



The Right Honourable Christopher Luxton
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The Hon Penny Simmonds; Minister for the Environment
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cc/The Hon Chris Bishop; Minister for RMA Reform
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cc/Hon Simeon Brown; Minister of Local Government
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cc/Hon Paul Goldsmith; Minister of Justice
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27 March 2024

Dear Prime Minister

Further to my letter of 18 March 2024 to Hon Chris Bishop on behalf of the residents of Thorndon, another issue in relation to the recent Wellington City Council Environment and Infrastructure Committee resolutions on their Proposed District Plan has emerged. This is separate and distinct to the issues relating to Character Precincts and brings significant concerns relating to breaches of the Local Government Act 2002 requirements for consultation, as well as due process and natural justice by the Wellington City Council.

During the entire process of development of the District Plan from the Draft Spatial Plan in 2020, the Draft District Plan in 2021, the Notified Proposed District Plan of July 2022, and the Independent Hearing Panel (IHP) Recommendations released in February this year, the height limit for residential Thorndon to the west of the Wellington Urban motorway has always been promoted as consistently 11 metres or less.

Following the receipt of the Independent Hearings Panel (IHP's) Recommendations, the Wellington City Council, in its rejection of the significant IHP recommendations has arbitrarily increased height limits to a number of areas in residential Thorndon. These areas have never been considered for increased height limits at any stage of the District Plan process. Recent explanations for the changes

outlined that they relate to increasing the walkable catchment. But Thorndon has always been within all the proposed walkable catchments; afterall Thorndon is immediately adjacent to the perimeter of the City Centre Zone.

These areas now defined and added to allow developments of 22 metre height have not been presented to the community or residents at any stage; there is no empirical evidence to support this change.

The Association considers the change by the Wellington City Council as arbitrary and unfair. It is a breach of:

- natural justice
- the legal requirements of the Resource Management Act 1991
- the consultation requirements of the Local Government Act 2002
- the provisions of the National Policy Statement on Urban development 2020.

In addition to the breach of natural justice, the late, unnotified change to the plan which is now being presented to the Minister fails to meet the legal requirements of the Resource Management Act, for the development and handling of plan changes, the requirements of the Local Government Act for consultation, and the National Policy Statement on Urban Development.

- Resource Management Act 1991 (RMA) – Schedule 1 of the RMA presents requirements for undertaking a Plan change. While the original Draft District Plan and the IHP's recommended improvements to the Plan comply with these requirements, the changes in height limits in Thorndon made by a committee of Wellington City Council on 14 March 2024 do not.
- Local Government Act 2002 (LGA) – The LGA presents requirements for consultation which apply to Plan changes. Introduction of late changes to a Plan, without any consultation, fails to meet these requirements, and is in breach of the LGA including the principles of consultation detailed in Section 82 of the LGA.
- National Policy Statement on Urban Development 2020 (NPS-UD) – this requires (Clause 3.6 (4)) that **any** changes to RMA planning documents to give effect to the bottom-line requirements of the NPS-UD must be made using a Schedule 1 process. Late, unnotified and unnecessary amendments to a District Plan, as attempted by the Wellington City Council do not fit with this requirement.

In their meeting of 14 March 2024, it is recorded that the Wellington City Council would reject¹ the IHP recommendation for a walkable catchment and consequential zoning for Kilbirnie and have proposed that this would be a future plan change. The reasoning for this rejection of the IHP recommendation is recorded in the Minutes as:

“Council agrees with the view of the reporting officer in the Section 42A Report (Stream 1, Part 1 para 373) that “the Council has not proposed the upzoning at any stage: Draft Spatial Plan, Final Spatial Plan, Draft plan nor [Proposed] plan. The effects (both positive and adverse) of enabling six storey buildings may be significant. Landowners and residents affected have not had the opportunity to consider and submit on the change. From a best-practice engagement perspective, it would be best for this scale of upzoning to be discussed with the community about its implications and let them have their say. While the

¹

<https://wellington.govt.nz/-/media/your-council/meetings/committees/kt-environment-and-infrastructure/2024-03-14-minutes-eic-updated-1803.pdf>

*NPS-UD requirement to enable six stories in this area would remain, people may raise relevant points about a High Density Residential Zone boundary ... or other matters.”
The change arose from submissions highlighting how the NPS-UD and its qualifying matters (such as natural hazard overlays) had been applied around Kilbirnie.*

This creates a situation of natural justice – where other areas of the City had the opportunity to provide their views through consultation but not the people of Kilbirnie. “

The extension of the walkable catchments in Thorndon and the imposition of 22 metre height limits here and elsewhere has, as for Kilbirnie, not been proposed at any stage - Draft Spatial Plan, Final Spatial Plan, Draft District Plan nor the Notified Proposed District Plan, or in the recommendations proposed by the IHP. Using the Kilbirnie decision as precedence, it is not democratic, acceptable or appropriate for the Wellington City Council to introduce changes to the Thorndon community and residents which they have not consulted in Thorndon.

The Association requests that the Minister, in considering and making a decision on the Wellington City District Plan, takes account of the requirements and expectations of the RMA, the LGA and the NPS-UD and only allows urban intensification proposals that have been the subject of a proper democratic process, either through the RMA Schedule 1 process to produce the Notified Proposed District Plan, or as amended by the IHP. This is clearly what was expected by the NPS-UD.

We note that with the outcome of either the Notified Proposed District Plan or the IHP changes, there will be residential development capacity that substantially exceeds the requirements of the NPS-UD and the needs of the City for the next 30 years. We also note that in considering the development of a walkable catchment and upzoning in Kilbirnie, the Council have already recognised that natural justice issues require that this be handled through a future Plan Change. We recommend that all the late changes made, without evidence by the Council in their meeting of 14 March 2024, that are not included in either the Notified Proposed DP or the IHP recommendations be sent back to the Council for them to consider for a Plan Change. We note that, as the development capacity requirements of the NPS-UD will have been met before this Plan Change, that the full requirements to consider effects and consult with the community, and affected residents of the RMA and LGA (or any replacement legislation) will need to be met, without using the current expedited process, which has been used to try to politicise the decision that a Minister must make.

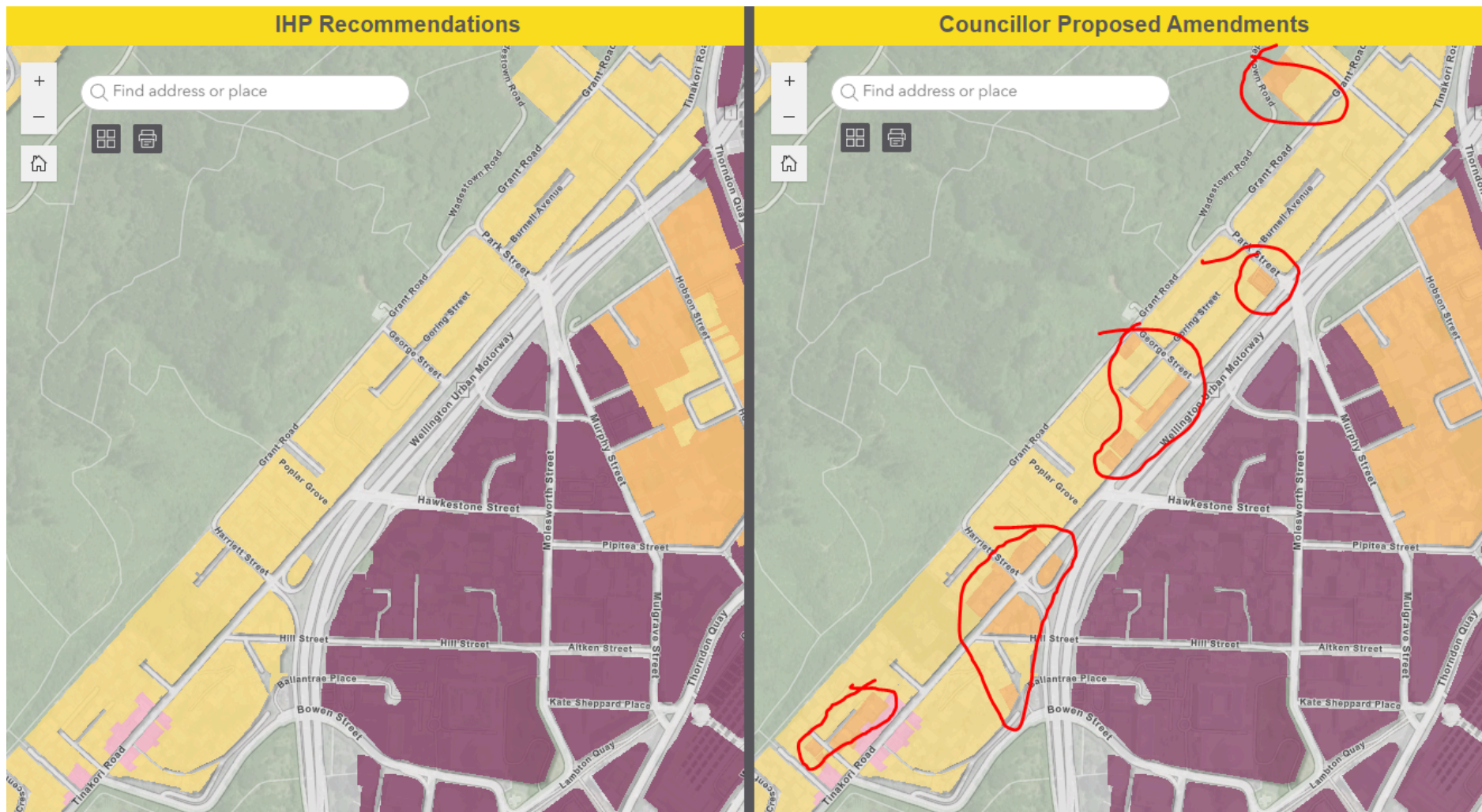
We, together with other residents associations and community groups, have strongly criticised the group of Councillors in control of the Wellington City Council for their lack of evidence, transparency and due process. We believe that they have deliberately stepped into this position where they intended to undermine central government policy stability by randomly and arbitrarily rejecting the IHP recommendation, by breaching the natural justice rights of the community and rule of law expectations of the Government. This is a flagrant disregard of the law by the Wellington City Council. We urge the Minister and Government to call out their behaviour and impose observers and/or commissioners on the Wellington City Council.

Yours sincerely



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Maps copied from: <https://experience.arcgis.com/experience/0645dd8999c0492faec0f46e11df1779>

Non-notified, arbitrary, Councillor Proposed Amendments would have High Density plots (6+ storeys) scattered amidst an otherwise cohesive Medium Density Residential Zone (11m) proposal endorsed by the IHP. The Councillors' random amendment would create discordance with qualifying matters i.e. character precincts and a natural hazard feature.