

**Proposed Intensification Planning Instrument
for the
Upper Hutt City District Plan**

Section 32 Evaluation Report

VOLUME 4: QUALIFYING MATTERS

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1.0 Introduction

Sections 77I, 77N, and 80E(1)(a)(ii)(A) of the Amendment Act enables the Council to make the MDRS and any relevant building height or density requirements under Policy 3 of the NPS-UD less enabling of development to the extent necessary to accommodate one or more qualifying matters as specified within section 7I or 77(O) of the RMA and clause 3.32 of the NPS-UD.

Sections 77K and 77Q of the RMA provides the evaluative requirements for the retention of existing qualifying matters within the plan, where they address one or more of the matters specified under section 77I or 77(O). In effect, this approach simply maintains the existing applicability of these provisions in the plan, even if they have the effect of limiting the application of the MDRS or Policy 3 of the NPS-UD.

Examples of existing qualifying matters include flood hazard provisions, fault line provisions, electricity transmission line setbacks, historic heritage protection provisions etc. A full list of the existing qualifying matters areas that will continue to apply are included in a proposed definition for *existing qualifying matter areas* in Part 1 of the District Plan – Interpretation, Definitions.

Specific evaluation requirements for existing qualifying matters are included in sections 77K and 77Q to ensure the Council:

- Identifies the location where existing qualifying matters apply;
- Specifies the alternative density standards proposed for the areas affected by existing qualifying matters;
- Explain in the section 32 report why the Council considers that the qualifying matters apply to the identified areas; and
- Describe in general terms for a typical site in an identified area the level of development that would be prevented by accommodating the qualifying matter in comparison to the level of development that would have been permitted by the MDRS and Policy 3 of the NPS-UD.

2.0 Consideration of New Qualifying Matters

The use of new qualifying matters was considered during the preparation of the IPI, such as provisions to identify and protect SNAs on urban environment allotments via regulatory methods. After consideration of the timing and resourcing limitations and challenges associated with the mandatory IPI notification date, and the fact the Council is still in dialogue with affected property owners the Council has decided not to include any new qualifying matters in the IPI.

The Council has prepared a draft evidence base that identifies all significant natural areas (SNAs) within urban areas, in accordance with the identification requirements of the RPS¹. The Council intends to progress a plan change to incorporate these areas into the District Plan. The plan change would include relevant objectives, policies, rules and other relevant provisions to ensure the Council is meeting the requirements of section 6(c) of the RMA. This future plan change is also necessary to ensure the Council is meeting its duty under section 31(1)(b)(iii) to maintain indigenous biodiversity. It is noted the Government intends to gazette the National Policy Statement on Indigenous Biodiversity in December 2022², and the Council is now waiting to view any new requirements the NPS-IB will set for the SNA plan change.

¹ Policy 23, Regional Policy Statement for the Wellington Region 2013.

² [Proposed national policy statement for indigenous biodiversity | Ministry for the Environment](#)

In the absence of a notified plan change to identify and protect SNAs on urban environment allotments, the application of the MDRS increases the existing risk posed to SNAs through increased levels of permitted subdivision and development.

The IPI proposes to create a precinct over the extent of the identified SNAs and apply policy direction to encourage the protection of indigenous biodiversity. The application of the precinct is not a qualifying matter as it does not make the plan less enabling than the MDRS or prevent the modification of indigenous vegetation from within the identified significant natural areas. It does however provide policy direction that is intended to introduce greater policy balance to be considered alongside the MDRS objectives and policies when a resource consent applicant proposes to modify the identified significant indigenous vegetation or habitat. This will assist in accommodating the section 6(c) during the resource consent process and signals the Council's intent to meet its statutory requirements and functions with respect to the identification and protection of the SNAs via a future plan change.

3.0 Existing Qualifying Matters

3.1 Introduction

Under section 77I of the RMA and policy 4 of the NPS-UD, the Council may provide for District Plan provisions to be less enabling of development than the requirements of the MDRS or Policy 3 of the NPS-UD, where a qualifying matter exists. Section 77I enables the following matters can be considered as qualifying matters:

- a. a matter of national importance that decision makers are required to recognise and provide for under section 6:*
- b. a matter required in order to give effect to a national policy statement (other than the NPS-UD) or the New Zealand Coastal Policy Statement 2010:*
- c. a matter required to give effect to Te Ture Whaimana o Te Awa o Waikato—the Vision and Strategy for the Waikato River:*
- d. a matter required to give effect to the Hauraki Gulf Marine Park Act 2000 or the Waitakere Ranges Heritage Area Act 2008:*
- e. a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure:*
- f. open space provided for public use, but only in relation to land that is open space:*
- g. the need to give effect to a designation or heritage order, but only in relation to land that is subject to the designation or heritage order:*
- h. a matter necessary to implement, or to ensure consistency with, iwi participation legislation:*
- i. the requirement in the NPS-UD to provide sufficient business land suitable for low density uses to meet expected demand:*
- j. any other matter that makes higher density, as provided for by the MDRS or Policy 3, inappropriate in an area, but only if section 77L is satisfied.*

This IPI proposes to retain existing qualifying matters that fall under clauses (a), (b), (e) and (f) of section 77I. No new qualifying matters are proposed.

Sections 77K and 77Q require the Council to carry out a specific evaluation for each existing qualifying matter. This evaluation is carried out in the sections below.

3.2 Sections 77K and 77Q Requirements

The IPI proposes to retain a wide variety of existing qualifying matters that are already in the District Plan to:

- recognise and provide for section 6 RMA matters.
- give effect to national policy statements.
- ensure the safe or efficient operation of nationally significant infrastructure.
- manage open space zones.

Therefore, an evaluation under sections 77K and 77Q can be carried out for those matters rather than an assessment under section 77J and 77O. As specified by sections 77K and 77Q, each of the following matters are addressed below:

- (a) identify by location (for example, by mapping) where an existing qualifying matter applies:
- (b) specify the alternative density standards proposed for those areas identified under paragraph (a):
- (c) identify in the report prepared under section 32 why the territorial authority considers that 1 or more existing qualifying matters apply to those areas identified under paragraph (a):
- (d) describe in general terms for a typical site in those areas identified under paragraph (a) the level of development that would be prevented by accommodating the qualifying matter, in comparison with the level of development that would have been permitted by the MDRS and Policy 3:
- (e) notify the existing qualifying matters in the IPI.

3.3 Identification by location

The following table explains where each existing qualifying matter applies:

Existing Qualifying Matter	Where it applies
Food hazard extents identified on the Planning Maps comprising the: <ul style="list-style-type: none"> (a) River Corridor; (b) Stream Corridor; (c) Overflow Path; (d) Erosion Hazard Area; and (e) Ponding areas. (RMA section 6(h))	Within relevant residential zones as shown on the District Plan Maps.
1) Pinehaven Flood Hazard Extent; and 2) Mangaroa Flood Hazard Extent. (RMA section 6(h))	Within relevant residential zones as shown on the District Plan Maps.
1% (1 in 100 year) flood extent of the Hutt River. (RMA section 6(h))	Within relevant residential zones as shown on the District Plan Maps.
Fault band identified on the Planning Maps. (RMA section 6(h))	Within relevant residential zones as shown on the District Plan Maps.

Significant Heritage Features listed in Schedule HH-SCHED1. (RMA section 6(f))	Within relevant residential zones as shown on the District Plan Maps and listed in Schedule HH-SCHED1.
Notable Trees listed in TREE-SCHED1. (RMA section 6(f))	Within relevant residential zones as shown on the District Plan Maps and listed in Schedule TREE-SCHED1.
Urban Tree Groups listed in UTG-SCHED1. (RMA section 6(c) and (f))	Within relevant residential zones as shown on the District Plan Maps and listed in Schedule UTG-SCHED1.
Indigenous vegetation that is not on an Urban Environment Allotment ³ . (RMA section 6(c))	Throughout the relevant residential zones where an allotment does not meet the definition for Urban Environment Allotment under section 76(4C) of the RMA.
Rare or Threatened Indigenous Vegetation and Fauna in ECO-SCHED-2 where not on an Urban Environment Allotment. (RMA section 6(c))	Within relevant residential zones on allotments that do not meet the definition for urban environment allotments under section 76(4C) of the RMA.
The areas within 20 metres of the bank of any waterbody with an average width of 3 metres or more. (RMA section 6(c))	All waterbodies with an average width of 3 metres or more within a relevant residential zone.
The widths specified for esplanade reserves and esplanade strips in SUB-GEN-S1. (RMA section 6(d))	As specified for named water bodies in SUB-GEN-S1.
The areas within 20 metres of a high voltage (110kV or greater) electricity transmission line. (RMA section 77I(b) and (e) – NPSET, RMA section 55)	Within relevant residential zones as shown on the District Plan Maps.
The areas within 12-32m of a high voltage (110kV or greater) electricity transmission line. (RMA section 77I(b) and (e) – NPSET, RMA Section 55)	Within relevant residential zones as shown on the District Plan Maps.
The Open Space Zone as identified on the Planning Maps. (RMA section 77I(f))	As shown on the District Plan Maps.
The Natural Open Space Zone as identified on the Planning Maps. (RMA section 77I(f))	As shown on the District Plan Maps.
The Sport and Active Recreation Zone as identified on the Planning Maps. (RMA section 77I(f))	As shown on the District Plan Maps.

³ As defined by section 76(4C) of the RMA.

3.4 Why the existing qualifying matters apply to those areas

Provisions are in place to manage subdivision, use and development with respect to the following qualifying matters:

1. Qualifying matters necessary to give effect to the following RMA section 6 matters:
 - a. the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;
 - b. the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers
 - c. the protection of historic heritage from inappropriate subdivision, use, and development; and
 - d. the management of significant risks from natural hazards.

The Council considers the qualifying matters apply to the areas identified because they have been identified or described and included in the District Plan. The inclusion of these existing qualifying matters is authorised by section 771(a) of the RMA.

2. Qualifying matters necessary to give effect to the following national policy statements:
 - a. National Policy Statement on Electricity Transmission

The Council considers the qualifying matter applies to the areas identified on the District Plan Maps because they have been identified, mapped and included in the District Plan to give effect to the requirements of the NPSET. The electricity transmission networks is specified as regionally significant infrastructure within the RPS. The inclusion of this existing qualifying matter is authorised by section 771(b) and (e) of the RMA.

3. Qualifying matters for open space provided for public use, in relation to the land that is open space, comprising:
 - a. Open Space Zone;
 - b. Natural Open Space Zone; and
 - c. Sport and Active Recreation Zone.

The Council considers the qualifying matter applies to the areas as they are zoned for open space purposes within the District Plan, and the qualifying matter is authorised by section 771(f) of the RMA.

3.5 Description of the level of development that would be prevented

Each type of existing qualifying matter is discussed in general terms below with respect to the level of development that would be prevented compared to the level of development that would have been permitted by the MDRS and Policy 3. It is important to note the District Plan includes a potential consent path for urban development affected by the existing qualifying matter areas that do not comply with any relevant permitted activity standards. Therefore, such development is not prevented per se, although it may not be a permitted activity and in some instances resource consent may not be granted.

3.5.1 Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna

The provisions that identify and protect significant indigenous vegetation and significant habitats of indigenous fauna are not extensive within the urban areas of Upper Hutt City. The Council is yet to progress a plan change to identify and protect these areas on *urban environment allotments*. This

means that within the relevant residential zones affected by this IPI, the District Plan only identifies and protects the following unless located on a non-urban environment allotment as defined by section 76(4C) of the RMA:

- (i) urban tree groups that have been specifically identified and protected in accordance with RMA section 76(4A), (4B) and 4C);
- (ii) rare and threatened indigenous vegetation and fauna species identified in ECO-SCHED2 where not located on an *urban environment allotment* as defined by section 76(4C) of the RMA;
- (iii) indigenous vegetation that is not on an *urban environment allotment* as defined by section 76(4C) of the RMA;

As these qualifying matters only apply to non-urban environment allotments, they will not result in a significant reduction in permitted activity development in comparison with the level of development that would have been permitted by the MDRS and Policy 3 of the NPS-UD.

In the limited number of instances where urban tree groups are located in a relevant residential zone on a non-urban environment allotment, the existing qualifying matter will result in a reduction in as-of-right development compared to what could have been permitted by the MDRS and Policy 3 of the NPS-UD. However, it is not a reasonable option to consider applying the MDRS without retaining the existing levels of protection on these non-urban environment allotments for a matter of national importance. To do so would result in the Council failing to meet Part II of the RMA, and it would also fail to meet one of its core functions specified in section 31 (to maintain indigenous biodiversity).

3.5.2 Public Access to and Along Rivers

The provisions that require the provision of public access along rivers are applied at subdivision stage in the form of esplanade reserve and esplanade strip requirements. These provisions are included in the District Plan via section 77 of the RMA, as they serve one or more of the purposes specified in section 229 for esplanade reserves and strips.

The existing qualifying matters require the creation of esplanade reserves and strips ranging in width from a 'varying width suitable for access purposes along one side' (Collins Creek), up to 20 metres along both banks (e.g. Hutt River, Akatarawa River). On this basis, a typical site within a relevant residential zone that adjoins a named river in standard SUB-GEN-S1, the subdivision is required to set aside land as an esplanade reserve or strip to the specified width.

With respect to the level of development that would be prevented by accommodating the qualifying matter compared to the level of permitted development that would have been permitted by the MDRS and Policy 3, it is noted esplanade reserves or strips are already in place for the majority of the relevant residential zones in the City. The urban land most affected by this qualifying matter is the proposed St Patrick's Estate Precinct, which is to be rezoned from Special Purpose Zone to High Density Residential Zone under this IPI.

Most of the land in the City affected by the qualifying matter is zoned for purposes other than residential subdivision, use and development, such as rural zones and open space zones. This means the qualifying matter will have minimal impact on the amount of permitted development that would otherwise be possible as a permitted activity under the MDRS and Policy 3.

In general terms, the land within a relevant residential zone that is most affected by the existing qualifying matter is not suitable for residential development due to the presence of natural hazards,

meaning the existing qualifying matter will have minimal impact on the amount of permitted development that would otherwise be possible as a permitted activity under the MDRS and Policy 3.

3.5.3 Historic Heritage

Historic heritage is identified and protected within the City via the identification and protection of historic buildings, structure, sites and features. These heritage items are listed in a schedule and are protected and managed via a suite of objectives, policies and rules within the HH-Historic Heritage chapter.

Of the 27 heritage buildings, structures, sites and features identified within HH-SCHED1 – Heritage Features, 18 are also listed or recorded with Heritage New Zealand as one of the following:

- (i) Heritage New Zealand Heritage Covenant
- (ii) Historic Area
- (iii) Heritage New Zealand Category I listing
- (iv) Heritage New Zealand Category II listing

A typical site containing a historic heritage building, structure, site or feature requires a controlled activity resource consent where alterations and additions are proposed to a listed feature. Discretionary resource consent is required for partial or total demolition. The heritage features themselves are protected by the District Plan, but their settings (the balance of the allotment) are available for permitted activity development under the MDRS or Policy 3. The District Plan provisions do not protect the settings of protected buildings and structures.

On this basis, for a typical site containing a historic heritage feature, the amount of permitted development that would be prevented by accommodating the qualifying matter could range from all potential additional residential units to no restriction on permitted development at all depending on allotment size, the siting of the heritage feature within the allotment, and potential existence of other existing qualifying matters such as natural hazards. With only 27 listings in the District Plan, this qualifying matter is considered to have minimal impact on the overall MDRS permitted activity development in the City, but it may have a varying degree of effect on a site-specific basis for the 27 listed sites.

3.5.4 Significant Natural Hazards

Significant natural hazards are identified throughout relevant residential zones on the District Plan Maps. Natural hazards that are most significant in the City are those that arise from earthquakes and flooding. The provisions and mapping for these hazards address:

- a. Fault line (the Wellington Fault). There are differing levels of certainty on the exact location of fault through the City. This uncertainty is addressed via the identification of a band where evidence shows the fault is most likely located, but its exact location is not known. Provisions in the District Plan for buildings and subdivision address this uncertainty through requiring a resource consent to provide geotechnical information to confirm proposed building sites are not on the fault.
- b. Flood hazard and flood erosion hazard: Flood hazards are identified throughout the relevant residential zones and identified on the District Plan Maps. Depending on the level of threat, the District Plan either requires avoidance of development within high hazard areas, or remedying and mitigating of hazard risk in lower hazard risk categories. It is important to note that even the lower level hazard risks such as flood ponding hazard, would be a significant

natural hazard if mitigation such as requiring buildings to be above 1 in 100 year flood levels was not required by the District Plan.

In general terms, as shown on the District Plan Maps, most of the relevant residential zones in the City are not identified as being subject to significant natural hazards. The Fault Band is identified as a 40 metre wide (approx.) band located along the Northern edge of the City, following the general path of the Hutt River before continuing up the valley through residential areas to the north-east.

In general terms there would be no difference for a typical site within the areas identified as being subject to significant natural hazards, in the level of development that would be prevented by accommodating the existing flood hazard provisions in comparison with the level of development that would have been permitted by the MDRS.

Addressing natural hazards, including avoiding significant natural hazard risk, is addressed at the time of subdivision under section 106 of the RMA, and at the time of considering whether the Council will issue a building consent under sections 71 and 72 of the Building Act 2004⁴. The District Plan includes flood hazard permitted activity standards for building on land subject to specified natural hazards, meaning the majority of housing development that would be authorised under the MDRS could still occur if the specified mitigation measures are met.

3.5.5 National Grid

The New Zealand Electrical Code of Practice for Electrical Safe Distances 2001 (NZECP:34) prevents the erection of buildings and structures within specified distances of the national grid transmission lines. These regulations fall outside the jurisdiction of local authorities, but it is important to consider the restrictions this is likely to place on the ability to erect buildings and structures beneath high voltage transmission lines, regardless of what the District Plan enables. Section 55 of the RMA requires the District Plan to give effect to the NPS-ET.

For reverse sensitivity and community safety purposes the District Plan manages the following activities within close proximity to high voltage (110kV or greater) electricity lines and support structures:

- Subdivision;
- Buildings and structures; and
- Earthworks.

Proposed subdivision, development and earthworks within specified distances of centreline of electricity transmission lines, or base of an electricity transmission support structure are required to:

- Apply for resource consent; and
- Consult with Transpower New Zealand Limited.

Resource consent applications may be processed by way of limited notification with Transpower New Zealand Limited being determined an affected person.

The geographical areas affected by the transmission lines within a relevant residential zone in the City can be described as a limited number of General Residential Zone properties beyond walkable catchments of centres and rapid transit stops.

⁴ Decisions under section 106 of the RMA, and sections 71 and 72 of the Building Act are not limited to the consideration of natural hazards that are identified in a district plan.

In terms of what the existing qualifying matter provisions mean for restricting the amount of permitted development that would otherwise occur under the MDRS, it is noted the matter of safe separation distances are between buildings and structures and a transmission line, and earthworks in proximity to a national grid support structure are also managed under the New Zealand Electrical Code of Practice for Electrical Safe Distances 2001 (NZECP:34). The NPS-ET requires the District Plan to include provisions to manage many of the same actual and potential safety and reverse sensitivity effects as those managed under the NZECP:34. One of the key differences between the district plan and the NZECP:34, apart from who has legal authority under them, is the District Plan can identify and manage these effects prior to subdivision and development taking place, enabling a pro-active approach to managing safety and reverse sensitivity effects. In contrast to this NZECP:34 relies on people being aware of the requirements before carrying out development.

In general terms, the amount of permitted activity development on a typical that would be prevented by the electricity transmission line provisions compared to the amount of permitted development that would otherwise occur under the MDRS depends on the location of the transmission line or support structure in relation to the proposed building site, and the ability for a proposed development to satisfy any reverse sensitivity and safety issues raised by Transpower. In some situations, where a transmission line passes over the only part of a residential allotment where an additional residential unit could be constructed, the placement of a residential unit in that location may be deemed to result in too great a safety risk to the future occupants of the proposed residential unit, or would result in unacceptable reverse sensitivity effects on the national grid. These determinations are site-specific and are to be made on a case-by-case basis in consultation with Transpower.

In other situations, safety and reverse sensitivity effects may be able to be addressed via achieving acceptable setbacks and separation distances via bespoke building and subdivision design. These site-specific possibilities are determined through consultation with Transpower as part of the resource consent process.

3.5.6 Open Space Zones

Under the RMA open space zones are not a *relevant residential zone* under section 2 – Interpretation. On this basis, the MDRS cannot be applied via the IPI. On this basis, the inclusion of these areas as qualifying matters has no impact on the permitted level of development that would have applied under the MDRS.

APPENDIX R: Draft Significant Natural Areas