

**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

**Addendum to Section 42A Report – Overarching from Torrey James
McDonnell and Michael David Rachlin on behalf of Porirua City Council**

Date: 23 February 2023

INTRODUCTION:

- 1 Our full names are Torrey James McDonnell and Michael David Rachlin. We are both employed as Principal Policy Planners for Porirua City Council.

- 2 We have prepared this Addendum to the Section 42A Report – Overarching dated 10 February 2023 on behalf of the Porirua City Council (**Council**) in respect of submissions that were not addressed in this report.

- 3 Officers omitted the following two submissions in error in their entirety:
 - 3.1 Submitter 35: Te Whenua Ora Trust (formerly Te Hiko Puaha Trust) – submission points 35.1, 35.2 and 35.3

 - 3.2 Submitter 115: Whitby Lakeside Villas Body Corp – submission point 115.1¹

- 4 In this report Mr McDonnell provides recommendations on submission 115.1 and submission point 35.1, while Mr Rachlin provides recommendations on submission points 35.2 and 35.3.

- 5 We are authorised to provide this evidence on behalf of Council.

QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

- 6 Appendix C of the Overarching s42A report sets out our qualifications and experience.

¹ Note there was only a single submission point from this submitter in their submission

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

SCOPE OF ADDENDUM

8 This Addendum is to Section 42A Report – Overarching regarding two submissions omitted in error from this report:

8.1 Submitter 35: Te Whenua Ora Trust (formerly Te Hiko Puaha Trust)

8.2 Submitter 115: Whitby Lakeside Villas Body Corp

9 These submissions should have been addressed in the s42A Report as follows:

9.1 The submission from Te Whenua Ora Trust (formerly Te Hiko Puaha Trust) should have been addressed in section 7.5 'Papakāinga'; and

9.2 The submission point from Whitby Lakeside Villas Body Corp should have been addressed in section 7.13 'flood hazard mapping'.

10 We have considered whether either submitter or any other submitters have been disadvantaged by these submissions having been omitted from the Overarching Report. In our view, there has been no disadvantage to any submitter as the points raised in these submissions have also been made by other submitters. Therefore, neither submitter has raised additional matters that were not already addressed.

ADDENDUM

Submitter 35: Te Whenua Ora Trust (formerly Te Hiko Puaha Trust)

Matters raised by submitter

- 11 Te Whenua Ora Trust [OS35.1] seeks that MRZ-R13 (papakāinga) be amended to include the following land types:
- General Title, but was Māori Freehold Title prior to compulsory acquisition by the Crown or a council; or converted from Māori Freehold Title to General Title under the Māori Affairs Amendment Act 1967
 - General Title and was transferred from the Crown as part of a Treaty Settlement Act
 - General Title and collectively owned by Māori, represented by certain organisations
- 12 The submitter considers that including these land types helps ensure Māori landowners are recognised and treated in the same manner as those whose whenua is titled under Te Ture Whenua Māori Act 1993. They note that this aligns with the Greater Wellington Regional Council's eligibility types in relation to land under Te Ture Whenua Māori Act 1993, as stated in their Rates Remission Policy. Additionally, they consider that recognising Māori owned land not titled under Te Ture Whenua Māori Act 1993, as an eligible land type, is also seen favourably by the Ministry of Housing and Urban Development.
- 13 Te Whenua Ora Trust [OS35.2, OS35.3] also seek that MRZ-R13 be amended to change the controls on commercial activities and community facilities from a gross floor area threshold to a percentage of the site, for example 15% of the site. The submitter considers that this approach allows these activities to be relative to the land and residential potential of the site.

Assessment

Land title [OS35.1] (Authored by Torrey McDonnell)

- 14 First, I note that neither the definition of Papakāinga nor MRZ-R13 were amended by Variation 1. In my view, the definition would need to be amended rather than the rule to provide for the relief sought by the submitter.
- 15 Second, this submission raises similar issues to those raised by Kāinga Ora [81.547, 81.614] on the PDP that were addressed in section 3.3 of the Section 42A Report - Part B Tangata Whenua Strategic Objectives and Papakāinga.
- 16 This report details that the PDP definition of Papakāinga was developed in partnership with TROTR and specifically limits it to ancestral land that is held under Te Ture Whenua Māori Act.
- 17 I consider that the consent process provides a mechanism for the landowner to demonstrate this ancestral connection where land is not held under Te Ture Whenua Māori Act and is held under general title. One way, for example, would be to provide evidence they are a registered member of Ngāti Toa through written confirmation from TROTR.
- 18 Further, with regard to the request that permitted activity rule for papakāinga apply to “General Title and collectively owned by Māori”, this would be inconsistent with advice from TROTR that the provisions for papakāinga expressly provide for the relationship of Ngāti Toa Rangatira and its whanau with its ancestral land.
- 19 I therefore recommend that the submission be rejected.

Controls on commercial activities and community facilities [OS35.2, OS35.3]

(Authored by Michael Rachlin)

- 20 These submissions [OS35.2, OS35.3] raise similar issues to those raised by TROTR and addressed at 7.5.2 of the Section 42A Report – Overarching. This noted that Variation 1 carried over MRZ-R13 from

the PDP (rule was numbered MRZ-R12 in the 2020 PDP) including the same controls over commercial activities and community facilities². The s42A report sets out the reason for the controls and I consider that the reasons and assessment are equally relevant to the Te Whenua Ora Trust submissions. At paragraph 217 the s42A report notes:

In relation to the thresholds on papakāinga commercial activities and community facilities in the residential zones, I note that these are more permissive than for non-papakāinga developments. I consider this is appropriate and necessary given the definition of papakāinga³⁰ and the range of activities it can involve.

- 21 While the Te Whenua Ora Trust submission is not seeking complete removal of the controls, the percentage based threshold would result in instances where larger-scale commercial activities and community facilities could be undertaken, putting at risk the “centres-based” approach contained in the PDP. For example, a 1000m² site could create a commercial activity offering of 150m², which is 50% greater than that provided for in the notified rule which has a 100m² gross floor space and for non-papakāinga developments any commercial activity (except home business) is a discretionary activity under MRZ-R23. In my opinion, the gross floorspace controls remain the most appropriate method to manage scale effects of these activities on the planned purpose of the MRZ-Medium Density Residential Zone and help to implement strategic objectives CEI-O1 to CEI-O7.
- 22 I recommend that OS35.2 and OS35.3 be accepted in part as this recognises that the submitter is seeking to amend the method of the control rather than their complete removal.

Summary of recommendations

² No submissions opposed these controls in the PDP.

- 23 Mr Rachlin recommends that the submission from Te Whenua Ora Trust (formerly Te Hiko Puaha Trust) [OS35.2, OS35.3] be **accepted in part**.
- 24 Mr McDonnell recommends that the submission from Te Whenua Ora Trust (formerly Te Hiko Puaha Trust) [OS35.1] be **rejected**.
- 25 Our recommendations in relation to further submissions reflect the recommendations on the relevant primary submission.

Submitter 115: Whitby Lakeside Villas Body Corp (Authored by Torrey McDonnell)

Matter raised by submitter

- 26 Whitby Lakeside Villas Body Corp [115.1] is seeking deletion of flood hazard maps as it relates to the Lakeside Villas on Discovery Drive, Whitby.
- 27 The submitter gives the following reason for the relief sought:

The 17 houses are situated approx. 4 m above the Whitby lower lake We understand Wellington Water has yet to do the modelling for Whitby on the 1% Probability of the 100 year flood and yet the Council is showing this on the Proposed District Plan.

Contours based on GIS of the land show the outlet crest meters lower at the Whitby Mall carpark Driveway We have [engaged an] engineer to investigate this

Assessment

- 28 As outlined in section 7.13, Wellington Water have modelled the 1% AEP flood event for this catchment³, but subsequently advised Council that the topography has likely changed in the Waiohata/Duck Creek catchment in Whitby to the point where new ground levels will have a significant bearing on the flood extent in some areas of the catchment. They advised that updated lidar information would be needed to rerun the model, but that this was not able to be collected this summer due to poor weather and civil aviation approval issues.
- 29 In section 7.13, I advised the Panel that Council was considering withdrawing flood mapping for the Waiohata/Duck Creek Catchment from the planning maps in the PDP.
- 30 I can update the Panel that Council has now considered this matter, and at a Council meeting on 23 February 2023 approved the removal of these flood hazard maps from the PDP. Appendix A contains a map which outlines the area of flood hazard mapping to be removed in green⁴. The remainder of the catchment referred to in the report 'Wellington Water (2022) Whitby Stormwater Catchment Model Build Report' is outlined in black, these smaller catchments drain into Browns Bay and Bradeys Bay and are being retained in the PDP.
- 31 As the flood hazard maps are being removed from this catchment, I agree with the submitter that the flood hazard maps should be removed in relation to these properties. The general location of these properties is indicated on Appendix A.
- 32 To assist the Panel in locating other similar submissions in this general area, I have also included the locations of 64 Exploration Way referred to by Submitter 64, and 300C Paremata Road referred to by Submitter

³ 'Wellington Water (2022) Whitby Stormwater Catchment Model Build Report'

⁴ Council's GIS team are currently removing them from the PDP planning maps in the ePlan

46. The flood hazard maps with respect to this latter submission have been retained in the PDP as they are outside the Waiohata/Duck Creek Catchment.

Summary of recommendations

33 I recommend for the reasons given in this assessment that the submission from Whitby Lakeside Villas Body Corp [115.1] be **accepted**.

Date: 23 February 2023

Torrey McDonnell	
Michael Rachlin	

Appendix A: Area of flood hazard mapping withdrawn from PDP planning maps

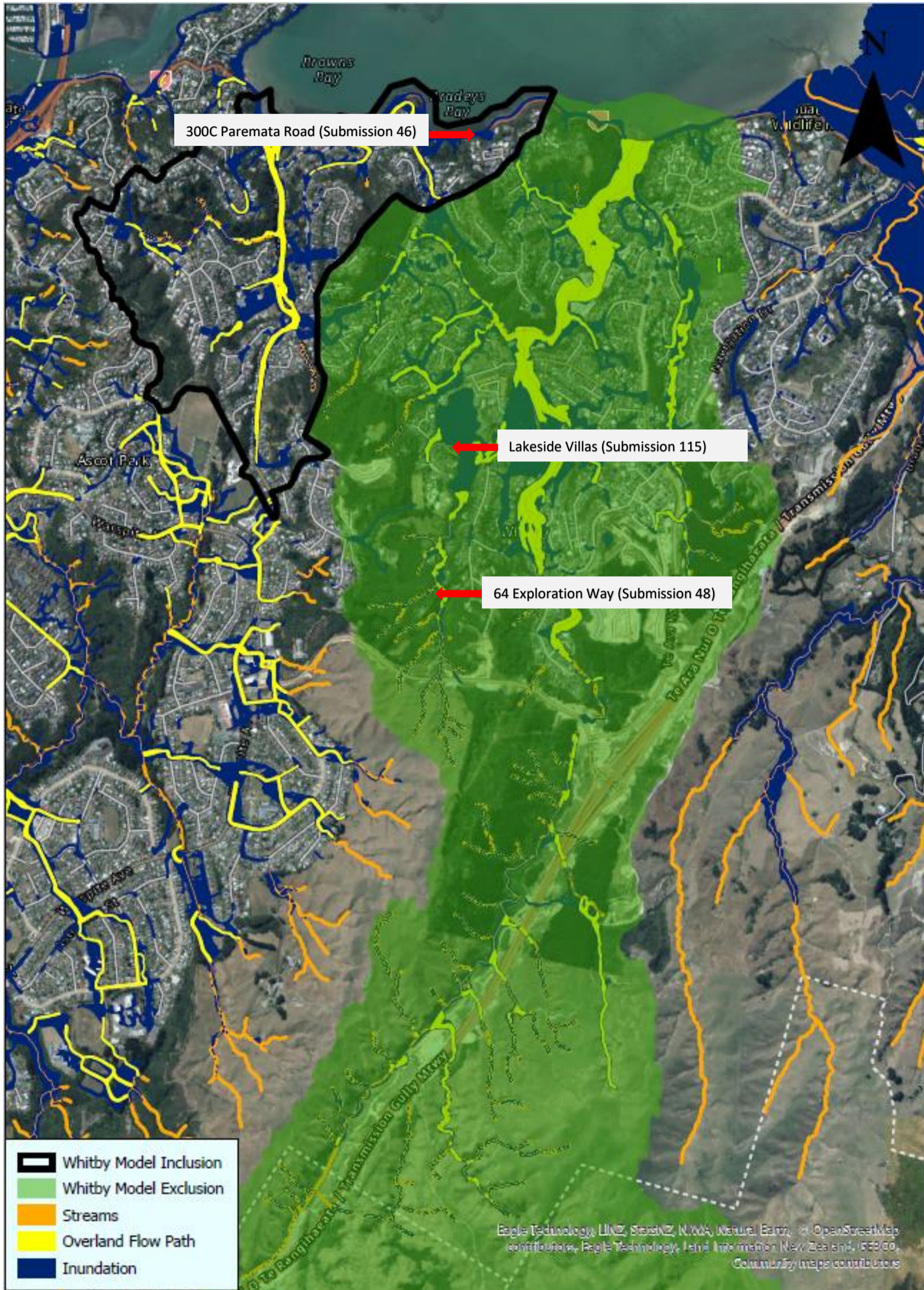


Figure 1: Map showing flood hazard maps for Whitby and surrounds, Council has approved the withdrawal of the Waiohata/Duck Creek Catchment area from the PDP planning maps (marked in green). The remainder of the Whitby stormwater model build area draining to Browns Bay and Bradeys Bay has been retained in the planning maps.