

# Proposed Private District Plan Change 45

Rule Amendments and Rezoning of Land at  
1N and 57N Mandel Mews

Publicly Notified:

24 January 2017

Submissions Close:

24 February 2017 at 5.00pm



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## Part 1: Introduction

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### 1. What is Proposed Private Plan Change 45

On 28 November 2016 Cuttriss Consultants Limited on behalf of Best Value Homes lodged a private plan change request with Hutt City Council (“Council”). Council officers’ undertook a first initial assessment of the request and came to the conclusion that no further information was required and that Council had adequate information to make a decision on how to proceed with the private plan change request.

On 15 December 2016 Council formally accepted the private plan change request and instructed officers to commence the plan change process for a private plan changes as set out in the First Schedule of the Resource Management Act 1991.

The requested plan change, including the Section 32 report and the requested additional information, can be found as Part 3 of this document.

### 2. What does Proposed Private Plan Change 45 propose

In brief, the private plan change request seeks to delete Rules 4A 2.1 (q) and 11 2.2.1(a) (in part) from the Operative City of Lower Hutt District Plan to allow for residential activities on Lot 64 DP 319972 (1N Mandel Mews) and to rezone Lot 64 DP 329306 (57N Mandel Mews) from General Residential Activity Area to General Recreation Activity Area.

### 3. Structure of this document

This document contains four parts:

<b>Part 1</b>	Introduction
<b>Part 2</b>	Public Notice for Proposed Private Plan Change 45 as advertised in the Hutt News
<b>Part 3</b>	Private Plan Change Request including Section 32 Evaluation
<b>Part 4</b>	Submission Form (Form 5)

All four parts of this document are publicly available from Hutt City Council as detailed in the Public Notice in Part 2 of this document.

### 4. The Process for Proposed Private Plan Change 45

The process for Proposed Private Plan Change 45 so far can be summarised as follows:

<b>28 October 2016</b>	Cuttriss Consultants on behalf of Best Value Homes provides draft documents to Council for initial comments.
<b>28 November 2016</b>	Cuttriss Consultants on behalf of Best Value Homes lodges a private plan change request with Council.
<b>15 December 2016</b>	Council formally accepts the private plan change request.
<b>24 January 2017</b>	Proposed Private Plan Change 45 is publicly notified.

## 5. **The Private Plan Change Process under the Resource Management Act 1991 (“RMA”)**

The process for a private plan change is set out in the First Schedule of the RMA. Any person may request a change to the District Plan and Council must consider that request.

Clause 25 of the First Schedule of the RMA requires Councils who have received a request for a private plan change to do one of four things:

- Adopt the plan change request in whole or in part, and notify it as a Council initiated plan change; or
- Accept the plan change request in whole or in part, and notify it as a private plan change; or
- Decide to deal with it as a resource consent; or
- Reject the plan change request.

On 15 December 2016 Council has decided to accept the private plan change request and thereby agreed that the private plan change can proceed to notification. The process then follows the private plan change decision-making procedures set out in Part II of the First Schedule of the RMA. The plan change remains a private plan change and all costs associated with the plan change are borne by the person who made the request.

Upon notification of the proposed private plan change, all interested persons and parties have an opportunity to have input through the submission process with some limitations applying to trade competitors. The process for a private plan change that has been accepted is as follows:

- The proposed private plan change is publicly notified and any member of the public may make a submission in support of or in opposition to the proposal. This initial submission phase is at least 20 working days.
- After the closing date for submissions, Council must prepare a summary of decisions requested and this summary must be publicly notified. Copies of all submissions must be sent to the person who requested the private plan change.
- No later than 10 working days after the notification of the summary of decisions requested certain persons may make a further submission in support of, or in opposition to, the submissions already made.
- If a person making a submission asks to be heard in support of their submission, a formal hearing must be held. The person who made the request has the right to appear before the hearing panel.
- The hearing panel makes a decision on whether to approve the content of the proposed private plan change without changes, to amend the proposal or to decline the proposal. The decision on the proposal must be given in writing and must include the reasons for accepting or rejecting submissions.
- Any person who has made a submission as well as the person who requested the private plan change have the right to appeal Council's decision on the proposal to the Environment Court.

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## Part 2: Public Notice

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# PUBLIC NOTICE

### Public Notification of

### **Proposed District Plan Change 38 to the City of Lower Hutt District Plan**

*Clause 5 of the First Schedule of the Resource Management Act 1991*

and

### **Proposed Private District Plan Change 45 to the City of Lower Hutt District Plan**

*Clause 5 and Clause 26 of the First Schedule of the Resource Management Act 1991*

#### **Proposed District Plan Change 38: Taita Drive, North of Avalon Park Rezoning to General Residential Activity Area and General Recreation Activity Area**

Hutt City Council has prepared Proposed Plan Change 38 which seeks to rezone a Hutt City Council owned area of land North of Avalon Park from General Recreation Activity Area to General Residential Activity Area, while rezoning the property at 107A Taita Drive from General Residential Activity Area to General Recreation Activity Area. The area proposed to be rezoned to General Residential Activity Area is situated to the North of Avalon Park and has an overall area of approximately 7550m<sup>2</sup>. It was previously classified as Reserve but the Reserve Status has recently been revoked. The area proposed to be rezoned to General Recreation Activity Area is located at 107A Taita Drive and has an area of approximately 1900m<sup>2</sup>. It is owned and occupied by the Avalon Tennis Club and the proposed rezoning reflects the current and intended future use of the site for recreational activities.

The purpose of this Plan Change is to ensure that the Sites will have a zoning that is consistent with the surrounding area and that any use and development of the Sites will be managed under the existing provisions of the District Plan.

#### **Proposed Private District Plan Change 45: 1N & 57N Mandel Mews**

Hutt City Council has received a private plan change request from Cuttriss Consultants Limited on behalf of Best Value Homes. Proposed Private Plan Change 45 seeks to delete Rules 4A 2.1 (q) and 11 2.2.1 (a) (in part) from the Operative City of Lower Hutt District Plan to allow for residential activities on Lot 64 DP 319972 (1N Mandel Mews) and to rezone Lot 64 DP 329306 (57N Mandel Mews) from General Residential Activity Area to General Recreation Activity Area.

Documentation for Proposed Plan Change 38 and Proposed Private Plan Change 45 can be inspected:

- on Council's website: [huttcity.govt.nz/district-plan-change-38](http://huttcity.govt.nz/district-plan-change-38);  
[huttcity.govt.nz/district-plan-change-45](http://huttcity.govt.nz/district-plan-change-45); and
- at all Hutt City Council Libraries; and
- at the Customer Services Counter, Council Administration Building, 30 Laings Road, Lower Hutt.

Copies can also be requested by contacting Hutt City Council:

- Phone: 04 570 6666 or
- Email: [district.plan@huttcity.govt.nz](mailto:district.plan@huttcity.govt.nz)

### **Submissions close on Friday 24 February 2017 at 5pm**

Any person may make a submission on Proposed Plan Change 38 and Proposed Private Plan Change 45. Submissions may be lodged in any of the following ways:

- Online            [huttcity.govt.nz/district-plan-change-38](http://huttcity.govt.nz/district-plan-change-38)  
                      [huttcity.govt.nz/district-plan-change-45](http://huttcity.govt.nz/district-plan-change-45)
- Email:            [submissions@huttcity.govt.nz](mailto:submissions@huttcity.govt.nz)
- Post:             Environmental Policy Division, Hutt City Council, Private Bag 31912, Lower Hutt 5040
- In Person:       Council Administration Building, 30 Laings Road, Lower Hutt

Submissions must be written in accordance with RMA Form 5 and must state whether or not you wish to be heard in respect of your submission. Copies of Form 5 are available from all of the above locations and on Council's website.

The process for public participation in the consideration of this proposal under the RMA is as follows:

- after the closing date for submissions, Hutt City Council must prepare a summary of the submissions and this summary must be publicly notified; and
- there must be an opportunity to make a further submission in support of, or in opposition to, the submissions already made; and
- if a person making a submission asks to be heard in support of his or her submission, a hearing must be held; and
- Hutt City Council must give its decision on the proposal (including its reasons for accepting or rejecting submissions); and
- any person who has made a submission has the right to appeal the decisions on the proposal to the Environment Court.

**Tony Stallinger**  
**Chief Executive**

**24 January 2017**

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## Part 3: Private Plan Change Request

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# Proposed Private Plan Change Section 32 Report

**1N & 57N Mandel Mews**

Best Value Homes

Reference: 28876

Date: 28 November 2016

## PART 1

## INTRODUCTION

### 1.1 WHAT IS THE PROPOSED PLAN CHANGE

The purpose of the Proposed Plan Change is to delete Rules 4A 2.1 (q) and 11 2.2.1(a) ‘Other’ from the Operative City of Lower Hutt District Plan. This will allow for residential activities on Lot 64 DP 319972 (1N Mandel Mews). It is also proposed to rezone Lot 64 DP 329306 to General Recreation Activity Area.

The application site is currently zoned General Residential Activity Area, which (with the exception of the application site) provides for residential buildings and activities as permitted activities (subject to compliance with the permitted activity conditions and city wide standards). However, Rule 4A 2.1(q) is specific to the application site and states that the 12m wide strip (which covers the entire site) can only be used for the purpose of a road reserve, or a reserve created under the provision of the Reserves Act 1977. It is proposed to remove this restriction from Lot 64 DP 319972, by deleting the relevant rule, as it was originally intended to address reverse sensitivity effects from residential activities onto the railway yard to the west of the application site. It is also proposed to rezone Lot 64 DP 329306 to General Recreation as it is considered that this approach will align with the original intent of Rule 4A 2.1(q) despite it being removed from the plan. It is considered that any potential reverse sensitivity issues can be addressed through other mechanisms, such as the use of private land covenants requiring specific construction standards to be achieved for any future development on the site (which have been agreed to in principal by KiwiRail).

In the case of the southern lot, Lot 64 DP 329306, the rezoning of this allotment to General Recreation Activity Area would prevent residential activity occurring on the site as a permitted activity in the absence of Rule 4A 2.1 (q), and therefore no reverse sensitivity issues as a result of residential activity occurring on the site would arise (as the General Recreation Activity Area does not allow for residential activities).

It is also proposed to remove Rule 11 2.2.1(a) General Residential ‘Other.’ to ensure throughout the District Plan.

While it is proposed to rezone one of the lots on the application site, no new District Plan provisions, e.g. objectives, policies, rules or standards, will be introduced as a result of this proposal. The only amendment required to the Plan is the removal of in both Rules 4A 2.1 (q) and 11 2.2.1(a) ‘Other’ and removal of Appendix General Residential 12’ in Chapter 4A and ‘Appendix Subdivision 1’ in Chapter 11. Some minor renumbering will be required to the remaining rules and appendices as a result of the proposed removals.

### 1.2 REASONS FOR PROPOSED PLAN CHANGE

It is understood the sites were created as a buffer zone, for the adjacent residential development along Mandel Mews, against the activities of the rail yard to the west. The rules in the District Plan were imposed to ensure the then future residential sites were afforded a degree of setback from the rail yards to avoid reverse sensitivity effects. It is however considered that the option of avoiding development is a relatively blunt response to addressing the issue of reverse sensitivity and that this matter can be better addressed through requiring

performance standards for any new habitable buildings, which ensures that these reverse sensitivity issues can be addressed. These performance standards will be registered as a covenant on the title of the site. These standards, while not finalised, have been agreed to in principal with KiwiRail (Appendix 3).

The plan change has been proposed to allow for the future residential activity on Lot 64 DP 319972 (1N Mandel Mews). Rule 4A 2.1 (q) states that the use of the site is limited to that of road reserve or a general-purpose reserve as the site falls completely within the identified 12m strip in the appendices of Chapter 4. In order to allow for the possibility of residential activity and development at 1N Mandel Mews the rule must first be removed in its entirety.

Consequently, it also proposed to rezone Lot 64 DP 329306 (57N Mandel Mews) from General Residential Activity Area to the General Recreation Activity Area. Removing Rule 4A 2.1 (q) from the plan would allow for residential development on 57N Mandel Mews, however as the site has even more physical constraints than 1N Mandel Mews (as it is smaller in size), it is considered that the recreation zoning is appropriate and maintains the original intent of the Rule 4A 2.1 (q) for the lot as either road reserve or a general-purpose reserve. The General Recreation Activity Area zoning also ensures that no unintended reverse sensitivity effects arise from the proposed plan change.

## PART 2

# SECTION 32 EVALUATION

## 1. INTRODUCTION

Section 32 of the Resource Management Act 1991 requires an evaluation of the Proposed Plan Change, and the preparation of a report outlining the basis and outcome of the evaluation. Section 32 of the Resource Management Act 1991 states:

*An evaluation report must—*

- (a) *examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
- (b) *examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
  - (i) *identifying other reasonably practicable options for achieving the objectives; and*
  - (ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
  - (iii) *summarising the reasons for deciding on the provisions; and*
- (c) *contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*

*The assessment contained in the report must—*

- (a) *identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*
  - (i) *economic growth that are anticipated to be provided or reduced;*

- and*
- (ii) employment that are anticipated to be provided or reduced; and*
  - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and*
  - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*

This document is the evaluation report that is required under s.32 of the Resource Management Act 1991. This report explores and identifies the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the proposed Plan Change.

## 2. DESCRIPTION OF THE SITE

### Physical Description

The application site covers two allotments: Lot 64 DP 319972 is a 791m<sup>2</sup> vacant allotment situated at 1N Mandel Mews, Waiwhetu. This property is located on the western side of Mandel Mews, is an irregular shape, with the northern most section of the site being a triangular area of approximately 185m<sup>2</sup>. The northern and western boundaries (in the triangular section) are vegetated, with the plantings being comprised of low flaxes and small to medium sized shrubs up to a height of 2.5m - 3m. The middle and southern sections of the site vary in width from 2m - 4m wide. This strip is predominantly vegetated and follows the alignment of Mandel Mews for approximately 220m. The western boundary of the site is contained by a 1.8m high closed boarded fence.

The second allotment (being Lot 64 DP 329306) is also vacant and is located at 57N Mandel Mews, Waiwhetu. This lot is to the south of 1N Mandel Mews and is a similar irregular shape. The eastern boundary of the allotment follows the alignment of Mandel Mews, with the northern portion of the site comprising an approximately 2m - 3m wide vegetated strip of land. The middle section is triangular shaped with an area of approximately 145m<sup>2</sup>. The southernmost portion of the lot is also vegetated, and is approximately 2m wide. This site terminates at the Mandel Mews cul de-sac.

The western boundary of both sites adjoins the General Business Activity Area, with the majority of this area being comprised of a Kiwirail service yard with a small area in southernmost portion of the application site adjoining a commercial warehouse.

Residential is the predominant land use to the east of the application site, with approximately 60 developed properties. These residential sections generally range in size from 400m<sup>2</sup> to 600m<sup>2</sup> and typically contain a single storey residential dwelling.

The application site is located within walking distance to local schools, being approximately 400m to the north of Gracefield School and 500m to the south of Our Lady of the Rosary School. The Waiwhetu shops are slightly further afield, being approximately 850m to the north of 1N Mandel Mews.

A site plan of the application location can be found in Appendix 1. **Legal Descriptions**

The application sites are legally described as Lots 64 DP 319972 & Lot 64 DP 329306 held in Computer Freehold Registers WN119824 and WN/78811 respectively (A copy of the Computer Freehold Registers are contained in Appendix 2).

There are several consent notices and encumbrances registered on the titles of the subject allotments. One encumbrance is to Her Majesty the Queen, relating to the construction and repair of fencing along the common boundary with the site now owned and operated by Kiwirail. A second encumbrance also relates to the adjoining Kiwirail site, imposing a no complaints policy and prohibiting owners or occupiers of the subject sites from lodging, being party to, or the financing of a submission, application, or proceeding, designed to limit, prohibit or restrict the current or future uses of the adjoining rail yards.

Consent notice 5702215.1 informs owners of the need to meet a minimum floor height as shown on Lucas Surveys Plan 1231FLOC and notifies them that their property is subject to ponding and overland flow. Several conditions of this consent notice relate to contamination and land suitability, noting that the sites are remediated and suitable for residential use. The conditions require confirmation of ground conditions prior to construction of a building and the findings to be taken into account with regard to foundation design. It also requires a validation report to be submitted for each lot prior to application for building consent (it is noted that this validation support has been submitted).

Consent notice B657968.3 advises owners that they must pay the costs of constructing any stormwater disposal infrastructure and also they must provide a vehicle turning areas. A second condition of the consent notice, specific to Lot 2 and 3 DP 83690 (Lot 2 is now known as Lot 64 DP 329306), requires vehicle turning areas to be provided in accordance with the dimensions on TSE Group Limited plan 275/22-3/10.

### 3. HISTORICAL PLANNING REVIEW OF THE SITE

A review has been undertaken of the previous City of Lower Hutt District Schemes, Proposed District Plan and Operative District Plan. The first record of zoning which can be found for the application site is the District Scheme of 1964. In this scheme, the site was zoned Industrial 'C' Zone. Under the first review of the District Scheme, which became operative in 1978, the site zoning changed to Railway Land. During the second review of the District Scheme, which became operative in 1991, the zoning of the site was amended to Railway Designation. The proposed District Plan of 1995 zoned the site General Business Activity Area but under the Operative District Plan of 2004 the application site has a zoning of General Residential Activity Area. The site has subsequently retained this zoning. The site specific restrictions preventing residential activities were imposed in 2004 to address any potential reverse sensitivity effects of the residential development along the western side of Mandel Mews.

### 4. EVALUATION OF OPTIONS

Section 32 (1)(b)(i) of the Resource Management Act 1991 states:

- (1) *An evaluation report required under this Act must—*
- (b) *examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*

*(i) identifying other reasonably practicable options for achieving the objectives;*

There are several potential options that require evaluation in relation to this proposal. These options have been shown to reflect the intent of the applicant and as such options which did not result in the provision of residential development on Lot 64 DP 319972 were not considered. These options are as follows:

Zoning

- Maintain the current zoning and provisions of the site; or
- Maintain the current zoning and amend the Rules 4A 2.1 (q) and 11 2.2.1(a) *Other* of the District Plan; or
- Rezone the site to General Residential Activity Area - Medium Density and delete Rule 4A 2.1 (q);
- Retain existing zoning for Lot 64 DP 319972; delete Rules 4A 2.1(q) and 11 2.2.1(a) *Other* and rezone Lot 64 DP 329306 as General Recreation Activity Area.

Option	Evaluation
<p><b>Option 1:</b></p> <p>Maintain Status Quo</p> <p><u>NOT RECOMMENDED</u></p>	<p><u>Benefits</u></p> <ul style="list-style-type: none"> <li>• Avoids the costs associated with the Plan Change process;</li> <li>• The existing characteristics of the sites are maintained;</li> </ul> <p><u>Costs</u></p> <ul style="list-style-type: none"> <li>• While the application site remains zoned General Residential Activity Area it cannot be used for anything other than a road reserve or a reserve under the provisions of the Reserves Act 1977</li> <li>• Any potential future development would be assessed against the provisions of the General Residential Activity Area zoning and would require resource consent as a Non-Complying Activity. Under the current Plan work the site are unlikely to be able to be developed for residential purposes.</li> <li>• If the use and development of vacant allotments within the existing urban environment (which are suitable for residential uses) is not provided for, there are lost social and economic opportunities as well as additional costs associated with extending the city limits and urban sprawl, having to provide for residential housing supply outside of the existing urban fringe;</li> <li>• Potential confusion around outdated Lot and Deposited Plan numbers in the District Plan not matching the current legal descriptions.</li> </ul>
<p><b>Option 2:</b></p> <p>Zoning of both lots remains unchanged (being General Residential Activity Area) but Rule 4A 2.1(q) and 11 2.2.1(a) <i>Other</i> is amended to remove reference to Lot 1</p>	<p><u>Benefits:</u></p> <ul style="list-style-type: none"> <li>• Retains the existing residential zoning of the site which is consistent with the character of the existing residential environment to the east;</li> <li>• The amended rule (4A 2.1(q)) will allow for residential use and development of Lot 64 DP 319972 that is compliant with the zone standards as a permitted activity;</li> <li>• Allows for development within an existing urban area, thereby containing urban development within the existing urban</li> </ul>

<p>DP 83690 and the reference to Lot 2 DP 83690 is updated its' current legal description.</p> <p><u>NOT RECOMMENDED</u></p>	<p>boundaries;</p> <ul style="list-style-type: none"> <li>• Additional revenue from an increase in rates;</li> <li>• Results in economic benefits by allowing the development of a residential dwelling on the site; and</li> <li>• Lot and deposited plan number matches the current legal description in the Rule.</li> </ul> <p><u>Costs</u></p> <ul style="list-style-type: none"> <li>• The costs associated with the Plan Change process;</li> <li>• A change in the visual amenity values of the local environment as perceived open space is developed into a residential environment.</li> <li>• Will still require site specific rules in the District Plan, which are not required and can be addressed through other zone options.</li> <li>• Reverse sensitivity issues could arise from allowing residential development if no additional measures are put in place.</li> </ul>
<p><b>Option 3:</b></p> <p>Rezone both lots as General Residential Activity Area - Medium Density and delete Rules 4A 2.1 (q) and 11 2.2.1(a) <i>Other</i>.</p> <p><u>NOT RECOMENDED</u></p>	<p><u>Benefits:</u></p> <ul style="list-style-type: none"> <li>• Allows for residential development on both allotments;</li> <li>• Additional revenue from an increase in rates.</li> </ul> <p><u>Costs:</u></p> <ul style="list-style-type: none"> <li>• The costs associated with the Plan Change Process;</li> <li>• The zoning would be inconsistent with the pattern of existing residential zoning in the area, would create a spot zoning which is not encouraged as good urban planning;</li> <li>• Site does not exhibit the characteristics of land that is traditionally zoned General Residential Activity Area - Medium Density. Currently the District Plan seeks to provide Medium Density Residential areas along major transport routes and within approximately a 5-minute walking distance from the edge of particular shopping centres. Mandel Mews is not a major transport route and it is more than 5minutes walk to the Waiwhetu shops.</li> </ul>
<p><b>Option 4:</b></p> <p>Retain existing zoning for Lot 64 DP 319972 and delete Rules 4A 2.1(q) General Residential '<i>Other</i>.' section from Rule 11 2.2.1 (a) from both lots.</p> <p>Rezone Lot 64 DP 329306 to General Recreation Activity Area</p> <p><u>RECOMMENDED</u></p>	<p><u>Benefits:</u></p> <ul style="list-style-type: none"> <li>• Retains the existing residential zoning of the site (with regard to Lot 64 DP 319972), which is consistent with the character of the existing residential environment to the east;</li> <li>• The amended rule now allows for residential use and development of Lot 64 DP 319972 that is compliant with the zone standards as a permitted activity;</li> <li>• Allows for development within an existing urban area, thereby containing urban development within the existing urban boundaries;</li> <li>• Additional revenue from an increase in rates;</li> <li>• Results in economic benefits by allowing the development of a residential dwelling on the site; and</li> <li>• Lot and deposited plan number matches the current legal description in the Rule.</li> </ul>

	<ul style="list-style-type: none"> <li>• Rezoning of Lot 64 DP 329306 to General Recreation will reflect the existing use of the site and the intent of the rule being removed (4A 2.1(q))</li> <li>• No site-specific rules will remain in the Plan which relate to the application site.</li> </ul> <p><u>Costs:</u></p> <ul style="list-style-type: none"> <li>• The costs associated with the Plan Change process;</li> <li>• A change in the visual amenity values of the local environment as perceived open space is developed into a residential environment.</li> <li>• Reverse sensitivity issues could arise from allowing residential development if no additional measures are put in place.</li> </ul>
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It is considered that Option 4, maintaining the current zoning for Lot 64 DP 319972, removing Rules 4A 2.1(q), 11.2.2.1 (a) 'Other' and rezoning Lot 64 DP 239306 to General Recreation is the most appropriate option to proceed with. This option maintains the existing General Residential Activity Area zoning of the northern allotment, which is considered to be the most appropriate residential zoning of those used within the Lower Hutt context. The continued use of this zoning preserves uniformity with the developed residential environment to the north, south and most importantly with the adjacent eastern properties. It is also considered that the objectives and policies that are associated with the General Residential Activity Area are more applicable and consistent with the density of development which would result from the establishment of a single residential dwelling on the Lot 64 DP 319972.

It is considered that the proposed General Recreation Activity Area zoning for the remaining site is appropriate. This zone ensures that the current characteristics of the property are maintained and discourages residential development.

## 5. PROPOSED DISTRICT PLAN CHANGES

Chapter 4 of the District Plan contains the General Residential Activity Areas Objectives, Policies and Rules. To facilitate the future construction of a residential dwelling at 1N Mandel Mews, it is proposed to delete rules 4A 2.1(q) and 11.2.2.1 (a) 'Other'

The existing rules are as follows:

4A 2.1 (q) *In respect of Lots 1 and 2 DP 83690 (Mandel Mews), in the 12m wide exclusion area, (identified in Appendix General Residential 12), land can only be utilised for the purpose of road reserve or a reserve created under the provisions of the Reserves Act 1977.*

And;

11.2.2.1 Standards and Terms

*All Controlled Activity subdivisions shall comply with the following Standards and Terms:*

- (a) *Allotment Design*  
*The minimum size of an allotment shall exclude rights of way and access legs to a rear site.*

**General Residential Activity Area**

*Minimum size of allotment: 400m<sup>2</sup>*



<i>Minimum frontage:</i>	<i>3m to ensure that there is drive-on access to the allotment. For rear allotments the 3m frontage may be satisfied through a registered Right of Way outside the title (outside legal boundaries of the allotment).</i>
<i>Shape factor:</i>	<i>All allotments must be able to contain a rectangle measuring 10m by 15m. Such a rectangle must be clear of any yard or right of way and have a suitable building platform.</i>
<i>Other:</i>	<i>Compliance with the permitted activity conditions of the activity area.</i>
	<i>In respect of the 12m wide exclusion zone - Mandel Mews, Lots 1 and 2 DP 83690 as shown on Appendix Subdivision 1, land can only be subdivided for the purpose of road reserve or a reserve created under the provisions of the Reserves Act 1977.</i>

The rules deleted shown as strikethroughs:

~~4A 2.1 (g) In respect of Lots 1 and 2 DP 83690 (Mandel Mews), in the 12m wide exclusion area, (identified in Appendix General Residential 12), land can only be utilised for the purpose of road reserve or a reserve created under the provisions of the Reserves Act 1977.~~

And;

#### 11.2.2.1 Standards and Terms

All Controlled Activity subdivisions shall comply with the following Standards and Terms:

- (a) **Allotment Design**  
The minimum size of an allotment shall exclude rights of way and access legs to a rear site.

#### **General Residential Activity Area**

Minimum size of allotment: 400m<sup>2</sup>

*Minimum frontage:* 3m to ensure that there is drive-on access to the allotment. For rear allotments the 3m frontage may be satisfied through a registered Right of Way outside the title (outside legal boundaries of the allotment).

*Shape factor:* All allotments must be able to contain a rectangle measuring 10m by 15m. Such a rectangle must be clear of any yard or right of way and have a suitable building platform.

~~*Other:* Compliance with the permitted activity conditions of the activity area.~~

~~*In respect of the 12m wide exclusion zone – Mandel Mews, Lots 1 and 2 DP 83690 as shown on Appendix Subdivision 1, land can only be subdivided for the purpose of road reserve or a reserve created under the provisions of the Reserves Act 1977.*~~

## 6. ENVIRONMENTAL EFFECTS RESULTING FROM THE PROPOSED PLAN CHANGE

Section 32 does not require an assessment of the environmental effects associated with a plan change (it requires the consideration of objectives and whether the proposed provisions are the best way of meeting those objectives). However, in the case of this proposal, an assessment of the potential environmental effects resulting from the proposed rule amendment has been provided as the proposal would enable the development of a site for residential purposes, where such an activity has been previously discouraged. This assessment assists with informing the appropriateness of this Proposed Plan Change and demonstrates that the Proposed Plan Change does not result in a development outcome that is contrary to the existing environment. The key environmental effects that will be considered are as follows:

- Character and Amenity Effects
- Traffic Effects
- Infrastructure Effects
- Reverse Sensitivity Effects
- Natural Hazard Effects
- Contamination Effects

### Character and Amenity Effects

The proposed Plan Change is seeking to amend existing site specific provisions of the General Residential Activity Area and Subdivision rules, which prevents the use of Lot 64 DP 319972 for residential development. The eastern side of Mandel Mews is an established residential environment with developed residential properties ranging in size from 400m<sup>2</sup> - 600m<sup>2</sup> (including properties accessed from Bell Road). It is considered that any future residential development on the subject site would read as an extension of the existing residential environment to the east of Mandel Mews. While the shape of the subject site is irregular, a dwelling could be constructed on the site that complies with the bulk and location standards of the General Residential Activity Area. It is also noted that a land use consent could be sought if a future dwelling was proposed that did not comply with the bulk and location standards, the effects of this would be assessed at the consenting stage. It is accepted that development will change the existing character of the site, however beyond the immediate vicinity of the site, the nature of land uses, to the east, are largely residential. As such, the proposed plan change is considered to be consistent with the character of the surrounding area and any amenity effects associated with future residential development less than minor.

While outside the scope of the plan change, it is worth noting that future dwelling plans have been drawn for the subject site, which take into account the size and shape constraints of the site, and offering a design response to these limitations. It is acknowledged that this dwelling design will need to obtain resource consent as it does not comply with all the bulk and location requirements of the General Residential Activity Area. However, the effects of the dwelling above the permitted baseline will be assessed via a resource consent application. A plan has been drawn to show a two-bedroom dwelling that could comply with the bulk and location standards and subject to the amendments proposed by this plan change could be built as a permitted activity. The ability to construct a residential dwelling on Lot 64 that complies with the existing bulk and location standards of the General Residential Activity Area is not

considered to have significant adverse effects on the residential character or amenity values of the surrounding environment.

The rezoning of Lot 64 DP 329306 (current reference in the plan to Lot 2 DP 83690) is not considered to have any adverse effects on the residential character or amenity values of the surrounding area. The use, or potential future use, of the lot will not change and this change is administrative to ensure that unintended residential activities do not occur on this site as a result of this proposal.

### **Traffic Effects**

The physical constants of the subject site (Lot 64 DP 319972) will limit the potential yield of the site. It is therefore relevant that one additional dwelling is contemplated when considering effects that may arise from any additional vehicle and personnel movements to and from the site. Mandel Mews is approximately 500m long, no exit street with a formed width of approximately 7.8m and a minimum road reserve width of 13m. A footpath exists within the eastern road reserve providing pedestrian access for the length of the street and connections to the south via a walkway to Quadrant Drive and the onto the Waiwhetu Stream. The additional vehicle movements arising from a single dwelling are not considered to be discernible in the context of the 60 dwellings which currently utilise Mandel Mews.

### **Infrastructure Effects**

The proposed amendments to Rule 4A 2.1 (q) would allow for residential activity to be undertaken on the site (subject to compliance with District Plan standards).

Reticulated services for the three waters (being potable water, stormwater and wastewater) are available within close proximity to the Lot 64 DP 319972. There are no known capacity issues within the area. Power and telecom services exists within the road reserve of Mandel Mews. At the building consent stage the site would need to be reticulated at the owners cost for the above-mentioned services.

Overall, no known issues exists with regard to availability and capacity of services to the site and therefore the proposed amendments to allow for residential activity on the application site are considered to be appropriate.

### **Reverse Sensitivity Effects**

Consultation has been undertaken with KiwiRail as they own and occupy the adjoining site to the west of the application sites. Given the nature of the activities that occur on the Kiwirail site, there is the potential for reverse sensitivity effects to arise from a residential dwelling being established on the application site. In order to mitigate against any reverse sensitivity effects, the applicant has agreed in principal to register a covenant on the title of Lot 64 DP 319972, which imposes design standards for any future dwellings with regard to noise and vibration. Any habitable building will have to achieve a certain level of design to ensure the vibrations and noise from trains and other rail related activities on the adjoining site to the west do not have adverse effects on the occupants of any future dwelling on the application site. It is noted, a no complaints covenant is already registered on the title of Lot 64 which states that the encumbrancer shall make no complaint or objection to the effects of the use of the KiwiRail

land. Appendix 3 contains the relevant construction standards that will be used as part of the covenant.

It is considered that the proposed General Recreation Activity Area zoning of Lot 64 DP 329306 will not give rise to any potential reverse sensitivity effects. This proposed zone discourages residential development and will ensure that the existing characteristics of this site are maintained.

### **Natural Hazard Effects**

Like all of the residential properties in the surrounding area, the application site is also susceptible to the 1 in 100 year flood hazard of the Waiwhetu and Awamutu Streams. A consent notice (58702215.1) was registered on the title of the subject site when it was created 2003. Two of the conditions within the notice relate to flooding, one conditions states that *'the floor level to the underside of the joists or bottom of concrete slabs are not to be less than that shown on Plan 1231FLOC. If required by Council the owners are to provide a Registered Surveyors Certificate that the levels have been so constructed'*. The other condition notes that several of the lots are subject to ponding and overland flow, of which Lot 64 is one of the specified lots. The plan referred to in the Consent Notice identifies minimum floor heights for each the relevant lot. However, a floor height is not specified for 1n Mandel Mews.

To ensure consistency with the most up to date flood data of the Waiwhetu Stream a minimum floor height for 1N Mandel Mews has been sought from Greater Wellington Regional Council Flood Protection, who have specified a floor level of 2.9m for the site. Given that the plan referred to in the consent notice doesn't specify a specific floor height for the lot, an encumbrance will be registered on the title requiring that any future habitable building on the site will need to achieve a minimum floor height as specified by Greater Wellington Regional Council. It is considered that the combination of the existing consent notice and the encumbrance relating to achieving a minimum floor height specified by Greater Wellington Regional Council is sufficient mitigation for the known 1% flood risk posed by the Waiwhetu and Awamutu Streams. Correspondence with Greater Wellington Regional Council is contained within Appendix 3.

### **Contamination Effects**

The application sites are listed on Greater Wellington Reginal Council's Selected Land Use Register (SN/03/355/902), as it is deemed to have been subject to HAIL. As part of the wider Mandel Mews development remedial work was undertaken and URS produced a report which includes several recommendations for future development works. The report identifies that a layer of ash (arsenic being the contaminant of concern) with possible asbestos fibres and matting are buried 600mm deep at 1N Mandel Mews (among other areas within the development) and that any soil disturbance work below 500mm should take this into account and take preventative measures to limit exposure of works and the general public. In any regard the National Environmental Standards for Managing Contaminants in Soil to Protect Human Health, 2012 (NES) will apply to the site. Resource consent will be required under the NES for a change of use prior that allows for residential activity being undertaken on the site, or for the disturbance of soil (earthworks) which exceed the permitted activity standards in the NES. As such, for the Proposed Plan Change the levels of any contaminates on site presently are considered to be at an appropriate level that remediation (if required) is possible and the

potential effects are of such a level that they can be dealt with via resource consent at a future stage.

## 7. POLICY ANALYSIS

### 7.1 Resource Management Act 1991

The purpose and principles of the Resource Management Act 1991 are detailed in Sections 5-8 of Part II of the Act. An assessment of the Proposed Plan Change against Part II is provided below.

#### Section 5

Section 5 promotes the sustainable management of natural and physical resources.

*“Sustainable Management means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –*

- a) Sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and*
- b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

The proposed plan change would result in the ability of Lot 64 DP 319972 to be utilised for residential development. The site is currently a vacant allotment, situated in an existing residential area. It is considered that the amendments proposed to the District Plan, allowing for residential use of the site, will result in a development form that cognisant with the local environment. No additional rules or controls in the District Plan beyond the existing standards of the General Residential Activity Area are proposed. A private covenant will be registered on the title of the lot which imposes construction standards for noise and vibration and ventilation to mitigate against any potential reverse sensitivity effects of the adjoining railway yards, to the west of the site. The subject site is in close proximity to transport links and can be serviced by the existing infrastructure in the immediate area.

The proposal to rezone Lot 64 DP 329306 to General Recreational Activity Area is considered to adhere to the principals of the Act, specifically section 5 being sustainable management of the available land resource. This site has even less area that could be utilised effectively for future residential activities as such the proposal to rezone to General Recreation is considered to be appropriate as it maintain the intended buffer zone and will ensure that that unintended residential activities do not occur on this site as a result of this proposal.

For the above reasons, the proposal is considered to be consistent with Section 5 of the Resource Management Act 1991.

## **Section 6- Matters of National Importance**

It is considered that there are no relevant Section 6 Matters that require consideration as part of this proposal.

## **Section 7- Other Matters**

Section 7 of the Resource Management Act identifies several matters which must be given due regard when assessing an application under the Act. Of particular relevance is the efficient use and development of natural and physical resources; maintenance and enhancement of amenity values. Section 7 (b) requires consideration to be given to the efficient use and development of natural and physical resources. The Proposed Plan Change is considered to be consistent with Section 7 (b) of the Resource Management Act 1991. The Proposed Plan Change is being undertaken to encourage residential development of a vacant allotment within the existing urban limits. The site is currently zoned to provide for residential use and is has connections to local shopping centre and transport routes in Waiwhetu and therefore it is considered to be an appropriate location for a residential development. The physical constraints of Lot 64 DP 329306 do not easily promote the site as being readily available for residential activities. As such it is considered that the rezoning of the site to General Recreation Activity Area is a more suitable zoning for the site. Section 7(c) relates to the maintenance and enhancement of amenity values. Amenity is discussed in more detail under Part 6 of this s32 report. For these reasons detailed in Part 6 of this report it is considered that the proposal is consistent with these particular clauses of section 7 of the Act and consistent with section 7 in general.

## **Section 8- Treaty of Waitangi**

Section 8 of the Resource Management Act requires that applications take into account the principles of the Treaty of Waitangi.

The principles of the Treaty of Waitangi have been taken into account in the analysis of this Plan Change. The site is not situated within or near any sites or areas which are identified in the District Plan as being significant to Maori. Given the small nature of the Proposed Plan Change and the location of the site, it is considered that the Schedule 1 process is an appropriate mechanism for consultation with Iwi groups. It is further noted that the application site is not within a statutory area as defined in Schedule 1 of the either the Port Nicholson Block (Taranaki Whanui ki Te Upoko o Te Ika) Claims Settlement Act (2009) or the Ngati Toa Rangatira Claims Settlement Act 2014. It is noted that consultation letters were sent to both Iwi groups and the Tenth Trust as part of initial consultation, of the responses received no concerns or objections have been raised.

## **7.2 Wellington Regional Policy Statement**

The Wellington Regional Policy Statement (RPS) for the Wellington Region sets out the regional perspective for managing the environment, and providing for growth and its effects.

The RPS sets out the framework and priorities for resource management in the Wellington region. The RPS identifies the regionally significant issues around the management of the regions natural and physical resources and sets out what needs to be achieved (objectives) and the way in which the objectives will be achieved (policies and methods). The objectives

and policies of the RPS most relevant to the Proposed Plan Change are considered to be the following:

### **Section 3.3 Energy, Infrastructure and Waste**

#### Objective 10

*The social, economic, cultural and environmental, benefits of regionally significant infrastructure are recognised and protected.*

#### Policy 8

*Protecting regionally significant infrastructure – regional and district plans.*

### **Section 3.8 Natural Hazards**

#### Objective 19

*The risks and consequences to people, communities, their businesses, property and infrastructure from natural hazards and climate change effects are reduced.*

#### Objective 20

*Hazard mitigation measures, structural works and other activities do not increase the risk and consequences of natural hazard events.*

#### Objective 21

*Communities are more resilient to natural hazards, including the impacts of climate change, and people are better prepared for the consequences of natural hazard events.*

#### Policy 29

*Avoiding inappropriate subdivision and development in areas at high risk from natural hazards – district and regional plans.*

#### Policy 51

*Minimising the risks and consequences of natural hazards – consideration*

#### Policy 52

*Minimising adverse effects of hazard mitigation measures – consideration*

### **Section 3.9 Regional form, design and function**

#### Objective 22

*A compact well designed and sustainable regional form that has an integrated, safe and responsive transport network and:*

- d) *Development and/or management of the Regional Focus Areas identified in the Wellington Regional Strategy;*

- (e) *Urban development in existing urban areas, or when beyond urban areas, development that reinforces the region's existing urban form;*
- (k) *Efficiently use existing infrastructure (including transport network infrastructure).*

Policy 31

*Identifying and promoting higher density and mixed use development – district plans.*

Policy 33

*Supporting a compact, well designed and sustainable regional form – Regional Land Transport Strategy.*

Policy 54

*Achieving the region's urban design principles – consideration.*

Policy 55

*Maintaining a compact, well designed and sustainable regional form – consideration.*

Policy 58

*Co-ordinating land use with development and operation of infrastructure – consideration.*

Policy 67

*Maintaining and enhancing a compact, well designed and sustainable regional form – non-regulatory.*

It is considered that the Plan Change is consistent with the objectives and policies of the Regional Policy Statement.

Policy 8 of the RPS requires the protection of regionally significant infrastructure, the application site adjoins the KiwiRail service yards and this should be considered as a regionally significant piece of transport infrastructure. While the area of the yards that adjoin the site is seldom used, development or residential activity on the site should not result in limitations to the current or future use of the KiwiRail land. Extensive consultation has been undertaken with KiwiRail and in principal agreements have been made to register a private land covenant on the title of Lot 64 DP 319972, which would ensure any future habitable building on the site achieve design standards that would mitigate against the effects (noise and vibration) of the adjoining railyards. It is noted a no complaints covenant also exists on the title of the lot, but the additional covenant that will be registered is considered to ensure that the proposal seeks to protect the regionally significant piece of transport infrastructure that adjoins the site.

The application site is situated in the 1:100 year flood extent of the Waiwhetu and Awamutu Stream. No specific rules are proposed to directly address the identified flood hazard. A number of other residential properties have been developed within the immediate area that are also subject to the same 1% flood hazard of the Waiwhetu and Awamutu Stream. The subject site and the developed residential lots are subject to a consent notice condition requiring them to achieve a minimum floor level that is clear of the 1 in 100 year flood hazard



at the time a building consent is applied for. At present the minimum height specified by GWRC to the underside of the bearers for 1N Mandel Mews is 0.45m above the existing ground level or 2.9m above mean sea level (Wellington Datum 1953). This will be protected by the proposed covenant that will be registered on the title of the site. This covenant will ensure that any future development is appropriately designed to take into account the flood risks of the site and ensure that the risk to future occupants are appropriately addressed.

Policy 29 states that inappropriate subdivision and development in areas at high risk from natural hazards should be avoided. It is considered that the presence of the existing consent notice and the registering of a land covenant requiring any future habitable building to be achieve a minimum floor level, as specified by Greater Wellington Regional Council, will ensure that the risk associated with flooding is appropriately addressed.

With regard to the objectives and policies relating to regional form, the site is situated within an existing urban environment and can be serviced using the existing infrastructure. The site is located close to main transport links and is also located within walking distance of an Waiwhetu shops. The proposal represents development within an area that can appropriately support the resulting density of development.

These existing rule framework of the General Residential Activity area is considered to be appropriate to ensure that any future development is respectful of the amenity values and character of the local environment.

### **7.3 The Wellington Regional Strategy**

The Wellington Regional Strategy (WRS) is a sustainable growth strategy that has been developed by the nine local authorities within the Greater Wellington Area, in conjunction with Central Government, and the region's business, education, research, and voluntary sector interests.

The aim of the WRS is to build a resilient, diverse economy which is one that retains and creates jobs (especially high value jobs), supports the growth of high value companies and improves the region's position in relation to national GDP and national employment.

The Proposed Plan Change would allow for the development of the site in a manner that would support employment and economic growth. This is due to the Proposed Plan Change being prepared to facilitate the construction of a future dwelling on the site. The construction of a dwelling would provide limited employment opportunities and therefore support economic growth. It is therefore considered that the Proposed Plan Change is consistent with the outcomes sought within the WRS.

### **7.4 Consistency with Surrounding District Plans**

Section 74(2)(c) of the Act requires Council to consider the extent to which this Proposed Plan Change needs to be consistent with the plans or proposed plans of adjacent Territorial Authorities. It is considered that the proposal is not inconsistent with the plans of adjacent territories.

## 7.5 Hutt City Urban Growth Strategy

In 2014, Hutt City Council approved an urban growth strategy which sets out the long term approach to managing growth and change for Hutt City. As part of this growth strategy it recognises the need for intensification of residential development within the existing urban boundary of Lower Hutt. In this regard the proposed Plan Change is consistent with the Urban Growth Strategy and it would encourage the development of a vacant allotment within the existing urban environment.

## 7.6 District Plan

Chapter 1 of the City of Lower District Plan identifies the area wide objectives and policies which the District Plan seeks to achieve. The area wide objectives and policies which are considered to be relevant to the proposal are as follows

### 1.10.2 Amenity Value - Objective

*To identify, maintain and enhance the character and amenity values of the different activity areas.*

#### Policy

*To identify within all activity areas the general character and amenity values of that activity area.*

### 1.10.3 Residential Activity - Objective

*To accommodate residential growth and development through consolidation of the existing urban area but to allow some peripheral development.*

#### Policy

- (a) *To provide opportunities for gradual intensification of residential densities by:*
- (i) *Enabling higher densities along major transport routes and near suburban focal points*
  - (ii) *Providing for infill development throughout the established residential areas to appropriate minimum standards, and*
  - (iii) *Managing the rate at which land at the periphery of the urban area is developed for residential purposes.*

### 1.10.6 Recreation and Open space – Objective

*To provide and maintain a diverse range of open space and recreation facilities for the enjoyment of residents and visitors which meet the needs of different sectors of the community*

#### Policy

- (e) *To restrict the development of buildings and structures to ensure the open space characteristics and amenity values of land within the Recreation and Open Space Activity Area are maintained and enhanced*

### **1.10.11 Lessening Natural Hazards - Objective**

*To avoid or mitigate the vulnerability and risk of people and development to natural hazards.*

#### Policies

*(c) To limit the scale and density of development in areas where the risk of flooding is medium to high.*

The Proposed Plan Change is considered to be consistent with, and achieve the outcomes sought through the above objectives and policies of the District Plan. Objective 1.10.2 recognises that properties within the General Residential Activity Area are readily able to be developed for residential use either as a result of their natural topography, or as a result of bulk earthworks undertaken as part of the subdivision which created those properties. The land area which is subject to the Proposed Plan Change is flat, with a topography that is synonymous with the valley floor of the Hutt Valley. As such, the topography of the site is considered to be appropriate to enable future residential development.

The Proposed Plan Change seeks to provide for residential development within the existing urban area. It does not result in residential development on, or outside of the urban fringe. The site is currently a vacant residentially zoned allotment, adjacent to an established residential environment the use and development of the site is considered to be an efficient use of the available land resource within the existing urban fringe.

The site is not identified as an outstanding natural landscape, nor does it contain any significant cultural or archaeological resources (Objective 1.10.9) that need to be protected or have been identified for protection.

Policy 1.10.2 recognises that within Activity Areas there are areas that have different character and amenity values. In this regard, the proposed General Residential Activity Area zoning of the southern lot is considered to be the best zone that reflects the current use and future use of the site, in a manner that is consistent with the character and amenity values of the local area. The proposal is therefore considered to be consistent with Policy 1.10.2

It is acknowledged that the site is subject to the 1% flood hazard of the Waiwhetu and Awamutu Streams. The imposition of a covenant that requires any future habitable building to achieve a minimum floor height as specified by Greater Wellington Regional Council is considered an appropriate and common mechanism (meeting a minimum floor level) to mitigate against the known flood hazard. In any case a consent notice exists requiring any future buildings to achieve a minimum floor height that is clear of the flood hazard which is considered to reinforce the management of the level of risk posed by the 1 in 100 year flood event of the Waiwhetu and Awamutu Streams.

The rezoning of Lot 64 DP 329306 to General Recreation Activity Area will restrict the development of buildings and structures as is intended by with *Policy 1.10.6 (e)*. Which will intern ensure that no unintended reverse sensitivity effects arise from the proposed plan change. The continued use of the site as a buffer zone between the rail yards and the adjacent residential development to the east.

Overall, it is considered that the Proposed Plan Change will contribute to achieving the area wide objectives and policies of the District Plan. It is considered that the removal of the reference to Lot 1 DP 83690 from Rules 4A 2.1 (q) and 11 2.2.1(a) will achieve a balance between maintaining the amenity values and character of the local environment while allowing for the development potential of the site to be realised. The Proposed Plan Change would allow for the site to be developed for residential activities including the construction of a dwelling. It is considered that maintaining the status quo will not be as effective or efficient in achieving these area wide objectives and policies.

### **Specific District Plan Objectives and Policies**

The Proposed Plan Change is considered to be consistent with the following relevant objectives and policies pertaining to the General Residential Activity Area of the City of Lower Hutt District Plan:

#### General Residential Activity Area Objectives and Policies:

##### **4A 1.1.1 Residential Character and Amenity Value**

###### Objective

*To maintain and enhance the amenity values and residential character of the General Residential Activity Area of the City.*

###### Policies

- (a) *That opportunity be provided for a diversity of residential activities.*
- (c) *To ensure residential amenity values are retained, protected and enhanced through the establishment of a net site area per dwelling house.*
- (d) *That adverse effects arising from noise, dust, glare, light spill and odour be managed.*
- (e) *That vegetation and trees which add to the particular amenity values of the area be retained where practicable.*
- (f) *That the clearance of vegetation be managed to avoid, remedy or mitigate any adverse effects on the intrinsic values of ecosystems.*

##### **4A 1.2.1 Building Height, Scale, Intensity and Location**

###### Objective

*To avoid, remedy or mitigate adverse effects caused by building height, intensity and location on the amenity values of adjacent residential sites and the residential character of the surrounding residential area.*

###### Policies

- (a) *To establish a minimum net site area and maximum site coverage requirement to ensure medium density development is achieved.*
- (c) *To ensure all new development is of a height and scale, which is compatible with surrounding residential development.*
- (d) *To ensure a progressive reduction in height of buildings the closer they are located to a site boundary, to maintain adequate daylight and sunlight to adjoining properties.*

- (e) *To manage the siting of all buildings so as to minimise detracting from the character and visual attractiveness of the surrounding residential activity area.*
- (f) *To manage the siting of all buildings so as to minimise detracting from the amenities of adjoining properties.*
- (g) *That where practicable, the siting of accessory buildings be managed to maintain safety and visibility during manoeuvres.*

#### **7A 1.1.1 Adverse Effect of Recreation Activities on Adjoining Residential Activity Area**

##### Objective

*To ensure that recreation activities have adverse effects which are no more than minor on adjoining residential activity areas.*

##### Policies

- (a) *To ensure that recreation activities are of a scale and character that amenity values of adjoining residential activity areas are not affected adversely.*
- (b) *To ensure that adverse effects, such as noise, glare, light spill and odour, generated by activities in the General Recreation Activity Area, are managed to ensure that residential amenity values are maintained.*

The proposed plan change is considered to be consistent with, and achieve the outcomes of, Objective 4A 1.1.1, in as much that it will facilitate further residential development in the Mandel Mews subdivision, without compromising the character of the existing residential environment or the amenity values of the area. Lot 64 DP 319972 achieves the minimum net site area requirements of the General Residential Activity Area, although it is acknowledged that this is not in a fashion that is common (in terms of future lot configuration as a result of subdivision), in the General Residential Activity Area. Despite this, the subject site has sufficient area available to facilitate future residential development that will be in keeping with the character of the residential environment to the east. The development of the site for residential use would enhance the entrance to the Mandel Mews subdivision. It would act like a gateway to the subdivision with residential dwellings on either side of the road, framing the area, setting and solidifying the typology of the established subdivision. The physical constraints of the site provide opportunity for an increase in the range of residential activities and forms within the area as any future dwelling will need to be compact and succinct to fully utilise the available land area.

The subject site features a mixture of small and medium sized vegetation, none of which is identified as having any particular amenity value. This vegetation does provide a visual softening of the acoustic fence between the Kiwirail yards and the adjacent Mandel Mews subdivision and while some of the vegetation may be removed as the result of providing for future residential development, the Proposed Plan Change will not result in the loss of any significant areas of vegetation. In any regard, it is thought that the majority of the vegetation will be retained when a dwelling is constructed in future and any that may be removed would be confined to the northern portion of the site.

With regard to Objective 4A 1.2.1 and its policies, the subject site can cater for residential development, the General Residential Activity Area contains a number of Permitted Activity rules which establish controls for residential development within this activity area. It is considered that the continued use of these controls are appropriate for the site. If any future dwelling is proposed for the subject site that does not comply with the prescribed activity standards, the effect of any non-compliances will be assessed at the resource consent stage. The continued use to the zone wide standards will ensure that future development is consistent with the established residential environment to the east.

The policies under 7A 1.1.1 seek to ensure that recreational activities maintain the amenity values of adjoining residential properties. The proposed rezoning would not result in new recreational activities being established on 57N Mandel Mews, but would ensure that the site is appropriately zoned for the existing activities that are undertaken on the site. Compliance with the existing rules pertaining to the General Recreational Activity Area are considered to be sufficient to ensure that any future activities are in keeping with the character of the local area. Compliance with these existing rules are considered to be sufficient to ensure that the outcomes sought under these policies are achieved

### **7.7 Proposed Plan Change 39**

On 4 October 2016 Hutt City Council notified Proposed District Plan Change 39 (PC 39). PC 39 is a revision of the existing transport provisions of the Operative Plan, predominantly found in Chapter 14A. This application is largely unaffected by the amendments proposed by PC 39. The application site is clear of the proposed Railway Corridor Buffer Overlay and as such is unaffected by the provisions proposed for new dwellings within the overlay.

It is however noted that the proposed restrictions to address reverse sensitivity effects proposed to be registered on the private covenant are very similar to the proposed restrictions outlined in Plan Change 39 to address reverse sensitivity effects associated with the rail corridor. In this regard, the proposed approach and measures to address reverse sensitivity effects in consistent with Plan Change 39 and therefore can be considered to also be appropriate to address any potential reverse sensitivity effects.

### **7.8 Other Strategies and Plans**

The Hutt City Council has a number of strategies and plans that detail the priorities for the City, namely:

- Integrated Vision 2014;
- Long Term Plan (LTP) 2012;
- Economic Development Strategy 2009 – 2014;
- Environmental Sustainability Strategy 2009;

The Proposed Plan Change is considered to be consistent with the outcomes sought under the above strategies and plans.

## 7.9 Consultation

Consultation letters (page 1 & 2, Appendix 3), have been sent to the Territorial and Regional Authorities within the Wellington Region as well as 1 Mandel Mews (the adjacent property) to inform them of the Proposed Plan Change and seek their feedback. Specific consultation has not been undertaken with any other residential properties with Mandel Mews. No feedback has been received to date from 1N Mandel Mews or any of the territorial or regional authorities. Letters were also sent to the Tenths Trust, Port Nicholson Block and Te Runanga o Toa Rangatira Inc. Of these, a response has been received from the Tenths Trust stating they have no issue with the Proposed Plan Change.

It is noted that since the original consultation letters were sent out to the above parties the scope of the plan change has been altered. However, the overall intention and of the proposal and the outcomes have not changed, in that the provision of residential activity on Lot 64 DP 319972 is still proposed and Lot 64 DP 329306 will still not be utilised for residential activities.

### KiwiRail:

Extensive consultation has undertaken with KiwiRail in regard to the application. As part of consultation it has been agreed in principal to register a private covenant on the title of Lot 64 DP 319972 which will ensure any future buildings on the site, which contain noise sensitive activities (generally habitable spaces) meet specific standards for vibration, noise, and if required, ventilation. The agreed approach to wording of the covenant is yet to be finalised although it is intended to provide a degree of consistency where possible with the requirements of Hutt City Council's Proposed Plan Change 39 (PC 39). Although not within an identified 40m buffer from an active railway corridor, the wording of the standards imposed by the covenant is comparable to the wording contained within PC 39.

### Greater Wellington Regional Council:

Consultation has been undertaken with Greater Wellington Regional Council's Flood Protection Team with regard to the Proposed Plan Change. As per the letter dated 25 October 2016 (Appendix 3), GWRC does not oppose the Proposed Plan Change. Feedback and direction was also sought as part of the consultation process to establish a minimum floor height for any future habitable buildings on the site. This has been specified at 2.9m, given in terms of Mean Sea Level Wellington 1953 Datum. This represents a flood depth of between 0.2m and 0.6m on the application site. The private covenant will not specify the minimum floor level at 2.9, it will simply specify that it meets the minimum flood level specified by GWRC, this is to allow for the most up to date data to be used at the time a building consent is sought for a habitable building in future.

## 8. RISK OF NOT ACTING

Section 32 (2) (c) of the Resource Management Act 1991 states:

- (2) An assessment under subsection (1)(b)(ii) [assessing the efficiency and effectiveness of the provisions in achieving the objectives] must—*
- (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions*

In considering the proposal against Section 32 (2) of the Resource Management Act 1991, it is considered that Council has sufficient information to consider this Proposed Plan Change.

Due to the small and discrete nature of the plan change, there is little risk to Council from acting on this plan change.

## 9. SUMMARY

The purpose of the Proposed Plan Change is to remove Rules 4A 2.1 (q) and 11 2.2.1(a) 'Other' of the Operative City of Lower Hutt District Plan to allow for residential activities on Lot 64 DP 319972 (1N Mandel Mews). It is also proposed to rezone Lot 64 329306 (57N Mandel Mews) to the General Recreation Activity Area. The evaluation of the Proposed Plan Change has included an assessment of the effects on the environment resulting from removing the activity restrictions on both lots. The existing General Residential Activity Area zoning is considered to be appropriate for Lot 64 DP 319972 and would be consistent with the character of the local environment and would allow for future development of the site in a manner which is in keeping with the amenity values of the local environment.

An analysis of the relevant national, regional and local policy statements, plans and other non-statutory documents has been undertaken. It is considered that the Plan Change is consistent with the national, regional and local policy statements, plans and other non-statutory documents. The objectives, policies and rules of the General Residential Activity Area and General Recreation Activity Area are considered to adequately control any potential adverse effects resulting from allowing residential activity on Lot 64 DP 319972 (1N Mandel Mews) and any subsequent development as well as ensuring no unintended development (residential or otherwise) occurs on Lot 64 DP 329306. As such, no changes to the existing objectives, policies or additional rules for the General Residential Activity Area or General Recreation Activity Area have been sought as part of this Proposed Plan Change.

The costs and benefits of the Plan Change have been assessed against the purpose of the Resource Management Act 1991. The costs and benefits of the options for the site have been evaluated and the recommended option to remove the restrictions on Lot 64 DP 319972 & Lot 64 DP 329306 combined with rezoning Lot 64 DP 329306 is considered to be the most appropriate in terms of achieving the purpose of the Act. Overall, the Proposed Plan Change is considered to be consistent with the purpose and principles of the Act.

--

### Report prepared by



Sam Gifford  
Senior Planner  
**Cuttriss Consultants Ltd**

On behalf of Best Value Homes  
28 November 2016



### **Index to Appendices**

1. Site Plan, identifying the extent of the area of the application site affected by the Proposed Plan Change.
2. Computer Freehold Register
3. Consultation Documents



# Appendix 1 Site Plan



DELETE RULES 4A 2.1(q) & 11.2.2.1(a) 'Other'  
TO ALLOW FOR RESIDENTIAL ACTIVITY

LOT 64  
DP 319972

LOT 64  
DP 319972

MANDEL MEWS

LOT 64  
DP 329306

REZONE TO GENERAL  
RECREATION ACTIVITY AREA

0 50 100 150m  
SCALE 1:1500

Cuttriss Consultants Limited  
Hutt Valley, Wellington, Kapiti Coast

JOB

PROPOSED PLAN CHANGE AT  
LOT 64 DP 329306 & LOT 64 DP 319972  
MANDEL MEWS, WAIWHETU, LOWER HUTT

Copyright of this drawing is vested in Cuttriss Consultants Limited

SCALE 1:1500

SIZE A3

FIELDWORK - -

DESIGNED - -

DRAWN EMJ 09/16

CHECKED SG 09/16

DRAWING NUMBER

28876SK1

SHEET 1 OF 1 SHEETS

REVISION -

CLIENT

BEST VALUE HOMES LIMITED

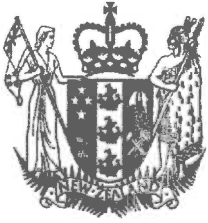
**Cuttriss**  
Surveyors. Engineers. Planners.

Lower Hutt Branch - Level 3 MacKay House, 92 Queens Drive, Lower Hutt  
Postal Address - PO Box 30 429, Lower Hutt 5040  
Telephone (04) 939 9245 Fax (04) 939 9249 Email hutt@cuttriss.co.nz

Paraparaumu Branch - 33 Kapiti Road, Paraparaumu  
Postal Address - PO Box 386, Paraparaumu 5254  
Telephone (04) 904 5420 Fax (04) 904 5423 Email kapiti@cuttriss.co.nz



## Appendix 2 Computer Freehold Register



# COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952



Search Copy

  
R. W. Muir  
Registrar-General  
of Land

**Identifier** 78811  
**Land Registration District** Wellington  
**Date Issued** 22 August 2003

## Prior References

WN50D/543

---

**Estate** Fee Simple  
**Area** 791 square metres more or less  
**Legal Description** Lot 64 Deposited Plan 319972

## Proprietors

PML Trustees (Bell Spike) Limited

## Interests

Subject to Part IV A Conservation Act 1987

Subject to Section 11 Crown Minerals Act 1991

B657968.3 Consent Notice pursuant to Section 221(1) Resource Management Act 1991 - 30.3.1998 at 11.56 am

Fencing Covenant in Transfer B824981.1 - 7.3.2001 at 9:11 am

Appurtenant hereto are rights to water drainage as specified in Easement Certificate B657968.7 - 30.3.1998 at 11.56 am

The easements specified in Easement Certificate B657968.7 are subject to Section 243 (a) Resource Management Act 1991

B824981.1 Transfer excluding coal and other minerals - 7.3.2001 at 9.11 am

B824981.3 Encumbrance to Her Majesty the Queen - 7.3.2001 at 9.11 am

5702215.1 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 22.8.2003 at 9:00 am

5702215.7 Encumbrance to (now)Toll NZ Consolidated Limited - 22.8.2003 at 9:00 am

Subject to a electricity easement in gross over part herein in favour of Vector Wellington Electricity Network Limited created by Transfer 5702215.10 - 22.8.2003 at 9:00 am

The easement created by Transfer 5702215.10 is subject to Section 243 (a) Resource Management Act 1991

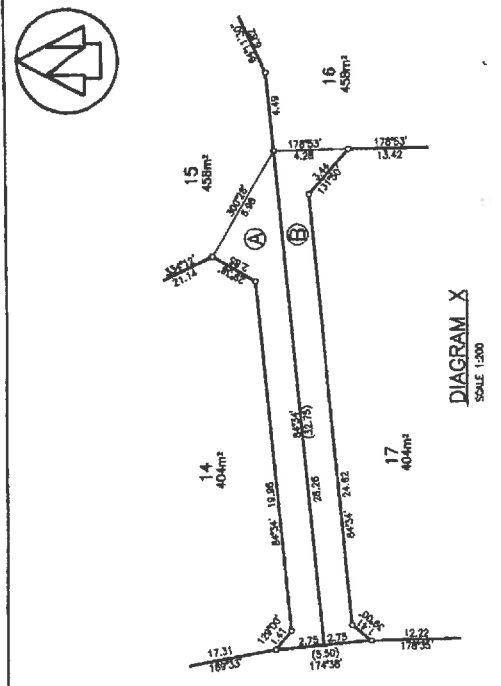
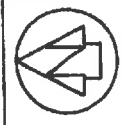
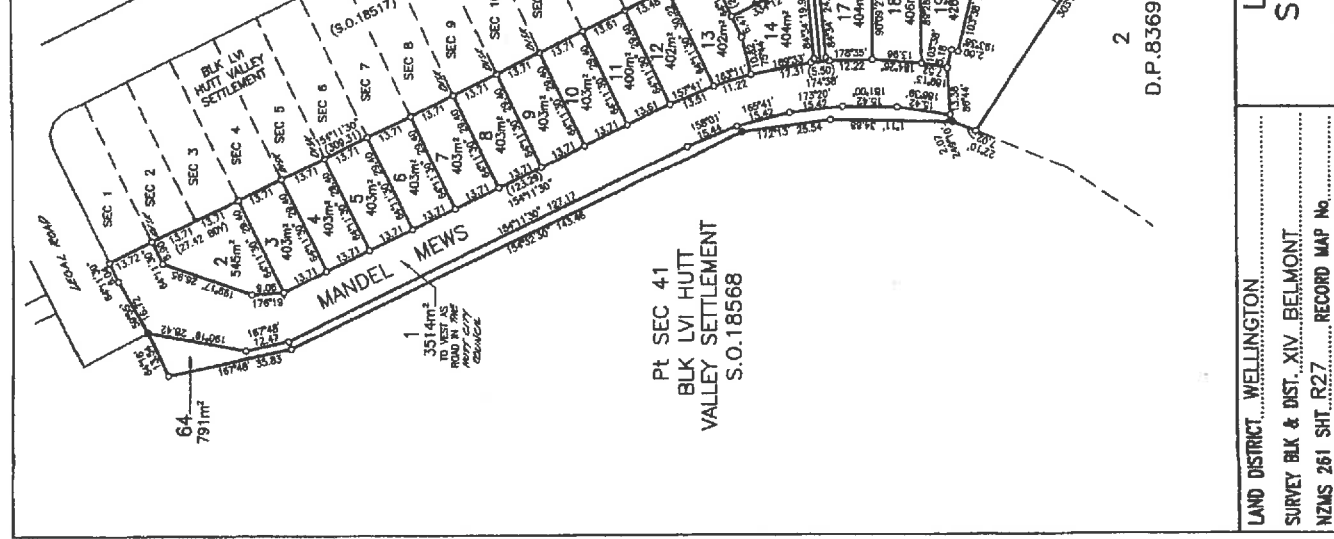


DIAGRAM X  
SCALE 1:300

Subject to Part IVA  
Conservation Act 1987

NOTE: LAND SUBJECT TO Pt. IVA OF THE CONSERVATION ACT 1987.

Approved as to Survey by  
Land Information N.Z. on 24/4/2003  
Deposited by Land Information N.Z.  
on 22/11/2003



LAND DISTRICT, WELLINGTON  
SURVEY BLK & DIST. XIV, BELMONT  
NZMS 261 SH. R27 RECORD MAP No.  
D.P. 83690  
LOTS 1-19, 64 AND 100 BEING  
SUBDIVISION OF LOT 1 D.P. 83690  
TERRITORIAL AUTHORITY THE HUTT CITY  
Surveyed by LUCAS SURVEYS LTD  
Scale 1:1,000 Date NOVEMBER, 2002

Approvals

REGISTERED PROPRIETORS  
I HEREBY CERTIFY THAT THIS PLAN WAS APPROVED BY THE HUTT CITY COUNCIL PURSUANT TO SECTION 223 OF THE RESOURCE MANAGEMENT ACT 1991, I HEREBY CERTIFY THAT THE CONDITIONS OF THE RESERVATION OF THE EASEMENT SET OUT ON THE MEMORANDUM HEREON ON THE 14th DAY OF February 2003 SUBJECT TO THE GRANTING OR RESERVING OF THE EASEMENT SET OUT ON THE MEMORANDUM HEREON

AUTHORISED OFFICER  
*Michler*

PURSUANT TO SECTION 224(C) OF THE RESOURCE MANAGEMENT ACT 1991, I HEREBY CERTIFY THAT THE CONDITIONS OF THE RESERVATION OF THE EASEMENT SET OUT ON THE MEMORANDUM HEREON HAVE BEEN ISSUED IN RESPECT TO THOSE CONDITIONS THAT HAVE NOT BEEN COMPLIED WITH  
DATED THIS 14th DAY OF February 2003

AUTHORISED OFFICER  
*Michler*

SURVEY: CLASS 1

NEW CERTIFICATES OF TITLE ALLOCATED	
LOT 1	ROAD LOT 2 WN 78194 LOT 3 WN 18195
LOT 4	WN 18196 LOT 5 WN 18197 LOT 6 WN 78198
LOT 7	WN 18199 LOT 8 WN 18900 LOT 9 WN 78901
LOT 10	WN 18602 LOT 11 WN 78603 LOT 12 WN 78604
LOT 13	WN 78605 LOT 14 WN 78606 LOT 15 WN 78607
LOT 16	WN 78608 LOT 17 WN 78609 LOT 18 WN 78610
LOT 64	WN 78611 LOT 100 WN 78612 LOT 19 WN 78613

Total Area, 1,556.2ha  
Comprised in WN 500/543 (ALL)

I, GARY CHARLES RAWSON being a person entitled to practice as a Licensed Cadastral Surveyor, do hereby certify that this plan is a true and correct copy of the original plan as shown to me or under my direction in accordance with the Cadastral Survey Act 2002 and the Surveyor-General's rules for Cadastral Survey 2002/1.  
(a) This document is correct, and has been created in accordance with the Act and these rules.  
Dated this 27th day of November 2002  
G.C. Rawson  
Reference Plans D.P. 83690, 83691, 83692  
Field book REG 43 p. 12, Traverse Book p. 12  
Examined Correct  
Approved as to Survey by  
Deposited this 22nd day of November 2003  
Chief Surveyor

REGISTRAR GENERAL OF LAND  
File 1231/LT  
Received 4.03.03  
Instructions DP 319972  
LTC FORM 013 (Amended March 1977)



THE HUTT CITY COUNCIL

CONSENT NOTICE PURSUANT TO SECTION 221  
RESOURCE MANAGEMENT ACT 1991

IN THE MATTER of Lots 1-5 LT  
83690

AND

IN THE MATTER of Subdivision  
Consent pursuant  
to sections 105,  
220 and 221 of the  
Resource  
Management Act  
1991

Pursuant to section 220(1)(c) of the Resource Management Act 1991 The Hutt City Council by resolution passed under delegated authority on 28 November 1996 imposed the following condition on the subdivision consent for the subdivision of being a subdivision of Part Sections 40 & 41, Blk LVI Hutt Valley Settlement and Lot 1, DP 40193 that:

- a) At the time of the development of their property the respective owners of Lots 1, 2 and 3 shall be required to bear the cost of construction of suitable independent drains for the disposal of stormwater off their particular lot discharging into the Waiwhetu Stream.
- b) Vehicle turning areas to the dimensions shown on Tse Group Limited plan 275/22-3/10 shall be provided in relation to Lots 2 and 3.

DATED at Lower Hutt this 4 day of August 1997.

For and on behalf of  
THE HUTT CITY COUNCIL

*File*

Donna Anderson  
LEGAL ADVISOR

This reproduction is certified to be a  
true copy of B 657968.3  
for the purposes of section 215B  
Land Transfer Act 1952 - 20.6.2013



*Ch*  
For RGL

B 657968.3

30.3.1998 at 11.56am



**TRANSFER**  
Land Transfer Act 1952

ENC B824981.3 Encumb

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DocID: 411146676

If there is not enough space in any of the panels below, cross-reference to and use the approved Annexure Schedule: no other format will be received.

Land Registration District

WELLINGTON

Certificate of Title No.

50D/543 ✓

All or Part? Area and legal description — Insert only when part or Stratum, CT

All

Transferor Surnames must be underlined

HER MAJESTY THE QUEEN pursuant to Section 24 (a) of The New Zealand Railways Corporation Act 1981

Transferee Surnames must be underlined

CAPITAL PROJECTS (1998) LIMITED

Estate or Interest or Easement to be created: Insert e.g. Fee simple; Leasehold in Lease No. ....; Right of way etc.

Fee simple excluding coal and other minerals which will be retained by the Transferor with the transfer also to be subject to Part IVA of the Conservation Act 1987 (See Annexure)

Consideration

\$160,000.00

Operative Clause

For the above consideration (receipt of which is acknowledged) the TRANSFEROR TRANSFERS to the TRANSFEEE<sup>\*</sup> all the transferor's estate and interest described above in the land in the above Certificate(s) of Title and if an easement is described above such is granted or created. \*pursuant to Section 24 of the New Zealand Railways Corporation Act 1981

Dated this

15

day of

December

2000

Attestation

Signed on behalf of HER MAJESTY THE QUEEN by Paul Stephen Kelly pursuant to Section 10A of The New Zealand Railways Corporation Act 1981

Signed in my presence by the Transferor  
Signature of Witness

Witness to complete in BLOCK letters  
(unless typewritten or legibly stamped)

Witness name ROGER KENNETH HILDEN

Occupation PORTFOLIO MANAGER

Address LAND INFORMATION N.Z.  
WELLINGTON

Signature, or common seal of Transferor

Certified correct for the purposes of the Land Transfer Act 1952

Solicitor for the Transferee

Annexure Schedule

TRANSFER

Dated

15 December 2000

Page

2

of

2

Pages

Estate of Interest continued

PROVIDED ALWAYS that the Transferor shall not be liable nor be called upon to erect or repair or contribute towards the costs of erection or repair of any boundary fence between the land hereby transferred and any land now owned by the Transferor adjoining thereto but this proviso shall not enure for the benefit of any purchaser of such adjoining land.



If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

A handwritten signature in black ink, appearing to be "S. J. [unclear]".

Approved by Registrar-General  
of Land under No. 1995/1004

# TRANSFER

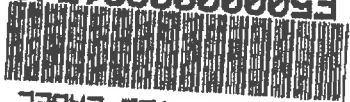
Land Transfer Act 1952

Law Firm Acting

Auckland District Law Society  
REF: 4135

**This page is for Land Registry Office use only**  
*(except for "Law Firm Acting")*

F500000921542



RECALL FILE LABEL

9.11.07 MAR 01 B 824981.1



500/543

- Transfer to Capital Projects
- (1998) provided - Excluding Coal
- and other minerals
- + Paid N & Minerals
- Fencing/cey

THE HUTT CITY COUNCIL  
CONSENT NOTICE PURSUANT TO  
SECTION 221 RESOURCE MANAGEMENT ACT 1991

ONO 5702215.1 Consent ui

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DocID: 410794484

IN THE MATTER of Lots 1-19,64 AND 100  
DP

AND

IN THE MATTER of Subdivision  
Consent pursuant to sections 105,  
108, 220 and 221 of the Resource  
Management Act 1991

Pursuant to sections 108 and 220 of the Resource Management Act 1991 The Hutt City Council by resolution passed under delegated authority on 8 November 2002 Imposed the following conditions on the subdivision consent for the subdivision of LOTS 1-19,64 AND 100, BEING A SUBDIVISION OF LOT 1 DP 83690 that:

- 1 The owners note that the land is classified as remediated or contaminated site suitable for residential use. The URS reports dated 28/4/03 and 19/5/03 contains recommendations regarding future excavation on the Lots. In the event that excavations are to be carried out the recommendations in the report are to be followed.
- 2 Provision of a validation report for each Lot and its acceptance by Council, prior to application for Building Consents on the land.
- 3 Compliance with the Sawrey Lane report dated 11/4/03 prior to application for Building Consents on the land.
- 4 The floor levels to the underside of floor joists or bottom of concrete slabs are to be not less than that shown on plan 1231FLOC. If required by Council the owners are to provide a Registered Surveyors certificate that the levels have been so constructed.
- 5 Owners of Lots 5-11, & 64 note that their lots are subject to ponding and overland flow and Lots 1-4, 12-19 & 100 are subject to overland flow during heavy rainfall and should be kept clear of all obstructions- see Lucas Surveys Plan 12310FLOC.

DATED at Lower Hutt this <sup>19<sup>th</sup></sup> day of <sup>August</sup> 2003.  
For and on behalf of THE HUTT CITY COUNCIL

Authorised Officer

ENC 5702215.7 Encumbrance

Copy - 01/01, Pgs - 006, 19/09/03, 09:51



DateID: 410794498

IN THE MATTER of the Land Transfer Act 1952

AND

IN THE MATTER of a Memorandum of Encumbrance

**MEMORANDUM OF ENCUMBRANCE**

**(REVERSE SENSITIVITY COVENANT)**

**PARTIES**

BELL ROAD DEVELOPMENTS LIMITED

1. ~~CAPITAL PROJECTS (1999) LIMITED~~ ("Encumbrancer")
2. TRANZ RAIL LIMITED ("Tranz Rail")

**INTRODUCTION**

- A. The Encumbrancer is registered as proprietor of an estate in fee simple in the land described in the Schedule.
- B. The Encumbrancer has requested Tranz Rail to consent to a subdivision of the land described in the Schedule.
- C. Tranz Rail has agreed to consent to such subdivision on the condition, *inter alia*, that the Encumbrancer enter into and execute this Memorandum.

**COVENANTS:**

1. The Encumbrancer hereby encumbers all the land described in the Schedule for the benefit of Tranz Rail or its permitted assigns or successors in title for a term of 999 years from the date hereof with an annual rent charge of \$1.00 to be paid on the 1<sup>st</sup> day of June each year if demanded by the date.
2. The Encumbrancer covenants with Tranz Rail as follows:
- (a) It will allow Tranz Rail to carry on its operations and activities without interference or restraints from the Encumbrancer;
- (b) It will not in any way inhibit Tranz Rail from carrying out any works or activities pursuant to the current or replacement Railway Purposes Designations, or pursuant to any existing use rights under Section 10 of the Resource Management Act 1991, or pursuant to any other industrial

activity on the land likely to be approved by the Hutt City Council under the current or replacement District Plan;

(c) It will not bring any proceedings for damages, negligence, nuisance, trespass or interference arising from the use or indirect use of the Tranz Rail land;

(d) It will make no complaint or submission or objection relating to the effects of the use of the Tranz Rail land;

(e) It will not:

(i) Make nor lodge, nor;

(ii) Be party to, nor;

(iii) Finance nor contribute to the cost of

any submission, application, proceeding (either under the Resource Management Act or otherwise) designed or intended to limit, prohibit or restrict continuation of the current or future uses of Tranz Rail's land including, without limitation, any action to require Tranz Rail to modify the current or future uses carried out within the Tranz Rail land;

(f) It will disclose to all occupiers and purchasers of the allotments to be created the terms of this covenant and ensure that this covenant is recorded for all time against each individual Certificate of Title for any allotment so created. In the event of subsequent or leasehold titles or similar being issued, such restrictions are to be brought down onto such subsequent or leasehold or similar titles. Tenants or other occupiers are to be based on the same manner as an "owner" is;

(g) The covenants on the part of the Encumbrancer are to continue to apply in perpetuity or until such time as Tranz Rail or the then owner/lessee of the Tranz Rail land indicates otherwise.

3. The Encumbrancer shall pay the costs of preparation and registration of this encumbrance and any other costs incurred by Tranz Rail in relation to this encumbrance.

4. Section 104 of the Property Law Act 1952 applies to this encumbrance but otherwise (and without prejudice to Tranz Rail's right of action at common law as a rent charger or Encumbrancee):


(a) Tranz Rail shall be entitled to none of the powers and remedies given by

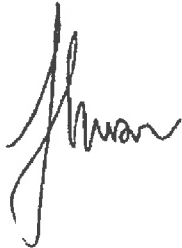
A handwritten signature and initials, possibly 'M. S.', are written in the bottom right corner of the page.


encumbrances by the Land Transfer Act 1952 and the Property Law Act 1952; and

(b) No covenants on the part of the Encumbrancer and his successor in title are implied in this memorandum other than the covenants for further assurance implied by Section 154 of the Land Transfer Act 1952.

5. The parties hereto acknowledge and agree that the benefit of the covenants herein recorded is for the enjoyment of the owner for the time being of the Tranz Rail land generally known as Hutt Workshops, the Rail Operator (a term defined in the Railway Safety and Corridor Management Act 1992) and any successive owner or occupier of the land using that land for non residential purposes.

  
SIGNED by BELL ROAD )  
DEVELOPMENTS CAPITAL PROJECTS )  
(1998) LIMITED )  
by its Director )  
in the presence of: )




Witness Signature:   
Witness Name:

Occupation: **LLOYD JOHN COLLINS**  
Wellington  
Solicitor  
Address:

\* its attorney  
SIGNED by )  
TRANZ RAIL LIMITED )  
by \* Neil Davies )  
in the presence of: )



Witness Signature:   
Witness Name: Mairead Cleary MAIREAD ELIS CLEARY  
Occupation: Property Administrator  
Address: Wellington.

**SCHEDULE**

Lots 1 and 2 on Deposited Plan 83690 contained in Certificates of Title Volume 50D, Folio 543 and Volume 50D, Folio 544 in the Wellington Land Registry.





Westpac Banking Corporation being the Mortgagee under and by virtue of Mortgage No. 5506344.1 hereby consents to the registration of the within Memorandum of Encumbrance.

SIGNED by  
WESTPAC BANKING CORPORATION  
by its attorney

Meriana May van der Kuist

in the presence of:

Witness signature

Witness name

KIRSTON JANE COX  
BANK OFFICER  
WESTPAC BANKING CORPORATION  
LEGAL SERVICES UNIT  
AUCKLAND

Occupation

Address

Her Majesty the Queen being the Encumbrancee under and by virtue of Encumbrance B824981.3 hereby consents to the registration of the within Memorandum of Encumbrance.

SIGNED by PAUL STEPHEN KELLY for and on behalf of  
HER MAJESTY THE QUEEN

pursuant to Sec 41 State Securities Act 1988

in the presence of: KIRSTEN L HURRIE Kaitiaki  
PORTFOLIO MANAGER  
PRIVATE BOX 5501, NGON

TRANZ RAIL LIMITED being the Encumbrancee under and by virtue of Encumbrance hereby consents to the registration of the within Memorandum of Encumbrance.

\* its attorney

SIGNED by  
TRANZ RAIL LIMITED  
by \* Mairead Cleary

in the presence of:

Witness signature

Witness name

Mairead Cleary MAIREAD ELIN CLEARY

Occupation

Property Administrator

Address

Wellington.

**TRANZ RAIL LIMITED**

**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**

I, Neil Davies, of Wellington in New Zealand Manager, Lease Management of Tranz Rail Limited, hereby certify that:

1. By deed dated 30 March 2000 I was, by virtue of holding the office of Manager, Lease Management of Tranz Rail Limited, appointed attorney of Tranz Rail Limited on the terms and subject to the conditions set out in that deed.

Copies of that deed are deposited in the Land Transfer Offices listed below under the number shown alongside each of those offices:

North Auckland	D 495195	Nelson	396530
South Auckland	B 601291	Marlborough	211090
Gisborne	228837	Canterbury	A 455078
Hawkes Bay	701031	Westland	114112
Taranaki	469524	Otago	5000005
Wellington	B 777693	Southland	272410

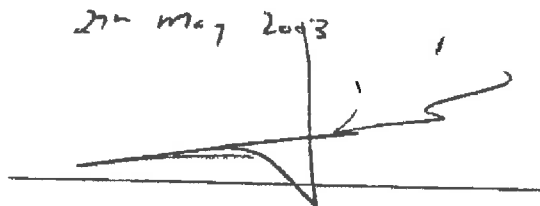
2. I am an employee of Tranz Rail Limited and hold the office of Manager, Lease Management.
3. At the date of this certificate, I have not received any notice or information of the revocation of that appointment by the liquidation or dissolution of Tranz Rail Limited or otherwise.

DATED

SIGNED

NEIL DAVIES:

27<sup>th</sup> May 2003



**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**  
**OTHER THAN BONDS, FACILITY AGREEMENTS**  
**AND POWERS OF ATTORNEY**

I, **MARIANA MAY VAN DER HULST**, of Auckland in New Zealand, Bank Officer

**HEREBY CERTIFY -**

1. **THAT** by Deed dated the 10th of July 1996 copies of which are deposited in the Land Registry Offices at -

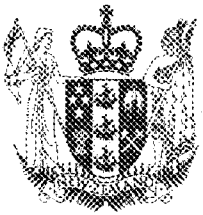
AUCKLAND (North Auckland Registry) and there numbered D.043055.1  
BLENHEIM (Marlborough Registry) and there numbered 187102  
CHRISTCHURCH (Canterbury Registry) and there numbered A.257595/1  
DUNEDIN (Otago Registry) and there numbered 915888  
GISBORNE (Poverty Bay Registry) and there numbered G.212187.1  
HAMILTON (South Auckland Registry) and there numbered B.367046  
HOKITIKA (Westland Registry) and there numbered 105721  
INVERCARGILL (Southland Registry) and there numbered 244294.1  
NAPIER (Hawkes Bay Registry) and there numbered 646199.1  
NELSON (Nelson Registry) and there numbered 361557.1  
NEW PLYMOUTH (Taranaki Registry) and there numbered 435551  
WELLINGTON (Wellington Registry) and there numbered B.533510.1

**WESTPAC BANKING CORPORATION** ABN 33 007 457 141 incorporated in New South Wales, Australia ("Westpac") appointed me its attorney on the terms and subject to the conditions set out in that Deed and the attached document is executed by me under the powers conferred by that Deed.

2. **THAT**, at the date of this certificate, I am Manager Legal for Westpac.
3. **THAT**, at the date of this certificate, I have not received any notice or information of the revocation of that appointment by the winding up or dissolution of Westpac or otherwise.

**SIGNED** at Auckland  
this 29<sup>th</sup> day of April 2003





# COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952



  
R. W. Muir  
Registrar-General  
of Land

## Search Copy

**Identifier** 119824  
**Land Registration District** Wellington  
**Date Issued** 06 April 2004

### Prior References

78812 WN50D/544

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**Estate** Fee Simple  
**Area** 454 square metres more or less  
**Legal Description** Lot 64 Deposited Plan 329306

### Proprietors

PML Trustees (Bell Spike) Limited

### Interests

Subject to Part IV A Conservation Act 1987

Subject to Section 11 Crown Minerals Act 1991

Appurtenant hereto is a stormwater right created by Gazette Notice A040483 (affects the part formerly in Gazette Notice A040483) (affects part formerly CT WN50D/544)

B657968.3 Consent Notice pursuant to Section 221(1) Resource Management Act 1991 - 30.3.1998 at 11.56 am  
Fencing Covenant in Transfer B824981.1 - 7.3.2001 at 9:11 am (affects part formerly CT 78812)

Appurtenant hereto is a right of way (affects part formerly CT WN50D/544) and water drainage rights (affects part formerly CT 78812) specified in Easement Certificate B657968.7 - 30.3.1998 at 11.56 am

The easements specified in Easement Certificate B657968.7 are subject to Section 243 (a) Resource Management Act 1991

Fencing Covenant in Transfer B824981.2 - 7.3.2001 at 9.11 am (affects part formerly CT WN50D/544)

B824981.3 Encumbrance to Her Majesty the Queen - 7.3.2001 at 9.11 am

5702215.1 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 22.8.2003 at 9:00 am (affects part formerly CT 78812)

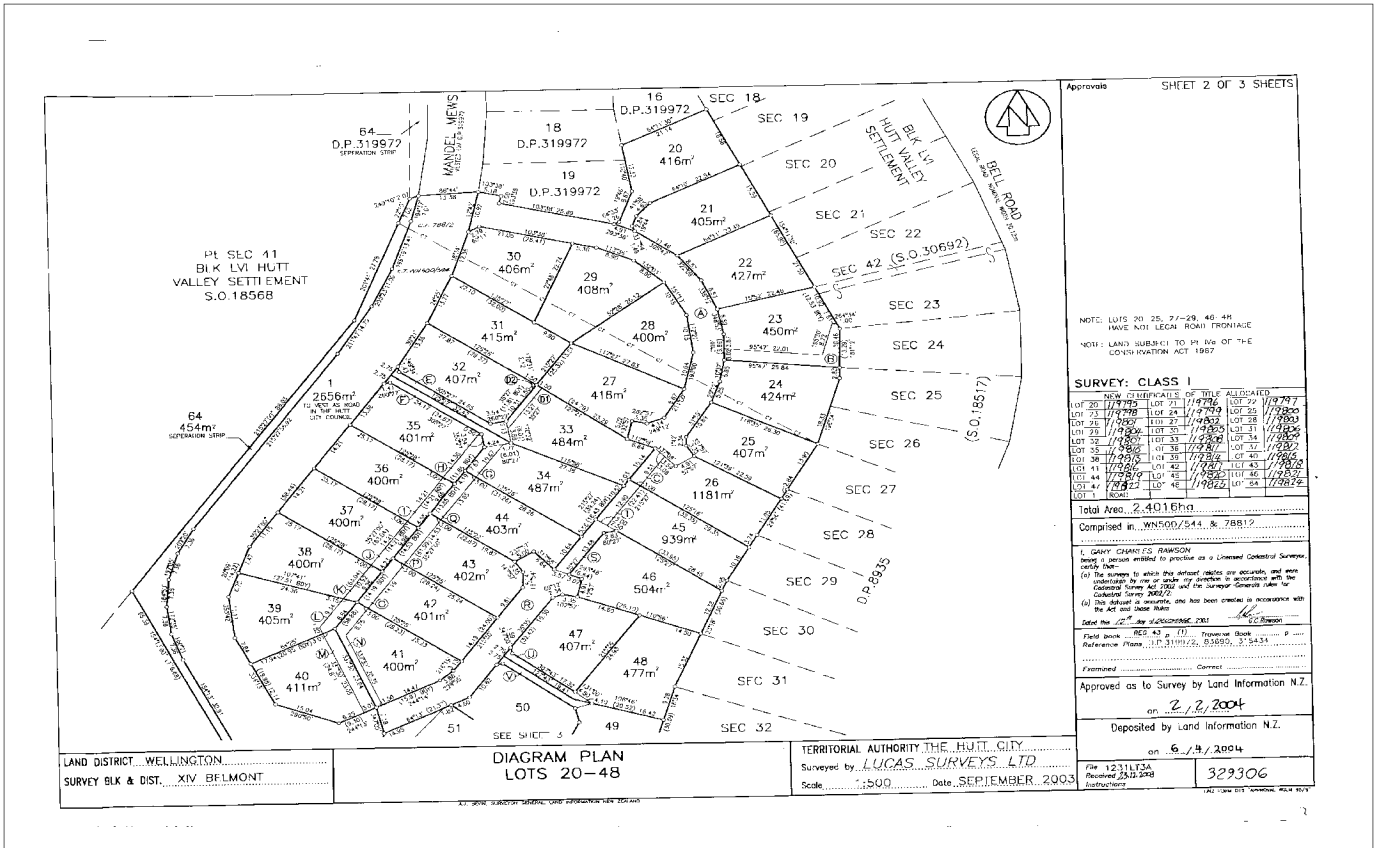
5702215.7 Encumbrance to (now)Toll NZ Consolidated Limited - 22.8.2003 at 9:00 am

5959171.4 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 6.4.2004 at 9:00 am

Subject to an electricity supply right (in gross) in favour of Vector Wellington Electricity Network Limited created by Transfer 5959171.11 - 6.4.2004 at 9:00 am

The easement created by Transfer 5959171.11 is subject to Section 243 (a) Resource Management Act 1991





Approval SHEET 2 OF 3 SHEETS

NOTE: LOTS 20, 25, 27-29, 40, 41 HAVE NEW LEGAL ROAD FRONTAGE  
 NOTE: LAND SUBJECT TO Pt 106 OF THE CONSERVATION ACT 1967

**SURVEY CLASS I**

NEW DISPERSED LOTS OF TITLE ALLOCATED	LOT 20	LOT 21	LOT 22	LOT 23	LOT 24	LOT 25	LOT 26	LOT 27	LOT 28	LOT 29	LOT 30	LOT 31	LOT 32
1/19/72	1/19/72	1/19/72	1/19/72	1/19/72	1/19/72	1/19/72	1/19/72	1/19/72	1/19/72	1/19/72	1/19/72	1/19/72	1/19/72

Total Area: 2,401.6ha  
 Comprised in: WN500/544 & 78819

I, GARY GIBSON, Surveyor, being a person entitled to practice as a Licensed Cadastral Surveyor, hereby state:  
 (a) The survey to which this instrument relates was conducted in accordance with the provisions of the Land and Survey Act 2002;  
 (b) The instrument to which this instrument relates has been checked in accordance with the Act and these Rules.

Field Book: REC 42 of 101, Reference Sheet: 9  
 Reference Plane: PIP 311112, 63080, 375431

Examined: \_\_\_\_\_  
 Approved as to Survey by Land Information NZ on 2/2/2004  
 Deposited by Land Information NZ on 6/9/2004

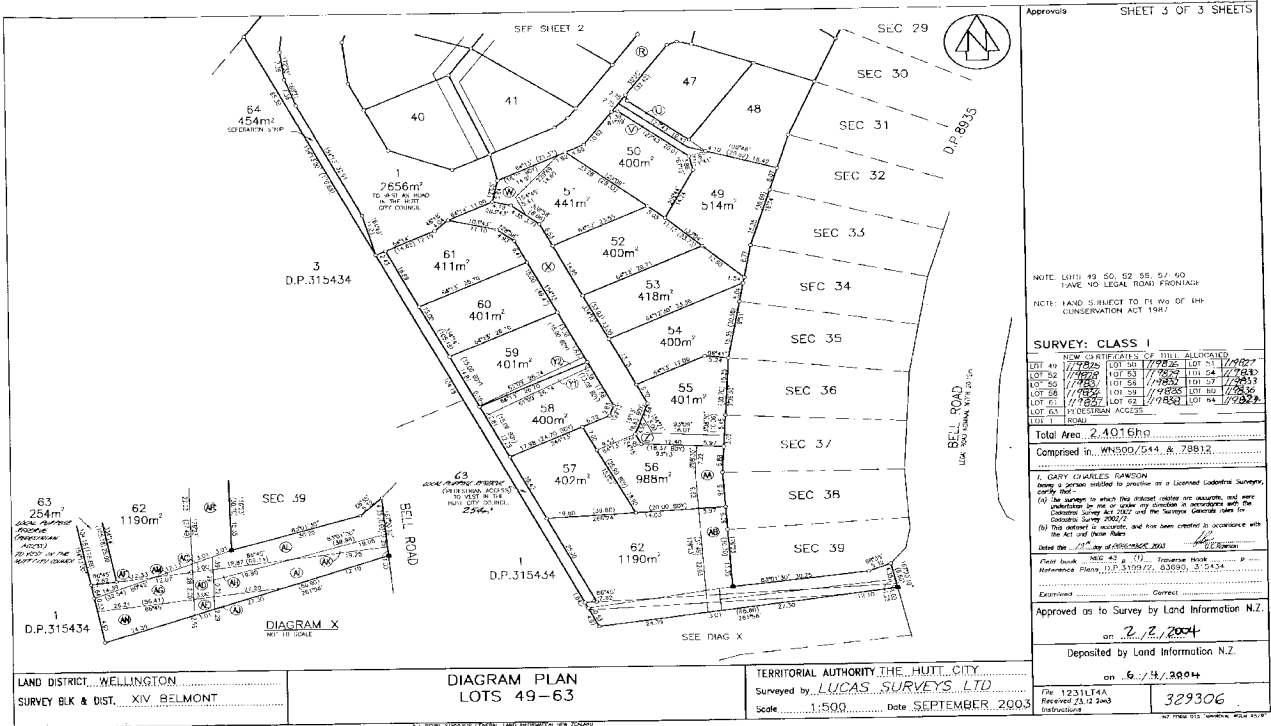
TERRITORIAL AUTHORITY THE HUTT CITY  
 Surveyed by: LUCAS SURVEYS LTD  
 Scale: 1:500 Date: SEPTEMBER, 2003

File: 12311123A  
 Received: 28/10/2004  
 Instructions: 329306

LAND DISTRICT... WELLINGTON  
 SURVEY BLK & DIST. XIV BELMONT

DIAGRAM PLAN  
 LOTS 20-48

TERRITORIAL AUTHORITY THE HUTT CITY  
 Surveyed by: LUCAS SURVEYS LTD  
 Scale: 1:500 Date: SEPTEMBER, 2003



THE HUTT CITY COUNCIL  
CONSENT NOTICE PURSUANT TO  
SECTION 221 RESOURCE MANAGEMENT ACT 1991

CONO 5959171.4 Consen

Cpy - 01/01, Pgs - 001, 06/04/04, 11:23



DocID: 410973794

IN THE MATTER of Lots 20-64

DP 329306

AND

IN THE MATTER of Subdivision  
Consent pursuant to sections 105,  
108, 220 and 221 of the Resource  
Management Act 1991

Pursuant to sections 108 and 220 of the Resource Management Act 1991 The Hutt City Council by resolution passed under delegated authority on 8 November 2002 Imposed the following conditions on the subdivision consent for the subdivision of LOTS 1 AND 20-64, BEING A SUBDIVISION OF LOT 100 DP 319972 AND LOT 2 DP 83690 that:

- 1 The owners note that the land is classified as remediated or contaminated site suitable for residential use. The URS reports dated 28/4/03 and 19/5/03 contains recommendations regarding future excavation on the Lots. In the event that excavations are to be carried out the recommendations in the report are to be followed.
- 2 Provision of a validation report for each Lot and its acceptance by Council, prior to application for Building Consents on the land.
- 3 Compliance with the Sawrey Consulting Engineers Limited Foundations Investigation and Land Suitability Report For Residential Construction dated 20/11/03 prior to application for Building Consents on the land.
- 4 The floor levels to the underside of floor joists or bottom of concrete slabs are to be not less than that shown on plan 1231FLOC. If required by Council the owners are to provide a Registered Surveyors certificate that the levels have been so constructed.
- 5 Owners of Lots  
26,30,31,32,33,34,35,36,39,40,41,42,44,45,46,49,50,51,52,56,57,58,59,60,61,62 AND 64  
note that their lots are subject to ponding and overland flow and Lots 23,24,25,26,27,28,  
29,30,33,37,38,39,42,43,45,47,48, AND 64 are subject to overland flow during heavy  
rainfall and should be kept clear of all obstructions- (see Lucas Surveys Plan 1231FLOC).

DATED at Lower Hutt this <sup>24<sup>th</sup></sup> day of <sup>February</sup>.....2004.  
For and on behalf of THE HUTT CITY COUNCIL

*Misher*

Authorised Officer





## Appendix 3 Consultation Documents

Ref: Gifford/28876

27 September 2016

Lee Ruahina-August  
Port Nicholson Block  
PO Box 12164  
Wellington 6144

Dear Lee

## PROPOSED PLAN CHANGE – 1N & 57N Mandel Mews, Waiwhetu

On behalf of our client, Best Value Homes, we are writing to you to seek your views and feedback on a proposed private plan change at 1N & 57 N Mandel Mews, Waiwhetu (please refer to the location plan enclosed). This property is currently zoned General Residential Activity Area in the Hutt City District Plan. Our client is proposing to amend an existing provision of the General Residential Rules and the Subdivision chapter through the plan change process, so it allows for residential development on 1N Mandel Mews (Lot 64 DP 319972) and provides constancy when referencing the application site in the District Plan.

The existing rules are as follows:

4A 2.1 (q) *In respect of Lots 1 and 2 DP 83690 (Mandel Mews), in the 12m wide exclusion area, (identified in Appendix General Residential 12), land can only be utilised for the purpose of road reserve or a reserve created under the provisions of the Reserves Act 1977.*

11.2.2.1 (a) *Other: Compliance with the permitted activity conditions of the activity area.*

*In respect of the 12m wide exclusion zone - Mandel Mews, Lots 1 and 2 DP 83690 as shown on Appendix Subdivision 1, land can only be subdivided for the purpose of road reserve or a reserve created under the provisions of the Reserves Act 1977.*

To facilitate the future construction of a residential dwelling at 1N Mandel Mews, it is proposed that the existing rule 4A 2.1(q) is amended by:

- Removing the current reference to Lot 1 DP 83690;
- Updating the reference to Lot 2 DP 83690 with its current legal description (being Lot 63 DP 31992);
- Amending Appendix 12 of the General Residential chapter to account for the above changes.

To provide consistency within the District Plan when referring to the application site, it is proposed that 'Other' within Standard 11.2.2.1 for the General Residential Activity Area is amended by similar methods, being:

- Removing the current reference to Lot 1 DP 83690;
- Updating the reference to Lot 2 DP 83690 with its current legal description (being Lot 63 DP 31992);

The amended rules would read as follows:

4A 2.1 (q) *In respect of Lot 64 DP 329306 (Mandel Mews), in the 12m wide exclusion area, (identified in Appendix General Residential 12), land can only be utilised for the purpose of road reserve or a reserve created under the provisions of the Reserves Act 1977.*

11.2.2.1 (a) *Other: Compliance with the permitted activity conditions of the activity area.*

*In respect of the 12m wide exclusion zone - Mandel Mews, Lot 64 DP 329306 as shown on Appendix Subdivision 1, land can only be subdivided for the purpose of road reserve or a reserve created under the provisions of the Reserves Act 1977.*

The proposed amendments would mean that a dwelling could be constructed at 1N Mandel Mews as a permitted activity subject to compliance with the bulk and location provisions of the General Residential Activity Area. No additional rules or provisions are proposed as part of the plan change, although a private covenant will be registered on the title of 1N Mandel Mews. This covenant would:

- Specify specific construction standards that any future habitable building will need to comply with to address any potential reverse sensitivity effects of the railway actives on the adjoining site to the west.

Schedule 1(3) of the Resource Management Act 1991, allows for consultation to be undertaken with relevant parties as part of the preparation of a plan change. You have been identified as a party which may be interested in the Proposed Plan Change and we would like to invite you to provide any feedback which you may have.

This can be done by either giving me a call on 027 536 2869 or emailing me at [sam.gifford@cuttriss.co.nz](mailto:sam.gifford@cuttriss.co.nz). Alternatively, I would be happy to meet with you at your convenience to discuss this proposal. We would very much appreciate any feedback regarding this proposed plan change to be received by 25 October 2016.

Yours sincerely,



Sam Gifford  
Senior Resource Consents Planner  
**CUTTRISS CONSULTANTS LTD**

## By email

25 October 2016

File Ref: FMGT-2-1324

Cuttriss Consultants Ltd  
PO Box 386  
Paraparaumu 5032

hutt@cuttriss.co.nz

Shed 39, 2 Fryatt Quay  
Pipitea, Wellington 6011  
PO Box 11646  
Manners Street  
Wellington 6142  
T 04 384 5708  
F 04 385 6960  
www.gw.govt.nz

Dear Sam

### Proposed Plan Change 1N & 57N Mandel Mews, Waiwhetu

I am pleased to respond to your request for feedback on a private plan change to allow residential development on the property at 1N Mandel Mews, Waiwhetu (Lot 64 DP 319972).

In providing this feedback I note that previous advice to you from James Flanagan dated 13/10/2016 was the following:

*“this northern part of the land parcel is subject to flooding hazard from the Waiwhetu stream in a 1 in 100 year return period flood event.*

*The 1 in 100 year flood level for this location is 2.9m given in terms of Mean Sea Level (MSL) Wellington 1953 Datum. This represents flood depths of between 0.2 and 0.6m at the location of the proposed building. GWRC Flood Protection would not consider that any further subdivision is appropriate given the existing flood risk, as we do not consider it appropriate to increase the number of houses exposed to flood risk. We recommend that if you do build on the site that the floor level is raised above the 1 in 100 year flood level given. We also recommend that you contact Hutt City Council (HCC) about any building controls or rules that may apply to the site from the District Plan.*

*GWRC Flood Protection recommends:*

- *That you do not subdivide the property.*
- *That as minimum you build the floor levels to above the 1 in 100 year flood level given.*
- *That you contact HCC about any building controls or rules under their district plan.*

PROPOSED PLAN CHANGE 1N AND 57N MANDEL MEWS, WAIWHETU



- *That you notify any insurers of this flood risk.*

*Note that for construction to a given flood level, the level is to the underside of the floor joists or to the base of the concrete floor slab.”*

This advice remains current. I note that in the proposed private plan change no subdivision is proposed, and building on the northern part of Lot 64 DP 319972 will be a permitted activity subject to conditions.

GWRC does not oppose the proposed private plan change.

I am happy to discuss this further if you would like.

Yours sincerely

**Sharyn Westlake**  
Senior Engineer, Strategy and Advisory Specialist  
Flood Protection

DD: 04 830 4046  
sharyn.westlake@gw.govt.nz

28 November, 2016

Sam Gifford  
Cuttriss Consultants Ltd  
PO Box 30429  
**LOWER HUTT 5040**

**By Email to:** Sam.Gifford@cuttriss.co.nz

Dear Sam,

### **Best Value Homes – 1N Mandel Mews, Woburn**

KiwiRail has received and reviewed the proposed Plan Change to the Hutt City District Plan by Best Value Homes as it relates to 1N Mandel Mews, being Lot 64 DP 319972. The western boundary of this site adjoins the rail corridor and Woburn Depot area.

KiwiRail note that the proposal is that the underlying zoning provisions of the site are unchanged, remaining General Residential Activity Area, however that the rules which impose restrictions on the development of this site are altered. KiwiRail are aware that the intention behind the current restriction on residential development of this site was to address reverse sensitivity in relation to the rail corridor. This is now able to be addressed through development standards, as proposed to be addressed through the new covenant on the title of this site.

There are existing covenants on the title of the site, specifically a no-complaints covenant, and KiwiRail support that the Plan Change as proposed enables development of the site without further subdivision, thereby ensuring that the existing covenants are retained.

Subject to appropriate mitigation of the reverse sensitivity effects through noise and vibration standards and boundary setbacks, KiwiRail are not opposed to development on adjoining sites. In this instance mitigation is in the form of the existing District Plan standards and a covenant which is currently being prepared between the two parties. Therefore once the covenant is lodged on the title for the site, KiwiRail have no concerns with the development of Lot 64 DP 319972 for residential purposes.

If you have any queries please don't hesitate to contact me.

Yours faithfully,



Rebecca Beals  
RMA Team Leader  
**KiwiRail**

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## Part 4: Submission Form

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# Submission on publicly notified Proposed District Plan Change

Clause 6 of the First Schedule, Resource Management Act 1991



To: Chief Executive, Hutt City Council

1. **This is a submission from:**

Full name	<i>Last</i>		<i>First</i>	
Company/organisation				
Contact <i>if different</i>				
Address	<i>Number</i>	<i>Street</i>		
	<i>Suburb</i>			
	<i>City</i>		<i>Postcode</i>	
Address for Service <i>if different</i>	<i>Postal Address</i>		<i>Courier Address</i>	
Phone	<i>Day</i>		<i>Evening</i>	
Fax			<i>Mobile</i>	
Email				

2. This is a **submission** on the following proposed change to the City of Lower Hutt District Plan:

**Proposed District Plan Change No:**

**Title of Proposed District Plan Change:**

3. The specific provisions of the proposal that my submission relates to are:

*Please give details:*

*(Please use additional pages if you wish)*

4. My submission is:

*Include whether you support or oppose the specific provisions or wish to have them amended; and reasons for your views:*

*(Please use additional pages if you wish)*

5. I seek the following decision from Hutt City Council:

*Give precise details:*

*(Please use additional pages if you wish)*

6. I  **wish**  **do not wish** to be heard in support of my submission.  
*(please tick one)*

7. If others make a similar submission,  
I  **will**  **will not** consider presenting a joint case with them at the hearing.  
*(please tick one)*

Signature of submitter:  
*(or person authorised to sign on behalf of submitter)*

	<i>Date</i>
--	-------------

Personal information provided by you in your submission will be used to enable Hutt City Council to administer the submission process and will be made public. You have the right under the Privacy Act 1993 to obtain access to and to request correction of any personal information held by the Council concerning you.

Submission number   
OFFICE USE ONLY