

HEARING SUMMARY POINTS

IN THE MATTER OF:

Proposed Private District Plan Change 58:

Rezoning of land from Hill Residential Activity Area and General Recreation Activity Area to Medium Density Residential Activity Area along with site specific provisions.

PREPARED BY:

Dan Kellow
Consultant Planner

DATE OF HEARING:

23-24 September 2024

INTRODUCTION

Below is a brief discussion of:

- changes to the proposed private plan change requested by the applicant in the Requestor's Evidence;
- commentary on new matters in the Requestor's Evidence that were not included in the proposal;
- commentary on the Addendum to the Planning Evidence (MDRS).

The applicant's proposed changes to the Private Plan Change

Appendix 1 of the Requestor's Evidence sets out the amendments proposed by PC58 as notified and additional amendments proposed via the Requestor's Evidence. I have included this below for ease of reference.

Any amendments proposed by PC58 as notified are shown as black underline. Any further amendments proposed via the Requestor's Evidence are shown as **bold** and ~~bold strikethrough~~.

11.2.3 Restricted Discretionary Activities

(h) Any subdivision of land identified in Appendix Subdivision 10

In addition to the standard information requirements of s88(3) of the RMA the following information requirements shall also apply.

The following information requirements must be provided by the first application for subdivision under this rule and is applicable to any future stages and subsequent subdivision applications.

Where subsequent subdivision applications deviate from the management plans and information previously provided, the appropriate revisions, addendums or further information to the initial management plans and information shall be provided.

A. Stormwater

~~The first application for subdivision under this rule must provide a Stormwater Management Plan for the site that is applicable to any future stages and subsequent subdivision applications. The A Stormwater Management Plan must be prepared by a suitably qualified person and covering the following:~~

1. Existing site evaluation

- Topography
- Geotechnical and soil conditions
- Existing stormwater network
- Existing hydrological features
- Stream and river locations
- Flooding and Flowpaths locations
- Ecological and environmental areas

2. Development summary and planning context

3. Proposed development including:

- Location and area
- Site layout and urban form Location and extent of earthworks

4. Stormwater management including:

- Principles of stormwater management
- Proposed site specific stormwater management and treatment
- Hydraulic connectivity and downstream impacts
- Asset ownership
- Ongoing maintenance requirements
- Implementation of stormwater network

B. Geotechnical

~~The first application for subdivision under this rule must provide a Geotechnical Assessment for the site that is applicable to any future stages and subsequent subdivision applications. The A Geotechnical Assessment must be prepared by a suitably qualified person confirming that:~~

- The resulting allotments are able to accommodate the intended use and development.
- The risk from any ~~slope instability~~ geohazards can be avoided, remedied or mitigated.
- The subdivision will not increase or accelerate ~~land instability~~ the risk from geohazards on the site or adjoining properties.

C. Ecology

~~The first application for subdivision under this rule must provide an Ecological Plan for the site that is applicable to any future stages and subsequent subdivision applications. The An Ecological Plan must be prepared by a suitably qualified person and addressing the following:~~

1. Orchid Management

- Identify ~~whether there are potential~~ the location of threatened orchids within the development area.

- Set out requirements for the management of threatened orchids, ~~should they be~~ identified on the site.
2. Lizard Management Plan
 - Identify areas that require a pre-vegetation clearance monitoring survey of lizards.
 - Document any pre-vegetation clearance monitoring of lizards.
 - Identify suitable lizard relocation areas.
 - Set out requirements for any lizard relocation.
 3. Mānuka Management
 - Review the significance and threat status of Mānuka Forest on the site;
 - Identify areas of significant Mānuka Forest on the site.
 4. Vegetation Management
 - Identify vegetation protection measures outside the development area identified in Appendix Subdivision 10.
 - Provide details for weed and pest management on the site.
 - Identify ongoing monitoring and maintenance requirements.
 5. Falcon Survey
 - The requirements for an on-site survey for nesting NZ falcons prior to the start of works if any vegetation clearance or earthworks are scheduled to be undertaken during the falcon nesting season.

D. Landscape and Visual

~~The first application for subdivision under this rule must provide a Landscape Management Plan for the site that is applicable to any future stages and subsequent subdivision applications. The A~~ Landscape Management Plan must be prepared by a suitably qualified person and provide providing the following landscaping details:

- Street trees and amenity planting.
- Fencing and planting treatments at the boundary with Fenchurch Grove properties.
- Planting to mitigate earthworks and retaining structures.
- Reserve and open space design including recreation tracks.
- Roads, pedestrian and cycle linkages within the site to the wider access network.
- Stormwater design and associated planting.

E. Transport

For any subdivision that exceeds the high trip generator thresholds specified in Appendix Transport 2 an Integrated Transport Assessment prepared by a suitably qualified person.

11.2.3.1 Matters in which Council has restricted its discretion

...

(g) Any subdivision of the land identified in Appendix Subdivision 10

(i) Amenity Values

The extent to which any earthworks proposal will affect adversely the visual amenity values of the area, and the extent to which replanting, rehabilitation works or retaining structures are included as part of the proposal to mitigate adverse effects. Earthworks should not result in the permanent exposure of excavated areas or visually dominant retaining structures when viewed from adjoining properties or public areas, including roads.

Any measures proposed to mitigate potential adverse landscape and visual effects in accordance with the Landscape Management Plan for the site.

(ii) Existing Natural Features and Topography

The extent to which the proposed earthworks reflect natural landforms and are sympathetic to the natural topography.

Any measures proposed to mitigate potential adverse landscape and visual effects in accordance with the Landscape Management Plan for the site.

(iii) Historical or Cultural Significance

The extent to which the proposed earthworks will affect adversely land and features which have historical and cultural significance.

(iv) Construction Effects

The management of construction effects, including traffic movements and hours of operation.

The extent to which proposed earthworks have adverse short term and temporary effects on the local environment.

(v) Engineering Requirements

The extent of compliance with NZS 4431:2022 (Engineered Fill Construction for Lightweight Structures).

The extent of compliance with NZS 4404:2010 (Land Development and Subdivision Infrastructure). 4 Private Plan Change Request for 12 Shaftesbury Grove – Proposed Amendments

(vi) Erosion and Sediment Management

The extent of compliance with the “Erosion and Sediment Control Guidelines for the Wellington Region 2002” and “Small Earthworks – Erosion and Sediment Control for small sites” by Greater Wellington Regional Council.

(vii) Design and Layout

The design and layout of the subdivision, including the size, shape and position of any lot, any roads or the diversion or alteration to any existing roads, access, passing bays, parking and manoeuvring standards, and any necessary easements.

Any measures proposed to mitigate potential adverse effects of subdivision, earthworks and development upon the steeper hillsides, gullies and streams outside the identified development area.

(viii) Utilities Servicing ~~and Access~~

The provision of utilities servicing, including street lighting, telecommunications, gas and electricity.

~~The provision of vehicular, pedestrian and cycle access via public roads, footpaths and cycleways and the provision of private accesses.~~

(ix) Transport

The provision of vehicular, pedestrian and cycle access via public roads, footpaths and cycleways and the provision of private accesses.

For subdivisions that exceeds the high trip generator thresholds specified in Appendix Transport 2 any measures proposed in accordance with the Integrated Transport Assessment for the site.

(ix) Stormwater Management

The provision of stormwater control and disposal and any measures proposed to manage and treat stormwater in accordance with the Stormwater Management Plan for the site.

The extent of compliance with the Wellington Water Regional Standard for Water Services December 2021.

(xi) Wastewater

The provision of wastewater systems and any measures proposed to utilise offpeak network capacity through onsite storage and timed wastewater release. The extent of compliance with the Wellington Water Regional Standard for Water Services December 2021.

(xii) Water Supply

The provision of a reticulated water supply network and any measures proposed to achieve an adequate domestic and firefighting water supply. The extent of compliance with the Wellington Water Regional Standard for Water Services December 2021.

(xiii) Natural Hazards

The avoidance or mitigation of natural hazard risks.

(xiv) Regionally Significant Network Utilities

The design and layout of the subdivision where any lot may affect the safe and effective operation and maintenance of and access to regionally significant network utilities (excluding the National Grid) located on or in proximity to the site.

The outcome of consultation with the owner and operator of regionally significant network utilities (excluding the National Grid) located on or in proximity to the site.

(xiv) Geotechnical

Any measures proposed to provide appropriate foundations for future buildings within the subdivision and to manage the risk from ~~slope instability~~ geohazards on the site and on adjoining properties from any earthworks or site development works, in accordance with the Geotechnical Assessment for the site.

(xvi) Ecology

Any measures proposed to manage adverse effects on significant indigenous biodiversity values on the site in accordance with the Ecological Plan for the site.

The application of the effects management hierarchy as follows:

- Avoid adverse effects on significant indigenous biodiversity where practicable;
- Minimise other adverse effects on significant indigenous biodiversity where avoidance is not practicable;
- Remedy other adverse effects where they cannot be avoided or minimised;
- Only consider biodiversity offsetting for any residual adverse effects that cannot otherwise be avoided, minimised or remedied; and
- Only consider biodiversity compensation after first considering biodiversity offsetting.

(xvi) Those matters described in Section 108 and 220 of the Resource Management Act 1991.

Comments on the proposed amendments

11.2.3 (h) Information Requirements

I consider the proposed amendments relating to the information requirement provisions result in an acceptable framework for ensuring subdivision applications will be required to provide the information necessary to assess the acceptability of each proposal. I do not recommend any changes to the revised information requirement provisions set out above under 11.2.3 (h).

I consider the proposed wording change to 11.2.3 A – D that reflects the change to the information requirements is appropriate.

11.2.3. (h) : B. Geotechnical

The proposed wording change from 'slope instability' to 'geohazards' reflect what the s42A Officer's Report requested so is supported.

11.2.3. (h) : C. Ecology

The wording change in relation to identifying the location of orchids is supported.

The inclusion of a requirement to undertake a survey for nesting NZ falcons if vegetation clearance or earthworks are to occur during falcon nesting season is supported.

11.2.3. (h) : D. Landscape and Visual

The inclusion of additional matters relating to recreation tracks and wider linkages is supported.

11.2.3 (h) : E. Transport

The inclusion of a requirement to provide an Integrated Transport Assessment when a proposal exceeds the high trip generator threshold is supported as this was recommended in the s42A Officer's Report however an amendment to the matters of discretion is suggested below.

Comments on additional assessment in the Requestor's Evidence

Significant Natural Area's

I now comment on the issue regarding the NPS-IB definition of SNA as this was addressed in the Requestor's Evidence. I note the reasons why the applicant (paragraph 52 - Requestor's Evidence)

considers the existing Significant Natural Resource (SNR) does not meet the NPS-IB definition of SNA. I also note that Requestor's Evidence at paragraph 159 states that the SNR overlays technically meet the NPS-IB definition of SNA.

I maintain my opinion that the NPS-IB definition of SNA means the existing SNR overlay needs to be considered as a SNA. I note the SNA definition does not refer to rules which the applicant, to an extent, appears to rely on to justify why the existing SNR should not be considered a SNA. When HCC decided to not advance PC46 the decision was made to rely on non-regulatory methods and therefore the SNR overlay retained significance.

In my view if it is considered that the SNR's are to be considered as SNA's then the proposed matters of discretion do not give adequate regard to the five effects that must be avoided, set out in clause 3.10(2), and would result in district plan provisions that are inconsistent with the NPS-IB. I therefore retain my recommendation in relation to amending the ecology related provisions.

High Trip Generator

I agree with the statements in the Requestor's Evidence (paragraph 247) that the District Plan has an inconsistent approach in regard to the activity status of a proposal that breaches the High Trip Generator threshold. The applicant proposes a Restricted Discretionary activity status for a proposal that breaches the High Trip Generator threshold with the matters of discretion as follows:

(ix) Transport

The provision of vehicular, pedestrian and cycle access via public roads, footpaths and cycleways and the provision of private accesses.

For subdivisions that exceeds the high trip generator thresholds specified in Appendix Transport 2 any measures proposed in accordance with the Integrated Transport Assessment for the site.

In contrast the existing Transport Chapter matters of discretion are as follows:

The effects of the activity on the transport network including impacts on on-street parking.

Should the plan change request be approved with the High Trip Generator breach as a matter of discretion I recommend, for consistency, that the existing 'matter of discretion' wording in the Transport Chapter is used instead of the wording proposed by the applicant.

I note that the Draft District Plan makes a subdivision that does not comply with the rules and standards of the Transport Chapter a Restricted Discretionary activity with the matters of discretion including "*The relevant matters of discretion of any infringed standard*". This supports my recommendation to amend the proposed matters of discretion to align with the Transport Chapter. In my s42A I recommended that a breach of the High Trip Generator resulted in subdivision being a Discretionary activity to align with the Operative District Plan. If the matters of discretion are amended as described above I consider that a Restricted Discretionary activity status would be suitable.

Activity status for Subdivision outside of the Development Area

The Requestor's Evidence, at paragraphs 302 – 312, addresses my recommendation that subdivision outside of the Development Area is a Non-Complying activity.

I confirm my recommendation to apply a Non-Complying activity status is based on the management of ecology effects as well as landscape and visual effects. I recognise it is a challenge to develop provisions that are consistent with both section 6(a), and the highly directive NPS-IB, for urban sites where the

MDRS applies. I acknowledge that a Discretionary or Non-Complying activity status would both require a full assessment of effects.

A response to the further information request dated 23.04.2023, which requested “*an assessment of the potential effects of development beyond the Development Area*” may have provided additional information to better understand the effects of enabling development beyond the Development Area. In the absence of that information the applicant’s LVA is relied upon and the clear signal the LVA gives is to ‘avoid’ an ‘protect’ areas beyond the Development Area. I agree with the Requestor’s Evidence which highlights the narrow focus given to the words ‘avoid’ and ‘protect’ in planning – which contributed to why I recommended a Non-Complying activity status. However, given the direction in Schedule 3A to apply a Controlled activity status I acknowledge that a Non Complying activity status appears inconsistent with Schedule 3A. If the site did not contain a SNA/SNR then my recommendation would align with the applicants.

Alignment of PC58 with MDRS Requirements

I have read the Addendum to the Statement of Evidence prepared by Corinna Tessendorf. I agree with the reasoning in regard to why the proposed activity status of an application for subdivision consent is more restrictive than the requirement for a Controlled Activity status under Schedule 3A.

The Addendum identifies the matters of national importance which are a qualifying matter under s771 (a). I agree that 6(a) protection of rivers and their margins, s6(c) protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna and 6(h) relating to the management of significant risks from natural hazards are relevant to this site.

I also agree that under 771 (b) that the NPS-IB and NPS-FM are relevant and need to be given effect to. A Controlled activity status is not appropriate given the requirement to approve a Controlled activity proposal and this would be inconsistent with the management of effects under the NPS-IB in particular. A Controlled activity status across all or some of the site would allow the formation of Urban Environment Allotments. Section 76(4A) of the RMA precludes blanket rules prohibiting or restricting the felling, trimming, damaging or removal of a tree or trees on a single urban environment allotment. The only way such rules are permissible is if specific trees and allotments are described in the plan. A Controlled activity status would then allow for, under the current District Plan rules, the removal of trees (indigenous and exotic) from the allotments which would clearly be inconsistent with the NPS-IB.

I consider the lack of water supply is a relevant other matter that can be considered under 77(j). A subdivision proposal with a Controlled activity status must be granted but this would be entirely inappropriate when a water supply is not in place or at least under construction. The natural landscape values can also be considered as an ‘other matter’ given the applicant’s Landscape and Visual Assessment states on page 15 that approximately 5.1 hectare of the site is suitable for residential development. The remaining area of the site that is unsuitable from a landscape and visual perspective needs to be managed via a consent application that has a Restricted Discretionary or higher activity status.

Summary

I agree with the proposed changes to the provisions with the exception of the matters of discretion applied to a breach of the High Trip Generator.

I generally agree with the statements in the Addendum to Planning Evidence justifying why a Controlled activity status is not appropriate.

On balance, assuming that it is accepted that the SNR should be considered as an SNA then I maintain a Non-Complying activity status should be applied to development outside of the Development Area but acknowledge that a Discretionary activity status would also allow a full assessment of effects.

Report prepared by:

Dan Kellow
**Planning Consultant, acting for Hutt
City Council**

23 September 2024

