

**Before the Hearings Panel
At Porirua City Council**

Under Schedule 1 of the Resource Management Act 1991

In the matter of the Proposed Porirua District Plan

Between **Various**

Submitters

And **Porirua City Council**

Respondent

Council reply of Caroline Elizabeth Rachlin on behalf of Porirua City Council
Hearing Stream 7 –
Date: 28 April 2023

INTRODUCTION:

1 My full name is Caroline Elizabeth Rachlin. I am employed as a Senior
Policy Planner for Porirua City Council.

2 I have read the evidence and tabled statements provided by submitters
relevant to the Section 42A Report – Part A Overarching Report.

3 I have prepared this Council reply on behalf of the Porirua City Council
(**Council**) in respect of matters raised through Hearing Stream 7.

4 Specifically, this statement of evidence relates to the matters in the
Section 42A Report – Part A Overarching Report.

5 I am authorised to provide this reply evidence on behalf of the Council.

QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

6 Appendix C of the Overarching Section 42A report sets out my
qualifications and experience.

7 I confirm that I am continuing to abide by the Code of Conduct for Expert
Witnesses set out in the Environment Court's Practice Note 2023.

SCOPE OF REPLY

8 This reply follows Hearing Stream 7, held on 13 – 15, 17, and 20 – 22
March, and 4 April 2023.

9 The topics addressed in this reply evidence include responses to two
questions from the Hearings Panel in Minute 60.

10 I also recommend a minor correction to a paragraph in the introduction
to the HH – Historic Heritage Chapter.

11 A list of the material provided by submitters, including expert evidence,
legal submissions, submitter statements etc is provided in the reply
evidence prepared by Mr Torrey McDonnell, at Appendix 1. This

information is also available on the Proposed District Plan (PDP) hearings web portal at: <https://pdportal.porirua.govt.nz>

REPLY

Question 72 - Site specific controls on sites adjacent to heritage items and SASMs

12 In question 72 of Minute 60 the Hearing Panel asked:

As regards Mr and Mrs Rachlin's interim replies dated 23 March, while they provided a useful road map linking the provisions the subject of the Hearings Panel's queries and the supporting analysis, the Hearing Panel would appreciate it if the Council Reply included a fuller response including a narrative of the relevant evaluations. It is appreciated that the Section 42A authors would not have had time to prepare same as part of their interim response.

13 I reply to this question insofar as it relates to site specific controls for sites adjacent to heritage items and heritage settings, and to sites adjacent to sites and areas of significance to Māori (SASMs).¹

14 In my interim response, I interpreted the Panel's reference to Section 77(j) to mean S77J² of the RMA. I identified where in the relevant s32 and supporting technical reports the elements of s77J(3) were addressed. I expand on this below as regards to each relevant section of s77J.

Sections 77J(3)(a)(i) and 77J(3)(a)(ii)

15 Sections 77J(3)(a)(i) and 77J(3)(a)(ii) of the RMA address the evaluation of potential qualifying matters. These subsections require the Council to demonstrate why the area is subject to a qualifying matter; and that the qualifying matter is incompatible with the level of development permitted by the MDRS or as provided for by policy 3 (of the NPS-UD) for that area.

¹ The Reply of Michael Rachlin addresses this question insofar as it relates to shading site specific controls.

² The Panel's earlier question is also included as question 54 in Minute 60

Sites adjacent to heritage items and heritage settings

- 16 The proposal to include the sites adjacent to historic heritage as qualifying matters relied on the historic heritage assessment undertaken by Gregory Vossler and Ian Bowman, in their report 'Historic Heritage Qualifying Matters Assessment' (**Historic Heritage Assessment**), July 2022. Their assessment is summarised within Section 11.2.2.2, pages 89-93 of the Section 32 Evaluation Report Part B: Urban intensification – MDRS and NPS-UD Policy 3 (s32 – Part B). Section 11.2.2.2 is the evaluation pursuant to s77J and s77P of qualifying matters that arise from the application of s77(l)(a-i) and s77O(a-i). Mr Vossler and Mr Bowman's overall recommendations were that for 14 of the 27 heritage items which they assessed changes were necessary to the proposed density standards on specific adjoining sites.
- 17 The assessment undertaken by Mr Vossler and Mr Bowman regarding the possible adverse effects of taller buildings on identified heritage items and associated heritage settings is summarised at page 90 of the s32 – Part B, as follows:
- *Undertake background research into a sub-set³ of heritage items scheduled in the PDP to determine if any modifications to proposed density standards are necessary and justifiable.*
 - *Undertake associated site visits to inform initial conclusions.*
 - *Advise a draft list of sites where proposed density standards require modification.*
 - *Advise on suggested modifications to proposed density standards (e.g. to height, height recession plane, setbacks) applicable to sites identified on the draft list, including any exceptions to standards contained in the PDP.*

³ A number of sites were excluded from the study due to a number of factors such as the site being surrounded by non-residential zoning, or topography made it unlikely that adverse effects would arise.

18 Pages 90-91 of the s32 – Part B, outlines the four-stage methodology that they adopted.⁴ In summary it included:

- Identification of heritage places potentially affected and relevant heritage-related values and effects⁵;
- Preparing an evaluative approach to inform assessment plus desk-top analysis to refine the list of potentially affected places;
- Field assessment to assess and confirm potential impacts of proposed density standards on heritage values and consider alternatives; and
- Further assessment and draft report setting out recommendations for each materially affected place.

19 Their assessment included a context condition and effects assessment for each ‘candidate’ heritage item, and recommendations on whether adjacent sites needed to be subject to additional controls on heights and/or heights in relation to boundary (**HIRB**).

20 The s32 report – Part B states how their assessment considered which density standards needed to be modified and it discounted the use of increased setbacks from boundaries in favour of building height and HIRB. It outlines a number of assumptions in the Historic Heritage Assessment, such as modifications to proposed density standards were to the minimum extent necessary and were determined on a site by site basis and summarises how the historic heritage assessment report found that:

... the historic heritage values for a number of scheduled heritage items and their settings would be significantly harmed by increased building heights and/or height in relation to boundary. It also considered the

⁴ I note Mr Vossler and Mr Bowman summarise the methodology in their Statement of Evidence for Hearing Stream 7, dated 7 February 2023.

⁵ This included some heritage items in the schedule being excluded, for example because of their underlying zone (e.g. open space, rural zone)

minimum level of modification required to protect these historic heritage values.

21 I further note that the Historic Heritage Assessment contains two tables, which demonstrate the heritage item by heritage item (or site by site) assessment. The table in Appendix 1 is the 'Contextual Condition Assessment' which includes the following content for each potentially affected heritage item:

- Heritage Identification (e.g. HHA002);
- Heritage Item (includes name and address);
- Category (Group A or B);
- Relevant Heritage Values per place (Physical, Social, Surroundings);
- Item/Setting Description information including topography, site area, location/orientation, height (i.e. 1 or 2 storey), visual connections (current condition); and
- Adjoining Zoning and Height Settings (PDP and Draft Variation).

22 The other table⁶ contains the outcome of the Effects Assessment and it builds on Appendix 1 by including for each heritage item:

- Whether Heritage Values Affected (N/A, or 1 or more of 'Physical, Social and Surroundings');
- Degree of Effect (Major, Moderate, Minor, or Negligible/No);
- Significance of Effect (Very Large, Large, Moderate, Slight, or Neutral);
- Reasons; and
- Suggested response.

⁶ Historic Heritage Assessment, pages 8-24,

23 As evidenced in these tables Mr Vossler and Mr Bowman assessed a total of 27 heritage items (and associated heritage settings).⁷ Of those 27 they recommended:

- For 13 of them no changes were necessary to proposed density standards on adjoining sites;
- For 14 of them, changes to density standards on adjoining sites were needed; and
- Where changes were recommended, they were on a site by site basis. For example, for HHB027 different maximum heights and recession planes (i.e. HIRB) were recommended for 14 and 18 Arawhata Street.

24 Examples of the reasons for recommending changes to density standards on adjoining sites included:

- How intensification would likely result in development that would visually dominate the heritage item;
- The potential for ‘major perceivable contrasts in scale’; and
- The potential for the value of a heritage item as a local landmark/focal point being diminished.

Sites adjacent to site and areas of significance to Māori (SASM)

25 The s32 – Part B at section 11.2.2.2 also addresses the work undertaken to identify sites adjacent to SASMs which have reduced height and/or HIRB controls.

26 The s32 – Part B, page 92-93 steps through the issue identification and assessment undertaken by TROTR and Council, which included:

- Initial discussions held with TROTR staff and Council staff to consider if there was an issue to be addressed, i.e. is there

⁷ This excludes those excluded from further assessment from the outset given for example their adjoining zoning was open space.

potential for adverse effects on the values of SASMs from intensification on sites near to SASMs.

- Following confirmation of this being an issue, TROTR and Council staff met to consider the issue more fully including:
 - where intensification is being considered adjacent to SASMs; and
 - to receive comments from TROTR on those SASM sites which may be impacted by the effects of intensification, and which sites near to these SASMs and relevant density standards for these sites should be amended.
- TROTR then provided further advice including the SASMs of concern and drawing on this, Council undertook work to map sites near to SASMs which would be subject to amended height controls together with draft policies.
- The draft material was then provided to TROTR for review.

27 Of the SASMs which were considered by TROTR, no site-specific controls were considered necessary for two of the SASMs.

28 Similar to the historic heritage assessment, a case-by case (or SASM by SASM) review of where these site-specific controls should apply was undertaken.

29 The evaluation exercise above demonstrates a comprehensive and fine-grained approach to this matter for both historic heritage and SASM.

Section 77J(3)(b)

30 Section 77J(3)(b) requires that the evaluation must assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity.

31 Section 11.2.2.2, page 93 of the s32 – Part B includes a summary of the work undertaken by Property Economics and their findings, which is contained in their report ‘Variation 1 and Plan Change 19 – Qualifying

Matters Assessment, 2022 (Property Economics Assessment).’ This s32 - Part B states:

Property Economics⁸ have identified that these modifications to the density standards for building height and height in relation to boundary will only have negligible impact on development capacity. In particular it identifies that combined, these control result in the theoretical loss of 302 residential units, but only 71 realisable residential units. It also undertakes a review of the economic efficiency of these controls in terms of costs and benefits.

32 Property Economics found there would be a loss of 71 realisable units as set out in Table 7 of their report.⁹ This comprises a split of eight in relation to the historic heritage height controls and 63 in relation to the SASM height controls.

33 I would note the finding in Mr Osborne’s response dated 20 March 2023 to an interim question from the Hearings Panel, that the total realisable capacity following reduction of the qualifying matters would be 26,594. This realisable capacity is considerably above the total demand of 13,798.¹⁰

Section 77J(3)(c)

34 Section 77J(3)(c) requires an assessment of the costs and broader impacts of imposing the proposed limits. This assessment is addressed in a number of places with the relevant reports which I identified in my interim response.

S32 – Part B

35 The s32 – Part B, section 11.2.2.2 includes an assessment of broader costs and impacts including:

- An assumption of the Historic Heritage assessment work that¹¹:

⁸ Porirua Variation 1 and Plan Change 19 – Qualifying Matters

⁹ Refer to page 25 of the Property Economics Assessment

¹⁰ Which comes from the housing bottom line in the Regional Policy Statement.

¹¹ S32 report – part B, page 92

- *Recommended modifications to proposed density standards were to the minimum extent necessary to protect the affected heritage values of adjoining heritage items and their associated heritage setting, noting that these values are primarily protected by the heritage provisions and related schedules contained in the PDP.*

- It sets out that¹²:

Based on the above analysis, the report found that the historic heritage values for a number of scheduled heritage items and their settings would be significantly harmed by increased building heights and/or height in relation to boundary. It also considered the minimum level of modification required to protect these historic heritage values.

- Taking account of section 6(e) and 6(f) matters of national importance, and MDRS objective 1 and NPS-UD Objective 1, identifying that¹³:

... a well-functioning urban environment is one that enable people to provide for their cultural wellbeing. Given this policy direction, there is no tension between controls intended to enable people to provide for their cultural wellbeing and the requirement to recognise the national significance of urban development.

- How the Property Economic report finds there will be costs associated with the controls, however in terms of housing supply they are negligible and that there¹⁴:

...will also be a direct cost to landowners affected by the additional restrictions, however the controls are no greater than those imposed by the PDP.

36 The s32- Part B, section 11.2.2.2¹⁵ also includes a summary finding that:

¹² Ibid

¹³ S32 report – part B, page 93

¹⁴ Ibid

¹⁵ Ibid

Overall, the controls are necessary to protect historic heritage and SASM values (s6(e) and s6(f)) and to enable people to provide for their cultural wellbeing and so achieve a well-functioning urban environment (MDRS objective 1 and NPS-UD objective 1). They represent the minimum level of modifications to the density standards to achieve the necessary protection of a matter of national importance and do not conflict with the requirement to recognise the national significance of urban development.

Property Economics Assessment

37 As well as the assessment of lost development capacity, Property Economics also undertook a cost benefit analysis of the proposed qualifying matters, which considered the costs, benefits and associated economic consequence/ probability.¹⁶ Examples of matters considered includes those relating to place-making and public appreciation, property valuations, brownfield development and costs to property owners in the form of lost development potential. An example of benefits and costs addressed in this analysis are shown below¹⁷:

Economic Benefit

- Economic Benefit: Higher intensification levels adjacent to Heritage Items may alter the existing structure and character of the buildings or properties¹⁸.
- Economic Consequence/Probability: Critical/HIGH”
- Comments/Notes: If these areas are subject to a QFM, the current amenity and heritage value of these buildings and properties can be secured (relative to higher density redevelopment in the areas).

Economic Cost

¹⁶ Section 9.1 and 9.3 of Property Economics Assessment

¹⁷ Section 9.1 Heritage Buildings, Structures and Areas

- Economic Cost: A cost would occur to the wider community through less efficient urban form through the decreased ability for intensification.
- Economic Consequence/Probability: Moderate – Critical/LOW
- Comments/Notes: Although the potential cost of this is high, the likelihood of it becoming an issue within the next 30 years is extremely low. This is based on the total supply and demand making it unlikely the loss of these sites will undermine intensification.

Historic Heritage Assessment

38 I would note that the Historic Heritage assessment also considered costs and broader impacts. In their Hearing Stream 7 evidence,¹⁹ Mr Vossler and Mr Bowman refer to the ‘relatively small’ number of sites affected. They state that the number of affected sites is²⁰:

... relatively small in comparison with the spatial extent of sites subject to Variation 1, with the controls applicable to only 22 adjoining sites. In light of this it appears unlikely that retention of the proposed height controls on these sites will have a material impact on the overall intensification outcomes sought by Variation 1, nor seriously undermine the intent of the intensification directives in the NPS-UD and RMA.

S32A – Part A

39 I also outlined in my interim response how Section 2.7.3 of the Section 32 report Part A – Overview to section 32 Evaluation (s32 – part A) considers cost and broader impacts. The following assessment in the s32 – Part A is included under the heading: ‘b. assess the costs and broader impacts of imposing those limits’.²¹

¹⁹ Evidence of Mr Vossler and Mr Bowman, 23 February 2023

²⁰ Evidence of Mr Vossler and Mr Bowman - 23 February 2023, paragraph 21

²¹ The statement applies to the qualifying matters as a whole and makes specific reference to section 6 matters.

The benefits of imposing these qualifying matters far outweigh the costs.

The Property Economics report outlines how the lost development capacity is minor in comparison to the large amount of capacity enabled by the PDP including Variation 1 and PC19. This opportunity cost is a potential economic cost as a result of imposing these limits.

However, the environmental, economic, social and cultural benefits associated with imposing the limits are enormous. For example, as outlined in the s32 reports listed in table 3, many of these qualifying matters mostly relate to the protection of natural and physical resources listed as matter of national importance in s6 of the RMA.

Section 77J(4)

- 40 I also note that the s32 report – Part A addresses requirements for what the evaluation report must include in terms of s77(4), and in relation to the provisions implementing the MDRS:²²

Modifications to the MDRS as applied to the relevant residential zones in the Variation and PC19 are limited to only those modifications necessary to accommodate qualifying matters. For example, the height controls in the MRZ in relation to sites adjacent to Heritage Sites are limited to those needed to protect specific Historic Heritage values identified in the PDP in response to s6(f).

...

Standards relating to height controls and height in relation to boundary are identified at a site-specific level and shown in the planning maps.

Question 64

- 41 In question 64 of Minute 60 the Hearings Panel asked:

What is the view of the Section 42A authors of Mr Warburton's contention that if the overlays of various kinds constraining urban development had been considered against the background of the proposed intensification required by the NPSUD and associated RMA

²² S32 report – Part A, page 21

amendments, there might have been ground for greater controls on adjacent developments (e.g. on residential developments immediately adjacent to an identified SNA)?

42 In preparing Variation 1 consideration was given by Officers regarding which overlays might be impacted from proposed intensification on adjacent sites, and therefore which overlays would merit a more detailed evaluation. This recognised that such evaluation would need a site-by-site assessment of the effects of potential intensification and include associated recommendations on any modifications to density standards.

43 Officers considered the likelihood and risk of adverse effects on the overlays from intensification on adjacent sites, including having regard to matters such as:

- the PDP context, e.g. permitted height limits and whether any such issues or concerns had previously been raised by submitters or experts on potential adverse effects (including submissions on the drafts released for public consultation);
- the nature of the overlays and their particular features, characteristics, qualities and values;
- the size and location and extent of the overlays including the extent of the interface with areas proposed for intensification – this included if overlays were surrounded on multiple boundaries by properties where increased density standards would apply; and
- the type, nature and scale of assessment work to further identify and confirm whether there were any issues and undertake comprehensive evaluations. These include site specific assessments and any modifications proposed to density standards being to the minimum extent necessary.

44 By way of example, for heritage items the listed features are predominantly buildings or structures on individual land parcels, many of which have associated heritage settings. They are also often

surrounded on multiple boundaries by properties subject to increased density standards. Their HH-P1 heritage values are specifically listed in the individual schedule entries. Heritage items and settings comprise section 6 matters of national importance. As stated at paragraph 20 of this Reply, the Historic Heritage Assessment found for a number of heritage items and their settings that their historic heritage values would be significantly harmed by increased building heights and/or HIRB on adjoining sites.

- 45 When considering the combination of factors listed in paragraph 42 above, and the evaluation requirements for matters in s77J, the approach taken was to focus the adjacent qualifying matters assessment on historic heritage items and settings and SASMs, and not to extend this to other overlays.
- 46 As set out in this Reply, the evaluations which were undertaken to determine the amended density standards on sites adjacent to overlays included comprehensive and fine grained assessment in order to meet the respective s77J RMA tests.
- 47 As regard to the evaluations not extending to other overlays; unlike heritage items and settings and SASMs, the qualities and values of other overlays were considered to be less at risk to the adverse effects from intensification, and therefore did not merit more detailed evaluation. This was due to the combination of the matters listed in paragraph 42 above, such as the nature of the overlays and their particular features and values and the size and extent of the overlays. For example, in regard to Special Amenity Landscapes (SALs) the interface of the areas proposed for intensification relative to the SAL overlay are significantly smaller (as a proportion of the overlay) than for other features such as heritage items and heritage settings.²³ In contrast, many heritage items and SASMs in the urban environment are

²³ This is addressed in the s32 – Part B, in response to the feedback on Variation 1 from Mr Warburton in which Mr Warburton sought qualifying matters in the form of three modified density standards for all sites adjacent to land zoned as Open Space and/or areas identified as an ONF/ONL and/or areas identified as SAL.

on individual land parcels and surrounded on multiple boundaries by properties where intensification could occur.

48 In summary, and in response to the Panel’s question, the officers considered the relevant provisions of the RMA that relate to qualifying matters and the matters in paragraph 42 above, and proposed the inclusion of restrictions where that was warranted following a fine-grained assessment. While, conceptually, there could be arguments for additional restrictions on sites adjacent to overlays, Council has not supported any additional qualifying matters of this nature.

49 I further note that Mr Rachlin, in section 7.18.11.2 of the s42A – Overarching Report, addressed Mr Warburton’s submission seeking a qualifying matter in the form of modifying three density standards for all sites adjacent to land zoned as Open Space and/or areas identified as an ONF/ONL and/or areas identified as SAL. This was a similar request to that made on the draft Variation. In assessing the submission, Mr Rachlin raises issues of lack of clarity regarding the adverse effects that the submitter is seeking to control and the lack of assessment, including site specific assessment.²⁴

50 I would also note that a similar adjacent sites qualifying matter issue was considered in the same section of the s42A report by Mr Rachlin. This was the submission from GWRC seeking amended building heights on sites adjacent to Significant Natural Areas. This was sought at a policy level. I note in that assessment Mr Rachlin raises concerns about GWRC’s broad approach and lack of detailed assessment and evidence to support the relief being sought.²⁵

Minor Error

²⁴ Refer to paragraphs 693-694 of s42A- Overarching Report

²⁵ Refer to paragraphs 695-698 of section 7.18.11.2 of s42A – Overarching Report

51 I recommend an amendment is made to the third paragraph of the HH-Historic Heritage Chapter as follows (new text shown as blue underline):

... These sites are identified on the planning maps as Height Control – Heritage A, B, or C and/or Height in Relation to Boundary (HIRB) Control – Heritage A, or B. The associated rules are contained in the relevant zone chapters. These are qualifying matters under s77I and s77O of the RMA.

52 This amendment is to reflect that some of the sites where there is a heritage height and/or HIRB control are included located within urban non-residential areas. I consider that this amendment falls within clause 16 of the RMA. I recommend it is made as part of the Hearing Panel’s recommendations for completeness and clarity.

Date: 28/04/2023



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