

## RESPONSE TO ISSUES RAISED BY HEARING COMMITTEE AT END OF DAY 1 OF HEARING

The Hearing Committee has asked WDL to respond on four matters which are:

1. Area B of the Wallaceville Structure Plan (vires, fairness, policy implementation)
2. Triangle of land south of Alexander Road - urban design response regarding Grants Bush or Wallaceville Living Area Precinct (Residential Centres Overlay or not)
3. Planning process – flow diagram
4. Mechanisms to address detailed foundation design in triangle area

We were not asked to respond on all matters by this morning. It was acknowledged that some details can be finalised between now and closing submissions. However, we wish to provide some initial comments on the Area B issue.

### AREA B OF THE WALLACEVILLE STRUCTURE PLAN

The Committee have raised a good question regarding the implications for PC40 of the recent case *Queenstown Airport Corporation Limited v Queenstown Lakes District Council [2014]*, NZEnvC 93. This was the third interim decision of the Environment Court in relation to this case, issued in April 2014. **This is attached for the Committee's information.**

In this case, the Environment Court found that it was ultra vires to include rules where activity status is dependent on the future grant of consent to a Comprehensive Development Plan (CDP). This is because activity status is derived from the RMA and its subsidiary planning documents (ie. the district plan) and not from a resource consent.

#### The solution in the Queenstown case

The final outcome for that particular plan change (Plan Change 19) was set out in the Environment Court's final decision, issued in September 2014, *Queenstown Airport Corporation Limited v Queenstown Lakes District Council [2014]*, NZEnvC 197. **This is attached for the Committee's information.**

The outcome was the inclusion of policies and rules relating to spatial layout plans and the requirement for applications to be accompanied by a spatial layout plan for the relevant area. The requirement for a future CDP to be approved by way of separate resource consent was deleted, as were the subsequent rules that linked activity status to compliance with the approved CDP. Instead, failure to comply with the information required (ie. provision of spatial layout plan) resulted in a higher activity status applying.

The relevant policies approved by the Court are:

#### Policy 1.5<sup>1</sup>

To use a spatial layout plan in Activity Areas C1 and C2 to:

- (a) ensure buildings and subdivision give effect to the objectives and policies of the Zone; and
- (b) co-ordinate development within these activity areas and manage their interfaces and integration with adjoining activity areas and Zones.

#### Policy 3.1<sup>2</sup>

To require applications for buildings and subdivision in Activity Areas C1 and C2 (except for subdivisions that create lots for an entire Activity Area) to include a spatial layout plan (SLP) for the whole of the Activity Area within which they are located. The spatial layout plan is to be prepared with reference to:

- the objectives and policies of the Zone and the relevant Activity Area;

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1 Set out in Annexure A of the Court's final decision (NZEnvC 197) at pages 12-3 and 12-4

2 Set out in Annexure A of the Court's final decision (NZEnvC 197) at pages 12-5 and 12-6

- current and anticipated future built form (building mass, typologies and footprint) and uses within the Activity Area;
- the anticipated future capacity of the Activity Area; and
- relationships and connections within adjacent Activity Areas.

The spatial layout plan is to identify the following features:

- i. the location, width and design of publicly accessible roads, laneways and access ways having regard to vehicles, public transport, pedestrians and cyclists that are intended to use them;
- ii. the location and shape of publicly accessible open space areas;
- iii. the location of indicative view shafts;
- iv. indicative landscape concepts for the above; and
- v. the three waters infrastructure.

The relevant rule approved by the Court<sup>3</sup> is:

*Applications for buildings shall be accompanied by a spatial layout plan for the whole of an Activity Area in accordance with Policy 3.1 including:*

- i. *The location, width and design of publicly accessible roads, laneways and access ways having regard to vehicles, public transport, pedestrians and cyclists that are intended to use them;*
- ii. *The location and shape of publicly accessible open space areas;*
- iii. *The location of indicative viewshafts;*
- iv. *Three waters infrastructure, including soakage areas and overland flow paths for stormwater;*
- v. *Concept landscape design treatment of the above (such as road cross sections and indicative location and layout of open space areas);*

*Where relevant, applications may rely upon any spatial layout plan submitted as part of a prior application that has received consent.*

#### **Plan Change 40**

It is accepted that the current wording of Plan Change 40 is inconsistent with the above Court decision in that:

- It includes Policy 4.4.15 that sets the framework for approval of a structure plan for Area B.
- It includes rules (in notified Appendix Residential 4) relating to development in the interim period until a structure plan is approved and sets the activity status of subdivision and development in Area B depending on whether or not a structure plan has been approved.

#### **Applying the principles of the Court's solution in the Queenstown case to provide a solution for PC40**

The good news is that a solution which is vires is relatively simple to achieve.

First, it needs to be emphasised that:

1. PC40 has already sought to rezone Area B to residential
2. Under PC40, the Wallaceville Structure Plan applies to the whole of the area to be rezoned (ie. Areas A and B)

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<sup>3</sup> Set out in Annexure C of the Court's final decision (NZEnvC 197) at pages 15-1 and 15-2

3. The Wallaceville Structure Plan (suggested by Council planners, and agreed by WDL, to be inserted as **new Chapter 39: Wallaceville** instead of in new Residential and Business Zone appendices (Appendices Residential 3 and Business 4) as notified.
4. The content of the Wallaceville Structure Plan includes (1) the structure plan map; (2) the precinct descriptions, intentions and outcomes; (3) road typologies; (4) stormwater management principles. These all apply to both Areas A and B.
5. It is submitted that there has been thorough analysis of both Areas A and B, and the technical evidence presented by all of WDL's experts confirms that both Area A and B is suitable for residential development.
6. While DOC has agreed that the shape and boundaries of its existing Floodplain Remnant can be amended, agreement has not yet been reached regarding what the final shape and boundaries should be (agreeing, however, that the overall area shall be no smaller). Were it not for this **one** matter - the final decision on covenant boundaries) then the indicative roads and reserve areas within Area B would have been shown for Area B just as they have been for Area A.
7. In effect, only this internal layout needs to be finalised and - consistent with the Queenstown decision - it is now considered that there does **NOT** need to be any future approval process for a "structure plan" that would then sit outside of the District Plan (by virtue of it being introduced by way of a resource consent process). Similarly, there is no need at all for the activity status of subdivision and development in Area B to depend on the approval or otherwise of a future structure plan.
8. With the benefit of this recent Queenstown case, it would have been preferable for the structure plan map to have shaded Area B in the yellow colour of the Wallaceville Living Precinct (not a different grey colour). Also, given only the very limited matters still to be resolved, it would have been preferable not to have included the notation in Area B saying "subject to future structure planning" given that the Wallaceville Structure Plan - including (1) the structure plan map; (2) the precinct descriptions, intentions and outcomes; (3) road typologies; (4) stormwater management principles - does already apply to both Areas A and B (as notified).
9. A key rule in PC40 as notified is Rule 18.28B which makes all subdivision in the Wallaceville Structure Plan Area a restricted discretionary activity (instead of controlled activity elsewhere). This rule includes matters of discretion that provide a key part of the proposed solution.

#### Changes to give effect to this solution

##### PC40 Amendment 1 – New 2.6.9D (Specific information requirements for applications for subdivision or development within the Wallaceville Structure Plan Area)

This already requires assessment against Wallaceville Structure Plan. It is proposed only to delete the reference to any approved structure plan and include information requirement for a spatial layout plan to be included for applications in Area B (consistent with Queenstown approach)

##### PC40 Amendment 3 – New Objective 4.3.5

This already applies to whole of Wallaceville Structure Plan, including Areas A and B. It is proposed to include a specific cross-reference to Chapter 39. No other changes needed.

##### PC40 Amendment 8 – New Policy 4.4.14 (Subdivision and development to be consistent with Wallaceville Structure Plan)

As notified, this only applies to Area A. It is proposed to remove the reference to Area A so that this policy applies throughout the whole of the Wallaceville Structure Plan, both Areas A and B.

##### PC40 Amendment 9 – New Policy 4.4.15 (Avoid subdivision and development in Area B until future structure plan approved)

Delete – to give effect to Queenstown decision.

PC40 Amendment 9A – New Policy 4.4.15A (Subdivision and development in Area B to be consistent with approved Structure Plan) as proposed by UHCC planners to be added

Delete – to give effect to Queenstown decision.

PC40 Amendment 10 – New Policy 4.4.16 (Subdivision and development not consistent with Wallaceville Structure Plan)

Can remain largely unchanged, however delete references to Areas A and B as no need to make any such differentiation.

PC40 Amendment 27 – New Rule 18.28B (Restricted discretionary activity rule for all subdivision in the Wallaceville Structure Plan Area)

This is a key rule that enables Council to retain control over all future subdivision including to power to approve or decline. It is proposed to:

- Move the requirement to comply with the minimum requirements for subdivision (18.5) and access standards (18.9) to be a standard instead (same effect)
- Specify that failure to comply with these standards triggers full discretionary activity status.
- Delete any reference to any approved structure plan or concept plan (previously proposed in planners' joint statement to be added – but not needed with this solution)
- Add the following to the existing matters of discretion
  - Standard, construction and layout of roads
  - Provision of cycle and pedestrian connections
  - Provision of, and effects on, utilities and/or services (existing wording from controlled activity subdivision rule, as requested by UHCC planners)

PC40 Amendment 28 – Existing Rule 18.37 (Matters for consideration)

Delete any reference to any approved structure plan or concept plan (not in notified version of PC40 but previously proposed in planners' joint statement to be added – but not needed with this solution)

PC40 Amendment 29 – New Appendix Residential 3 Wallaceville Structure Plan

This appendix is now proposed by UHCC planners (and accepted by WDL) to be contained in a new chapter 39: Wallaceville.

It is clear that the Wallaceville Living Precinct description, intentions and outcomes apply to both Area A and Area B, as stated in the first line under the heading. However, it is proposed to amend the two sentences under the Area B subheading to delete references to a future structure plan process as in reality all that remains to be finalised are some internal spatial layout details once the DOC covenant amendments are finalised. These can be information requirements at time of subdivision consent, following the approach of the Court in the Queenstown case.

PC40 Amendment 308 – New Appendix Residential 4 (Wallaceville Area B Structure Plan)

This notified appendix contains the interim rules that apply to any subdivision or development in Area B until such time as a future structure plan is approved.

It is proposed to delete this as it is not needed with this solution and its removal is consistent with Queenstown decision.