

IN THE MATTER OF the Resource Management
Act 1991

AND

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

**SUBMISSIONS ON BEHALF OF WALLACEVILLE DEVELOPMENTS LIMITED
[RIGHT OF REPLY]**

1.0 INTRODUCTION

- 1.1 The formal hearing proceedings on Proposed Plan Change 40 were adjourned on Friday 10 July. The Hearing Committee has issued a third minute requesting additional responses from Council and the Requestor on certain matters. The minute sets out the further information required and stipulates that a written right of reply is to be provided to the Committee before 5.00pm Monday 27 July.
- 1.2 This submission contains the Requestors reply addressing the issues raised by the submitters and the additional information required by the Hearing Committee.

2.0 RESPONSE TO ORAL SUBMISSIONS

Forest and Bird

- 2.1 The oral submission of Forest and Bird requested that sustainable green building construction and services principles be incorporated into the Plan Change. The Requestor is of the view that such principles can be encouraged but should not be required in the Plan Change. Should the Council wish to promote sustainability principles then it can do so by way of a separate district wide plan change or through another non-RMA mechanism such as the Code of Practice for Engineering works it should not be done in a piecemeal manner by imposing requirements within this Plan Change alone.
- 2.2 It is noted that the Upper Hutt City Sustainability Strategy includes measures to establish eco-design advice capacity within UHCC.

Upper Hutt City Council Town and Country Association (UHTCA)

Grants Bush

- 2.3 The oral submission of the UHTCA identified a discord between the proposed new outcome for the Grants Bush Precinct which is 'Protection of indigenous vegetation within Grants Bush' and the proposed new wording of the description of the Grants Bush walkway in the Wallaceville Road Typologies which is:

The alignment of the path will be dictated to target the removal of exotic species where required over native species and will be aligned so as to avoid opening the indigenous vegetation canopy.

....

The path is proposed to have a metalled surface with timber edging and raised boardwalks where required to minimise the impact on the existing indigenous vegetation.

2.4 In order to address this disconnect, it is proposed to amend the wording of the Grants Bush Precinct outcome as follows:

- Protection of the ecological values of and the indigenous vegetation canopy within Grants Bush

2.5 The amended outcome has been agreed with Council and is included in the track change precinct descriptions documents provided with the third joint statement.

Impacts on Fergusson Drive

2.6 The oral submission of the UHTCA questioned whether the reduction in the speed limit on Alexander Road would generate adverse traffic effects on the wider roading network, namely Fergusson Drive. Such effects were addressed on page 18, section 7.1 of the Transportation Assessment Report as follows:

“...In travel terms, it would give rise to only a few seconds increase in travel time over this length from the present situation of a posted 80kph limit. Indeed, application of the UHTM (Upper Hutt Transport Model) shows that such a speed limit change would have negligible effect on traffic patterns, with less than 5% of vehicles shown by the model to divert to other parallel routes. The UHTM also shows that any such resulting changes in traffic patterns would not give rise to level of service changes elsewhere on the network. These results are not surprising given the small change in travel time that would occur following a change in speed limit. Even then, and in practice, the change in travel times would go unnoticed by most drivers.”

2.7 Mr Georgeson concluded in his assessment (refer para 34 of evidence) that no parts of the urban network are shown by the UHTM to experience a level of service changes that would warrant mitigation in response to partial or full development of the Wallaceville site, in a manner contemplated by the Structure Plan.

Stephen Pattinson

2.8 The oral submission of Mr Stephen Pattinson requested that the Council Hearing Committee require that:

- *Baseline 1-in-100 year flood levels and extents for all sub-catchments of the site as it stands in its current situation i.e. pre development flows) be identified now and included in the Wallaceville Stormwater Management Principles, and that,*
- *Council review and confirm the accuracy of these baseline levels, and that*
- *Council ensure that the means proposed by WDL for achieving stormwater neutrality are sound, and that the development will not worsen the current situation identified by the baseline levels/extents in a 1-in-100 year flood event, and that*
- *This baseline information be made publically available, including*
 - *A map of the whole catchment (206ha) including contours*
 - *A map of all sub-catchments including contours*
 - *A statement and description of the method used for calculating the baseline 1-in-100 year flows for the site in its current situation*

- All assumptions and input data, calculations and results.

2.9 Mr Alan Blyde has confirmed that while the above baseline information has been calculated, this information has not been requested by Council nor has it been deemed necessary to be included in the Wallaceville Stormwater Management Principles. Summary tables of the calculations undertaken by Harrison Grierson are provided in the Stormwater Management Plan that was submitted with the Plan Change request application and the catchment map has been provided to Council. The level of information already provided is appropriate for this rezoning process. It is submitted that additional information of the kind requested by Mr Pattinson is not required for the current plan change process. Rather, subsequent subdivision processes provide the normal process for the provision and assessment of detailed stormwater calculations.

Mr Paul Persico

2.10 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

2.11 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

2.12 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.

2.13 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.*

2.14 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.

2.15 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)).

2.16 In addition to the requirements of the NES, and in addition to the earthworks standards set out in 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.

2.17 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

2.18 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.

2.19 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.

2.20 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.

2.21 WDL has already invested significantly in expert investigations and opinions and these have been thoroughly reviewed by independent expert reviewers. With respect to Mr Persico, no expert evidence which challenged the independent experts engaged by Council and WDL was provided, rather an assortment of clippings, assumptions and lay observations. It is submitted that the Hearing Committee can have full confidence in the professional expert investigations and opinions, and independent expert peer review opinions. In addition, the regulations of the NES, the existing provisions of the District Plan and the requirements of the Building Code, in combination, will ensure that contamination issues are thoroughly addressed and risks fully avoided, remedied or mitigated for the Wallaceville Structure Plan Area. Accordingly no additional provisions related to contamination have been recommended.

Ministry for Primary Industries

2.22 On the morning of the first day of the hearing (Wednesday 8 July) agreement in principle was reached between WDL and MPI to address the reverse sensitivity concerns that MPI raised in its submission and through subsequent correspondence.

2.23 The Requestor has agreed the following with MPI by way of private agreement:

- 1. A 2m high close boarded fence shall be erected along the boundaries of a site where it adjoins a site designated as MAF1. The fence shall be constructed of materials having superficial mass of not less than 10kg per square metre and shall be constructed prior to occupation of buildings on the site;*
- 2. Sleeping rooms and studies within 50m of a site designated MAF1 shall have a positive*

supplementary source of fresh air ducted from outside at the time of fit-out. For the purposes of this requirement a sleeping room is any room intended to be used for sleeping. The supplementary source of air is to achieve a minimum of 7.5 litres per second per person;

3. Windows in buildings within 25m of a site designated as MAF1 which have an aspect to a site designated as MAF1 (including windows on the sides of buildings where those windows have an aspect to a site designated as MAF1) shall be non-opening, except for the existing Buddle Building which is exempt from this requirement.
4. Buildings in the Urban Precinct and Grants Bush Precinct within 25m of a site designated as MAF1 shall not exceed a single storey and shall have a maximum building height of 5 metres. The same requirement applies to any buildings in the Gateway Precinct (except the existing Buddle Building) used for residential purposes or people sleeping overnight.

2.24 MPI is also seeking that the above be included in the Plan Change as controlled activity standards. Standards 1 and 2 are already proposed as permitted activity standards in the Plan Change albeit the distance proposed for sleeping room and study ventilation in the evidence of Mr Malcolm Hunt is 10m rather than 50m. Mr Hunt confirmed that increasing the ventilation requirement from 10m to 50m would result in a very high level of protection for occupiers of the new residential buildings.

2.25 In the hearing it was confirmed that resource consent would not be able to proceed should any person seek to not comply with the relevant standards. This is because the covenant would be registered on the certificate of title and accordingly, Council processing planners would be alerted to the obligations of the covenant when title is provided with the resource consent application pursuant to section 2.6.1 of the District Plan.

3.0 ADDITIONAL RESPONSES TO HEARING COMMITTEE

(h) *Whether the indicative retail node notations in the Gateway Precinct are required on the Structure Plan, given the proposed rule framework*

3.1 Recommendations from the heritage assessment and from Ms Lauren White through the structure planning processes included the provision of incentives for the re-establishment of the historical street pattern and character evidenced on previous land uses on the site. The specific details of the proposed 'heritage street' are included in the Wallaceville Road Typologies. The street is intended to have a high pedestrian priority. To support the pedestrian activation of the street as the 'front door' to the development, a retail node was included in an area where an active street frontage with retail activities directly adjoining the pedestrian footpaths could be provided. It was correctly identified by the Hearing Committee that retail activity is a permitted activity in the Gateway Precinct. Accordingly such an activity could establish anywhere within the Precinct.

3.2 While the activity itself is permitted, at a minimum a restricted discretionary resource consent application would be required under new rule 20.30A for the new retail building adjoining the street frontage. In addition, a new retail building fronting the heritage street would likely not comply with the front yard setback requirement of 8m and in such event a discretionary activity consent would be required. Further, it is likely that a subdivision consent would be required as the heritage street would require vesting with Council as it is intended that this be public road.

3.3 In summary, it is submitted that the indicative retail node annotation on the structure plan, while not essential, does serve a purpose and should be retained.

- (i) A flow diagram or decision tree of the proposed objectives, policies, rules and other methods

3.4 Refer attachments provided in **Appendix 1**.

4.0 KEY OTHER MATTERS ARISING AT THE HEARING

Area B

- 4.1 In response to the concerns raised from the Hearing Committee with respect to the future structure plan approval process for Area B, WDL put forward an alternative approach to controlling development in this area. Both WDL and Council obtained legal opinions with respect to the proposed new approach (WDL's legal opinion from the law firm Russell McVeagh is attached as **Appendix 2** to this submission), and subsequently the new approach has been supported by Council Officers. The amendments proposed in order to adopt the new approach are included in the final agreed district plan amendments table appended to the third joint statement.
- 4.2 Paragraph 9 of the DLA Piper legal opinion provided to Council recommends that a rule be required that triggers a higher activity status if a spatial layout plan is not provided with a subdivision consent application. WDL is of the view that such a rule is not necessary. This view is supported by the legal opinion obtained from Russell McVeagh. The amendments proposed to the new information requirements section 2.6.9D (amendment 1) requires that a spatial layout plan is provided with all subdivision and development applications for land within Area B. Accordingly, if a consent application is unable to meet this requirement then the resource consent application can be rejected as incomplete and any such rejected application would not even proceed to processing / assessment. To reiterate this a new matter of restriction applies which requires an assessment of the extent to which the subdivision application is consistent with the spatial layout plan and the following additional note is included in the subdivision rule:

A resource consent application for subdivision consent under this rule shall contain the information listed in 2.6.9D in addition to the requirements of the Fourth Schedule of the Resource Management Act 1991. Where relevant, applications may rely upon any spatial layout plan submitted as part of a prior subdivision application that has received consent

- 4.3 The proposed amendments agreed with Council which includes the deletion of rules relating to structure plan approval is considered to be consistent with the court's findings in the *Queenstown Airport* case. The court found that it would not be lawful for a plan change to require resource consent for an outline development plan if the outline plan is not required itself to authorise specified activities.¹

Land on the Southern Side of Alexander Road rezoned to Residential (Centres) Overlay

- 4.4 A key topic raised by the Hearing Committee was the rezoning of the triangular portion of land to the south of Alexander Road to Residential (Centres) Overlay.
- 4.5 WDL would like to reiterate that when specifically questioned by the Hearing Committee regarding development of the triangular portion of land, no submitters raised any concerns

¹ *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2014] NZEnvC 93, at [167] - [168]. The Court stating that the rule in question was unlawful "in the absence of a rule specifying activities that are expressly allowed subject to a grant of consent".

in relation to the intensity of development proposed.

- 4.6 The rezoning of the flat triangular portion of the site to the south of Alexander Road to residential and the potential impacts of this on the adjacent hills that form part of the Wallaceville Structure Plan Area but are not being rezoned, is addressed in the expert evidence of Mr Mark Lowe (ecology), Mr Andrew Jackson (engineering), Ms Karen Jones (geotechnical), Mr Mark Georgeson (traffic and access), Ms Melissa Davis (landscape), Ms Lauren White (urban design) and Mr Alan Blyde (stormwater). Ms White's supplementary statement also further addresses this matter.
- 4.7 Each of the experts' evaluations have concluded that residential development on the flat triangle portion of land to the south of Alexander Road is appropriate. The evidence of Mr Georgeson identifies why it is important that both sides of roads have the same level of development and the supplementary evidence from Ms White provides further detail regarding the rationale for rezoning the land to Residential (Centres) Overlay.
- 4.8 Ms Jones concluded that on geotechnical and geological grounds the land is suitable for the development proposed. Mr Andrew Jackson agreed with this conclusion and in his evidence stated that the reporting proposed by Ms Jones to investigate and mitigate the identified potential risks (being rockfall and ground conditions) on the south side of Alexander Road are routine and standard practice for any subdivision of a similar type.
- 4.9 Ms Jones stated when questioned by the Hearing Committee, that an earth bund and ditch could be used around the perimeter of the triangle to mitigate the risk of rock or debris flow. Mr Jackson in his evidence stated that this is effectively what is there at the moment and the earthworks required to reshape or modify the existing ditches would be minor and easy to construct. Mr Jackson noted that the site is not particularly steep around the immediate perimeter of the triangle.
- 4.10 In this respect it is noted that development of this site, or any part of this site, will require a resource consent. The Resource Consent would be supported by a detailed geotechnical report as is a standard requirement for subdivision as specifically required in the Code of Practice for Land Engineering Works and New Zealand Standard 4404:
- Code of Practice (B2.1, P47)** – requires that a geotechnical report including a statement of professional opinion be included with any Resource Consent application (including stability of the natural ground).*
- NZS 4404 (part 2)** – requires that geotechnical assessment be undertaken by a geotechnical engineer (including an assessment of land stability).*
- 4.11 This geotechnical report will investigate and evaluate the identified potential risks and provide recommendations for the design of the subdivision. The geotechnical report will be carried out prior to detailed earthworks design. This is standard practice on any subdivision of similar scale to the development proposed.
- 4.12 A geotechnical engineer will be retained throughout the construction period and upon completion of the physical works will provide a geotechnical completion report. This report will detail the suitability of the building platforms created and will specify whether these meet the foundation requirements specified by NZS3604. Again, it is noted that this is standard practice on every subdivision of a similar type.
- 4.13 Based on the evaluations of the relevant experts WDL reaffirm that high density residential development of this land is deemed appropriate.

4.14 Notwithstanding this conclusion, the final district plan amendments table includes two amendments related to the provision of consideration of land stability issues. The first amendment includes 'land stability' as a matter of restriction for the new subdivision rule:

- *Earthworks and land stability*

4.15 The second amendment seeks to specifically exclude the parcel of land to the south of Alexander Road from the existing controlled activity multiple dwellings rule as outlined below. The exclusion 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 matters can be adequately addressed through the discretionary activity resource consent process.

Two or more dwellings on a site within a Residential (Centres Overlay) Area except on land identified as Pt Section 618 Hutt District complying with the net site area standard of rule 18.5

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Standard Residential Development in the Urban Precinct

4.16 Discussions between WDL and Council officers were ongoing before and through the hearing regarding implications arising if standard density development were to be introduced in the Urban Precinct. In light of this I note that as a greenfield site, the unique opportunity has been afforded to WDL to write in words and display on a map exactly what residential amenity is envisaged on the site. In the case of the Urban Precinct this is 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.

4.17 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, has therefore been to encourage activities that satisfy the intentions and outcomes sought for the Precinct as opposed to discourage other activities provided for in the Zone. This is considered appropriate given the economic incentives provided by the higher density residential development provisions of the Urban Precinct where it is extremely unlikely that standard density development would occur in the Urban Precinct.

4.18 The Hearing Committee has asked that the Requestor and Council officers consider possible mechanisms to discourage standard density development in the Urban Precinct. Such options include setting both minimum and maximum lot sizes, setting yield, setting average lot sizes, or making non-CRD residential development a restricted discretionary or discretionary activity. Regarding the latter, this approach was conveyed to Council when discussions regarding the current defects of the District Plan arose prior to the hearing. Council officers responded to the suggestion with concerns regarding how Council would be able to turn down an application for a standard density dwelling in the Urban Precinct if it is permitted some 100m away down the road or everywhere else in the residential zone. Should the Hearing Committee warrant it necessary that a rule control activities otherwise permitted, strong policy guidance would be required to allow Council the ability to turn such applications down.

Business / Commercial Development in the Urban Precinct

4.19 It is understood that Ms Boyd considers that explicit reference to the potential for commercial development within the Urban Precinct would inappropriately signal an intention for these types of activities to establish in this area, and given that the precinct is proposed to be zoned residential and to function as a high density area, Ms Boyd considers

that the proposed references are not appropriate. Ms Boyd believes that the references may lead to 'creep' of the activities within the Gateway Precinct and the expansion of the urban village and that this may impact on the vitality of the city centre. The Requestor is simply seeking that Plan Change 40 be treated in a consistent manner with existing provisions in other residential zoned areas throughout the City.

4.20 Ms Stephanie Blick outlined at the hearing that she does not agree with the opinion put forward by Ms Boyd and therefore cannot support the recommendation. Ms Blick noted that the proposed amendments related to Policy 4.4.3 are to the explanation only. Accordingly, Ms Blick considers that the proposal is entirely consistent with an existing District Plan framework that seeks to address non-residential activities that are already provided for and exist in the residential zone throughout the City.

4.21 The intention of the precinct outlined in the Wallaceville Structure Plan which has not been disputed by Ms Boyd states:

“A compact and attractive 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”

4.22 Ms Blick and Ms Lauren White consider that it is clear from this that as a transitional zone from a business commercial area to an area of predominantly standard residential area (Grants Bush Precinct) that some limited business / commercial use may be appropriate, provided that it is not of a scale that would adversely impact the viability of the Gateway Precinct and the vitality of other areas of the city zoned Business Commercial. Further, Ms White considers that limited business / commercial uses may help reinforce the local Gateway Precinct centre and take advantage of the location of the area with respect to the Wallaceville Rail Station.

4.23 Changing the reference to such activity in the Precinct Outcomes from “some” to “limited” will indicate the intention for the scale of such activities to be small. Given the use of the word 'limited' it is likely that a proposal for medium to large scale business / commercial activities would be deemed inconsistent with the Structure Plan. With respect to the concern about the extent of business/commercial use and potential undermining of the vitality/viability of the Gateway Precinct and other business / commercial areas of Upper Hutt I have recommended amendments to the outcome that seeks to ensure that any new business / commercial uses in the Urban Precinct do not generate significant adverse effects on other parts of the city that are zoned business commercial including the CBD.

4.24 Ms Boyd has noted that business / commercial activities in this precinct would require discretionary activity resource consent. Accordingly, as a discretionary activity Council is not restricted in its assessment of potential impacts of the proposed use, including those on the vitality of the CBD, the Gateway Precinct or with other areas zoned Business Commercial in the city. In addition to the existing matters of consideration, the following matters are also proposed to be inserted in the Residential Zone chapter:

- *The extent to which the subdivision and/or development is consistent with the Wallaceville Structure Plan*
- *The extent to which any subdivision and/or development that is not consistent with the Wallaceville Structure Plan will avoid, remedy or mitigate adverse effects on other areas of Upper Hutt City, including effects on the vitality and amenity of the CBD and will integrate with adjoining development anticipated through the Structure Plan*
- *Relevant matters above.*

4.25 On the basis of the above and to provide additional certainty regarding the level of business/commercial development considered acceptable for the precinct, WDL supports the recommended amendments to the Urban Precinct outcome as outlined in the evidence

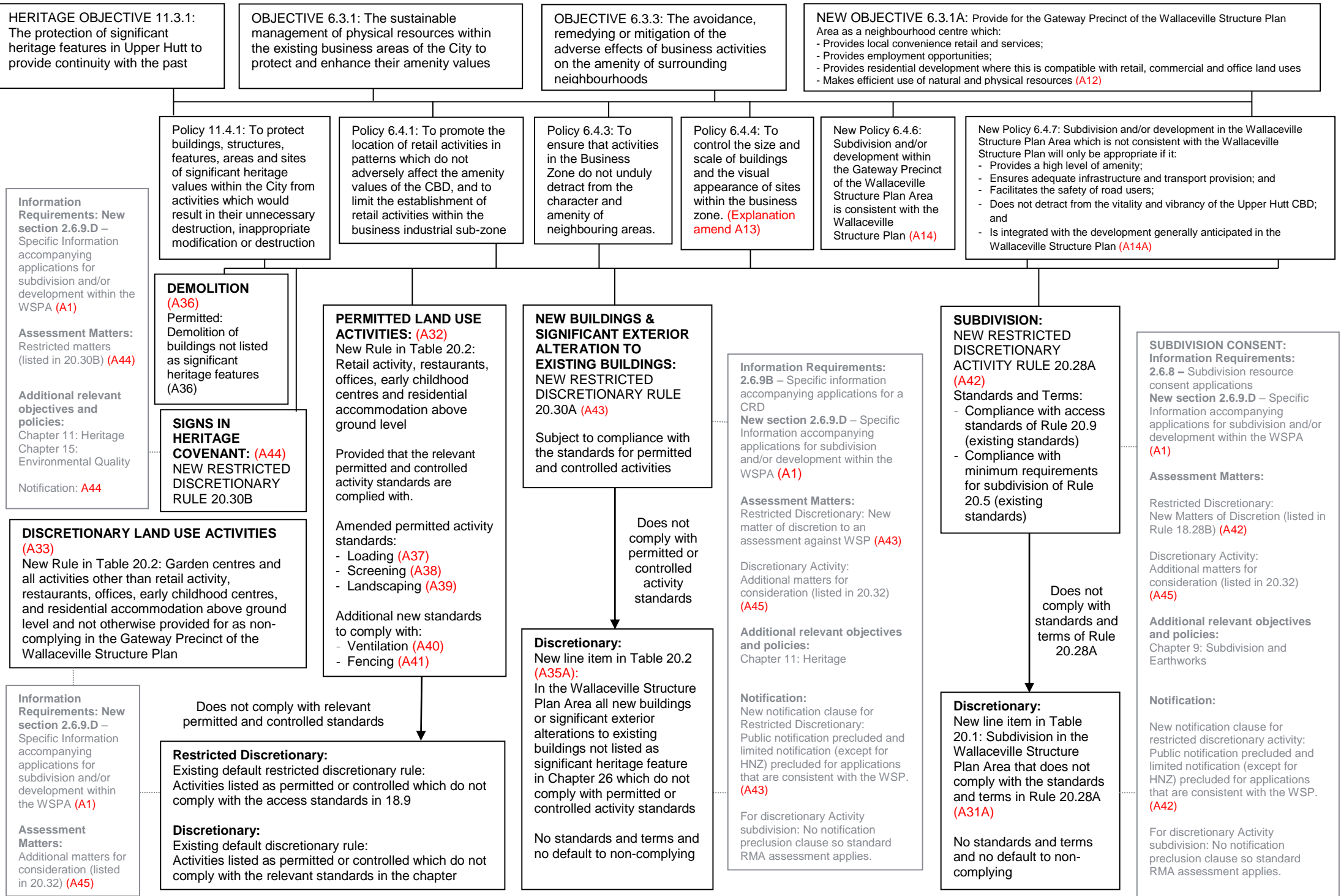
of Ms Blick.

5.0 CONCLUSION

- 5.1 Rezoning of the subject land is necessary because the current Special Activity zoning of the land on the northern side of Alexander Road is no longer appropriate because the previous special activity of the 'Wallaceville Animal Research Centre' has ceased on the Plan Change land, the Government has sold the land being surplus to its needs, and the site is now privately owned. Rezoning and redevelopment of the subject land is clearly identified in the Upper Hutt Urban Growth Strategy 2007.
- 5.2 The requestor has made considerable efforts to address matters raised by Council officers and submitters which are reflected in the agreements reached in the Joint Statements, which have resulted in refinements of the proposed Plan Change to promote a high standard of development. These, in conjunction with the private agreements and covenants between the requester and submitters/adjoining land owners, ensure that the provisions of Plan Change 40 result in a most practical, effective and appropriate means of promoting the efficient use, development and sustainable management of this important land resource to meet the urban growth needs of the City into the future.
- 5.3 Having considered all evidence and submissions throughout the course of the Hearing, the requestor respectfully concludes that Plan Change 40 is fully consistent with the Purpose and Principles of the Resource Management Act and that the relevant statutory considerations in the Resource Management Act are met to enable the Hearing Committee to be able to make a recommendation for approval and adoption of the Plan Change to Upper Hutt City Council.

APPENDIX 1
FLOW DIAGRAMS OF RELEVANT PLAN FRAMEWORK

WALLACEVILLE STRUCTURE PLAN AREA – BUSINESS COMMERCIAL ZONE AND HERITAGE PROVISIONS



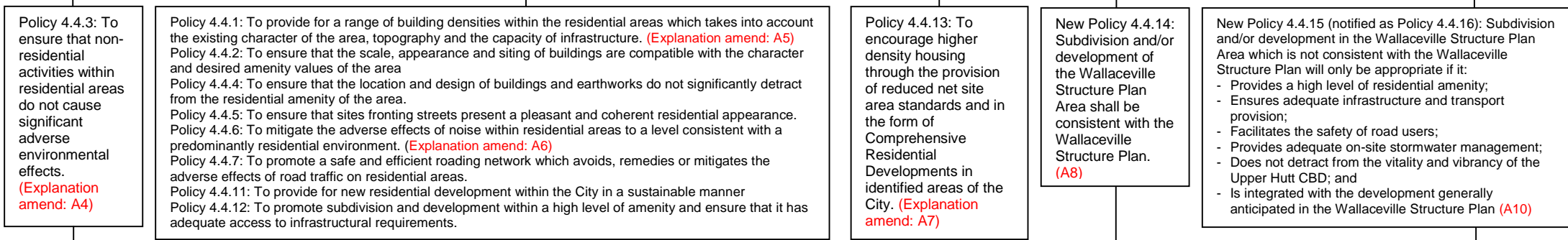
WALLACEVILLE STRUCTURE PLAN AREA –RESIDENTIAL AND RESIDENTIAL (CENTRES) OVERLAY PROVISIONS

OBJECTIVE 4.3.1: The promotion of a high quality residential environment which maintain and enhances the physical character of the residential areas, provides a choice of living styles and a high level of residential amenity.

OBJECTIVE 4.3.4: To provide for higher density residential development by way of Comprehensive Residential Developments and specific net site area standards around the central business district, neighbourhood centres and major transport nodes.

NEW OBJECTIVE 4.3.5: To promote the sustainable management and efficient utilisation of land within the Wallaceville Structure Plan area, while avoiding, remedying or mitigating adverse effects. (A3)

OBJECTIVE 4.3.3: The management of the adverse effects of subdivision within residential areas



Policy 4.4.3: To ensure that non-residential activities within residential areas do not cause significant adverse environmental effects. (Explanation amend: A4)

Policy 4.4.1: To provide for a range of building densities within the residential areas which takes into account the existing character of the area, topography and the capacity of infrastructure. (Explanation amend: A5)
Policy 4.4.2: To ensure that the scale, appearance and siting of buildings are compatible with the character and desired amenity values of the area
Policy 4.4.4: To ensure that the location and design of buildings and earthworks do not significantly detract from the residential amenity of the area.
Policy 4.4.5: To ensure that sites fronting streets present a pleasant and coherent residential appearance.
Policy 4.4.6: To mitigate the adverse effects of noise within residential areas to a level consistent with a predominantly residential environment. (Explanation amend: A6)
Policy 4.4.7: To promote a safe and efficient roading network which avoids, remedies or mitigates the adverse effects of road traffic on residential areas.
Policy 4.4.11: To provide for new residential development within the City in a sustainable manner
Policy 4.4.12: To promote subdivision and development within a high level of amenity and ensure that it has adequate access to infrastructural requirements.

Policy 4.4.13: To encourage higher density housing through the provision of reduced net site area standards and in the form of Comprehensive Residential Developments in identified areas of the City. (Explanation amend: A7)

New Policy 4.4.14: Subdivision and/or development of the Wallaceville Structure Plan Area shall be consistent with the Wallaceville Structure Plan. (A8)

New Policy 4.4.15 (notified as Policy 4.4.16): Subdivision and/or development in the Wallaceville Structure Plan Area which is not consistent with the Wallaceville Structure Plan will only be appropriate if it:

- Provides a high level of residential amenity;
- Ensures adequate infrastructure and transport provision;
- Facilitates the safety of road users;
- Provides adequate on-site stormwater management;
- Does not detract from the vitality and vibrancy of the Upper Hutt CBD; and
- Is integrated with the development generally anticipated in the Wallaceville Structure Plan (A10)

NON-RESIDENTIAL DEVELOPMENT
 Subject to existing rules and standards. No additional rules and standards proposed for non-residential development.
 Non-residential activities listed in Table 18.2

NON CRD RESIDENTIAL DEVELOPMENT:
 Existing rules in table 18.2:
Permitted:
 - One dwelling per site
 - One family flat in conjunction with a dwelling on a site
Controlled:
 - Two or more dwellings on a site complying with the net site area standard of rule 18.10 (A17B seeks to control land use preceding subdivision)
 - Two or more dwellings on a site within a Residential (Centres Overlay) Area complying with the net site area standard of rule 18.5
 Provided that the relevant permitted and controlled activity standards are complied with.

COMPREHENSIVE RESIDENTIAL DEVELOPMENT: RESTRICTED DISCRETIONARY RULE 18.28A
 Existing standards and terms for Rule 18.28A:
 - Compliance with access (18.9), site coverage (18.11), yard setbacks (18.12 (A19) and 18.17), outdoor living court (18.13) (A20), maximum building height (18.15) (A21), sunlight access planes (18.16) (external boundaries only), on-site soakage (18.18A)
 New WSPA standards and terms for Rule 18.28A (A26):
 - Compliance with new fencing (A24), noise insulation (A23B) and ventilation standards (A23A).

CRD CONSENT:
Information Requirements:
 2.6.9B – Specific information accompanying applications for a CRD
 New section 2.6.9.D – Specific Information accompanying applications for subdivision and/or development within the WSPA (A1)
Assessment Matters:
 Restricted Discretionary: New matter of discretion to an assessment against WSP (A26)

SUBDIVISION: NEW RESTRICTED DISCRETIONARY ACTIVITY RULE 18.28B
 Standards and Terms:
 - Compliance with access standards of Rule 18.9 (existing standards)
 - Compliance with minimum requirements for subdivision of Rule 18.5 (existing standards)
 Does not comply with standards and terms of Rule 18.28B

SUBDIVISION CONSENT: Information Requirements:
 2.6.8 – Subdivision resource consent applications
 New section 2.6.9.D – Specific Information accompanying applications for subdivision and/or development within the WSPA (A1)

Assessment Matters:
 Restricted Discretionary: New Matters of Discretion (listed in Rule 18.28B) (A27)

Discretionary Activity:
 Additional matters for consideration (listed in 18.37) (A28)

Additional relevant objectives and policies:
 Chapter 9: Subdivision and Earthworks

Notification:
 New notification clause for restricted discretionary activity: Public notification precluded and limited notification precluded for applications that are consistent with the WSP. (A27)

For discretionary Activity subdivision: No notification preclusion clause so standard RMA assessment applies.

Information Requirements:
 New section 2.6.9.D – Specific Information accompanying applications for subdivision and/or development within the WSPA (A1)
Assessment Matters:
 Additional matters for consideration (listed in 18.37) (A28)
Notification:
 No notification preclusion clause so standard RMA assessment applies.

Does not comply with relevant permitted and controlled standards

Restricted Discretionary:
 Existing rule: Activities listed as permitted or controlled which do not comply with the access standards in 18.9
Discretionary existing rules:
 - (RES DEV ONLY) Two or more dwellings on a site within a Residential (Centres Overlay) Area that does not comply with the net site area standard of rule 18.5
 - Activities listed as permitted or controlled which do not comply with the relevant standards

Does not comply with standards and terms of Rule 18.28A

Discretionary:
 Existing default rule in table 18.2:
 CRD on a site within a Residential Centres Overlay) Area not complying with the standards and terms of rule 18.28A

Discretionary Activity:
 Additional matters for consideration (listed in 18.37) (A28)
Notification:
 New notification clause for Restricted Discretionary CRD: Public notification precluded and limited notification precluded for applications that are consistent with the WSP. (A26)
 For discretionary Activity subdivision: No notification preclusion clause so standard RMA assessment applies.

Discretionary:
 New line item in Table 18.1: Subdivision in the Wallaceville Structure Plan Area that does not comply with the standards and terms in Rule 18.28B (A17A)
 No standards and terms and no default to non-complying

APPENDIX 2
RUSSELL MCVEAGH LEGAL OPINION

14 July 2015

PARTNERS

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PROPOSED (PRIVATE) PLAN CHANGE 40: WALLACEVILLE - STRUCTURE PLAN ISSUE

Introduction

1. We have been asked to review the amendments proposed to Plan Change 40: Wallaceville to the Upper Hutt City Plan ("**PC40**") as summarised in the document "Response to issues raised by the hearing committee at end of day 1 of hearing" ("**Harrison Grierson Summary**"), which we understand was presented to the Committee on Thursday 8 July 2015.
2. In particular, we have been asked to consider whether the proposed amendments to PC40 are:
 - (a) consistent with the Environment Court's decision in *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2014] NZEnvC 93, which provides guidance on the extent to which "structure planning" mechanisms can be used in a district plan; and
 - (b) within the scope of PC40.
3. We can confirm that we are satisfied on both counts. Our analysis is set out below.

Restrictions on use of structure planning after the Queenstown case

4. In the *Queenstown Airport* case, the Environment Court was concerned with the use of structure plans (or "outline development plans") in Plan Change 19 to the Queenstown Lakes District Plan. That plan change would have provided for resource consent to be sought for approval of outline development plans to specify the performance standards applying to areas of land, and the activities that could be carried out under an outline development plan.
5. The plan change also provided that certain activities could not be carried out (ie were to be prohibited) until an outline development plan had been approved for an area, and required activities to be undertaken later to comply with standards contained in an approved outline development plan.
6. The Court ultimately found that it would not be lawful for a plan change to require resource consent to be sought for an outline development plan, if the outline plan is not required itself to authorise specified activities.¹ This was on the basis that an outline plan is not an "activity" in and of itself.

¹ *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2014] NZEnvC 93, at [167] - [168]. The Court stating that the rule in question was unlawful "in the absence of a rule specifying activities that are expressly allowed subject to a grant of consent".

7. The Court also considered that it would be unlawful for plan provisions to require compliance with an approved outline development plan as a standard for other activities, including to determine the applicable activity status. In essence, this was because the Resource Management Act 1991 contemplated resource consent being granted for activities that comply with the "standards, terms, or conditions, if any, specified in the plan or proposed plan."² In light of this, the Court found that:³
- ... the status of an activity derives from the Act and its subsidiary planning instruments and not from a resource consent. In summary we find rules 12.19.1.1 and 12.20.3.2-4 are ultra vires s 77B of the Act insofar as the rules require compliance with a resource consent which is not a standard, term or condition that is specified in the plan change.
8. However, the Court did indicate that it would be permissible for a plan to include an assessment matter requiring consideration to be given to the degree of compliance with any applicable outline development plan,⁴ as opposed to having an outline plan specify standards that must be complied with.
9. The effect of the decision then is that the status of activities (and applicable standards which might trigger a different activity status) must be contained in the plan itself, rather than being specified in a resource consent. While the Court's decision was made with respect to section 77B and that section has now been replaced⁵ by section 87A, given that section 87A is to similar effect, we consider that the Court's reasoning remains applicable to the new section 87A as well.⁶
10. In terms of the appropriate use of structure planning mechanisms, the Environment Court's final decision on Plan Change 19⁷ approved plan provisions which required applications for subdivision to be accompanied by a "spatial layout plan" for the whole of the activity area. Later applications could then rely on a spatial layout plan approved as part of a previous application that had received consent.

Amendments proposed to PC40

11. We understand⁸ that concerns were raised in the course of the PC40 hearing that the plan change was ultra vires in that it:
- (a) required a structure plan to be approved through a resource consent process; and
 - (b) included rules providing for development in the interim period before a structure plan was approved, and provided for the activity status of other

² RMA, s 77B. That section has since been replaced by s 87A.

³ *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2014] NZEnvC 93, at [183].

⁴ *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2014] NZEnvC 93, at [189].

⁵ Under the 2009 RMA amendments.

⁶ Section 87A uses a slightly different formula, referring to "the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan." We do not consider that change to be material. However, it is notable that this formula is included in subsection 87A(5) with respect to non-complying activities, whereas the Court attributed some weight to the fact that s 77B(5) did not state that non-complying activities must comply with any standards stipulated in a plan or proposed plan (refer para [190]). As such, the Court's comments with respect to non-complying activities should be treated with caution.

⁷ *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2014] NZEnvC 197. Refer to Annexure C to that decision, at 15.1-15.2.

⁸ From the Harrison Grierson Summary, at pages 2-3.

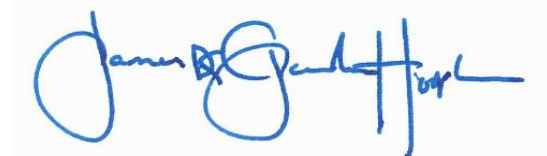
activities to be contingent on whether or not a structure plan had been approved.

12. There had also been some suggestion of compliance with approved structure plans being a requirement for certain activities within Area B.⁹
13. The Harrison Grierson Summary outlines¹⁰ a number of amendments (by reference to the Table of Amendments) that are proposed in order to address these concerns. As we understand it, the amendments will mean that the only "structure plan" requirement in the final version of PC40 will be that a "spatial layout plan" will be required to accompany subdivision or development applications, as an information requirement.
14. We do not therefore have any concerns with that approach in terms of the *Queenstown Airport* decision, and we consider that this approach is entirely consistent with the provisions that were later approved in the Environment Court's final decision on the plan change at issue in that case.
15. We have also considered whether the amendments proposed in the Harrison Grierson Summary would be "within scope" of PC40. We confirm that we do not have any concerns in this regard, given that the amendments proposed will not materially alter:
 - (a) the activities to be carried out under PC40;
 - (b) the environmental effects that can be anticipated to arise from PC40; and/or
 - (c) the persons who might be affected.

Further actions

16. Please do not hesitate to contact us if you require anything further, or would like us to advise on the detailed drafting of amendments to PC40.
17. We understand that this letter is intended to be provided to the Hearings Committee for its consideration. We are happy to address the Committee in person, if that would assist.

Yours faithfully
RUSSELL McVEAGH



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⁹ For example, we understand from the Harrison Grierson Summary that this approach was promoted by Upper Hut City Council planners with respect to Amendment 9A.
¹⁰ We have not been provided with exact wording, but understand in general terms the nature of the amendments that are intended to be made.