

**POLICY COMMITTEE**

**DECISION ON PROPOSED PLAN CHANGE 11 –  
WESLEYHAVEN RETIREMENT VILLAGE**

Minutes of a meeting of the Policy Committee held in The Hutt  
City Council Chambers, Administration Building, 30 Laings Road,  
Lower Hutt on 6<sup>th</sup> December 2010

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**PRESENT:**

Cr VR Jamieson (Chair)  
Cr D Bassett  
Cr M Cousins  
Cr RW Styles  
Cr M Willard  
Mayor WR Wallace (part only)

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

**POLICY COMMITTEE**

**DECISION ON PROPOSED PLAN CHANGE 11 –  
WESLEYHAVEN RETIREMENT VILLAGE**

## 1. SUBMISSIONS

The following submitters lodged submissions on Proposed Plan Change 11:

<b>Name of Original Submitters</b>	<b>Submission Reference</b>	<b>Page Number</b>
Greater Wellington Regional Council	DPC11/01	5, 7
C.E Holloway	DPC11/02	8

<b>Name of Further Submitter</b>	<b>Submission Reference</b>	<b>Page Number</b>
Wesley Community Action	DPC11/03	5, 7

## 2. HEARING NOT REQUIRED

A hearing of submissions was not required as the two original submitters and one further submitter withdrew their requests to be heard. A hearing of submissions is not required pursuant to schedule 1, Part 1, clause 8C of the Resource Management Act (the Act) which states that, where submissions are made but the request to be heard is withdrawn, the local authority shall consider the submission along with the other relevant matters but shall not be required to hold a hearing.

The Policy Committee meeting addressed matters raised in submissions and further submissions on Proposed District Plan Change 11 (the Plan Change) as outlined in the planning officers report. Copies of all submissions and the further submissions were available to all parties. No parties appeared or provided written statements of evidence at the Policy Committee meeting.

## 3. DELIBERATIONS OF THE COMMITTEE

### **Statutory Regime and Legal Framework**

The Plan Change is the result of a request for a private plan change by Wesley Community Action to schedule part of the site at 255 Rata Street, containing the existing Wesleyhaven Retirement Village, as a permitted activity by adding a new policy and rules to Chapter 4E, Landscape Protection Residential Activity Area.

Although this report is intended as a stand-alone document, a more in-depth understanding of the Plan Change, the process undertaken, and related issues may be gained by reading the Section 32 Evaluation and associated Plan Change documents as publicly notified.

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 Act and includes: *The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district, and the methods used to carry out any functions under subsection (1) may include the control of subdivision.*

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 outlines the contents that a District Plan must contain, including objectives, policies and rules. 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.”*

### **Procedural Matters**

The Committee gave careful consideration of the issues raised by the submitters.

The following report sets out the decisions in response to the relief sought by each of the submissions.

### **Conclusion**

After evaluating all matters, it was considered that the Plan Change (incorporating the amendments recommended by the Committee) offers the most appropriate way of achieving the purpose and principles of the Act.

## **4. DECISION AND REASONS**

### **RESOLVED:**

*“That Council resolves, pursuant to the provisions of Section 34 and Schedule 1 of the Resource Management Act 1991, to make the decisions on submissions and further submissions lodged, resulting in the amendments to Plan Change 11, as recommended by the Policy Committee at its meeting held on 6 December 2010.”*

### **Summary of Submissions and Proposed Plan Change Provisions**

The submissions are addressed in groups based on issues or concerns raised and where the content of the submissions is the same or similar. In summarising submissions, the name of the submitter is shown in **bold**, with their submission number shown in normal font within [square brackets]. In summarising further submissions, the name of the further submitter is shown in ***bold italics***, with their submission number shown in italics within [*square brackets*].

Where amendments to the District Plan are to be made as a result of a decision, additional text is shown as underlined and text to be removed is shown as being ~~struck out~~.

Attached to this report as Attachment 1 are the revised amendments to the District Plan provisions further to the decisions contained in this report. Where there is any inconsistency between the provisions contained in Attachment 1 and amendments made by the decisions below, then the provisions in Attachment 1 shall be considered correct.

Where changes are made as a result of decisions, the effectiveness and efficiency of such changes has been assessed in accordance with the requirements of Section 32 of the Resource Management Act 1991 (referred to as the Act).

Where a submission is determined to be outside the scope of the Plan Change the submission is rejected. With respect to determining the scope of a submission reference is made to Clause 6 of the First Schedule to the Act which stated:

*“6. Making submissions*

*Any person, including the local authority in its own area, may, in the prescribed form, make a submission to the relevant local authority on a proposed policy statement or plan that is publicly notified under clause 5.”*

A submission on a plan change is therefore limited in that it must be “on” the Plan Change. Accordingly, for a submission to be deemed to be within the scope of Plan Change 11 the submission must relate to:

- Any one of the issues addressed in the Plan Change and detailed above; and
- Any other change to the District Plan as a result of the Plan Change.

It should be noted that the Greater Wellington Regional Council made changes to their submission as a result of consultation following the submission period. It is the latter changed submission which is addressed in this report and decisions.

## **DECISIONS:**

### **4.1 SUBMISSION: DPC11/01 D1 - GREATER WELLINGTON**

#### **4.1.1 Submission**

**Greater Wellington Regional Council [DPC11/01 D1]** recommends the addition of new words (shown underlined) at the end of the new policy to 4E 1.2.2:

*(b) To allow for the ongoing and enhanced use and development of the Wesleyhaven residential facilities on that part of Pt Lot 1 DP 14660 at 255 Rata St, Naenae that is below the 70m contour (as identified in Appendix Landscape Protection Residential 1). Any use and development must maintain the aquatic ecology and habitats of streams and other water bodies.*

**Wesley Community Action [DPC11/03]** oppose the request by Greater Wellington to insert the additional text into policy 4E 1.2.2 (b) because they believe it would read as a ‘tack-on’ to the new policy. They submit that if Greater Wellington is of the opinion that the Regional Freshwater Plan does

*not provide adequate protection for the Wellington region's waterways, then it should look at amending the Regional Plan or including a similar policy in the District Plan General Rules chapter, rather than singling out this one site.*

#### **4.1.2 Discussion**

The Committee agree that it is appropriate for the new policy 4E 1.2.2(b) to recognise that any use and development of the Wesleyhaven site must maintain the aquatic ecology and habitats of streams and other water bodies. The stream and its tributaries are an important natural feature of the wider site and given the close proximity to the development and potential future development it is important that a new policy and rule for the delineated area to which the Plan Change applies provide some recognition of the need for care with any earthworks alongside the stream.

As the site is located within the Landscape Protection Activity Area, all earthworks are a restricted discretionary activity. However, the earthworks chapter does not include any setback from water ways or specific policies or assessment criteria which would directly support the maintenance of stream values. It is considered appropriate to take the opportunity provided by this Plan Change to introduce a new policy and rule which would provide protection for the stream that passes through the delineated area on the Wesleyhaven site, which is subject to the Plan Change.

#### **4.1.3 Decision**

**Reject** the further submission of **Wesleyhaven Community Action [DPC11/03]**.

**Accept** the revised submission of **Greater Wellington Regional Council [DPC11/01 D1]** and amend the new policy 4E 1.2.2 (b) as follows:

*(b) To allow for the ongoing and enhanced use and development of the Wesleyhaven residential facilities on that part of Pt Lot 1 DP 14660 at 255 Rata St, Naenae that is below the 70m contour (as identified in Appendix Landscape Protection Residential 1). Any use and development must maintain the aquatic ecology and habitats of streams and other water bodies.*

#### **4.1.4 Reason**

It is appropriate for the new policy 4E 1.2.2(b) to recognise that any use and development of the Wesleyhaven site must maintain the aquatic ecology and habitats of streams and other water bodies.

## 4.2 SUBMISSION: DPC11/01 D4 – GREATER WELLINGTON

### 4.2.1 Submission

**Greater Wellington Regional Council [DPC11/01 D4]** seeks that a new Permitted Activity Condition (shown underlined) be added to 4E 2 Rules, 4E 2.1.1 as follows:

- (e) *Earthworks associated with streams - Wesleyhaven Site, 255 Rata Street.*  
*Earthworks must be no closer than 5 metres from a stream.*

*Wesley Community Action [DPC11/03], oppose the request from Greater Wellington Regional Council that a new permitted activity condition be added to 4E 2 Rules requiring earthworks to be no closer than 5 metres from a stream. They submit that the objectives, policies and rules covering earthworks are already addressed in Chapter 14I of the District Plan which apply to all zones and that the Regional Freshwater Plan has rules which address water quality within the region.*

### 4.2.2 Discussion

It is appropriate to add a new Permitted Activity Condition to 4E 2.1.1 to require that earthworks on the Wesleyhaven site be no closer than 5 metres from a stream. This rule would reflect the addition recommended to policy 4E 1.2.2 (b) discussed above. The stream and its tributaries are an important natural feature of the site and given the close proximity to the development and potential future development it is important that a new policy and rule for the site control earthworks alongside the stream.

As the site is located within the Landscape Protection Activity Area, all earthworks are a restricted discretionary activity. However, the earthworks chapter does not include any setback from water ways or specific policies or assessment criteria which would directly support the maintenance of stream values. The matters in which discretion is limited to are amenity values, existing natural features and topography, historical or cultural significance, and natural hazards. It is considered appropriate to take the opportunity provided by this Plan Change to introduce a new rule which would provide protection for the streams on the Wesleyhaven site.

### 4.2.3 Decision

**Reject** the further submission of **Wesleyhaven Community Action [DPC11/03]**.

**Accept** the revised submission of **Greater Wellington Regional Council [DPC11/01 D4]** and amend Rule 4E 2.1.1 as follows:

- (e) *Earthworks associated with streams - Wesleyhaven Site, 255 Rata Street.*  
*Earthworks must be no closer than 5 metres from a stream.*

#### **4.2.4 Reason**

It is appropriate to add a new Permitted Activity Condition to 4E 2.1.1 to require that earthworks on the Wesleyhaven site be no closer than 5 metres from a stream in order to control earthworks alongside the stream.

### **4.3 SUBMISSION: DPC11/02 D1 – C.E HOLLOWAY**

#### **4.3.1 Submission**

**Mr C.E Holloway [DPC11/02 D1]** does not oppose the Plan Change, but is concerned about Wesleyhaven staff parking on Rata Street. The submitter is of the opinion that Wesleyhaven should provide on-site car parking for their staff. The submitter also suggests that the footpath be moved so that it is hard up against his fence in order to gain more road space for parking cars.

#### **4.3.2 Discussion**

The Plan Change aims to provide a more relaxed development framework on that part of the site below the 70m contour line in order to provide for the ongoing use and development of the Wesleyhaven Retirement Village. The Plan Change does not alter the car parking requirements of the District Plan for the Wesleyhaven site. The Wesleyhaven site currently has an under provision of car parking spaces, meaning that the current number of car parking spaces provided on the site is not sufficient to meet the car parking requirements of the current District Plan. However, any new development on the Wesleyhaven site (including the part subject to the Plan Change) is required to meet the car parking standards in Chapter 14A of the District Plan. As such, any new developments on the site will be assessed against the requirements of Chapter 14A and any non-compliance will require resource consent. New developments on the site could increase the scale and intensity of the effects of the activity on the site and it is appropriate that an assessment of traffic effects be undertaken through a resource consent process.

In terms of moving the existing footpath, this matter is outside the scope of the Plan Change. Overall, no amendments are appropriate to the Plan Change as a result of this submission. It is noted that since the receipt of this submission the Road and Traffic Division have undertaken to paint broken yellow lines outside the submitter's property at 216 Rata Street to prevent parking in this location.

#### **4.3.3 Decision**

**Accept in part** the submission of **C.E Holloway [DPC11/02 D1]** to the extent that the provisions of the Plan Change remain without change.

#### **4.3.4 Reason**

No amendments are appropriate to the Plan Change as a result of this submission. Although the Wesleyhaven site currently has an under provision of car parking spaces, any new development on the Wesleyhaven site is required to meet the car parking standards in Chapter 14A of the District Plan.



## ATTACHMENT 1: AMENDMENTS

The decisions result in the following amendments to the Plan Change:

*(Note: for the purpose of this report only the changes made as a result of a decision have been shown here).*

### Chapter 4E – Landscape Protection Residential Activity Area

#### 4E 1.2.2 Building Height, Scale, Intensity and Location

##### Issue

**Building height, coverage, scale, intensity and siting can cause adverse effects upon the amenity values of neighbouring properties, and surrounding hillside environment. It is important that such adverse effects be avoided, remedied or mitigated.**

For Objectives, Policies refer to Hill Residential 4D 1.2.2 with the addition of the following policy.

##### Policy

- (a) Where a certificate of title has been issued for a site prior to 5 December 1995 or where a site has been created by a staged development whether under a stage unit plan or crosslease plan lodged with the District Land Registrar and where part of the development has been completed prior to 5 December 1995, it is recognised that it is reasonable to permit the erection of buildings/structures (as contemplated when the title was issued or plan lodged) even though the maximum site coverage may exceed that set out in 4E 2.1.1(a). Under such circumstances the scale, intensity, visual attractiveness of buildings and/or structures as well as the adverse effects on the amenity values of adjoining properties, and the streetscape be taken into account in assessing the suitability of the development.
- (b) To allow for the ongoing and enhanced use and development of the Wesleyhaven residential facilities on that part of Pt Lot 1 DP 14660 at 255 Rata St, Naenae that is below the 70m contour (as identified in Appendix Landscape Protection Residential 1). Any use and development must maintain the aquatic ecology and habitats of streams and other water bodies.

#### 4E 2.1.1 Permitted Activities – Conditions

- (e) Earthworks associated with streams - Wesleyhaven Site, 255 Rata Street. Earthworks must be no closer than 5 metres from a stream.