

DISTRICT PLAN COMMITTEE

**HEARINGS FOR PROPOSED PLAN CHANGE 8 -
SITES IN THE CENTRAL COMMERCIAL ACTIVITY AREA ADJACENT TO
RESIDENTIAL AREAS**

Minutes of a meeting of the District Plan Committee held in The Hutt City Council Chambers, Administration Building, 30 Laings Road, Lower Hutt on Tuesday 15 April 2008 and deliberations also held on Tuesday 15 April 2008.

PRESENT:

Cr RW Styles (Chair)
Cr J Baird (Deputy Chair)
Mayor DK Ogden
Cr D Hislop

IN ATTENDANCE:

Ms V Rodgers, Environmental
Policy Analyst
Ms B Little, Divisional Manager Environmental
Policy & Approvals
Mr S Quinn, Legal Advisor, DLA Phillips Fox

In accordance with a delegation by Council, pursuant to the provisions of section 34 of the Resource Management Act 1991, the District Plan Committee had power to act in determination of Changes to the Operative District Plan for recommendation to Council following the hearing of submissions.

DISTRICT PLAN - CITY OF LOWER HUTT

**HEARINGS FOR PROPOSED PLAN CHANGE 8 -
SITES IN THE CENTRAL COMMERCIAL ACTIVITY AREA ADJACENT TO
RESIDENTIAL AREAS**

1. APPEARANCES

Submitter:

Rodger Marvelly
Warwick Stoupe

Represented by:

Rodger Marvelly
Warwick Stoupe

Vance and Fay Arkinstall
Glen Evans
Rob MacDonald

Vance and Fay Arkinstall
Thomas Evans
Rob MacDonald

In addition correspondence from Rob Young was tabled at the hearing and presented by the Committee Chair.

2. THE HEARING

The parties who appeared presented additional written and oral submissions and statements of evidence. The hearing addressed matters raised in submissions and the further submission on Proposed District Plan Change 8 - Sites in the Central Commercial Activity Area adjacent to residential areas. Volumes containing copies of all submissions and the further submissions were available to all parties. A background report by Council officers, specific comments and recommendations, individually addressing all submissions and the further submission were pre circulated to all parties to the hearing.

3. DELIBERATIONS OF THE COMMITTEE

Statutory Regime and Legal Framework

Proposed District Plan Change 8 introduces to Chapter 5A of the District Plan objectives, policies and rules to control the height of buildings and structures in the Central Commercial Activity Area that are adjacent to residential areas.

The proposed plan change came about due to concern that some sites in the Central Commercial Activity Area may be redeveloped in a manner so that adversely affects the amenity values of the adjacent residential activity areas. The concern was that the current rules in the District Plan were inadequate to deal with this situation. The operative rule in the District Plan (rule 5A 2.1.1 (g)) only applies to sites in the Central Commercial Activity Area that 'abut' residential activity areas.

A number of submissions raised the legal interpretation question of the correct definition of 'abut' in the District Plan. This is critical to the limitations applying to development within neighbouring commercial land, as it determines whether Rule 5A 2.1.1 (g) applied to that land, and accordingly whether the plan change was necessary.

DPC R/3

To clarify the correct application of Rule 5A 2.1.1 (g), the Council sought an Environment Court declaration. The hearing of submissions on this plan change had to await the outcome of that Court process. The Environment Court and the High Court (following an appeal by Rob Macdonald) have both ruled that the word 'abut' requires physical contact between sites, or sites having the same common boundaries. Proposed Plan Change 8 is therefore to provide more certainty and greater protection to residential properties adjacent to the Central Commercial Activity Area from the effects of development in the Central Business District of Lower Hutt in circumstances where Rule 5A 2.1.1(g) does not apply (commonly due to separation by a road).

Part II of the RMA underpins the exercise of all functions, duties and powers. Section 5 is fundamental to any assessment. The approach in section 5 is to weigh the matters in section 5(2) in order to reach a broad judgement as to whether a policy or rule would promote the sustainable management of natural and physical resources.

Section 31 outlines the functions of the Council under the RMA and includes the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of avoidance or mitigation of natural hazards.

Section 74 requires the Council to change its plan in accordance with its functions under section 31, the provisions of Part II, its duty under section 32 and any regulations.

Section 76 enables the Council to include rules in the District Plan, for the purpose of carrying out its functions under the Act, and to achieve the objectives and policies of the Plan. In making a rule the Council:

"...shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect;..."

The following passage from the Environment Court decision *Wakatipu Environmental Society v Queenstown Lakes District Council* (2000, NZRMA 59] is applicable to a District Plan in general:

"A district plan must provide for the management of the use, development and protection of land and associated natural and physical resources. It must identify and then state (inter alia) the significant resource management issues, objectives, policies and proposed implementation methods for the district. In providing for those matters the territorial authority (and on any reference to the Environment Court) shall prepare its district plan in accordance with:

- *its functions under section 31;*
- *the provisions of Part II;*
- *section 32;*
- *any regulations;*

and must have regard to various statutory instruments."

The following passage from the Planning Tribunal's decision *Nugent v Auckland City Council (1996, NZRMA 481)* summarises the requirements derived from section 32(1):

"A rule in a proposed district plan has to be necessary in achieving the purpose of the Act, being the sustainable management of natural and physical resources (as those terms are defined); it has to assist the territorial authority to carry out its functions of control of actual or potential effects of the use, development or protection of land in order to achieve the purpose of the Act; it has to be the most appropriate means of exercising that function; and it has to have a purpose of achieving the objectives and policies of the plan."

Proposed Plan Change Provisions

The main features of this proposed Plan Change (as recommended by this decision), which include amendments to Issues, Objectives, Policies, Explanation and Reasons, Rules and Anticipated Environmental Results to Central Commercial Activity Area Chapter of the District Plan are as follows:

- (a) New provision 5A 1.2.6 is added under Site Development Issues in the Central Commercial Activity Area chapter of the District Plan. The new provision adds objectives and policies for development within sites in the Central Commercial Activity Area that do not abut, but are adjacent to, residential activity areas.
- (b) The inclusion of a new objective that seeks to mitigate adverse effects caused by buildings and structures in the Central Commercial Activity Area on the amenity values of adjacent residential activity areas.
- (b) The introduction of a permitted activity standard, which places a limitation on the height of buildings within the Central Commercial Activity Area that are constructed within sites that do not abut, but are adjacent to, residential activity areas.
- (c) The maximum height of buildings and structures within 50m of a residential activity area property boundary would be limited to 12m.
- (d) Buildings must be contained within a 31 degree angle measured from the natural ground level at the nearest residential activity area property boundary.

The proposed changes are outlined in detail in Appendix 1 attached to this decision.

DPC R/5

Shadowing and visual dominance diagrams were provided as part of the officer's report to show the effect of three different plan change options on permissible building development, and on sunlight within nearby residential properties.

The Committee noted that these diagrams, while helpful in determining the extent of sunlight loss and visual dominance, did not take into account other existing rules that would control the bulk and location of buildings in the Central Commercial Activity Area. They are not therefore to be interpreted as illustrating the nature of building development in the Central Commercial Activity Area that can occur as of right.

Plan Change History

The Committee are aware of the history leading up to preparation and notification of the plan change, and the relatively urgent need to introduce new rules to address an unintended anomaly in the operative District Plan.

The operative District Plan rules only control the height and location of buildings in Central Commercial Activity Area where the property boundary 'abuts' that of a residential property. Potential proposals for the Central Commercial Activity Area have demonstrated potential adverse effects on the amenity of residential properties separated from the development site by a road. These properties are not protected by the operative height, recession plane, yard and fencing rules in Rule 5A 2.1.1(g), if the development site does not 'abut' a residential property boundary.

The Plan Change is therefore required to allow Council to carry out its powers and function under the Resource Management Act 1991 by controlling effects where developments are in close proximity to Residential Activity Areas, even if separated by a road.

The Committee noted that all parts of the District Plan are being reviewed on a rolling basis, including:

- Plan Changes 1-6
- Plan Change 7 - Subdivision Allotment Design Standard Exemptions
- Plan Change 8 - heritage chapter changes
- Proposed Plan Change 10 - subdivision chapter changes
- Proposed Plan Change 11 - provision for Wesleyhaven activities
 - Review of all the Residential Provisions in the District Plan
 - Review of the Urban Design Provisions in the District Plan
- District Plan Monitoring Programme
- Update of Archaeological Records
- Designation Amendments in relation to the SH2 Dowse to Petone Upgrade
- Development of an Education Programme in relation to Slope

DPC R/6

Stability Issues

- Review of the Special Business Activity Area
- Floodplain Management (in conjunction with Greater Wellington Regional Council)

The Committee are also aware of the Central Business District (CBD) review, which is in the process of being undertaken by Council. The review is a comprehensive examination of the central area, which includes consideration of the effectiveness of District Plan provisions for the area. The first stage of the review involves looking at a vision for the future of the CBD. This will be followed by wider consultation, which will set a strategic direction for the central business area. Recommendations to all areas of Council will be made following completion of the first two stages of the review.

It is expected that Council's Environmental Policy Division will review the Central Commercial Activity Area provisions in the District Plan in light of the agreed vision. Changes to the District Plan may include a review of provisions ranging from the activity area boundaries and the activities provided for in the area, as well as the permitted activity controls.

Work on the CBD Review has commenced, with some consultation having been undertaken. However, the review was put on hold awaiting the outcome of the appeal to the Environment Court with respect to the definition of "abut", and the outcome of proposed District Plan Change 8.

Scope of Plan Change

The Committee are aware that there are a range of options for district plan controls, including the introduction of more restrictive controls to limit the potential effects of building development within the parts of the Central Commercial Activity Area that are in proximity to a residential activity area.

The Committee considered provisions for the control of buildings in central commercial areas near residential areas that have been adopted by other local authorities. It was noted that methods used include the identification of zones with specific building height restrictions and graduated recession plane controls.

This plan change reflects the "middle ground" in terms of rules that could be applied to control effects from development in the Central Commercial Activity Area. It is neither the most stringent approach to take, nor is it the most lenient in terms of controlling what can be developed on central commercial sites.

Significant additional research, assessment and notification of a new plan change would be required to adopt alternative solutions/controls, such as those utilised by some other local authorities.

DPC R/7

The scope of what can be introduced through this plan change is limited to the type of control that was publicly notified, and the Committee are therefore mindful of the limitations on the extent of the new rule that can be legally introduced through this district plan change.

The permitted activity conditions that will be introduced through this plan change vary slightly from those that were originally notified. That is, after considering the submissions, the Committee decided that a 12m height limit will be placed on buildings that are within 50m of a residential activity area property boundary, which is different to the originally proposed condition that limited height to that part of the building that is within 30m of the boundary. The amended plan change also requires that all buildings be contained within a 31 degree angle measured from natural ground level at the residential property boundary, rather than limiting buildings beyond 30m of a boundary to within an angle based on the General Residential Activity rules applicable to the neighbouring property.

The amendments to the wording of the permitted activity standards are considered to be within the scope of the plan change. The introduction of even more restrictive rules, such as those suggested by submitters would potentially go beyond the scope of what was notified. The amended plan change is supported on the basis that it remains within the scope of the plan change.

The Plan Change Process

The plan change comes about as a result of concern that some sites in the Central Commercial Activity Area that are adjacent to residential activity areas may be redeveloped in a manner that results in the amenity values of adjacent residential activity areas being compromised. The Committee are aware of the limitations placed on it by the legal requirement to stay within the scope of the notified plan change.

The Committee encourages a comprehensive review of the bulk, location, siting, height etc rules for buildings within the Central Commercial Activity Area near residential properties as part of the CBD review. It is considered that this process allows for a more rigorous and comprehensive assessment of the effects of any rule changes. The CBD review is considered the most appropriate process for the adoption of any more far reaching rule changes that affect both commercially and residentially zoned land, should that be considered necessary or appropriate at that time.

District Plan Change 8 is an interim measure to place some constraint on development patterns in a manner that is consistent with the formula used to establish the existing rules of the operative District Plan. The plan change does not preclude consideration of other options for rule changes that might be introduced through any changes to the District Plan that flow from the CBD review.

DPC R/8

The introduction of the plan change provides for a 'clean' planning environment until such time as the CBD review has been completed and any further changes to the District Plan provisions introduced through that process are adopted. Other District Plan rules controlling the effects of development within central commercial areas would also remain in place.

The Committee considers that Plan Change 8 (as amended as noted above) is a suitable interim solution to address the inadequacy of existing District Plan rules.

Conclusion

After evaluating all matters, it is considered that the Proposed Plan Change (incorporating the amendments recommended by the Committee) offer the most appropriate way of achieving the purpose and principles of the Resource Management Act 1991 and seek to ensure that amenity values are protected.

DECISION AND REASONS

Resolved:

That the Committee notes that, in making its decisions on submissions and further submissions lodged on Proposed District Plan Change 8 – Sites in the Central Commercial Activity Area adjacent to residential areas, Council is restricted to the relief sought in those submissions and further submissions that fall within the scope of the notified plan change.

That in exercise of the powers delegated to it by Council pursuant to the provisions of section 34 of the Resource Management Act 1991, the District Plan Committee hereby resolves, pursuant to Schedule 1 of the Resource Management Act 1991, to make the following decisions on submissions and further submissions lodged, resulting in the amendments to Plan Change 8 as shown in Appendix 1, for recommendation to Council."

4. DECISIONS AND REASONS

DPC08/01 D1 - Rodger Dunstan Marvelly

Further Submitters in support: Rodger Dunstan Marvelly
John Edward Ogilvie
Douglas Beckford McIntyre Govey
Peter John Ross
Patricia G Fitzgerald
Suzette Topley
Central Hutt Residents Group Inc.
Glen and Barbara Evans
Perry Robin Nicol
Evan Islwyn Jones

Further Submitter in opposition: Kernal Investments Ltd

Decision:

That the submission lodged by Rodger Marvelly, requesting that the plan change be amended to restrict commercial buildings to a 12 metre height within 150 metres of residential boundaries, be **accepted in part** to the extent that the 30m distance governing 12m maximum high buildings be extended to 50m.

That the further submission lodged by Rodger Dunstan Marvelly, John Edward Ogilvie, Douglas Beckford McIntyre Govey, Peter John Ross, Patricia G Fitzgerald, Suzette Topley, Central Hutt Residents Group Inc., Glen and Barbara Evans, Perry Robin Nicol, Evan Islwyn Jones, be **accepted in part** to the extent that the 30m distance governing 12m maximum high buildings be extended to 50m.

That the further submission lodged in opposition by Kernal Investments Ltd be **rejected** to the extent that the 30m distance governing 12m maximum high buildings will be extended to 50m.

Reason:

Extending the 12 metre height limit to 150 metres from residential boundaries exceeds the scope of the plan change and would result in the "family resemblance" to the proposed plan change being lost. Extending the distance for which a building is limited to 12m for 50m will afford a level of certainty with respect to the protection of residential amenity of adjacent residential properties while remaining within the scope of the plan change.

Further Submitter in support: Rodger Dunstan Marvelly

John Edward Ogilvie

Douglas Beckford McIntyre Govey

Peter John Ross

Patricia G Fitzgerald

Suzette Topley

Central Hutt Residents Group Inc.

Thomas and Barbara Evans

Perry Robin Nicol

Evan Islwyn Jones

Further Submitter accepts in part: Kernal Investments Ltd

Decision

That the submission lodged by Roger Marvelly, requesting that Council ensures commercial developments adjacent to residential areas do not detract from the character and quality of the residential areas be **accepted in part** to the extent that the maximum height and height recession plane rules will require that building development be set back from the boundary, thereby reducing its effect on adjacent residential land.

That the further submissions lodged by Rodger Dunstan Marvelly, John Edward Ogilvie, Douglas Beckford McIntyre Govey, Peter John Ross, Patricia G Fitzgerald, Suzette Topley, Central Hutt Residents Group Inc., Thomas and Barbara Evans, Perry Robin Nicol, Evan Islwyn Jones be **accepted in part** to the extent that the maximum height and height recession planes rules will require that building development be set back from the boundary, thereby reducing its effect on adjacent residential land.

That the further submission lodged by **Kernal Investments Ltd**, be **partially accepted** to the extent that the maximum height and height recession planes rules will require that building development be set back from the boundary, thereby reducing its effect on adjacent residential land

Reason:

Plan Change 8 will address the gap in the district plan in terms of height for buildings on sites in the central commercial area adjacent to residential areas (for example, sites separated by a road). Holding the height limit constant for 50 metres helps address visual dominance and adverse effects on aesthetic coherence and character. Buildings more than 50 metres from a residential activity area must comply with the 31 degree recession plane requirement measured from the ground at the boundary.

DPC R/11

The plan change is intended to control the height of buildings and structures and the adoption of rules to address urban design related matters would therefore go beyond the scope of the plan change. However, urban design issues will be addressed as part of the CBD review.

DPC08/02 D1 – Derek Scott and Lynda Reid

Further Submitter supports/accepts in part: Kernal Investments Ltd

Decision

That the submission lodged by Derek Scott and Lynda Reid, requesting that minimal risk to the public by giving full consideration to seismic risks, risks to the aquifer and microclimate changes be **accepted** to the extent that there are adequate controls in the Building Act 2004 and the Greater Wellington Freshwater Plan.

That the further submission lodged by Kernal Investments Ltd be **accepted in part** to the extent that there are adequate controls in the Building Act 2004 and the Greater Wellington Freshwater Plan.

Reason:

There are adequate performance standards regarding seismic risks in the New Zealand Building Code 1992 and Building Act 2004. In terms of risks to the aquifer, any penetration of the aquifer is a discretionary activity under the Freshwater Plan and accordingly requires consent from Greater Wellington Regional Council.

DPC08/02 D2 – Derek Scott and Lynda Reid

Further Submitter supports/accepts in part: Kernal Investments Ltd

Decision

That the submission lodged by Derek Scott and Lynda Reid, requesting that a harmonious integration of the CBD with the adjoining residential zone be **accepted** to the extent that the plan change limits the height of buildings to 12m where they are within 50m of a residential property boundary.

That the further submission lodged by Kernal Investments Ltd, be **accepted** to the extent that the plan change limits the height of buildings to 12m where they are within 50m of a residential property boundary.

Reason:

The plan change will achieve a transition in height and bulk from residential activity areas to the Central Commercial Activity Area. It does this by limiting building height where they are adjacent to residential properties. It is considered that this will create an appropriate and more harmonious interface between the two activity areas.

DPC08/03 D1 - Robert Crawford Young**Decision:**

That the submission lodged by Robert Crawford Young, requesting that the height restriction of 12 metres to be held constant for 30 metres from the residential boundary, and that a 45 degree recession plane is then applied from this 30 metre point be **rejected**.

Reason:

This request is inappropriate as to comply with the recession plane of 2.5m + 45 degrees measured at the 30 metre point from the residential boundary, buildings between 30 and 39.5 metres will be less than 12 metres in height.

DPC08/03 D2 - Robert Crawford Young**Decision:**

That the submission lodged by Robert Crawford Young, requesting assurances that the Council's building restrictions adequately address earthquake and subsidence for high rise buildings bordering residential zones, be **accepted** to the extent that the Council is already bound by the performance standards of the New Zealand Building Code 1992 and Building Act 2004.

DPC08/04 D1 - Central Ward Committee

Further Submitter in support: Thomas and Barbara Evans
Derek James Scott

Further Submitter accepts in part: Kernal Investments Ltd

Decision:

That the submission lodged by Central Ward Committee, seeking to have a solution that will ensure that the amenity values of residential or recreation areas abutting properties in the Central Commercial Activity Area are protected, be **accepted** to the extent that the plan change introduces building controls to address matters to protect amenity values within the areas specified by the submitter.

That the further submission lodged by Thomas and Barbara Evans and Derek James Scott, be **accepted** to the extent that the plan change introduces building controls to address matters to protect amenity values within the areas specified by the submitter.

That the further submission lodged by Kernal Investments Ltd, be **accepted in part** to the extent that the plan change will introduce building controls to address matters to protect amenity values within the areas specified by the submitter.

Reason:

The plan change protects the amenity values of those areas adjacent to the Central Commercial Activity Area in the same way as the permitted activity conditions required for sites abutting residential or recreation activity areas in the operative District Plan.

DPC08/04 D2 - Central Ward Committee

Further Submitter in support: Thomas and Barbara Evans
Derek James Scott

Further Submitter accepts in part: Kernal Investments Ltd

Decision:

That the submission lodged by Central Ward Committee, seeking urgent clarification of the word 'abut' in the District Plan, be **partially accepted** to the extent that the submission has been overtaken by events.

That the submission lodged by Thomas and Barbara Evans, seeking urgent clarification of the word 'abut' in the District Plan, be **partially accepted** to the extent that the submission has been overtaken by events.

That the further submission lodged by Kernal Investments Ltd, in opposition to the above be **accepted in part** to the extent that the meaning of the word 'abut' has been clarified by the Court.

Reason:

Both the Environment Court and High Court of New Zealand have examined the meaning of the word 'abut' in the context of rule 5A2.1.1 (g). Both Courts' were of the view that the word 'abut' means to share a boundary with. Accordingly, sites do not abut if separated by a road. Given the Courts have addressed the meaning of the word 'abut' and that they are in agreement, it is considered that the meaning of 'abut' is clear and unambiguous.

DPC08/04 D3 - Central Ward Committee

Further Submitter in support: Derek James Scott

Further Submitter in opposition: Kernal Investments Ltd

Decision:

That the submission lodged by Central Ward Committee, seeking implementation of a 'buffer zone' which provides a harmonious integration between the Commercial and Residential Activity Areas, either by (a) at a specified distance from the boundary of the Residential Activity Area the building height shall not exceed 12 metres; or (b) the implementation of Option 3 (combined 30 metres and 31 degree angle) as

DPC R/14

proposed at the Extraordinary Council Meeting on 9 March 2006, be **accepted** to the extent that the provisions of the Plan Change provided a form of 'buffer zone' in an attempt to more harmoniously integrate commercial and residential activity areas by limiting development within 50 metres of a residential activity area to a 12 metre maximum building height as a permitted activity condition.

That the further submission lodged by Derek James Scott be **accepted** to the extent that the provisions of Proposed Plan Change 8 are amended in accordance with Appendix I.

That the further submission lodged by Kernal Investments Ltd be **rejected**.

Reason:

Creating a harmoniously integrated environment between commercial and residential land uses was a consideration of the plan change. Effects such as visual dominance, shadowing and privacy were considered in the decision to adopt the plan change.

DPC08/05 D1 - Warwick Edwin Denys Stoupe

Further Submitter accepts in part: Kernal Investments Ltd

Decision:

That the submission lodged by Warwick Edwin Denys Stoupe, seeking an appropriate balance between development and the protection of amenity values be **accepted** to the extent that the plan change will adopt the amended wording which imposes a maximum building height of 12 metres for buildings within 50 metres of a residential property boundary. Buildings more than 50 metres from a residential activity area must be contained within a 31 degree recession plane measured from ground level at the boundary.

That the submission lodged by Kernal Investments Ltd, be **accepted in part** to the extent that the plan change will adopt the amended rule discussed above.

Reason:

Holding the height limit constant for 50 metres helps address visual dominance and adverse effects on aesthetic coherence and character. The rule seeks to ensure that developments in the commercial area adjacent to residential areas do not detract from the quality and character of these residential areas.

DPC08/06 D1 - Petone Community Board

Further Submitter in support: Kernal Investments Ltd

Decision:

That the submission lodged by Petone Community Board, seeking adoption of Proposed Plan Change 8, be **accepted** to the extent that the proposed plan change will be adopted.

That the submission lodged by Kernal Investments Ltd, seeking adoption of Proposed Plan Change 8, be **accepted** to the extent that the proposed plan change will reflect the amended changes to the rule.

Reason:

The plan change is adopted to reflect the requested change.

DPC08/07 D1 - Maxwell John Shierlaw
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Further Submitter supports/accepts in part: Kernal Investments Ltd

Decision:

That the submission lodged by Maxwell John Shierlaw, seeking the status quo (prior to the proposed change number 8) be retained until a proper evaluation as detailed under S32 of the RMA is conducted, be **rejected** to the extent that the status quo will not be maintained.

That the submission lodged by Kernal Investments Ltd in partial support of the above be **rejected in part** to the extent that the status quo will not be maintained.

Reason:

This plan change will be adopted with recommended modifications. A section 32 report, as detailed under section 32 of the Resource Management Act, has been prepared for Proposed Plan Change 8.

DPC08/08 D1 - Robert Macdonald and David Bassett

Note: A petition with 1242 signatories supported this submission

Further Submitters in support: Tony Payne

Elaine and Lionel Sharman

Allan Devlin

Darryl Briton Maycroft

George Eric Maycroft

Beverley Anne Tyler

Florence Jocelyn Benstead

Anthony Edward Fleming

Patrick Ryan and Pamela Ryan

Thomas Evans and Barbara Evans

Further Submitter in opposition: Kernal Investment Ltd

Decision:

That the submission lodged by Robert Macdonald and David Bassett requesting that the plan change specify that no building or structure within the Central Commercial Activity Area be sited in whole or in part within 150 metres of a Residential Activity Area or Recreational Activity Area may have a building height of more than 12 metres be **partially accepted** to the extent that the 12m building height limitation be increased from 30m to 50m.

That the further submissions lodged by Tony Payne, Elaine and Lionel Sharman, Allan Devlin, Darryl Briton Maycroft, George Eric Maycroft, Beverley Anne Tyler, Florence Jocelyn Benstead, Anthony Edward Fleming, Patrick Ryan and Pamela Ryan, Thomas Evans and Barbara Evans and Vance Arkinstall and Fay Arkinstall be **partially accepted** to the extent that the extent that the 12m building height limitation be increased from 30m to 50m.

That the further submission lodged by Kernal Investment Ltd be **rejected**.

Reason:

It is considered that increasing the 12m height limit beyond 50m would go beyond the scope of the notified plan change; that is, the family resemblance to the proposed plan change would be lost. A limitation on height for 50m into the site recognises that buildings not immediately opposite residential activity areas may still have adverse effects on adjacent residential activity areas, depending on bulk and location.

DPC08/08 D2 - Robert Macdonald and David Bassett

Note: A petition with 1242 signatories supported this submission

Further Submitters in support: Tony Payne

Elaine and Lionel Sharman

Allan Devlin

Darryl Briton Maycroft

George Eric Maycroft

Beverley Anne Tyler

Florence Jocelyn Benstead

Anthony Edward Fleming

Patrick Ryan and Pamela Ryan

Thomas Evans and Barbara Evans

Further Submitter in opposition: Kernal Investment Ltd

Decision:

That the submission lodged by Robert Macdonald and David Bassett requesting that the word 'abut' (and corresponding derivatives of that word) in the City of Lower Hutt District Plan includes as to meaning the words 'border', 'abound' and 'adjacent' (with corresponding derivatives for each of those words) be **rejected** to the extent that events supersede the submission in that the meaning of the word 'abut' has been clarified by both the Environment and High Courts of New Zealand to require that 'abutting' sites physically touch each other.

That the further submissions lodged by Tony Payne, Elaine and Lionel Sharman, Allan Devlin, Darryl Briton Maycroft, George Eric Maycroft, Beverley Anne Tyler, Florence Jocelyn Benstead, Anthony Edward Fleming, Patrick Ryan and Pamela Ryan, Thomas Evans and Barbara Evans and Vance Arkinstall and Fay Arkinstall be **rejected** to the extent that the meaning of the word 'abut' has been clarified by both the Environment and High Courts of New Zealand to require physical touching.

That the further submission lodged by Kernal Investments Ltd be **accepted** to the extent that the meaning of the word 'abut' has been clarified by both the Environment and High Courts of New Zealand to require physical touching.

Reason:

Given that both the Environment Court and High Court of New Zealand have addressed the meaning of the word 'abut' and that they are in agreement; it is considered that the meaning of 'abut' is clear and unambiguous. In other words, it has been determined by the Courts that the word 'abut' in the City of Lower Hutt District Plan does not mean 'border', 'abound' or 'adjacent'.

DPC08/08 D3 - Robert Macdonald and David Bassett

Note: A petition with 1242 signatories supported this submission

Further Submitters in support: Tony Payne

Elaine and Lionel Sharman

Allan Devlin

Darryl Briton Maycroft

George Eric Maycroft

Beverley Anne Tyler

Florence Jocelyn Benstead

DPC R/18

Anthony Edward Fleming

Patrick Ryan and Pamela Ryan

Thomas Evans and Barbara Evans

Vance Arkinstall and Fay Arkinstall

Further Submitter in opposition: Kernal Investment Ltd

Decision:

That the submission lodged by Robert Macdonald and David Bassett that without limiting the meaning of 'abut' to clarify that a Commercial Activity Area abuts a Residential Activity Area or a Recreational Activity Area where the areas are separated by a road or a lane or any other passage or right of way or access be **rejected** to the extent that the meaning of the word 'abut' has been clarified by both the Environment and High Courts of New Zealand to require physical touching.

That the further submissions lodged by Tony Payne, Elaine and Lionel Sharman, Allan Devlin, Darryl Briton Maycroft, George Eric Maycroft, Beverley Anne Tyler, Florence Jocelyn Benstead, Anthony Edward Fleming, Patrick Ryan and Pamela Ryan, Thomas Evans and Barbara Evans and Vance Arkinstall and Fay Arkinstall supporting the above be **rejected** to the extent that the meaning of the word 'abut' has been clarified by both the Environment and High Courts of New Zealand to require physical touching.

It is recommended that the further submission lodged by Kernal Investments Ltd in opposition to the above submission be **accepted** to the extent that the meaning of the word 'abut' has been clarified by both the Environment and High Courts of New Zealand to require physical touching.

Reason:

Given that both the Environment Court and High Court of New Zealand have addressed the meaning of the word 'abut' and that they are in agreement; it is considered that the meaning of 'abut' is clear and unambiguous. In other words, it has been determined by the Courts that the word 'abut' in the City of Lower Hutt District Plan does not mean 'border', 'abound' or 'adjacent'.

DPC08/08 D4 - Robert Macdonald and David Bassett

Note: A petition with 1242 signatories supported this submission

Further Submitters in support: Tony Payne

Elaine and Lionel Sharman

Allan Devlin

DPC R/19

Darryl Briton Maycroft

George Eric Maycroft

Beverley Anne Tyler

Florence Jocelyn Benstead

Anthony Edward Fleming

Patrick Ryan and Pamela Ryan

Thomas Evans and Barbara Evans

Vance Arkinstall and Fay Arkinstall

Further Submitter in opposition: Kernal Investment Ltd

Decision:

That the submission lodged by Robert Macdonald and David Bassett requesting that in determining whether a Residential Activity Area abuts a Commercial Activity Area, the submitters seek to ensure that any part of a Commercial Activity Area that, prior to a subdivision, abuts a Residential Activity Area is deemed to continue to abut that Residential Activity Area after subdivision be **rejected** to the extent that abut requires sites to share a common boundary.

That the further submissions lodged by Tony Payne, Elaine and Lionel Sharman, Allan Devlin, Darryl Briton Maycroft, George Eric Maycroft, Beverley Anne Tyler, Florence Jocelyn Benstead, Anthony Edward Fleming, Patrick Ryan and Pamela Ryan and Vance Arkinstall and Fay Arkinstall in support of the above be **rejected** to the extent that 'abut' requires sites to share a common boundary.

It is recommended that the further submission lodged by Kernal Investments Ltd be **accepted** to the extent that abut requires sites to share a common boundary.

Reason:

The rule requested in the submission is outside the scope of the plan change. Furthermore there are technical issues that would make the rule impractical and difficult to implement.

DPC08/08 D5 - Robert Macdonald and David Bassett

Note: A petition with 1242 signatories supported this submission

Further Submitters in support: Tony Payne

Elaine and Lionel Sharman

Allan Devlin

Darryl Briton Maycroft

George Eric Maycroft

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Beverley Anne Tyler

Florence Jocelyn Benstead

Anthony Edward Fleming

Patrick Ryan and Pamela Ryan

Thomas Evans and Barbara Evans

Vance Arkinstall and Fay Arkinstall

Further Submitter in opposition: Kernal Investment Ltd

Decision:

That the submission lodged by Robert Macdonald and David Bassett, seeking to specify that developments in the Commercial Activity Area, abutting a Residential Activity Area or a Recreational Activity Area, must comply with urban planning principles, blend in with the area and include reserves where the development is of a substantial scale, be **rejected** as the requested change is outside the scope of the plan change.

It is recommended that the further submissions lodged by Tony Payne, Elaine and Lionel Sharman, Allan Devlin, Darryl Briton Maycroft, George Eric Maycroft, Beverley Anne Tyler, Florence Jocelyn Benstead, Anthony Edward Fleming, Patrick Ryan and Pamela Ryan, Thomas Evans and Barbara Evans and Vance Arkinstall and Fay Arkinstall in support of the above be **rejected** to the extent that the request is outside the scope of the plan change.

It is recommended that the further submission lodged by Kernal Investments Ltd be **accepted**.

Reason:

Existing rules of the District Plan apply to sites abutting residential and recreation activity areas. These control the height and location of buildings in the Commercial Activity Area, where they are within an allotment that abuts a residential property boundary. The submitters' requests are outside the scope of this plan change because the plan change only addresses height limits for buildings. However, these issues will be addressed as part of the CBD review.

DPC08/08 D6 - Robert Macdonald and David Bassett

Note: A petition with 1242 signatories supported this submission

Further Submitters in support: Tony Payne

Elaine and Lionel Sharman

Allan Devlin

Darryl Briton Maycroft

DPC R/21

George Eric Maycroft

Beverley Anne Tyler

Florence Jocelyn Benstead

Anthony Edward Fleming

Patrick Ryan and Pamela Ryan

Thomas Evans and Barbara Evans

Vance Arkinstall and Fay Arkinstall

Further Submitter in opposition: Kernal Investment Ltd

Decision:

That the submission lodged by Robert Macdonald and David Bassett, seeking to ensure that nothing in the proposed change limits or obviates the need for developments on sites in the Commercial Activity Area to satisfy the other provisions of the District Plan be **accepted** to the extent that the plan change does not obviate the need for the development to comply with the District Plan and other planning documents to be a permitted activity.

That the further submissions lodged by Tony Payne, Elaine and Lionel Sharman, Allan Devlin, Darryl Briton Maycroft, George Eric Maycroft, Beverley Anne Tyler, Florence Jocelyn Benstead, Anthony Edward Fleming, Patrick Ryan and Pamela Ryan and Vance Arkinstall and Fay Arkinstall in support of the above be **accepted** to the extent that the provisions of Proposed Plan Change 8 do not obviate the need for developments to comply with the District Plan and other planning documents to be a permitted activity.

It is recommended that the further submission lodged by Kernal Investments Ltd be **rejected** to the extent that the provisions of Proposed Plan Change 8 do not obviate the need for developments to comply with the District Plan and other planning documents to be a permitted activity.

Reason:

If a proposal is not a permitted activity or does not meet any one or more of the permitted activity conditions listed in the District Plan then resource consent is required, and will be assessed under the Resource Management Act 1991.

Cr RW Styles
CHAIR

**CHANGES TO DISTRICT PLAN
PROPOSED PLAN CHANGE 8**

This proposed District Plan Change introduces to Chapter 5A - Central Commercial Activity Area, provisions and a rule to control the height of buildings and structures.

Changes to Chapter 5A - Central Commercial Activity Area

Add new 5A 1.2.6 "Heading", "Issue", "Objective", "Policy" and "Explanation and Reasons" to 5A 1.2 Site Development Issues as follows:

"5A 1.2.6 Sites that do not abut residential activity areas but are adjacent to residential activity areas

Issue

It is important that adverse effects of buildings and structures in the Central Commercial Activity Area on adjacent residential activity areas are mitigated.

Objective

To mitigate adverse effects caused by buildings and structures in the Central Commercial Activity Area on the amenity values of adjacent residential activity areas.

Policy

- (a) To ensure that where buildings and structures in the Central Commercial Activity Area are within 50 metres of a residential activity area property boundary, adverse effects on amenity values of adjacent residential activity areas are mitigated.
- (b) To ensure that buildings and structures in the Central Commercial Activity Area are contained within a 31 degree angle measured from the natural ground level of the nearest residential activity area property boundaries so that adverse effects of buildings and structures on adjacent residential amenity values are mitigated.

Explanation and Reasons

Buildings and structures in the Central Commercial Activity Area may adversely affect amenity values of adjacent residential activity areas. Examples of such adverse effects on residential amenity values can include visual dominance and possible overshadowing. Placing a height

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restriction on buildings and structures within 50 metres of a residential activity area property boundary will ensure that such adverse effects are mitigated. In addition, complying with a 31 degree angle (measured from the natural ground level at the nearest residential activity area property boundaries) for buildings and structures more than 50 metres from a residential activity area will provide for a transition in the height of buildings between commercial and adjacent residential activity areas, thereby protecting residents from the impact of buildings and structures.”

2. **Add new Rule** to 5A 2.1.1 “Permitted Activities – Conditions” as follows:

“(h) Sites that do not abut residential activity areas:

Where a site does not abut a residential activity area, the following conditions shall apply:

- (i) The maximum building height for buildings and structures within 50 metres of a residential activity area property boundary shall be 12 metres.
- (ii) Buildings and structures more than 50 metres from a residential activity area shall be contained within a 31 degree angle measured from the natural ground level at the nearest residential activity area property boundaries adjacent to the site.”

And renumber **(h)** Building Frontages and Display Windows and **(i)** General Rules as **(i)** and **(j)** respectively.