl (1), which includes giving consent subject to reasonable conditions, the WSP may start the work. A significant area of dispute is likely to be whether conditions imposed by the owner are reasonable. It is unclear whether the WSP can proceed with the works when it regards the conditions as unreasonable. Technically if the conditions are unreasonable, the owner has not complied with cl 118(1) and the WO may start the works. However, what is reasonable or not may be a grey area. In practice, private landowners often seek payment of financial compensation as a condition of granting access to their land. The Bill provides in cl 121 for a mechanism to deal with this situation, however it involves going straight to the District Court and puts the onus on the provider to pursue it. It is not clear why a landowner decision to impose conditions which the provider considers unreasonable (such as a condition requiring the WSP to pay financial compensation unrelated to any loss incurred by the landowner) should be treated, procedurally, any differently to a straight refusal of consent. The former is in substance also a refusal of consent. We therefore suggest that the process in cls 119 and 120 apply in both situations. In our comments on cl 120 below, we also discuss the possibility of a simplified process but if that ids adopted it should also apply equally to both consent with conditions and refusal of consent.	Amend cl 118 to provide that if the WSP and the owner cannot agree whether a condition is reasonable, the process in cl 119 applies (and the WSP may not start the work in the meantime, but can start work after the hearing under cl 119 is held and the WSP decides, after the hearing, to proceed with the works).

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
119	This sets out the process when consent has been declined. It involves a hearing before the WSP and a right of appeal to the District Court. As suggested immediately above, we suggest it also applies when there is a dispute about whether a condition imposed by the owner is reasonable. As drafted, the process in cl 119 applies where "the owner has not consented to the work within 30 working days of receiving the notice". On the face of it, this would cover the situation where an owner has not responded at all to the WSP's notice. This needs to be changed to say that the owner has declined consent within the 30-day period (which is consistent with the clause heading).	Amend cl 119(1) to cover a failure to agree reasonable conditions as well. Replace cl 119(1)(b) with "the owner has declined consent to the work within 30 working days of receiving the notice".
120	Clause 120 covers District Court appeals relating to land access. This clause (or cl 119) should state that the WSP may proceed with the works if its determination under cl 119 has been given to the owner and no appeal to the District Court has been lodged under s 120 (this must be within 28 days of notification). Under cl 120(5), on appeal to the District Court, the Court may authorise a water provider to carry out construction works or infrastructure placement only if satisfied that "no practical alternative exists". This sets the bar too high – notably higher than other equivalent requirements such as to give adequate consideration of alternatives – see s 204 of the Water Services Entities Act, or s 171 of the RMA. The test being set in this way is likely to prevent WSPs from being able to provide infrastructure on private land due to the inability to meet the "no practical alternative" requirement.	Provide in cl 119 or 120 that the WSP may proceed with the works if its determination under cl 119 has been given to the owner and no appeal to the District Court has been lodged. Amend cl 120(5)(c) to say: "in relation to the construction or placement of the water services infrastructure, the water services entity has given adequate consideration to alternative routes."
121	As discussed under cl 118 above, this clause imposes different processes and tests in the District Court depending on whether a private landowner imposes conditions on their consent, or refuses. In practice, unreasonable conditions imposed by a landowner are tantamount to refusal – for example, permission to	Simplify cls 119 to 121 to have a single process to cover refusal of consent and the reasonableness of conditions.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	undertake works on private land is only granted if excessive compensation of $5 million is paid. We have considered a simplified approach for all objections, with a single step of a hearing before the District Court. On balance we consider that may be a false economy. Given the delays in getting heard before that Court, this procedure would allow an objector to refuse consent and just wait the many months before a hearing and then get serious at the last moment. The works could not proceed in the meantime. On the other hand, having a hearing before the WSP first ought to focus attention much earlier on and will involve more engagement between the WSP and the owner and therefore more potential for resolution at an early stage.	
Water services infrastructure works on roads		
131	This is the definition clause for the purposes of water infrastructure work on roads. The key definition of "road" in the Bill is a combination of the definitions in the Local Government Act 1974 and the Land Transport Act 1998. As such the definition is much too broad. The definition includes "a street and any other place to which the public have access (including a State highway and a public footpath), whether as of right or not", which comes from the LTA where it is used for a (very different) traffic regulation purpose. This definition would extend to private land e.g. supermarket carparks and is unsuitable for the purpose of delineating a WSP's power to carry out works in roads. As in the equivalent provision relating to Watercare (s 65 of LGACA, which is proposed to be repealed), the WSP's powers should be in respect of "roads" as defined in the LGA74 i.e. the narrower category of "legal roads" together with "public land", which does not need to be defined.	Amend the definition of "road" to "a road as defined in section 315(1) of the Local Government Act 1974, and which includes State highways and Government roads, but excludes motorways". Extend the powers in relation to "roads" in cls 132 and 133 to "roads and public land".
135	This clause says that if a person or body fails to notify the water service provider of conditions in accordance with section 134, "those conditions" are not imposed	Reword clause as follows:

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	and the water service provider may commence work. The reference to "those conditions" is non-sensical, where no conditions have been notified.	if a person or body fails to notify the water service provider of conditions in accordance with section 134, ~~"those conditions" are not imposed and~~ the water service provider may commence work.
Subpart 5 – Drinking water catchment plans		
143	It is not apparent why a territorial authority should have a role in issuing a drinking water catchment plan, where a WO is providing the relevant water services. A TA that has transferred its water services functions to a WO is likely to lack the capability to produce such a plan. While a TA can delegate the preparation of a drinking water catchment plan to the WO under cl 143(2), it is not required to do so. The responsibility to prepare the plan should automatically rest with the relevant WSP.	Amend cl 143 to make the WSP (rather than a TA) responsible for issuing a drinking water catchment plan.
143 and 144	The drinking water catchment plan requirements are largely duplicated and are poorly integrated with existing requirements under s 43 of the Water Services Act 2021 (WSA) for a source water risk management plan. The WSA defines source water as the water body from which water is abstracted for use in a drinking water supply (for example, a river, stream, lake, or aquifer). A source water risk management plan must identify any hazards that relate to source water, including emerging or potential hazards; and assess any risks that are associated with those hazards; and identify how those risks will be managed, controlled, monitored, or eliminated as part of a drinking water safety plan.	Amend cls 143 and 144 to reduce duplication with s 43 of the Water Services Act 2021.
146	This clause requires that there be consultation on a drinking water catchment plan. It is not clear why there should be a requirement to consult in respect of any aspect of a plan other than for a bylaw which has regulatory effect and restricts rights and obligations. This is an example of unnecessary compliance burden being placed on parties under the Bill.	Delete consultation requirements except where a drinking water catchment plan contains a recommendation for a bylaw.
Subpart 6 – Trade waste		

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
Trade waste plans		
149	This interpretation clause includes a definition of trade waste. The definition is too narrow, in that it could exclude tinkered waste and waste from a range of non-domestic premises (e.g community kitchens, swimming pools, landfills) that is not "discharged in the course of an industrial or trade process".	Replace trade waste definition with definition taken from NZS 9210: ch 23 model bylaw.
150	This clause requires TAs to issue a trade waste plan, although the preparation may be delegated to a WO. The trade waste plan must set out the approach that the TA it to take to regulating TW in the district and the discharge of trade waste into wastewater networks in the district. There is substantial duplication between the trade wate plan and a trade waste bylaw (see for example cl 150(5) and (6)), notwithstanding that only the latter is effective as a regulatory document. This begs the question as to what purpose is served by having a trade waste plan, in addition to a bylaw. The approach taken to regulation can be apparent in the trade waste bylaw itself. There is at present no requirement for a territorial authority to have trade waste plan in addition to its trade waste bylaw. It is also nor entirely clear whether the trade waste plan itself is intended to have regulatory effect (we assume not). If clauses 150 to 152 are not deleted, responsibility for trade waste plans should rest with the WSP (who will be operating the wastewater network), rather than the TA.	Delete clauses 150 to 152, 154, and all references in other clauses to a trade waste plan. If clauses 150 to 152 are not deleted, amend cl 150 to make the WSP responsible for issuing a trade waste plan.
151	As with the drinking water catchment plan, it is unclear why there should be a requirement to consult in respect of any aspect of a trade waste plan other than a recommendation for a bylaw which has regulatory effect, and restricts rights and obligations.	If clause 151 is not deleted as per previous recommendation, delete consultation requirements except where a trade waste plan contains a recommendation for a bylaw.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
152	This clause illustrates the duplication in these provisions by requiring a TA to consider its own proposal or recommendation in a trade waste plan to make a trade waste bylaw.	Delete clause 152.
154	The clause requires review of a trade waste plan after 10 years. It is modelled on LGA provisions requiring local authority review of bylaws (ie regulatory documents) 5 or 10 years after they are made (sections 158 – 160). As the document with direct regulatory effect, it is the trade waste bylaw rather than the trade waste plan that should be subject to review requirements.	Amend clause 154 to require review of a trade waste bylaws (rather than trade waste plans).
154(5)	This clause is modelled on a power to make minor changes to, or correct errors in, bylaws in s165 of the LGA. However, the comparison is flawed because unlike a bylaw, trade wate plan presumably does not have regulatory effect, and so changes and corrections could never affect existing rights, interests and duties.	Amend clause 154 to allow a territorial authority make minor changes to, or correct errors in, trade waste bylaws (rather than trade waste plans).
Trade waste permits		
155 - 159	Clause 155 provides for applications for trade waste permits to a TA. Although the bylaw is made by the TA, the permit system must be administered by the WSP which operates the wastewater network and knows its limits. It undermines the transfer of functions to a WO if a TA is able to issue permits in respect of trade waste discharges to the wastewater network operated and/or owned by the WO. If the TA remains the WSP, it should issue permits in its capacity as WSP rather than TA. Clause 163 seeks to address this by saying that where the TA has delegated the administration of trade waste bylaws to a WSP, references to the TA should be taken as references to the WSP. However, this approach is clumsy and undesirable – a WO must be issuing permits itself and in its own right (and the bylaw should provide for this), not as a delegate of the TA.	Change "territorial authority" to "water service provider" throughout cl 155 – 159.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	The clause gives a power to seek an internal review of a decision to decline a trade waste permit. However, there are not the normal "lead up" clauses which provide for applications to be made and determined. This may be welcomed as it should give the WSP flexibility to design its own procedures.	
163	The clause deals with delegation of administration from the TA to the WSP. As stated above in relation to cl 156, there should be no need for this delegation. The bylaw and permit system should apply directly to a WO who can exercise the statutory powers in its own right.	Delete cl 163.
Subpart 7 – Management of stormwater networks		
167	<u>Definition of 'critical infrastructure'</u> This definition refers to "stormwater infrastructure", and to "infrastructure of that kind that conveys stormwater to, or receives stormwater from, an overland flow path or a watercourse". This creates doubt as to whether a watercourse could itself be critical infrastructure, and displays a bias in favour of hard infrastructure being the only critical components of a stormwater network, when natural watercourses may be equally important. In our view, paragraph (b) should be amended to refer to a watercourse whose failure will prevent or seriously impair the conveyance of stormwater in a network.	Amend para (b) in definition of critical infrastructure as follows: includes ~~infrastructure of that kind that conveys stormwater to, or receives stormwater from,~~ <u>any</u> watercourse whose failure will prevent or seriously impair the conveyance of stormwater in a network ~~that crosses over or beneath private land~~
171	This clause states that a WSP must not make a stormwater network bylaw in relation to an overland flow path within or crossing a transport corridor. Roads will typically be amongst the most significant overland flow paths in any urban stormwater network. It is not clear why they and other transport corridors should be completely excluded from regulation under a bylaw – presumably, it is because regulation may impair the functionality of roads etc as transport corridors.	Delete clause 171.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	Clearly, some general requirements in relation to overland flowpaths – for example, prohibitions on placing obstructions within the flowpath – should not apply to transport corridors, which will have infrastructure such as bus shelters or other street furniture located within them for good reason. But this is not a reason to exclude any ability to regulate overland flow paths on transport corridors through bylaws.	
168 and 172	Clauses 168 and 172 relate to stormwater risk management plans and stormwater bylaws. There is no requirement that shareholders of a WO (if the WSP is a WO), or transport corridor operators, are consulted during the development of these documents. In the case of the bylaws (s172), there also does not seem to be a requirement that WSPs consult with the community. When TAs develop bylaws under the LGA, there are prescriptive consultation requirements.	Clauses 168 and 172 should be amended to require consultation with shareholders (where the WSP is WO) and transport corridor operators in developing stormwater risk management plans and stormwater bylaws. Clause 172 should require WSPs to consult with the community on bylaws, modelled on LGA requirements.
Part 4 – planning, reporting and financial management		
181	This clause states that a number of provisions relating to CCOs in Part 5 of the LGA, starting at section 64, do not apply to a CCO that is a WO or its shareholders. Implicitly, the provisions in Part 5 before section 64 *do* apply. These include sections 58 and 59 of the LGA relating to the role of directors and the principal objective of CCOs. The application of section 59 in particular is problematic, given that this states that the principal objective of a CCO is to achieve the objectives of its shareholders as set out in the SOI: and inconsistent with cl 15 of the Bill which sets out the objectives of WSPs (including WOs). As noted above, cl 15 carries over the "good employer" obligation in s59 of the LGA, but not other objectives (such as to "exhibit a sense of social or environmental responsibility"). Section 60 of the LGA states that decisions of a CCO must be made in accordance with the SOI and constitution, establishing the primacy of these documents.	Add ss 58-63 to the list of LGA provisions that are stated in cl 181 as not applying to a CCO that is a WO or its shareholders. However, that will require adding a new clause, equivalent to s60 of the LGA, requiring decisions of the WO to be made in accordance with the WSS (rather than SOI) and constitution. This recommendation reflects our recommendation below to delete cl 186 (the requirement for a WO to give effects to a SOE)

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	However, this is inconsistent with the Bill which removes the requirement for an SOI in the case of a WO that is a CCO (s64 of the LGA is expressly excluded), and in its places establishes the water services strategy (WSS) as the primary direction-setting document. Equally, the s60 requirement for a CCO to make decisions in accordance with its constitution is an important one, which should be carried over into the Bill and apply to WOs. As the Bill stands, there is considerable confusion over how ss 58 - 60 of the LGA in particular can apply to a WO that is a CCO at the same time as provisions in the Bill.	
Subpart 1 – Planning *Statement of expectations*		
184	Clause 184 relates to the statement of expectations (**SOE**). The purpose of the SOE is stated in subcl 3 as being to set out the shareholders' expectations of the WO; set the priorities and strategic direction of the WO; and inform and guide decisions and actions of thew WO and the WO's preparation of its WSS. The purpose of SOE under the Bill is therefore significantly greater than a SOE under s64B of the LGA, which sets out a shareholder's expectations as to how a CCO is to conduct its relationships, rather than objectives or priorities for the CCO. Clause 184 allows the shareholders of a WO to set the direction and priorities for the WO (for a period of 10 years), while under cl 186 a WO "must give effect to" the SOE. In our view this places too much power in the territorial authority shareholders; it begs the question why a territorial authority would establish a WO at all, or why anyone would want to become a director of the WO, if a TA retains such extensive control over the WO's strategic direction. It may be particularly hard to attract experienced directors from the commercial world to the WO's board.	Amend clause 184 so that it more closely resembles s64B of the LGA, and does not address the objectives and priorities of the WSP. Alternatively, confine the clause 184 to the matters currently set out in cl 187(2).

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	This regime also reduces the difference between two the three options currently before TAs in terms of delivering water services i.e. continued delivery of water services by the TA, or delivery via a WO. The option of "arms-length" service delivery via a CCO is weakened through the extent of control reserved to the WO's shareholders. The Bill also creates considerable duplication between the SOE and the WSS. Thus, while one of the purposes of the SOE set the priorities and strategic direction of the WO (cl 184(3, and see also the content requirements in cl 187), equally a WSS also addresses strategic matters and must include the strategic priorities of the WSP, and the objectives and expectations that apply to the WSP: see Schedule 3, cl 2. Clause 187(3) also states that for a WO, the purpose of the WSS is also to provide an opportunity for the shareholders of the water organisation to participate in the WO setting its strategic intentions and performance framework; and influence the strategic direction of the WO. Yet the shareholders already have the opportunity to set that direction through the SOE. This duplication underscores the need to confine the SOE largely to matters of process (*how* a WO conducts its operations and relationships), while matters of substance (strategic direction, priorities, outcomes etc) are set out in the WSS.	
186	This clause states that a WO "must give effect to a statement of expectations provided by the shareholders of the water organisation". The SOE is a high-level document, and to some extent aspirational – the document that sets out what activities a WSP intends to undertake in the WSS (the equivalent to the SOI under the LGA. Reflecting that "split" between high-level guidance and operational documents, in the LGA there is no requirement to "give effect to" a SOE under s64B, but there is a requirement (in s60) for decisions of a CCO to be made in accordance with the SOI. It is unclear what "giving effect to" a SOE (if the SOE	Delete cl 186.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	retains the broad content set out in cl 187, or even if it is a narrower document based on s64B of the LGA) would mean, or how compliance with that obligation could be measured. Currently, the consequence for a CCO failing to appropriately taking into account a SOE under s64B of the LGA is that the shareholders may (and likely would) comment on or modify the SOI prepared by the CCO's Board, or if the failure is significant enough, dismiss or decline to reappoint the CCO's directors. These "sanctions" remain more appropriate than imposing a direct (and unclear) requirement to "give effect to" the SOE.	
187	Clause 187 sets out the required content of a WO's statement of expectations. This reflects a very expansive view of what a SOE should cover. Clause 187(1) in particular allows shareholders to set expectations as to how the WO is to conduct its operations, by stating the SOE must include how the shareholders expect the WO to meet the objectives set out in section 15, and to perform its duties and functions and exercise its powers. There may in fact be limited scope for the shareholder to set expectations as to how s15 objectives are met, given that the WO will be required to meet requirements imposed by the Water Services Authority and Commerce Commission. In circumstances where a territorial authority has chosen to establish a WO rather than remain the WSP itself, the directors of the WO rather than the territorial authority (and in particular, its elected members) are better placed – in terms of relevant experience and expertise – to determine these matters. In particular, a territorial authority that has established a WO is unlikely to retain in-house expertise (at officer level) in relation to water services, to assist in the setting of objectives and priorities.	Delete cl 187 or confine it to cl 187(2).

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
187(1)(e)	Clause 187 sets out the required content of a WO's SOE. This includes "a requirement that the water organisation must act in accordance with any relevant statutory obligation that applies to a shareholder that is a territorial authority". As such an obligation will apply to the TA and not the WO, it is hard to understand what this means for the WO. It is also unclear what a "relevant" statutory obligation would be. A similar comment can be made in relation to cl 187(2)(c). The example given (obligations to hapū, iwi and other Māori organisations) is not unreasonable, but the provision could theoretically apply to any TA obligation, which is inappropriately open-ended. Clause 187(2)(d) is even more open-ended and objectionable for that reason. A WO should not be in the position of having to carry out a shareholder's obligations on its behalf.	Delete or narrow cls 187(1)(e), (2)(c) and (2)(d).
192	The purposes of the WSS set out in this clause include for the WSP to state publicly the water services activities that it intends to carry out to achieve the objectives specified in section 15 and any other outcomes: cl 192(1)(a)(i). This wording is based on s64(2)(a) of the LGA relating to statements of intent. A further purpose of a statement of intent under the LGA is to provide an opportunity for shareholders to influence the direction of the organisation: s64(2)(b). This opportunity is given through the LGA Schedule 8 process, under which the shareholders have the opportunity to comment on a the CCO's draft SOI, and to modify an adopted SOI. Clause 196 of the Bill relating to the process for making a WSS is loosely based on Schedule 8, insofar as it allows shareholders to provide comments on a draft WSS, or require the WO to amend the draft strategy.	Amend cl 196 so that it more closely resembles Schedule 8 of the LGA – ie. shareholders have a power to comment on the draft WSS, and to require modification of an adopted WSS (based on cl 6 of Schedule 8). Alternatively, the clause 196 should confine the shareholders' role to providing comments on the draft WSS, with no power to require modifications or to approve. The Bill should state what a shareholder's powers are in relation to the WSS, rather than allowing

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	It is considered this process in relation to the WSS provides a more appropriate level of influence over the activities of a WO. On the basis that territorial authorities have the ability to influence the direction of the WO through the WSS, the far greater level of influence given to shareholders through the SOE is not required. However, clause 196(2) also allows shareholders to reserve for themselves the power to approve the final WSS. Again, this level of control over the activities of the WO is considered in appropriate. If territorial authorities shareholders wish to retain this level of control over the direction of water services they have the they have the option of not establishing a WO and remaining the WSP.	shareholders, under cl 196(2), to determine the nature of their involvement.
Water services strategy		
191	This clause covers the transitional situation where a new WO has to prepare a water services strategy. It gives flexibility for the WO and its shareholders to agree a different commencement date and duration in force than would otherwise be required. Clause 191(4) says that before a water services strategy comes into force, the existing LTP of each territorial authority shareholder continues to apply. This does not seem workable in practice given that (1) where there is more than one shareholder, the LTPs will almost certainly be different (2) individual LTPs are unlikely to align with the WO's obligations to act in the interests of all of its shareholders and its overall service area (3) more generally, it is hard to see how an LTP, which relates to a TA, can be "applied" by a WO.	Amend cl 191(4) to be more precise as to how and what aspects of an LTP can apply.
196	Clause 196(5) says that "this Act does not require a water organisation or its shareholders to consult communities or consumers on a draft water services strategy.". However, under cl 196(6) the shareholders of the WO can require it to consult on any proposals in the WSS.	Delete clauses 196(5) and (6) and replace them with a requirement for the WO to publicly consult on the draft WSS within its service area, using the special consultative procedure under the LGA 2002.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	These provisions are opposed. A WO should be responsive and accountable to its communities not just its shareholders, and on that basis should be required to publicly consult in its draft WSS in the same way as WSP is required to consult under cl 195. Communities should not be deprived of opportunities to comment on and influence a draft WSS, just because the WSP is a WO rather than a TA.	
Water services annual budget		
201	The annual "proposed" budget must include rates set by a WSP which is a TA, and fees and charges if set by a WO. It is not clear whether this requires the particular rates and charges to be specified. Clause 201(2) says the budget may include the WO's list of charges which suggests the fees and charges referred to in s 201(1)(a)(ii) may not be the specific charges. A TA's annual plan, the equivalent of the annual budget, would not include that level of detail. As previously mentioned, WOs ought to have flexibility to change their charges or set new charges during a financial year (it is accepted that LGRA does not allow for this in the case of TAs), At present TAs can set and amend charges (which are not rates) at any time and the same should be the case for WO water services charges.	Clarify that the fees and charges referred to in cl 201(a)(ii) are not the specific fees and charges, and that a WO may set or amend fees and charges at any time.
202	This sets out the process for making a water services annual budget. Cl 202(1) says that a WSP is not required to consult on a water services annual budget. This is opposed: communities and customers who fund the activities of WSPs should have an opportunity to comment on the budget (including the charges they will be paying), just as ratepayers have the opportunity to comment on a local authority's LTP (including the rates they will be paying) under the LGA.	Amend cl 202(1) to require a WSP to consult with the public in its service area on its draft annual budget. Delete cl 202(2).

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	Cl 202(2) states that in the case of a WO, the process for preparing a water services strategy under section 196 applies, with all necessary modifications, to preparing a water services annual budget. The effect of this subclause is to allow TA shareholders of a WO to decide whether or not they wish to comment on, require amendments to, or approve a budget prepared by the WO – these being the procedural options the TAs have in relation to preparation of the WSS. It is inappropriate for the TA shareholders to retain this level of control over the activities of a WO. The WO has no autonomy to implement a WSS if, in addition, the TA shareholders retain the power to amend, or withhold approval of, the annual budget.	
Subpart 4 – Financial matters *Charges as security*		
213(1)	This provision would apply where a WO grants security over a charge or charging regime revenue as security for its borrowings. If a receiver is appointed under the security then, in addition to the rights to the charged revenue under the security agreements, the receiver would also be entitled to "assess and collect in each financial year a charge under this section to recover sufficient funds to meet" the WO's debt obligations in that year and associated administration etc costs relating to the charge. The special charge model in Section 60A has been based on the special rates model provided for in section 115 of the LGA. Neither "charge" or "charging regime revenue" (or "water services charges", which is used in subsection (4)) are defined. There is a lack of clarity as to what charges would or should be covered by this section for the purposes of setting the special	References to "charges" and "charges regime revenue" should be changed to "water services charges". A definition of "water services charges" should be included (possibly by reference to charges set under section 60), although explicitly excluding the one-off charges arising under section 60(2)(a) and (b).

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	charge, and suggests that each of these terms have different meanings when they should be the same. We suggest that "water services charges" be defined and substituted for "charges" and "charging regime revenue" so that (1) a singular term is used consistently throughout the section and (2) there is sufficient clarity as to what charges are captured by the special charge model. This could be by reference to the charges enabled under section 60 – however, this would capture the types of one-off charges described in section 60(2)(a) and (b) (being initial connection charges and IGCs). These kinds of one-off charges should not be captured by the special charge model in section 213, in the same way that development contributions are not subject to section 115 of the LGA.	
213(4)	Subsection (4) would require any such charge to be assessed as "*a uniform charge in the dollar on the water services charges payable by consumers*". This is based on section 115 of the LGA, which refers to "a uniform charge on the dollar on the rateable value of a property". However, while a rateable value of a property is a fixed value, "water services charges" will include different types of charges of variable amounts that may become payable at different periods of time. Accordingly, the subclause should clarify what water services charges the special charge will be calculated against – we suggest that it would be appropriate to specify a time period during which the relevant water services charges had to fall due in order for the additional uniform charge to apply to them (for example, the water services charges incurred and payable by a consumer in the previous 12-month period immediately before the special charge is assessed.	Section 214(4) should specify the period by which the charges are to be set, as water services are variable based on usage, rather than fixed in the way rateable value is. We suggest that it would be appropriate for the special charge to be calculated by reference to the water services charges incurred and payable during the 12-month period ending on the last day of the calendar month falling immediately before the month during which the charge is assessed.
Part 6 – Miscellaneous provisions		

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
Subpart 1 – Water services bylaws		
347	This clause specifies the permitted subject matter of a water services bylaw. The clause does not, but should, cover both connection to and disconnection from a network	Amend cl 347(1)(c) to say "connecting to or disconnecting from a water supply network, a stormwater network, or a wastewater network
348	Clause 348(2) requires a WO to consult on a proposal to make, amend or revoke a water services bylaw. Clause 349(2) says a TA must consult once it receives such a proposal from a WO, but cl 349(3) then says the TA does not have to consult if satisfied that the WO consulted. Clause 349(2) and (3) should be deleted, to simplify the position and confine consultation obligations to the WO. It makes sense for the entity proposing a bylaw, amendment or revocation to be the one that consults on it. Clause 349(3)(b) as it stands is unclear, because it does not identify what "all other requirements for making" etc a bylaw are. The requirements in contemplation must be those other than consultation requirements, but the only meaningful requirements in the LGA are in s155.	Assuming cls 349(2) and (3) are deleted as we recommend, we recommend "carrying over" the requirements of s155 of the LGA. In that event, a new subclause 349(2) might read: (3) Before deciding whether make, amend or revoke a water services bylaw under subclause (1), the territorial authority must determine: a. That the proposal in respect of the water services bylaw is the most appropriate way of addressing the perceived problem; b. That any new or amended bylaw is the most appropriate form of bylaw; c. That any new or amended bylaw is not is inconsistent with the New Zealand Bill of Rights Act 1990.
350	This clause relates to delegation of the administration of a water services bylaw from the TA to a WO. It seems to proceed on an assumption that the only way for a WO to exercise these powers is for there to be a delegation. As discussed in relation to cls 156 and 163 in the case of trade waste bylaws, it will be possible for the bylaw to confer the necessary "administrative" powers directly on	It should be made clear that cl 350 does not preclude a bylaw conferring relevant powers directly on the WO.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	the WO without them having to be delegated. It makes little sense anyway for the WO to be exercising powers on behalf of the TA when the decisions relate to the WO's own network and services and not the TA's. Further, the TA may not wish to be the legally responsible entity (delegation does not transfer liability) in those circumstances. Delegation may still be needed for the TA's existing water services bylaws, until new bylaws are made.	
351	This requires a TA to carry out a review of its water services bylaws within 2 years of the section coming into force. The provision is presumably intended to apply only to existing bylaws and not any new ones made under the Bill, but it does not say that.	Exclude form the ambit of cl 351 any bylaws made after the commencement of the Bill. Extend timeframe for review of bylaws to 3 years.
Schedules		
Schedule 1, cl 8	Council-controlled organisations (such as Watercare) that currently provide water services – and will continue to do so after the Bill is enacted – will automatically become water organisations, upon enactment. This means they will be subject to the new Act, and the responsibilities that apply to other water service providers. Where a CCO becomes a water organisation and does not already meet the statutory requirements that apply to water organisations, it has six months following enactment to make the changes needed (or for territorial authority shareholders to obtain an exemption, if relevant). Similarly, a territorial authority that is a shareholder in a CCO that becomes a water organisation has six months in which to provide a transfer agreement, to formalise the responsibilities and other matters held by the organisation and the authority. The definition of CCO in the Local Government Act 2002 is amended by the Bill to include a reference to water organisations. A water organisation is also a CCO if it is owned by one or more local authorities, and they are the majority shareholders (with trustees in a consumer trust being the minority).	As written, this would mean that WWL becomes a water organisation in December 2025, and the councils would have from August (when WSDP is adopted by councils) to December to do most of the establishment work incorporated in the transfer agreement. Six months isn't long enough for this process, particularly when we have six shareholders and one has indicated that they are working on a different model and timetable than the other five. Twelve months might be workable, and aligns with the regional WSDP intent to have a new organisation in place by July 2026.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
		There is allowance for an exemption but no indication of how that would be considered or on what criteria.
Schedule 2, cl 7	Decision making for revenue and charging under Sch 2, cl 7 should be the responsibility of the WO's Board, not the territorial authority. See our earlier comments recommending deletion of cl 202(2) which would allow for TA shareholder approval of a WO's annual budget. As worded, this clause would allow TAs to prevent WOs setting the charges they need to cover the costs of providing their services.	Clause 7 should be amended as follows: ~~A transfer agreement must specify whether the territorial authority or~~ The board of the water organisation will be responsible for making final decisions about the following matters: (a) the water organisation's capital expenditure and operating expenditure for the water services it provides: (b) the water organisation's level of charges and revenue recovery for the water services.
Schedule 3, cl 2	Clause 2 sets out the "strategic matters" that must be included in a WSS. Under cl 2(1)(b), this includes the objectives and expectations that apply to the water service provider, including the objectives specified in section 15; and in the case of a WO, any objectives or expectations specified in the organisation's SOE. There is no value in a WSS simply repeating the statutory objectives in cl 15 of the Bill. The reference to the WSS including objectives set out in the SOE is premised on the SOE being a direction-setting document in which objectives are set out, as opposed to a more limited document akin to a SOE under s64B of the LGA. For the reasons set out above, this is inappropriate. Rather than the WSS simply repeating objectives that are set elsewhere, it should be the document that sets out any objectives or priorities of the WO to supplement the statutory objectives set out in cl 15. The shareholders have the opportunity to	Amend cl 2(1)(b) as follows: (b) ~~the~~ any objectives ~~and expectations that apply to~~ of the water service provider additional to the ~~, including~~ ~~(i)~~ the objectives specified in **section 15.**~~; and~~ ~~(ii) in the case of a water organisation, any objectives or expectations specified in the organisation's statement of expectations:~~

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	influence those objectives or priorities through the opportunity to comment on the draft WSS.	
Schedule 6 **New Schedule 7 inserted into Commerce Act 1986**		
Part 1 Ring-fencing of revenue	A new regulatory power is given to the Commission under the Bill. The intention is to ensure water service providers are using revenue generated from provision of water services for the continued provision of water services (including on maintenance, improvements, and providing for growth). Water service providers are not prevented from cross-subsidisation, but the Commission may make a determination that a portion of revenue is used for a particular purpose. The ring-fencing provisions also do not prevent water service providers from making a profit or paying dividends to shareholders: clause 3(7). We disagree with this provision. It is inconsistent with the Government's expressed policy positions on ring-fencing (including the August 2024 announcements), and with cl 16(1) of the Bill which states that one of the financial principles that WSP must act in accordance with is: (a) the provider must spend the revenue it receives from providing water services on providing water services (including on maintenance, improvements, and providing for growth). In general terms, there is underinvestment in water services infrastructure in New Zealand. Customer revenue should be invested into the operations of the WO rather than returned to shareholders. Also, customers will often have little choice but to pay water service charges. Territorial authority shareholders have their own tools	Replace clause 3(7) with a statement that a nothing in this clause authorises a WO to make a profit or return a dividend to its shareholders.

CLAUSE	ISSUE / COMMENT	RECOMMENDATION
	for funding the services they provide, and their activities should not be funded by a WO. We note that Watercare is currently prevented from returning a dividend to Auckland Council under s57 of the Local Government (Auckland Council) Act 2009.	
Other matters		
Wellington Regional Water Board Act 1972	This Act sets up the framework for Greater Wellington Regional Council's (GW) bulk water function and many other water-related rights and obligations. In addition, there is also a Wellington Regional Council (Water Board Functions) Act 2005 that provides for GW to have the right to install renewable energy infrastructure on land that was previously owned by the now disestablished Wellington Water Board and subsequently vested in GW.	Both of the above Acts need to be reviewed to ensure that any powers required by the new entity are transferred to it to enable it to take over the bulk water function. The above Acts should then be considered for amendment or repeal provided, however, that GW retains all land vested in it by the previous Wellington Water Board and the right to appropriately deal with that land. In the meantime, the Councils agree that these two Acts should not be amended or repealed by the Bill.

Hutt City Council

18 February 2025

Report no: HCC2025/1/59

Proposed Private District Plan Change 58: 12 Shaftesbury Grove, Stokes Valley - Rezoning to Medium Density Residential Activity Area

Purpose of Report

1. This report presents the recommended decisions of the hearing panel on Proposed Private District Plan Change 58: 12 Shaftesbury Grove, Stokes Valley – Rezoning to Medium Density Residential Activity Area.

Recommendations

That Council:

(1) receives the report and recommendation of the hearing panel dated 16 December 2024 for Proposed Private District Plan Change 58 (attached as Appendix 1 to this report);

(2) notes the process under the Resource Management Act 1991 for Proposed Private District Plan Change 58;

(3) adopts the recommended decisions on Proposed Private District Plan Change 58, and reasons for those decisions, set out in the hearing panel's report;

(4) approves Proposed Private District Plan Change 58 subject to the amendments recommended by the hearing panel, as recommended in section 8 of the hearing panel's report;

(5) resolves to publicly notify its decision on Proposed Private District Plan Change 58 within 10 working days of this decision, and to serve that decision on the applicant and submitters; and

(6) instructs staff to work with Wellington Water Limited and the requester for Proposed Private District Plan Change 58 to identify and implement a solution that will unlock the development potential of the site, as well as address the wider water supply issues facing the area.

Background

2. M & J Walsh Partnership Ltd ('the requester') lodged a private plan change request with Council on 12 September 2023. The purpose of the request was to rezone 12 Shaftesbury Grove (a 12.5 hectare site) from a combination of

the Hill Residential and the General Recreation Activity Areas to Medium Density Residential Activity Area.

3. At its 30 October 2023 meeting, Council resolved to accept the plan change request, and instructed officers to begin the plan change process as set out in Schedule 1 of the Resource Management Act 1991.

4. The proposal was publicly notified for submissions on 9 November 2023 as Proposed Private District Plan Change 58 (the Proposed Plan Change). Five submissions were received.

5. A summary of decisions requested in submissions was publicly notified on 8 February 2024, to provide for further submissions. Eight further submissions were received.

6. Council appointed a hearing panel to hear the application and submissions and make a recommendation to Council. That panel conducted a hearing on 23 September 2024, and has prepared a recommended decision for the proposed plan change (attached as Appendix 1 to this report).

7. The hearing panel's overall recommendation is:

> *8.1 In summary, we find that the proposed plan change is consistent with the purpose and principles of the RMA, and with the objectives and policies of the operative District Plan. In particular, we find that the management framework provided for under PC58 would enable residential urban development in line with the City's Urban Growth Strategy while effectively managing the adverse effects. The proposed zoning would appropriately align with the MDRAA residential zoning that applies to most of Stokes Valley, including the adjoining area to the north of the site. Significant indigenous biodiversity would be protected by avoiding or managing adverse effects from new subdivision and development.*
>
> *8.2 Based on our consideration of all the material before us, including the s42A report from the Council's consultants, the submissions, further submissions, evidence presented at the hearing and other relevant statutory matters, and for the reasons we have set out in sections 3 and 4 above, we recommend to the Council that:*
>
> > *a) Pursuant to clause 29(4) of Schedule 1, RMA, the Plan Change be approved, subject to the recommended amendments as outlined in Appendix 1 to this report;*
> >
> > *b) All submissions and the further submissions on the Plan Change be accepted or rejected to the extent that they correspond with our recommendations, as outlined in Appendix 2 to this report; and*
> >
> > *c) Pursuant to Clause 10 of Schedule 1 of the RMA, Council gives notice of its decision on submissions to PC58.*
>
> *8.3 Although not within the scope of the Plan Change, we separately recommend that the Council proactively works with Wellington Water and the Requester to identify and implement a solution that will unlock the*

development potential of the site, as well as address the wider water supply issues facing the area.

8. The amendments recommended by the panel (referred to in paragraph 8.2a of the panel's report) are:

    - A new policy for the protection significant ecological values at the site;
    - Additional information requirements for subdivision consent applications, in relation to:
        - A stormwater management plan,
        - A geotechnical assessment,
        - An ecological assessment,
        - A landscape management plan, and
        - An integrated transport assessment for any subdivision that exceeds the high trip generator thresholds (set in the Transport chapter of the District Plan);
    - Amendments to the matters Council would have discretion to when considering an application for subdivision of the site, in relation to:
        - Effects on the transport network, including impacts on on-street parking,
        - Effects on indigenous biodiversity; and
        - Geotechnical issues.

Options

9. The decisions before Council are:

    - To either adopt or reject the hearing panel's first recommendation to approve Proposed Private District Plan Change 58 subject to the panel's recommended amendments; and
    - How to acknowledge the hearing panel's recommendation (8.3 in the panel's report) on Council working with Wellington Water and the requester to identify and implement a solution that will unlock the development potential of the site, as well as address the wider water supply issues facing the area.

Adopting or rejecting the hearing panel's recommendation to approve the plan change subject to the panel's recommended amendments

10. If Council decides to adopt the recommendation to approve the plan change, the availability of the Council decision will be publicly notified in the Hutt News and on Council's website. At the same time a copy of the public notice and information about how to lodge an appeal will be served on the applicant and all submitters, in accordance with clause 29(6) of Schedule 1 to the Resource Management Act 1991.

11. Any person who has made a submission on the proposed plan change, and the requestor, has the right to appeal to the Environment Court in respect of the provisions included or excluded in the proposal, or the provisions the Council's decision proposed to include or exclude in the plan change.

12. The right of appeal of submitters is limited to matters raised in their submission.

13. Council does not have the option of making changes to the hearing panel's recommendation because Council has not heard the evidence presented at the hearing and to change the recommendation would not demonstrate fairness or natural justice to the plan change requestor and to submitters.

14. If Council decides to reject the recommendation to approve the plan change, the process would need to return to at least the hearing stage. All submitters and the requestor of the proposed plan change would need to be re-heard, either by the same hearing panel or by a newly appointed panel. The panel would then present a new (and possibly unchanged) recommendation to Council to again make this decision to accept or reject. This would cause additional costs and time delays.

15. If no appeals on the plan change are received, no further action on Council's part is required. The District Plan will be amended as set out in the plan change request and the hearing panel's recommendation.

16. If one or more appeals are received, Council will need to defend its decision in the Environment Court.

Relevance of this proposed change for the Proposed District Plan

17. The Council notified a new Proposed District Plan on 6 February 2025. Under the Proposed District Plan, 12 Shaftesbury Grove would be in the Large Lot Residential Zone.

18. While Council could have attempted to pre-empt the recommendations of the hearing panel for this site by zoning the site as Medium Density Residential Zone in the Proposed District Plan, the advice of officers was that it would be more appropriate to allow the process for the Proposed Plan Change to run its course, as the outcomes of the Proposed Plan Change could be incorporated into the Proposed District Plan process at a later date (ideally through a submission on the Proposed District Plan as this would be the most straight forward and cost-effective method, but alternatively through a formal variation to the Proposed District Plan).

19. This is still the opinion of officers, and with the Council's decision on the Proposed Plan Change, officers will continue to consider the most appropriate way to incorporate the outcomes of the Proposed Plan Change into the Proposed District Plan process.

Recommendation on Council working with Wellington Water and the requester regarding a solution to unlock development potential and address wider water supply issues in the area

20. In section 8.3 of their report, the hearing panel recommends that "the Council proactively works with Wellington Water and the requester to identify and implement a solution that will unlock the development potential of the site, as well as address the wider water supply issues facing the area" (while acknowledging that this is not with the scope of the Proposed Plan Change).

21. This recommendation is in response to evidence presented to the panel on water supply issues for the site and wider area, which constrains development. The issue is primarily discussed in paragraphs 5.38 to 5.43 of the hearing panel's report.

22. In short, the panel found that while they do not consider the water supply issue to be a reason to amend or reject the Proposed Plan Change, but that the Council has an obligation to proactively and constructively achieve a long-term solution to the water supply issue.

23. The Council's Long Term Plan does not currently include funding for a solution to this issue.

Climate Change Impact and Considerations

24. Climate change impact has been considered by the hearing panel in making its recommendation to the extent relevant under the Resource Management Act.

Consultation

25. Full public notification, a submissions process, and a public hearing were conducted in the processing of the plan change as required by the Resource Management Act 1991, which has specific requirements about the public engagement involved with private plan change proposals.

Legal Considerations

26. All legal considerations under the Resource Management Act 1991 have been taken into account and processes have so far been carried out in accordance with the Act.

Financial Considerations

27. The costs with processing the Proposed Plan Change are passed on to the applicant in accordance with the provisions of the Resource Management Act 1991 and Council policy.

28. There would be costs to Council and additional cost to the requester and submitters if the decision is appealed.

29. If Council decided not to adopt the recommendation of the hearing panel to approve the plan change, there would be significant extra cost to Council, the requester, and submitters associated with repeating all or parts of the plan change process.

30. With regard to the recommendation on Council working with Wellington Water and the requester on a solution to water supply issues, there is a cost associated with this work for all parties involved. For Council, this would include costs associated with Council officers time associated with this work, but also potentially substantial costs associated with implementing any solutions that come out of that work as these solutions would likely involve substantial investment in new infrastructure. Without knowing what those solutions are, it is unclear what those costs would be, and what share of those costs would fall on Council.

Appendices

No.	Title	Page
1⇩	PC58: Recommendation Report of the Independent Hearing Panel	79

Author: Nathan Geard
Policy Planning Manager

Reviewed By: Tim Johnstone
Head of Planning

Approved By: Alison Geddes
Director Environment and Sustainability

City of Lower Hutt District Plan

PRIVATE PLAN CHANGE 58

12 SHAFTESBURY GROVE STOKES VALLEY – REZONING TO MEDIUM DENSITY RESIDENTIAL ACTIVITY AREA

Recommendation Report of the Independent Hearing Panel appointed by the Hutt City Council pursuant to s34A of the Resource Management Act 1991

16 December 2024

CONTENTS

APPENDICES

INDEX OF ABBREVIATIONS

This report utilises several abbreviations and acronyms as set out in the glossary below:

Abbreviation	Means…
"the Act"	Resource Management Act 1991
"Activity Area"	The equivalent of 'zone' under the operative District Plan
"the Council" / "HCC"	Hutt City Council
"District Plan"/"ODP"	Operative City of Lower Hutt District Plan 2004
"FDS"	Future Development Strategy
"GRAA"	General Recreation Activity Area
"GWRC"	Greater Wellington Regional Council
"HBDCA"	Housing & Business Development Capacity Assessment for Wellington Region
"HRAA"	Hill Residential Activity Area
"MDRAA"	Medium Density Residential Activity Area
"NESCS"	National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011
"NPS-FM"	National Policy Statement for Freshwater Management 2020
"NPS-IB"	National Policy Statement on Indigenous Biodiversity 2023
"NPS-UD"	National Policy Statement on Urban Development 2020
"PC43"	Plan Change 43 – introduced Medium Density Residential Activity Area
"PC56"	Plan Change 56 – enabled greater intensification in residential and commercial areas
"PC58" / "Plan Change"	Plan Change 58 – this Plan Change
"Planning Standards"	National Planning Standards 2019
"the Requester"	M & J Walsh Partnership Ltd, which requested this Plan Change
"RMA"	Resource Management Act 1991
"s[#]"	Section number of the RMA, for example s32 means section 32
"s32 report"	The report prepared to support the Plan Change Request, pursuant to s32, RMA
"s42A report"	The report evaluating the proposed Plan Change prepared by HCC pursuant to s42A, RMA
"the site"	The land at 12 Shaftesbury Grove, subject to this Plan Change request
"UGS"	Hutt City Urban Growth Strategy 2012 - 2032
"WNRP"	Wellington Natural Resources Plan
"WRPS"	Wellington Regional Policy Statement

Hutt City Council
Private Plan Change 58
12 Shaftesbury Grove, Stokes Valley – Rezoning to Medium Density Residential Activity Area

Recommendations of the Independent Hearing Panel

Proposal Description:
Proposed Private Plan Change 58 to the City of Lower Hutt District Plan: Rezoning the site at 12 Shaftesbury Grove to Medium Density Residential Activity Area from, in part, Hill Residential Activity Area and, in part, General Recreation Activity Area.

Hearing Panel:
R J Schofield – Independent RMA Hearing Commissioner, Chair
E A Burge – Independent RMA Hearing Commissioner
Councillor B Dyer – Sitting as an Independent Commissioner

Date of Hearing:
23 September 2024

Hearing Officially Closed:
17 October 2024

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1 INTRODUCTION

1A. Report Purpose

1.1 This report sets out our recommendation as to a decision on Proposed Private Plan Change 58 (PC58) to the Operative City of Lower Hutt District Plan 2004 (ODP).

1.2 We were appointed by the Council to hear submissions made on the Plan Change and to consider and make a recommendation as to a decision. We have the delegated authority of the Council under s34A of the Resource Management Act 1991 (RMA) as to recommend whether PC58 should be declined, approved, or approved with amendments.

1.3 The Plan Change seeks to rezone approximately 12.5601 hectares of the site at 12 Shaftesbury Grove in Stokes Valley (the site) from *General Recreation Activity Area* (GRAA) and *Hill Residential Activity Area* (HRAA) to *Medium Density Residential Activity Area* (MDRAA).

1.4 As notified, no new objectives and policies were proposed as part of the Plan Change, nor any changes to the provisions of the MDRAA itself. No new provisions or amendments to

existing zone provisions in the District Plan were proposed either: the proposed amendments were confined to the subdivision provisions.

1.5 We will canvas the Plan Change's background in due course. At this point, we note that it was the subject of a s32 report[1], consultation with stakeholders, and the public notification and hearing process, culminating in our recommendation as to a decision.

1.6 Before setting out the details of PC58, the submissions to it and our substantive evaluation, there are some procedural matters that we will address, beginning with our role as an Independent Panel.

1B. Role of the Hearing Panel

1.7 The role of the Hearing Panel was to hear all submissions on PC58 on the Council's behalf, and to make a recommendation to the Hutt City Council on the outcome of the privately requested Plan Change. The authority delegated to us by the Council includes all necessary powers under the RMA to hear and make a recommendation as to a decision on the submissions received on the Plan Change. The final decision is made by the full Council.

1.8 The purpose of this report is to satisfy the Council's various decision-making obligations and associated reporting requirements under the RMA on behalf of the Council.

1.9 Having familiarised ourselves with PC58 and its associated background material, read all submissions and evidence, conducted a site/locality visit and held a hearing, we hereby record our recommendations and reasoning.

1C. Report Outline

1.10 In this respect, our report is broadly organised into the following two parts:

a) Factual context for the Plan Change:

The non-evaluative part of our report, comprising Sections 2 to 4, is largely factual and contains an overview of the land subject to the Plan Change, the local environment, the current zoning, and the changes sought by the Plan Change as notified. This part of the report briefly describes the submissions received on the Plan Change and provides a summary account of the hearing process itself, including various procedural matters that arose.

b) Evaluation of key issues:

The second part of our report, comprising Sections 5 to 7, contains an evaluation of the main issues raised in submissions to PC58 and, where relevant, evidence and statements presented at the hearing. We also evaluate the consistency of the Plan Change with the relevant statutory direction at national, regional and district levels. We conclude with a summary of our findings and our recommendations. Collectively, this part of our report records the substantive results of our deliberations.

[1] S32 of the RMA sets out the requirements for preparing reports that evaluate the appropriateness of a Plan Change.

1.11 In advance of setting out the Plan Change context, we would like to record our appreciation at the manner in which the hearing was conducted by all the parties taking part. All those in attendance enabled a focused hearing process that greatly assisted us in assessing and determining the issues, and in delivering our recommendation as to a decision.

1.12 These initial thoughts recorded, we now set out the factual background to PC58.

2 PLAN CHANGE CONTEXT

2A. The Site

2.1 The site is located in the suburb of Stokes Valley, in the northern part of Lower Hutt, within Hutt City. Stokes Valley is contained within its own long valley, physically separated from the rest of Lower Hutt, and nearly fully encircled by densely vegetated hills to the east, west and south. There is only the one entrance into Stokes Valley, at the northern end of the Valley, where the Stokes Valley Stream discharges into the Hutt River. The location of the site is shown in **Figure 1** below.

2.2 The site area is 12.5601 hectares, with a legal description of Lot 1, DP 507600. The street address is 12 Shaftesbury Grove, Stokes Valley, Lower Hutt, with all of that property being subject to the proposed Plan Change. The site is located at the end of Shaftesbury Grove, which comes off Holborn Drive, on the northwestern side of Stokes Valley. There are several interests on the Record of Title, including a Consent Notice that states that the limited water supply available to the site means only one dwelling can be constructed on site and that further development of the land will require provision, by the developer, of water facilities that fully meets Councils' "Water Supply Code of Practice".

2.3 The site is undeveloped except for an unsealed road along the ridgeline and two cell phone towers. A Council water reservoir is accessed via the unsealed road with the reservoir located on Council land just south of the application site. The site is covered in vegetation which is described in detail in the ecological assessment.

2.4 A 250m section of the northeastern boundary abuts developed residential sites that are located on Fenchurch Grove. The site is nearly fully surrounded by 20 Shaftsbury Grove which is owned by HCC and is zoned General Recreation Activity Area. A 50m section of the western boundary adjoins 188 Eastern Hutt Road which is occupied by Taitā College. A 110m section of the western boundary adjoins 30 Shaftsbury Grove which is privately owned and is mostly zoned General Recreation although an approximately 35m length of the boundary adjoining the application site is Medium Density Residential Activity Area. There is no development on 30 Shaftsbury Grove near the application site.

2.5 The site is located on part of the line of hills that form the western edge of Stokes Valley, separating it from the suburbs of Taitā and Pomare to the west. This line of hills gradually ascends from the entrance to the Valley to the north, rising to nearly 400m amsl at the southern end of the Valley. The hills to the east and south of Stokes Valley are generally higher (generally twice the height) and more forested and form a backdrop to many of the views of and within Stokes Valley.

2.6 Within the site itself, the ridgeline is undulating, ranging in elevation between about 135m and 150m amsl. The ridgeline has relatively narrow 'shoulders' which vary in width along the length of the site but are broader to the north. The shoulders fall steeply on either side of the ridge, particularly on the western, Taitā, side. The western boundary is 105m to 135m above sea level and the eastern boundary 125m – 145m above sea level.

2.7 The site is primarily covered in regenerating indigenous vegetation mixed with exotic weeds and interspersed with some wilding pine trees, particularly on the western face. Historically, the site and the entire ridgeline was cleared of its original forest cover and used for pastoral farming.

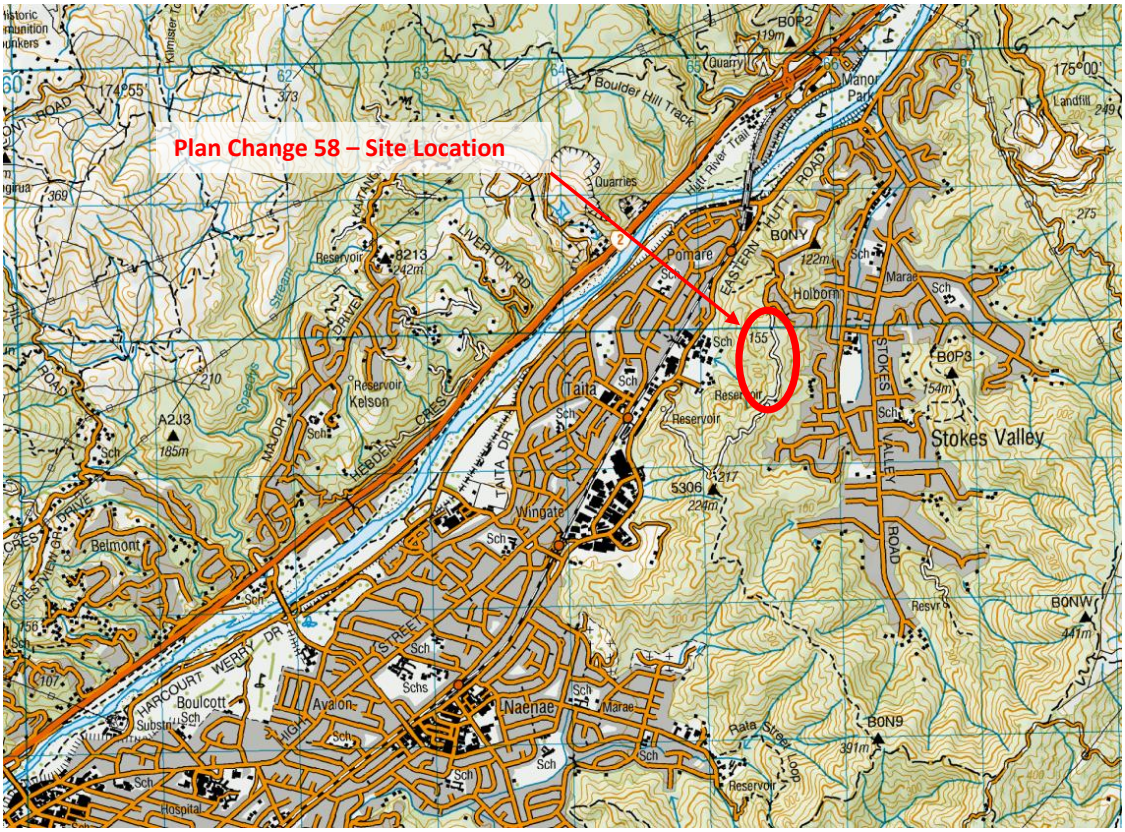

Figure 1: Site Location, Proposed Plan Change 58

2.8 An unsealed access track extends along the ridgeline within the site, providing vehicular access from Shaftesbury Grove to the telecommunication masts and to a Council water reservoir (this latter facility is outside the site to the south). Other informal walking tracks link the site with other locations, including Taitā College.

2B. Local Environment

2.9 Stokes Valley is a suburb of about 10,000 people. The commercial centre is located immediately east of the subject site, and three primary schools service the community. The nearest secondary school is Taitā College, directly west of the site, but some 5km via road. The site to the south of the College is now the Learning Connexion, and was formerly the

Soil Bureau, a government science research unit between 1960s–1980s which used the catchment for research into pine, native forest and pasture.

2.10 The residential area to the north of the site, referred to as Holborn, is principally served by Holborn Drive, which provides the principal access to the site via Shaftesbury Grove. Alternative access is provided by Logie Street, which connects Holborn Drive with central Stokes Valley, including the commercial centre.

2.11 Located on the western ridgeline, much of the residential development in Holborn is visible from the valley floors and more distance viewpoints, although it presents as a low density of development, the appearance of which is broken up by trees on the steeper slopes on either side of the ridgeline.

2C. Current Zoning

2.12 **Figure 2** is the map used to notify PC58. The area subject to the Plan Change is outlined by a yellow line, the property boundary, which currently contains land zoned *Hill Residential* (orange) and *General Recreation* (green). The existing residential areas to the north (Holborn) and east (Stokes Valley) are zoned *Medium Density Residential* (light yellow).

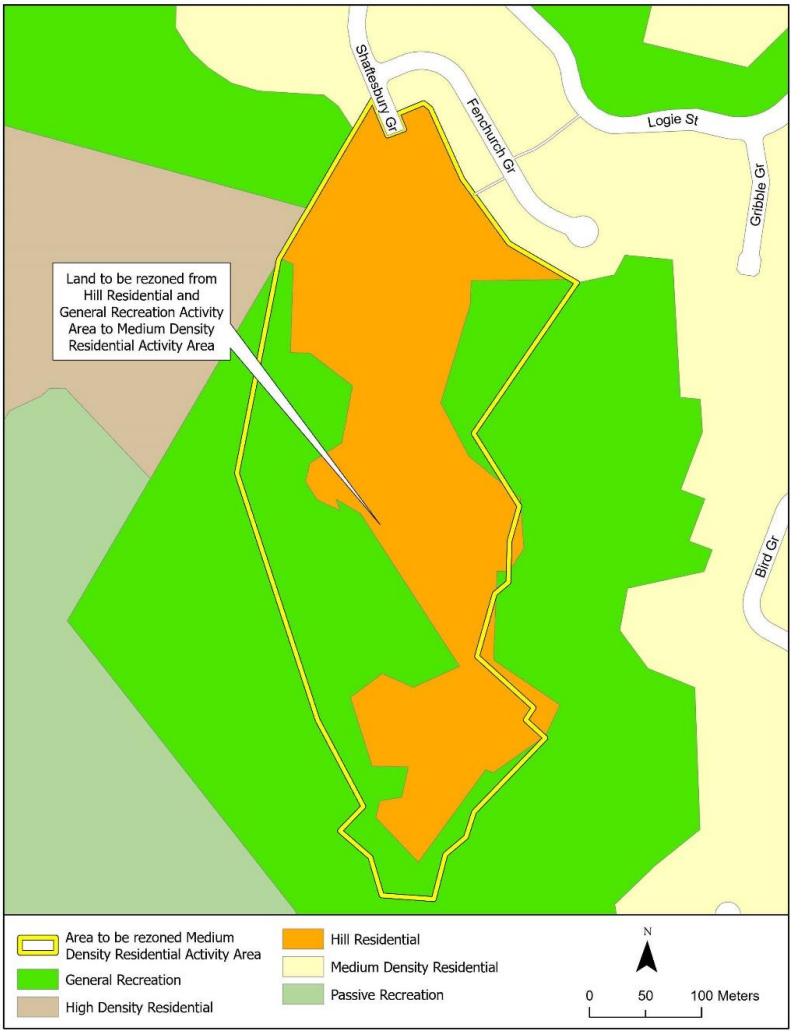

Figure 2: Current zoning of the site and immediate environs (from Plan Change documents)

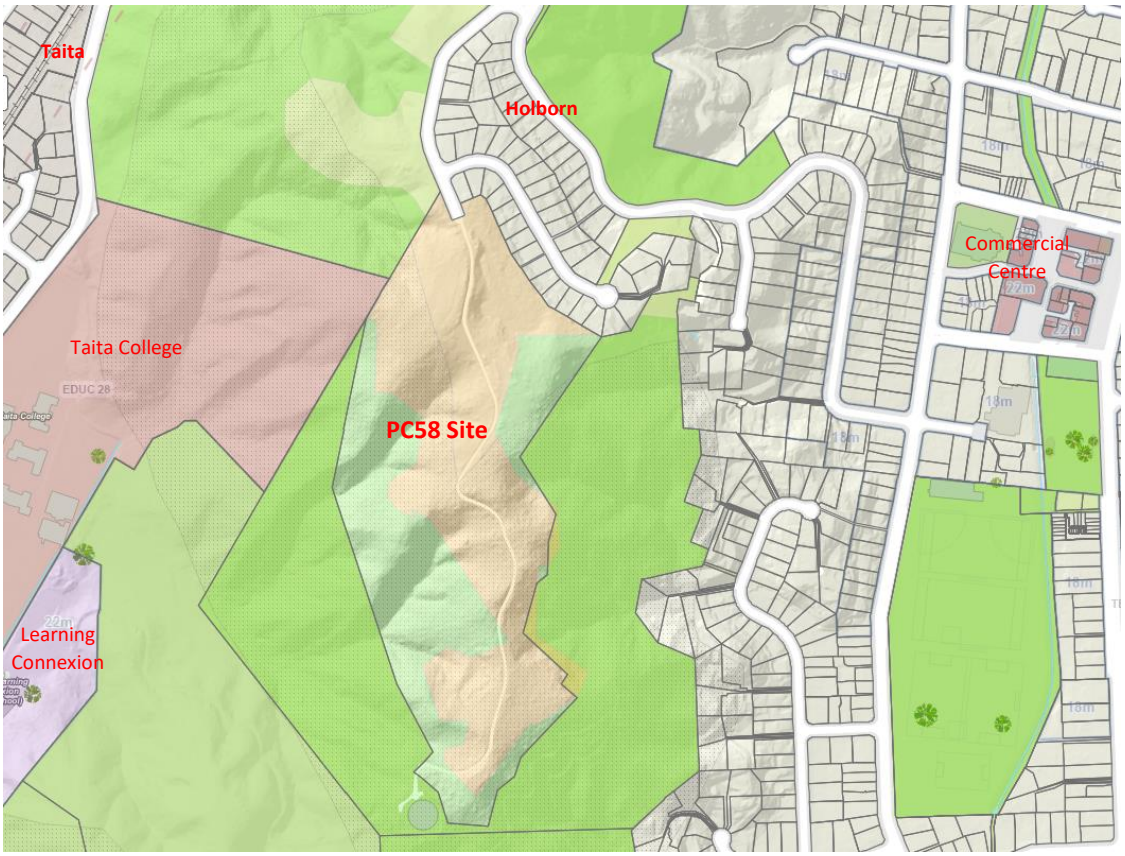

Figure 3: Zoning of Plan Change 58 site and locality, with underlying topography (source HCC GIS Viewer).

2.13 A map of the zoning pattern in the vicinity of the site, underlain by the topography, is shown in **Figure 3** above. Most of Stokes Valley residential area is zoned Medium Density Residential Activity Area (light yellow), with many of the hillsides zoned General Recreation Activity Area (green). Taitā College, which partly adjoins the site to the west, is zoned *High Density Residential* (pink), but is designated for education purposes.

2.14 Under the ODP, that part of the site zoned Hill Residential Activity Area can be developed for low density residential uses, at a minimum net site area of 1000m^2 and 35% building coverage. The General Recreation zoning is intended to manage the City's open space and recreational areas, and thus does not enable any residential development.

2.15 The residential areas of Stokes Valley are zoned Medium Density Residential Activity Area (MDRAA), including these adjacent to the site, to the north and east. The MDRAA enables the development of sites with three residential units, up to three storeys high.

2D. Changes to the City's Planning Framework

2.16 Before outlining the changes sought under PC58, it is important to clarify the recent and significant changes that have been made to the City's planning framework, particularly in regard to residential development.

2.17 Under the RMA, the development and use of land in Hutt City is managed under the City of Lower Hutt District Plan. The City Council is in the process of reviewing and replacing its operative District Plan (**ODP**), which became operative in 2004. The Council is currently working towards notifying a full Proposed District Plan (**PDP**) in early 2025.

2.18 The current ODP has been subject to a wide range of Plan Changes since 2004, most of which were site specific. Two of the most significant changes of relevance to PC58 were Plan Changes 43 and 56.

2.19 Plan Change 43 (**PC43**) was introduced to provide for greater housing capacity in the City, with a wider range of housing options at medium densities within parts of the existing urban area. The Plan Change introduced two new zones to the District Plan:

a) The Suburban Mixed Use Activity Area, which introduced a building height standard of 12m (three to four storeys), accommodating shops and cafes on the ground floor, with apartments or offices above.

b) The Medium Density Residential Activity Area, which introduced a building height standard of 10m (plus one metre for the roofline), while restricting building height closer to the rear and side boundaries to reduce shading effects using recession planes and boundary setbacks.

2.20 In Stokes Valley, under PC43, the commercial centre was rezoned Suburban Mixed Use, and the area around the Centre was rezoned to Medium Density Residential Activity Area. The remaining residential areas of Stokes Valley remained zoned as General Residential Activity Area.

2.21 The other, more significant Plan Change was introduced in response to more recent legislative changes to the RMA and the National Policy Statement on Urban Development (**NPS-UD**). In 2021, the Government introduced the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act (**RMA-EHS**). The RMA-EHS requires the high growth councils in NZ to incorporate Medium Density Residential Standards (**MDRS**) into every relevant residential zone in their District Plan to enable intensification to occur without resource consent: this includes Hutt City. Plan Change 56 (**PC56**) was the Hutt City Council's response to this mandate.

2.22 PC56 was publicly notified on 18 August 2022, introducing new, more permissive development standards with higher densities to enable intensification in the City's residential and commercial areas. In terms of residential development, there were two main components to PC56. First, it incorporated the mandatory MDRS into a number of residential zones in the District Plan, including the General Residential Activity Area (but not the Hill Residential Activity Area). The MDRS are a set of provisions, including standards, rules, objectives and policies, which enable 3 residential units to be built on a residentially zoned site, up to 11m (three storeys) high. PC56 also introduced changes to the ODP to allow housing of at least six storeys within walking distance of train stations, the CBD and Petone town centre.

2.23 As a result of these changes, much of the valley floor in Lower Hutt and Petone is now zoned for high density residential development, including Taitā and Pomare, while the remaining areas of General Residential became Medium Density Residential Activity Area, including Stokes Valley. These changes are now fully operative through the City.

2.24 A final change of relevance is the National Planning Standards which were introduced in 2019 to improve the consistency of format, structure and terminology in Plans across NZ. The format of District Plans is gradually being replaced with defined terms and structures. For example, there are defined set of zones which must be applied as relevant: thus, the Medium Density Activity Area will become the Medium Density Residential Zone. There is no direct replacement for the Hill Residential Activity Area, but the Large Lot Residential Zone is probably the nearest equivalent.

2E. Plan Change Request

2.25 Part 2 of the RMA's First Schedule sets out various requirements for private Plan Changes such as PC58. Under clause 22, any private Plan Change request is to:

a) Explain in writing the purpose of, and reasons for, the proposed change;

b) Contain the required evaluation under s32 of the Act; and

c) Describe the anticipated environmental effects of the proposal in such detail that corresponds with the scale and significance of the effects.

2.26 Each of these are discussed further below.

I. Reasons and Purpose for the Proposed Change

2.27 As notified, the Plan Change proposes to rezone the area to which it relates from General Recreation Activity Area and General Residential Activity Area to Medium Density Residential Activity Area, as illustrated in Figure 2 above, together with changes to the subdivision provisions.

2.28 It has to be emphasised that the entire site is proposed to be rezoned *Medium Density Residential Activity Area*, not just the area zoned *Hill Residential Activity Area* which might be inferred from the Plan Change map (shown in Figure 2).

2.29 As an aside, the proposed rezoning would leave some orphan elements of Hill Residential Activity Area that lie outside the property boundary, to the southeast. These are located within Council-owned reserve land. It is presumed that these would have to be 'tidied up' in the upcoming District Plan review process if PC58 is confirmed.

2.30 The purpose and scope of the Plan Change is set out in s2 of the s32 Evaluation. The Plan Change Request states that –

> *The purpose of the Plan Change is to rezone the property at 12 Shaftesbury Grove in Stokes Valley from the current split-zoning comprising Hill Residential and General Recreation Activity Area, in order to be entirely zoned as Medium Density Residential Activity Area. The proposed zoning would provide for additional development potential that aligns with the residential zoning and anticipated density of the surrounding area and is therefore considered to better meet the purpose of the RMA through the objectives of the District Plan. While it is proposed to zone the entire site as Medium Density Residential Activity Area, it is anticipated that any future development will be limited to the flatter parts of the site along the existing ridgeline with limited earthworks. The steeper and more sensitive areas of*

the site are proposed to be excluded from the identified Development Areas on the site.[2]

2.31 The Private Plan Change also seeks the introduction of new site-specific provisions to the Subdivisions Chapter to address the site-specific limitations and opportunities. The s32 evaluation asserts that any potential future effects arising from the development of the site under the Private Plan Change can be addressed through the existing and proposed objectives, policies and rules especially in the Subdivision and the Medium Density Residential chapters.[3]

2.32 As an aside, we note that, because the notified Plan Change does not propose any changes to the objectives of the District Plan, for the purpose of determining whether the objective of the Plan Change proposal is the most appropriate way to meet the purpose of the Act we must, under subs(6) of s32, treat the purpose of the Plan Change as the relevant objective of the proposal.

II. S32 Evaluation

2.33 S32 requires, in this case, an evaluation which:

- examines the extent to which the purpose of the Plan Change is the most appropriate way to achieve the purpose of the Act (s32(1)(a)); and
- examines whether the provisions proposed to be changed are the most appropriate way to achieve the purpose of the Plan Change (s32(1)(b)) – by:
  - identifying other reasonably practicable options
  - assessing the efficiency and effectiveness of the provisions in achieving the purpose of the Plan Change by, in accordance with s32(2), identifying and assessing benefits and costs of anticipated effects (including economic growth and employment), if practicable quantify those benefits and costs, and assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions, and
  - summarising the reasons for deciding on the provisions.

2.34 The Requester's s32 evaluation report outlined four main rezoning options for the land in question and evaluated the costs and benefits of each option:[4]

- Option A – Do Nothing: Retain the Existing Zoning of Hill Residential Activity Area
- Option B – Rezone the entire site to Medium Density Residential Activity Area without the introduction of any site specific provisions
- Option C – Rezone the entire site to Medium Density Residential Activity Area with site specific provisions, and

[2] Paragraph 6 of the s32 Evaluation
[3] At paragraph 9
[4] S8

- Option D – Rezone the Hill Residential portion of the site to Medium Density Residential while retaining the General Recreation zoning for the remainder of the site.

2.35 The s32 report concluded that Option C is the recommended approach for the Plan Change, as it:

- Is the most appropriate way to achieve the objectives of the District Plan;
- Provides for the most appropriate zoning of the site subject to the Plan Change, by using the provisions that apply to the adjacent residential sites; and
- Is the most efficient option because the benefits outweigh the associated costs.

2.36 The reasons for this conclusion include:

- The site is suitable for additional residential development that is consistent with the existing and anticipated development of the surrounding residential areas;
- The current Hill Residential zoning does not support the development of the site at a density that is feasible and in keeping with surrounding areas;
- Any potential effects associated with the subdivision and development of site can be appropriately addressed and managed through the existing rules of the District Plan and the proposed site-specific provisions; and
- Any resulting effects from these activities would be appropriately mitigated through the existing and proposed provisions of the District Plan.

2.37 The evaluation accepted that the identified lack of sufficient water supply capacity means that any future development is highly dependent on the establishment of a new water reservoir in the catchment. It notes that a potential suitable location for such a reservoir has been identified.

2.38 Following the hearing, the Requester recommended adding a new policy to the District Plan's subdivision policies, to provide guidance to future decision-making in relation to the development of the site at 12 Shaftesbury Grove. A s32AA evaluation was provided as part of that recommendation as well as for the other recommended amendments made in that response.

III. Environmental Effects Assessment

2.39 The Plan Change request included an assessment of environmental effects (S7), drawing on assessments from the following:

- Infrastructure – Cuttriss Consultants Ltd
- Geotechnical – Torlesse Ltd
- Ecology – Frances Forsyth Consulting
- Landscape & Visual – Eco-Landscapes & Design Ltd
- Transport – Traffic Concepts Ltd

2.40 In summary the assessments drew the following conclusions:

- Water supply – at present, any future residential development of the site cannot be provided with a level of service that meets current water supply standards. A potential solution would be to build a new reservoir that would not only service the private Plan Change site but also address the existing water supply issues in the wider catchment.
- Wastewater – the existing wastewater network in the area is at capacity and therefore some form of mitigation would be required for any development of the site. A potential solution would be the storing of wastewater at 'peak' times and then discharge to the network at 'off-peak' times. This could be achieved through either a public wastewater pump station at the southern end of the future road alignment, or through individual pumps as part of a low-pressure wastewater network.
- Stormwater – While no flooding risks were identified on the site, the development of the site would generate additional stormwater runoff. Wellington Water advised that stormwater neutrality would be required for any development of the site due to the lack of capacity in downstream networks. There are a number of options to achieve stormwater neutrality and introduce water sensitive design solutions. The most practical and effective stormwater solution for managing stormwater would be via controlled discharges to the natural gullies on either side of the ridgeline, subject to suitable standards. Consideration will also need to be given to downstream properties of any stormwater discharge location.
- Energy and Telecommunications – the site can be serviced by electricity, gas, and telecommunications.
- Natural hazards and geotechnical – while the site is not subject to any natural hazard risks identified in the District Plan, slope stability is not currently mapped. A geotechnical investigation found the site is suitable for residential development subject to a number of recommendations, but identified the need for further specific engineering design, especially for any fills greater than 6m in height and for stormwater discharge to gullies with slope angles over 15°.
- Roading and access – the development can occur with no adverse traffic effects on the local roading network.
- Cultural values – there are no significant cultural or archaeological sites or heritage buildings and structures identified on the site.
- Ecology – a desktop analysis was supported by several site surveys, with the existing vegetation mapped (and mānuka height and diameter at breast height measured), plant species observed were recorded, as were birds seen or heard. In addition, streams on either side of the property were surveyed. The main findings were –
    - The existing patterns of vegetation were assessed against WRPS Policy 23[5], with the dominant vegetation type being mānuka forest which is classified as Significant due to the At-risk conservation status of mānuka species. The second most common vegetation type is pine forest which is classified as a weed and is therefore not a significant vegetation type. The gullies are dominated by three

[5] Policy 23 of the WRPS sets out the criteria that local authorities must use to assess and identify indigenous ecosystems and habitats with significant indigenous biodiversity values

types of forest and shrublands, with wetter areas, generally to the west, dominated by kāmahi and tree fern (mamaku), and drier areas, generally to the east, dominated by mixed broadleaf including mahoe. None of the observed vegetation types are significant.

- Nine species of orchids are listed for the site, including the sun orchid which has a national threat category of At Risk-Naturally Uncommon. Habitat supporting rare orchids is significant under the WRPS Policy 23.
- None of the recorded native bird species detected on or nearby the site are rare or threatened.
- There are numerous records of geckos for the area, including the Wellington green gecko and the Ngahere gecko, which are both classified as At Risk – Declining. As these geckos have been found nearby, there is a high likelihood that they will also be present at the site.
- The headwaters of several streams originate on the slopes on either side of the site. While there were no fish observed in the streams within the property, fish have been observed in the streams around Taitā College and the Learning Connexion. Fish could also potentially be present downstream on the Stokes Valley side. The streams show good to excellent water quality and high macroinvertebrate health. They provide drift food for fish downstream and contribute to the maintenance of base flows. The vegetation cover over the streams contributes to their good water quality.

A number of measures were recommended to mitigate the effects of development on the ecological values, including a more detailed survey to identify significant indigenous biodiversity values, management plans for lizards and orchids, the removal of wilding pines, and weed control, and enhancement planting, and the control of stormwater run-off.

- Landscape effects – landscape effects are anticipated under the current Hill Residential zoning, but these effects are likely to be limited to the ridgetop and upper slopes. There is capacity to absorb change from residential development given the presence of established residential development on adjacent sites. While the undeveloped character of the ridgeline would change, this change would mostly be a shift of the existing development border and, over time, the development would be able to integrate with the wider landscape through the protection of vegetation on lower slopes and the planting of buffer vegetation and street trees. Landscape effects are anticipated to be moderate to low.
- Visual effects – the site is widely visible, with an extensive visual catchment. From the distance (such as the Western Hills or the eastern parts of Stokes Valley) the site is mostly seen in the context of the wider ridgeline with urban development in the foreground and higher hills in the background. The degree of visual effects will depend on a nature of the view, orientation, separation distance, foreground and background context and elevation. The densities enabled by the proposed Medium Density Residential zoning (in comparison to the densities enabled by the current Hill

Residential zoning) would be seen in within the context of the established residential zones and can be readily absorbed within the receiving landscape.

2.41 One minor matter we would record, but which is not substantive to our evaluation is that the Plan Change uses the term 'Development Area' to describe that part of the ridgeline and its shoulder which is intended to be subdivided and developed for residential purposes. We would note, however, that this term has been defined by the National Planning Standards as follows:

> *A Development Area spatially identifies and manages areas where plans such as concept plans, structure plans, outline development plans, master plans or growth area plans apply to determine future land use or development. When the associated development is complete, the Development Areas spatial layer is generally removed from the plan either through a trigger in the Development Area provisions or at a later Plan Change.*

2.42 A plan showing the possible subdivision and development of the site was provided by the Requester's civil engineers, Cuttriss Consultants, but it is clear that this plan was not intended to be a concept or structure plan to direct the future development of the site, but rather assist in understanding the type of development envisaged for the site[6]. It was not included as part of the notified provisions of the Plan Change. The only plan used in the proposed Plan Change provisions, Appendix Subdivision 10, could not be considered a structure plan, but is proposed to be used to support the application of the proposed rules. The 'Development Area' is more of an 'overlay' as defined under the National Planning Standards: "an overlay spatially identifies distinctive values, risks or other factors which require management in a different manner from underlying zone provisions".

2.43 We envisage that standardising terminology and spatial layers to be consistent with the National Planning Standards will be a broader matter for the forthcoming District Plan Review to address. At this stage, we simply flag this matter for the Council.

2F. The Proposed Development Framework under PC58

2.44 It is important to understand how the proposed planning framework is intended to manage the subdivision and development of the site as this has been critical in affecting our consideration of many of the issues.

2.45 First, the entire site is proposed to be zoned as Medium Density Residential, not just the existing Hill Residential zoned part but also that part zoned as General Recreation. As we noted, the medium density residential zone standards were introduced through Plan Change 56, and enables development of three residential units per site, up to three storeys high. Thus, the steeply sided heavily vegetated slopes on either side of the ridge would be zoned for medium density residential development.

2.46 However, because of the special characteristics of the site, the Plan Change is proposing several site-specific modifications to the medium density residential zone provisions for this site:

[6] For example, refer to the plan on page 164 of the Plan Change request

a) The site has been divided into two parts: the Development Area as shown on the map in proposed Appendix Subdivision 10, and the remaining area, not labelled in Appendix Subdivision 10 but identified as 'protected area' in evidence for the hearing[7]. The Development Area is similar in boundary to the area currently zoned Hill Residential, but is not equivalent, as it appears to have a more contour basis to it than the zone boundaries.

b) The subdivision of the ridgeline area within the identified Development Area is proposed to require resource consent as a restricted discretionary activity rather than as a controlled activity so that subdivision consent applications may be declined, but only within the specified matters of discretion.

c) Outside the Development Area (i.e., within the 'protected area'), subdivision would require resource consent as a full discretionary activity, enabling a full assessment of all potential adverse effects for particular proposals and a full consideration of relevant policies. An application may be declined consent.

2G. Qualifying Matters

2.47 As described above, the Plan Change seeks to rezone the entire site at 12 Shaftesbury Grove, Stokes Valley, from *Hill Residential* and *General Recreation* to *Medium Density Residential Activity Area* (MDRAA). As set out in s2D, the MDRAA replaced parts of the General Residential Activity Area as a result of Plan Change 56, which became operative on 21st September 2023. That Plan Change was introduced in response to an amendment to the Resource Management Act (RMA) in 2021 requiring Councils to change their District Plans to enable housing up to 3 storeys high and up to 3 units per sin most residential areas.

2.48 As part of that legislative change, a set of Medium Density Residential Standards (MDRS) were required to be included in the relevant residential zones to replace existing residential standards, including for subdivision. The MDRS makes residential uses a permitted activity if the building density standards specified in Schedule 3A are met, and the subdivision of land for the purpose of the construction and use of residential units a controlled activity.

2.49 The duty to give effect to the MDRS in the Council's residential zones is contained in s77G RMA. Under s77G(6), the Council may only make the requirements set out in the MDRS less enabling of development if authorised to do so under s77I. Under s77I, a Council may make the MDRS less enabling only to the extent necessary to accommodate one or more of listed qualifying matters. Where a qualifying matter is provided for, the s32 Evaluation Report must include the additional information set out under s77J(3). If the matter is not one of the listed qualifying matters, then a further evaluation is required under s77L.

2.50 If rezoned to MDRAA, the MDRS would apply to the subdivision and development of the entire site at 12 Shaftesbury Grove, including, as we noted, the steep well vegetated hillsides. While Plan Change 58 does not propose to make any changes to the zone provisions in Chapter 4F itself, it is seeking to introduce changes to the subdivision provisions in Chapter 11 as they relate to the MDRAA, including introducing –

[7] For example, in Figure 1 of Ms MacArthur's Evidence-in-Chief

- A new restricted discretionary activity rule for subdivision within the identified Development Area, with a set of assessment matters that relate specifically to subdivision of the site, and
- A new discretionary activity rule for any subdivision outside the identified Development Area, with a greater range of assessment matters.

2.51 Given the RMA requirements for making the MDRS provisions less enabling under Sections 77I, 77J and 77L, the Panel posed the following questions to the Requester through Minute #2:

a) Are the proposed rules for the site in respect of subdivision for residential development less enabling than the MDRS rule for subdivision under Schedule 3A RMA?

b) If yes:

i) are the requirements necessary to accommodate any of the qualifying matters (a) to (i) under s77I, and if so why, and

ii) if required to accommodate qualifying matter s77I(j), has an evaluation been undertaken in accordance with sections 77J to 77L?

2.52 For background, these sections are in brief:

a) S77I contains a list of qualifying matters that allow territorial authorities to make the MDRS less enabling

b) S77J contains the additional evaluation requirements for the implementation of MDRS and the accommodation of qualifying matters

c) S77L contains further requirements that other matters described in s77I (j) need to comply with to be a qualifying matter (noting that qualifying matters not only relate to density standards but also to subdivision requirements).

2.53 In reply, the planner for the Requester, Ms Tessendorf, produced an addendum to her planning evidence, circulated on 18 September prior to the hearing. In summary, Ms Tessendorf provided the following responses:

a) Yes, the proposed site-specific rules for the site at 12 Shaftesbury Grove are less enabling than the MDRS requirements for subdivision under Schedule 3A. While Schedule 3A requires the subdivision of land for the purpose of the construction and use of residential units to be a controlled activity, PC58 proposes a restricted discretionary starting point for subdivision of the site and requires all earthworks, building platforms, roads, private accesses and utility structures to be located within the identified Development Area on the site. Any subdivision that proposes these activities/structures to be located outside the Development Area becomes a discretionary activity.

b) Yes, the more restrictive subdivision framework is considered necessary and appropriate to accommodate qualifying matters under sections 77I (a), (b) and (j). While the initial s32 evaluation report refers more broadly to site specific characteristics, issues, challenges and limitations, these matters align with the qualifying matters under s77I.

2.54 Ms Tessendorf stated that the rezoning of the site to Medium Density Residential Activity Area with a site specific restricted discretionary starting point for subdivision would allow

for a greater development density than the current Hill Residential zoning of the site. She considered that the restricted discretionary subdivision status is considered necessary and appropriate to address site specific characteristics and qualifying matters.

2.55 Further, Ms Tessendorf contended that, since the current zoning of the site does not allow for the application of the MDRS, the restricted discretionary starting point for subdivision of the site does not reduce the density or development potential of the site but allows for the rezoning of the site to medium density residential while addressing specific characteristics, challenges and limitations (qualifying matters). She therefore concluded that the proposed rezoning and site-specific provisions will enable increased development capacity while allowing for the management of site-specific characteristics.

2.56 In her addendum, Ms Tessendorf identified the following site-specific characteristics and challenges that should require further assessment at the subdivision stage:

- Ecology
- Infrastructure capacity
- Stormwater management
- Geotechnical
- Landscape and visual

2.57 Ms Tessendorf considered the most relevant subsections of s77I to be s77I (a), s77I (b) and s77I (j) as follows:

a) Under s77I(a) matters of national importance under s6 of the RMA are qualifying matters: Ms Tessendorf considered that s6(a) relating to protection of rivers and their margins, s6 (c) requiring the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and s6 (h) relating to the management of significant risks from natural hazards are of relevance to PC58.

b) S77I(b) lists matters required in order to give effect to a national policy statement as qualifying matter: Ms Tessendorf considered the National Policy Statement for Indigenous Biodiversity (NPS-IB) and the National Policy Statement for Freshwater Management (NPS-FM) to be of relevance to PC58.

c) S77I(j) allows for the consideration of other matters: Ms Tessendorf considered the natural landscape values of the site and the provisions of sufficient infrastructure to be other relevant matters, even though they are neither s6 matters nor addressed by a National Policy Statement.

2.58 Ms Tessendorf stated that, based on the site-specific characteristics, challenges and limitations outlined in more detail in the experts' assessments and the s32 evaluation, she considered the site at 12 Shaftesbury Grove to be subject to qualifying matters that are incompatible with the controlled activity status for subdivision as prescribed by Schedule 3A. Ms Tessendorf contended that making subdivision a restricted discretionary activity for the site does not limit the actual development capacity of the site as it allows for the future development of the ridgeline at a medium density level that would not be achievable under its current Hill Residential zoning. She asserted that the restricted discretionary starting

point and the related site-specific information requirements, matters of discretion and standard allow for the consideration and management of site-specific qualifying matters:

> *While there may be additional costs for the preparation of additional information and the protection and management of identified matters, they are outweighed by the benefit of the rezoning and the resulting additional development capacity.*[8]

2.59 Ms Tessendorf concluded that the proposed modifications to the MDRS are limited to the Plan Change site, and the degree of limitation to development will occur according to the sensitivity of the environment within the site, noting that PC58 seeks the introduction of a Development Area overlay to show the most appropriate area for medium density residential development in alignment with the MDRS.

2.60 Based on the evaluation provided in Ms Tessendorf's addendum, we are satisfied that the need to protect and manage indigenous biodiversity values on the site of PC58 provides sufficient justification to be a qualifying matter under S77I(a), in terms of being required to appropriately address the directions under s6(a) RMA and the policies of the NPS-IB. There was sufficient evidence based on the site surveys and assessment undertaken for the Plan Change to satisfy us that the ecological values of the site were significant enough to warrant a less enabling management approach to subdivision of the site in the manner proposed under PC58.

2.61 We were, however, not necessarily persuaded that the other constraints to the subdivision and development of the site were sufficiently problematic or exceptional to meet the thresholds to be qualifying matters under the RMA. In particular, we considered that many of those other constraints could be satisfactorily addressed to avoid or mitigate adverse effects through, for example, best practice earthworks and stormwater management practices, and landscape treatment and planting. In addition, while we accept that water supply is currently a significant constraint to development, there are options available to address this constraint. While these constraints may impose significant costs on development (for example, earthworks and slope stability measures), they did not necessarily preclude development. However, we did find that these matters were sufficiently substantive to require explicit consideration in any subdivision process.

3 SUBMISSIONS AND HEARING

3A. Notification and Submissions

3.1 PC58 was publicly notified on 9 November 2023. Four submissions were received before submissions closed on 8 December 2023. One late submission was received, from Kathryn Martin, some six days after the close of the hearing (we address this submission at paragraphs 3.7 and 3.8).

3.2 The summary of submissions was notified on 8 February 2024, and eight further submissions were received before further submissions closed on 22 February 2024. No late further submissions were received.

[8] At paragraph 26

3.3 The five submitters were from:

Submission Number	Name
DPC58/001	Taitā College
DPC58/002	Greater Wellington Regional Council (GWRC)
DPC58/003	Graeme Adrian
DPC58/004	Ashley Keown
DPC58/005	Kathryn Martin

3.4 The further submissions were from:

Further Submission No.	Name	Position
DPC58/F001	Charlotte Heather	Supports parts of submissions 001, 002, 004 and 005
DPC58/F002	Kathryn Martin	Supports submissions 001 and 002, as well as the feedback from Ngāti Toa Rangatira included in the s32 Evaluation Report
DPC58/F003	Will van't Geloof	Did not specifically relate to any of the submissions but generally oppose the Plan Change.
DPC58/F004	Nicholas Dowman	Did not specifically relate to any of the submissions but generally oppose the Plan Change.
DPC58/F005	Nico Reason	Did not specifically relate to any of the submissions but generally oppose the Plan Change.
DPC58/F006	John Hopgood	Supports submission 005
DPC58/F007	The Friends of Horoeka Scenic Reserve	Supports 001, 002, 005 and supports in part 004
DPC58/F008	Cosmic Kaitiaki of Native Realms Foundation	Opposes submission 003 and supports 001, 002 and 005

3.5 A summary of the submissions and further submissions was provided in Appendix 1 to the S42A report, which included recommendations on whether the points made in the submissions should be accepted, accepted in part, or rejected.

3.6 In regard to further submissions F004 to F006, while these submissions could be regarded as technically invalid in that they did not relate to any original submission, it can be inferred from their submissions that they oppose the Plan Change and therefore support those original submissions that opposed the Plan Change: namely, submissions 001, 003, 004, and 005.

3.7 One late submission to the Plan Change was received by the Council, from Kathryn Martin (submission DPC58/005), some six days after the closing of the submission period. We were advised by the Council's reporting planner that this submission did not delay the notification of the summary of submissions, who recommended this submission be accepted.

3.8 Under our delegated authority, we determined to accept this late submission pursuant to S37 RMA, power of waiver and extension of time limits, for the following reasons:

a) No person is considered to be adversely affected by the grant of a waiver of time. The late submission raised similar issues to others raised in other submissions.

b) It is in the interest of the community to test the provisions of PC58, and the late submission would assist that process. It is also a matter of natural justice to allow the fullest participation in the development of policy under the RMA and the District Plan.

c) The receipt of the late submission did not cause an unreasonable delay in terms of the preparation of the summary of submissions, or the processing of the proposed Plan Change generally. There was no risk to the Council's ability to meet its duty to avoid unreasonable delay.

3.9 The matters raised in the submissions were summarised by the reporting planner as falling into the following topic areas:

- Site stability
- Transport
- Effects on indigenous flora and fauna/biodiversity
- Three water infrastructure
- Urban sprawl
- Access to school land (Taitā College)
- Geotechnical hazards
- Active transport links
- Freshwater management
- Sites of significance to Māori.

3.10 We evaluate these matters as part of broad evaluation in S5 of our report.

3B. Pre-Hearing Directions and Procedures

3.11 Prior to the commencement of the hearing, we issued two minutes to the parties to provide direction on various procedural and substantive matters.

3.12 Minute #1 was issued on 13 August 2024 to provide notice of the appointment of the Hearing Panel for PC58, and the date and venue of the hearing. The Minute also provided direction on the timetable for the circulation of reports and evidence prior to the hearing, as well as general advice on the hearing process.

3.13 In the lead-up to the hearing, the following reports and evidence were received and made available to all parties in accordance with the proposed timetable:

a) The s42A Officer's report, prepared by Mr Dan Kellow, a consultant planner, acting for Hutt City Council, dated 30 August 2024, and incorporating advice from Mr Luke Benner (Transport), Ms Tessa Roberts (Ecology), Ms Linda Kerkmeester (Landscape and Visual), Mr Ryan Rose (Development Engineering), and Messrs Adam Smith and Thomas Justice (Geotechnical Engineering).

b) Statements of evidence from the consultant planner for the Requester, Ms Corinna Tessendorf, dated 6 September 2024, and accompanying statements of evidence from the Consultant Engineer, Mr Sam Godwin (Infrastructure), Mr Nathan Schumacher (Geotechnical), Ms Frances Forsyth (Ecology), Ms Angela McArthur (Landscape and Visual), and Mr Gary Clark (Transport).

3.14 No expert evidence was received on behalf of the submitters either during the lead-up to or during the course of the hearing. However, the two submitters who appeared at the hearing (Ms Kathryn Martin (via audio-visual link) and Mr Simon Hirini, for Taitā College) did talk to their submission points and answered questions.

3.15 A second minute was issued on 16 September, following the Panel's site visit on 13 September, seeking further information on:

a) The relationship of the Plan Change with the requirements for medium density residential subdivision and development under the 2021 amendment to the RMA and the revised NPS-UD, particularly in regard to qualifying matters; and

b) Graphic material showing the physical extent of the site and proposed Development Area along the ridgeline.

3.16 This additional information was provided by the Requester and circulated on 18th September.

3C. The Hearing

3.17 The hearing commenced at 9.30am on Monday 23 September 2024 in Meeting Room 1 at the Lower Hutt Events Centre, at 30 Laings Road, Lower Hutt.

3.18 In attendance were the following persons:

3.19 PRESENT

Hearing Panel:

Commissioner Robert Schofield
Commissioner Elizabeth Burge
Commissioner (Cr) Brady Dyer

Applicant/Requester:

Corinna Tessendorf, Consultant Planner, Urban Edge Planning
Theresa Walsh, for the Requester
Francis Forsyth, Consultant Ecologist
Angel McArthur, Consultant Landscape and Visual

Two planners from Urban Edge, observing

Council:

Dan Kellow, Consultant Planner and Reporting Officer
Linda Kerkmeester, Consultant Landscape Architect
Tessa Roberts, Consultant Ecologist

Submitters:

Kathryn Martin (via audio-visual link)
Simon Hirini, for Taitā College

In Attendance:

Nathan Geard, Policy Planning Manager HCC
Heather Clegg, Minute Taker, HCC
Saritha Shetty, Administrator, Planning, HCC

3.20 At the outset of proceedings, we outlined the order of proceedings. A number of experts who had provided written assessments and advice on behalf of the Requester and for the Council were available to attend via the audio-visual link, if required to answer any questions. For the Requester, the following expert advisers were on-hand:

- Gary Clark, Transport – Traffic Concepts Limited
- Sam Godwin, Civil Engineering – Cuttriss Consultants
- Nathan Schumacher, Geotechnical Engineering – Torlesse Limited.

3.21 For the Council, the following expert advisers were on-hand:

- Luke Benner, Transport – Luke Benner Transportation Consultancy Ltd
- Ryan Rose, Development Engineering – Envelope Engineering
- Adam Smith and Thomas Justice, Geotechnical Engineering – Engeo

3.22 In the end, none of these experts were required to attend the hearing to answer questions as the Panel considered we had sufficient evidence on these matters.

3.23 The Council's Policy Planning Manager, Mr Nathan Geard, submitted a statement to the hearing to address the potential for a perceived conflict of interest for Ms Corinna Tessendorf, the planning expert for the Requester, who is also involved in the review of the District Plan for the Council. Ms Tessendorf had raised this potential conflict of interest with Mr Geard prior to the hearing. In his statement, Mr Geard explained that Ms Tessendorf's role was to review a number of chapters in the ODP, including subdivision. Mr Geard clarified that Ms Tessendorf, as with other planners who have been sub-contracted to support the Review, has no decision-making functions, neither do any of the Council officers who are also working on the Review. He also clarified that the work of all external advisors, including that of Ms Tessendorf, ultimately is reviewed by the Policy Planning Team who decide what is ultimately recommended to the Council's District Plan Review Committee. In Mr Geard's opinion, there is no conflict of interest with Ms Tessendorf's involvement with PC58, nor is there any other inappropriate advantage for her client from her involvement with the District Plan Review.

3.24 We agree with Mr Geard that there is sufficient remoteness and checks between Ms Tessendorf's role in the District Plan Review and her involvement with PC58 to prevent any conflict of interest. PC58 is a quite separate and discrete process, disconnected with the wider review process. We further note that a separate independent contractor, Mr Kellow, was engaged to review and provide impartial advice on PC58.

3.25 No other procedural matters were raised during the course of the hearing that we were obliged to make a finding on.

3.26 We note that a number of submitters who had indicated they had wished to be heard did not attend the hearing. However, we record that the issues raised in their submissions remained 'live' for our consideration, whether heard or not, and we have done so, as we are required to do.

3.27 The Panel had read all circulated reports, evidence and submissions prior to the hearing. This enabled us to focus on the key outstanding issues, and on any changes in information or advice that we had received. We heard summary statements from the expert witnesses, both for the Requester and for the Council, who answered our questions. In addition, we heard from Theresa Walsh, for the Requester M & J Walsh Partnership Ltd at the commencement of the hearing, who outlined the background to the Plan Change Request and the outcomes sought by the proposed development. In particular, Ms Walsh, outlined the issues they have encountered in regard to the question of water supply for the site: we address this matter further in this report.

3.28 We adjourned the hearing at 3.42pm after agreeing to receive a written Reply from the Requester before the close of business on Friday 27 September.

3D. Post-Hearing Direction and Procedures

3.29 Following the hearing, we issued several Minutes to seek a response to a number of questions:

a) Minute #3 recorded directions provided orally at the end of the hearing, seeking consideration whether a new policy could provide direction to future decision-making and whether some of the provisions could be further amended in regard to the management of indigenous biodiversity and the management of the subdivision and development inside and outside the Development Area;

b) Minute #4 recorded a direction seeking the recommended amendment in full to Rule 11.2.3.E, Transport, in relation to any subdivision that exceeds the High Trip Generator Thresholds;

c) Minute #5 recorded directions seeking a response to follow-up questions regarding the recommended new policy, provided following Minute #3, and regarding the information requirements on ecology; and

d) Minute #6 recorded a direction seeking a response to the release of decisions on Change 1 to the WRPS, released on 4 October 2024 in relation to the implications for PC58.

3.30 Responses to Minutes #3 and #4 were received as part of the written reply on Thursday 26 September. This was received in the form of a joint statement from the planners for the Requester and Council.

3.31 Responses to Minutes #5 and #6 were received on Tuesday 8 October, in the form of a joint statement from the planners for the Requester and Council.

3.32 The hearing was formally closed on Thursday 17 October 2024. Minute #7 recorded the closing of the Hearing and the anticipated Council meeting date to consider our recommendations.

4 STATUTORY FRAMEWORK

4A. Statutory Framework for Evaluating Plan Changes

4.1 Before formally recording our consideration of the issues raised in relation to PC58, we summarise here the relevant statutory matters that have framed our evaluation. They have been derived from the Environment Court's *Colonial Vineyards* decision[9], and include the following considerations:

General Requirements

a) the District Plan should be designed in accordance with[10], and assist the Council to carry out, its functions[11] so as to achieve the purpose of the Act[12];

b) when changing the District Plan, the Council must:

i) give effect to any National Policy Statement, the New Zealand Coastal Policy statement or any Regional Policy Statement for Wellington[13];

ii) have regard to any proposed RPS[14];

iii) have regard to any management plans and strategies under any other Acts and to any relevant entry on the NZ Heritage List and to various fisheries regulations (to the extent relevant), and to consistency with plans and proposed plans of adjacent authorities[15];

iv) take into account any relevant planning document recognised by an iwi authority[16];

v) not have regard to trade competition[17];

vi) be in accordance with any regulation[18];

c) in relation to regional plans:

9 ENV-2012-CHC-108, [2014] NZEnvC 55
10 s74(1), RMA
11 s31, RMA
12 ss 72, 74(1), RMA
13 s75(3)(a)-(c), RMA
14 s74(2), RMA
15 s74(2)(b)-(c), RMA
16 s74(2A), RMA
17 s74(3), RMA
18 s75(1)-(c), RMA

i) the District Plan must not be inconsistent with an operative regional plan for any matter specified in s30(1) or any water conservation order[19]; and

ii) shall have regard to any proposed regional plan on any matter of regional significance[20];

d) the District Plan must also state its objectives, policies and the rules (if any) and may state other matters[21];

e) the Council has obligations to prepare an evaluation report in accordance with s32 and have particular regard to that report[22];

f) the Council also has obligations to prepare a further evaluation report under s32AA where changes are made to the proposal since the s32 report was completed;

Objectives

g) the objectives of the Plan Change are to be evaluated to the extent which they are the most appropriate way to achieve the Act's purpose[23];

Provisions

h) the policies are to implement the objectives, and the rules (if any) are to implement the policies[24];

i) each provision is to be examined as to whether it is the most appropriate method for achieving the objectives of the District Plan, by:

i) identifying other reasonably practicable options for achieving the objectives[25];

ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives[26], including:

- identifying and assessing the benefits and costs anticipated, including opportunities for economic growth and employment opportunities that may be provided or reduced[27];
- quantifying those benefits and costs where practicable[28];
- assessing the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the provisions[29];

19 s75(4), RMA
20 s74(1)(f), RMA
21 s75(1)-(2), RMA
22 Schedule 1, Part 2, Clause 22, RMA
23 s32(1)(a), RMA
24 s75(1), RMA
25 s32(1)(b)(i), RMA
26 s32(1)(b)(ii), RMA
27 s32(2)(a), RMA
28 s32(2)(b), RMA
29 s32(2)(c), RMA

Rules

j) in making a rule, the Council shall have regard to the actual or potential effect on the environment of activities, including (in particular) any adverse effect[30]; and

Other Statutes

k) the Council may be required to comply with other statutes.

4.2 We record that no new objectives were proposed under PC58 as notified, nor any new policies. However, in response to the matters raised during the hearing, the Requester proposed a change to an existing subdivision policy, 11.1.4, by adding a new sub-policy specifically relating to the subject site at 12 Shaftesbury Grove. Accordingly, we are obliged to evaluate whether the new policy is the most appropriate way to achieve the objectives of the District Plan.

4.3 Our overall powers in relation to this proposal are set out in clause 29(4) of Schedule 1 of the Act. Under this clause, we may recommend declining the proposal, approving it, or approving it with modifications. We must give reasons for the recommendation as to a decision that we reach. In arriving at our recommendation, we must undertake the further evaluation required under s32AA and have regard to that evaluation. As indicated above, the further evaluation under s32AA is required only in respect of any changes arising since the Plan Change was notified. Such an evaluation must:

a) examine the extent to which the objectives of PC58 are the most appropriate way to achieve the purpose of the Act

b) examine whether the policies, rules, standards, zoning, and other methods of PC58 are the most appropriate way to achieve the existing Plan objectives and the PC58 objectives

c) in relation to (b) above, to the extent relevant:

i) identify any other reasonably practicable options for achieving the existing and proposed objectives; and

ii) assess the efficiency and effectiveness of the provisions in achieving the objectives, and

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

4.4 In relation to matters (a) and (b) above, as we have noted, PC58 contains no new objectives. In accordance with s32(6), the purpose of the proposal stands in for objectives where these are not otherwise contained or stated by the proposal. In other words, the term 'objective' is synonymous with the Plan Change's purpose and not confined to the technical meaning of the term otherwise used in the Plan.

[30] s76(3), RMA

4.5 Under s2.1 of the Plan Change Request, the purpose of the Plan Change was described as thus:

> *The purpose of the Plan Change is to rezone the property at 12 Shaftesbury Grove in Stokes Valley from the current split-zoning comprising Hill Residential and General Recreation Activity Area, in order to be entirely zoned as Medium Density Residential Activity Area. The proposed zoning would provide for additional development potential that aligns with the residential zoning and anticipated density of the surrounding area and is therefore considered to better meet the purpose of the RMA through the objectives of the District Plan. While it is proposed to zone the entire site as Medium Density Residential Activity Area, it is anticipated that any future development will be limited to the flatter parts of the site along the existing ridgeline with limited earthworks. The steeper and more sensitive areas of the site are proposed to be excluded from the identified Development Areas on the site.*

4.6 For the purpose of our evaluation, the term 'objective' assumes a dual meaning:

a) those goals or aspirations set out in the Plan Change's purpose; and

b) the relevant (and settled) objectives of the operative Plan.

4.7 In addition, we have considered whether the proposed Plan Change:

a) has been designed to accord with, and assist the Council to carry out its functions so as to achieve the purpose of the Act;

b) gives effect to any relevant National Policy Statement and the New Zealand Coastal Policy Statement;

c) gives effect to the Regional Policy Statement ("RPS"); and

d) is consistent with any regional plans.

4.8 In considering all of the matters above, we record that our recommendation as to a decision is based upon our consideration of the following documents:

a) the notified Plan Change and s32 evaluation;

b) the submissions and further submissions received;

c) the Council's s42A report; and

d) the statements/presentations from all parties appearing before us.

4.9 We note for the record that several s32AA evaluations were provided over the course of, and subsequent to, the hearing in response to further amendments to the Plan Change that were recommended. To the extent that our evaluation corresponds with the recommended changes, we adopt the s32AA evaluations that have been provided.

4.10 It is important that all parties understand that it is not for us to introduce our own evidence on the issues that have been raised, and we have not done so – rather, our role has been to:

a) establish that all relevant evidence is before us; and

b) test the evidence before us to determine the most appropriate outcome to achieve sustainable management.

4.11 It is that dual role to which the following evaluation addresses. Before doing so, and as a closing comment to this preamble, we observe that s32AA(1)(d)(ii) enables our further evaluation reporting to be incorporated into this report as part of the decision-making record. To this end, our evaluation of each issue is intended to satisfy the evaluation report requirements of s32AA as outlined above.

4.12 For the record, on matters not discussed in this report, we accept and adopt the evaluation of the reporting officer, Mr Kellow in his s42A report and post-hearing responses.

4B. Statutory Overview

4.13 As explained in the Requester's s32 report, s73(2) of the RMA enables any person to request a territorial local authority to change a District Plan in the manner set out in Schedule 1 of the Act. On 12 September 2023, M and J Walsh Partnership Ltd formally requested a change to the City of Lower Hutt District Plan (District Plan). The Council formally accepted the request (but did not adopt it), enabling the Plan Change to proceed to be publicly notified as Plan Change 58 on 8 December 2023. The summary of submissions received on the proposed Plan Change was notified on 8 February 2024, with the period for further submissions closing on 22 February 2024.

4.14 Our evaluation of PC58 is subject to the consideration of a number of relevant statutory and non-statutory documents. We note that both planning experts were in agreement as to the relevance or otherwise of these documents. Before we evaluate the consistency of the Plan Change with the relevant statutory direction, we first evaluate the proposed Plan Change in terms of the issues that have arisen through submissions.

5 EVALUATION OF ISSUES

5A. Overview

5.1 For the purposes of this evaluation, we have grouped our discussion of the submissions and the reasons for accepting, rejecting, or accepting them in part by the matters to which they relate – rather than assessing each issue on a submitter-by-submitter basis.

5.2 This approach is not to downplay the importance of the input from submitters; to the contrary, their input has been invaluable in shaping the grouping of issues and for our consideration of those matters. However, we note that there was some commonality among the submissions on key issues and we consider it will be to everyone's benefit for our recommendation as to a decision to be as tightly focused on the key issues as possible.

5.3 We reiterate that PC58 is a private Plan Change request to rezone a piece of land. It is not an application for a subdivision of the land or for any form of development on the land. The development of the site would require at least one resource consent application to Council, and most likely more if the development is staged as indicated by the Requester. PC58 is intended to provide a management framework under which the subdivision and development process would occur. Therefore, we evaluate the potential effects arising from the subdivision and development of the site as provided by the zoning, and how effective

the proposed management framework will be in avoiding, remedying, or mitigating these effects to an acceptable level.

5.4 The primary issues in contention are as follows:

- Ecological effects
- Traffic and connectivity effects
- Infrastructure effects
- Landscape and visual effects
- Geotechnical effects
- Stormwater and runoff effects, and
- Cultural effects.

5B. Ecological Effects

5.5 Several submissions[31] raised concerns related to the effects on indigenous flora and fauna and indigenous biodiversity. The s42A Report summarises the submission points in opposition as the following which we adopt for efficiency:

- Risk of indigenous biodiversity loss
- Creation of a road would impact flora and fauna
- The forest around Stokes Valley should be protected and cherished, noting climate and biodiversity crises
- The site is home to numerous birds, skinks, geckos, and insects
- There are indigenous freshwater species existing in the area
- There are indigenous birds in the area, and
- Vegetation would need to be removed for the development.

5.6 Under the ODP, the site is almost entirely covered by Significant Natural Resource (SNR50)[32] relating to the vegetation which covers the site and is described in detail in the Ecology Constraints Report which accompanied the Plan Change Request. We note that there is no proposed change to the Significant Natural Resource overlay.

5.7 The Ecology Constraints Report that accompanied the Plan Change request was prepared by Ms Forsyth of Frances Forsyth Consulting, who also provided evidence to the hearing. The Report made the following findings and recommendations:

- The site has vegetation (Mānuka) that is considered Significant and nine species of native orchids (habitat supporting rare orchids is Significant under RPS Policy 23)

[31] Taitā College DPC58/001, GWRC DPC58/002 and Kathryn Martin DPC58/005 and further submissions: Charlotte Heather F001, Kathryn Martin F002, Nicholas Dowman F004, Nico Reason F005, John Hopgood F006, Friends of Horoeka Scenic Reserve F007 and Cosmic Kaitiaki of Native Realms Foundation F008.

[32] Refer to our discussion in paragraphs 6.21 to 6.28 regarding the status pf SNRs as 'Significant Natural Areas'

- There is a high likelihood of lizards being present on site and a Lizard Management Plan should be required.
- The streams show good to excellent water quality and high macroinvertebrate health
- The streams provide drift food for fish downstream and contribute to the maintenance of base flows, while the vegetation cover over the streams contributes to their good water quality
- Remove wilding pines and replant in the gaps
- Avoid the loss of stream extent and values, and
- Control stormwater run-off to avoid effects on the significant ecosystems.

5.8 The Ecology Constraints Report was reviewed by Ms Tessa Roberts of Wildlands on behalf of the Council. In general, Ms Roberts agreed with Ms Forsyth's findings and made the following key comments:

- The constraints assessment raises an opportunity to improve ecological values across the site through controlling wilding pines
- The rare orchid habitat located along the side of the existing access road will be lost by development. If orchid translocation and restoration is shown to not be feasible then the ecological effects management hierarchy will lead to a requirement for offsetting and compensation for this habitat loss
- Using criteria in the NPS-IB (rather than now out of date RPS criteria) may result in other ecological features being recognised as significant, additional to features currently identified as significant within the constraints report
- Ecological effects management should meet regulatory standards, and the Assessment of Ecological Effects that is yet to be prepared to support the future subdivision application should address recent legislative changes reflected in Proposed RPS Change 1
- Edge effects, fragmentation and loss of connectivity will result from indigenous vegetation loss; these effects are expected to be managed appropriately through the use of the effects management hierarchy, in accordance with current legislation
- Sediment discharge from development could occur and adversely affect aquatic ecosystems, and
- Adherence with the RPS (Change 1 and operative provisions) should mean potential ecological effects of sediment resulting from the development can be appropriately managed via a Sediment and Erosion Management Plan.

5.9 Ms Roberts concluded that the assessment of ecological effects that would accompany any future subdivision proposal should be prepared in accordance with the WRPS Plan Change 1 as this would give effect to the NPS-IB.

5.10 Mr Kellow agreed with that approach as it ensures the assessment at the time of the application will be made against the higher order planning documents in place at that time.

In his view, the following section (as recommended to be amended by Mr Kellow) of the proposed Restricted Discretionary matters under (xv) is suitably broad to allow a full consideration of ecological effect:

(xv) Ecology

Any measures proposed to manage adverse effects on significant indigenous biodiversity values on the site in accordance with the National Policy Statement for Indigenous Biodiversity 2023 and the Ecological Plan for the site.

~~*- The application of the effects management hierarchy as follows:*~~

~~*- Avoid adverse effects on significant indigenous biodiversity where practicable;*~~

~~*- Minimise other adverse effects on significant indigenous biodiversity where avoidance is not practicable;*~~

~~*- Remedy other adverse effects where they cannot be avoided or minimised;*~~

~~*- Only consider biodiversity offsetting for any residual adverse effects that cannot otherwise be avoided, minimised or remedied; and*~~

~~*- Only consider biodiversity compensation after first considering biodiversity offsetting.*~~

5.11 The main matter of contention at the Hearing was whether the proposed matters of discretion sufficiently give effect to and allow for the consideration of the relevant provisions of the NPS-IB. Following adjournment of the Hearing, we issued Minute #3 in which we reiterated our concerns during the Hearing and asked the Requester to:

- Consider whether a new policy could provide some direction of future decision-making on the outcomes being sought for 12 Shaftesbury Grove, and the scope for introducing such a policy at this stage of the plan change process; and
- Reconsider whether some of the Plan Change provisions could be amended further, taking into account questions and matters arising at the hearing; in particular –
    - The management of SNA values and indigenous biodiversity, and
    - The management of the subdivision and development inside and outside the Development Area.

5.12 In reponse to our first request, to consider the introduction of a policy to guide future decision-making. Ms Tessendorf agreed, opining that such a policy would add certainty regarding the intended outcomes especially in support of the diecretionary activity status for those parts of the site not included within the identified Development Area. The wording she proposed is as follows:

11.1.4 Special Areas

…

c. Subdivision of the land identified in Appendix Subdivision 10 is managed as follows:

i. Require the identification of all earthworks, building platforms, roads, accesses and utility structures at the time of subdivision;

ii. Provide for the subdivision of land where all earthworks, building platforms, roads, accesses and utility structures are located within the development area identified in Appendix Subdivision 10;

iii. Only allow for the subdivision of land that enables earthworks, building platforms, roads, accesses and utility structures located outside the development area identified in Appendix Subdivision 10 where the activities or structures are required to support or enable development within the development area and to provide additional flexibility along the boundary of the development area.

5.13 Ms Tessendorf stated that the proposed policy is well aligned with the intention of the private plan change which is to focus any future development of the site to the identified Development Area of the site while restricting future development outside the identified Development Area. Mr Kellow agreed with the proposed policy wording.

5.14 To provide better alignment with the newly proposed policy, Ms Tessendorf also recommended a small amendment to proposed Standard 11.2.3.2 (b) to include the word 'identified' and delete the word 'private'.[33]

5.15 In response to our second request, regarding further amendments to the provisions to clarify the intended management of significant indigenous biodiversity, Ms Tessendorf proposed another change to 11.2.3 C Ecology to insert the words '*at least*' so that the Ecological Plan was not limited to those matters detailed.

5.16 In regard to the matters in which Council has restricted its discretion (11.2.3.1) under (xvi) Ecology, Ms Tessendorf recommended deleting the effects heirarchy entirely (as did Mr Kellow in his s42A Report) and inserting the words 'avoid or' so that it read:[34]

(xvi) Ecology

Any measures proposed to avoid or manage adverse effects on significant indigenous biodiversity values on the site.

5.17 Mr Kellow further submitted that the wording of the matter of discretion does not qualify adverse effects as having to be 'significant' which he considered to be appropriate. However, in his opinion, the inclusion of the word 'significant' is unnecessary since the NPS-IB relates to indigenous biodiversity outside of SNAs as well as within SNAs. He emphasised that indigenous biodiversity does not have to be classed as significant to require adverse effects to be managed nor do the effects have to be significant due to clause 3.16 (1) and (2) of the NPS-IB.

5.18 Mr Kellow noted that neither Section 6(b) of the RMA nor the NPS-IB uses the word 'values' but the RPS and RPS PC1 (Policy 24B) do incorporate the word 'values'. He did not think that

[33] Written Reply 26 September 2024, at paragraphs 3-13

[34] Written Reply 26 September 2024, at paragraphs 19-20

the word 'values' adds anything to the matter of discretion so he recommend that it be removed to remain consistent with the Section 6(b) and the NPS-IB.[35] His final wording was:

> *(xvi) Ecology*
>
> *Any measures proposed to avoid or manage adverse effects on ~~significant~~ indigenous biodiversity ~~values~~ on the site.*

5.19 In regards to the new policy proposed by Ms Tessendorf, we discuss this in full in Section 7 of our Decision. However, in summary, we did not agree with her proposed wording as we did not consider that it would not sufficiently or succinctly describe the management approach being applied to the site, containing unnecessary detail and repetition, and some internal contradiction. Further, when the Subdivision Chapter is read as a whole, we consider it is sufficiently well understood that the subdivision process includes earthworks, building platforms, road and utilities without the need to specify these activities within this policy. These matters are better addressed through the information requirements. Our preferred wording of the new policy is as follows:

> *…*
>
> *c. To enable urban development through the subdivision of land identified in Appendix Subdivision 10 in a manner that protects the land's significant ecological values by:*
>
> *i. Providing for the subdivision of land within the identified Development Area;*
>
> *ii. Only allow for the subdivision of land outside the identified Development Area where the subdivision is required to support or enable development within the Development Area, and the land's significant ecological values are maintained or enhanced.*

5.20 Regarding the other amendments proposed by Ms Tessendorf and Mr Kellow discussed above, we agree that they now provide for a robust process to occur that begins with a full ecological assessment of the site by an appropriately qualified ecologist and avoiding or managing effects on significant indigenous biodiversity and managing effects on other indigenous biodiversity. We consider that this framework is now consistent with the NPS-IB requirements which we address further below.

5C. Traffic and Connectivity

5.21 Two submitters raised issues about potential adverse effects arising from the additional traffic generated by development on the site[36].

5.22 The proposed Plan Change was accompanied by a Transportation Impact Report prepared by Mr Gary Clark of Traffic Concepts Limited. The purpose of the report was to provide an analysis of the anticipated transportation effects of the development of the site under the proposed Plan provisions on the expectation that about 150 residential units could be built. It provided an assessment of the existing roading environment, a description of the traffic

[35] Written Reply 26 September 2024, at paragraphs 28-31

[36] Submissions DPC58/002, DPC58/004

environment, an analysis of crash history of the area and an impact assessment relating to the proposal.

5.23 The development site has access to the wider road network from Shaftesbury Grove, a 300m long cul-de-sac coming off Holborn Drive/Logie Street which would provide the development with access to the City roading network. All access points were identified as having sufficient sightlines at intersections for safe movements, and the roads have well-formed footpaths.

5.24 The crash history analysed for the assessment shows that there are no inherent safety deficiencies with the road in the search area. The low severity crash types also suggests that the road environment of Holborn Drive and Logie Street provides a safe environment for the users of these roads. The alignment and general road geometry of these roads encourages drivers to be more alert and drive carefully.

5.25 The adjacent immediate road network is operating below its potential operating capacity except for some intersections with Stokes Valley Road, where congestion can occur at peak times. In particular, the potential impacts of the Development Site on the wider road network are likely to be most evident at the intersection of Holborn Drive and George Street. In terms of trip generation, the assessment concluded that, while the Plan Change site will add new trips to the road network, these are expected to disperse across the various routes reducing the impacts at these locations. The relatively small increases in additional traffic across the road network and through these intersections is likely to be indiscernible to road users, with the Level of Service anticipated to remain within the acceptable thresholds.

5.26 There is a bus route that runs along Holborn Drive and Logie Street with a bus stop located at the intersection of Shaftesbury Grove, Holborn Drive and Logie Street. This bus stop is around 300 metres from the Plan Change area. There are bus services near the Plan Change site that link the Development Area to the wider Stokes Valley basin and other parts of the Hutt Valley. The bus routes also link the Plan Change area to the nearby train services.

5.27 Overall, the transport assessment concluded that the Plan Change site is a logical extension to the existing urban edge that uses existing road infrastructure. The roads in the area have sufficient operating capacity to accommodate the expected increases in traffic flows, and any potential adverse effects can be managed through the subdivision and resource consenting processes under the RMA.

5.28 The Transport Impact Report was reviewed by an independent transport planner, Mr Luke Brenner, who concluded the following:

> *It is considered that the proposed Plan Change gives effect to the objectives and policies of the transport chapter of the operative district plan, while future consenting processes for the site will (should the Plan Change be granted) allow for the adequate assessment of those applications against the relevant rules of the plan. Similarly, it is also considered that the proposed Plan Change has the ability to align well with Hutt City Councils Integrated Transport Strategy.*[37]

5.29 The only matter of contention between the Council and the Requester was whether a proposal that was a high trip generator (i.e., a subdivision enabling 60 or more dwellings) should be managed in a consistent manner as for proposed high trip generating proposals

[37] Evidence of Luke Brenner for HCC, at paragraph 38

elsewhere in the City under the transport provisions of the District Plan. Under the transport chapter, where a subdivision does exceed the High Trip Generator Standard it becomes a discretionary activity under Rule 11.2.4 (j). As a discretionary activity, an Integrated Transport Assessment is required to be submitted with any consent application and all effects of the proposal can be considered.

5.30 Ultimately there was an agreement between the planners for the Requester and Council in recommending that transport be a matter of restricted discretion for high trip generating subdivisions (rather than a full discretionary activity), but that for any proposal exceeding the transport generation levels in Appendix Transport 2, the wording of the discretion be same as that used in the transport chapter: i.e. "the effects of the activity on the transport network including impacts on on-street parking". We accept this recommendation as it would maintain a consistent approach within the District Plan, but would recommend modifying the wording of this matter to ensure that this matter is in addition to the general matter of discretion in regard to transport as follows:

> *(ix) Transport*
>
> *The provision of vehicular, pedestrian and cycle access via public roads, footpaths and cycleways and the provision of private accesses.*
>
> *In addition, for subdivisions that exceeds the high trip generator thresholds specified in Appendix Transport 2, the effects of the activity on the transport network including impacts on on-street parking.*

5.31 In terms of connectivity, the matter of how and where the Development Area could be better connected with the local community through new or enhanced pedestrian linkages is proposed to be addressed as part of the first stage of development. This will be an important matter to address given that the extension of residential development along this ridgeline will create, in essence, a long cul-de-sac in relation to vehicular traffic, as well as most pedestrian and cycle traffic, who will only be able to access the site via Shaftesbury Grove. We also observed that there may be some difficulties in creating alternative connections, given the topography, the general lack of legal access points elsewhere in the immediate vicinity and other issues[38].

5.32 However, we are satisfied that, as one of the matters of discretion, this issue will be appropriately addressed at the relevant stage of development.

5.33 Overall, we accept the evidence presented by the expert traffic witnesses and find that, although there may be adverse traffic effects arising from a residential development of the subject land, these adverse effects will be minor and largely indiscernible from the existing traffic patterns.

5D. Infrastructure Effects

5.34 Three submissions raised issues relating to infrastructure[39]. Concerns included potential stormwater and wastewater runoff and whether there was adequate water supply to meet the demands of the development.

[38] We note, for example, the potential future pedestrian accessway to Fenchurch Grove has been fenced off at No.29.

[39] Submissions DPC58/001, DPC58/003, DPC58/004.

5.35 The Plan Change included an Infrastructure Report by Cuttriss Consultants. That assessment drew the following findings and recommendations:

a) Earlier work undertaken by GHD identified a site 750m from the southern end of the site on HCC land that could accommodate a new reservoir that could address the current inadequacies in water supply for Stokes Valley as well as service the development on the subject site;

b) Wastewater mitigation would be required and would be designed as part any subdivision proposal;

c) Telecommunications and electricity supply can be readily provided;

d) The most practical solution to stormwater discharge is likely to be via controlled discharges to gullies which will need appropriate engineering design – this approach would slowly release retained stormwater from the site; and

e) Stormwater neutrality would be required, and a Stormwater Management Plan would be part of any resource consent application.

5.36 The reporting planner for the Council obtained the advice of Mr Ryan Rose, who reviewed the infrastructural requirements of the proposed development that would be enabled by PC58. The main points made by Mr Rose were as follows:

a) There was no intent to discharge any wastewater anywhere except through the existing wastewater system through one of two possible connection points into the public system. There are a series of steps proposed to be undertaken that mean that the effect of development on the site would minimise the effects on the existing wastewater system will be minimised. Mr Rose considers that there are no obvious wastewater issues that would preclude PC58.

b) Stormwater disposal to gullies with suitable levels of attenuation as proposed is a widely accepted stormwater disposal technique and, if managed correctly, will have minimal effects to the surrounding areas. A Stormwater Management Plan to accompany the first subdivision would be a requirement under the Plan Change. Mr Rose considers that there are no obvious stormwater issues that would preclude the Plan Change and the ongoing residential use of the land from proceeding.

c) Mr Rose considers that there are no obvious utility (electricity and telecommunications) issues that would preclude the development of the site at PC58.

d) The principal infrastructure constraint for the development of the site at 12 Shaftesbury Grove is water supply. There is already an existing issue with adequate water supply for the area, and there is no funding or consent in place for a new water supply reservoir. Mr Rose expressed concern that should the Plan Change be granted that it would create an expectation that development could occur when this may not be practically possible.

5.37 We accept the advice of Mr Rose in regard of the ability to provide suitable infrastructural solutions to address the potential wastewater, stormwater, electricity, and telecommunications requirements of the development of the site at 12 Shaftesbury Grove. This leaves the question of water supply.

5.38 The difficulty of providing potable water supply to the development was traversed at some length at the Hearing. In her opening statement, the Requester's representative, Ms Theresa Walsh, devoted most of her submission to the water supply issues that they have faced in pursuing development proposals for the site since the site was purchased from the Council in 2017. Some of the key points made by Ms Walsh include the following:

a) In selling the land in 2017, information provided by the Council included a report identifying existing water supply issues but indicating a booster pump that could provide water in the interim for up to 80 houses would be an acceptable albeit transitional solution. This solution was also acceptable for the Requester, understanding that a new water reservoir was the preferred long-term solution.

b) Subsequently, after the land was purchased and concept plans and assessments had been developed, the Council and Wellington Water advised the Requester in July 2018 that a booster pump would no longer be an acceptable solution, because of their poor performance after the Christchurch earthquake in 2011.

c) In seeking a solution, we were informed that the Requester proposed at one point building the new reservoir and having the Council pay the costs through development contributions – this proposal was not taken up by the Council.

d) Ms Walsh outlined a history of meetings and proposals to find a solution that would enable the development of the site, but she expressed frustration and disappointment with the responses from both the Council and Wellington Water and their inability to find a long-term solution that would address both the existing and long-standing inadequacies of water supply and enable the development of the site.

5.39 We do not intend to investigate the veracity of the history behind the water supply issue, particularly as we did not receive submissions from either Hutt City Council or Wellington Water. Addressing that matter is outside our scope or ambit.

5.40 However, we observe that the lack of water supply is an existing situation, constraining the development potential of a site zoned for residential development. This was a known problem at the time the site was put on the market and sold by the Council. We understand that there is a Consent Notice on the property's Record of Title advising that a water supply is required to be provided by the developer that meets Council's "Water Supply Code of Practice" before two or more dwellings are constructed that was on the Title at the time the property was sold.

5.41 As Mr Kellow advised, development within the site under either the current HRAA or proposed MDRAA provisions would ultimately require the construction of a water reservoir, and the proposed Plan Change is not altering this situation. Clearly, some form of solution will be required, even on a staged basis until a long-term overarching solution is found that would address the wider water supply issues in the area, as well as unlocking the development potential on which the Council sold the land at 12 Shaftesbury Grove.

5.42 On that latter basis, we consider that the Council has an obligation to proactively and constructively achieve a long-term solution to the water supply issue. The site was sold on the basis that a particular solution was available to enable development on the site to commence, while a longer-term solution (i.e., a reservoir) could be planned. On that basis, we are recommending to the Council, outside the scope of and separately to this Plan

Change, that it works with Wellington Water and the Requester to identify and implement a solution.

5.43 Ultimately though, we do not consider the water supply issue is reason to amend or reject the Plan Change proposal. Some form of water supply will be required to commence the development of the site, and this matter is proposed to be one of the matters of discretion for the subdivision process.

5.44 Overall, we find that the infrastructure related effects can be appropriately managed through the proposed provisions.

5E. Landscape and Visual Effects

5.45 Original submitters did not express concerns regarding the effects of the development of the site on amenity values or wide landscape values. Only the further submission from Friends of Horoeka Scenic Reserve[40] expressed concern that allowing substantial development along a further portion of the Holborn Ridge would be detrimental to the character of the greenbelt, which is a significant feature in Stokes Valley.

5.46 The site is not identified as having any significant landscape or amenity values. Indeed, the operative District Plan contains little overall direction on the City's landscapes, including ridgelines and hilltops. We were informed by Mr Kellow that Proposed Plan Change 46, which would have introduced landscape policies and provisions into the District Plan was not proceeded with[41].

5.47 A Landscape and Visual Assessment was submitted as part of the Plan Change Request, prepared by Ms Angela McArthur of Eco Landscapes & Design Ltd. The LVA was peer reviewed by Ms Linda Kerkmeester on behalf of the Council. Both Ms McArthur and Ms Kerkmeester also provided evidence to the Hearing.

5.48 The key points arising from the LVA and the evidence of Ms McArthur may be summarised as follows:

a) Due to the existing Hill Residential zoning of the ridgeline within the site, landscape effects from the residential development of the site are anticipated and that there is capacity to absorb change from residential development along the ridgeline where there is an existing pattern of development;

b) Outside the identified Development Area, all other areas of the site will be protected from development and the proposed Vegetation Management Plan that would be required to be submitted as part of the subdivision process would have to identify protection measures to avoid damage and removal of vegetation outside the Development Area;

c) The LVA recommends that a Landscape Plan is required at the consent stage to detail street trees and amenity planting, fencing and planting treatments at the boundary with Fenchurch Street, planting to mitigate earthworks and retaining structures, reserve and

[40] DPC58/FS7

[41] S42A report, at paragraph 107

open space design and stormwater design, roads, pedestrian and cycle linkages, and associated planting;

d) The LVA report found that, due to the site being widely visible, the visual effects will depend on the visibility of the site from a number of different aspects but, overall, the additional densities enabled by the proposed rezoning would be seen in the context of the established residential zones, particularly along the Holborn ridgeline and can be readily absorbed within the receiving landscape; and

e) The retention of vegetation within that part of the site outside the identified Development Area (the 'protected area') would assist in visually integrating development on the ridgeline.

5.49 In her review of the proposal, the Council's landscape advisor, Ms Kerkmeester, largely agreed with the assessment and findings of the LVA with the exception of the potential development of that part of the site outside the identified Development Area. Ms Kerkmeester considered that more information on the landscape and visual effects of the development within that part of the site was required to obtain a full understanding of the landscape and visual effects.

5.50 This point was rejected by the Requester on the basis that any meaningful assessment would largely depend on the kind of activity and scale of development involved (for example, on the particular scale and location of earthworks, buildings, and access) and therefore any assessment at this stage would have to be highly speculative. It was also asserted that any development outside the identified Development Area would be a discretionary activity which would enable a full assessment of effects at that time.

5.51 We agree with the Requester that it would be too problematic to assess the landscape and visual effects of any development that might occur outside the identified Development Area at this stage of the process in a manner that would be helpful. More importantly in our view, it is the intention of the Plan Change to only enable any development within the 'protected area' (i.e., outside the identified Development Area) to allow some flexibility in the design and development around the edge of the identified Development Area. This intention was not fully clear until the Hearing. Thus, any development proposed outside the identified Development Area should be relatively minor in nature and considered as part of the broader development occurring on the ridgeline. As a discretionary activity, such works would have to be demonstrated as necessary to facilitate the development of the ridgeline. Recommended changes to the provisions of the Plan Change would underline the intention of the consenting process for any development occurring outside the identified Development Area (we address these changes later in our report).

5.52 On this matter, we are mindful of Policy 6 of NPS-UD which acknowledges changes to existing urban environments may occur:

> *….changes to urban environments may detract from amenity values appreciated by some people, but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types, and are not, of themselves, an adverse effect.*[42]

[42] Policy 6, NPS-UD 2020

5.53 This policy recognises that change in urban environments is to be expected, but that it must occur in such a way that amenity values are maintained and enhanced.

5.54 After consideration of the above points, we accept that the landscape and visual values of the ridgeline will change if the land is developed for medium density residential purposes under PC58 rather than under the existing Hill Residential zoning but find that such changes will be acceptable in the context of the existing pattern of development along the ridgeline, and that the protection of the vegetated slopes together with the proposed vegetation management and landscape treatment will satisfactorily mitigate such effects.

5F. Geotechnical Effects

5.55 Several submitters raised concerns about the geotechnical suitability of the site for residential development and the potential for erosion and sediment runoff to affect downstream stream and properties[43]. Submission points included:

- The site is steep, and development could create slips that would impact upon the adjacent school land (Taitā College)
- No confidence that the geotechnical and engineering requirements will be adequate to avoid site stability issues that are present in the Stokes Valley area, and
- To appropriately manage risks from natural and geotechnical hazards, the recommendations in the Torlesse Consulting Assessment should be followed.

5.56 In addition, GWRC supported the proposed requirement for a geotechnical assessment to address potential slope stability issues and considers it appropriate that it is prepared by a suitably qualify expert.

5.57 The PC58 Request documents included a Geotechnical Assessment by Torlesse Consulting, which made the following findings and recommendations:

a) The site is considered suitable for residential development

b) The fill identified on site has been assessed to be unsuitable and should not be reused

c) The extent of potential slope instability across the site, in its current form (i.e., existing topography), generally indicates a low risk of instability along the edges of the proposed extents of earthworks, and

d) In these locations, slope instability risk can be mitigated by standard engineering design.

5.58 The geotechnical assessment and Plan Change was reviewed by Adam Smith and Thomas Justice of Engeo on behalf of the Council, who made the following key comments:

a) The work undertaken by Torlesse Ltd lacks detail but was adequate for Plan Change purposes

b) There is no reason from a geotechnical perspective to recommend declining PC58, and

c) The term 'slope instability' used in the provision should be replaced with the broader term 'geohazard'.

[43] Submissions DPC58/001, DPC58/002, DPC58/004.

5.59 The proposed provisions include an information requirement that the first subdivision application must provide a Geotechnical Assessment for the full site, and one of the proposed matters of discretion allows for the consideration of geotechnical related effects. In addition, the 'natural hazards' matter of discretion allows for consideration of natural hazard effects.

5.60 Based on the evidence before the Hearing, we find that the site has no significant geotechnical constraints for development which cannot be adequately addressed through the subdivision and development process. We also concur that the term 'slope instability' should be replaced by the term 'geohazard' which is a broader more encompassing term.

5G. Stormwater and Runoff Effects

5.61 The generation of stormwater from the development of the site and the potential adverse downstream effects was a concern expressed by several submitters[44]. In particular, there was concern that the runoff into the gullies and stream would cause erosion and flooding risks, and damage stream ecology. There was also concern the current stormwater infrastructure was not adequate to meet the additional demand created by the development of the land.

5.62 The Infrastructure Report prepared by Cuttriss Consultant for the Plan Change Request addressed stormwater management. The report recommended that the most practical solution to stormwater discharge is likely to be via controlled discharges to gullies which will need appropriate engineering design, and that stormwater neutrality would be required, and Stormwater Management Plan would be part of any resource consent application for the subdivision of the site. In addition, construction earthworks will need to be subject to a Sediment and Erosion Management Plan.

5.63 Mr Ryan Rose was engaged by the Council to provide independent advice on the infrastructure effects of the Plan Change, including stormwater management. He advised that stormwater disposal to gullies with suitable levels of attenuation is a widely accepted stormwater disposal technique and, if managed correctly, will have minimal effects to the surrounding areas. Mr Rose considered that there are no obvious stormwater issues that would preclude the Plan Change and the ongoing residential use of the land from proceeding.

5.64 One of the proposed information requirements is for the provision of a Stormwater Management Plan to address the ongoing stormwater runoff from the site and outline the proposed provision of stormwater control and disposal and any measures proposed to manage and treat stormwater. In addition, the assessment of any subdivision proposal will include the extent of compliance with the Wellington Water Regional Standard for Water Services December 2021, which includes stormwater management.

5.65 In regard to the potential for sediment runoff, the proposed provisions include a requirement for sediment and erosion risks to be addressed through a Stormwater Management Plan. Furthermore, any earthworks will need to address sediment and erosion controls under both the City's District Plan and the Wellington Natural Resources Plan.

[44] Submissions DPC58/001, DPC58/003, DPC58/004

5.66 We are satisfied that the development of the site can be managed to avoid adverse effects from sediment and stormwater runoff on downstream ecology and properties.

5.67 We also find that, with adherence to the existing requirements regarding stormwater, any potential adverse effects on flooding and erosion risks can be adequately mitigated.

5H. Cultural Effects

5.68 The District Plan does not identify any sites of cultural significance in the area subject to this Plan Change.

5.69 The Requester sought the input of Port Nicholson Block Settlement Trust, Te Rūnanga o Toa Rangatira, Te Rūnanganui o Te Āti Awa ki te Upoko o Te Ika a Māui and Wellington Tenths Trust and Palmerston North Māori Reserve Trust. Te Rūnanga O Toa Rangatira provided pre-lodgement comments, but no submissions were lodged by any of the iwi that were served notice of the Plan Change.

5.70 A further submission was lodged (by Cosmic Kaitiaki of Native Realms Foundation[45]) in relation to four of the submissions. The submission stated that they have an interest greater than the interest of the general public, and that "as mokopuna of Te Tiriti o Waitangi, Article 2 – to assert tino rangatiratanga over our lands, whenua, villages and taonga". While the submitter requested to be heard they did not appear before the Hearing.

5.71 In support of Taitā College's submission, Mr Hirini referred to the important cultural values of the local streams and the regenerating forests which the College has invested considerable energy to restore, providing valuable learning experiences for the students.

5.72 Overall, we find no evidence that the proposal Plan Change would adversely affect any cultural values.

6 STATUTORY EVALUATION

6A. National Statutory Documents

RMA – Part 2

6.1 Part 2 (sections 5-8) of the RMA states the purpose and principles of the Act. Part 2 is overarching, and the assessments required under other sections of the Act are subject to it. In order to recommend PC58 is adopted, the Panel must be able to conclude that the Plan Change will promote the sustainable management of natural and physical resources (purpose of s5 of the Act). The operative District Plan was developed under this same RMA framework, and Council is required to ensure all proposed changes to the Plan will also result in outcomes which meet this purpose.

6.2 We discuss our findings in more detail in the following section. However, in summary, we find that PC58 will appropriately provide for residential development on suitable land which is not prone to flooding or other natural hazards, and which can be fully serviced, and well

[45] DPC/008

connected with an existing community (Stokes Valley). The indigenous biodiversity values of the site along the steeper sides of the ridge, the headwaters of many streams, will be protected, with opportunities for enhancement and restoration through the Plan Change. There will be economic and employment benefits arising from the construction of residential buildings and associated infrastructure, and future residents will contribute to the vibrancy of the local community. Greenfield residential land in Lower Hutt is scarce, and PC58 will enable up to approximately 200 new households to be established. Therefore, we find that PC58 will promote the sustainable management of a scarce land resource and promote the wellbeing of people and communities with Hutt City.

6.3 S6 sets out a number of matters of national importance to be recognised and provided for. Of these, we consider that the following are relevant:

a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga:

h) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development.

6.4 The site is not within or adjacent to a coastal environment. While the site does not contain wetlands, lakes or rivers, it does contain the headwaters of a number of small streams that feed into either the Stokes Valley catchment or into the Taitā Stream. Aside from protecting the vegetation on the steeper slopes, the proposed management framework would require the use of stormwater treatment and discharge control systems to avoid adverse downstream effects. We are satisfied that the natural character of these headwaters would be maintained and would be consistent with S6(a) RMA.

6.5 The site contains a mix of vegetation, exotic and indigenous, with a range of values. PC58 would establish a management framework for assessing these values and identifying ways to manage these values, including protection of significant indigenous biodiversity values. We are satisfied that the Plan Change is not inconsistent with S6(c) RMA.

6.6 The relationship of Māori with the area has been acknowledged through consultation by the applicant with Te Runanga O Toa Rangatira Inc, Taranaki Whānui ki Te Upoko o Te Ika Trust (Port Nicholson Block Settlement Trust), Wellington Tenths Trust, Palmerston North Māori Reserve Trust, and Te Rūnanganui o Te Ati ki Te Upoko o Te Ika. No concerns were raised about the proposal by these Iwi entities. We are satisfied the Plan Change is consistent with S6(e) RMA.

6.7 The site is not subject to any natural hazards risks in the District Plan. Geotechnical surveys of the site indicate that the proposed Development Area within the site is suitable for residential subject to appropriate earthworks management. We are satisfied the Plan Change is consistent with S6(h) RMA.

6.8 S7 sets out other matters that must be had particular regard to. Of these, we consider the following are relevant:

a) the efficient use and development of natural and physical resources;

b) the maintenance and enhancement of amenity values;

c) maintenance and enhancement of the quality of the environment; and

d) any finite characteristics of natural and physical resources.

6.9 We find that PC58 is consistent with this s7 as any future development will be required to comply with the Medium Density Residential Activity Area objectives, policies, rules, and standards in the Plan. These provisions are designed to develop and maintain an appropriate level of residential amenity. PC58 will provide for an efficient use and development of a scarce land resource available for urban development.

6.10 S8 requires the Council to take into account the principles of the Treaty of Waitangi. We note that Te Rūnanga o Toa Rangatira, Te Rūnanganui o Te Ātiawa ki te Upoko o Te Ika a Māui, the Port Nicholson Block Settlement Trust, the Wellington Tenths Trust and the Palmerston North Māori Reserve Trust were consulted by the Requester prior to the request being accepted by Council.

National Policy Statements

6.11 We concur with the Council's consultant planner that the following National Policy Statements are relevant to PC58:

- National Policy Statement on Urban Development 2020 (NPS-UD)
- National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB), and
- National Policy Statement for Freshwater Management 2020 (NPS-FM).

6.12 The consistency of the proposed Plan Change with these national planning instruments was comprehensively addressed in the s32 evaluation of the Plan Change, and independently assessed as part of the Council's s42A evaluation. We agree with and adopt the evaluation and the findings of these assessments, and therefore do not intend to assess the consistency of the Plan Change with these instruments in great detail, but rather provide a summation of our evaluation and findings.

National Policy Statement for Urban Development 2020

6.13 The NPS-UD identifies Lower Hutt City as being a Tier 1 Urban Environment, a high growth urban area. Such authorities are required to provide sufficient development capacity to meet the demand for housing in the short, medium, and long term as well as enabling well-functioning urban environments. The NPS-UD requires councils to appropriately plan for growth and ensure a well-functioning urban environment for all people, communities, and future generations. District Plans must make room for growth both 'up' and 'out' and should not unnecessarily constrain growth.

6.14 Policy 1 of the NPS-UD is of particular relevance to PC58 as it requires Councils to appropriately plan for growth and ensure well-functioning urban environments are developed. It defines a well-functioning urban environment:

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

a) have or enable a variety of homes that:

i. meet the needs, in terms of type, price, and location, of different households; and

ii. enable Māori to express their cultural traditions and norms; and

b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and

c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and

d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and

e) support reductions in greenhouse gas emissions; and

f) are resilient to the likely current and future effects of climate change.[46]

6.15 PC58 is a land zoning request, not an actual application for a subdivision or any form of land development. The planning decision to be made is whether the rezoning is consistent with this Policy. In terms of Policy 1 above, we find that PC58 would enable a well-functioning urban environment to be created.

6.16 Policies 2 and 7 are also considered relevant as they specify that Tier 1 (and 2) local authorities need to provide at least sufficient development capacity to meet expected demand for housing, and to set housing bottom lines in District Plans. We find that PC58 will assist HCC in meeting expected demand for housing, aligning with the City's Urban Growth Strategy which identified the feasibility of development at this site as one of the steps in progressing growth in the City[47].

6.17 We would record that it is important to recognise that the site is not strictly a 'greenfields site' in that, to a large degree, it is proposing to upzone an existing urban zoning, Hill Residential Activity Area, to Medium Density Residential Activity Area, rather than rezone a rural site. That part of the site currently zoned General Recreation, while part of the proposed rezoning to Medium Density Residential, is not anticipated to be developed. Thus, the Plan Change is primarily a question of enabling urban development through intensification rather than greenfields expansion.

6.18 Policy 8 of the NPS-UD is also relevant to PC58. It states that:

Local authority decisions affecting urban environments are responsive to Plan Changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:

a) unanticipated by RMA planning documents; or

[46] S2.2, NPS-UD 2020 – Policy 1

[47] Hutt City Urban Growth Strategy 2012-32, at page 11

b) out-of-sequence with planned land release.[48]

6.19 We find that the proposal will add to the development capacity of Hutt City. It relates to land that, whilst zoned as Hill Residential, the proposed rezoning would be classified as 'unanticipated' in that a change to a Medium Density Residential zoning would significantly increase the density of development that could occur on the site. Subject to the resolution over the long-term supply of potable water, the site can be serviced by the necessary infrastructure.

6.20 Overall, we find PC58 is consistent with the NPS-UD because it would provide for additional urban development capacity that would create a well-functioning urban environment.

National Policy Statement for Indigenous Biodiversity 2023

6.21 The NPS-IB took effect on 4 August 2023. Its purpose is to provide direction to Councils to protect, maintain and restore indigenous biodiversity requiring at least no further reduction nationally. The NPS-IB puts a strong focus on the involvement of tangata whenua as partners and on the engagement with people and communities, including landowners.

6.22 The NPS-IB requires territorial local authorities to identify SNAs using prescribed criteria and include these in District Plans. This criterion has recently been introduced into the Wellington Regional Policy Statement (through Proposed RPS Change 1, now in the appeal period). However, as Mr Kellow identified, HCC has not worked through this process yet.

6.23 Mr Kellow considered the definition of SNA in the NPS-IB to be a relevant factor for PC58 because there is a 'Significant Natural Resource' (SNR 50) overlay covering approximately 75% of the site. In his opinion, the SNR meets the definition of SNA because HCC has not had an ecologist assess and make a determination whether the site is a SNA or not.[49] We agree with this interpretation.

6.24 Ms Tessendorf did not agree. She considered that while the District Plan contains overlays and descriptions of SNR, the relevant rules do not apply to private properties as a result of related Environment Court decisions in 2004 and 2005. In her opinion "under the newly released NPS-IB the factually invalid SNR areas are now interpreted as being SNA by definition. I consider this to be an unintended outcome …"[50]

6.25 Mr Kellow listed the most relevant NPS-IB policies as being Policies 3-8, 10, 13 and 14. We agree that these policies apply.

6.26 In regard to the direction provided in the NPS-IB, Mr Kellow considered that clause 3.10 of the NPS-IB would have to be taken into account when a subdivision application is lodged for a proposal on this site unless HCC has completed the SNA identification process and determined that the site does not meet the SNA criteria. In summary, clause 3.10 sets out matters that must be avoided and sets out other matters that are to be managed by applying the effects management hierarchy. Mr Kellow also identified clause 3.16 NPS-IB which requires any significant adverse effects on indigenous biodiversity outside of a SNA to be managed by applying the effects management hierarchy.

48 S2.2, NPS-UD 2020 – Policy 8

49 S42A Report at paragraphs 75-77

50 Ms Corinna Tessendorf EIC para 52

6.27 As a result of Ms Tessendorf's opinion that the SNR is not an SNA, she did not agree that clause 3.10 is relevant.

6.28 We agree with Mr Kellow's assessment that SNRs have to be considered, on a transitional basis, as SNAs, given the definition in the NPS-IB, which is (our emphasis):

> *any area that, on the commencement date, is already identified in a policy statement or plan as an area of significant indigenous vegetation or significant habitat of indigenous fauna (regardless of how it is described); in which case it remains as an SNA unless or until a suitably qualified ecologist engaged by the relevant local authority determines that it is not an area of significant indigenous vegetation or significant habitat of indigenous fauna.*

6.29 Thus, we find that SNR 50 must be regarded as a SNA for the purpose of the NPS-IB, notwithstanding its limitations. However, taking into consideration the proposed provisions and their amendments which have been discussed in detail above within the assessment of effects on indigenous biodiversity, we consider that the proposal will be consistent with the NPS-IB. PC58 sets out an appropriately robust framework, directed by a site-specific policy, to require a comprehensive pre-development Ecological Plan that would identify the significance of the indigenous biodiversity within the site, and then require measures for avoiding or managing the effects of subdivision and development on indigenous biodiversity.

National Policy Statement for Freshwater Management 2020

6.30 The National Policy Statement of Freshwater Management (NPS-FM) sets out the overarching objective and policies for the management of freshwater under the RMA. The NPS-FM manages freshwater in a way that seeks to give effect to the concept of Te Mana o te Wai, improve degraded water bodies and maintain or enhance all others. The NPS-FM contains one objective which prioritises the health and well-being of water bodies and freshwater ecosystems.

6.31 The onus for implementing the NPS-FM is on regional councils, and changes to the Wellington Regional Policy Statement and Wellington Natural Resources Plan are in progress, with decisions on the WRPS now in the appeal period, and changes to the WNRP yet to be heard.

6.32 The NPS-FM is relevant to the Plan Change through the stormwater run-off generated by the site which will eventually be discharged to the Hutt River via all of the tributary streams that have headwaters in the site of the proposed Plan Change. The potential for adverse effects on these streams were identified by submitters as a matter of concern. The Plan Change responds to this by including a requirement for a stormwater management plan and including stormwater management as a matter of discretion. We are satisfied that these measures, together with the protection of the regenerating vegetation on the site's steep slopes that feed into the headwaters, would protect freshwater values.

6.33 Overall, we find the proposed Plan Change will give effect to the NPS-FM.

National Planning Standards

6.34 Under s74(1)(ea) RMA, Council must prepare and change the District Plan in accordance with the National Planning Standards. The first national planning standards came into effect in 2019. The operative District Plan has not yet been reformatted in line with the National

Planning Standards. The Plan Change is framed to be consistent with the operative District Plan, and thus is not consistent with the National Planning Standards. As PC58 is a proposed change to the Operative District Plan, it does not need to implement the National Planning Standards.

6.35 The Operative District Plan is currently under a full review, which is expected to result in a Proposed District Plan being notified in late 2024, formatted in accordance with the National Planning Standards. If PC58 is confirmed, it is expected that it will need to be recast in accordance with the National Planning Standards.

6B. Regional Statutory Documents

Wellington Regional Policy Statement

6.36 A District Plan must give effect to any Regional Policy Statement. The RPS for the Wellington Region (WRPS) became operative on 24 April 2013 and postdates the operative District Plan. The s32 evaluation report prepared in support of PC58 provided a comprehensive analysis of the consistency of the Plan Change with the relevant RPS provisions.[51] We note the Council's reporting planner undertook his own analysis of the WRPS and was in general agreement with the conclusions of the s32 analysis.[52] We concur with and adopt both their evaluations, finding that the Plan Change is generally consistent with the relevant objectives and policies of the WRPS.

6.37 Change 1 to the operative WRPS was going through the submission and hearing process when the Plan Change Request and subsequent Plan Change was undertaken. Decisions on Change 1, which include a large number of amendments to the WRPS, were released not long after the hearing on PC58 finished. While the appeal period has yet to close and therefore full weight cannot be given to the changes proposed, we did seek a response from the Requester's planner and Council planner on the implications of the amendments to the WRPS for PC58. This response was circulated on 8 October 2024.

6.38 In general terms, many of the changes in policies will require an all-of-District Plan response to ensure a consistent and integrated approach is taken rather than seeking to implement the RPS policies on a piecemeal basis.

6.39 We find that PC58 will give effect to the relevant objectives and policies of the RPS as it seeks to provide for residential development within an existing urban environment. The subject land is located in close proximity to community facilities and transport networks.

6.40 Regarding biodiversity values, in 2018, HCC decided not to advance Plan Change 46 which dealt with ecosites and landscape areas and opted instead to use non-regulatory methods. As Mr Kellow pointed out, despite this decision, the RPS objectives and policies in relation to significant biodiversity values still need to be considered for this proposal.

6.41 In that respect, Mr Kellow identified that there are aspects of the WRPS which are in the form of regulatory direction to the Council to include specific provisions in the District Plan (for example, in RPS Policies 1, 23 and 24) and there are other aspects of the RPS to be

[51] Pages 16, 17 S42A Report

[52] S42A report, at paragraph 145

considered in the interim period when a Plan Change is being determined (for example in WRPS Policy 47).

6.42 The Applicant's ecologist and the Councils ecologist were generally in agreement that the ecology within the application site met the criteria set out in Policy 23 and, as Mr Kellow pointed out, the proposed Matters of Discretion in relation to ecology are broadly stated and do not constrain the assessment to matters narrower than Policy 47.

6.43 We consider that the approach taken in the private plan change in regard to indigenous biodiversity is acceptable and not contrary to the WRPS.

Operative and Proposed Regional Plans

6.44 When preparing or changing a District Plan, a Council shall also have regard to any relevant proposed or operative regional plan.[53] There is only one operative regional plan for the Wellington region, the Wellington Natural Resources Plan (WNRP). Both the s32 and s42A reports outlined the relevant provisions of the WNRP for PC58, and concluded that the Plan change is not inconsistent with the Plan[54].

6.45 For PC58, the main potential crossover between the function of HCC and GWRC relates to stormwater management and natural hazards. The proposed provisions of PC58 will require that stormwater management issues are fully addressed at the time of development through the preparation and implementation of a site-wide Stormwater Management Plan, which will need to take into account the requirements of the WNRP as they apply at that time of any application. There is also a proposed requirement for a full geotechnical assessment prior to development.

6.46 There is no apparent inconsistency between PC58 and the provisions of the WNRP. Any consenting requirements under the WNRP will be the responsibility of the applicant to address at the time of subdivision and development.

6.47 The WNRP is subject to proposed Change 1, which will introduce many changes to the current provisions. Decisions on submissions to WNRP Change 1 were released subsequently to the Hearing on PC58. At this point, it is not known how many of the decisions will be appealed and therefore be subject to further change. Accordingly, the objectives and policies should in our view be given limited weight.

6C. District Statutory Documents

Operative District Plan

6.48 PC58 proposes to rezone the site from General Recreation and Hill Residential to Medium Density Residential. We reiterate PC58 proposes no changes to the objectives, policies, rules or standards of the MDRAA. The existing objectives and policies of the Operative District Plan relating to the MDRAA are therefore relevant, as are the relevant objectives and policies of the Earthworks and Transport chapters.

[53] S74(2)(b)(ii), RMA

[54] S42A report, at paragraph 180, and s32 report, at paragraph

6.49 We concur with the reporting planner's summary of the relevant ODP provisions and reproduce it here for completeness[55]:

> ***Medium Density Residential Activity Area***
>
> • *There is a well-functioning urban environment;*
>
> • *Residential activities are the dominant activity in the zone;*
>
> • *A variety of housing types and sizes are provided for;*
>
> • *Recognition of the planned character is defined by enabling three storeys;*
>
> • *Built development is of high quality; and*
>
> • *Built development is adequately serviced.*
>
> ***Subdivision***
>
> • *Ensure land which is subdivided can be used for proposed use or development;*
>
> • *Utilities provided to service the subdivision protect the environment; and*
>
> • *Land subject to natural hazards is subdivided in a manner that the adverse effects are managed and does not increase the risk from natural hazards.*
>
> ***Transport***
>
> • *The transport network is integrated with land-use patterns, and facilitates and enables urban growth;*
>
> • *Adverse effects from the transport network on the adjacent environment are managed; and*
>
> • *The transport network is safe and efficient and provides for all transport modes.*
>
> ***Earthworks***
>
> • *Earthworks maintain natural features, and do not adversely affect visual amenity, cultural or historical site values.*

6.50 Both the s32 and s42A reports contained a summary of the relevant Objectives and Policies[56]. The s42A report endorses the evaluation and findings of the s32 report. We agree with the assessment in the s32 report[57] which, in summary, considered that the proposed site-specific provisions assist in meeting the objectives and policies. We consider the existing objectives and policies do not need amending especially in light of the District Plan review that will update the objectives and policies across the District Plan.

6.51 We find, for reasons more fully explained in the following section, that PC58 is appropriate for a Medium Density Residential zoning.

[55] S42A report, at paragraph 200

[56] Paragraph 210 of S42A Report - a full list is contained in Appendix 3 to the s42A report

[57] Through paragraphs 154 – 178

6E. Non-Statutory Documents

6.52 Two non-statutory documents were identified by the reporting planner as being relevant to PC58. These are the Urban Growth Strategy 2012-2032 (UGS), and the Environmental Sustainability Strategy 2015-2045 (ESS).

Urban Growth Strategy 2012-2032

6.53 We were advised by the Council's consultant planner that the UGS was prepared under the Local Government Act 2002 and reflects the Council's strategy for directing growth and development within the City to 2032. It was adopted by Council in March 2014. The UGS is only given statutory weight through future District Plan changes.

6.54 The s42A report provides a good commentary on the UGS[58]. We concur with this commentary, noting that it is intended to achieve the City's growth targets through a mixture of intensification, apartment living and greenfield development. As we noted earlier (at paragraph 6.17), PC58 is not strictly a greenfields rezoning, but is effectively a replacement of a low density residential zoning with a medium density residential zoning, thereby enabling a greater density of residential development when it does occur. We also note that a medium density residential zoning would not require future development to be at the density enabled by that zoning: it could be developed at a much lower density, to meet anticipated housing market demand at that time.

Environmental Sustainability Strategy 2015-2045

6.55 This Strategy was prepared to provide guidance for Council decision-making, outlining an increased focus on good environmental management.

6.56 Focus Area 3 of the Strategy is Transport. It identified that walking and cycling links can assist in the reduction of emissions, and like the UGS, notes that Council intends to develop comprehensive cycling networks linking key population centres in the city and providing access through the City. Focus Area 4 is concerned with land-use, including housing.

6.57 Focus Area 4 acknowledges that all development has an impact on the environment and focuses on urban form and development to minimise environmental effects.

6.58 The overall Strategy also states the City's environmental amenity is aided by a range of outdoor public open space, including the river, and acknowledges that they are important for the community's wellbeing, particularly in providing recreational opportunities. Access and proximity to nature is seen as a key element in defining the 'liveability' of the city.

6.59 We find that the plan change is not inconsistent with this strategy as the District Plan includes provisions to manage environmental outcomes, and the development of the site would promote proximity to nature and supporting the liveability of the City.

[58] Paragraphs 185-187, s42A report

7 PROPOSED PLAN CHANGE PROVISIONS

7A. New Policy

7.1 During the course of the Hearing, it became clear that some form of overarching policy direction to guide decision-making in the consent process for development proposals on the site should be introduced. While the site is proposed to be brought into the City's Medium Density Residential zoning, development of the site would occur under a site-specific management framework dovetailed into the subdivision provisions. This is an appropriate approach as the subdivision process addresses the requirements for urban development, including earthworks, roading and access, infrastructure and utilities, landscaping, and reserves.

7.2 It became apparent, though, that having an explicit policy foundation for a site-specific consenting framework for the Shaftesbury Grove land would facilitate and support the future consenting process under that framework. In particular, it would provide direction to inform the purpose of managing development proposals that affected the 'protection area': that is, for any development that may extend beyond the delineated Development Area, onto the more steeply sided well-vegetated slopes.

7.3 This issue arose from the evaluation of this aspect of the proposal by Mr Kellow who recommended, in his s42A report, that any subdivision within the 'protection area' should be a Non-Complying Activity rather than a Discretionary Activity as notified. Mr Kellow considered that, while a Discretionary Activity status allows for a full assessment of effects, it does not restrict development in any meaningful way. Mr Kellow considered that a Non-Complying Activity status would provide more of a signal that development outside of the Development Area is not encouraged or anticipated[59].

7.4 In response, it was put to us by Ms Tessendorf that the very nature of the steeply sided slopes of the site, which are areas of higher sensitivity and significance, would inhibit the development of these parts of the site, and that any future subdivision and development would face significant challenges from both a consenting perspective (for example, under the policies of the WNRP and the NPS-IB) and a feasibility perspective (for example, potentially prohibitive costs for extensive earthworks for a comparatively low yield)[60].

7.5 Ms Tessendorf considered that discretionary activity status provided a balanced approach, together with the other limitations and restrictions that would be imposed on any development proposal outside the identified Development Area.

7.6 Ms Tessendorf then advised us that some flexibility was required to achieve the best subdivision design that could take into account site specific features and characteristics. She stated that the purpose of providing a consent process for development inside the 'protected area' was to allow some flexibility:

> *The discretionary activity status allows for the assessment of all adverse effects of a proposal while also providing some flexibility. Especially along the boundary of*

[59] At paragraph 177

[60] At paragraph 304

the Development Area there may be small areas of earthworks or minor structures required and the effects can be managed[61].

7.7 Following this clarification, we queried whether the Plan Change contained sufficiently explicit direction about this intention for future decision-making. In response to the Panel's questions, following the hearing, Ms Tessendorf recommended a new policy, which was supported by the Council's reporting planner, to be added to the two existing subdivision related policies under *Issue 11.1.4, Special Areas*[62]. This issue relates to the "subdivision of land in the coastal environment and in areas of ecological and historic heritage value can have adverse effects that need to be controlled", which has two objectives, one being "to ensure that land in the coastal environment, areas adjoining lakes and rivers and other environmentally sensitive areas are protected from inappropriate subdivision"[63].

7.8 It was recommended that the new policy read as follows (red underlined text):

Policy

a. To ensure that land in the coastal environment, areas adjoining rivers and lakes and other environmentally sensitive areas are not subdivided to an extent or manner where amenity values, ecological, social, cultural and recreational conditions are adversely affected.

b. Protect the historic heritage values of heritage items and in the Heretaunga Settlement and Riddlers Crescent Heritage Precincts by managing density of development enabled by subdivision of land.

c. In addition to (a) above, subdivision of the land identified in Appendix Subdivision 10 is managed as follows:

i. Require the identification of all earthworks, building platforms, roads, accesses and utility structures at the time of subdivision;

ii. Provide for the subdivision of land where all earthworks, building platforms, roads, accesses and utility structures are located within the Development Area identified in Appendix Subdivision 10;

iii. Only allow for the subdivision of land that enables earthworks, building platforms, roads, accesses and utility structures located outside the Development Area identified in Appendix Subdivision 10 where the activities or structures are required to support or enable development within the Development Area and to provide additional flexibility along the boundary of the Development Area.[64]

7.9 As we noted in Minute #5, while this appears to be appropriate for such a policy, given the accepted ecological values within the site, we questioned whether the level of detail in recommended policy (c) is appropriate relative to the other two policies. In particular, there

[61] Evidence-in-Chief of Corinna Tessendorf, at paragraph 306

[62] Written Reply #1, at paragraph 3

[63] The second objective relates to historic heritage values

[64] The words "In addition to (a) above" at the beginning of (c) were recommended to be added through the second written Reply, following further questions from the Panel, to clarify that Policy 11.1.4(a) should also apply to 12 Shaftesbury Grove

is neither an overall outcome expressed nor the need to identify and protect the significant ecological values of the land.

7.10 In response, Ms Tessendorf considered that the level of detail of the proposed policy was appropriate, with the intention of the policy being to clarify the intentions for the subdivision and development of the site especially in relation to portions within or outside the identified Development Area. She stated that the policy was not intended to specifically address or be limited to the identification and protection of significant ecological values of the site.[65]

7.11 With respect we disagree. The objective which this policy is intended to achieve is to ensure that land in the coastal environment, areas adjoining lakes and rivers and other environmentally sensitive areas are protected from inappropriate subdivision. We consider the recommended wording of Policy (c) would not sufficiently or succinctly describe the management approach being applied to the site, containing unnecessary detail and repetition, and some internal contradiction[66]. Further, when the Subdivision Chapter is read as a whole, we consider it is sufficiently well understood that the subdivision process includes earthworks, building platforms, road and utilities without the need to specify these activities within this policy. These matters are better addressed through the information requirements.

7.12 In addition, we agree with the comments of Mr Kellow that Policy 11.1.4(a) would set a very high bar for a subdivision to occur on the subject site and would be inconsistent with the NPS-IB which envisages that some adverse effects may be allowed subject to the effects' management hierarchy[67]. For that reason, we conclude that a cross-reference to Policy 11.1.4(a) would not assist in the implementation of PC58.

7.13 We prefer the following wording:

> *c. To enable urban development through the subdivision of land identified in Appendix Subdivision 10 in a manner that protects the land's significant ecological values by:*
>
> *i. Providing for the subdivision of land within the identified Development Area;*
>
> *ii. Only allow for the subdivision of land outside the identified Development Area where the subdivision is required to support or enable development within the Development Area, and the land's significant ecological values are maintained or enhanced.*

7.14 In summary, we find that the proposed policy would be the most appropriate way to achieve the objectives of the District Plan, relative to an absence of any policy direction on the purpose of the site-specific provisions.

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65 Second written Reply, at paragraph 3

66 Under clause (ii) all earthworks, building platforms etc are required to be located within the identified Development Area, while clause (iii) potentially enables earthworks, building platforms etc to be located outside the identified Development Area.

67 Second Written Reply, at paragraph 9

7B. Other Provisions

7.15 Through the written replies following the hearing, a large measure of agreement between the planners for the Requester and the Council was reached.

7.16 Through the second written Reply, Mr Kellow recommended including the following to 11.2.3(h)C:

> *A full ecological assessment of the site that:*
>
> *1. Identifies indigenous biodiversity values on the site.*
>
> *2. Identifies the appropriate level of management or avoidance depending on the significance of the indigenous biodiversity.*
>
> *…*

7.17 This was accepted by Ms Tessendorf. We agree with this recommended insertion, as it addresses what we considered to be a gap in the provisions, a clear direction that a full ecological assessment of the site is required to identify the indigenous biodiversity values on the site and the appropriate level of management or avoidance. This information is necessary to provide the basis for the subsequent subdivision and development process.

7.18 Another outstanding question the Panel had following the hearing was in relation to the Landscape Management Plan, which, as notified, had no clear relationship with the Ecological Management Plan. Through Minute #5, we queried whether more explicit direction is required to ensure that the Landscape Management Plan is appropriately integrated with the measures identified in the Ecological Management Plans. In response, Ms Tessendorf considered that all of the information requirements would be prepared in an integrated way and would inform the design and layout of the subdivision[68]. However, to address the question, Ms Tessendorf recommended amending information requirement 11.2.3(h)D, Landscape and Visual, as follows:

> *A Landscape Management Plan must be prepared by a suitably qualified person taking into consideration the findings of the ecological assessment and management plans required under C. Ecology and providing the following landscaping details: …*

7.19 This recommended amendment was accepted by Mr Kellow.

7.20 We agree with this recommendation. While we accept that a large degree of integration between the various strands of subdivision and development design and planning is likely to occur, we consider it important to highlight the necessity to ensure integration between the landscape and ecological management plans to optimise the benefits that can be achieved through such an integrated approach. However, we consider it important that the recommendations of the ecological assessment and management plans also be taken into account in the development of the Landscape Management Plan.

7.21 In all other respects, we agree with the final recommended wording of the Plan Change, as provided in the second written Reply, dated 8 October 2024.

[68] Second Written Reply, at paragraph 19

8 OVERALL FINDINGS AND RECOMMENDATIONS

8.1 In summary, we find that the proposed plan change is consistent with the purpose and principles of the RMA, and with the objectives and policies of the operative District Plan. In particular, we find that the management framework provided for under PC58 would enable residential urban development in line with the City's Urban Growth Strategy while effectively managing the adverse effects. The proposed zoning would appropriately align with the MDRAA residential zoning that applies to most of Stokes Valley, including the adjoining area to the north of the site. Significant indigenous biodiversity would be protected by avoiding or managing adverse effects from new subdivision and development.

8.2 Based on our consideration of all the material before us, including the s42A report from the Council's consultants, the submissions, further submissions, evidence presented at the hearing and other relevant statutory matters, and for the reasons we have set out in sections 3 and 4 above, we recommend to the Council that:

a) Pursuant to clause 29(4) of Schedule 1, RMA, the Plan Change be approved, subject to the recommended amendments as outlined in Appendix 1 to this report;

b) All submissions and the further submissions on the Plan Change be accepted or rejected to the extent that they correspond with our recommendations, as outlined in Appendix 2 to this report; and

c) Pursuant to Clause 10 of Schedule 1 of the RMA, Council gives notice of its decision on submissions to PC58.

8.3 Although not within the scope of the Plan Change, we separately recommend that the Council proactively works with Wellington Water and the Requester to identify and implement a solution that will unlock the development potential of the site, as well as address the wider water supply issues facing the area.

DATED AT LOWER HUTT THIS 16 DAY OF DECEMBER 2024

Robert Schofield
Panel Chair

APPENDIX 1 – Panel Recommendations on Plan Change 58 Provisions

The following shows the amendments proposed by PC58 as notified and includes any proposed further amendments as recommended by the Hearings Panel.

Plain text is the operative District Plan provisions.

Any amendments proposed by PC58 as notified are shown as black underline.

Any amendments recommended by the Hearing Panel in response to submissions are shown as red underline and ~~red strikethrough~~.

AMENDMENT 1 – REZONING AS NOTIFIED

Rezoning of the site

Rezone the site at 12 Shaftesbury Grove from Hill Residential Activity Area and General Recreation Activity Area to Medium Density Residential Activity Area.

AMENDMENT 2 – RECOMMENDED NEW POLICY

Chapter 11 – Subdivision: Add site specific policy

11.1 Issues, Objectives and Policies

11.1.4 Special Areas

Issue

Subdivision of land in the coastal environment and in areas of ecological and historic heritage value can have adverse effects that need to be controlled.

Objective 1

To ensure that land in the coastal environment, areas adjoining lakes and rivers and other environmentally sensitive areas are protected from inappropriate subdivision.

Objective 2

Historic heritage values of identified heritage precincts and heritage items are protected from inappropriate subdivision.

Policy

a. To ensure that land in the coastal environment, areas adjoining rivers and lakes and other environmentally sensitive areas are not subdivided to an extent or manner where amenity values, ecological, social, cultural and recreational conditions are adversely affected.

b. Protect the historic heritage values of heritage items and in the Heretaunga Settlement and Riddlers Crescent Heritage Precincts by managing density of development enabled by subdivision of land.

c. To enable urban development through the subdivision of land identified in Appendix

Subdivision 10 in a manner that protects the land's significant ecological values by:

i. Providing for the subdivision of land within the identified Development Area;

ii. Only allow for the subdivision of land outside the identified Development Area where the subdivision is required to support or enable development within the Development Area, and the land's significant ecological values are maintained or enhanced.

AMENDMENT 3 – RECOMMENDED CHANGES

Chapter 11 – Subdivision: Add site specific Restricted Discretionary Activity and Information Requirements

11.2.3 Restricted Discretionary Activities

…

h. Any subdivision of land identified in Appendix Subdivision 10.

In addition to the standard information requirements of s88(3) of the RMA the following information requirements shall also apply.

The following information requirements must be provided by the first application for subdivision under this rule to achieve an integrated design response. They are applicable to any future stages and subsequent subdivision applications.

Where subsequent subdivision applications deviate from the management plans and information previously provided, the appropriate revisions, addendums or further information to the initial management plans and information must be provided.

A. Stormwater

~~The first application for subdivision under this rule must provide a Stormwater Management Plan for the site that is applicable to any future stages and subsequent subdivision applications. The A~~ Stormwater Management Plan ~~must be~~ prepared by a suitably qualified person ~~and~~ covering the following:

1. Existing site evaluation
   - Topography
   - Geotechnical and soil conditions
   - Existing stormwater networkExisting hydrological features
   - Stream and river locations
   - Flooding and Flowpaths locations
   - Ecological and environmental areas
2. Development summary and planning context
3. Proposed development including:
   - Location and area
   - Site layout and urban form

- Location and extent of earthworks

4. Stormwater management, including:

- Principles of stormwater management
- Proposed site-specific stormwater management and treatment
- Hydraulic connectivity and downstream impacts
- Asset ownership
- Ongoing maintenance requirements
- Implementation of stormwater network

B. Geotechnical

~~The first application for subdivision under this rule must provide a Geotechnical Assessment for the site that is applicable to any future stages and subsequent subdivision applications. The~~ A Geotechnical Assessment ~~must be~~ prepared by a suitably qualified person confirming that:

- The resulting allotments are able to accommodate the intended use and development.
- The risk from any ~~slope instability~~ geohazards can be avoided, remedied or mitigated.
- The subdivision will not increase or accelerate ~~land instability~~ the risk from geohazards on the site or adjoining properties.

C. Ecology

~~The first application for subdivision under this rule must provide an Ecological Plan for the site that is applicable to any future stages and subsequent subdivision applications. The Ecological Plan must be prepared by a suitably qualified person and address the following:~~ A full ecological assessment of the site that:

1. Identifies indigenous biodiversity values on the site.
2. Identifies the appropriate level of management or avoidance depending on the significance of the indigenous biodiversity.
3. Provides the required management plans addressing at least the following:

~~1~~i. Orchid Management

- Identify ~~whether there are potential~~ the location of threatened orchids within the Development Area.
- Set out requirements for the management of threatened orchids~~, should they be~~ identified on the site.

~~2~~ii. Lizard Management ~~Plan~~

- Identify areas that require a pre-vegetation clearance monitoring survey of lizards.
- Document any pre-vegetation clearance monitoring of lizards.
- Identify suitable lizard relocation areas.

- Set out requirements for any lizard relocation.

~~3~~iii. Mānuka Management

- Review the significance and threat status of Mānuka Forest on the site;
- Identify areas of significant Mānuka Forest on the site.

~~4~~iv. Vegetation Management

- Identify vegetation protection measures outside the Development Area identified in Appendix Subdivision 10.
- Provide details for weed and pest management on the site.
- Identify ongoing monitoring and maintenance requirements.

v. Falcon Survey

- The requirements for an on-site survey for nesting NZ falcons prior to the start of works if any vegetation clearance or earthworks are scheduled to be undertaken during the falcon nesting season.

D. Landscape and Visual

~~The first application for subdivision under this rule must provide a Landscape Management Plan for the site that is applicable to any future stages and subsequent subdivision applications. The~~A Landscape Management Plan ~~must be~~ prepared by a suitably qualified person ~~and provide~~ taking into consideration the findings and recommendations of the ecological assessment and management plans required under C. Ecology and providing the following landscaping details:

- Street trees and amenity planting.
- Fencing and planting treatments at the boundary with Fenchurch Grove properties.
- Planting to mitigate earthworks and retaining structures.
- Reserve and open space design including recreation tracks.
- Roads, pedestrian, and cycle linkages within the site and to the wider access network.
- Stormwater design and associated planting.

E. Transport

For any subdivision that exceeds the high trip generator thresholds specified in Appendix Transport 2 an Integrated Transport Assessment prepared by a suitably qualified person.

AMENDMENT 4 – RECOMMENDED CHANGES

Chapter 11 – Subdivision: Add site specific Matters of Discretion

11.2.3.1 Matters in which Council has restricted its discretion

…

(g) Any subdivision of the land identified in Appendix Subdivision 10.

(i) Amenity Values

The extent to which any earthworks proposal will affect adversely the visual amenity values of the area, and the extent to which replanting, rehabilitation works or retaining structures are included as part of the proposal to mitigate adverse effects. Earthworks should not result in the permanent exposure of excavated areas or visually dominant retaining structures when viewed from adjoining properties or public areas, including roads.

Any measures proposed to mitigate potential adverse landscape and visual effects in accordance with the Landscape Management Plan for the site.

(ii) Existing Natural Features and Topography

The extent to which the proposed earthworks reflect natural landforms and are sympathetic to the natural topography.

Any measures proposed to mitigate potential adverse landscape and visual effects in accordance with the Landscape Management Plan for the site.

(iii) Historical or Cultural Significance

The extent to which the proposed earthworks will affect adversely land and features which have historical and cultural significance.

(iv) Construction Effects

The management of construction effects, including traffic movements and hours of operation.

The extent to which proposed earthworks have adverse short term and temporary effects on the local environment.

(v) Engineering Requirements

The extent of compliance with NZS 4431:2022 (Engineered Fill Construction for Lightweight Structures).

The extent of compliance with NZS 4404:2010 (Land Development and Subdivision Infrastructure).

(vi) Erosion and Sediment Management

The extent of compliance with the "Erosion and Sediment Control Guidelines for the Wellington Region 2002" and "Small Earthworks – Erosion and Sediment Control for small sites" by Greater Wellington Regional Council.

(vii) Design and Layout

The design and layout of the subdivision, including the size, shape and position of any lot, any roads or the diversion or alteration to any existing roads, access, passing bays, parking and manoeuvring standards, and any necessary easements.

Any measures proposed to mitigate potential adverse effects of subdivision, earthworks

and development upon the steeper hillsides, gullies, and streams outside the identified Development Area.

(viii) Utilities Servicing ~~and Access~~

The provision of utilities servicing, including street lighting, telecommunications, gas and electricity.

~~The provision of vehicular, pedestrian and cycle access via public roads, footpaths and cycleways and the provision of private accesses.~~

(ix) Transport

The provision of vehicular, pedestrian and cycle access via public roads, footpaths and cycleways and the provision of private accesses.

In addition, for subdivisions that exceeds the high trip generator thresholds specified in Appendix Transport 2 the effects of the activity on the transport network including impacts on on-street parking.

(x) Stormwater Management

The provision of stormwater control and disposal and any measures proposed to manage and treat stormwater in accordance with the Stormwater Management Plan for the site.

The extent of compliance with the Wellington Water Regional Standard for Water Services December 2021.

(xi) Wastewater

The provision of wastewater systems and any measures proposed to utilise off-peak network capacity through on-site storage and timed wastewater release.

The extent of compliance with the Wellington Water Regional Standard for Water Services December 2021.

(xii) Water Supply

The provision of a reticulated water supply network and any measures proposed to achieve an adequate domestic and fire-fighting water supply.

The extent of compliance with the Wellington Water Regional Standard for Water Services December 2021.

(xi~~i~~iii) Natural Hazards

The avoidance or mitigation of natural hazard risks

(xi~~ii~~iv) Regionally Significant Network Utilities

The design and layout of the subdivision where any lot may affect the safe and effective operation and maintenance of and access to regionally significant network utilities (excluding the National Grid) located on or in proximity to the site.

The outcome of consultation with the owner and operator of regionally significant

network utilities (excluding the National Grid) located on or in proximity to the site.

(xiv) Geotechnical

Any measures proposed to provide appropriate foundations for future buildings within the subdivision and to manage the risk from ~~slope instability~~ geohazards on the site and on adjoining properties from any earthworks or site development works, in accordance with the Geotechnical Assessment for the site.

(xvi) Ecology

Any measures proposed to avoid or manage adverse effects on ~~significant~~ indigenous biodiversity ~~values~~ on the site ~~in accordance with the Ecological Plan for the site~~.

- ~~The application of the effects management hierarchy as follows:~~
- ~~Avoid adverse effects on significant indigenous biodiversity where practicable;~~
- ~~Minimise other adverse effects on significant indigenous biodiversity where avoidance is not practicable;~~
- ~~Remedy other adverse effects where they cannot be avoided or minimised;~~
- ~~Only consider biodiversity offsetting for any residual adverse effects that cannot otherwise be avoided, minimised or remedied; and~~
- ~~Only consider biodiversity compensation after first considering biodiversity offsetting.~~

(xvii) Other Matters

Those matters described in S108 and 220 of the Resource Management Act 1991.

AMENDMENT 5 – RECOMMENDED CHANGES

Chapter 11 – Subdivision: Add site specific Standards and Terms

11.2.3.2 Standards and Terms

…

b. Any subdivision of land identified in Appendix Subdivision 10

i. Development Area~~s~~

All earthworks, building platforms, roads, private accesses, and utility structures must be identified and located within the Development Area identified in Appendix Subdivision 10.

AMENDMENT 6 – RECOMMENDED CHANGES

Chapter 11 – Subdivision: Add site specific Discretionary Activity

11.2.4 Discretionary Activities

...

(o) Any subdivision of land identified in Appendix Subdivision 10 that does not comply with the Standards and Terms in 11.2.3.2 (b)(i)~~(1)~~.

AMENDMENT 7

Chapter 11 – Subdivision: Add new Appendix Subdivision 10

APPENDIX 2 – Panel Recommendations on Submissions and Further Submissions

DPC58/001 Taitā College					
Sub. Ref.	**Topic**	**Position**	**Decision Requested**	**Submitter's Comments**	**Panel Recommendation**
1.1	General	Oppose	The submitter opposes the proposal and seeks that the Council engages with all people impacted by the proposal.	The submitter comments on: - Site stability - Flora and fauna - Significance to Māori - Rubbish and waste - Access to school land, and - Three waters infrastructure. Further detail is provided below.	Reject – see below.
1.2	Site stability	Oppose		- The site is steep, and development could create slips that would impact upon the adjacent school land. - The submitter does not have confidence that the geotechnical and engineering requirements will be adequate to avoid site stability issues that are present in the Stokes valley area. - Erosion and sedimentation already occur in the area. - The school site has had sediment deposited at the back of the school.	Reject - Geotechnical assessment is proposed as a Matter of Discretion so geotechnical matters will be managed appropriately.

DPC58/002 Greater Wellington Regional Council					
Sub. Ref.	**Topic**	**Position**	**Decision Requested**	**Submitter's Comments**	**Panel Recommendation**
2.1	General	Not stated	That the Plan Change does not proceed.	The submitter states that they do not consider the Plan Change necessary at this time. Reasons given relate to: - Risk of indigenous biodiversity loss, with reference to the Regional Policy Statement and the National Policy Statement for Indigenous Biodiversity, - Existing development	Reject - Indigenous biodiversity management is proposed as a Matter of Discretion and will be managed in accordance with the NPS-IB. Changes are proposed to the Plan Change provisions to more effectively address this matter.

DPC58/002 Greater Wellington Regional Council					
Sub. Ref.	**Topic**	**Position**	**Decision Requested**	**Submitter's Comments**	**Panel Recommendation**
				capacity, and - Proposed Change 1 to the Natural Resources Plan.	
2.2	Natural and geotechnical hazards	Amend	That the geotechnical recommendations in the Torlesse Report are followed.	To manage appropriately manage risks from natural and geotechnical hazards, the recommendations in the Torlesse Consulting Assessment (attached to the proposed Plan Change) should be followed.	Reject - Geotechnical assessment is proposed as a Matter of Discretion so geotechnical matters will be managed appropriately. The recommendations in the Torlesse report are the type of recommendation that would be made in the Geotechnical Assessment that must be submitted with subdivision application and the recommendations in that assessment will be taken into account.
2.3	Building platforms	Amend	Building platforms are sited on the low to moderate aspects of lots less than 26 degrees.	The submitter notes that the Development Area in proposed Appendix Subdivision 10 is mainly along the ridge.	Reject – Geotechnical assessment is proposed as a Matter of Discretion so geotechnical matters will be managed appropriately. No changes to the proposed provisions are recommended.
2.4	Public and active transport	Amend	Provision for safe, accessible active transport links through and out of the development.	That public and active transport links are made to be convenient and accessible alternatives for residents.	Reject – The Transport Chapter of the District Plan manages these effects.
2.5	Regional Policy Statement	Amend	Application of techniques to recognise impacts of development, including: - Water sensitive design - Management of downstream effects - Minimisation of contaminants - Maintenance of habitat corridors - Buffering - Habitat provision for core species, and - Application of the effects management	Proposed Regional Policy Statement Change 1 and the operative Regional Policy Statement contain direction to mitigate adverse effects on biodiversity, terrestrial and freshwater including impacts beyond the site and the use of the precautionary approach	Accept in part - Indigenous biodiversity management is proposed as a Matter of Discretion and will be managed in accordance with the NPS-IB. Changes are proposed to the Plan Change provisions to more effectively address this matter.

DPC58/002 Greater Wellington Regional Council					
Sub. Ref.	**Topic**	**Position**	**Decision Requested**	**Submitter's Comments**	**Panel Recommendation**
			hierarchy.		
2.6	Geotechnical assessment	Support	Retain as notified	Supports the requirement for a geotechnical assessment to address potential slope stability issues and considers it appropriate that it is prepared by a suitably qualify expert.	Accept

DPC58/003 Graeme Adrian					
Sub. Ref.	**Topic**	**Position**	**Decision Requested**	**Submitter's Comments**	**Panel Recommendation**
3.1	Water supply	Oppose	Construction of a new water reservoir is to service the Plan Change area and address existing water supply issues in the wider catchment.	- The water supply would not meet current water supply standards. - Residential properties in the surrounding areas have levels of service that do not meet current standards. - A new reservoir could service the Plan Change site and address existing water supply issues in the wider catchment. - There is a suitable site for a reservoir on Hutt City Council land (from the Infrastructure Report, Appendix 2 of the Plan Change request).	Reject – A Consent Notice already requires water supply to be provided that meets the relevant standards. In addition, a Matter of Discretion provides for the provision of a water supply to be considered at the resource consenting stage.

DPC58/004 Ashley Keown					
Sub. Ref.	**Topic**	**Position**	**Decision Requested**	**Submitter's Comments**	**Panel Recommendation**
4.1	Stormwater	Oppose	Do not approve without requiring a detailed plan to appropriately manage stormwater to protect the natural environment.	- Current stormwater infrastructure is not adequate to meet demand from any proposed development of the site. - The proposal to discharge to gullies lacks detail regarding effects on environmental health, erosion and flood risk.	Reject - Stormwater management is proposed as a Matter of Discretion so the associated effects will be managed appropriately.

4.2	Transport	Oppose	Do not approve without an alternate access into Stokes Valley to avoid increasing traffic via Holborn Drive and Logie Street.	- The evaluation only considers access from Shaftsbury Grove and does consider access to Stokes Valley and Hutt Valley. - Holborn Drive and Logie St are narrow and have had accidents occur on them. Increasing traffic volume would increase the risk of injury and accidents. - The single access into Stokes Valley is vulnerable. - Disruption on Eastern Hutt Road has the potential to cut off access to Stokes Valley. - Development would require additional public transport.	Reject – The transport engineers consider the proposal is acceptable subject to assessment at the consent in stage. Changes are proposed to the Restricted Discretionary provisions.

DPC58/005	Kathryn Martin				
Sub. Ref.	**Topic**	**Position**	**Decision Requested**	**Submitter's Comments**	**Panel Recommendation**
5.1	Indigenous vegetation	Oppose	Do not approve.	- The forest around Stokes Valley should be protected and cherished, noting climate and biodiversity crises. - The site is home of numerous birds, skinks, geckos and insects. - Housing development should focus on walkable, medium density neighbourhoods and not urban sprawl. - Nature provides benefits to humans and communities, including for health and as a carbon sink.	Accept in part - Indigenous biodiversity management is proposed as a Matter of Discretion and will be managed in accordance with the NPS-IB. Changes are proposed to the Plan Change provisions to address this matter more effectively.

Further Submissions

DPC58/F001 Charlotte Heather					
Sub. Ref.	**Submission and topic**	**Position**	**Decision/Relief Sought**	**Submitter's Comments**	**Officer Recommendation**
F001	Submission 1. Site stability	Support	Accept the submission	- Management of run-off is required. - Exposure of clay ridges creates the risk of slips and soil run off.	Reject - Stormwater management is proposed as a Matter of Discretion so the associated effects will be managed in appropriately.
	Submission 1. Flora and fauna	Support	Accept the submission	- Regenerating vegetation could be protected to create corridors for fauna - Damage to valuable areas of bush should prevented.	Reject - Indigenous biodiversity management is proposed as a Matter of Discretion and will be managed in accordance with the NPS-IB. Changes are proposed to more effectively address this matter.
	Submission 2. Impacts of development	Support	Accept the submission	- Management of run-off is required - Exposure of clay ridges creates the risk of slips and soil run off. - Geotech assessment needs to be undertaken	Reject - Geotechnical assessment is proposed as a Matter of Discretion so geotechnical matters will be managed appropriately.
	Submission 4. Stormwater	Support	Accept the submission	- Management of run-off is required - Exposure of clay ridges creates the risk of slips and soil run off.	Reject - Geotechnical assessment is proposed as a Matter of Discretion.
	Submission 5. Indigenous vegetation	Support	Accept the submission	- Regenerating vegetation could be protected to create corridors for fauna - Damage to valuable areas of bush should prevented.	Accept in part - Indigenous biodiversity management is proposed as a Matter of Discretion and will be managed in accordance with the NPS-IB. Changes are proposed to the provisions to more effectively address this matter.

DPC58/F002 Kathryn Martin					
Sub. Ref.	**Submission and topic**	**Position**	**Decision/Relief Sought**	**Submitter's Comments**	**Officer Recommendation**
F002	Submission 1. Erosion and sediment control Cultural significance Ecological significance	Support	Not stated	- Substantial risk of further erosion and sedimentation into the catchment area, putting further stress on the ecosystems starting to bounce back, as well as the danger to Taitā College property - Cultural significance to	Accept in part - Geotechnical assessment is proposed as a Matter of Discretion so geotechnical matters will be managed appropriately.

				original local hapū - The ecological significance of pre-European remnant indigenous forest - threat to revitalization efforts - increase in pollutants and rubbish Note: the submission also provides comment on climate change, freshwater and engagement with tangata whenua with the comments not linked to a submission.	
	Submission 2. Ecological significance Unnecessary rezoning	Support	Not stated	- Risk of loss of indigenous biodiversity. - The proposed housing intensification is unnecessary.	Accept in part - Indigenous biodiversity management is proposed as a Matter of Discretion and will be managed in accordance with the NPS-IB. Changes are proposed to the provisions to more effectively address this matter.

DPC58/F003 Wil van't Geloof					
Sub. Ref.	**Submission and topic**	**Position**	**Decision/Relief Sought**	**Submitter's Comments**	**Officer Recommendation**
F003	Not linked to a submission Water supply Traffic Not linked to a submission	Oppose	Not stated	- Extra entrance to Stokes Valley - Water pressure is not adequate.	Reject – The Plan Change is recommended to be approved.

DPC58/F004 Nicholas Dowman					
Sub. Ref.	**Submission and topic**	**Position**	**Decision/Relief Sought**	**Submitter's Comments**	**Officer Recommendation**
F004	Entire Plan Change	Oppose	That the proposal is not allowed.	- Infrastructure in Stokes Valley is inadequate. - There is no bus depot in Stokes Valley. - Deforestation is leading to slips. - There are power blackouts in Stokes valley	Reject – The Plan Change is recommended to be approved.

DPC58/F005 Nico Reason					
Sub. Ref.	**Submission and topic**	**Position**	**Decision/Relief Sought**	**Submitter's Comments**	**Officer Recommendation**

F005	Entire Plan Change	Oppose	That the proposal is not allowed.	- Eastern Hutt Road cannot cater with additional traffic. - Local roads are dangerous. - Limited public transport. - Habitat loss. - Construction noise effects. - Access to Taita College would be more difficult. - Runoff could damage a swamp Taita College has been restoring.	Reject – The Plan Change is recommended to be approved.

DPC58/F006 John Hopgood					
Sub. Ref.	**Submission and topic**	**Position**	**Decision/Relief Sought**	**Submitter's Comments**	**Officer Recommendation**
F006	Submission 5. Location Stormwater Natural green space	Supports the submission	Allow the objection	- The site is a poor choice for Medium Density housing - Stormwater management is already problematic - Protect green spaces	Reject – The site is adjacent to Medium Density housing and is Matters of Discretion will control the effects of development. Stormwater management is also proposed as a Matter of Discretion to manage the effects appropriately. Accept in part - Indigenous biodiversity management is proposed as a Matter of Discretion and will be managed in accordance with the NPS-IB. Changes are proposed to the provisions to more effectively address this matter.

DPC58/F007 The Friends of Horoeka Scenic Reserve					
Sub. Ref.	**Submission and topics**	**Position**	**Decision/ Relief Sought**	**Submitter's Comments**	**Officer Recommendation**
F007	Submissions 001, 002, 005 Biodiversity effects Cultural values	Support the submissions in opposition	Not stated	- Oppose loss of biodiversity and habitat - Loss of connectivity - Reduced halo effect by disturbing greenbelt corridors - Adverse edge effects including erosion, runoff, rubbish, adverse impacts from domestic animals and increased access for pests - Lost opportunity of allowing the regeneration to continue - Insufficient recognition of	Accept in part - Indigenous biodiversity management is proposed as a Matter of Discretion and will be managed in accordance with the NPS-IB. Changes are proposed to the provisions to more effectively address this matter. Geotechnical management is proposed as a matter of discretion. No submissions were received from iwi and hapū and the site

				cultural values	is not identified a s significant cultural resource.
	Submission 003 Water supply	Neither support nor oppose 003.	Not stated		Reject - Stormwater management is proposed as a Matter of Discretion so the associated effects will be managed in appropriately.
	Submission 004 (reference 4.1)	Support in part	Not stated	- Not stated specifically to stormwater	Reject - Stormwater management is proposed as a Matter of Discretion so the associated effects will be managed in appropriately.

DPC58/F008 Cosmic Kaitiaki Native Realms Foundation					
Sub. Ref.	**Submission and topic**	**Position**	**Decision/ Relief Sought**	**Submitter's Comments**	**Officer Recommendation**
F008	Submissio n 002 Ecology protection provisions	Oppose	Reject the objection	- Submission 002 requests a strengthening of provisions if the Plan Change proceeds. The further submitter contends that provisions should not allow destruction of vegetation.	Reject - Indigenous biodiversity management is proposed as a Matter of Discretion and will be managed in accordance with the NPS-IB. Changes are proposed to the provisions to address this matter more effectively.
	Submissio n 003 Request to build a reservoir	Oppose	Reject the submission	- A reservoir would require loss of vegetation	Reject - A Consent Notice already requires water supply to be provided that meets the relevant standards.
	Submissio n 005	Support	Allow the objection	- The submitter fully agrees with 005.	Reject - Indigenous biodiversity management is proposed as a Matter of Discretion and will be managed in accordance with the NPS-IB. more effectively address this matter.