
BEFORE THE HEARINGS PANEL

In the Matter of: The Resource Management Act 1991

And Palmerston North City District Plan:
Private Plan Change for Whiskey Creek
Residential Area

Proposed By: Flyers Investment Group Limited

**SECTION 32AA EVALUATION OF PROPOSED CHANGES TO THE PLAN CHANGE
JOINT STATEMENT OF EVIDENCE BY
Marz Asgar & Paul Thomas**

Dated: 29 July 2022

1. Introduction

1.1 This report provides an update on areas of agreement and disagreement between reporting officers for the Palmerston North City Council and the applicant since Day 3 of the Hearing completed. Additionally, the report contains a further evaluation of agreed and recommended amendments in accordance with s32AA of the Resource Management Act 1991 (RMA). The Report responds to Minutes 4 and 5 of the Independent Hearing Panel respectively issued 18 and 27 July 2022.

1.2 Since adjourning the hearing on 11 July 2022, there has been ongoing conferencing and discussion between the reporting officers and the applicants representatives. Including a conferencing between the two parties Planning and Legal held on Friday 15 July 2022 and then ongoing conferencing to maximise agreement and refine the provisions.

1.3 The issues addressed in this report by way of update are as follows:

- Relevant changes to the Structure Plan;
- Non – Notification Clause in relation to intersection upgrade;
- Multi-Unit Development requirements;
- Flood Prone Overlay Dispute;
- Cultural naming of the Residential Area;
- Residential Commercial Rule.

1.4 In addition to above matters, this report also incorporates a response to Minute 5 of the Independent Hearing Panel issued on 27 July 2022. The Planners' responses to questions raised in Minute 5 are incorporated within this report and addressed at section 8 of this report.

1.5 In preparing this report, we confirm that we have read the Code of Conduct for Expert Witnesses and we agree to comply with this Code of Conduct. This evidence is within our area of expertise, except where stated we are relying on what has been provided by another person. We have not omitted to consider material facts known to us that might alter or detract from the opinions expressed.

2. Statutory Considerations

- 2.1 Section 32 of the RMA sets out a duty to examine whether the objectives of a plan change are appropriate to achieve the purpose of the RMA and whether provisions are the most appropriate way to achieve the objectives of the plan change. The evaluation must identify options and examine the efficiency and effectiveness of provisions in achieving the objectives of the plan change. Importantly, the level of detail contained in the evaluation must correspond to the scale and significance of effects anticipated from the implementation of the plan change.
- 2.2 Mr Asgar's s42A report dated 11 May 2022, states¹ the relevant District Plan Objectives and Policies that apply to this private Plan Change. The report evaluates these provisions against the notified version of the private Plan Change with recommendations pursuant to s32.
- 2.3 Section 32AA requires further evaluation of changes made to the draft planning standards since the original evaluation report was completed. Further evaluation must be undertaken in accordance with the requirements of s32 of the RMA, with a level of detail that corresponds to the scale and significance of the changes.
- 2.4 The following section of this report addresses each of the bulleted items in paragraph 1.3 and where required provides an assessment under the criteria of s32AA of the RMA.

¹ in section 4 from paragraph 4.6 – 4.26.

3. Issue 1: Relevant changes to the Structure Plan

3.1 Mr Asgar's updated evidence and hearing submission on 11 July 2022 recommended the following changes to the Structure Plan Map 7A.3:

- Property 127 Benmore Avenue included within the Whiskey Creek Residential Area and therefore is subject to the provision of Section 7A of the District Plan,
- Additional provision of the shared path along Road 1 as recommended by Mr Rossiter in his updated evidence dated 10 July 2022,
- Removal of the term 'roundabout' and generalising it to state 'intersection upgrade' at the Benmore Avenue and Road 1 intersection,
- Removal of reference to 'Open Space/ Parks' or 'Recreation functions' from any stormwater treatment reserves as recommended by Mr Phillips in his evidence dated 24 March 2022,
- Only indicate general location of features within the structure plan, rather than showing volume of size in particular the stormwater detention pond.

3.2 In his opinion, the above changes will:

- (a) Provide better outcomes from a transport perspective.
- (b) Avoid any future challenges between reserves and infrastructure easements in maintenance of features.
- (c) Avoid complexity in future consenting of Road 1 by including 127 Benmore Avenue within the Greenfield Residential Area by making it clearly subject to Section 7A provisions.
- (d) Provides flexibility for the developer to meet 'in general accordance' requirement pursuant to Objective 1 and Policy 1.2 of the District Plan by way of removing the size of features and indicating an 'intersection upgrade' rather than limiting development to a 'roundabout' at the intersection with Benmore Avenue.

3.3 Following discussions on 15 July 2022, the above recommendations were agreed as appropriate. The amendments to the structure plan are considered to be an efficient and effective way to achieve the objectives of Section 7A of the District Plan, in particular, Policies 1.2, 1.5, 2.1, 2.4 and 2.8 – 2.9 (as detailed below in section 5 below).

3.4 The requestor has prepared and provided a modified Structure Plan which includes the changes sought by Council. It also includes the removal of the balance allotment retained as Rural Zone land from the Structure Plan area. The updated structure plan is to replace the notified Map 7A.3 from Section 7A.

3.5 The following table contains an agreed assessment of the efficiency and effectiveness of the changes compared with the notified Structure Plan.

Section 32AA: Structure Plan Changes			
Recommended Change/Amendment	Efficiency/Effectiveness	Risk of acting/ not acting	Appropriateness of achieving the purpose of the Act/Plan Change objectives
Option 1: Notified Version of Structure Plan	<p>This version of the Structure Plan requires further clarity and additions as requested.</p> <p>As per Mr Rossiter’s evidence tabled on 11 July 2022, there is a need for a 3-metre-wide shared path on at least one side of the carriageway on a 19.2-metre-wide corridor (Collector Road standard) for the proposed 6.5-metre-wide carriageway. This is also a requirement under the Council Engineering standards for appropriate road hierarchy.</p> <p>The Whiskey Creek Residential Area outline does not incorporate 127 Benmore Avenue and the intersection upgrade as part of the area that should be subject to Section 7A provisions.</p> <p>The volumes of features indicated on the Structure Plan limits these features to be kept at that size and has a risk of future development not meeting the ‘in general accordance’ test under the policy framework of the District Plan.</p> <p>Along with other matters this version of the Structure Plan is not considered to be effective and efficient.</p>	<p>This version of Structure Plan is not an effective and efficient to assess future development in terms of the ‘in general accordance’ test under the policy framework of the District Plan.</p>	<p>This version of the Structure Plan does not appropriately achieve the objectives of the proposal.</p>
Option 2: Changes to Structure Plan as outlined in Paragraph 3.1 and 3.4 above	<p>This approach provides clarity within the Structure Plan on the development outcomes sought. The updated plan links better with the outcomes of the Policy Approach as discussed in section 5 of this report below.</p> <p>As such the updated plan is preferred as a better outcome to the ‘in general accordance’ test subject to Policy 1.2 and Policies 2.8 – 2.9 of Section 7A of the District Plan.</p>	<p>There is no risk of adopting the updated Structure Plan.</p>	<p>This approach is appropriate to preserve the outcomes sought for the area and protecting the objectives of the proposal.</p>

4. Issue 2: Non – Notification Clause in relation to Intersection Upgrade

4.1 During the hearing, submitters raised concerns around the final design and outcome of the intersection upgrade at Benmore Avenue/ Meadowbrook Drive and Road 1.

4.2 No detailed design of the intended roundabout has been provided at the time of assessing the Plan Change. Thus, detailed assessment of effects on private driveway access is not possible at this stage in the process. This is intended to occur at the consenting stage pursuant to Rule R7A.5.2.1. This rule includes the following matters of discretion relevant to assessing the detailed design of the intersection upgrade:

- *a. The size, shape and arrangement of roads, public open spaces, lots, cross lease and company lease areas, units, and access,*
- *d. Urban design,*
- *f. Noise attenuation and management,*
- *k. Visual amenity,*
- *m. Safe and efficient operation of the roading network,*
- *n. Connectivity.*

In addition to the above matters of discretion, the developer will also need to comply with various Transport Engineering Standards and Road Safety Audits in preparation of the final design of the intersection upgrade.

4.3 It was also noted at the hearing that notifications are precluded for applications under Rule R7A.5.2.1 pursuant to Rule R7A.5.4.1 of the District Plan. This would preclude any persons who may be affected by the intersection design from participating in the consenting process where the final design and outcome of future intersection upgrade is to be assessed.

4.4 Taking into account the concerns raised by the submitters in relation to the intersection upgrade, to the parties discussed opportunities to provide for participation of affected neighbouring property owners in relation to intersection issues. To address this issue, an addition to Rule R7A.5.4.1 is proposed as stated below:

“R7A.5.4.1 Notification

...

(ii) Subject to the exception in (iii) and (iv), limited notification is precluded for applications under R7A.5.2.1.

...

(iv) The owners of 120 – 131 Benmore Avenue and 1 – 5 Meadowbrook Drive may be given limited notification of an application under R7A.5.2.1.”

4.5 Mr Asgar and Thomas agree that this is an appropriate method of enabling limited notification for those neighbouring properties likely to be affected by the intersection upgrade.

4.6 Further, the reporting officers and requestor consider that it is an effective and efficient

method of achieving the relevant Section 2 City View Objectives: 3 and 23 as well as Policy 2.1 and recommended Policy 2.8(4)(i) of Section 7A of the District Plan.

4.7 The following table contains assessment of the efficiency and effectiveness of the changes compared with the notified Structure Plan.

Section 32AA: Non-Notification Clause			
Recommended Change/Amendment	Efficiency/Effectiveness	Risk of acting/ not acting	Appropriateness of achieving the purpose of the Act/Plan Change objectives
Option 1: Notified version of the Non-Notification Clause	This version is inefficient and ineffective as it restricts Council from notifying future consenting seeking development of the intersection upgrade.	The notified version of the proposal would preclude any notification on affected landowners from the development, including in respect of the future intersection upgrade at the time of consenting.	It is considered that the full application of the preclusion is less appropriate in terms of achieving the proposals objective.
Option 2: Preferred Non-Notification Clause R7A.5.4.1 (ii) and (iv)	<p>This approach provides Council with the ability to limited notify matters of consent application lodged under R7A.5.2.1 that could potentially have more than minor adverse effect on the neighbouring properties.</p> <p>The Rule structure is such that it only enables limited notification to nearby neighbouring properties that adjoin the future intersection upgrade area. This is effective and efficient as the matter that could potentially cause 'minor' or 'more than minor' adverse effects on these properties are associated with the intersection upgrade.</p>	No risk associated with this approach.	This approach is appropriate as a valid response to concerns raised by the submitters at the hearing. It enables Council to Limited Notify consents that could have an impact on neighbouring property owners at the time of consenting the detailed design of the intersection upgrade, without substantially departing from the established notification rule.

5. Issue 3: Section 7A Policy Approach

- 5.1 Section 3 of Mr Asgar’s updated evidence dated 11 July 2022 recommends retaining one policy that deals with the entire developments within the District Plan. This is an approach taken throughout his assessment of the Plan Change.
- 5.2 Mr Thomas suggested a two-policy approach with his recommended Policy 2.8 being the “must do’s” and his Policy 2.9 being the “nice to have.”
- 5.3 The Panel suggested that the Council may wish to consider the two-policy approach similar to Horowhenua District Council in the Tara-Ika Growth Area Plan Change. Having reviewed the relevant aspects of the Tara-Ika Plan Change, Mr Asgar recommends adopting the policy approach for Whiskey Creek. However, he recommends the deletion of Mr Thomas suggested policy 2.8 in its entirety as it does not provide a great degree of achievement considering most of the “must do’s,” as stated are already a component within the Structure Plan. This deletion consequentially renumbers Mr Thomas Policy 2.9 as Policy 2.8. In addition, Mr Asgar recommends a new Policy 2.9. The preferred option with Policy 2.8 now outlines the “fixed outcomes” sought and Policy 2.9 as “flexible outcomes” at the time of consenting. Mr Asgar’s suggested edits are provided below:

Section 7A: Policy Approach

2.8 To ensure that subdivision and development in the Whiskey Creek Residential Area:

- ~~Avoids, remedies, or mitigates adverse effects on the Manawatu Drainage Scheme and minimizes any increased flood risk to adjoining properties.~~
- ~~Provides for restoration of the ephemeral tributary of Whiskey Creek as recreational reserve with quality recreational links.~~
- ~~Provides appropriate setbacks of buildings from the natural gas pipeline that traverses part of the area and locates the pipeline within a public service corridor.~~
- ~~Provides for vehicle access to both Benmore Avenue and Rangitikei Line.~~
- Has regard for the existing residential subdivision boundaries where it abuts Meadowbrook Drive.

2.8 In addition to Policy 1.2, subdivision in the Whiskey Creek Residential Area shall be in general accordance with the following Structure Plan design principles:

1. Stormwater and Flooding

- (i) Avoid any more than minor adverse effects on the Manawatu Drainage Scheme.
- (ii) Flooding risk on adjoining residential properties shall not be exacerbated.
- (iii) Water Sensitive Design either within the street network or within the reserve are provided.
- (iv) Design of the stormwater detention pond positively contributes to visual amenity and ecological values whilst achieving hydraulic neutrality.
- (v) Supplementing flows within Whiskey Creek with stormwater or groundwater discharges.

2. Open Space and Reserves

- (i) The design provides for:
 - Ecological restoration of the ephemeral tributary of Whiskey Creek.
 - A dry formal equipped play area and a flat open space for informal recreation.
 - Consultation outcomes with Rangitāne o Manawatū in relation to the

design and preparation of a Management Plan for the reserve regarding whanau ora values.

3. Gas Pipeline

- (i) Appropriate setbacks of buildings from the natural gas pipeline are provided and the pipeline is located within a public service corridor.

4. Streets and Linkages

- (i) To provide safe transport access to Benmore Avenue/ Meadowbrook Drive intersection and a left in/left out access to Rangitikei Line.
(ii) All streets shall interconnect with no cul-de-sacs.
(iii) The cycle and pedestrian links shown on the Structure Plan are provided.
(iv) Street design and planting shall be in accordance with the Council Engineering standards for appropriate road hierarchy.

5. Subdivision Design and Integration

- (i) For lots adjoining existing Meadowbrook Drive properties:
- The subdivision design shall maximise alignment with existing lot boundaries for Nos. 7 to 31 Meadowbrook Drive.
 - A 1 storey height standard shall apply.
- (ii) A positive city edge is achieved by ensuring all lots adjoining the reserve enable dwellings fronting the reserve.
(iii) Layout of the multi-unit housing area will achieve active frontages to road 1 and the flood plain reserve.
(iv) Lots enabling dwellings fronting streets.
(v) The street and block layout provides for a fine grain walkable block structure and a predominant generally orthogonal street alignment as shown on the Structure Plan (Map 7A.3).
(vi) The location, dimensions, and size of lots shall provide for a mix of conventional suburban lots, multi-unit residential development, open space, recreation, and commercial activities that is generally consistent with mix of housing density and uses shown on the Structure Plan (Map 7A.3).

6. Typology and Density

- (i) Medium Density Housing is provided for in the location shown on the Structure Plan, allowing for development up to 11m in height while ensuring reasonable sunlight access to adjacent properties is maintained.
(ii) Commercial activities are provided for in accordance with the Structure Plan (Map 7A.3) that provide:
- A positive relationship to the reserve and attenuation area
 - Amenities and services for the local neighbourhood
 - An active frontage at the street edge.

2.9 Subdivision and land development in the Whiskey Creek Residential Area that is not generally in accordance with the Structure Plan design principles identified in Policy 2.8 shall achieve the following:

- (i) The same or similar level of connectivity into, out of and within the Whiskey Creek Residential Area.
(ii) The same or similar street hierarchy and layout.
(iii) The opportunity for commercial activities is maintained.
(iv) Stormwater detention, which does not compromise the delivery of other Structure Plan features.
(v) A positive active edge to the Conservation and Amenity Area and vegetated edge to Rangitikei Line / State Highway 3.
(vi) A mix of housing types and densities.

- 5.4 The recommended policy 2.8 focuses on testing fixed matters as an 'in general accordance' with the structure plan with policy 2.9 being additional matters where a degree of flexibility can be acceptable. This approach provides a more useful guide for the consenting planner(s) to undertake their assessment of future restricted discretionary and discretionary activity consents associated with the Whiskey Creek Residential Area while ensuring future development does not deter from the overall Plan Change objective detailed in Section 12 of the Notified Plan Change.
- 5.5 The above approach is agreed between the reporting officers and the requestor, as it provides future plan users better guidance into the fixed and flexible aspects sought by the Plan Change. This approach is an efficient and effective way to achieve the overall objective of the Plan Change and in assessing Policy 1.2 of Section 7A. It provides a clear assessment of 'in general accordance with the Structure Plan Map 7A.3' and enables flexibility on outcomes sought on less critical features.
- 5.6 A s32AA assessment is provided below of the three options put to the Panel in the duration of the Plan Change hearing.

Section 32AA: Section 7A Policy Approach			
Recommended Change/Amendment	Efficiency/Effectiveness	Risk of acting/ not acting	Appropriateness of achieving the purpose of the Act/Plan Change objectives
Option 1: S42A Single Policy Approach	<p>This approach provides a greater level of certainty for future development outcomes to be in general accordance with the Structure Plan. Ensures future development within the Whiskey Creek Residential Area meets the objective of the Plan Change.</p> <p>Provides the plan users a better guidance and criteria to assess future development against.</p>	This approach restricts plan users to detract from the Structure Plan with less flexibility on outcomes and does not provide an assessment criterion when development sought is not in general accordance with the Structure Plan.	This approach is appropriate to preserve the outcomes sought for the area and protecting the Plan Change objectives but limits flexibility in future development outcomes sought.
Option 2: Mr Thomas Two-Policy Approach proposed In Evidence	<p>This approach has merit as it seeks to provide future plan users a set of 'must do' outcomes and a set of 'nice to have' outcomes in the Whiskey Creek Area.</p> <p>However, it is considered this approach is not effective and efficient, as it provides a high level of flexibility on most of the critical features of the Structure Plan. The policy with must do features already form part of the Structure Plan and does not achieve the extent of outcome the Plan Change objective seeks in particular medium density housing.</p>	Adapting this policy approach will create a risk of future development not achieving the design principles and overall objectives of the Plan Change as it is considered to be 'loose' with matters that are 'must do.'	This approach is not considered appropriate as it creates a great level of flexibility for future plan users which creates a risk of future development to detract from the objectives of the Plan Change.
Option 3: Revised Two-Policy Approach	<p>This approach follows similar structure to Option 2 with Policy 2.8 being "fixed outcomes" and Policy 2.9 as "flexible outcomes" sought.</p> <p>This version is an upgrade to Option 1 above and provides future plan users an assessment criteria and guidance for when development is not in general accordance with the Structure Plan. It provides an effective and efficient consenting path for Restricted Discretionary and Discretionary Activity consents.</p>	This is the preferred approach by all parties.	<p>The approach allows for flexibility in the principles that corresponds to the significance of the feature and the scale of the departure sought. Enabling minor variation to the Structure Plan features to be assessed as a Discretionary Activity.</p> <p>This Policy approach protects the objective of the Plan Change and plays a critical role in how each associated performance standards within Section 7A and 10 of the District Plan is achieved. The connection of this Policy approach with Section 10 of the District Plan is assessed in section 6 of this report.</p>

6. Issue 4: Multi-Unit Development Requirements

6.1 Mr Asgar and Mr Duindam are of the view that there should be a degree of certainty in achieving medium density housing in the multi-unit overlay area illustrated within the Structure Plan. This is required to ensure the Plan Change objectives are met and a high-quality development is provided for. A 'yield' approach recommended by Mr Burns would achieve this (and it resulted in a recommended amendment to the approach to the Lot Size Rule R7A.5.2.2(d)), however, Mr Asgar noted in his updated evidence that:

"... there was no corresponding provision within the Residential section (Section 10) of the District Plan. In my view there would ideally also be a land use control directing the yield outcomes. This would ensure average lot size is also managed in circumstances where subdivision (including unit titles) occurs later in the development process."

6.2 Based on above and in addition to the Lot Size Rule in Section 7A, additional changes to Section 10 were recommended with amendments to Policy 9.7 in the set of provisions filed on Monday 25 July, reflecting that medium density housing are provided for as shown within the Structure Plan. An additional bullet point was also recommended under Rule R10.6.3.3 (matter of discretion) to have regard to the alignment of design principles, in accordance with Mr Asgar's recommended Policy 2.8 in Section 7A. Finally, an additional performance standard under Rule R10.6.3.3 was recommended to control the average minimum number of dwellings shall be 25 per hectare. These are set out below:

Section 10:

Policy 9.7

To ensure that multi-unit housing development is provided for within the Whiskey Creek Residential Area in general accordance with the relevant Structure Plan.

Rule R10.6.3.3

Multi-unit residential development in the multi-unit housing areas identified on Maps 10.6.3.3(a)-(h) is a Restricted Discretionary Activity with regard to:

...

- Matters addressed in the design principles in Policy 2.8 of Section 7A for housing within the Whiskey Creek Residential Area.

Rule R10.6.3.3(x) Development Yield

Within the multi-unit housing area identified in the Whiskey Creek Residential Area the average minimum number of dwellings shall be 25 per hectare.

6.3 Subject to specific response to Minute 5 below, this approach is considered to provide for the plan change objective and design principle outcomes to be achieved without having to rely on Rule R7A.5.2.2(d) alone. The minimum, maximum and averaging lot size thresholds are key to implementing these provisions. This is reflected in this approach as agreed by the Planners.

6.4 This is considered to be an efficient and effective approach to ensure any medium density development pursued at subdivision stage will achieve the corresponding land use rules within Section 10 and vice versa: if any medium density development is pursued in this area first and followed up with subdivision, then the lot size requirements could be readily met as a secondary matter.

Specific response to Question 1 in Minute 5 – Section 10, Policy 9.7:

6.5 Unfortunately, there has been limited time for the planners to discuss the Panel's questions in Minute 5 as Mr Thomas left NZ on the evening of 27 July 2022 and is not due to return until 9 August 2022. Thus, he is unable to participate in discussions while away. Prior to leaving he set out a succinct summary of his answers to Questions 1 and 2, but there was no time for a discussion to ensue. Mr Asgar does not agree with Mr Thomas' position in respect of Question 1.

6.6 To provide the Panel with some insight, the separate views of Mr Thomas and Mr Asgar are set out below. It is understood that the Panel is scheduled to reconvene for deliberations on 12 August, so there may be a possibility on 10 or 11 August for Mr Thomas and Mr Asgar to discuss matters in further detail if that may be of benefit to the Panel.

Mr Thomas' Response

6.7 The purpose of Policy 9.7 is to enable, not compel, multi-unit development. The wording agreed in our 25 July provisions was that the policy directive should be "to ensure", while the remainder of the policy clearly states what is to be ensured is that multi-unit development "is provided for", not compelled.

6.8 As for which version of the policy is most appropriate to give effect to the direction in the plan change objective, there are three versions, not two: the notified version ("to enable"), a subsequent version ("to enable and encourage") and the 25 July version ("to ensure"). I consider all three versions are appropriate to give effect to the objective. I do not consider any one of them more appropriate than the others. My understanding is that Mr Asgar does not share my support for all three versions, thus our 25 July agreement settled on the version we were both able to support as appropriate.

Mr Asgar's Response

6.9 Following further consideration to Question 1, I am of the view that the use of term 'multi-unit' in Policy 9.7 is consistent with the wording used throughout Section 10 of the District Plan. The preferred approach as agreed by the Planners and detailed in the s32AA table below will achieve medium density housing as an outcome via multi-unit developments. The preferred approach is appropriate to implement the objective. That is what is intended by the wording "ensure." The intent is to achieve a mix of housing typologies, density, and price point developments.

6.10 I also acknowledge that the recommended development yield performance standard 10.6.3.3

(x) seeks to control housing density by way of yield, which is not necessarily exclusive to achieving “multi-unit” outcomes but is consistent with achieving both medium density development and multi-unit development.

6.11 For the above reason, I gave serious consideration to recommending a change to Policy 9.7 so that it specifies “medium density” instead of “multi-unit” on the basis that this might improve hierarchical consistency. However, I would be concerned about rushing such a recommendation in this report given the potential consequential changes that would be required to other provisions in the plan change that refer to this policy, and I am not fully satisfied that such a change is required.

6.12 As both Mr Thomas and Mr Duindam have been unavailable for conferencing discussions on this aspect of the minute (Mr Duindam has been unwell all week), I am reluctant at this stage to rush any further recommendations here and would respectfully appreciate an opportunity to further discuss these matters with my colleagues, should the Panel consider that helpful.

Multi-Unit Lot Size Rule

6.13 In addition to matters detailed in paragraph 6.1 – 6.4 above, following Day 3 of the hearing, we have discussed and agreed on the following amendments to the Lot Size performance standard in Rule R7A.5.2.2(d).

Rule R7A.5.2.2(d) – Lot Size

Preferred Approach:

(d) Lot Size

- (i) Unless otherwise specified below, Any subdivision within a Greenfield Residential Area must have an average lot size of 500m² - 550m².
- (ii) No single lot shall be less than 350m².
- (iii) No single lot shall exceed 1000m² (excluding balance lots or, within the Whiskey Creek Residential Area, neighbourhood centre lots, lots to be developed for multi-unit housing development).
- (iv) Any subdivision in the Whiskey Creek Residential Area must have an average lot size of 400m² – 500 m² and a minimum of 350 m², other than multi-unit residential development in the identified multi-unit housing area on Map 7A.3 where the developed density shall be lots of no less than 150m² and no more than 400m², with the average lot size being 250m² – 350m².
- (v) In calculating the lot sizes in (i) to (iii) above, no balance lot, public open space lot, or road parcel shall be included; and the lot sizes shall be exclusive of the acoustic setbacks required by the provisions of R10.6.1.5(e)(i) and (ii).

6.14 This approach provides for the outcome sought by Mr Duindam. It sets a minimum, maximum and average lot size for multi-unit residential development in the identified multi-unit housing area. In addition, performance standard R7A.5.2.2(d)(iii) also sets out requirement to enable 1000m² allotments for multi-unit housing development. This is intended to allow the requestor to undertake some ‘first-order’ subdivision to separate the site into large lots (i.e. greater than

1,000m²), which can be transferred by the requestor to third party developer/contractors, to undertake multi-unit development.

Specific response to Question 1 in Minute 5 – Section 10, Policy 9.7:

- 6.15 In response to the question at paragraph 13(c), the reason that we have recommended a 'range' of lot size averages is because it is considered appropriate to specify a minimum average and a maximum average, providing an acceptable range within which the development would be regarded as 'medium density'. This provides some flexibility in achieving a mix of housing density and price points while still ensuring that medium density development is provided. The ranging of averages is consistent with the way that lot size parameters are expressed in other areas (see for example Rule R7A.5.2.2(d)(i)).
- 6.16 The allotment size average specific to Whiskey Creek is also based on Mr Burns' Urban Design Report (dated 21 April 2021) see page 46 matters in relation to 'Minimum Net Site Area' – Mr Burns anticipated medium density in a general range of 220m² – 330m². On that basis, we do not consider that the expression of the average range is incompatible with medium density and do not consider that dropping to a single figure of 250m² would be a more effective way of achieving the policy or objective referred to above. Mr Thomas notes that the upper range of the average density is reasonably compatible with the overall density sought of 25 dwellings per hectare.
- 6.17 Since filing our recommended provisions on Monday 25 July, we have become aware of an unintended consequence. Specifically, we note that the phrasing of (v) does not appear to apply in relation to the calculation of the Whiskey Creek lot sizes located in (iv). The significance is that the calculation of the lot sizes would arguably not cross-reference to the acoustic insulation setbacks in R10.6.1.5(e). We also consider that tidying of the phrasing of the exception in (i) is appropriate. Option 3 as addressed in the s32AA Evaluation table below reflects these changes. We have included Option 2 in the table (the Monday 25 July version), for completeness.

Section 32AA assessment in respect of multi-unit provisions

- 6.18 A section 32AA assessment is provided below on Rule R7A.5.2.2(d) – Lot Size and Section 10 Policy 9.7, Rule R10.6.3.3 framework amendments. The third part of the table (dealing with Rule R10.6.3.3) was agreed prior to Mr Thomas' departure; but the first two parts of the table (Rule R7A.5.2.2(d) and Policy 9.7) have both been added to since Mr Thomas left, and accordingly do not reflect a joint position.

Section 32AA: Multi-Unit Development			
Section 7A: Rule R7A.5.2.2(d) – Lot Size			
Recommended Change/Amendment	Efficiency/Effectiveness	Risk of acting/ not acting	Appropriateness of achieving the purpose of the Act/Plan Change objectives
<p>Option 1: Approach put forward at Hearing Day 3</p> <p>Lot Size</p> <p>(i) Any subdivision within a Greenfield Residential Area must have an average lot size of 500m² - 550m², <u>except for:</u></p> <ul style="list-style-type: none"> the <u>Whiskey Creek Residential Area</u> which must have an average lot size of 400m² – 500 m²; <u>except for the multi-unit housing area identified on Whiskey Creek Residential Area Map 7.A.3 where no lot shall be less than 150m² and no more than 400m², with the average lot size being 250m² – 350m² which must have an average lot size of 250 m² – 350 m².</u> <p>(ii) No single lot shall be less than 350m², <u>except within the multi-unit housing area identified on Whiskey Creek Residential Area Map 7.A.3.</u></p> <p>(iii) No single lot shall exceed 1000m² (<u>except neighbourhood centre lots and balance lots</u>).</p> <p>(iv) In calculating the lot sizes in (i) to (iii) above, no balance lot, public open space lot, or road parcel shall be included; and the lot sizes shall be exclusive of the acoustic setbacks required by the provisions of R10.6.1.5(e)(i) and (ii).</p>	<p>In comparison to the notified version of this performance standard, this is an efficient and effective approach for future development outcomes to provide for medium density housing development in accordance with the objective of the Plan Change.</p>	<p>There is no risk associated with this approach.</p>	<p>This approach is appropriate to preserve the outcomes sought for enabling medium density housing development, protecting the Plan Change objectives.</p>
<p>Option 2: Approach Post Hearing Day 3</p> <p>Lot Size</p> <p>(i) <u>Unless otherwise specified below, A</u>any subdivision within a Greenfield Residential Area must have an average lot size of 500m² - 550m².</p> <p>(ii) No single lot shall be less than 350m².</p> <p>(iii) No single lot shall exceed 1000m² (excluding balance lots <u>or, within the Whiskey Creek Residential Area, neighbourhood centre lots, lots to be developed for multi-unit housing development</u>).</p> <p>(iv) <u>Any subdivision in the Whiskey Creek Residential Area must have an average lot size of 400m² – 500 m² and a minimum of 350 m², other than multi-unit residential development in the identified multi-unit housing area on Map 7A.3 where the developed density shall be lots of no less than 150m² and no more than 400m², with the average lot size being 250m² – 350m².</u></p> <p>(v) In calculating the lot sizes in (i) to (iii) above, no balance lot, public open space lot, or road parcel shall be included; and the lot sizes shall be exclusive of the acoustic setbacks required by the provisions of R10.6.1.5(e)(i) and (ii).</p>	<p>In addition to above approach, this version of the performance standard framework reads better and provides the developer with the ability to create larger allotments for medium density housing development.</p>	<p>There is an unintended error in this approach, and it is not recommended.</p>	<p>An unintended consequence of the renumbering in this provision is that item (v) does not relate to item (iv) and therefore does not link to the Whiskey Creek acoustic insulation and setback standards.</p> <p>This is not recommended – option 3 below is preferred.</p>
<p>Option 3: Approach Post Hearing Day 3 with minor amendment</p> <p>Lot Size</p> <p>(i) Any subdivision within a Greenfield Residential Area must have an average lot size of 500m² - 550m², <u>except as specified in (iv)</u></p>	<p>In addition to above approach, this version of the performance standard framework reads better and provides the developer with the ability to create larger allotments for medium density housing development.</p>	<p>There is no risk with this approach, however, because it is clear to read and follow it is the preferred option.</p>	<p>In addition to above approach, this version of Rule R7A.5.2.2d) is preferred by the Planners as it is clear to read and follow. This option corrects an unintended consequence of option 2, as presented to the Panel on Monday 25 July.</p>

<p>(ii) No single lot shall be less than 350m².</p> <p>(iii) No single lot shall exceed 1000m² (excluding balance lots <u>or, within the Whiskey Creek Residential Area, neighbourhood centre lots, lots to be developed for multi-unit housing development</u>).</p> <p>(iv) <u>Any subdivision in the Whiskey Creek Residential Area must have an average lot size of 400m² – 500 m² and a minimum of 350 m², other than multi-unit residential development in the identified multi-unit housing area on Map 7A.3 where the developed density shall be lots of no less than 150m² and no more than 400m², with the average lot size being 250m² – 350m².</u></p> <p>(v) In calculating the lot sizes in (i) to (iv) above, no balance lot, public open space lot, or road parcel shall be included; and the lot sizes shall be exclusive of the acoustic setbacks required by the provisions of R10.6.1.5(e)(i) and (ii).</p>			
Section 10: Policy 9.7			
Recommended Change/Amendment	Efficiency/Effectiveness	Risk of acting/ not acting	Appropriateness of achieving the purpose of the Act/Plan Change objectives
Option 1: Approach put forward at Hearing Day 3 9.7 To enable and encourage multi-unit housing development within the Whiskey Creek Residential Area in accordance with the Structure Plan (Map 7A.3).	This approach refers to multi-unit housing development but does not provide the level of assurance sought by Mr Duindam in his evidence with regards to outcome sought in medium density housing.	Adapting this approach has a risk that medium density housing could not be delivered to the extent the Plan Change objective seeks.	This approach does not provide the level of certainty sought to ensure the design principles of the Structure Plan and the objectives of the Plan Change in relation to providing medium density housing can be achieved post Plan Change process.
Option 2: Approach Post Hearing Day 3 9.7 To ensure that multi-unit housing development is provided for within the Whiskey Creek Residential Area in general accordance with the relevant Structure Plan (Map 7A.3).	This approach is more directive and ensures this Policy links with Policies 1.2, 2.8 and 2.9 in Section 7A of the District Plan. As such this policy approach is considered an effective and efficient in achieving the District Plan objectives.	There is no risk associated with this approach.	This approach is considered to be sufficiently directive and links with relevant policies in Section 7A, it is considered the as an appropriate method by the Planners as it achieves the District Plan and the Plan Change objectives. However, following Minute 5, it is considered that better alignment with the policy could be achieved with amendment to its wording.
Section 10: Rule R10.6.3.3 Framework			
Recommended Change/Amendment	Efficiency/Effectiveness	Risk of acting/ not acting	Appropriateness of achieving the purpose of the Act/Plan Change objectives
Option 1: Approach put forward at Hearing Day 3 No additional recommendations to Rule R10.6.3.3 standards.	Having no additional standards in relation to multi-unit development does not provide the level of certainty sought by Mr Duindam.	As noted in Mr Asgar’s updated evidence (July 2022) there are missing connections between multi-unit development requirements between Section 7A and Section 10 of the District Plan. Thus has the potential for confusion and misinterpretation of the Plan Change objective by future plan users.	Having the missing connections between the two Sections of the District Plan is not an appropriate outcome.
Option 2: Approach Post Hearing Day 3 Rule R10.6.3.3 edits as outlined in paragraph 6.2 above.	This approach is considered efficient and effective as it ties together the outcomes sought within Section 7A into Section 10. This way whether future development seeks to undertake land use first followed by subdivision (or vice versa) in relation to multi-unit development both Sections will achieve a same outcome in achieving the objective of the Plan Change.	There is no risk associated with this approach.	This approach addresses Mr Asgar’s concerns raised in his updated evidence (July 2022) and is considered the most appropriate way to achieve the outcomes sought by Mr Duindam. Overall, this approach will enable future development to comply with the District Plan provisions under Section 7A and 10 along with achieving the Plan Change objective.

7. Issue 5: Flood Prone Overlay Issue

7.1 There have been a number of options put forward to the hearing panel on how to treat the Flood Prone Overlay removal currently associated with land on the Whiskey Creek Residential Area. These options are:

1. As stated within the notified version of the Plan Change:

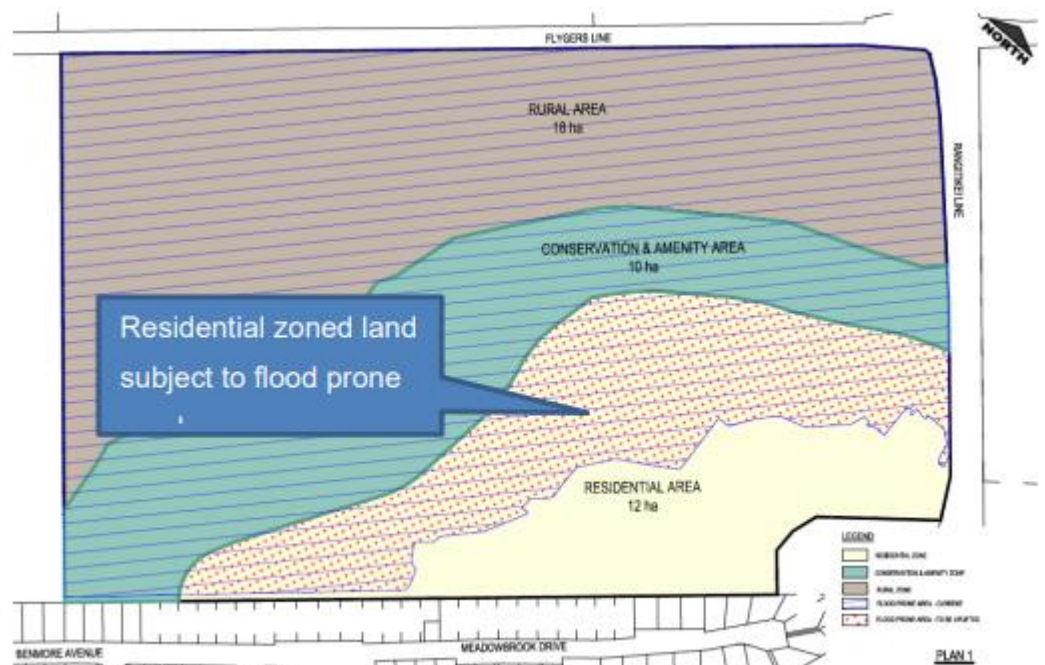
“Amend the Flood Prone Overlay boundary associated with the Whiskey Creek Residential Area to the boundary of the Residential Zone as shown below with the following annotation. “The change to the Flood Prone Overlay shown here shall take effect once the earthworks authorised in Resource Consent XXXXXX have been fully implemented.”

2. Council’s preferred approach:

To enable the Plan Change but keep the Flood Prone Overlay in place ensuring any subdivision and land use is undertaken via Section 22 of the District Plan. Once appropriate level of earthworks has been undertaken and flood hazard avoidance has been accomplished to the satisfaction of Council then the Council will take it on themselves to undertake a future Plan Change seeking to remove the Flood Prone Overlay from within the new Residential Zone. This could occur in any one of the Council’s several upcoming plan changes, subject to the works actually being completed.

3. Mr Thomas approach:

Map 22.6.3 identifies an area that is zoned Residential and also shown on the Plan Maps as Flood Prone Area. If Flood Hazard Avoidance is achieved for that area, then it shall be deemed to immediately cease being Flood Prone Area, despite anything to the contrary in the Planning Maps.



The map above shows the zones and the flood prone overlay within the area to be uplifted shown clearly shaded. It should also be noted that “flood hazard avoidance” is already defined in the District Plan and adopts the One Plan definition.

4. Approach following legal input and conferencing on 15 July 2022:

To have a standalone Rule within Section 7A which dictates when Flood Prone Overlay is no longer applicable to development within the Whiskey Creek Residential Area. This Rule applies following all earthworks and flood hazard avoidance is achieved to Council satisfaction and until such time Council initiates a Plan Change to remove the Flood Prone Overlay from the specified area of land and consequently the associated rules. The Rule will be an additional clause within Rule R7A.5.2.2(h) and is framed as below:

Rule R7A.5.2.4 – Flood Prone Overlay in the Whiskey Creek Residential Area

- (i) Despite anything to the contrary in this District Plan, the Flood Prone Overlay shown on the Planning Maps (and associated rules in Chapter 22 of the District Plan) do not apply to subdivision development within the Whiskey Creek Residential Area in the following circumstances:
- a. Earthworks are completed for the purpose of achieving flood hazard avoidance in respect of the entire Whiskey Creek Residential Area shown in Map 7A.3 and in accordance with the Resource Management Act 1991, including any applicable conditions of consent, rules, or regulations; and
 - b. A suitably qualified and experienced engineer with skills in geotechnical assessment acceptable to council provides a certification in accordance with the following: that earthworks within the Whiskey Creek Residential Area and in respect of the site of the proposed subdivision have been soundly designed and constructed to completion such that there is a minimal risk of their failure; and
 - c. A registered surveyor provides correct and true ‘as built’ plans in respect of the earthworks completed for the purpose of achieving flood hazard avoidance and to inform certification of the works; and
 - d. A suitably qualified and experienced stormwater engineer skilled in flood management and mitigation acceptable to council provides a certification in accordance with the following: that earthworks within the Whiskey Creek Residential Area and in respect of the site of the proposed subdivision have been completed and as a consequence of their completion, flood control measures are in place that provide protection from the current 0.5% annual exceedance probability (1 in 200 year) flood event such that:
 - (i) a provision of freeboard over predicted flood levels is provided;
 - (ii) final ground levels are suitable for development and no further earthworks are required for the subdivision in relation to flood risk;
 - (iii) final ground levels do not impede current drainage from neighbouring existing properties;
 - (iv) the earthworks do not worsen or exacerbate flooding on adjacent properties; and
 - (v) flood modelling has been completed to demonstrate the above conditions have been met.

Point of dispute between Planners on preferred Option 4:

7.2 Rule R7A.5.2.4 has been drafted with legal, stormwater, and planning input. A point of dispute

remains within this Rule between the Planners (as bubbled on the provision set). This dispute is in relation to the words highlighted in the table above.

7.3 Mr Asgar's preference is to retain the words as stated "subdivision development" as this Rule is placed within Section 7A of the District Plan and in his opinion is relevant and engaged only by subdivision consent applications.

7.4 Mr Thomas prefers the wordings to state "subdivision and/or development" in order that it applies to any form of future development. Mr Thomas considers this is important not only in terms of scope of application but also in terms of the mechanics of the Plan provisions. As stated in the proposed wording The Flood Prone Overlay controls are located in Chapter 22 titled Natural Hazards. The specific section is 22.6 titled Flood Prone Areas.

7.5 The rules in this section control the construction of habitable and non-habitable structures to ensure that hazard avoidance is incorporated into these proposals. The rules do not control subdivision. Subdivision in relation to flood risk is controlled through proposed Rule R7A.5.2.2 (g). If the location of this provision in the Plan is the principal concern of Mr Asgar, then consideration should be given to locating this rule in Chapter 22.

7.6 Overall, and subject to resolution of the wording issue above, Option 4 is agreed and considered as an efficient and effective way to achieve:

- Section 2: Objective 19 in the City View Objectives,
- Section 7A: Objective 2 relevant Policy 2.8, Objective 3 relevant Policy 3.1 – 3.3,
- Section 10: Objective 11 relevant Policy 11.2,
- Section 22: Objective 2 relevant Policies 2.1 – 2.5 of the District Plan.

7.7 A Section 32AA assessment is provided below considering each of the 4 options.

Section 32AA: Flood Prone Overlay Removal Approach			
Recommended Change/Amendment	Efficiency/Effectiveness	Risk of acting/ not acting	Appropriateness of achieving the purpose of the Act/Plan Change objectives
Option 1: Notified Version of the Plan Change	This approach is the least preferred as there is a lot of uncertainty associated with it.	At the time of writing this report and throughout the Plan Change process, the requestor have not been able to provide a relevant earthworks consent number lodged with Horizons Regional Council. In addition, the earthworks consent to be lodged will likely be a Controlled Activity consent for recontouring the site pursuant to Rule 13-2 of the One Plan. This consent is highly unlikely to give the Regional Council control to assess any risks associated with flood mitigation and control. The only control the Regional Council will have while processing a consent under Rule 13-2 is on water quality via sediment run-off.	This approach is the least preferred as it is legally not appropriate to place within the District Plan.
Option 2: Council's Approach	This approach has merit as it enables the Plan Change to proceed without the need to remove the Flood Prone Overlay. Thus, any development sought following Plan Change will need to traverse through Section 22: Natural Hazards of the District Plan. It is noted that consenting path under Section 22 would have also been Restricted Discretionary, consistent with the consenting hierarchy under Section 7A and 10 of the District Plan. From a Council's perspective this approach would have been the most effective but from a development point of view this approach is not the most effective as it requires a future Schedule 1 of the RMA process to remove the Flood Prone Overlay from the Whiskey Creek Residential Area.	There are no major risks associated with this approach from Council's perspective. From a development view, there is a risk that there is no assurance a future Plan Change to remove the Flood Prone Overlay once earthworks are complete and flood avoidance has been achieved to occur in a timely manner.	This approach is considered appropriate but may not be as efficient due to the need for a future Schedule 1 process under the RMA required to remove the Flood Prone Overlay.
Option 3: Mr Thomas Approach	This approach seeks to deter the Flood Prone Overlay without the need for a future Schedule 1 of the RMA process. However, it has legal constraints and is considered to be not effective and efficient in comparison to Option 2 discussed above. In any case, under this approach the Flood Prone Overlay will be retained within the Whiskey Creek even after the referred flood hazard avoidance is achieved. It makes the District Planning Maps look messy and provides a confusion point for future plan users.	Risk associated with this approach is that there is no indication as to 'who' assess when 'flood hazard avoidance' has been achieved.	This approach is not appropriate as there is a lack of certainty with this approach. From a legal standpoint this approach does not have merit.
Option 4: Rule R7A.5.2.4 Approach	This approach enables Plan Change to proceed with the Flood Prone Overlay in situ and provides a clear set of guidance to future plan users as to when the overlay is no longer applicable to a subdivision application made in the Whiskey Creek Residential Area. Failure to achieve the guidance set out in this Rule framework will require developers to traverse through a consenting path via Section 22 of the District Plan. Ensuring the natural hazard associated with flooding in this location is assessed at the time of consenting.	This is the preferred option.	This option is considered to be appropriate as it enables future development to proceed in this area with the Flood Prone Overlay in situ on the District Planning Maps and a future Schedule 1 under the RMA process to remove the overlay not impeding on future development as it can occur once Council is satisfied flood hazard avoidance is achieved to its satisfaction based on the guidelines set out in Rule R7A.5.2.4 framework.

8. Specific response to Question 2 in Minute 5

8.1 Question 2 in Minute 5 concerns the fencing requirements as they relate to existing properties on Meadowbrook Drive adjoining the Whiskey Creek Residential Development Area. A combined Planners response is provided in the table below.

8.2 In addition, the requestor has asked that we record in advance that (regardless of the planner's responses recorded below) the requestor considers the Andersons (23B Meadowbrook Drive) to be a special case, warranting specific mitigation. The requestor states that as part of its reply, they will formally undertake to offer to the Andersons a private fencing agreement (solely for the benefit of the Andersons) that will include bespoke controls for height and/or permeability of fencing to address their unique circumstances.

Planners Response to Minute 5: Boundary Fence		
Paragraph #	Matters Raised by Panel	Agreed Comments
17	Are rules to address fencing along the boundary warranted and, if so, how should the said rules be drafted?	<p>There are no existing district plan controls in any zone in relation to rear boundaries of properties. As indicated by the submitters, there appear to be a range of design preferences with no uniform position, and we consider desirable outcomes are likely to be influenced by future dwelling design on each property. We note that urban design evidence does not provide a view as to height or design restrictions for fences along this interface and we consider that there is insufficient evidence to conclude that fencing controls are required here, beyond existing provisions of the District Plan and the Fencing Act 1978.</p> <p>We consider that fencing issues including agreements in relation to fencing ought to be resolved on an individual basis through the mechanisms of the Fencing Act. It is anticipated that neighbours will be able to address issues such as balance between privacy and views through discussion.</p> <p>Accordingly, for the reasons stated above we do not propose the drafting of a rule.</p>
18	In the absence of such rules being proposed along the Meadowbrook Drive property boundaries, what fencing structures could be constructed as of right?	<p>As of right, fences up to 1.8m tall on the boundary is provided in the District Plan as a permitted activity. Specific fencing requirements in Greenfield Residential Area is controlled by Rule R10.6.1.1 (h) of the District Plan – it is noted that there are no Rules requiring rear fencing requirement between residential properties.</p> <p>Rule R10.6.1.1 (h) requires:</p> <p>Fencing</p> <ul style="list-style-type: none"> i. Where a fence is erected along a property boundary directly adjoining public open space it shall not exceed a maximum height of 1.8 metres for half of the property boundary; any remainder is permitted to a maximum height of 0.9m. This standard does not apply to any fence within any setback area required under performance standard (e) above. ii. Where a fence is erected on the road frontage, a maximum height of 0.9m applies.
19	Risk of acting or not acting.	<p>The risk of imposing an additional fencing control (such as lower height, or greater permeability) to favour Meadowbrook property owners' amenity, is that this cannot address individual preferences, so may not achieve the outcomes desired by those owners; and may also penalise Whiskey Creek owners by preventing them from achieving standard privacy protections.</p> <p>The risk of not imposing an additional control is minimal. It is considered that the status quo under the plan can be relied upon as appropriate in this case, considering the possible individual preferences, competing rights, and the ability for such matters to be resolved between neighbours.</p>

9. Other Matter: Cultural Naming of the Residential Area

9.1 At the Hearing Day 1, Submitter 14 Hayden Turoa representing Ngāti Turanga referred to the cultural naming of the Whiskey Creek Area as 'Te Puka'. In Mr Thomas evidence dated 8 July 2022 he states in Paragraph 27:

“Siobhan Karaitiana has recommended adoption of the name “Matangi” for the reserve and Matangi Way for Road 1. With this in mind the requestor agrees to change the name of the Residential Area to the Matangi Residential Area.”

9.2 Both Council and the requestor are open to the Cultural Naming of the Whiskey Creek Residential Area. The requestor has confirmed that Submitter 14 is not opposed to naming the area Matangi Residential Area, consequently this change is supported by Mr Asgar and Mr Thomas.

10. Other Matter: Minor Variation to Rule R10.7.3.5

10.1 It is brought to the Panel's attention that there is also a minor recommended amendment to Rule R10.7.3.5 has been incorporated and agreed on by the Planners. The change results in similar outcome but focuses on matters associated with the Whiskey Creek Plan Change, to ensure that the provision does not have unintended broader effect on other areas.

Prepared by:



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