

**UPPER HUTT CITY COUNCIL HEARING ON
PROPOSED (PRIVATE) PLAN CHANGE 40: WALLACEVILLE**

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

a private plan change request ('Proposed (Private) Plan Change 40: Wallaceville') to the Upper Hutt City District Plan made by Wallaceville Developments Limited ('WDL').

EXPERT CONFERENCING JOINT STATEMENT TO THE HEARING COMMITTEE (#3)

DATED: 27 July 2015

INTRODUCTION

1. The Hearing Committee's Minute 3 (dated 14 July 2015) directed that the Requestor and Council prepare a third joint statement that indicates all agreed amendments to the provisions and sets out any provisions which remain in contention and the reasons for disagreement.
2. This third joint statement includes:
 - Final agreement on the approach to the policy framework for Area B;
 - Minor changes to wording of some provisions; and
 - Updated Wallaceville Structure Plan documents with agreed amendments as a result of matters raised by submitters and the Hearing Committee.
3. This statement is an in principle agreement between experts engaged by WDL and Council. No submitters were involved in, or have agreed with the responses contained in this statement.
4. Participants in **Conferencing** were:
 - Stephanie Blick – Senior Planner, Harrison Grierson Consultants (for Requestor)
 - Steve Taylor – Consultant Planner for Upper Hutt City Council
 - Richard Harbord - Director, Planning and Regulatory Services, Upper Hutt City Council
5. Attachments to this statement:
 - **Attachment 1** – Final agreed track change amendments to District Plan provisions amendment table. An evaluation of the amendments has been included to assist the Hearing Committee with the Section 42AA further evaluation.
 - **Attachment 2** – Final agreed amendments to the Wallaceville Structure Plan precinct descriptions, Wallaceville Road Typologies and the Wallaceville Structure Plan map.

DISCUSSION ON MATTERS FOR THE REQUESTOR AND COUNCIL

Area B

6. In the second joint statement WDL and Council officers agreed in principle to the approach taken to managing Area B.
7. Subsequent to the agreement reached, the Hearing Committee raised a number of concerns with the proposed approach to Area B and requested that WDL and the Council consider the following:
 - i. *The vires of the notified provisions and of any proposed amendments arising over the course of the hearing*
 - ii. *Whether the suggested revisions to the Area B provisions (and particularly the jettison of the originally notified future process associated with the inclusion of the Structure Plan for Area B and the proposal to include such a Plan with additional elements through the current decision making process) are lawful and within the scope of the Plan Change as notified.*

8. Legal opinions were sought by both WDL and Council with respect to the new approach proposed by Mr Andrew Collins on day 2 of the hearing (9 July). In summary the above advice confirms that the revised approach is lawful and within scope.
9. The agreed amendments are shown in **Attachment 1**. On the basis of the agreed amendments proposed Appendix Residential 4 is recommended to be **deleted**.

Policies and Rules

10. Minute #3 requested that a clear indication of matters of agreement and disagreement between the Requestor and the Council be provided including with reference to:
 - i. *The need (or otherwise) for the proposed explanation to Policy 4.4.3, and the potential relocation of that into the proposed area-specific policies for Wallaceville (i.e. 4.4.16);*
 - ii. *Whether the area-specific policies require amendment for improved clarity and guidance, including the possible combination of the policies (i.e. 4.4.14 to 4.4.16);*
 - iii. *Related to this point, whether the rules (particularly the structure plan and associated rule triggers, and assessment matters) best implement the policies – by way of example, is the ‘encouragement’ rule approach to higher density housing an effective way (as opposed to direct control) to ensure the Structure Plan’s stated outcome that mixture of housing types will be achieved?*
11. As a consequence of amendments to the Area B approach, a number of policies have been deleted, and others renumbered. This includes above reference policy 4.4.16, which now becomes policy 4.4.15.
12. An evaluation of the amendments is also provided in the final agreed district plan amendments table (attached as **Appendix 1**). As the new approach to Area B has been agreed by Council Officers and the Requestor, proposed policy 4.4.15 is no longer required to be adopted.
13. The hearing committee also sought consideration as to the terminology contained in the policies and whether such terminology was appropriately carried through and implemented in the corresponding rules. The policies, in combination with the proposed objective, rules, information requirements, matters of discretion and matters for consideration seek to ensure that the future development of the site is assessed against the Wallaceville Structure Plan. However, the provisions have been drafted so that flexibility exists. The policy uses the phrase ‘shall be consistent’. This phrase requires compatibility with, but not the rigid application of the Structure Plan. It therefore appropriately allows for minor variations from the Structure Plan e.g. in the final alignment of public open spaces or the alignment of roads.
14. This approach is considered appropriate instead of ‘fixing’ the Structure Plan or making it a Master Plan for the site. This is because retaining some flexibility reflects the length of time (10+ years) over which a development of this size will take place. The approach is one which provides a high degree of certainty about the overall outcome for the site, but which allows flexibility if the

market does not respond as anticipated to the development types proposed or if a specific opportunity arises, not currently anticipated.

15. With respect to point 3 above, the encouragement approach was addressed in the opening statement of Ms Boyd. Ms Boyd correctly points out that a consequence of adopting a structure plan into an existing plan framework is that it relies on the plan's permitted activity standards and objective and policies and in doing so allows for the construction of non-CRD development / standard density residential accommodation as a permitted activity. Such activities are not consistent with the intentions and outcomes of the Urban Precinct which seeks high density CRD development. Ms Boyd concludes that it would not be an appropriate approach to subject future land owners in the Urban Precinct to more stringent controls on activities which are permitted in residential zones elsewhere in Upper Hutt.
16. The encouragement approach that is supported by Council and WDL has been to enable higher density development through the adoption of the comprehensive residential centres overlay to Grants Bush and the Urban Precinct, and amendments to bulk and location requirements. The plan change request includes specific plan provisions and specific outcomes in the Wallaceville Structure Plan which clearly signal the intended use of the Urban Precinct being high density residential. As such developments deviate only slightly from the CRD rules, it was concluded that the utilisation of such rules and minor amendments/tweaks to encourage slightly higher density was the most appropriate means of seeking to achieve such an environment. This was addressed in the Section 32 report.
17. The minor amendments sought, in combination with the inclusion of a restricted discretionary rule, will allow Council enough scope to assess consistency of subdivision with the WSP and encourage activities that satisfy the WSP intentions and outcomes sought for the Precinct. To reiterate this, the following amendment has been agreed to the intention of the Urban Precinct to reiterate the desired high density residential outcome for this precinct:

*A compact and attractive **high density** residential precinct, making efficient use of the land resource in this location and providing a transition from the Business Commercial Zone to other residential areas.*
18. The 'encouragement' approach achieves an appropriate balance of private property rights and efficient land use planning. However such an approach does not negate the possibility of permitted activities occurring which are inconsistent with the Structure Plan.
19. Should the Hearing Committee warrant it necessary that a rule pertaining to the Urban Precinct that controls activities otherwise permitted such as standard residential development, strong policy guidance or amendments to proposed policy 4.4.15 (notified as policy 4.4.16) would be required to allow Council the ability to turn such applications down.

Confirmation of the validity of the Heretaunga Pistol Club Submission

20. The legal opinion obtained by Council dated 13 July 2015 and provided to the Hearing Committee on Friday 17 July confirmed that the submission of the Heretaunga Pistol Club can be disregarded as the submission of the New Zealand Defence Force was withdrawn.

Foundation Design

21. Minute #3 requests the WDL and Council consider whether any measures need to be included in the policies, rules and/or matters of discretion/assessment about foundation design or specify whether this is a matter already dealt with in the operative Plan.
22. Council Officers and WDL have agreed to an amended matter of discretion within the proposed new subdivision rules to allow consideration of land stability:

- *Earthworks and land stability*

23. In addition, the parcel of land of the Wallaceville Structure Plan Area that is located on the southern side of Alexander Road is proposed to be excluded from the existing rule that allows two or more dwellings on a site that comply with the net site area standards as a controlled activity. The exclusion of the land parcel is a temporary measure that seeks to ensure that, if in the unlikely event that multiple dwellings are proposed on the site prior to subdivision taking place, that land stability concerns can be adequately addressed through the discretionary activity resource consent process.

Contamination

24. Minute #3 requests the WDL and Council consider whether additional controls on earthworks are required for triggering a land use consent.
25. The oral submission of Mr Paul Persico raised a number of concerns in relation to possible contamination effects associated with past uses of the site. Both Mr Bull (Council's peer reviewer) and Mr Robotham (WDL's contamination expert) provided a brief verbal reply with respect to the concerns raised by Mr Persico. In response to questions from the Hearing Committee, both Mr Robotham and Mr Bull confirmed their professional opinion that the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health ('the NES') provides a robust process and set of standards to address potential contamination of the site. A summary of how the NES applies to further development of the Wallaceville Structure Plan Area is provided below.

The NES and the District Plan

26. The site has been subject to a number of past land use activities several of which are listed on the Hazardous Activities and Industries List (HAIL) and thereby the NES will apply to the future development of the Wallaceville Structure Plan Area. The three activities of relevance to future development that are controlled under the NES are:

- i. Disturbing soil

- ii. Subdivision
- iii. Change in land use

27. A number of preliminary site investigations have been commissioned that identify the potential for contamination across the site. The consequence of those reports is that subdivision or a change in land use to residential activities is not permitted under 4(b) of the regulations. The regulations require that if an activity cannot meet the requirements for a permitted activity, a resource consent will be required. For an application to be considered as a controlled or a restricted discretionary activity, the consent authority must receive a detailed site investigation report on the land. The report must identify the applicable standard for soil contamination for the land. If the detailed investigation shows that the soil contamination does not exceed the applicable standard for the land, then the activity must be considered as a controlled activity. If the detailed investigation shows that the soil contamination does exceed the applicable standard for the land, then the activity must be considered as a restricted discretionary activity.

28. Regulation 10(3) sets out the matters over which the council has discretion when assessing and granting the application.

- a. *The adequacy of the detailed site investigation, including site sampling, laboratory analysis, and risk assessment*
- b. *The suitability of the piece of land for the proposed activity, given the amount and kind of soil contamination.*
- c. *The approach to the remediation or ongoing management of the piece of land, including:*
 - i. *the remediation or management methods to address the risk posed by the contaminants to human health*
 - ii. *the timing of the remediation*
 - iii. *the standard of the remediation on completion – both the applicable standard that must be met and the method of validating (confirming) that the standard has been met (based on the guidance on site validation contained in CLMG No. 1)*
 - iv. *the mitigation methods to address the risk posed by the contaminants to human health*
 - v. *the mitigation measures for the piece of land, including the frequency and location of monitoring specified contaminants.*
- d. *The adequacy of the site management plan or the site validation report or both, as applicable.*
- e. *The tracking, transport and disposal of soil and other materials taken away from the piece of land, to ensure the soil goes to an appropriate disposal facility, and there is no risk to people during the transportation of the soil (for example, from spills or dust emissions).*
- f. *The requirement for and conditions of a financial bond for example.*
- g. *The timing and nature of the review of the conditions in the resource consent.*
- h. *The duration of the resource consent.*

29. In light of the requirements of 10(3), Council would expect remediation to consider the risks across the entire site, and to be appropriate for the anticipated residential activities provided by the zoning.

30. The NES does not contain any policy guidance. Councils must assess any consent applications under the NES in accordance with the requirements of section 104 of the RMA. When considering an application for a resource consent required by regulation 9, regulation 10, or regulation 11, the consent authority must have regard to any relevant provisions in the district plan or proposed district plan, and the regional policy statement or proposed regional policy statement (RMA s

104). It is standard practice that the resource consent requires a Remediation Action Plan (RAP) to be approved by Council prior to earthworks / change of use for that part of a site identified by the Detailed Site Investigation (DSI) as being contaminated.

31. The NES does not say that a district rule can be more stringent than the NES and so all regulations in this NES prevail over any district rule that applies to assessing and managing contaminants in soil to protect human health (RMA s.43B(1)).
32. In addition to the requirements of the NES, and in addition to the earthworks standards set out in Chapter 23 of the District Plan, the plan contains a chapter (Chapter 34) that seeks to control development of contaminated land. This section applies in addition to the regulations of the NES as the provisions extend to more matters than solely the protection of human health. Pursuant to Section 34.1 of this chapter, the use, development or subdivision of any contaminated site is a Discretionary Activity. The matters for consideration for resource consent requires the preparation of an environmental risk assessment.
33. In terms of existing policy guidance related to the use, development or subdivision of contaminated land, the District Plan contains the following relevant objectives and policies:

Policy 9.4.2 – To avoid, remedy or mitigate the contamination, degradation and erosion of soil from earthworks or vegetation removal through advocating responsible land use practices.

Policy 17.4.2 – To promote appropriate use of contaminated sites having regard to the type and level of contaminants present.

The NES and building regulations

34. In addition to the NES regulations and district plan controls outlined above, all new buildings as well as the alteration or demolition of existing buildings within Wallaceville is controlled by the Building Act 2004.
35. Building work in New Zealand is governed by the Building Act 2004, the Building Regulations 1992, and the Building Code, which is the First Schedule to the Building Regulations. Specifically Clause F1 – Hazardous Agents on Site of the Building Code addresses the requirements for buildings to be constructed to avoid the likelihood of people within the building being adversely affected by hazardous agents or contaminants on the site. Clause F1 of the Building Code Building Regulations 1992. Schedule 1. New Zealand Building Code Clause F1 Hazardous Agents on Site. Ref. Figure 1. Pg12. also recommends the site history is considered before a building consent application is submitted to ensure the provisions of the Clause are met.
36. Building plans and specifications are required to be assessed by building consent authorities (i.e. Council) to ensure they comply with the Building Code before a building consent is issued. The requirements of section 37 of the Building Act 2004 (refer below) will apply if soil contamination will or may materially affect the building work.

37. Territorial authority must issue certificate if resource consent required

- (1) *This section applies if a territorial authority considers that—*
 - (a) *a resource consent under the Resource Management Act 1991 has not yet been obtained; and*
 - (b) *the resource consent will or may materially affect building work to which a project information memorandum or an application for a building consent relates.*
- (2) *The territorial authority must issue a certificate, in the prescribed form, to the effect that until the resource consent has been obtained—*
 - (a) *no building work may proceed; or*
 - (b) *building work may only proceed to the extent stated in the certificate.*
- (3) *The certificate must be—*
 - (a) *attached to the project information memorandum; or*
 - (b) *if no project information memorandum has been applied for, provided to the building consent authority.*

Direct Access to Alexander Road

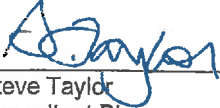
37. The notified plan framework would have allowed private vehicle access associated with a single dwelling as a permitted land use activity. Two or more dwellings complying with the net site area standards of rule 18.10 would have been controlled. Matters of control for multiple dwellings include 'standard, construction and layout of vehicular access' (rule 18.8). As consent applications for controlled activities must be approved, this framework was not considered as providing the necessary certainty to ensure that private vehicle access onto Alexander Road would not occur until a reduced speed environment is in place.
38. To address this point, a new standard has been included within the joint statement under rule 18.9 (access standards for subdivision and land use activities) limiting vehicle access onto Alexander Road from Areas A and B. Contravention of this standard would default to discretionary activities under the catch-all rule in 18.1 (subdivision) or 18.2 (land use). Consideration of discretionary consent would then take into account whether the speed environment had been reduced. It would also be informed by the Wallaceville Road Typologies that form part of the structure plan.
39. Amendments to the Wallaceville Road Typologies have been agreed within the joint statement to inform the consideration of subdivision and land use consent applications, as directed by amendments to policy 4.4.14 (contained in the attached joint statement) and assessments against rule 18.28B. This includes clarification of the expectation that traffic calming would be imposed prior to subdivision approval.
40. Amendments to policy 4.4.15 (contained in the attached joint statement), including consideration of the 'safety of road users', have also been included within the joint statement.

AREAS THAT HAVE NOT BEEN RESOLVED

41. The issues of contention that have not been resolved between WDL and Council are as follows:

i. *Business/Commercial land uses in the Urban Precinct.*

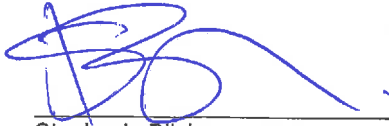
42. This matter is addressed in both Council's and WDL's right of reply



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