

IN THE MATTER of the Resource Management Act 1991
AND

IN THE MATTER of an appeal under clause 14 of
Schedule 1 to the Act

BETWEEN BROOKLYN VIEWS LIMITED
(ENV-2006-WLG-000120)
Appellant

AND WELLINGTON CITY COUNCIL
Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge B P Dwyer sitting alone pursuant to section 279 of the Act.

IN CHAMBERS

CONSENT ORDER

Introduction

[1] The Court has read and considered the appeal, the respondent's reply and the memorandum of the parties.

[2] The following persons gave notice of an intention to become parties under s274:

- Wellington Regional Council;
- G L Melvin;
- T Bradley;
- J M Kaveney;
- Friends of Owhiro Stream;
- R J Waters;
- Brooklyn Residents' Association; and
- Southern Environmental Action (Wellington) Inc;

and have signed the consent order setting out the relief sought.



[3] The Court is making this order under s279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:

- (a) All parties to the proceedings have executed the memorandum requesting this order;
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

Order

[4] The Court orders, by consent, that the appeal is upheld in part and the respondent's decision to decline Plan Change 30 to the Wellington City District Plan, dated 27 April 2005, is reversed, subject to the amendment of Plan Change 30 in the manner set out in Appendix 1.

[5] The appeal is otherwise dismissed.

[6] There is no order as to costs.

DATED at Wellington this 5th day of October 2011

B P Dwyer
Management Judge

**Appendix 1 - amended District Plan Provisions, Amended
Planning Map and Constraints Map**



**Proposed District Plan Change 30 - provisions to be added into
Residential Chapter of the District Plan**

DISTRICT PLAN MAPS

Rezone the subject land on Planning Map 6 from Rural to Residential (Outer) including an appropriate notation directing readers to Policies 4.2.3.4A and 4.2.3.4 B, Rules 5.1 XX, 5.4.8 and related Appendix XX (see attached Map).

POLICY 4.2.3.4A

Manage residential development on the hill slopes to the west of Ohiro Road (identified in Appendix xx) in a manner that recognises the particular topographical and other natural constraints of the land and achieves an urban form that is within a framework of substantial, undeveloped vegetated space comprising:

- **existing gullies and their ephemeral streams**
- **land adjacent to Ohiro Road and the Owhiro Stream**
- **land abutting existing residential properties to the west.**

Matters to be considered when assessing an application for subdivision in the Appendix xx area include:

- **The extent to which the overall subdivision design and public space structure is appropriate for the hillside site and achieves development within a well vegetated setting and is responsive to its suburban surroundings.**
- **The protection of any indigenous vegetation which has significant ecological values.**
- **The protection and/or management of indigenous vegetation in those areas identified in appendix xx as subject to development constraints where they act as an ecological corridor and buffer area and in stabilising the steep slopes to promote their ongoing regeneration and enhancement of ecological values.**



- Requirements for new plantings and the extent to which local eco-sourced indigenous vegetation is used and planting is undertaken to minimise “edge effects”.
- The extent to which the natural character of streams (including ephemeral streams) within and adjacent to the area will be retained and protected.
- The provision of public and private open space with particular emphasis on maintaining the natural character of gullies and the setting of the Owhiro Stream.
- The extent to which earthworks are designed and engineered to minimise the effects of significant cuts and fills to retain the natural character of the site as far as practicable.
- The extent to which roads and other vehicle accessways are designed and engineered to minimise earthworks while complying appropriately with the Council’s standards.
- The design of any roading and services connections across areas shown in Appendix xx as subject to development constraints and the extent to which adverse effects on the ecological and amenity values of those areas and the Owhiro Stream can be minimised.
- The ability to provide roading and pedestrian connectivity between different stages of subdivision or where subdivision crosses title boundaries and other connections to promote walking or cycling. Pedestrian access shall also be provided between the existing residential development to the west and Ohiro Road.
- The extent to which the subdivision design provides for building lots that minimises the need for earthworks and provides for a diversity of housing types.
- The extent to which any adverse traffic effects can be addressed and provision made for pedestrian access to public transport.
- The manner in which stormwater effects will be managed and in particular the discharge of sediment into the Owhiro Stream and the provision of low impact stormwater design where practicable.



- **The extent to which the design of retaining walls and the finishing of cut faces minimises any adverse effects on the site.**
- **Landscaping and planting in development areas and restoration of earthworked areas using local eco sourced indigenous vegetation where practicable and available.**
- **On and off site vehicle parking acknowledging the likely formation of narrower roads.**
- **The extent of compliance with the relevant parts of the Subdivision Design Guide, Residential Design Guide and the Code of Practice for Land Development.**
- **The requirements of section 106 of the Act.**

METHODS

- Rules
- Subdivision Design Guide
- Residential Design Guide
- Code of Practice for Land Development
- Covenants

POLICY 4.2.3.4B

Manage the removal of existing indigenous vegetation on the hill slopes to the west of Ohiro Road (identified in Appendix xx) prior to the approval of any part of the land for subdivision.

METHODS

- Rules

The area covered by Appendix xx totals some 15 hectares and consists mainly of steep hillsides and a number of incised gullies. The Owhiro Stream flows along parts of the base of the site parallel with and in some places within Ohiro Road. The land is predominantly covered by regenerating native bush and a mix of other species.

Although valued for its amenity landscape and native vegetation values the land is in private ownership, is generally surrounded by existing residential uses and is close to the Central Area. It is considered that there is potential for residential development in this location which will support the consolidation of the established urban form and provide additional housing options within easy access of work areas.



However, the Council is of the view that prior to any subdivision of the land existing indigenous vegetation should be managed in order to ensure that Policy 4.2.3.4A and associated assessment considerations are not negated through the removal of indigenous vegetation prior to any subdivision applications being lodged and approved. Appropriate rules have therefore been included to achieve this outcome. While the general presumption is that applications for vegetation clearance will be non-notified, more significant clearance in excess of one hectare in area will be assessed for notification in accordance with the requirements of the Act. The provisions for vegetation clearance will ensure that the policies for the future subdivision of the land, particularly the development of housing within a well vegetated setting will be achieved. Towards this outcome any clearance of vegetation exceeding 1,000m² per site within the areas identified in Appendix xx as subject to development constraints will take into account the existing indigenous vegetation, the regenerating indigenous vegetation, and the ultimate function of these areas as stated in Policy 4.2.3.4.A.

The Council acknowledges that the nature of the terrain will provide some challenges in developing the land. Particular care will therefore be required to ensure that new development is successfully integrated with the landform and that important developmental effects are appropriately addressed.

To this end, all subdivision within the Appendix xx area has been made a Discretionary (Unrestricted) Activity with a specific requirement for the public notification of resource consent applications. This will enable all key aspects of proposed land development to be fully assessed.

In particular the Council expects that the form of future development will acknowledge the topographical and other constraints imposed by the site and it should be recognised that not all of the land will be able to be developed for residential purposes. The land subject to development constraints is identified on the Appendix xx plan and will be defined by survey as subdivision progresses. It is anticipated that there will be no new house building platforms in these areas, however some essential infrastructure provisions may be necessary within them. In addition it is anticipated that subdivision design will provide for the retention of some indigenous vegetation outside the land which is subject to development constraints where removal of this vegetation is not necessary to create building sites, roads etc.

With regard to the above the design of the public space structure (including roads) is considered crucial as this is the prime determinant of subdivision quality.

While it is not intended to control the design of individual houses the subdivision approval process will be used to ensure that building lots will promote housing forms that minimise the effects on the landform and contour disruption. The creation of entirely flat building lots is generally considered inappropriate for this land.

As the Appendix xx area is in multiple ownerships and as roading access from Ohiro Road will be limited it is important that any subdivision applications show how any development will relate to the development of the area as a whole. To this end the rules require the submission of a concept plan to indicate how the total area might be developed and staged over time. In particular the concept plan should clearly show how roading connections will be made to adjacent titles so that the location of such connections will not compromise development of the area as a whole and minimise the impact on the gully areas.

The design of roads is of particular importance. It is acknowledged that roading will be constructed and installed through the site including through the land which is subject to development constraints where it is not practicable to locate such roads and services outside of the land which is subject to development constraints. The Council is of the view that for such a steep site there must be a flexible implementation of the design standards to achieve road widths that promote acceptable functionality while minimising earthworks and the impacts of roads in the landscape. It is not considered that the road hierarchy should include roads above sub-collector standard.

It is similarly acknowledged that services will be constructed and installed through the site including through the land which is subject to development constraints. As in the case for roading there will be a flexible implementation of design standards that promotes acceptable functionality whilst minimising earthworks and impacts on the landscape.

Those areas identified in Appendix xx as subject to development constraints will be appropriately protected and/or managed to promote ongoing regeneration and the enhancement of ecological values. To this end it is intended that after the depositing of subdivision plans, further District Plan changes will be initiated to



rezone the identified areas as Open Space. Some areas may be vested in Council and designated as reserves but where land remains in private ownership other mechanisms such as covenants may also be applied.

RULES

(Note: the proposed additions to the Operative District Plan are highlighted in yellow)

CONTROLLED ACTIVITIES

SUBDIVISION

5.2.3 Any subdivision that is not a Permitted Activity and which creates five or less allotments, except those that:

- create an allotment of less than 400 sq.m.; or
- create an allotment which cannot contain a circle with a radius of 7 metres; or
- create more than 10 linear metres of legal road; or
- are on an identified ridgeline or a hilltop; or
- involve a requirement to set aside esplanade land; or
- result in an increase in the degree of non-compliance with the residential standards contained in 5.6.1 and 5.6.2; or
- involve the subdivision of land shown in Appendix 18 (Tapu Te Ranga Land, 16-50 Rhine Street, Island Bay) (see Rule 5.4.6)
- involve the subdivision of land shown in Appendix xx (off Ohiro Road, Brooklyn) (see Rule 5.4.8)

For subdivision of Lot 1 DP 25046 and Pt Sec 10 Kaiwharawhara District above Patna Street and Huntleigh Park Way, Ngaio refer to Appendix 12.

For Subdivision of Lot 1 DP 29604 off the end of Silverstream Road, Ngaio refer to Appendix 7

For subdivision of Lot 3 DP 71465 and Lot 33 DP 1022 off Allanbrooke Place refer to Appendix 8

is a Controlled Activity in respect of:

5.2.3.1 site design, frontage and area



DISCRETIONARY ACTIVITIES (RESTRICTED)

SUBDIVISION

5.3.12 Any subdivision that is not a Permitted or Controlled Activity and which creates five or less allotments, except those that:

- create more than 10 linear metres of legal road; or
- are on a ridgeline or a hilltop; or
- involve a requirement to set aside esplanade land; or
- result in an increase in the degree of non-compliance with the residential standards contained in section 5.6.2; or
- involve the subdivision of land shown in Appendix 18 (Tapu Te Ranga Land, 16-50 Rhine Street, Island Bay) (see Rule 5.4.6)
- involve the subdivision of land shown in Appendix xx (Off Ohiro Road, Brooklyn) (see Rule 5.4.8)

Note, section 3.2.4 requires a Design Statement to accompany any application for resource consent that is to be assessed against the Residential Design Guide.

is a Discretionary Activity (Restricted) in respect of:

DISCRETIONARY ACTIVITIES (UNRESTRICTED)

SUBDIVISION

5.4.8 Any subdivision within the area shown in Appendix xx (Off Ohiro Road, Brooklyn) is a Discretionary Activity (Unrestricted).

For the area covered by Appendix xx a concept plan shall be provided to show how the total area might be developed and staged over time.

Notification

Any resource consent application must be publicly notified

Relevant policies for approving resource consent applications

See policies 4.2.1.5, 4.2.3.4A, 4.2.3.4 B, 4.2.3.7, 4.2.5.1, 4.2.5.2, 4.2.6.1 and 4.2.6.2.

Note that this is an indicative list of relevant policies; applicants should check all policies for relevance to a particular consent application.



NEW RULES

1. **Insert** a new permitted activity rule after Rule 5.1.XX as follows:

5.1.XX Within the land shown in Appendix XX (Off Ohiro Road Brooklyn), prior to the approval and implementation of a subdivision consent under Rule 5.4.8, the modification, damage, removal or destruction of indigenous vegetation is a permitted activity subject to complying with the following conditions:

- The activity does not involve modification, damage, removal or destruction of indigenous vegetation of more than 300m² per site for an infill housing unit or more than 150m² for accessory buildings or residential structures over a 5 calendar year period after (*insert operative date of rule*).
- The activity involves:
 - The creation and maintenance of tracks not exceeding 1.5 metres in width. Construction and maintenance of these tracks shall be limited to the removal of understorey vegetation, and shall not involve the removal of canopy trees.
 - The creation of access drives not exceeding 3.0 metres in width to an infill housing unit.
 - The removal of wind thrown trees, standing dead trees that have died as a result of natural causes, or vegetation that has become dangerous to human life or property as a result of natural causes.
 - The pruning around existing residential buildings or residential structures.
 - The removal of vegetation to enable site investigations to take place as part of developing a conceptual subdivision design. This includes the setup of survey



instrumentation such as GPS, the creation of site lines and preliminary geotechnical investigations.

This rule provides for the management of existing indigenous vegetation on the land off Ohiro Road Brooklyn identified in Appendix XX to this rule prior to the approval and implementation of a subdivision consent under Rule 5.4.8. The purpose of the rule is to ensure that existing indigenous vegetation is not subject to extensive clearance before any part of the land is approved for subdivision. The overriding aim of the subdivision provisions is to achieve new housing development that is within a framework of substantial, undeveloped vegetated space.

5.4 - Discretionary Activities Restricted

2. **Insert** a new rule after Rule XX as follows:

5.4.XX Within the land shown in Appendix XX (Off Ohiro Road Brooklyn), prior to the approval and implementation of a-subdivision consent under Rule 5.4.8, the modification, damage, removal or destruction of indigenous vegetation that is not a permitted activity, is a Discretionary Activity (Restricted) in respect of:

5.4. X.X.X the management of indigenous vegetation

Non - Notification

In respect of Rule 5.4.XX applications will not be publicly notified (unless special circumstances exist) or limited notified except where the application involves the clearance of more than 1 hectare of land where consideration will be given to notification.

Relevant policies for preparing resource consent applications

See policies 4.2.3.4A and 4.2.3.4B.



Appendix xx Hill Slopes off Ohiro Road, Brooklyn



 Land to which Policy 4.2.3.4A and Rule 5.4.8 apply

- Watercourses

DEVELOPMENT CONSTRAINTS

⋮ Buffer adjacent to Mitchell Street properties generally 15m in width

⋮ Ohiro Road/Stream buffer generally 30m in width

⋮ Undeveloped Gully Areas generally 40m in width

⋮ Mature Vegetation Protection Area

Additional requirement:

Any application for resource consent must be supported by a concept plan to show how the total Appendix xx area might be developed and staged over time



