

DISTRICT PLAN SUBCOMMITTEE

**DECISION ON PROPOSED PRIVATE PLAN CHANGE 24 –
1 – 13 LUDLAM CRESCENT, WOBURN – ZONING AS GENERAL RESIDENTIAL
ACTIVITY AREA**

Record of the Decision of the District Plan Subcommittee on Proposed Private Plan Change 24 at their meeting at Hutt City Council, Administration Building, 30 Laings Road, Lower Hutt on 7th June 2012

PRESENT:

Cr RW Styles (Chair)
Cr L Bridson (Deputy Chair)
Cr D Bassett
Cr C Milne

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

1. **SUBMISSIONS**

The following submitters have lodged submissions on Proposed Private Plan Change 24:

Submission Number	Name of Original Submitters	Submission Reference
DPC24/1	Vincent Manks	1.1
DPC24/2	Greater Wellington Regional Council	2.1
DPC24/3	Soma Medical Centre	3.1

2. **HEARING NOT REQUIRED**

A hearing of submissions was not required as no submitters requested to be heard on Proposed Private Plan Change 24. 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 no person indicates they wish to be heard, the local authority shall consider the submissions along with the other relevant matters but shall not be required to hold a hearing.

3. **DELIBERATIONS OF THE SUBCOMMITTEE**

Statutory Regime and Legal Framework

This Plan Change is a private plan change prepared by Cuttriss Consultants on behalf of Ludlam Developments Limited. Council accepted the private plan change request, with no amendments to the original proposal at its meeting on 11 December 2011.

Proposed Private Plan Change 24 was notified on 21 February 2012, with submissions closing on 23 March 2012. The summary of submissions was notified on 17 April 2012, with further submissions closing on 2 May 2012. A total of 3 original submissions and no further submissions were received.

Part II of the Act 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.”

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

Procedural Matters, Analysis of Submissions and Analysis of Private Plan Change

The District Plan Subcommittee gave careful consideration to the Proposed Private Plan Change, the relevant issues and the submissions.

The following report provides a summary of the submissions, decisions in response to each submission and then makes a decision on the Private Plan Change itself.

The name of the submitter and the submission reference are printed in bold in the heading. Then the relief sought by the submitter is outlined and specific comments

made by the submitter are summarised. This is followed by a discussion of the issues raised and the Council's decision.

With respect to determining the scope of a submission, reference is made to Clause 6 of the First Schedule to the Resource Management Act 1991 (referred to as the Act) which states:

*“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.

In the case of Proposed Private Plan Change 24 the purpose was to rezone the site at 1 – 13 Ludlam Crescent from General Business Activity Area to General Residential Activity Area (Medium Density).

Accordingly, for a submission to be deemed to be within the scope of Proposed Private Plan Change 24 the submission must relate to any one of the issues addressed in the plan change.

Conclusion

After evaluating all matters, it is considered that the Proposed Private Plan Change offers the most appropriate way of achieving the purpose and principles of the Act.

RESOLVED:

Minute No. DP120301

“That the District Plan Subcommittee:

- (i) notes that the background to Proposed Private Plan Change 24 is identified in the officer's report (attached as Appendix 1 to the report) and is a Private Plan Change, accepted by Council on 13 December 2011;*
- (ii) notes that the purpose of Proposed Private Plan Change 24 is to rezone the land at 1-13 Ludlam Crescent to General Residential Activity Area – Medium Density;*
- (iii) notes that a total of three original submissions and no further submissions were received;*
- (iv) notes that the officer's report has analysed the submissions and made recommendations on the matters raised in the submissions;*
- (v) notes that the officer's report has analysed the Proposed Private Plan Change and makes a recommendation to approve the Proposed Private Plan Change, taking into account the submissions received;*
- (vi) notes that officers sought independent traffic advice which has found matters that will need to be addressed at the subdivision stage of development if Proposed Private Plan Change 24 is approved;*
- (vii) notes that none of the submitters wished to be heard in support of their submissions and therefore a hearing is not required pursuant to Schedule 1, Part 1, clause 8c of the Resource Management Act 1991;*
- (viii) makes a decision on the submissions to Proposed Private Plan Change 24,*

- accepting the submissions for the reasons recommended in the officer's report attached as Appendix 1 to the report;*
- (ix) makes a decision on Proposed Private Plan Change 24, approving the Private Plan Change for the reasons recommended in the officer's report attached as Appendix 1 to the report; and*
 - (x) instructs officers to prepare the decision for Proposed Private Plan Change 24 for approval by the Policy Committee and Council. Following Council's resolution, the decision will be issued to all submitters and a public notice advertising the appeal period will be placed in the Hutt News.*

RECOMMENDED:

Minute No. DP120302

"That the District Plan Subcommittee:

- (i) instructs officers to prepare the decision for Proposed Private Plan Change 24 for approval by the Policy Committee and Council; and*
- (ii) notes that following Council's resolution, the decision will be issued to all submitters and a public notice advising of the appeal period will be placed in The Hutt News."*

4. DECISION:

4.1 Submission

DPP12-5-24-01 – Vincent Manks – 1.1

4.1.1 Request of Submitter

That Council approve Proposed Private Plan Change 24 in its entirety.

4.1.2 Specific Comments

The submitter made no specific comments.

4.1.3 Discussion

The submitter is supportive of the Proposed Private Plan Change and gives no reasons for the support. It is considered that no further discussion is necessary with regards to this submission.

4.1.4 Decision

Accept the submission lodged by Vincent Manks, to the extent that Council acknowledge the submitter's request.

4.1.5 Reason

It is appropriate that the submitter's request is acknowledged.

4.2 Submission

DPP12-5-24-02 – Greater Wellington Regional Council – 2.1

4.2.1 Request of Submitter

That Council consider the following points:

- The recognition of the residual flooding risk posed to the site proposed to be rezoned
- The potential requirements to reduce and/or mitigate future development on the site to reduce the risk from flooding.

4.2.2 Specific Comments

The private plan change is in an area at risk from flooding from the Hutt River. Improving flood protection of the area is being undertaken by Greater Wellington's Flood Protection department as part of a programme of work outlined in the Hutt River Flood Plain Management Plan to protect most parts of the floor plain to a 440 year return period flood.

Once all proposed flood protection measures have been achieved, there will still be a residual hazard from flooding. It is important to recognise and acknowledge this. Greater Wellington notes that this has not been addressed in the Proposed Private Plan Change 24 report by Cuttriss Consultants.

4.2.3 Discussion

The submitter is concerned that the residual flooding risk from the Hutt River has not been recognised or acknowledged in Proposed Private Plan Change 24. The residual flood risk will exist after Greater Wellington has completed its flood protection measures in the two upstream sections of stopbank; the Hutt/Boulcott and the City sections and these will be completed by 2013 and 2019 respectively. The remaining hazard is the occurrence of an overdesign event when the stopbank is overtopped (i.e. a larger than 440 year return period flood) and includes the possibility of the stopbank failing and causing a breach.

It is important and therefore appropriate for Council to recognise and acknowledge this residual risk as the flood hazard could result in flood water depths over 2 metres.

4.2.4 Decision

Accept the submission lodged by Greater Wellington Regional Council, to the extent that the residual flood risk, as outlined in the submission is acknowledged.

4.2.5 Reason

It is appropriate that the submitter's request is acknowledged.

4.3 Submission

DPP12-5-24-03 – Soma Medical Centre – 3.1

4.3.1 Request of Submitter

That Council specifically mention in their decision the consideration of the following points:

- Access: Ensure that the entrance and exit ways to 23 Ludlam Crescent are never obstructed.
- Parking: That the Council make provision for parking spaces near the Soma Medical Centre to be avoided and left unused by any vehicles involved in construction work.
- Noise: That the Council makes provision so the contractors must negotiate with the Medical Centre in relation to noise. In particular, the timing of any excessive noise, and especially in the adjacent site, be when the nearest consulting room is not in use.
- Power: That the Council ensures power supply is not affected to the Soma Medical Centre.
- Odour: That the Council ensures odour does not occur.
- Privacy: That a double story building is not built adjacent to the submitter's property.

4.3.2 Specific Comments

Access: The submitter states that there are occasions when urgent ambulance access is required to the site.

Parking: The submitter submits that there is limited close parking in Ludlam Crescent and Wai-Iti Crescent for staff at Soma Medical Centre and overflow from the carpark

the Centre provides so the submitter requests that the parking spaces near the Soma Medical Centre be avoided and left unused by any vehicles involved in construction work.

Power: There is recent history of power surges and power cuts affecting the Medical Centre's building. This places computers and the business generally at risk. The submitter requests that these surges are to be prevented during construction.

Odour: The submitter has experience with offensive odour as during demolition of the petrol station a toilet was placed near to the fence next to the Medical Centre's property. Repeatedly, there was odour from it into adjacent rooms at the Centre.

Privacy: The submitter wants any future development on site to remain under two stories high, as occupiers in an upstairs room could view into the waiting room or other rooms on that side of the Medical Centre.

The submitter also comments that they had not been aware of any consultation prior to the Private Plan Change being notified.

4.3.3 Discussion

The submitter is not opposed in principle to this Private Plan Change, however the submitter has concerns surrounding access, parking, noise, power supply, odour and privacy. These issues are most relevant to the subdivision and resource consent stage, which is anticipated by the applicant if Private Plan Change 24 is approved by Council.

It is appropriate that Council be aware of these concerns now as it will give certainty to both the submitter and Council that they will be issues in the future, if the anticipated subsequent subdivision and development occurs on the site.

In regards to the submitter's comments about not being contacted during the pre-consultation phase of Private Plan Change 24, the applicant has responded by confirming that a letter was sent out to the submitter, however the applicant regrets that it was not received due to circumstances beyond their control.

4.3.4 Decision

Accept the submission lodged by the Soma Medical Centre, to the extent that their concerns are noted by Council.

4.3.5 Reason

It is appropriate that the submitter's request is acknowledged.

5.0 Applicant

Ludlam Developments Limited

Request of Applicant

The property at 1–13 Ludlam Crescent has been purchased by Ludlam Developments Limited (the applicant) who has considered a variety of development options for the site. The applicant determined that the best use of the site would be to undertake a fee simple residential subdivision. To facilitate this use of the property, the applicant is seeking to rezone the site from its current Suburban Commercial Activity Area zone to General Residential Activity Area (Medium Density).

If this Proposed Private Plan Change is approved by Council, and the application site is rezoned to General Residential Activity Area (Medium Density), it is anticipated by the applicant that a 5 lot subdivision could be undertaken on this site. The 5 lot subdivision would comply with the minimum allotment size and design and standards of the Subdivision Chapter in the District Plan. The applicant's assessment of effects contained within their Section 32 Report has been based off of the anticipated 5 lot subdivision. However, this subdivision does not form part of this Proposed Private Plan Change and should be taken as indicative only.

Specific Comments

Environmental Effects

The applicant has considered their proposal, including the indicative 5 lot subdivision as a base for assessment against the environmental effects of amenity and character, traffic, site contamination, infrastructure, economics. It is considered that any adverse effects of subdivision and development on the site would be appropriately managed by the provisions in the Subdivision chapter and the General Residential Activity Area chapter in the District Plan.

Policy Analysis

The Resource Management Act 1991

The Proposed Private Plan Change is considered to be consistent with Part 2 of the Resource Management Act 1991 for the following reasons:

- The proposal would be consistent with the zoning of the immediately adjoining residential properties and the density allowed would be consistent with what is currently in the immediate and wider environments.
- Future owners of the site would be able to meet their social, economic and cultural wellbeing needs as the site is within close proximity to two suburban shopping centres as well as a bus stop and the Woburn Railway station.
- The loss of potential commercial space (as the site is currently zoned General Commercial Activity Area) is not considered to have a detrimental economic impact

on the surrounding environment as it is unlikely that the site could be developed in a manner which would result in sustainable and integrated commercial development.

- The potential traffic generation which would arise from a maximum credible permitted or controlled development resulting from this Proposed Private Plan Change would be able to be accommodated on the local roading network without compromising the traffic safety or efficiency of the existing roading network.
- The site which is the subject of the Proposed Private Plan Change is not situated within a Significant Natural Resource as identified within the City of Lower Hutt District Plan and there is no significant vegetation located on the site which could be considered to be ecologically significant.
- The site does not contain a wetland, lake or river, and it is not on the margin of any of these.
- The site is not situated within the coastal environment.
- The proposed General Residential Activity Area (Medium Density) zone is consistent with the zoning of the adjoining residential properties. As such, the density of development which could result from rezoning the site would be in keeping with the character and visual amenity values of the wider environment.
- The levels of contaminants within the soil are within the Tier 1 criteria for residential development as defined within the Ministry for the Environment Guidelines.
- The site is highly modified and any site development works required to allow for the property to be used for residential purposes will be minimal.
- The potential traffic effects associated with rezoning the site would be less than if the site was developed in accordance with its current zoning.
- Existing services within the local environment have sufficient capacity to service future residential development on the site.
- The principles of the Treaty of Waitangi have been taken into account by the applicant in the analysis of the Proposed Private Plan Change. The site does not contain any Significant Cultural Resources which are identified in the District Plan. Consultation has been carried out with the local iwi authorities as part of the statutory consultation during the formation of the Proposed Private Plan Change and they raised no concerns regarding this proposal.

Regional Policy Statement

The 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 identifies the significant resource management issues for the region and outlines the policies and methods required to achieve the integrated sustainable management of the region's natural and physical resources. The Soils and Minerals and the Built Environment and Transportation chapters of the RPS are considered to be most relevant to the Proposed Private Plan Change.

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

Proposed Wellington Regional Policy Statement

Greater Wellington Regional Council has undertaken a review of the Regional Policy Statement. The Proposed Regional Policy Statement was notified in early 2009 with a decision on submissions being made in May 2010. The Proposed Wellington Regional Policy Statement is currently subject to several appeals at the Environment Court. The relevant objectives and policies of the Proposed Regional Policy Statement are similar to the Operative Regional Policy Statement, being Soils and Minerals and Regional Form, Design and Function.

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

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 WRS does not address the residential zoning in general which is sought within this Proposed Private Plan Change. It is however considered that the Proposed Plan Change is not inconsistent with the outcomes sought within the WRS. The Hutt City Council has a number of strategies and plans that detail the priorities for the City, namely:

- Economic Development Strategy 2009
- Environmental Sustainability Strategy 2009
- Long Term Council Community Plan (LTCCP) 2009

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

Consistency with Surrounding District Plans

Section 74(2) (c) of the Act requires Council to consider the extent to which this Proposed Private Plan Change needs to be consistent with the plans or proposed plans of adjacent territorial authorities.

The Proposed Private Plan Change involves a small area of land which is located well within the boundaries of the City of Lower Hutt. It will have no effect on the plans or proposed plans of adjacent territorial authorities and will not be inconsistent with them.

Area Wide Objectives of the District Plan

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

1.10.1 Resource Management and the Tangata Whenua of Lower Hutt

Objective

To respond to the principles of the Treaty of Waitangi and other matters of significance to the tangata whenua as specified in the Act.

Policies

- (a) To have particular regard to tangata whenua's desire to carry out kaitiakitanga.*
- (b) To protect waahi tapu and sites of cultural or historical significance to tangata whenua from desecration or disturbance.*
- (c) To recognise and protect the tangata whenua desire to maintain and enhance their traditional relationship with the environment.*
- (d) To consult with the tangata whenua when discharging functions and duties under the Act.*

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.*

1.10.4 – Commercial Activity

Objective

To promote an integrated and hierarchical approach to commercial centres as communal focal points.

Policies

(c) Recognise the Suburban and Special commercial centres as the secondary areas in the hierarchy, being small scale with a limited number of activities servicing local area needs.

(d) Manage the nature and scale of activities in the commercial centres based on the integrated and hierarchical approach.

(e) Manage and restrict commercial and other activities located outside the identified commercial centres that have the potential to undermine or detract from the vitality and vibrancy of the commercial centres.

The Proposed Private Plan Change is considered to be consistent with the above Area Wide Objectives and Policies of the District Plan. The Area Wide Objectives and Policies of the District Plan have an emphasis on higher density developments being located on main transport links that are near suburban focal points. As previously identified, there are two suburban shopping centres located less than 500m from the site. Furthermore, Ludlam Crescent is a main transport link and there is an established public transport network within walking distance of the site. Given these factors, it is considered that the proposed rezoning is consistent with the relevant objectives and policies pertaining to medium density residential development within the Hutt Valley.

The site is located in an established medium density residential area which is serviced by existing infrastructure. The location of the site on a main transport link, and the capacity within the local roading network means that the local environment will be able to accommodate the likely traffic generation which could result from future development of the site for residential purposes. Given these factors, it is considered that the proposed General Residential Activity Area (Medium Density) zoning is appropriate for the site and would allow for the maximum development potential to be realised while allowing for further consolidation of an existing established residential area. The proposal would result in the loss of an area of land which is zoned for commercial purposes. The site is located in close proximity to two suburban commercial centres, both of which contain vacant stores. These stores have been vacant for some time and are an indication that there is sufficient commercial space (if not an oversupply of space) within the immediate environment. Furthermore, the proximity of these existing commercial centres to the application site ensure that the local servicing needs of the local community would still be able to be met if the subject property is rezoned to General Residential Activity Area (Medium Density).

It is considered that given the above factors, the existing Area Wide Objectives and Policies are appropriate for the subject site and no site specific changes are proposed to these as part of this application. It is considered that the proposed zoning of General Residential Activity Area (Medium Density) will maintain the amenity values and character of the local environment while allowing for the development potential of the site to be met. It is considered that maintaining the status quo will not be as effective or efficient in achieving these Area Wide Objectives and Policies.

General Residential Activity Area Objectives

The Proposal Private Plan Change is considered to be consistent with the relevant objectives and policies pertaining to the General Residential Activity Area (which

also covers General Residential Activity Area (Medium Density)) of the City of Lower Hutt District Plan. The objectives and policies of the General Residential Activity Area which are considered to be relevant to this proposal are as follows:

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.*

4A 1.1.2 Medium Density Residential Development

Objective

To ensure opportunity is made for higher density residential development around some commercial centres, along major transport routes, and where amenity values will not be affected adversely and where there is appropriate servicing of development.

Policies

- (a) That opportunity for higher dwelling densities be made along major transport routes, around some commercial centres, in the residential area between Jackson Street and The Esplanade, Petone, where existing dwelling densities are higher, and where amenity values will not be affected adversely.*
- (b) To avoid, remedy or mitigate the adverse effects of higher dwelling densities on the surrounding area, caused by height of buildings, intensity, scale and location.*

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

- (b) To establish a minimum net site area and maximum site coverage to ensure opportunity is provided for higher density residential development where appropriate, without affecting adversely the amenity values.*

(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.

The Proposed Private Plan Change is considered to be an effective and efficient means of achieving the above objectives and policies for the application site. It is considered that the rules within the General Residential Activity Area are sufficient to ensure that the amenity values and character of the application site, neighbouring properties and wider environment are maintained and no deviation from these existing objectives, policies and rules is sought as part of this application.

Decision

That Proposed Private Plan Change 24 is **approved** without modifications by Council, taking into account the matters raised in submissions DPP12-5-24-001, DPP12-5-24-002 and DPP12-5-24-003.