

Submission from Claire and Brad Keenan, Hearing Stream 7 (20 March 2023)

35 Terrace Road DP LOT 4 DP 9161

A: Why we are here:

- 1) We do not support the introduction of a qualifying matter to the Proposed Porirua District Plan restricting height to manage effects of shading on residential slopes with south facing topography (Height Control Shading C) in general.
- 2) We want the minimum standards that are set out in the original qualifying matters of the National Policy Statement Urban Development (NPSUD) to be applied to our property.

B: Downslope shading as a new 'qualifying matter':

- 1) We do not support the introduction of a 'new' qualifying matter to the PCC PDP restricting height to manage effects of shading on residential slopes with south facing topography
- 2) At the heart of the matter is that this goes against the intent of the NPSUD – and proves why we need it to remove barriers / red tape to intensification and addressing many Councils' disabling, rather than enabling, mindset to land provision. While it is acknowledged that there will be 'winners and losers' in the implementation of the NPSUD, it promotes transparent and consistent standards to be applied fairly and without prejudice across the motu, and not at the discretion of local bodies.
- 3) Introducing this new qualifying matter goes against directions provided to territorial authorities by MFE. In "Understanding the RMA EHS general overview" it says under Medium Density Residential Standards that "*Territorial authorities' district plans must include the density standards in the table below (or standards that include greater development)*"
- 4) The new qualifying matter builds a case on the uniquely steep and variable terrain of Porirua. Wellington and Hutt councils share the same or steeper topography and have not done so.
- 5) We tautoko Kāinga Ora's Karen Williams' submission points around shading controls. In particular feel that the case for sunlight is overstated:
 - a) Mr McIndoe's *Indicators of Health and Wellbeing in the build environment* actually that "Curiously, access to sunlight does not feature prominently among wellbeing indices" (Section 7, page 7) and Ms Williams submission includes that MFE research on 47 identified studies of the impact of sunshine on a range of human outcomes concludes only limited evidence linking the two (Section 7.5, page 21). This appears to be a weak evidence foundation for introduction of a new "qualifying matter"
 - b) It appears that Mr McIndoe's has articulated a very narrow view of wellbeing (dismissing more holistic frameworks such as He Ara Waiora and the Living Standards Framework which would provide a wider and more robust view). It would be interesting to know what advice has been sought from actual Wellbeing experts and what independent peer review has been undertaken to attest to the quality of thinking and conclusions drawn.
 - c) The underlying premise also includes an assumption that people must get their sunlight quota only from inside their house, calculated in the middle of winter, in the middle of the day (when many may

be at work) and it may indeed be rainy or overcast. We think daylight is a more reasonable measure, and indeed this precedes the Sunlight section of the report.

- d) I have been unable to find details of the cost benefit analysis relating solely to this aspect (which I would expect to include the tangible and intangible costs of identifying properties in relation to the benefits expected from the outcomes sought, and consideration of the impact of trade-offs e.g. loss of supply and resulting affordability of housing and increased time, financial pressure and stress of dealing unnecessary administrative overheads)
- 6) Not only does this new qualifying matter create inequality of outcomes across the country for people in the same or similar positions, but it also doesn't reflect thinking in line with the changing times – as we will continue to be affected by events like Cyclone Gabrielle, councils need to be focussed on managing potential hazards and flooding which may reduce availability of viable sites for building. The ability to intensify and go higher will support making maximum use of viable land.
- 7) Considerations of how to best utilise sites created through intensification will be managed through the building design and consent process. Adequate heating, as Ms Williams says, could offset the negative effects of shading. The financial argument that costs may be prohibitive for heating also brings into play questions around the affordability of rates related to use of ratepayers' money.
- 8) Stress is a huge contributor to health. Navigating the Council processes has proven stressful for us and others.

C: Transparency of PCC processes related to this matter:

- 3) Porirua City Council demonstrated a lack of transparency given that information about who was affected by Height Control Shading C areas and how this was determined was very difficult to find and navigate. To actually find where these areas are, you have to go to "layers", expand the Variation 1 tab (which appears "on"), then tick "Height Control (Variation 1)" to display them. To find out what this means was even more difficult last year, despite putting common terms like Height Control into the search function. Currently, the PCC "homepage" doesn't feature the PDP and you have to search for it specifically.
- 4) Those properties currently designated as HCVA represent a major deviation from the intent of the NPSUD. We believe that if the council valued transparency, they would have approached the affected property owners directly, to ensure they were aware of the situation. There will undoubtedly be people unaware that their properties are HVCA designated and that if they don't know and speak up now, they cannot appeal this unless it is overturned.
- 5) The process for selecting South facing sites is based on the GIS plan with solid blue markings indicating south-facing 15-degree slopes. We note that this methodology is not discerning, (e.g. separately identifying 3 concrete steps and a small rockery garden retained by our neighbour as blue). It also does not differentiate between genuine slopes and retaining or excavations.
- 6) The council have made no notes or calculations in relation to decisions made on our property. We believe that this does not meet the requirements of Regulation 6 to ensure consistency in decision making and support for audit (as per the IANZ annual report 2019, p11).

D: In relation to our specific HVCA designated site (35 Terrace Road /DP LOT 4 DP 9161)

we note that:

- 1) We want the minimum standards that are set out in the original qualifying matters of the National Policy Statement Urban Development (NPSUD) to be applied to our property.
- 2) There are no steep south facing slopes on our property. The slope that goes right across the section highlighted in blue is actually 8 degrees.
- 3) PCC's own analysis didn't say the site wasn't steeply south facing until after we met with staff and provided them with topographical information from our surveyor, Cuttris, in a meeting last September. No one (including Mr McKenzie who was involved in the process) was able to explain why our property was in scope for HVCA at this time.
- 4) The contours shown in the GIS map in figure 1 of Mr McIndoe's evidence do not represent original ground levels and indiscriminately incorporate all earthworks, legal or otherwise. You can see that from the shape of the contours themselves and from photos taken before this area was developed.
- 5) Any buildings erected at the lower end/ East of our section would shade the houses below. However, that doesn't relate to the slope per se, but to unconsented excavations conducted at 3 Vella Road to create the building platform. You can still see the original ground level at the West and South of the property. This reflects the building choice made by the developer at the time. The blue area in blue on the GIS map (south boundary of our section) relates to a sheer vertical drop and, as such, has no slope.
- 6) We have raised concerns about the excavation of the Vella properties with PCC before. There is no record of consent for Earthworks in the building packet. A PCC staff member advised that they had "not been able to establish the considerations in relation to the cut on the boundary adjacent to 35 Terrace Road" and that "Revisiting the decisions made when the Vella properties were established is not something we [PCC] are prepared to undertake". Given that Porirua City Council considers everything historic after 5 years and provides "no mechanism to legitimise unpermitted work before 1991", we conclude that this building work is 'not legitimate'.
- 7) If we instead used the boundaries of 3 Vella Road and the maximum rise above ground level (4m) across the southern profile of the platform, against the narrowest point of the building platform (17.8m) and the slope is 12.7%. It does become steeper from the driveway, but this area is narrow, and can't be built on. Therefore it could be said that the Vella Road property should be considered to be immediately at the top of the slope.
- 8) Our calculations based on Figure 4 of Mr McIndoe's evidence show that the Vella Road flats do not receive sun on the solstice now, and nor will they if both they and we build to either 9m or 11m.
- 9) We are unaware of any other options put forward by PCC to ensure maximum use of the section e.g. considering making only part of this section under HVAC etc as is required under NPSUD para 3.33 (3e, iv).