

# Hearing Report

*District Plan Change 67  
Rezoning 43 Spenmoor Street, Newlands*  
24 March 2010



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<b>COMMISSIONER'S RECOMMENDATION:</b>	<b>FOR WELLINGTON CITY COUNCIL</b>
<b>SUBJECT:</b>	<b>DISTRICT PLAN CHANGE Nº 67 – REZONING OF 43 SPENMOOR STREET, NEWLANDS, FROM RURAL AREA TO RESIDENTIAL (OUTER) AREA</b>
<b>DATE OF HEARING:</b>	<b>7 and 9 OCTOBER and 3 NOVEMBER 2009</b>

## **1. INTRODUCTION**

District Plan Change 67 (DPC67) is a private plan change requested under Section 73(2) of the Act by Primeproperty Group Limited (referred to hereinafter as 'the Requester'). In August 2008 the Regulatory Processes Committee of Council agreed to 'accept' the private plan change request and proceed to public notification. Accepting a private plan change implies that the Council is taking a neutral position on the proposal until it is heard and decided.

DPC67 seeks to:

- change the zoning of approximately 17.7hectares (approximately 43%) of total land holding of 41 hectares at 43 Spenmoor Street from Rural Area to Outer Residential Area, and;
- introduce some additional controls that would apply to this area of land at the time of subsequent resource consent applications for subdivision and/or land use.

The change of zoning would enable subdivision and development of the site to the extent provided for by the Outer Residential Area provisions of the Operative District Plan, subject to any relevant aspects of Proposed District Plan Changes (PDPC) 36 - Northern Growth Management Framework and 70 - Earthworks Provisions.

DPC67 was publicly notified on 20 November 2008.

### **Attachments**

Attachment 1 is an extract from the District Plan Maps showing the site in context.

Attachment 2 is an extract from DPC67 that shows the site, the area to be rezoned and the Ridgelines Hilltop Overlay Area and the area of additional height control.

## 2. RECOMMENDATION

As Hearing Commissioner with delegated authority to hear submissions and recommend a decision on Proposed Plan Change 67, I have given careful consideration to the advice from Council officers, the evidence and/or submissions of the Requester, the evidence and/or submissions of submitters and further submitters that appeared, and other submissions.

### I recommend that Council:

1. *Receive the information.*
2. *Pursuant to clause 29(4) of Part 2 of Schedule 1 to the Resource Management Act 1991, DECLINE Plan Change 67 for the reasons set out in this report.*
3. *Determine that all submissions and the further submission be accepted or rejected to the extent that they accord with the above recommendation.*

## 3. THE ENVIRONMENT

### 3.1 THE SITE AND ENVIRONS

The area to be rezoned is located in Newlands to the north-east of State Highway 1. At the time of notification, the area was stated to be approximately 17.7 hectares of the property described as 43 Spenmoor Street Newlands, being Lot 1 DP 382626 which then had a total area of 41.0079 hectares. This 'parent' property sits within the western harbour hills and is part of the Wellington Fault escarpment which comprises a prominent land form running from Tinakori Hills to the Hutt Valley.

Since notification the parent property has been subdivided into 40 rural residential allotments in accordance with a resource consent granted 31 May 2006 (WCC SR 1402920).

The land that is proposed to be rezoned is now described as all of Lots 1 - 10, 12, 14 - 17, 19 - 21, 28, 30, and parts Lots 11, 13, 18, 22 - 26, 33 and 34 of DP 403079 and Lot 1 and part Lot 2 DP 423373, with a total area of 11.707 hectares excluding internal roads. The parts of the lots in the 40 lot subdivision subject to restrictive covenants (the covenant areas) and Lots 31 and 32, and 35-40 DP 423373 are to remain in the Rural Area.

The site of the proposed rezoning is located on a stand alone ridgeline/hilltop, generally oriented north towards the suburb of Newlands and the residential areas of Newlands Road, Spenmoor Street, and Miles Crescent. To the east the landform drops away steeply to Wakely Road (a legal road with a roughly formed track used for recreational purposes), and the industrial area of Glover Street in Ngauranga. To the south and west, the base of the hill is bounded by the Ngauranga Gorge, which contains State Highway 1.

The property can be described as a dome-shaped, stand-alone hill with steep sides and a moderately flat top. The upper areas of the hill are characterised by overgrown pasture and rank grass while the steep side slopes are covered in regenerating native vegetation, with some gorse and broom. An established pine woodlot sits within the top northeast corner of the site and

shelterbelts of pines extend around most of the boundaries between the open, flat to rolling pasture and the steeper, vegetated hillsides. There is an existing dwelling and ancillary buildings in the south of the site.

Spenmoor Street was developed along a small localised ridge in the 1960's as a residential cul-de-sac, approximately 280 metres long, to serve approximately 40 properties. Characteristically of this type of development, the houses are generally located close to the road where the contour is more favourable for building. Vehicle access to individual properties is often steep with little opportunity for on-site manoeuvring. Through this developed area Spenmoor Street has a legal width of 15 metres and a formed carriageway of approximately 7.2 metres with a footpath on the south side only.

Vehicle access to the site is from the end of Spenmoor Street by way of a road constructed as part of the approved 40 lot rural residential subdivision of the land and vested in the Council as legal road. The landform has been significantly modified by approximately 60,000m<sup>3</sup> of earthworks and the construction of the main spine access road and associated branch roads and rights of way. The newly created legal road has a kerbed carriageway in the order of 7 metres wide with a concrete footpath on one side contained within a legal width that varies from 15 metres to over 20 metres in places dependent on topography.

## 3.2 DISTRICT PLAN PROVISIONS

The site is zoned 'Rural Area'. A number of other notations/restrictions in the District Plan apply to this site, as follows:

- The majority of the site is included in the identified Ridgelines and Hilltops overlay introduced through District Plan Change 33 'Ridgelines & Hilltops (Visual Amenity) and Rural Area', which became operative on 10 July 2009.
- The site is identified as being close to the urban area where sensitively designed rural residential subdivision of generally low density and of varying lots sizes is appropriate as provided for in Appendix 5 to Chapter 15 Rural Area, with low density rural-residential subdivision being a Discretionary Activity (Unrestricted).
- The site is within the take off and approach fan for Wellington International Airport (Designation G2 on Planning Maps 36, 37 and 38).

## 3.3 APPROVED SUBDIVISION

The site is the subject of resource consents for subdivision and land use that are briefly described as follows:

### Subdivision Consent

- A 40 lot rural residential subdivision with lots ranging from 1600m<sup>2</sup> – 40840m<sup>2</sup> in area, with a large balance lot of 10.425 hectares and a road to vest in the Council.

### Land Use Consent

- Construction of 40 dwellings on an identified ridgeline and hilltop area.

- Construction of a new road (approximately 900m long), rights of way (880m long) and access with turning areas to individual building platforms; and
- Mass earthworks 65,000m<sup>3</sup> with a maximum cut of 7 metres; and the majority of excavated material to be used as fill within the site.

Approval conditions of these consents include:

- approximately 13 hectares of the escarpment face containing regenerating bush was required to be covenanted;
- only one dwelling is permitted per lot, and no further subdivision of the lots is permitted;
- the maximum height of dwellings is set at 8 metres, except on six of the proposed lots where the height limit is restricted to single level construction not exceeding 5 metres above the building platform;
- external cladding and roofing materials are restricted to those with low reflective qualities, and colours are required to be subdued tones – plans are to be submitted and approved by the Council;
- a landscaping plan is required to be provided for each lot to be approved by the Council;
- there is a restriction that earthworks for residential buildings or accessory buildings must be within identified building areas; and
- Specific engineering design is required for the foundations of buildings on the lots.

The above conditions are secured against the titles to the lots by way of consent notices under section 221 of the RMA.

The subdivision, earthworks and its physical infrastructure has been completed and titles for the new allotments have been issued. At the date of the hearing no dwellings have been constructed under the approved subdivision/land use consents.

Lots 1-7, 11, 14, 17, 19-21 and 34 are owned by parties other than the Requester.

## **4. PROPOSED DISTRICT PLAN CHANGE 67**

### **4.1 DESCRIPTION**

The rezoning proposed by DPC67 would enable residential development of the northern and western sides of the site, along with an area near the centre of the site just below the highest point, all within the footprint of the sites created by the approved subdivision. Development could be undertaken at a density similar to the adjacent residential area.

Within the area to be rezoned, the rules that apply to the Outer Residential Area in the operative District Plan, and in the relevant Proposed Plan Changes, would apply to any subdivision or development. However, in addition, DPC67 proposes a new Appendix to Chapter 5 Residential Area which sets out additional rules, standards and terms and assessment criteria that would apply to a future residential development of the site.

As a result, residential buildings would be a permitted activity only if they comply with the requirements in Rule 5.1.3 of the District Plan relating to the number of household units, yards,

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site coverage, maximum building height, sunlight access and maximum fence height, as well as the site specific provisions set out in the proposed Appendix. These include:

- a height limit of 5 metres for dwellings and other buildings over a part of the area to be rezoned;
- cladding and roofing materials are required to be of low reflective qualities and external colours to be restricted to subdued natural tones.

In relation to any future subdivision of the site, Rule 5.4.5 which requires resource consent for a subdivision in those parts of the Outer Residential Area within an identified ridgeline and hilltop area as a Discretionary Activity (Unrestricted), will apply. Further additional controls proposed by DPC67 to be included in an Appendix area for the site include:

- building platforms shall be shown for each lot in any subdivision application;
- a landscape plan and written specifications shall be provided with any subdivision application and include:
  - areas of existing pines to be retained;
  - location and extent of any fencing of covenanted bush;
  - location and extent of any pest control program;
  - street tree and associated public area landscape planting
  - identification of internal accessways, public furniture and areas; including any proposed footpaths, seats etc.
- additional assessment criteria will apply including:
  - the extent to which any earthworks blend into adjoining landforms.
  - the level of protection afforded to covenanted areas of regenerating indigenous vegetation
  - the appropriateness of the landscape plan.

The Ridgelines and Hilltops overlay across the site will remain and DPC67 does not specifically provide for the area to be rezoned Outer Residential to be excluded from Appendix 5 to Chapter 15 (which identifies the site for low density rural residential development).

## 4.2 SUBMISSIONS RECEIVED

A total of 55 submissions and 1 further submission were received in respect of DPC67. Of these 23 submissions were in support or conditional support, while 32 submissions opposed DPC67 seeking that it be declined.

The 32 submitters in opposition all live in close proximity to the subject site (i.e. Spenmoor Street or Lyndfield Lane), and they include the majority of the owners/occupiers of residential properties in Spenmoor Street. The submission from the 'Residents of Spenmoor Street' has 31 signatures from residents in Spenmoor Street. Fifteen of these signatories have also lodged their own submission.

In contrast, the submitters in support are scattered widely throughout the City, and from the addresses provided do not appear to reside in the wider Newlands area.

## 5. THE HEARING

### 5.1 APPEARANCES

#### Primeproperty Group Limited (The Requester)

Andrew Beatson	Counsel
Eyal Aharoni	Principal
Michael Copeland	Economist
Richard Jones	Engineer (Infrastructure)
Gary Clark	Engineer (Traffic)
Wade Robertson	Landscape Architect
Ian Leary	Planner and Surveyor
Richard Galloway	Engineer (Transportation)
Timothy Kelly	Engineer (Transportation)

#### Council Officers

Louise Miles	Consultant Planner (Reporting Officer)
Angela McArthur	Landscape Architect
Brendan Stone	Transportation Planner
Steve Spence	Chief Transportation Engineer
Brett McKay	Principal Planner
Lauren Neal	Hearing Administrator

#### Submitters

Philip Collett	32 Spenmoor Street
Sharon Murray	31 Spenmoor Street
Warwick Spencer	41 Spenmoor Street
Rosemary Spencer	41 Spenmoor Street
Jeremy Simonsen	16 Spenmoor Street
David Jacobson	38 Spenmoor Street
Lesley Jacobson	38 Spenmoor Street
Stephen Dunstan	21 Spenmoor Street
Emily Dunstan	21 Spenmoor Street
Wayne Jansen	39 Spenmoor Street
Rowan Anderson	39 Spenmoor Street
Warrick McCluskey	3 Spenmoor Street
Residents of Spenmoor Street (Spokesperson – Philip Collett)	

Peter Rundlett	Owner of Lot 11 Spenmoor Street
Nick Leggett (for Chris Gollins)	113A Motuhara Road, Porirua
Andrew Monahan	28 Rewa Road Hataitai, Wellington

NZ Fire Service	James Firestone
Greater Wellington Regional Council	Ling Phang and Doug Weir



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## 5.2 OFFICER REPORT

A comprehensive report was provided in advance of the hearing by Ms Louise Miles, consultant planner to the Council, covering all relevant aspects of DPC67 and its consideration including:

- Background to and a description of DPC67
- Relevant statutory provisions
- Relevant provisions of the District Plan and Regional Policy Statement
- An analysis of submissions and issues
- Consideration of Part 2 RMA and section 32 matters.

Ms Miles report included a Traffic Assessment by Mr Brendan Stone, Council's Principal Planner (Transport), legal advice regarding road and road upgrading aspects of DPC67, and an Assessment of Landscape and Visual Effects by Ms Angela McArthur, Council's Landscape Architect.

Ms Miles did not support DPC67. For the reasons set out in her conclusions she recommended that I recommend to the Council that DPC67 be declined. I have deduced those reasons to include:

- Improvement would be required to Spennmoor Street to enable two way flows for a residential development of the scale that would occur under a residential zoning but the Council has no ability to require the developer to do this upgrading through a plan change process. Without the upgrade it is considered that the adverse traffic effects will be more than minor.
- The impact of a residential development of the intensity that would be enabled through a residential zoning will have landscape/visual effects that are more than minor and those impacts cannot be adequately mitigated to maintain a relatively undeveloped character in this prominent ridgeline and hilltop area.
- DPC67 is not consistent with the objectives and policies of the District Plan or the operative or proposed Regional Policy Statement. In particular, it is not consistent with the objectives relating to urban form, or those relating to the Ridgelines and Hilltops overlay. Due to multiple ownerships within the DPC67 site, future resource consent applications for subdivision and earthworks would not enable a comprehensive assessment to be made of the effects on the values of the Ridgelines and Hilltops area.
- The proposed rezoning from Rural Area to Outer Residential Area is not considered an appropriate way to manage the effects of the use, development or protection of the land and its associated natural and physical resources in accordance with sustainable management principles.

At the hearing Ms Miles commented that the existing density of development approved under the 40 lot subdivision was consistent with the Ridgelines and Hilltop overlay provisions. She confirmed that if the indicative subdivision plan included as part of DPC67 was followed under

an Outer Residential Area zoning, the maximum number of dwellings permitted would be 228 (2 per lot). Some 13 of these would be limited to no more than 5 metres high.

She confirmed that there would be approximately 10,000m<sup>3</sup> of earthworks to achieve the indicative subdivision layout and that the bush covenant areas were not to be altered. She stated that the two main adverse effects were traffic and visual/landscape effects. She believed that the legal advice received by Council precluded the upgrading of Spenmoor Street through DPC67 and the adverse effects on the identified ridgelines would result in more than minor adverse effects. Neither of these aspects could be mitigated.

Ms Miles believed that the number of titles and separate ownerships make it difficult to achieve coordinated development. She did not believe that DPC67 was appropriate, hence her recommendation.

At the hearing Mr Stone expressed concerns over the traffic flow and that the proposed development was highly car-dependant and remote from public transport links. Because of topography, pedestrian links were not conducive to use. He was also concerned that legal parking on Spenmoor Street reduces it to a one way street. He referred to the fact that Council Officers had prepared some suggested improvements to Spenmoor Street to enhance the two way flow but he was concerned with a potential for a significant increase in traffic levels following any approval of DPC67.

At the hearing Ms McArthur confirmed that in her opinion DPC67 was inconsistent with the findings of the Boffa Miskell Ridgelines and Hilltops Report <sup>1</sup> and the development that could result from approval of DPC67 would not achieve the relatively open landscape sought by Plan Change 33 and would result in adverse visual effects.

## 5.3 REQUESTER'S CASE

### 5.3.1 Legal Submissions

*Mr Andrew Beatson*, Counsel for the Requester, presented written legal submissions in which he described the existing planning context and DPC67, identified the key issues and environmental results, and described the potential adverse effects and the likely outcomes of proposed residential development that would be enabled by DPC67 by reference to the evidence of experts for the Requester, the Council's evidence and the submissions.

Key issues that Mr Beatson identified included:

- The land is ideal for residential activity. Establishing higher density housing in this location (over and above what has already been approved) is entirely appropriate in terms of the wider objectives, policies and rules of the District Plan, will not lead to any unacceptable adverse effects, and will achieve the sustainable management purpose of the RMA.
- the Requester's evidence will demonstrate that the most effective and efficient use and development of the land resource is for residential

<sup>1</sup> This report formed the basis of the overlay provisions incorporated into the District Plan through Plan Change 33.

development envisaged by the Outer Residential Area objectives and policies, but subject to suitable controls, as opposed to retaining the status quo.

- The site can be developed in a manner that retains the relatively undeveloped nature of the Ridgelines and Hilltop area.
- The site is located at the urban fringe, has existing infrastructure, and is clearly envisaged by the Wellington City planning documents as being suitable for Outer Residential Area type activity.

Mr. Beatson submitted that once in effect DPC67 would have a number of positive environmental results including maximisation of land value, retention within the Rural Area of important landforms, a largely undeveloped character within the hilltop, better use of existing infrastructure, and reinforcement of a compact and coherent city form.

Mr. Beatson submitted that The **Long Bay-Okura Great Park Soc Inc v North Shore CC A078/08** decision sets out a comprehensive summary of the mandatory requirements for district plans or plan changes. He proceeded to evaluate DPC67 within this statutory context and by reference to the evidence from the Requester's experts, and the Council's evidence.

Key aspects of his analysis included that:

- the proposed objectives and policies are the most appropriate way to achieve the purpose of the RMA;
- the District Plan allows development within the Ridgeline and Hilltop overlay area and the proposed development would result in a relatively undeveloped character in compliance with the key policy;
- Council will have opportunities during subsequent consideration of subdivision and development proposals to ensure a quality outcome. In this respect the 'indicative' subdivision plan submitted as part of the application was not intended to be followed, but showed the absolute maximum yield possible. The existing consent notices registered under the approved subdivision will generally limit development to one dwelling per lot;
- the planning documents clearly indicate that expansion on the city fringe is appropriate provided adverse effects are dealt with and green field development is contemplated by the Northern Growth Management Strategy;
- the legal advice provided to the Council regarding road upgrading confuses the two separate processes of plan change applications and resource consent applications and does not prevent approval of DPC67 provided it can be shown vehicle access to the site can theoretically be achieved without unacceptable traffic safety and efficiency effects;
- Part 2 matters are not a barrier to approval of DPC67.

Mr Beatson's conclusions were:

*“Even at its highest potential density, the outcome of DPC67 will not have unacceptable effects on traffic and the roading network for the area, nor will there be servicing constraints for water supply or stormwater and wastewater management.*

*The greatest potential effect from DPC67 and subsequent development of the area relates to visual amenity and the ability to integrate development within the ridgeline and hilltop area. The landscape evidence provided demonstrates that this integration can be achieved. Particularly sensitive areas are avoided. Ample controls are proposed to ensure an appropriate outcome.*

*The site is within the NGMF area and policies within the District Plan support appropriate development by way of plan changes.*

*It is submitted that the effects and concerns outlined in the Officer's Report are overstated, and at times fanciful. Effects arising from the proposed plan change are, in all respects, controllable and acceptable.”*

### **5.3.2 Primeproperty Group**

**Mr. Eyal Aharoni**, managing director of Primeproperty Group Ltd gave evidence as to the nature and activities of Primeproperty Group Ltd, including its involvement in District Plan and Annual Plan processes. He expressed the view based on his involvement with district plan matters that the Council has been steadily “clawing back” development rights in the city, across the board, in the CBD, suburban centres and residential areas. He contrasted this with the recently approved Long Term Council Community Plan (LTCCP).

He pointed out that the LTCCP introduces the concepts of urban intensification along growth spines and containment of the city and, in his view, this supported DPC67 which is consistent with the overall direction of the Council. He produced a number of extracts from the LTCCP to support this view and expressed his disappointment with the Council Officers' reports for DPC67 that appear to have ignored or downplayed the positive effects that will result.

Mr. Aharoni also found himself at odds with the Officers' concerns regarding landscape effects of a number of houses on the hill when Plan Change 25 (Kiwi Point Quarry) allowed the removal of the hill altogether on the opposite side of the road. He produced a number of photographs to illustrate this point.

Mr. Aharoni's evidence was that his company purchased 43 Spenmoor Street several years ago with the initial intention of carrying out a rural residential type, small, life-style block subdivision. The property was marketed prior to the current recession and a number of lots were sold at the earlier stages. Since commencement of the recession almost 2 years ago, not one lot has been sold despite continued marketing. Of the original lots that were sold, most were the smaller lots with lower price ranges. He now believes that what the market requires at this location is lower priced, smaller lots.

With the installation of services to accommodate further subdivision of the land, which he understood to be a requirement of the Council's Rural Area Design Guide for urban fringe properties, he believes there is no justification to maintain the current land configuration. He

advised that the costs involved and the level of debt prevents discounting the land and selling it in its current configuration. In any event he advised that there is no market for the sections as they stand.

Mr. Aharoni believes that the current application is a natural extension of Spenmoor Street and there is no valid justification for it to be developed in any other way than for outer residential activity. The land is less than 1000 metres away in a direct line from the Johnsonville shopping centre, which has just received consent to become Wellington Region's largest shopping centre outside the CBD. Newlands offers all the services and amenities required for residential housing. In close proximity to the site there are schools, shopping and transport. It is one of Wellington's closest Greenfield sites to the CBD. There is no commercial or planning justification for the site to remain rural.

The existing roading layout was designed at the council's and traffic engineers request so it would accommodate a bus turning point at the end of the cul-de-sac. There will not be a bus service unless more dwellings are erected and it becomes more cost effective to extend existing services. Spenmoor Street has been upgraded at the company's cost and off street parking provided to accommodate increased traffic. Traffic engineers calculate that Spenmoor Street at its current configuration can accommodate many more houses than this Plan Change will be likely to provide for.

Mr. Aharoni also advised that he taken professional advice and on the basis of that advice he considered Spenmoor Street to be safe and adequate for the increased traffic, and that the landscaping effects would be minimal. He said that his vision is to provide good quality and reasonably priced residential development on the site, in a sensitive manner. The site itself has very good views and there is the potential to create a very attractive living environment for future residents. It was his view that the Council should grant approval for DPC67 which would benefit not only Primeproperty Group, but also Wellington as a whole and will be consistent with Council Long Term Plans.

### **5.3.3 Economic Evidence**

**Mr Michael Copeland**, an economist, gave evidence in support of DPC67 which concluded that:

*“In terms of economic effects, Proposed Plan Change 67 has a number of positive externality benefits and no significant externality costs. It is consistent with providing for the economic well being of the people and communities of Newlands and Wellington City. It is also consistent with the efficient use of resources.”*

In summary his key conclusions were:

*“Proposed private Plan Change 67 will improve the economic wellbeing of Wellington City by:*

- *Increasing employment, incomes and expenditure in the Wellington City economy during construction of the additional residences and subsequently from the increased number of households and population in the City;*

- *Strengthening the vitality and viability of the Newlands suburban shopping centre and other local community activities such as those associated with sport and service clubs;*
- *Reducing transport costs for residents who would otherwise reside at greater distances from central Wellington and secondary service centres;*
- *Increasing the utilisation of infrastructure (roads, water supply, sewerage and storm water disposal) already established within and adjacent to the site, thereby lowering unit costs of supply across the various infrastructure networks; and*
- *Enhancing the range of choice for residential section purchasers in Wellington City.*

*Proposed private Plan Change 67 will improve resource use efficiency by:*

- *Increasing economies of scale through increases in economic activity (at the Wellington City level) and through increased use of already established infrastructure and*
- *Allowing the land covered by proposed private Plan Change 67 to be allocated to its highest value use.”*

#### **5.3.4 Infrastructure**

**Mr. Richard Jones** a Chartered Professional Engineer, gave evidence that addressed the capacity of existing infrastructure relating to stormwater control and conveyance, sanitary sewer, water supply, roading within the developed site. He also addressed street lighting and services supporting the site being telecom, power and gas.

He found that no capacity constraints that would result from the additional development that DPC67 would enable. In addition he expressed the view that the matters over which Council retains control through the subdivision consent process will ensure that the necessary infrastructure amendments can be made at the time of any such application.

#### **5.3.5 Traffic**

**Mr. Gary Clark**, a Chartered Professional Engineer (Civil), provided evidence on the matters raised by submitters and in the Council report. His evidence primarily concentrated on the impacts of the increased level of development enabled by DPC67 on the original length of Spenmoor Street.

Mr Clark expressed the opinion that there were no congestion issues relating to the current use of Spenmoor Street. He commented that it was not unusual for vehicles to wait at narrow sections of the roadway in parts of the Wellington network. He was also satisfied that the road geometry and design along Spenmoor Street is able to provide a safe environment for all road users and pedestrians with the existing level of on-street parking and at the local speed environment of about 30km/hour.

Mr Clark considered that the practical operating capacity of Spenmoor Street was at least 550 vehicles per hour and he expected no adverse effects from an increased use of Spenmoor Street even to the maximum extent of 228 additional households or two households per 114 lots shown on the indicative subdivision plan.

Mr Clark was critical of the evidence of Mr Stone because it contained no detailed analysis to support its conclusions which were then relied on by Ms Miles in making her recommendations. Mr Clark believed that he had satisfied the questions posed in Ms Miles report as to the speed environment which had been reduced to about 30km/hour through the installation of the traffic calming measures, and the performance of the Spenmoor Street/Wakely Road intersection which can operate satisfactorily for a threshold of at least 127 dwellings on the Plan Change site.

Overall Mr. Clark considered that the development that would be enabled by DPC67 is able to be accommodated within the surrounding road network with no discernible effects on other road users. His key conclusions were that:

- “(a) The existing levels of service for Spenmoor Street are excellent. The levels of service upon completion of a development that’s has an additional 228 lots will also be excellent.*
- (b) Spenmoor Street has the capacity to provide a safe and convenient route which is consistent with the expectations of residential street design for the Wellington area.*
- (c) My analysis is based on best design practice and has involved detailed analysis of Spenmoor Street and the nearby intersections.*
- (d) The site is well located within the Wellington road network with excellent connections to the arterial road network. Provisions are provided for walking and cycling that are consistent with Wellington’s network. The provisions are similar to those provided for other new developments currently being construction to the north of Newlands. The connections to shopping areas and public transport are excellent and closer than some other new development areas.*
- (e) Public transport has the possibility being further improved as a result of this development being completed by creating a greater demand for this service.”*

### **5.3.6 Landscape and Visual**

**Mr Wade Robertson** a Landscape Architect presented a comprehensive statement of evidence which:

- Identified the key components of the Plan Change;
- Identified the key contextual issues including physical and visual characteristics;
- Identified and responded to the key landscape-related provisions of the District Plan and comments provided by the Council’s Landscape Architect where relevant;

- 
- Considered and responded to public submissions;
  - Drew conclusions with regard to the appropriateness of the Plan Change as to landscape and visual matters.

Within the context of the significant landscape and visual elements of visual coherence, character, intrinsic values, and visual amenity, Mr Robertson's evidence discussed the detail policy approach of the District Plan, including Plan Change 33 (which introduced the Ridgelines and Hilltop overlay), carefully identified where his opinion differs from that of Ms McArthur and/or Ms Miles, as the case may be, and gave reasons for his opinions. He produced a number of photographs to further illustrate his points of view.

Similarly his evidence examined the submissions in opposition to the Plan Change and provided reasoned responses.

His conclusions were that:

- *In my opinion establishing a relatively undeveloped character on sites that have been identified as highly visible and potentially valuable with regard to visual amenity is about addressing the size and frequency of spaces in between buildings and the elements that exist in those spaces. The end goal being to balance the appearance of buildings and ensure built form does not dominate the appearance of a site.*
- *Identifying this tipping point for each individual residential area contained within the Ridgelines and Hilltops Overlay will ensure that well considered and appropriate design responses are sought in favour of unimaginative developments that focus on low density and sporadic layouts that bear no relationship with the physical character and development challenges presented by Wellington's landscape.*
- *The inclusion of the site within the Ridgeline and Hilltops Overlay is based on its prominence and visual characteristics associated with its stand alone nature and the skyline in particular. The site is not recognised for its heritage, recreation or natural values aside from its landform/prominence relationship.*
- *The previously consented 40 lot rural-residential subdivision sought to retain the site's key features including the summit! skyline characteristics and eastern aspects that contribute to the character of the broader western harbour hills. The Plan Change has adopted the same approach in terms of retaining key features and has sought to maintain the skyline and retain the largely undeveloped character of the eastern slopes by restricting residential lots in these areas.*
- *Any subdivision and development resulting from the Plan Change will constitute urban intensification and therefore the primary issue relates to the ability to satisfy Policy 4.2.5.2 of the District Plan and avoid, remedy or mitigate adverse effects in ways that achieve a relatively undeveloped character.*



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- *The Plan Change seeks to address Policy 4.2.5.2 by way of a landscape plan, required as part of a subdivision consent application, that addresses:*
    - a. *Areas of existing pines to be retained;*
    - b. *Location and extent of any fencing of covenanted bush;*
    - c. *Location and extent of any pest animal control programme;*
    - d. *Street tree and associated public area landscape planting;*
    - e. *Identification of internal access ways, public furniture and areas, including any proposed footpaths, seats etc;*
  - *In lieu of specific design guidelines relating to the balance between built and non-built elements the following requirement is also proposed:*
    - f. *The establishment of a robust vegetation framework across the site, that specifically address opportunities to plant within and along proposed property boundaries to ensure the predominance of vegetation over buildings overtime.*
  - *In my opinion Council will have sufficient opportunity during subsequent subdivision and land use consent processes to ensure a quality built outcome on the site that recognises valuable site features and the development potential of the site whilst achieving a relatively undeveloped character.”*

### **5.3.7 Planning**

**Mr Ian Leary**, a Planner and Surveyor, presented a comprehensive statement of evidence dealing with:

- A description of the site;
- A description of the proposal;
- The legal framework;
- The effects;
- The regional policy statement;
- The long term community plan;
- The objectives and policies;
- Part II matters;
- The officer’s report; and
- Conclusion.

Mr Leary described in some detail how the execution of the approved 40 lot subdivision of the site altered the legal description and land ownership and created restrictive covenant areas for a number of lots that would remain in the Rural Area. He also described the effect of consent notices registered against the titles to the new lots that limit the density of development to a single household unit for each allotment, restrict earthworks and building development including the

height of buildings on some lots and require the submission of geotechnical reports and requirements.

Of the 11.707 hectares of land now identified as being the subject of DPC67, Mr Leary advised that 8.1738 hectares (comprised in 19 allotments) is still in the ownership of the Requester and the balance of 3.5332 hectares (comprised in 13 allotments) is owned by others.

Mr Leary considers the effects of DPC67 to include:

- Positive effects
- Visual/landscape effects
- Ecological effects
- Traffic effects
- Future construction effects
- Stormwater management effects

Contrary to the opinion of Council officers, which he disputes, Mr Leary contended that the development that would be enabled by DPC67 is well connected to the suburb of Newlands and the Wellington CBD and is an efficient allocation of land use (given the market considerations cited by Mr Aharoni), which is a significant positive effect.

In terms of visual effects Mr Leary believed that Council officers have evaluated the proposals in terms of the original indicative plan which represents a more intense form of subdivision than is now envisaged. He believed that the rural character is relatively low and based on the opinions of Mr Robertson, Mr Leary also believed that the visual and landscape effects are acceptable and compatible with the intended purpose of the Ridgelines and Hilltops overlay. He did not consider ecological effects to be such that they cannot be dealt with by appropriate mitigation measures through future subdivision conditions.

In relation to traffic effects Mr Leary relied on the opinions of others (Council reports, the evidence of Gary Clark and the submissions) to conclude that traffic effects are not matters that would prevent the approval of DPC67.

In regard to future construction effects and stormwater management he again relied on other expert evidence to conclude that these matters can be dealt with satisfactorily through conditions of subdivision.

Mr Leary also concluded that there is no inconsistency with regional planning instruments, and that DPC67 will support the policies of the LTCCP.

Mr Leary had comprehensively reviewed the relevant objectives and policies of the District Plan. His views can be summarised as follows:

- the site is arguably within the established urban area and DPC67 therefore does not offend objectives and policies seeking to promote “ruralness”.
- the Northern Growth Management Framework (NGMF) is a very high level document and, as far as can be determined by the level of detail provided, DPC67 is not inconsistent with it.

- the Rural Area Design Guide is not appropriate for application to the Plan Change site and the proposed controls to be included in DPC67 are a more efficient and satisfactory way of managing the scale, location, rate and design of new building development as required by Objective 14.2.2 and its associated Policies. The integrity of the Ridgelines and Hilltop overlay can be maintained.

Mr Leary's conclusions reflected the detail of his analysis of the planning issues as follows:

- *The proposed plan change is one that changes the zoning of approximately 10 hectares of land from rural/residential to outer residential.*
- *The plan change proposes specific provisions that address the fact that the land subject to the rezoning is within the RLHT Overlay.*
- *The presence of the overlay is not in my view, a barrier to rejecting the rezoning of the site, but will ultimately result in a higher quality of residential development than otherwise might occur on the site, if the overlay were not present.*
- *The site does not have high rural value either as a productive piece of land, nor in its visual contribution. It is within the overlay simply because it is visible and undeveloped.*
- *There are positive outcomes in terms of the efficient management and use of land. The proposal is consistent with the Council's LTCCP, the NGMF, and its developing strategies about building onto existing communities and supporting existing centres. The land is adjacent one of the "growth spines" and has reasonable connections to the services surrounding the site.*
- *The adoption of the Wellington City District plan residential area objectives and policies is consistent with the plans overriding objective of containment.*
- *The site is located within the urban periphery, despite being zoned rural and currently has services provided which are utilised well below their capacity.*
- *It is my view, that the adoption of this plan change is a sustainable use and allocation of resources, consistent with Part II of the Act.*

## 5.4 SUBMITTERS' EVIDENCE

### 5.4.1 Submitters In Support

**Mr Andrew Monahan**, an employee of the Requester, supported DPC67 on the basis that the Requester had taken a professional and responsible approach to the development, it DPC67 is consistent with the LTCCP, that the Ridgeline and Hilltop overlay does not preclude

development, and more detailed consideration can be given to matters such as design and landscaping at the subsequent resource consent stage.

Mr Monahan's evidence was that residential development as planned through DPC67 would be a better outcome for the wider community than if the land was to remain in the Rural Area.

In relation to traffic impacts, Mr Monahan tabled a copy of a memorandum dated 9 May 2006 from the Council's Chief Transportation Engineer, Mr Steve Spence, to the planner dealing with the earlier 40 lot subdivision. Mr Monahan pointed out that Mr Spence suggested that the cross section of the proposed road should be designed to allow for widening beyond the proposed 7 metre wide carriageway to accommodate a 9 metre carriageway and footpaths on both sides of the road in the event that there is future pressure for further subdivision. The memorandum also referred to possible provisions to accommodate a future bus operation.

**Mr Peter Rundlett**, a resident of 27 Woodland Road Johnsonville and owner of Lot 11 in the 40 lot subdivision, spoke in favour of DPC67. He disagreed with the comments in the Officer's report that the site is unique in character and is not well positioned relative to facilities. He expressed the opinion that the Officer's report appeared to be focussed on views into the site from other areas. He submitted that views out from the proposed allotments deserved equal weight. Mr Rundlett also argued for an amendment to the restrictive covenant on Lot 11 in part so that the existing pine trees could be removed. He believed that DPC67 should be approved.

**Mr Nick Leggett** presented a submission on behalf of Mr Christopher Gollins who supported DPC67. Mr Leggett submitted that DPC67 was consistent with the need to contain residential development close to the CBD to avoid putting pressure on infrastructure to service more remote development, and gave the example of \$1.4 billion needing to be spent on roading infrastructure to cater for dispersed development. He believed that people needed to live close to employment and commented that 45% of the Porirua City workforce commutes to Wellington. He submitted that the development that would be enabled by DPC67 would add value to Newlands and Johnsonville without compromising the immediately adjacent area.

#### **5.4.2 Submitters In Opposition**

**Lesley Jacobson** of 38 Spenmoor Street spoke in opposition to DPC67. She considered that the last remaining visible hill tops should not be covered with hosing and that the work to date to subdivide the land had resulted in visible scarring of the hillsides. She was also concerned about the physical works and the stability of the land and the effects of stormwater runoff and slips. On the basis of her 20 years as a resident of Spenmoor Street, she considered that the street could not cope with any more traffic. Already her driveway was dangerous to use because of the road extension and the speed of vehicles coming down the hill from the new subdivision. She was concerned about compliance with conditions of the 40 lot subdivision which should be achieved before any further development was approved. She requested that the land be protected from any further subdivision.

**Philip Collett**, a resident of Spenmoor Street, presented submissions on behalf of the residents of 31 of the 40 dwellings in Spenmoor Street who filed the submission of "**Spenmoor Street Residents.**" He identified four principal reasons for the objections to DPC67 which he summarised as follows:

- a. Traffic safety on Spenmoor Street if the number of residences on the subdivision is increased.

- b. That the growth of the subdivision will exceed the capacity of Spenmoor Streets infrastructure, and that it will increase the risk of slips and flooding on the surrounding hill area
- c. That the subdivision will be a potential trap, with a single access route that can become blocked.
- d. That the District Plan Change will, if approved, irrevocably change the Wellington City skyline.

He described the area in detail, particularly the street environment and usage including parking and property access. He developed each of his four main points in detail with the assistance of photographs and images.

In respect of traffic and road safety aspects Mr Collett submitted that there was a great deal of uncertainty about the actual number of additional dwellings that could result from the Plan Change. However he submitted that even at the lower end of the range of numbers discussed the resultant increased traffic would be unacceptable, unsafe and lead to collisions between moving vehicles and damage to parked vehicles. He submitted that there would be problems with access by emergency vehicles. He did not believe that all options for alternative roads access had been investigated.

Mr Collett did not see any scope for mitigating the potential problems that would result from increased traffic as more yellow lines would deprive residents of parking opportunities and road widening was not practical because of the proximity of houses to the road. His views accorded with those of the Council officers that the expanded subdivision would fail to meet the Council's objective for safe and efficient access for people and goods within residential areas.

In respect of flooding Mr Collett said that the experience of residents is that despite improvements having been made by the Requester to the Spenmoor Street stormwater system this is barely able to cope with the current levels of runoff from the 40 lot subdivision. He noted that there were specific references in the Council's geotechnical report highlighting the increased runoff from an urbanised site compared with a vegetated site. He said that the residents were concerned that further flooding events would occur as a result of the intensification of the use of the land if DPC67 was approved. Mr Collett also referred to downstream scouring of open drains on the Newlands Road side of Spenmoor Street. He advised that residents were concerned about the stability of the land in general and had observed a discernable increase in the number of slips on Wakely track since construction of the 40 lot subdivision. He questioned the wisdom of removing trees from steep exposed hillsides.

Mr Collett referred to the high visibility of the Plan Change site to the northern communities and from view points on the harbour and other parts of the city. He was concerned that an intensification of land use resulting in more houses will adversely affect one of Wellington's distinctive landscape features.

Mr Collett concluded by stating that:

*“The proposed District Plan Change has significant adverse consequences for the residents of Spenmoor Street and will be to the detriment of the appearance*

*of New Zealand's most visually appealing city. These are long term consequences which cannot easily be undone."*

The following residents presented submissions covering similar issues to those in the submission of the *Spenmoor Street Residents* but related them to their own particular property, the environment of Spenmoor Street and the Plan Change site. All individual submitters identified the adverse effects on the amenities that they enjoy that would result from DPC67 being allowed and all requested that DPC67 be declined.

<i>Sharon Murray</i>	31 Spenmoor Street
<i>Wayne Jansen and Rowan Anderson</i>	39 Spenmoor Street
<i>David Jacobson</i>	38 Spenmoor Street
<i>Philip Collett</i>	32 Spenmoor Street
<i>Stephen Dunstan and Emily Dunstan</i>	21 Spenmoor Street
<i>Jeremy Simonsen</i>	16 Spenmoor Street
<i>Warrick McCluskey</i>	3 Spenmoor Street
<i>Warwick Spencer &amp; Mrs Rosemary Spencer</i>	41 Spenmoor Street

#### 5.4.3 Other Submissions

*James Firestone for the New Zealand Fire Service* presented a submission on domestic fire safety aspects to reinforce its submission that DPC67 should require new dwellings to incorporate automatic sprinkler systems.

*Ling Phang for the Greater Wellington Regional Council* (GWRC) presented evidence that provided a response to the recommendations in the officer's report and recommended matters that I should consider in assessing the DPC67. This evidence is in the context of the GWRC submission which generally supported DPC67 and which requested some additional standards and terms to be included with application to the subsequent subdivision of the Plan Change land.

The key aspects of the evidence presented at the hearing included:

- that in the event that DPC67 is approved it would be appropriate to apply the relevant provisions from the Rural Area Design Guide to the area to limit the intensity of residential development and to guide future development;
- DPC67 in its current form is not able to meet the objective of promoting sustainable housing to support the use of public transport and to promote the efficient use of resources;
- DPC67 has not given adequate consideration to the availability of public transport facilities and other commercial services to ensure adequate integration with existing infrastructure capacity and the efficient use of it;
- It is highly unlikely that GWRC will provide a bus service to the Plan Change site.

The GWRC concluded its submission as follows:

*“.....the plan change does not provide a robust policy framework to guide the development and management of the subject site. The proposal in its current form does not facilitate neighbourhoods that are sustainable, well-connected, and safe. Higher density residential development in this location does not provide opportunity for the efficient use of existing infrastructure (including services and transport network) capacity. It has the potential to undermine the efficiency, reliability, or safety of the strategic public transport network. Accordingly, we seek that this be taken into consideration by the District Plan Hearings Committee in the decision making process.”*

## 5.5 COUNCIL OFFICERS' REPLY

Ms Miles confirmed her report and recommendation notwithstanding the evidence of the Requester regarding the indicative subdivision plan and other aspects that may lessen the intensity of development that would result from DPC67. She said that there was a reasonable expectation that similar densities to those in adjoining areas would be achieved under DPC67. She also believed that it would be difficult to achieve good overall development of the Plan Change area with multiple ownership of the land that has now occurred through the earlier subdivision. This makes it difficult to introduce the additional design guidelines suggested by Mr Robertson for *“a robust vegetation framework across the site ... to ensure the predominance of vegetation over buildings over time.”*

In terms of her prior involvement with Plan Change 33 as questioned by Mr Aharoni, Ms Miles confirmed that she had been involved in the preparation of the Rural Area Design Guide only and not the Ridgelines and Hilltops part of the Change.

Regarding Mr Leary's evidence Ms Miles noted that:

- the evidence of GWRC described the lack of access to public transport which differed from Mr Leary's view;
- other greenfield sites within the NGMF area would eventually have shops and other services conveniently located for residential development
- the GWRC submission identified that DPC67 was inconsistent with public transport policy
- Mr Leary's evidence had little in the way of analysis of Policy 4.2.5.2 which is a critical issue in terms of ensuring that adverse visual effects are avoided or mitigated in Ridgelines and Hilltop areas.

Ms McArthur presented a detailed reply to the landscape/visual evidence of Mr. Robertson. Her comments included reasoned responses that:

- disagreed with Mr. Robertson's comments on visual coherence and the fact that not all of the existing or the subsequent development can or would be seen from any single perspective;

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- disagreed that the hilltop has experienced a ‘high level of modification’, preferring the description ‘low to moderate’ modification;
  - stated that an increase in housing density typical for the Outer Residential Area in Wellington will erode the sense of openness and transition between the residential and rural land use that the Appendix areas 4 to 7 in PC33 makes provision for;
  - opposed the removal of the requirement for assessment against the Rural Area Design Guide;
  - suggested that a comprehensive landscaping initiative must cover the whole development, which is not possible without knowing the subdivision layout with more certainty;
  - suggested that the opportunities to site further dwellings and employ mitigation measures within and intensified lot pattern to maintain a ‘relatively undeveloped character’ are not available;
  - claimed the images shown in Mr Robertson’s Appendix 2, Photos 1-5 are larger than would reasonably be the case and as such exaggerate the effect of the built form that would result from the 40 lot subdivision;
  - suggested that Mr. Robertson’s photographic examples of vegetative cover of other hillside subdivisions are not comparable with what is likely to be the outcome on the Plan Change site.
  - identified that lower density development (under the Rural Area provisions) is the best option for the site given its visual prominence and high landscape values which are worthy of protection from ‘consistent’ residential development in the surrounding area.

At my request **Mr Brett McKay**, Council’s Principal Planner, attended the hearing to provide some background to Plan Change 33. He advised that prior to 1994 the District Plan had a multiplicity of rural zones to deal with peri-urban land that was not necessarily used for productive purposes but was not suitable for residential development to standard densities. When the current District Plan was prepared from 1994 it was decided to have a simple zone structure with a clear division between rural and residential land uses.

Mr McKay advised that Plan Change 33 was a review of the Rural Areas of the city and introduced the Ridgelines and Hilltop provisions for the Rural Areas as well as new subdivision rules. He advised that the Ridgelines and Hilltop provisions were intended to apply primarily to rural land although there were a few peripheral areas of residential land also included. He advised that the Council had decided to restore some development flexibility in a number of peri-urban locations. Therefore, Plan Change 33 identified a number of “fringe” areas in the Rural Area that lie within the identified ridgelines and hilltops close to the urban area where it is appropriate to allow some low intensity “rural residential” development provided environmental effects, including visual effects, are acceptable and the area retains a non-urban character. The Plan Change site is one such area.



At my request **Mr Steve Spence**, Council's Chief Transportation Engineer, attended the hearing to comment on Mr Clark's evidence. Mr Spence advised that, in his view, Mr Clark had focused on a text book approach to road capacity using road dimensions to deduce a theoretical carrying capacity for Spenmoor Street. Mr Spence advised that Mr Clark's calculation that Spenmoor Street had a capacity to serve some 500 dwellings translated to approximately 4000 vehicle movements per day using a figure of 8 vehicle movements per day per dwelling.

Mr Spence commented that when compared with the relevant table in the Council's Code of Practice for Land Development this corresponded to a residential collector road or higher in the road classification and clearly did not fit with the specified road widths. The boundary to boundary and carriageway widths of Spenmoor Street were more akin to a long cul-de-sac or minor access road with total daily vehicle movements in the hundreds rather than the thousands. Mr Spence considered that once all the 40 additional properties created by the recently approved low density rural residential subdivision were occupied, effectively doubling the number of properties served, Spenmoor Street would be operating at its practical capacity in the current configuration.

Mr Spence was present when the traffic evidence in reply was given by Mr Kelly and Mr Galloway (see below), and responded to my invitation for him to comment on that evidence.

Mr Spence advised that the first thing he noted was that the number of potential household units had reduced from what was discussed earlier in the hearing. He was uncertain which figure to take, but would use 2000vpd based on Mr Galloway's higher figure. The lower end of Spenmoor Street with 38 dwellings would have a flow of approximately 400vpd without any traffic from the 40 lot subdivision. But an increased flow 2000vpd is quite a high volume and would change the nature of the street.

In terms of Table C1 in the Code of Practice, which is effectively a standard applicable to the District Plan, Spenmoor Street is a "long cul-de-sac" which is described as having more than 30 households and being more than 100 metres long. For Spenmoor Street to serve 200 household units its category would change to that of a residential collector with a corresponding change in amenity.

Mr Spence's opinion was that going beyond a doubling of current traffic flows is unacceptable and would have adverse effects on residents. Although the traffic can be calmed, he advised that it is the volume that makes the difference. He thought that the current level of provision for household units in the existing subdivision was the acceptable limit and more appropriate than the Plan Change proposal. In response to my questions as to his opinion of 100 additional lots (including the approved lots), Mr Spence commented that 1000 vpd was still quite high for Spenmoor Street although some further improvements to indent parking spaces was possible which may give some scope for a small increase.

## 5.6 REQUESTER'S REPLY

Mr Beatson led further evidence in reply to a number of issues raised by Council officers including Mr Spence's view on the practical capacity of Spenmoor Street; and by submitters.

**Mr Timothy Kelly**, Transportation engineer advised that in his opinion:

- the views of the planning officer and Regional Public Health with regard

to the compliance of DPC67 with regional transportation policies are not only at odds with the Regional Council itself, but have been based upon a number of assumptions, for which no sound justification has been provided.

- the requirement for a single spine road serving residential development in this area is a function of its topography, for which no reasonable alternative is available;
- whilst such a roading configuration may be less conducive to the provision of a bus service than a through or circular route, the more intensive pattern of development enabled by DPC67 would result in a greater likelihood that bus services would be viable at some point in the future;
- roading and associated footpaths serving the development area would provide for good walking and cycle connectivity;
- it cannot be reliably concluded that bus services would remain unchanged, that residents would make minimal use of walking or cycling, or that the final design of the subdivision would not include shorter linkages for walking or cycling; rather than presume such negative aspects of residents' travel behaviour, the reductions in total travel demand arising from more intensive development close to a range of destinations should be regarded as a significant beneficial aspect of DPC67; and
- the focus should be upon enabling a more intensive pattern of development, and ensuring that opportunities for the uptake of alternative transport modes are maximised

**Mr. Richard Galloway**, Transportation Engineer, addressed traffic and transportation issues particularly the matters raised during the course of this hearing, particularly in relation to the ability of the original length of Spenmoor Street to accommodate the increased traffic flows associated with further residential development.

In summary his evidence was that:

*“As a summary of my evidence that follows, I find that the existing width of Spenmoor Street’s carriageway accords with current best practice for a residential street with heavy on-street parking. By functioning as a single lane width with parking on either side, and passing enabled at driveways and locations with specific parking restrictions, drivers are forced to travel at slow and safe speeds. This arrangement is, in my opinion, able to accommodate the traffic associated with approximately 100 household units.*

*Development beyond this level can be accommodated by providing an almost continuous two-way width of 5.5 to 5.7m wide, free of parked cars. This would necessitate some parking restrictions and, if necessary, one or two more indented parking bays to provide a visually narrow, and therefore slow speed street, while also accommodating the on-street parking demand. The 15m width of Spenmoor*

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*Street's road reserve is entirely sufficient to accommodate parking bays and, I suggest, was vested to Council in anticipation of such widening occurring. This arrangement will have capacity for the traffic associated with at least 200 household units.*

*Based on Mr. Leary's assessment that the foreseeable maximum level of development would result in around 138 household units on Spenmoor Street (including the existing houses), I conclude that there are reasonable and practical methods available to accommodate the traffic that may arise as a result of subsequent approvals for consent applications, enabled by this plan change. These methods can be implemented as conditions of those future approvals, and will not cause any more than minor effects on the safety and parking convenience of existing Spenmoor Street residents."*

**Mr Leary** produced a further statement of evidence in reply. Key aspects of this were:

- responses to Ms Miles's comments that he had not fully considered Policy 4.2.5.2, including that he did not accept Ms Miles view that the Policy 4.2.5.2 would prohibit a Residential zone for this site.
- acceptance that a Residential site, which is subject to the overlay provisions, would most likely be required to moderate the level and intensity of residential development, that might otherwise be anticipated in the Outer Residential Area zone.
- a conclusion that with the Ridgelines and Hilltops overlay in place, and using a development form that ensures that buildings do not dominate the landscape elements, the site could accommodate approximately 80 to a 100 dwellings in total. This includes the existing dwellings approved in the existing subdivision.
- the existing Rural Area provisions, which are bound to some extent to the Rural Area Design Guide, make it extremely difficult to achieve any further subdivision of the site and achieve the type of development that is going to satisfy District Plan policy for the Rural area.
- existing bus services are convenient to the area of the Plan Change and extensions are feasible. More direct pedestrian linkages to bus routes may also be possible.
- The location of the Plan Change area does not have poor connections to available public transport options compared to many areas within the Wellington City and Region.

**Mr. Aharoni**, presented a statement in reply which included:

- his assessment of the additional infrastructure that Council had requested him to install/construct in relation to the 40 lot subdivision and his opinion that his company should now be allowed to utilise this.
- his understanding that the 40 lot subdivision did not trigger upgrading of

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the original Spenmoor Street, but upgrading was a condition of consent.

- his dissatisfaction with the approach now adopted by the Regional Council
- some retrospective comments about Plan Change 33 and the lack of local support for it.
- some brief comments in response to the submissions from neighbours.

**Mr Beatson** presented a comprehensive overview/closing. In summary his submission was:

- That the essential question to be resolved is whether or not the current rural zoning is more appropriate for the Plan Change area than an Outer Residential Area zoning. In this respect he submitted that the area is not a rural area and the rural area zoning has little or no relevance to the situation found on the ground and the proposed zoning will be a more efficient use of natural and physical resources.
- The Plan Change will not permit any particular form of development and substantial controls are proposed to ensure that what finally occurs on this site is consistent with the relevant plan provisions, including existing policies that seek to maintain a “relatively undeveloped” character within the Ridgelines and Hilltops overlay.
- Controls are proposed to ensure that any adverse effects of any future proposals to intensify activity on this area can be appropriately avoided, removed or mitigated and the question is whether or not these are sufficient
- The District Plan policy framework does not seek to preclude residential activity in the Ridgelines and Hilltops overlay area, but seeks to control activity to ensure that unacceptable effects are not generated. It is wrong for the Council or others to assert that the plan does not envisage Outer Residential Area zoning for land within the overlay area which does not have to be removed in order that the Plan Change is considered.

Mr. Beatson advised that Primeproperty Group says:

- all key infrastructure is in place to service additional dwellings.
- the plan provisions are more than sufficient to provide checks and balances to avoid or mitigate any unacceptable effects of any such future development.
- The Plan Change is logical and inoffensive.
- The existing policy and legal framework, additional controls and discretionary activity status combined mean that the proposal should not cause a moments hesitation in its approval.
- The inference that the Plan Change could somehow lead to a 228 lot development on the Plan Change area is completely misguided and has been perpetuated by the Council Officer’s report.
- future development of this site will respect and work within the expectations established by the Ridgelines and Hilltops overlay as they apply to the site.

Mr. Beatson regarded Policy 4.2.5.2 as a key policy but said that it does not preclude the possibility of development if adverse visual affects can be avoided, remedied or mitigated, but rather the policy reflects the idea that design may offer suitable solutions giving the appearance of an undeveloped character along the apex of the ridgeline. He also commented that DPC33 envisages some residential areas within identified overlay areas.

Mr. Beatson submitted that the current rural zoning and rural area design guide does not in any way provide an appropriate framework for any further intensification of the site that may be appropriate given the site's comparatively inboard and strategic location and the existence of infrastructure.

In his opinion DPC67 is in accordance with the enabling thrust of the Act, has sufficient controls to ensure adverse affects are avoided, remedied or mitigated, is in accordance with policies seeking to locate urban expansion in inboard areas (including the NGMF, the Council's LTCCP, DPC72 and a range of other provisions), does not represent any particular form of development, and is generally more appropriate than retention of the rural area provisions for a site that has little or no rural characteristics.

Mr. Beatson considered that opponents to the Plan Change have closed minds to the possibility that there could in fact be better design outcomes for the future development of this site than what has already been approved. There is both capacity and scope for good design solutions to be reached. The plan requirements that are proposed provide ample opportunity to ensure that good solutions are reached.

Regarding opposition to the Plan Change Mr. Beatson identified landscape and visual amenity, the capacity of Spenmoor Street, and the access to public transport (bus) services as the main issues.

Regarding landscape and visual, Mr. Beatson said that the preliminary concept layout put together by the Requester and Athfield Architects explores an indicative development where built form does not dominate the landscape elements (i.e. no houses sited against the upper slopes or skyline, established shelter belts, potential for clustered housing with enhancements to planted areas and space between houses). This concept demonstrates the Plan Change's appropriateness and compatibility with the provisions of the District Plan.

Regarding the capacity of Spenmoor Street, Mr. Beatson referred to Mr. Galloway's opinion that Spenmoor Street accords with current best practice for a residential street with heavy parking and is able to accommodate the traffic associated with approximately 100 household units. Development beyond this level (for at least 200 household units) can also be accommodated with some minor parking restrictions and provision of indented parking/passing bays where necessary.

Mr. Beatson said that suggestions that there is insufficient capacity in Spenmoor Street to accommodate an intensification of activity at the site are completely at odds with what was required of his client company when it obtained and implemented its resource consent to install the existing infrastructure.

Mr Beatson commented that the evidence Council has put forward regarding capacity constraints on the roading network in particular lacks depth and any quality of analysis.

Regarding access to public transport Mr Beatson said that the adequacy of servicing the Plan Change site by bus has assumed inordinate prominence during the course of the hearing. He identified the evidence of the Requester that demonstrated that walking times to bus routes were acceptable and that the site was better served for public transport than many other residential areas in Wellington, a longer term outlook may mean extension of the route is viable in the future, and not everyone is able to use public transport.

He drew attention to Mr. Kelly's evidence that roading and associated footpaths serving the development area would provide for good walking and cycle connectivity and that by virtue of the close proximity of the Plan Change area to employment, retail and other opportunities overall travel demands associated with its residents may be considerably lower than those for many established residential areas.

Mr Beatson pointed out that the negative evidence from the Regional Council and others was at odds with the Council requirements at the time of the earlier subdivision for Primeproperty Group to install a bus turning area at the head of the major cul-de-sac within the subdivision.

Mr Beatson addressed the reasons that the residents raised for objecting to the Plan Change both generally and in relation to each submitter heard.

He submitted that traffic safety and infrastructure capacity issues have been comprehensively addressed during the course of this hearing. To the extent that any concerns are valid they can be resolved through any subsequent resource consent processes, once the extent of concern is established. In terms of safety, or access to the site, the Fire Service was not concerned. This is an existing situation, and the concerns do not seem to be shared by any of the experts who presented evidence.

Mr. Beatson was critical of the Regional Council's evidence which he asserted was completely at odds with the Council's original submissions which was generally supportive and referred to the conclusion to the evidence which was:

*"I consider that the plan change does not provide a robust policy framework to guide the development and management of the subject site. The proposal in its current form does not facilitate neighborhoods that are sustainable, well connected and safe. Higher density residential development in this location does not provide opportunity for the efficient use of the existing infrastructure (including services in transport network) capacity."*

Mr Beatson concluded by answering the question "***What is proposed for this site?***" as follows:

*"Ms Miles in her report expresses that the plan change would facilitate the development of more than 220 houses. A figure which seemed to inflate as it was repeated by submitters. A development of this scale would require a substantial number of individuals to collude.*

*Further, as an experienced surveyor, the Commissioner will appreciate that the site typography presents significant challenges in terms of intensification of development of the site. Prime has been looking at what could feasibly occur, consistently with the relevant plan provisions and assessment criteria advanced as part of this proposal. Very high level initial investigations have been carried out. In the preliminary concept addressed in Mr. Leary's evidence this morning a*

*further 40-60 dwellings over and above the number of dwellings already consented is envisaged. There is in no way a final development proposal, and one is not required.*

*There is an area or node of potential intensification proposed on a low area of the site which can be screened and is well away from the high points on the site. Most other lots provide limited opportunity for intensification due to topographic constraints. You need not be concerned about floodgates type concerns if the plan change is approved. As noted by Mr. Leary (at [35] of his reply) there are planning safeguards in place to ensure that any future development is properly assessed and unreasonable levels of development intensity are unlikely to obtain resource consent.”*

Mr. Beatson further submitted that the Plan Change simply proposes a framework that facilitates use of the site’s obviously favourable characteristics, while ensuring any adverse effects are fully addressed and there is no credible basis to decline what is an entirely appropriate proposal.

In response to Mr. Spence’s comments on the traffic evidence in reply he said that he found Mr. Spence’s position confusing and, in fact, the Code of Practice did not support his view. Mr. Beatson submitted that the level of Mr. Spence’s analysis was low and asked that I compare this with the Requester’s traffic evidence.

Mr. Beatson advised that if there was a problem with lots 1-7 on the previously approved subdivision these could be removed from the re-zoning proposal.

As a final comment of the suitability of the Plan Change land for more intensive development Mr. Beatson referred me to decision of the Environment Court in the case **Brown and Others v Taupo District Council Decision A097/2005** which I understood him to say supported a view that residents living in an urban environment had to accept the use of their roads as access to areas of potential residential development.

## 6. ISSUES AND DELIBERATIONS

The issues for resolution of this application for DPC67 are:

### *Preliminary Issues*

- Land ownership matters
- The baseline for assessment
- The existing consent notices
- Infrastructure provision

### *Principal Issues*

- Scale and density of development

- Physical Development Issues
- Compatibility with the District Plan Policy Framework
- The Ridgelines and Hilltop Overlay
- Landscape and Visual effects
- Connectivity and Transportation effects
- Traffic Effects

## 6.1 LAND OWNERSHIP

### *Comment*

The land comprising DPC67 is not all owned by the Requester. What is understood to be an up to date record of land owned by the Requester and land owned by others was provided during the course of the hearing both in tabulated form within Mr Leary's evidence and in graphic form. As a result I am advised that approximately 80% of the land which is subject to the rezoning proposal is owned by the Requester. An inspection of the graphic provided shows that with the exception of Lot 34 DP 403079, which is a large lot of approximately 2.88 hectares in the southern part of the property, most of the lots owned by others are along the initial 700 metres of the access road or the rights of way in that vicinity. However, the lots owned by others are not contiguous to any great degree, being scattered among the Requester's lots in groups of 1-5 lots.

I do not believe that there is any requirement that all land that is subject to a private plan change needs to be in the same ownership. Indeed it frequently happens that this is not the case. In respect of DPC67 only one owner other than the Requester appeared at the hearing and he was in support of the proposal, notwithstanding that he wanted some amendments to the existing covenant. Certainly there were no other owners that made submission in opposition to DPC67.

However, there are some practical difficulties that will occur which, in my view, will make it extremely difficult to implement a number of the mitigation measures that the Plan Change refers to being executed at the development stage. These include uniformity and harmony in earthworks design and resultant landform, and achieving a unified landscape concept across the site.

In this regard I agree with the evidence of Ms Miles where she points out that because of the multiple ownership of the Plan Change land there could potentially be multiple applications for subdivision and earthworks for subsequent residential development of individual sites which would frustrate the intention of having a comprehensive assessment of the effects on landscape and visual values.

In addition, I note that Mr Robertson suggested that a further requirement be added to the assessment criteria of the Plan Change as follows:

*“The establishment of a robust vegetation framework across the site, that specifically address opportunities to plant within and along proposed property boundaries to ensure the predominance of vegetation over buildings overtime.”*



In my view, which I note was shared by Ms Miles, the fragmentation of ownership of the Plan Change area would also make this difficult to achieve.

### *Conclusion*

While not necessarily a barrier to approval of DPC67, the multiple ownership of existing allotments will make it difficult, if not impossible, to implement the comprehensive mitigation measures that are required to reduce adverse effects of the future development to an acceptable level.

## 6.2 BASELINE ASSESSMENT

### *Comment*

It was submitted by Mr Beatson that the effects of the Plan Change are to be assessed against the approved 40 lot subdivision, rather than as if that development did not exist. He cited **Queenstown Lakes DC v Hawthorn Estate Ltd (No 2) (CA45/05) 12 ELRNZ** as authority for this. Essentially it is a matter of assessing both the existing environment and the future state of the environment both as modified through permitted activities and by granted resource consents which were likely to be implemented.

The details of the 40 lot subdivision were well canvassed at the hearing and although the subdivisional development work has been completed, no buildings have yet been erected. I understand that 32 of the existing allotments are within the footprint of the Plan Change area. Resource consent has been granted for these future dwellings in the positions shown on the application plans related to that consent, subject to the conditions, a number of which are the subject of consent notices on each title. These conditions are set out in 4.1 above.

Outside the Plan Change area, approximately 13 hectares of the Requester's property, being parts of some 17 of the existing subdivided lots comprising the escarpment faces to the west and south containing regenerating bush, are subject to registered Bush Protection Covenants.

Permitted Activities available for the Plan Change area are few by virtue of its inclusion within the Ridgelines and Hilltops Overlay Area. Rural and residential activities, but not buildings, are Permitted Activities as are small scale earthworks.

### *Conclusion*

The effects of DPC67 need to be assessed against the existing permitted environment and the future consented environment.

## 6.3 CONSENT NOTICES

### *Comment*

As seen above consent notices have been registered on the titles that have issued for the lots in the earlier subdivision. Mr. Leary submitted that these will be brought down on any subsequent titles unless removed, and I agree with that submission. The consent notices restrict all buildings and earthworks to the locations shown on the scheme plan and impose maximum height limits for

buildings. They not only restrict development on the approved lots to a single household unit, but they prevent further subdivision of those allotments.

Section 221 (3) of the RMA provides that an owner may apply to the Council to have the conditions specified in a consent notice varied or cancelled and the Council is empowered to review the conditions and vary or cancel them. The procedure to be followed is essentially the same as for a resource consent with sections 88 to 121 and 127(4) to 132 being applicable, see section 221 (3A).

The RMA provisions referred to above were included in the Act in 2005 following the ruling of the High Court (upheld on appeal) that a Council had jurisdiction to vary a condition of a consent notice and that jurisdiction lay outside the resource consent process.<sup>2</sup>

Since that time there have been two cases that I am aware of where the Environment Court has refused to cancel or vary consent notice conditions. These are:

- McKinlay Family Trust and Others v Tauranga City Council A119/2008,  
and
- Foster and Others v Rodney District Council – A23/2009

In both cases the applications were dealt with as Discretionary Activities, but as well as the application of the section 104 considerations the Court applied additional criteria to which regard should be had, following the Court of Appeal in **Frandi**, as follows:

- the circumstances in which the condition was imposed;
- the environmental values it sought to protect; or
- pertinent general purposes of the Act as set out in Sections 5 – 8.

In **McKinlay** the Court closely examined the purpose for which the consent notice had been imposed and decided that this purpose, which was to give certainty to purchasers and the public generally that the subdivision would not be subject to further applications for subdivision, continued beyond any re-zoning of the land.<sup>3</sup>

### *Conclusions*

It appears that even if the zoning is changed to Outer Residential Area the consent notices prevent any further subdivision, and an application under section 221(3) would be necessary before the land could be used for more intensive residential purposes under the Outer Residential Area provisions. A successful application for this may have been made more difficult to achieve by the cases referred to in that a finding appears to be that consent notices have a primacy over District Plan provisions and continue regardless of zoning.

The issues that would need to be addressed in an application under section 221(3) are the same or similar to the issues that are relevant to the Plan Change. These relate to the appropriate density

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<sup>2</sup> Frandi v Kapiti Environmental Action Inc HC AP173/01 and Kapiti Environmental Action Inc v Frandi [2003] 2 NZLR 338, (2003) 9 ELRNZ 235, [2003] NZRMA 337 (CA)

<sup>3</sup> Paragraphs 35 and 38

of development across the site and the adverse effects of a greater density of residential activity given the special characteristics of the landform of the site and its high visual qualities.

While the existence of the consent notices are not necessarily a bar to approval of DPC67 they will prevent any development of land beyond that authorised by the resource consents for the 40 lot subdivision. In that sense it is more than just a matter of timing, rather it goes to the matter of uncertainty and questions the practicality of approving DPC67 at this time.

## 6.4 INFRASTRUCTURE PROVISION

### *Comment*

The Requester maintains that at the Council's insistence additional capacity in infrastructure was required at the time of consideration and approval of the 40 lot subdivision. This included upgrading of Spenmoor Street, extra width in road carriageways and road reserve boundaries in the new subdivisional roads and the accommodation of a bus turning area within the subdivision.

Mr. Beatson submitted that intensification of the residential activities within the Plan Change land is an efficient use of the existing, in his view, over-capacity infrastructure. Furthermore having been asked to provide it, Mr. Beatson submits that the Requester should not be denied its utilisation.

I have examined the documents relevant to the 40 lot subdivision including, a report of a pre-application meeting between the Requester's consultants and Council staff on 17 November 2005, the application for resource consent dated 16 January 2006, the Council Officers Report on that application, an internal memorandum from Mr. Spence to the reporting planner dated 9 May 2006, and the decision of the Council committee that granted the consent dated 9 June 2006.

In terms of the traffic calming and traffic management modifications to the existing part of Spenmoor Street, these were proposed in the applicant's Traffic Assessment and were commented on further by the Traffic Consultant at the hearing in mitigation of the concerns of submitters. His suggestions included the installation of parking bays to address the parking issue for a small section of Spenmoor Street at the crest of the hill. In the event the Committee imposed a condition following the Traffic Consultant's recommendations as follows:

*“(13) A detailed plan showing the proposed traffic mitigation measures along both the new roading construction and on the existing length of Spenmoor Street as outlined in Traffic Assessment by Traffic concepts Ltd and the notes presented at the hearing by Traffic concepts Ltd must be prepared and submitted to, and be approved by the Compliance Monitoring Team, Strategy and Planning, in consultation with Council Chief Transportation Engineer, prior to the commencement of works within the site as required by condition (2) above.*

*Note: The traffic management measures may include the installation of some parking bays at critical locations; kerb extensions and median islands; road marking and raised pavement markers.”*

In terms of the carriageways of the new roads I note that from the time of the pre-application meeting the carriageway of the main road through the development was to be 7 metres with a

footpath on one side. This is also referred to in the Traffic Assessment that accompanied the application for resource consent and in the application itself. The carriageways of rights of way were proposed to be 4.5 metres minimum with a footpath on one side.

I have examined the 'as-built' plans submitted in satisfaction of the conditions of consent and note that the carriageway of the main road has been built to the 7 metre design width. I have also measured the width in a number of places to verify that dimension. The 'as-built' plans do show that the carriageway of some rights of way have been widened to between 5.26 and 6.25 metres. One right of way carriageway has been reduced below the 4.5 metre design width.

The resource consent application stated that the legal width of the road would be a minimum of 12 metres but will vary subject to berm requirements and earthworks. In terms of the legal width boundary to boundary of the road that was vested in the Council, I have compared the 'as-built' plans with the application plans. While the final legal width of the road does vary in some places, I believe this is a function of the practicalities of constructing a public road through steep terrain not any widening to cater for future development.

I accept Mr. Leary's evidence that the roundabout at the southern end of the proposed public road was enlarged to accommodate the turning circle of a mini-bus, but I note that Mr. Spence's advice in his memorandum was that some alterations were required in this location in any event.

Mr. Spence's recommendation to provide for the widening of the carriageway and road reserve of the proposed public road was made in the circumstances where there were to be no covenants on the lots preventing further subdivision. The subdivision was approved subject to a condition to that effect. There was no condition requiring the road or its carriageway to provide for future widening.

### ***Conclusions***

As a result of my examination of the above material I am satisfied that there has been no significant over provision of roading infrastructure in respect of the 40 lot subdivision. The roads appear to have been constructed generally in accordance with the proposals of the Requester's consultants. As to the requirement for street lighting I understand this to be a code requirement.

In any event, if the Requester, as consent holder, was not satisfied with the conditions of consent for the 40 lot subdivision an appeal could have been filed in respect of them and the matter resolved. I am not aware of any such appeal having been filed.

The Requester is of course correct to say that the use of spare capacity in infrastructure is an efficient use of resources. The Request for DPC67 confirms that the existing infrastructure is sufficient for a theoretical 114 lot subdivision but that does not mean that there was an over provision in the first instance. Widths of roads and diameters of pipes are not scaled to fit a precise number of lots. Rather their capacity is calculated in bands or thresholds that will cater for a range of lot numbers. Refusal of the Plan Change if that is the outcome does not mean a waste of resources if in fact those services were required for the initial development. It is my opinion, on the evidence, that they were.

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## 6.5 FUTURE SCALE AND DENSITY OF RESIDENTIAL DEVELOPMENT

### *Considerations*

The Plan Change request made on behalf of the Requester by Tse Group contained indicative subdivision and earthworks plans. The subdivision concept showed 106 proposed lots within the Plan Change area as well as 8 larger lots in the south east of the block, and a large balance area.

In addition, the subdivision plan showed possible/proposed house sites and an extended roading pattern through the addition of several rights of way. This plan was accompanied by several sheets of plans at large scale showing the additional earthworks necessary to achieve the level of subdivision illustrated.

The proposed Appendix map that formed part of the Plan Change documentation (as submitted by the Requester) showed the additional private ways from the indicative plan.

Although the text of the request made it clear that this indicative plan had no status in the context of the Plan Change, it did say that it had been prepared *‘to enable the assessment of effects, particularly the landscape effects, to be based on a realistic proposal.’*

The assessment by Traffic Concepts Limited that accompanied the request used a figure of 127 new houses to determine traffic effects of DPC67. In his evidence, the author of that assessment Mr Clark used the figure of 114 lots, with the assumption that two dwellings could be built on each lot, to assess vehicle movements.

The indicative plans, not unreasonably in my view, were used by Ms Miles and Ms McArthur to assess the impact of the intensification of lot numbers and earthworks. Ms Miles pointed out that under Outer Residential rules there was a potential for up to 228 dwellings if the Plan Change proceeded, but qualified this by saying:

*“Although in reality it is unlikely that every lot in the area zoned Outer Residential Area would have two dwellings, there would still be a substantial increase in the housing density over the site (i.e. from 32 houses in the area of the approved rural residential subdivision to between 114 – 228 dwellings (350% to 700%) in the same area if the “possible” subdivision plan were to be implemented).*

Not surprisingly the submitters picked up on this and the 228 figure was referred to throughout the hearing.

Mr Beatson stated in his legal submissions that the ‘indicative’ subdivision plan submitted as part of the application was not intended to be followed, but showed the absolute maximum yield possible. He said that the existing consent notices registered under the approved subdivision will generally limit development to one dwelling per lot. He did not refer to the other aspect of the consent notices that no further subdivision was permitted.

Mr. Leary was forthright in his dismissal of the indicative plan. His evidence in this respect was:

*“It is my view that this plan should be largely disregarded as it gives a*

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*misleading and unrealistic indication as to the likely type of development that would result from the proposed plan change.*

*In my opinion, the layout shown in the Tse Plan would be unlikely to be approved as it stands, as it does not appropriately respond to the site topography, provide adequate consideration of the visual effects or provide suitable opportunity for mitigation planting. It is an engineering plan with a practical engineering solution for the site.*

*The plan is useful as an indication of traffic effects and gives an example of a maximum possible density for the site. It enables some information on vehicle movements.*

*This plan could not be proposed unless all existing owners sold the land to PPG or another developer. There are a number of different owners and the likelihood of all owners selling to PPG or another developer is unlikely. Certainly PPG is not interested in buying back allotments it has already sold.”*

Mr Leary in his evidence in reply, after describing a ‘cluster-type’ approach to development suggested by Athfield Architects, stated that if such an approach was adopted he could see the site accommodating between 80 and 100 lots in total, that is, between 40 and 60 lots in addition to the 40 existing lots created by the earlier subdivision.

I have taken Mr. Beatson’s submission into account that the indicative plan was primarily for the purpose of showing the highest density of development that could occur on the Plan Change land and for assessing the capacity of infrastructure to accommodate further residential development.

I have noted also that in reference to Mr. Leary’s suggested 40-60 additional lots that Mr. Beatson said this was in no way a final development proposal.

It was Mr. Beatson’s submission that no such development proposal is required as part of DPC67 and the actual form of residential development that would occur if DPC67 was approved would be subject to topographical and environmental constraints that would be thoroughly assessed at the necessary resource consent application stage.

Mr. Beatson further submitted that:

*“What the applicant proposes, and you can be confident will occur, is that any future development of this site will respect and work within the expectations established by the RLHT overlay as they apply to the site. Limiting the area that is subject to the plan change in itself achieves this objective, and the outcome is reinforced by the proposed additional controls on this plan change ensuring a preponderance of vegetation over buildings over time.”*

### **Conclusion**

As a result of the above considerations, I have concluded that there is a great deal of uncertainty as to scale and density of residential development that may take place if DPC67 was approved. This ranges from no further development if the existing consent notices remain, through the Requester’s estimate (given by Mr. Leary) of 40-60 additional dwellings, to the theoretical maximum that can be derived from the indicative plan or a similar development proposal.

No limits on overall dwelling numbers have been suggested as being an appropriate control for the proposed zone, except Ms Miles's recommendation of restricting development to one dwelling per lot, and the extent to which the traffic carrying capacity of Spenmoor Street may limit overall numbers.

## 6.6 PHYSICAL DEVELOPMENT ISSUES

Submitters raised concerns regarding stormwater and flooding, land stability, and the effects of construction. I believe that these matters have been dealt with satisfactorily in the evidence of the Requester and the Council and note in particular that:

- Ms Miles is satisfied (on advice from Council experts) that the potential effects of stormwater runoff and stability of the site can be adequately addressed through detailed design and subsequent resource consents;
- Mr. Stone has recommended that a Council approved Construction Management Plan should be incorporated into any subsequent resource consent;
- Mr. Jones concluded in his evidence that in respect of the matters that he addressed (stormwater control and conveyance, sanitary sewer, water supply, roading within the developed site, street lighting, telecom, power and gas) there were no capacity constraints that would result from the additional development the Plan Change would enable.

## 6.7 DISTRICT PLAN POLICY FRAMEWORK

### *Considerations*

I heard planning evidence from Ms Miles and Mr. Leary and legal submissions from Mr. Beatson regarding the objectives and policies of the District Plan and how these related to the expansion of the urban area through greenfield subdivision in the rural area. From the evidence and submissions heard and from my consideration of the relevant District Plan provisions a number of matters emerge.

An identical policy is included in both the Rural Area and the Outer Residential Area provisions to:

*“Encourage new urban development to locate within the established urban areas.” [Policy 14.2.1.1 and Policy 4.2.1.1]*

The explanation of the Residential Policy 4.2.1.1 describes the urban area as follows:

*“The edge of the urban area of the city is defined by the interface between the Outer Residential Area and nearby Rural and Open Space Areas.”*

A further identical policy is also included in both Rural and Residential provisions as follows:

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*“Provide for areas of anticipated future growth as identified in the Northern Growth Management Framework, in accordance with the values and principles of the Framework subject to requirements for ridgelines and hilltops.” [Policy 14.2.1.1a and Policy 4.2.1.1a]*

Both these policies are included under an objective to promote the efficient use and development of natural and physical resources in the respective areas. [4.2.1 and 14.2.1]. I agree with Ms Miles that because of its specificity in reference to growth areas identified in the NGMF the second policies cited above do not apply to the Plan Change land which is not so identified.

Of significance is that the explanation to the Rural Objective 14.2.1 and Policy 14.2.1.1 states that:

*“.....the Council will support well designed rural residential development in identified locations (shown on Appendices 4 to 7 in Chapter 15) on the city fringe if it can be demonstrated that this will promote sustainable management. In many of these areas steep slopes or difficult access will need to be overcome before consideration will be given to allowing rural parcels of land on the edge of the city to be subdivided. In general such sites will only be appropriate for a lower density of residential development than that allowed in residential areas. An assessment will need to be made on a case by case basis, with the Council seeking a high standard of design through the assessment of proposals against the Rural Area Design Guide.”*

The Plan Change land is shown in Appendix 5 of Chapter 15 of the District Plan as one of the sites where rural residential development will be supported in the circumstances described. Other Rural Objectives and Policies that follow 14.2.1 and manage the construction and siting of buildings, structures and earthworks, including on identified ridgelines and hilltops, clearly distinguish the Appendix 5 (or city fringe) areas from the general rural area so that the environmental results identified for these areas are

*“...limited rural residential development that is sensitively designed to respect the important ridgeline and hilltop locations.”*

I accept the submissions and evidence that refer to other objectives and policies that would allow the consideration of extensions to the urban area. In particular, Policy 14.2.4.1 which is to:

*“Control greenfield subdivision initiated in the Rural Area to ensure that adverse effects are avoided, remedied or mitigated and that if land is developed, it is developed in a way that will lead to neighbourhoods that have a high amenity standard and which are adequately integrated with existing and intended infrastructure.”*

### **Conclusions**

I consider that the express provision for Rural Residential development in the city fringe areas as defined in Appendix 5 carries considerable weight in the overall reading of the objectives and policies when considering whether or not the Plan Change land is suitable for incorporation into the urban area and rezoned for intensified residential development.

I believe that it would be inconsistent with the way the Objectives and Policies of the District



Plan have been modified under Plan Changes 33 and 36 for the so called city fringe land where provision has been made for Rural Residential development to be generally 'available' for rezoning for a more intensive residential land use. There would need to be very special circumstances to justify inclusion in the urban area.

In my opinion, fragmentation of the land through Rural Residential subdivision generally renders it unusable for more intensive activities because of an established boundary pattern with multiple ownership and commitment to rural rather than residential character. To some extent this has already occurred with the Plan Change land.

## 6.8 RIDGELINES AND HILLTOPS OVERLAY

### *Considerations*

I consider that Ms Miles statement in section 7.1.1 of her Report is an accurate summary of the situation regarding the Ridgelines and Hilltop Overlay as follows:

*“The identification of the Ridgelines and Hilltops Overlay was based on a comprehensive study of the values associated with undeveloped ridgelines and hilltops carried out over several years by Boffa Miskell and the Wellington City Council. The assessment considered the range of natural, visual, heritage and recreation values of the ridgelines and hilltops. It was conducted at two scales these being at a district-wide scale, and in relation to local communities. It was the combination of the values that indicated the ridgelines and hilltops that required special consideration and management. While the overlay does not exclude development (including residential development), it identifies areas in which detailed scrutiny of activities is required to ensure that the intrinsic natural and amenity values of the identified areas are not adversely affected.”*

I also note that as reported by Ms Miles the hearing panel for Plan Change 33 declined the then owners' request that the identified Ridgelines and Hilltops overlay over the Plan Change land be reduced to the area of 'high visibility' only on the grounds that:

*“It does not consider that the overlay area can be reduced further because the hilltop area, which is effectively a tableland, is highly visible and any further reduction would not be consistent with the application of the ridgelines and hilltops mapping across the rest of the Rural Area.”*

Mr Beatson was critical of Ms Miles report which raised the question of whether Ridgelines and Hilltops overlay as it applies to the Plan Change land should have been subject to a consideration of its appropriateness under DPC67 before it was pursued. Mr Beatson drew my attention to the various parts of the Section 32 Report regarding the Ridgelines and Hilltops overlay for Residential land.

The section 32 report detailed the change in policy 4.2.5.2 to an effects based approach that achieved 'a relatively undeveloped character within identified ridgelines and hilltops'. After reference to a small number of Residential Areas within the identified Ridgelines and Hilltops overlay the commentary continues with the statement that 'amendment to the residential provisions is nevertheless worthwhile considering that significant areas of land within the

*Northern Growth Area are likely to be rezoned to residential in the future*. Mr Beatson's point was that District Plan Change 33 envisaged some residential areas within identified overlay areas.

While accepting the point, I note that Policy 4.2.1.1(a) which provides for areas of anticipated future growth as identified in the NGMF, in accordance with its values and principles, is subject to requirements for the Ridgelines and Hilltops. I therefore anticipate that rezoning proposals within the NGMF area may well avoid the inclusion of identified overlay areas or redefine them as part of the rezoning considerations.

Minimising the amount of undeveloped residential land within identified ridgelines and hilltops would be entirely consistent with Mr McKay's advice at the hearing that these provisions were intended to be a rural planning tool not an urban one.

Ms Miles's opinion is that overall the package of provisions relating to development in the Ridgelines and Hilltops overlay is more stringent for the Rural Area than the Residential Area. I agree that the level of scrutiny required and the mitigation measures available to ensure that the values of the identified areas are not adversely affected appear to be less in the Residential Area. I suspect that reflects the minimal expectation of the occurrence of undeveloped residential land with the overlay areas.

### **Conclusion**

A rezoning of the Plan Change land to Outer Residential has the potential to reduce the effectiveness of the Ridgelines and Hilltop overlay and frustrate the anticipated environmental results which include - *the visual integration of new development with the immediate landform and natural features, in context with the wider landscape character of ridgelines and hilltops [14.2.2.2]*.

## **6.9 VISUAL AND LANDSCAPE EFFECTS**

### **Introduction**

The visual and landscape effects were addressed through expert evidence from the two landscape architects involved in the hearing, Ms McArthur for the Council, and Mr. Robertson for the Requester. There is very little common ground in their respective opinions. A number of submitters from Spenmoor Street included comments about the adverse visual effects that would result from DPC67.

Ms Miles and Ms McArthur have made their assessments of the impact of proposed residential development on the indicative plan included with the Request for DPC67. This showed a potential 114 subdivided lots, approximately 10,000 m<sup>3</sup> of earthworks and some additional rights of way.

The Requester has now said that it does not intend to follow this indicative plan and has suggested that the potential for the Plan Change land under a residential zone is for approximately 40-60 additional subdivided lots contained within the parts of the property that have not yet been sold.

I agree with the Requester's Counsel that the effects of DPC67 are to be assessed against the approved 40 lot subdivision, rather than as if that development did not exist. In this respect Mr.

Robertson produced a series of photo simulations showing the effect of the approved dwellings across the site. Ms McArthur suggested that the size of the buildings shown was misleading and exaggerated the negative effect of the approved subdivision.

### ***Rural Character***

Mr. Robertson has a view that rural character is synonymous with rural land practices and associated elements, patterns and processes. He maintains that once these have ceased, rural character diminishes to the point of non-existence. He cites rural residential development in the absence of rural land practices as nothing other than low density residential development.

Ms McArthur agrees that rural character does decrease with a decrease in rural activities but maintains that rural character is more than just rural activities and includes undeveloped open space areas, natural landscape features, streams, scattered structures sometimes screened by shelter belts and wood lots.

I am more inclined to Ms McArthur's view, but agree that the approved 40 lot subdivision has the potential if it was fully built to reduce the rural character of the total landscape unit. A greater density of residential activity within the Plan Change land as proposed will therefore further reduce the rural character, but this may be mitigated by targeted landscape planting.

### ***Visual Coherence and Amenity***

Both landscape experts discussed the matter of visual coherence and visual amenity within the hilltop landscape. A contributing factor to potential adverse visual effects is the degree to which the site can remain '*relatively undeveloped*' in terms of the policies and assessment criteria of the District Plan. They also considered the degree to which the site had been modified by developments to date as affecting its character.

Ms McArthur described visual coherence as maintaining intactness and avoiding fragmentation of the site. She maintained that intensifying development across parts of the upper slopes reduces visual coherence and divides the hilltop into natural elements and built forms within the upper slopes. Her view is that a more intensely developed residential subdivision as proposed in the Plan Change area will further disintegrate the unique and distinctive landscape unit and will not read as have a relatively undeveloped character. She further said that with smaller lot sizes that would result from any intensification of the residential land use would not provide opportunities to mitigate these adverse effects through the use of topography and/or screen planting.

Ms McArthur expressed the view that the Ridgelines and Hilltops Overlay provision seeks to avoid the typical pattern of housing covering hilltops and creating strong patterns of dense housing edging open space land found within other hillside suburbs within the outer residential area around Wellington. It was her understanding that ridgelines and hilltops overlay areas could be described as transitional areas where residential development is less intense and more easily blurred or merged with the existing natural character.

In terms of overall visual effects, Ms McArthur considered the Plan Change land to have had a low to moderate degree of modification that has affected its character. However, although she considered parts of the hilltop remain outside the development area, her opinion was that the visible changes anticipated from a more dense residential housing pattern will dominate the hilltop. She also considered that the Plan Change section of the hilltop is the most prominent outlook for the community of surrounding suburbs looking at the site.

Mr. Robertson's evidence was that visual coherence is related to consistency with the underlying landform, which he considered had been highly modified. His view was that when built elements are scattered across a site in a random manner resulting in a patchwork or fragmented visual appearance, visual coherence also tends to be low. He did not necessarily equate high density with low visual coherence and said that establishing a relatively undeveloped character on sites that have been identified as highly visible and potentially valuable with regard to visual amenity is about addressing the size and frequency of spaces in between buildings and the elements that exist in those spaces. He placed emphasis on ensuring that the built form does not dominate the appearance of a site.

In addition to the matters already included in DPC67 to achieve a relatively undeveloped character in respect of residential development in Outer Residential Areas subject to the Ridgelines and Hilltops Overlay, Mr. Robertson recommended a further criterion be included in DPC67 as follows:

*“The establishment of a robust vegetation framework across the site, that specifically address opportunities to plant within and along proposed property boundaries to ensure the predominance of vegetation over buildings overtime.”*

### **Overall Conclusions**

Having considered these different expert views in the context of the Plan Change land and the approved 40 lot development I have concluded that the Plan Change site has undergone a reasonably significant level of modification including some 60,000m<sup>3</sup> of earthworks and the formation of roads. In that way, the site has already been fragmented into built and natural elements. The construction of 32 dwellings across the site in accordance with the approval already granted will have some adverse effect on visual cohesion and visual amenity of the Plan Change land but these effects would be mitigated by the landscaping required under the conditions of consent.

However, introducing additional dwellings into the landscape, even at the modest level of 40-60 suggested by Mr Leary will reduce the opportunities for mitigation of adverse visual effect through landscaping and planting. As I have already said above, there are some practical difficulties with multiple ownerships that will make it difficult to implement a number of the mitigation measures that the Plan Change refers to. The consequence of this is that, in my opinion, there is likely to be a higher degree of residual adverse landscape and visual effect if DPC67 proceeds compared with the baseline level resulting from the approved development.

## **6.10 CONNECTIVITY, ACCESSIBILITY AND TRANSPORTATION**

### **Considerations**

Ms Miles has identified in her report the amendments made to Policy 14.2.1.1 as a result of Plan Change 36 which was promulgated to give some weight to the NGMF in statutory processes through the inclusion of references to the NGMF in the policy section of the District Plan. Policy 14.2.4.1 and the explanatory statement now read as follows:

*“Control greenfield subdivision initiated in the Rural Area to ensure that adverse effects are avoided, remedied or mitigated and that if land is developed, it is*

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*developed in a way that will lead to neighbourhoods that have a high amenity standard and which are adequately integrated with existing and intended infrastructure.*

**Explanatory Statement**

*The District Plan Maps identify the extent of urban (primarily residential) areas on the basis of existing residential and suburban centre development and land subject to current subdivision consents. In accordance with the purpose of sustainable management, the aim is to provide for the intensification of land use within the urban area and potential growth areas as identified within the Northern Growth Management Framework to accommodate, where adverse effects can be avoided, remedied or mitigated, the orderly development of new subdivisions on the fringes of the existing urban area.*

*Greenfield subdivision may be considered as part of a District Plan change to extend the urban area. However, the effects of the potential development can be assessed according to the design of the subdivision, its impact on the natural and physical environment, and constraints (such as natural hazards) imposed by the environment, which may be identified by mechanisms such as the Northern Growth Management Framework.”*

Ms Miles is not satisfied that DPC67 does demonstrate that any adverse effects can be avoided remedied or mitigated, or that the land can be developed in a way that leads to a neighbourhood of high amenity with adequately integrated with existing and intended infrastructure. Her reasons include adverse traffic and landscape/visual effects.

In relation to relevant Regional Policy documents, Ms Miles considers that the development of the area for residential use will result in some efficiency with the use of existing on-site infrastructure (roads, water etc) and its proximity to a main arterial road but she considers that the proposed residential development of the site is not efficient in terms of its poor connectivity, the lack of readily accessible public transport, and the distance to services and shops thereby increasing the reliance on car travel.

The evidence of GWRC is also critical of DPC67 because it does not facilitate neighbourhoods that are sustainable, well-connected, and safe and does not promote the use of public transport.

Evidence for the Requester refuted these arguments as to unsuitability of the Plan Change area for more intensive residential development by virtue of location to the roading and public transport network, access to the Wellington CBD and neighbourhood facilities.

Mr Leary produced evidence to show that existing bus services are convenient to the area of the Plan Change and extensions are feasible. He also advised that more direct pedestrian linkages to bus routes may also be possible and produced evidence to show that in both driving and walking scenarios the Plan Change land is more conveniently located with respect to local shops, Newlands shopping centre, Johnsonville Town Centre, and Wellington CBD than other comparable northern suburbs.

Mr Galloway also provided evidence that the Plan Change land was well situated relevant to a major bus route and that future residents could be in the Wellington CBD in 25 -30 minutes, with a 9 minute walk to a high frequency bus service. He said that this compared favourably with Johnsonville residents using the train.

Mr Kelly produced detailed transportation evidence dealing with the issues raised by Ms Miles and GWRC, including public transport, walking and cycling, accessibility, and travel demand. His conclusions were positive particularly that DPC67 met the objective of the Regional Council's Travel Demand Management Plan and that there were reductions in total travel time that arose from more intensive development close to a range of destinations that should be regarded as a significant benefit.

It was Mr. Copeland's evidence that the proposal will result in overall transport cost savings and there would be a disbenefit if lots were not developed within the Plan Change land requiring them to be at more outboard locations.

There are a number of criteria that need to be applied when considering connectivity, access and the wider transportation issues in a rezoning such as is proposed by DPC67. These include the regional policies on the built environment and transportation, energy, and regional form, design and function.

The key District Plan Policy for consideration of greenfield subdivision in rural areas is 14.2.4.1. From this policy and its explanatory statement it can be seen that relevant considerations include avoidance, remediation and mitigation of adverse effects of the proposal, and whether the land will be developed in a way that leads to neighbourhoods that have a high amenity standard and which are adequately integrated with existing and intended infrastructure.

The policy suggests that adverse effects should be assessed according to the design of the subdivision, its impact on the natural and physical environment, and constraints imposed by the environment. In this case there is no subdivision design.

District Plan Objective 4.2.9 and Policy 4.2.9.3 are also relevant as follows:

*“Objective 4.2.9            To enable efficient, convenient and safe access for people and goods within Residential Areas.*

*Policy 4.2.9.3            Require appropriate parking, loading and site access for activities in Residential Areas.”*

### **Conclusions**

In respect of the regional policies, I believe that Mr Kelly is correct when he said that:

*“In my view, the intent of the policies within Chapter 14 of the RPS is to encourage more intensive residential development in areas closer to existing facilities, such that overall transportation requirements are reduced. Within this, the policies then seek to maximise the uptake of alternative modes of transportation through a range of measures, including subdivision design.*

Certainly this accords with the submission of GWRC when referring to Chapter 14 of the RPS that the provision of additional housing by extending the existing urban area will result in positive environmental quality outcomes with greater efficiency in the use of resources and is consistent with policy 8 and Policy 2 of Chapter 14 – Built Environment and Transportation.

I also believe that the Requester's evidence regarding travel times, overall transport cost savings,

proximity of main roads and public transport services and the potential for a bus service to be extended into the Plan Change land area, satisfies the matters raised by GWRC in evidence regarding the Proposed Regional Policy Statement.

However in respect of the District Plan criterion identified above that suggests that greenfields subdivisions need to be “adequately integrated with existing and intended infrastructure”, I believe that the link through Spenmoor Street is less than adequate and presents a significant constraint to the approval of DPC67. In addition, I do not believe that DPC67 is consistent with Objective 4.2.9 and Policy 4.2.9.3. These aspects are dealt with in detail below.

## 6.11 TRAFFIC EFFECTS

### *Introduction*

The Plan Change land relies on a single roading connection to the wider network through Spenmoor Street which was constructed as a residential cul-de-sac to serve approximately 40 properties. As a condition of the approval of the 40 lot subdivision of the Plan Change land in 2006, traffic calming devices were installed and the carriageway of Spenmoor Street was widened in one area to provide parking clear of the traffic lanes.

Spenmoor Street residents were opposed to the approval of the 40 lot subdivision on traffic grounds and they are equally opposed to DPC67. Their concerns include that the street is narrow and winding and is already congested and lacks capacity to accommodate any further traffic. They submit that there will be traffic and pedestrian safety issues and an adverse impact on on-street parking. Issues with the nearby intersections were also raised.

Traffic effects on the wider network, namely the intersections of Spenmoor Street with Lyndfield Lane/Wakely Road and Wakely Road with Newlands Road were dealt with in the Request for DPC67. The evidence was that these issues, to the extent that they are an adverse effect, can be dealt with by traffic management measures.

The enquiry therefore focuses on Spenmoor Street, and uses the baseline level of effects from existing and future environment which includes the approved 40 lot subdivision. In other words, it is the effects over and above those of the existing traffic and future traffic from the 40 approved lots that will be considered.

### *The Evidence*

The traffic evidence for and against approval of DPC67 is summarised in section 5 above. Mr Stone provided a report that lead Ms Miles to conclude that she was not satisfied that vehicle access to the Plan Change land can be achieved for a development of the scale proposed, without traffic safety and efficiency effects that are no more than minor. Mr Spence’s opinion supported Ms Miles conclusion. The residents provided details of their use of Spenmoor Street, the problems encountered with increased traffic, the reduction of the traffic lanes to one way, and parking impacts. The Requester provided expert traffic evidence from Mr Clark and Mr Galloway.

Mr. Stone’s report, which was circulated prior to the hearing with the report from Ms Miles, identified that possible further roading improvements along Spenmoor Street designed to preserve

a 5m/two-way traffic flow would assist in managing the effects of an increased use of Spenmoor Street. Mr. Stone produced an aerial photograph with some marked up changes suggested by Council Transport Officers to achieve this while retaining the current number of kerb side car parks.

In the absence of these or similar improvements to achieve a two-way carriageway, Mr. Stone concluded on traffic management grounds that the number of lots should be reduced in favour of a lesser number of large, lifestyle rural/residential lots with a restriction of one house per lot,.

Mr. Clark's report that accompanied the Request identified that for the 40 lot subdivision he had calculated that the operating capacity of Spenmoor Street was sufficient to accommodate a further 500 lots. He had done no more analysis on that aspect of the traffic assessment in respect of DPC67. In evidence at the hearing, Mr. Clark expressed operating capacity in terms of vehicles per hour based on a 'Level of Service A', the highest in the ranking for this measure. After allowing for additional traffic from 228 future dwellings (two per allotment) at a rate of 10 vehicle movements per day, he concluded that:

*".... no adverse effects are expected from the increased use of Spenmoor Street which will still continue to operate at a Level of Service A."*

As I understood Mr. Spence's comments when he attended the hearing initially was that without further widening of Spenmoor Street the existing traffic, together with the future anticipated traffic from the 40 approved lots, left no margin for any further lots to be developed in terms of capacity or the practical operation of Spenmoor Street.

At this point in the hearing, and in view of Mr Spence's comments, Mr Beatson requested an adjournment to allow him to consult with his traffic witness. In the event when the hearing was resumed, although Mr Clark did make a few additional remarks concerning his approach to the assessment of traffic effects from DPC67, Mr Galloway produced a statement of traffic evidence dealing among other things with the capacity of Spenmoor Street. Because of the critical importance of this matter to the consideration of DPC67 I have reproduced this portion of Mr Galloway's evidence in full as follows:

***"Capacity of Spenmoor Street***

40. *On the basis of what I have outlined, the latest research undertaken as part of the NZS4404 revision suggests the original length of Spenmoor Street can, in its current form satisfactorily accommodate the traffic from around 100 household units. That is sufficient to accommodate the existing 38 houses, the 40 approved by the previous subdivision consent, and around 20 more.*
41. *As residential growth reaches or passes this level, the frequency with which cars must stop and give way to each other will increase to a point at which residents consider the level of service unsatisfactory. It is important to highlight that there will not be any safety concerns with this, it will solely be a matter of convenience.*
42. *At that point there are options available for interventions, most obviously being to implement parking restrictions such that parking is only allowed on one side of the road at any point, unless an indented parking bay is*



*provided. The plan attached to Mr Stone's report shows what that could potentially look like and includes parking restrictions supported by another indented parking bay. On the basis of my parking survey I do not expect that the parking bay will be needed, but it nevertheless remains an option if car ownership levels or use of the Scout hall justify it. With such interventions implemented, Spenmoor Street will readily accommodate the traffic from 200 household units, well beyond the 138 likely maximum envisaged by Mr Leary, without losing its neighbourhood road characteristics. On this basis, it is my view that the Plan Change can be approved with comfort that the traffic effects can be appropriately and reasonably addressed as subdivision consent applications are considered.*

43. *I also note that traffic flows higher than 2,000vpd (200 households) could be accommodated safely from Spenmoor Street's 15m road reserve, but the character of the road would begin to change somewhat. I note in this regard that Kenmore Street, with a road reserve of 15m and a carriageway width of 8.5m carries 3,910 vpd as a Collector Road."*

It is immediately evident from this evidence that there is not too much of a gap between Mr Spence's opinion as to the capacity of Spenmoor Street, as it is now, and that of Mr Galloway. Whereas, Mr Spence believes the road will be at capacity when all the approved lots are built on and generating traffic, Mr Galloway believes that a further 20 households could be accommodated.

Mr. Galloway's comments about the latest research and revision of NZS4404 are fully explained in his evidence, but in summary he believes that the design of urban streets has shifted from a focus on traffic efficiency to one of safety and aesthetics, with the aim of providing a width and design which ensures car speeds are slow and gives a sense of enjoyment to pedestrians. Mr. Clark gave similar evidence. In this respect Mr. Galloway describes three discrete options for residential road widths:

- |          |   |
|----------|---|
| Option 1 | Width of 5.5 to 5.7m which allows parking on one side of the road while leaving space for trucks to pass through, yet not providing such a width that drivers may be tempted to park directly opposite another parked car. In this design drivers proceed cautiously and slowly on the expectation of meeting and needing to give way to oncoming vehicles, as well as pedestrians and other manoeuvring vehicles.                                |
| Option 2 | A design which achieves the same outcome as option 1 but allows for roughly twice as much on-street parking. A carriageway of 7.2 metres is recommended, being exactly that of Spenmoor Street. Places where parking is limited to one side of the road need to be provided intermittently to accommodate passing by oncoming vehicles. Once again this can often be facilitated at driveways with additional restrictions provided where needed. |
| Option 3 | A local feeder road with a 9.0 to 9.5m carriageway width. This design allows parking on both sides of the road, and two narrow  |

traffic lanes to keep speeds down. The 9.0 to 9.5m width does not need to be continuous and can instead be provided at indented parking bays, as required to accommodate the on-street parking demand. Part of the slow street design requires cars to pull to the side, perhaps at a driveway, to allow an oncoming truck to pass comfortably. With two lanes kept free at all times, this cross-section has the practical capacity to carry more than 2,000vpd, being the traffic associated with around 200 households

Mr. Galloway suggests that Option 2 could be implemented through conditions of subdivision consent at a time when residential growth reaches or passes the level that can be accommodated by his Option 1. He notes that this option would cater for the traffic from up to 200 households.

Mr Spence responded that 2000vpd used in Mr Galloway's Option 2 was quite a high volume and would change the nature of the street. In terms of Table C1 in the Code of Practice, which is effectively a standard applicable to the District Plan, Spenmoor Street is a "long cul-de-sac" which is described as having more than 30 households and being more than 100 metres long. For Spenmoor Street to serve up to 200 household units its category would change to that of a "residential collector" with a corresponding change in amenity.

Mr Spence's opinion was that going beyond a doubling of current traffic flows is unacceptable and would have adverse effects on residents. Although the traffic can be calmed, he advised that it is the volume that makes the difference. He thought that the current level of provision for household units in the existing subdivision was the acceptable limit and more appropriate than the Plan Change proposal.

In response to my questions as to his opinion of 100 additional lots (including the approved lots), Mr Spence commented that 1000vpd from these additional lots was still quite high for Spenmoor Street although some further improvements to indent parking spaces was possible which may give some scope for a small increase.

### *Considerations*

The outcome of comparing the opinion evidence of these two traffic engineers is that there is general agreement (within 20 lots) of the capacity of Spenmoor Street as it currently exists; there is no agreement that Spenmoor Street could serve up to 200 dwelling units. However, the comment from Mr Spence that with further improvements to the road there is scope for additional lots towards the lower end of the range suggested by Mr Leary of between 40 and 60 additional lots.

Mr. Galloway's opinion is that Spenmoor Street can accommodate the traffic from approximately 20 dwelling units in its existing layout but would be able to accommodate traffic from up to a total of 200 dwelling units with the addition of some no parking lines and possibly some further indented parking bays with the older part of Spenmoor Street. This would translate to spare capacity for up to 122 dwelling units after deducting the 38 existing houses in lower Spenmoor Street and the 40 approved single dwelling unit lots.

For this capacity Mr. Galloway is suggesting that the existing 7.2 metre wide carriageway provides for a single traffic lane with parking allowed on both sides of the road except where passing opportunities are provided. Mr. Galloway's evidence is that this configuration forces

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drivers to travel at slow and safe speeds. He advised that he expected the 'public comment' draft of the review of the New Zealand Standard for Land Development Engineering (NZS4404:2004) to include provision for substantially reduced carriageway widths for suburban streets.

I have examined this draft and note that it does include in Table 3.1 provision for suburban 'live and play' streets serving up to 200 dwelling units to have two movement lanes of between 2.75 and 2.85 metres wide with parking sharing these lanes in situations where the road is serving up to 100 dwelling units. Above that number of dwelling units served the draft Table 3.1 specifies separate parking with a footpath on both sides of the carriageway.

While I accept Mr. Galloway's evidence that he is familiar with developments in suburban road design and road widths leading to the provisions in the draft standard, as a draft it has no status and may be revised or altered after submissions from the public and/or professional interest groups. I also note that Mr. Galloway did not refer to the need for any variation of carriageway width due to the horizontal or vertical geometry of Spenmoor Street. The draft standard does not appear to account for these factors either.

Mr. Galloway's illustrative cross sections show 2 meter wide landscape strips adjacent to the kerbs and a footpath on each side of the road. This is simply not the reality of Spenmoor Street where there is a footpath on one side only, marginal verges with steep slopes up or down to the legal boundary. As pointed out in the residents' submissions, and is obvious from my site visits, the topography of the area makes driveway access to properties difficult and limits the ability to turn vehicles on site. Consequently, many residents have to reverse into the street when exiting their properties.

Mr. Galloway referred in his evidence to Spenmoor Street's 15 meter legal width allowing for the widening of the carriageway to 9.5 metres either in isolated locations or along the whole length of the road. Mr. Stone also suggested that Council transportation officers had identified where some further road widening/parking indentation could take place.

I revisited the site after the hearing to more closely assess the physical characteristics of the original length of Spenmoor Street in the light of these suggestions for widening. What I noted was that in the area on the marked up aerial photo produced by Mr Stone where it is suggested that a further indented parking bay could be constructed, ground terrain is such that there is insufficient usable flat land to construct a parking bay and re-position the footpath. The land drops away so steeply in the vicinity of No's 27 and 29 Spenmoor Street that, in my opinion, this is not a practical option. In any event, driveway access would need to be maintained for No 29 which would reduce the number of car parks that could be constructed. The roadside in the vicinity of the Scout Hall is also steep and could not easily be widened. Widening other sections of the road is precluded by the presence of existing property access.

### *Conclusions*

Given the particular characteristics of Spenmoor Street that I have described, and having heard the residents' submissions regarding traffic, parking and road safety issues, I have concluded that invoking Mr. Galloway's option to allow the road to be used by traffic from up to an additional 122 dwelling units would be intolerable for the residents and would have a significant adverse effect on their amenities, affecting the access to their properties and further restricting on-street parking. The residents are not traffic experts but their knowledge and experience with the traffic environment of their street requires me to give reasonable weight to their submissions.

I have concluded that widening options, even in isolated sections of the road are not practical. Some carriageway widening could be carried out but this would be at the expense of a continuous footpath. Pedestrian facilities within this area of Spenmoor Street are marginal at best and reduction in function cannot be tolerated.

I have therefore concluded that anything more than a marginal increase in traffic from approximately 20 dwelling units cannot be accommodated by Spenmoor Street in a sustainable manner which means that DPC67 fails on traffic grounds.

## 7. STATUTORY REQUIREMENTS

As referred to by Mr. Beatson in his opening submission, the decision of the Environment Court in **The Long Bay-Okura Great Park Soc Inc v North Shore CC A078/08** sets out a comprehensive summary of the mandatory requirements for district plans or plan changes as follows:

**“(A) General requirements**

1. *A district plan (change) should be designed to accord with and assist the territorial authority to carry out its functions so as to achieve the purpose of the Act.*
2. *When preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement and any regional policy statement.*
3. *When preparing its district plan (change) the territorial authority shall:*
  - (a) *Have regard to any proposed regional policy statement;*
  - (b) *Not be inconsistent with any operative regional policy statement.*
4. *In relation to regional plans:*
  - (a) *The district plan (change) must not be inconsistent with an operative regional plan for any matter specified in section 30(1) (or a water conservation order); and*
  - (b) *Must have regard to any proposed regional plan on any matter of national significance etc.*
5. *When preparing its district plan (change) the territorial authority must also:*
  - (a) *Have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historical Places Register and to various fisheries regulations; and to consistency with plans and proposed plans of adjacent territorial authorities;*

- (b) *Take into account any relevant planning document recognised by an iwi authority; and*
  - (c) *Not have regard to trade competition.*
- 6. *The district plan (change) must be prepared in accordance with any regulation (there are none at present).*
- 7. *The formal requirement that a district plan (change) must also state its objectives, policies and the rules (if any) and may state other matters.*
- (B) Objectives (the section 32 test for objectives)**
- 8. *Each proposed objective in a district plan (change) is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act (section 32(3)(a)).*
- (C) Policies and methods (including rules) (the section 32 test for policies and rules)**
- 9. *The policies are to implement the objectives, and the rules (if any) are to implement the policies.*
- 10. *Each proposed policy or method (including each rule) is to be examined having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives of the district plan taking into account:*
  - (a) *The benefits and costs of the proposed policies and methods (including rules); and*
  - (b) *The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*
- (D) Rules**
- 11. *In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.*
- (E) Other statutes**
- 12. *Finally territorial authorities may be required to comply with other statutes.*

## 7.1 COUNCIL FUNCTIONS – SECTION 31

The District Plan is one means to assist the Council to carry out its functions under section 31 of the RMA for the purpose of giving effect to the RMA in its district. These functions include 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.

DPC67 seeks to rezone an area of fringe Rural Area to Outer Residential Area which would result in the intensification of residential activity within the Plan Change area. I have assessed the outcome of this rezoning as having adverse landscape and visual effects on the land concerned which the District Plan intends to be retained for rural residential purposes with a relatively undeveloped character. I have also identified potential adverse traffic effects if the land use in the Plan Change area is rezoned as requested.

Consequently if DPC67 was approved it is my opinion that the District Plan would no longer assist the Council to give effect to the RMA in respect of the Plan Change land.

## **7.2 NATIONAL POLICY STATEMENTS AND REGIONAL POLICY STATEMENT**

There are no National Policy Statements relevant to DPC67. Although the land can be viewed from the Wellington Harbour, I do not consider that it is in the coastal environment to the extent that the provisions of the New Zealand Coastal Policy Statement need to be considered.

The GWRC has submitted that DPC67 is consistent with Policy 8 and Policy 2 of Chapter 14 – Built Environment and Transportation of the Regional Policy Statement. I accept that submission.

## **7.3 PROPOSED REGIONAL POLICY STATEMENT**

I have had regard to the relevant provisions of the Proposed Regional Policy Statement and am satisfied that there is no particular conflict on the basis of evidence from the Requester regarding travel times, overall transport cost savings, proximity of main roads and public transport services and the potential for a bus service to be extended into the Plan Change area.

## **7.4 RELEVANT MANAGEMENT PLANS AND STRATEGIES UNDER OTHER ACTS**

I have had regard to the NGMF and the Council's LTCCP following the Requester's submission that these documents support DPC67 and should be taken into account.

The NGMF provides a 'strategy for achievement' for the future development of the northern part of Wellington City. It is a framework rather than a detailed master plan because, although it must provide some certainty for the community, it must also allow appropriate flexibility for refinement. It describes the themes, values and principles that will help reach a community vision. It relies on an implementation programme to identify key initiatives and outline how those initiatives can be made to happen.

Because the NGMF is a non-statutory document its provisions are subject to the RMA processes. An important distinction is that the overarching purpose of the RMA, the promotion of sustainable management of natural and physical resources, must be at the forefront of any decision making under the RMA. The RMA process is also important, and superior to processes under the Local Government Act, because it provides for full public participation through to a hearing by the Environment Court if necessary.

The Plan Change land is located within the wider NGMF area, but is not specifically identified as an indicative future residential area in the document. The following 'underlying principles' that

are related to the identified values of the NGMF perhaps indicate why the Plan Change land has not been included as a future residential area:

- *Residential development should follow an integrated urban planning approach to subdivision and neighbourhood design that recognises landform and other natural features.*
- *Significant hilltops and ridgelines will be left intact.*
- *Development will not be permitted to impinge on important natural features.*
- *A simple, well-connected street network will be developed that supports a range of activities and avoids long winding cul de sacs as far as possible.*

Similarly the LTCCP is a strategic plan prepared under the Local Government Act with both long and short term goals, which are revised on a regular cycle. The Chapter on 'Urban Development' sets out the long term approach to this issue as follows:

***“The long-term approach***

*Wellington City Council's long term approach to urban development is focused on:*

- *maintaining the city's 'compactness'*
- *focusing development along a 'growth spine' running from Johnsonville through the city centre to Newtown and Kilbirnie*
- *maintaining and strengthening the city's centres to provide accessible shopping, facilities and services*
- *improving the quality of urban design and improving connections between green spaces in and near centres*
- *protecting places that have citywide character and heritage value*
- *ensuring that the city's urban environment is resilient to shocks over the long term*
- *providing the necessary urban infrastructure in a timely way to support population and economic growth.*

*Overall, this approach aims to manage growth and development by focusing it in areas where the benefits are greatest and the least harm, while protecting and enhancing the city's unique character.*

*This approach should also:*

- *support more affordable transport options*
- *improve accessibility to jobs, services and facilities*

- *encourage more affordable housing options*
- *reduce long term costs on ratepayers by focusing development in areas with existing infrastructure.*

*Development in the wrong areas, or the wrong types of development, can place strain on infrastructure and reduce people’s ability to access services and enjoy the opportunities the city offers. Poorly—planned growth, and poor development and construction of individual buildings, can reduce the attractiveness of the city and the ‘sense of place’ that people identify with and it can have a direct impact on people’s safety. As explained above, we aim to avoid or mitigate these negative effects by guiding future development into areas where the benefits are greatest and the negative effects least.*

*The tools we use include planning, working with landowners, direct investment in development of public spaces, and using our regulatory powers under legislation such as the Building Act and Resource Management Act.”*

I believe this extract from the LTCCP illustrates the relationship between strategic planning on the one hand and District Plan processes on the other. It is not a matter of the DPC67 being supported or otherwise by the LTCCP but using the resource management process to address the value judgements that are made in that plan according to sustainable management principles.

## 7.5 SECTION 32

### *Proposed Objectives*

The section 32 requirement is that each proposed Objective in a District Plan or Plan Change is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act. DPC67 proposes to adopt the Objectives of the Residential Area in lieu of those that apply to the Rural Area.

I have compared the two sets of Objectives in the light of my consideration of the issues set out above. Of the eleven objectives that apply to each Area, eight are generic and have identical wording except for the name of the Area to which they apply and would be equally appropriate in either area. However, Objectives 14.2.2, 14.2.3 and 14.2.4 differ from their Residential equivalents and it would not be appropriate to replace them with the Residential Objectives. This is because the three Rural Objectives refer particularly to aspects of land use that require intervention of the District Plan to achieve the purposes of the RMA for the Plan Change land as follows:

*“Objective 14.2.2*

*To maintain and enhance the character of the Rural Area by managing the scale, location and rate and design of new building development.*

*Objective 14.2.3*

*To maintain and enhance the amenity values and rural character of Rural Areas.*

*Objective 14.2.4*



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*To ensure that the adverse effects of new subdivisions in the Rural Area are avoided, remedied or mitigated and that subdivision is consistent with the approach to containment of the urban area in this Plan.”*

### **Policies and Rules**

The District Plan contains specific Rural Area Policies that relate to the Plan Change land. These are 14.2.2.1 and 14.2.2.3 as follows:

*“14.2.2.1 Control the number and location and design of new building developments and activities to avoid, remedy or mitigate their adverse effects on the rural character and landscape.*

*14.2.2.3 Control the construction and siting of buildings, structures and earthworks on identified ridgelines and hilltops in city fringe areas where satisfactory infrastructure allows for future growth.”*

Policy 14.2.2.3 relates only to the urban fringe areas identified in Appendices 4-7 Chapter 15 and the explanation describes the areas as follows:

*“Some identified ridgelines and hilltops cover rural land, located within or close to existing residential areas, which has potential for low density rural residential type development. These areas have been specifically identified in Appendices 4 to 7 in Chapter 15. Separate ridgeline and hilltop provisions have therefore been included to provide for development in these situations. The Council will seek to ensure that any development is designed to respect the special location. These rules provide the management framework for these areas.*

*The environmental result will be limited rural residential development that is sensitively designed to respect the important ridgeline and hilltop locations.”*

Under the Rural Policies specific rules have been included for the Appendix 4-7 areas. These are Rule 15.4.2a for land uses, and Rule 15.4.6 for subdivision, both of which are Discretionary (Unrestricted) Activity rules with dedicated assessment criteria.

By way of contrast the Residential Policies include a more generic approach to the management of environmental effects as follows:

*“4.2.5.2 Ensure that the adverse visual effects of development are avoided, remedied or mitigated in ways that achieve a relatively undeveloped character within identified ridgelines and hilltops.”*

*The undeveloped character of identified ridgelines and hilltops is an important component of the urban landscape of Wellington. The visual intrusion caused by buildings, structures and earthworks can be detrimental to the visual amenity of the surrounding area, and for this reason Council seeks to control development to ensure that potential visual effects can be addressed at the subdivision design stage. Where specific provisions have been included in Appendices to Chapter 5, such provisions take precedence over provisions for identified ridgelines and hilltops criteria stated elsewhere in Chapter 5.*

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*The environmental result will be the visual continuity of a relatively undeveloped character on the upper slopes and summit of ridgelines or hilltops that surround the urban areas of Wellington.*

The Residential Area Rules that implement the relevant policies generally provide for dwellings as Permitted Activities, earthworks as Discretionary (Restricted) Activities and subdivision as a Discretionary (Unrestricted) Activity. As seen in the explanatory statement for Policy 4.2.5.2 above, the Council seeks to control development to ensure that potential visual effects can be addressed at the subdivision design stage.

This subdivisional control is by way of Rule 5.4.5 which, amongst other things, requires assessment against the Subdivision Design Guide and some specific criteria regarding the visual sensitivities of earthworks buildings and structures in areas of identified ridgelines and hilltops.

### ***Evaluation***

I have evaluated the option of substituting the Policies and Rules that apply to the Residential Area for those that apply to the Plan Change land being the land in Appendix 5 of Chapter 15. I have done this by a comparison of the development control regimes under each set of rules, this being the significant difference between the respective policies and rules.

In general terms, I find that the Rural Area provisions under Policies 14.2.2.1 and 14.2.2.3 and their corresponding Rules 15.4.2a and Rule 15.4.6 establish a more efficient and effective development control regime than seeking to control development to ensure that potential visual effects can be addressed at the subdivision design stage as provided for in the Residential Area provisions.

The Rural Area provisions are more efficient because they have been established specifically for the city fringe appendix areas where the individual rural residential potential of the land and its natural characteristics have been taken into account.

The Rural Area provisions are more effective because they require subdivision consent for the division of the land and the provision of services, and require resource consent for the approval of buildings, earthworks and structures. There is a specific requirement of Rule 15.4.6 that provides a link to Rule 15.4.2a as follows:

*“15.4.6.8 Where any land is located within identified ridgelines and hilltops, the extent that the access and building location will meet the assessment criteria of Rule 15.4.2a.”*

This parallel, but linked, regime provides the greatest certainty and effectiveness in imposing appropriate conditions to avoid, remedy or mitigate adverse effects. Subdivision control alone and not specific to the Plan Change land as would be the case under the Residential Area rules may not enable the Council to impose necessary land use conditions in respect of the subdivision consent and would therefore be less effective.

There will be environmental benefits in retaining the Rural Area provisions because of the greater degree of specificity and certainty given to the relationship between the physical development of the Plan Change land and its landscape and visual amenity values; and retaining the overall development density at a rural residential scale to avoid adverse traffic-related effects on the residents of lower Spennor Street.

If a more compact urban form was established through the Plan Change there may be environmental benefits from reduced greenhouse gas emissions resulting from reduced vehicle trips on a city-wide and/or region-wide basis given the proximity of the Plan Change land to the Wellington CBD. This may be tempered to some degree by a predicted lower than average take up of travel by public transport.

There will be environmental costs associated with the loss of landscape and visual amenity values associated with the ridgeline and hilltop area if a greater degree of development density was established through the adoption of the Residential Rules.

There will be economic costs for the land owner arising from the lower density of residential development that can be achieved under the Rural Area provisions and from the additional resource consents required to develop the land further under those rules.

There may be economic costs for the city by retaining the Rural Area provisions rather than using the Plan Change to contribute to the “compact city” goal.

The social costs and or benefits of adopting the Residential Area provisions relate to the community perception of the balance between the provision of additional residential opportunities with the protection of landscape and visual amenity values and neighbourhood amenity. Plan Change 33 is a relatively recent amendment to the District Plan and has been the subject of close scrutiny in regard to the Ridgeline and Hilltops provisions, which themselves have been the subject of a comprehensive investigation and report. Submissions from land owners in close proximity to the Plan Change land prefer the retention of the Rural Area provisions to avoid the social costs associated with traffic-related effects and to protect the environmental values identified by the District Plan.

The risk of acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods is moderate to high. The position regarding the existing consent notices appears to that an application for the removal and/or variation of the conditions that give rise to these would have to succeed before the Plan Change land could be subdivided. There is a risk that this may not be achieved.

With the Residential Area provisions in place it is the Requester’s position that there will be sufficient safeguards so that all relevant effects on the environment will be able to be dealt with at the resource consent stage. Reliance on the Residential Area rules in their present form to effectively manage effects may be misplaced and is somewhat uncertain.

### ***Conclusions***

Having regard to the above examination of objectives and policies, together with the conclusions of my consideration of the issues under section 6 above I have concluded that it is more appropriate to retain Objectives 14.2.2, 14.2.3 and 14.2.4 as a means of achieving the purpose of the RMA than to replace these with the equivalent Residential Area Objectives; and that retaining the Rural Area Policies and Rules is the most appropriate method for achieving the objectives of the District Plan.

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**7.6 PART 2**

I have considered the Requester's submissions regarding the enabling nature of the RMA and that DPC67 is an efficient use of resources that will contribute to the compactness of the city by providing for residential land use at greater densities than the current zoning.

On their face those aspects are consistent with the promotion of sustainable management of natural and physical resources. However, the section 5 provision enabling people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety is qualified by the following:

“.....while—

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

In respect of (a) above, I accept that in the right circumstances a compact urban form would meet the needs of future generations, but the policy to achieve that should not be at the expense of the natural and physical environment. Cities need open spaces to provide visual and spatial relief from continuously built up areas. I consider that the natural and physical resource of the area identified as the Ngauranga Ridgeline and Hilltop area contributes to the visual amenity and quality of the environment on both a local and district wide scale and is intended to be protected for the benefit of future generations.

There are no particular issues that arise in respect of (b) above.

In respect of (c) above, I consider that the increased residential density that would result from the approval of DPC67 would result in adverse visual, landscape and traffic effects that cannot be avoided, remedied or mitigated to an acceptable level.

I do not believe that any of the matters of national importance under section 6 are relevant to DPC67 and no party has raised issues regarding section 8 the Treaty of Waitangi.

Under section 7, I have had particular regard to:

- (b) The efficient use and development of natural and physical resources:*
- (c) The maintenance and enhancement of amenity values:*
- (f) Maintenance and enhancement of the quality of the environment:*
- (g) Any finite characteristics of natural and physical resources:*

I consider that Ridgelines and Hilltops within the Plan Change land are a finite resource of the City requiring special management. The identification of these on the planning maps and the associated objectives policies and rules have recently been made operative as part of a comprehensive District Plan review of the Rural Area and Ridgelines and Hilltops provisions.

Overall I consider that sustainable management is promoted by retaining the rural residential zoning with a low density of development that enables natural values to be protected and avoids adverse effects on the amenity of the residents of Spenmoor Street that otherwise would result from a significant increase in traffic movements.

On the other hand, residential development of greater density, even with the additional plan provisions suggested by the Requester, would have unacceptable adverse effects on natural values and the traffic environment of Spenmoor Street. It would not, in my view promote sustainable management of natural and physical resources.

## **8. RECOMMENDATION AND REASONS**

### **8.1 RECOMMENDATION**

As Hearing Commissioner with delegated authority to hear submissions and recommend a decision on Proposed Plan Change 67, I have given careful consideration to the advice from Council officers, the evidence and/or submissions of the Requester, the evidence and/or submissions of submitters and further submitters that appeared, and other submissions.

I recommend that pursuant to clause 29(4) of Part 2 of Schedule 1 to the Resource Management Act 1991, Council **DECLINE** Plan Change 67 for the following reasons; and that all submissions and the further submission be accepted or rejected to the extent that they accord with the above recommendation.

### **8.2 REASONS**

1. The proposed rezoning from Rural Area to Outer Residential Area is not considered an appropriate way to manage the effects of the use, development or protection of the land and its associated natural and physical resources in accordance with sustainable management principles and would not assist the Council carry out its functions in order to achieve the purpose of the RMA.
2. It is more appropriate to retain the District Plan objectives for the Rural Area, particularly Objectives 14.2.2, 14.2.3 and 14.2.4 as a means of achieving the purpose of the RMA than to replace these with the equivalent Residential Area objectives.
3. Retaining the Rural Area Policies and Rules is the most appropriate method for achieving the Objectives of the District Plan.
4. Sustainable management of natural and physical resources is promoted by retaining the rural residential zoning with a low density of development that enables the natural values of the Upper Ngauranga Ridgeline and Hilltop to be protected and avoids adverse effects on the

amenity of the residents of Spenmoor Street that otherwise would result from a significant increase in traffic movements.

5. Residential development to the densities possible under the Residential Area Rules would have unacceptable adverse effects on natural values and the traffic environment of Spenmoor Street and would not promote sustainable management of natural and physical resources.
6. The Plan Change land which is one of the city fringe areas where express provision has been made through District Plan Change 33 for Rural Residential development, and has already been subdivided in accordance with those provisions, is not suitable for rezoning for more intensive residential land use activities because of an established boundary pattern with multiple ownership and commitment to rural residential rather than residential character.
7. A rezoning of the Plan Change land to Outer Residential Area has the potential to reduce the effectiveness of the Ridgelines and Hilltop Overlay and frustrate the anticipated environmental results which include the visual integration of new development with the immediate landform and natural features, in context with the wider landscape character of ridgelines and hilltops.
8. Introducing additional dwellings into the landscape, even at a modest level of between 40 and 60 additional dwellings will reduce the opportunities for mitigation of adverse visual effects through landscaping and planting.
9. Given the particular characteristics of the original portion of Spenmoor Street anything more than a marginal increase in traffic, say from approximately 20 dwelling units, cannot be accommodated by Spenmoor Street in a sustainable manner and without significant adverse effects on the residents.

Stuart Kinnear

Commissioner

26 February 2010



