
**55 - 85 CURTIS STREET REZONING: APPROACH TO PLAN
CHANGE, STAKEHOLDER ENGAGEMENT AND PLAN CHANGE
NOTIFICATION**

1. Purpose of report

On 3 May 2012 the Strategy and Policy Committee (“the Committee”) made decisions on this matter, which included instructions to officers to undertake further work. Further to those decisions this report:

- seeks the Committee’s agreement to rezoning the Curtis Street site (“the site”) for business use;
- seeks the Committee’s agreement to the recommended timing and nature of that rezoning (including consultation and notification aspects);
- updates the Committee on the outcome of discussions held with key stakeholders and miscellaneous other matters; and
- reports back on “lessons learned” from the High Court decision.

As a matter of clarification it is noted that this report seeks only an “in-principle” decision on the future zoning of the site, with further work required to be done and approved by the Committee before Council would be ready to notify any rezoning for the site. This subsequent step would be subject to further consultation with key stakeholders.

2. Executive summary

On 3 May 2012 the Committee agreed that officers would prepare a report on a new plan change process to rezone the site as a Business 2 Area (as previously proposed under PC73). This would incorporate lessons learned from the High Court decision and include liaison with CVRA and the landowner, Terrace Heights Holdings (“THH”) on the new plan change process. This report responds to those decisions.

Since that meeting, THH has taken two actions that are material to the possible rezoning plan change that the Committee will need to be aware of. These are:

- THH has lodged an appeal (with the Court of Appeal) against the entire High Court decision; and

- THH has signalled an intention to request a private plan change (“PPC”) should it not be satisfied with the timing or nature of a Council led plan change.

Due to timing issues officers are of the view that it is unlikely the case will proceed to the Court of Appeal, but consider the lodgement of a PPC to rezone the land is a real possibility. THH has clearly articulated that unless Council promotes a business rezoning for the site in the short-term, it will lodge a PPC request to expedite the matter. Further, officers note the scope for Council to “reject” (i.e. prevent it from proceeding through the statutory process) such a request is limited. For this reason officers recommend that the Committee make a deliberate decision, through consideration of this paper, to promote a Council-led plan change or to allow THH to promote a private rezoning proposal.

A PPC has some advantages to Council in that it could remain at arm’s length from the proposal and allowing the applicant to pay for a significant proportion of the plan change. Officers acknowledge these advantages but on balance recommend that Council lead any rezoning process, due to the strong public interest in the site, Councils desire for a meaningful public engagement process, and the site specific planning issues that have been identified.

In terms of planning controls, a business zoning is considered appropriate, but based on identified values (e.g. residential character) a site-specific zoning and package of provisions is recommended. Officers therefore recommend a site specific “Business (Curtis Street) Area” zoning which could be properly integrated into the District Plan at a later stage in the review programme. A further advantage of this approach is that the rezoning could be advanced in the short-term and totally independent of PC73.

This approach is inconsistent with the Committee resolution in February 2012 not to promote further plan changes until the 2013/14 financial year, or until existing appeals are resolved. However, if Council wishes to promote the plan change it must do so quickly, given THH’s signals about lodging a PPC.

Officers have established regular contact with CVRA and THH and propose that this continue throughout the rezoning process (prior to and after notification under the Resource Management Act 1991 / “RMA”). After any plan change is notified officers propose additional targeted public notification and input which will meet the requirements and spirit of the High Court decision and ensure effective stakeholder engagement.

Subject to Committee agreement officers can immediately commence work towards the preparation of plan change documents for notification, including further consultation with CVRA and THH. Draft plan change documents could be presented to the Committee in November for its agreement and a plan change could be notified thereafter.

3. Recommendations

Officers recommend that the Strategy and Policy Committee:

1. *Receive the information.*
2. *Agree that the rezoning proposal be for a site specific "Business (Curtis Street) Area" as described generally in this report.*
3. *Instruct officers to commence a new rezoning process for the site at 55 – 85 Curtis Street, by preparing proposed plan change documents for the approval of the Committee at a November 2012 meeting.*
4. *Agree that officers follow the consultation and notification proposal set out in Section 8 of this report.*
5. *Agree in-principle to the recommended approach to future plan changes as also set out in Section 8 of this report.*
6. *Note that a decision to promote a Council-led plan change for the Curtis Street site represents a deviation from the Committee decision of 16 February 2012 not to promote further plan changes (other than a "minor amendments" plan change) until the 2013/14 financial year or until all existing Environment Court appeals are resolved.*

4. Background

This report is set against the background of CVRA's successful judicial review and the Committee's subsequent decisions on 3 May 2012. In particular this report addresses the following decisions made by Committee:

- to instruct officers to prepare a report on a new plan change process to rezone the land Business 2 (as previously proposed) which would incorporate the lessons learned from the High Court decision;
- to instruct officers to liaise with CVRA and THH on the new plan change process; and
- to instruct officers to approach the Ministry for the Environment ("MfE") requesting the redrafting of clause 5(1A) of the First Schedule of the RMA in light of uncertainty caused by the High Court decision and to seek Local Government New Zealand's ("LGNZ") support in this approach.

5. Current situation

In making decisions on the current paper it is important to acknowledge progress since the last paper. These are set out below.

5.1 Discussions with Creswick Valley Residents Association

Officers met with representatives of CRVA on 6 and 22 August 2012. The meetings set about clarifying the likely process that will occur in the coming

months; establishing a constructive working relationship between CVRA and Council; and understanding CVRA's concerns from a planning perspective.

The statutory complexities surrounding the land (e.g. THH's potential PPC and Court of Appeal notice), CVRA's preferred planning outcomes, and consultation were all discussed, with CRVA stressing the need for an open and transparent process and an expectation that Council would share information and thinking with them. Officers have taken these concerns on board and have been in regular contact with CVRA. CVRA's views on planning matters are attached in **Appendix 1**.

A framework for continued communication and input from CVRA is set out in Section 8.

5.2 Terrace Heights Holdings

Officers met with the landowner, THH, on 7 August 2012 and also received written advice from them dated 18 July 2012. THH has been active since May in protecting its commercial interest in the land. In particular it has:

- lodged an appeal notice against the High Court decision in its entirety (appeal would be heard by the Court of Appeal); and
- written to Council outlining the intention to lodge a PPC to rezone the site for business use if it is unsatisfied with the Committee's decision on this paper.

Much of the discussion at the meeting centred round the PPC process. THH emphasised that unless Council shows a commitment to a business rezoning with "reasonable timeframes" it will lodge a PPC application. At the 7 August meeting officers advised that advice to the Committee would likely recommend a Council-led plan change, but emphasised that a constructive working relationship is desirable regardless of who promotes the plan change. Officers also emphasised site specific issues and values that would like require recognition in a plan change (see Section 6 below) and that they would be unlikely to recommend a Business 2 zone. THH

Based on discussions with THH officers advise that the PPC is of great relevance to Committee decision making at this stage. A PPC is a privately initiated change to the District Plan, and our legal advice confirms that this option is available to THH. THH's stated readiness to lodge a PPC applications necessitates that Council make a conscious decision to promote its own plan change in the short-term or allow THH to "make the running" via a PPC. The costs and benefits to Council of the two options are addressed in Section 7 of this report.

In terms of observations regarding the Court of Appeal notice, our legal advice is that the Court of Appeal hearing is unlikely to be held until February or March 2013, and given THH's stated interest in a PPC, it is likely that THH regards this as a "back stop" option.

Officers have also taken THH's concerns on board and have been in regular contact with them. THH's views on planning matters are also attached in **Appendix 1**.

5.3 Discussions with Transpower New Zealand Limited (“Transpower”)

The site is traversed by the Central Park – Wilton A (CPK-WIL-A) transmission line network, which is owned and operated by Transpower. Officers have discussed the site with Transpower, and they have identified standards and documents relevant for new development given the proximity of the transmission lines. Specifically the site is located within the “red and orange zones” which are not considered appropriate for activities like schools, residential buildings and hospitals. Officers have agreed to involve Transpower further in the planning process for this site.

5.4 Plan Change 73

A process related complication is that because Plan Change 73 (“PC73”) is not yet operative the standard suburban business zonings (“Centres”, “Business 1”, “Business 2”) cannot be applied to the Curtis Street site in the short-term without Council initiating a “variation”. Officer advice is that a variation should be avoided because it will significantly prolong making PC73 fully operative, and would not be consistent with a Committee decision on the District Plan Review to focus on making the plan operative as quickly as possible.

Current estimations are that PC73 will not be operative for another six months, at which point a Business 1 or 2 zone could be pursued but given THH’s signals about a PPC Council does not have this long to act. Therefore, if the Committee wishes to promote a rezoning for the site it will need to happen in the short-term with a site specific zoning title such as “Business Curtis Street” and a stand alone set of rules. Whilst this is not desirable in terms of the integrity and complexity of the District Plan as a document, it would enable the rezoning process to continue and the zoning could be better integrated into the District Plan at a later stage.

It is acknowledged that a Council plan change in the short-term would be a deviation from the recent Committee decision to avoid further plan changes until the whole District Plan is operative. However, given the specific context for this site officers believe this would be justified.

6. Recommended planning approach

Since the May paper officers have undertaken investigations to identify, in more detail, the recommended zoning and planning controls for the site. This has involved:

- discussions with CVRA and THH;
- commissioning expert advice on transport, landscape, ecology, economic, urban design, geotechnical and site contamination matters;
- considering the expert assessments against “high order” planning documents including the RMA, national policy statements, regional policy statement and high level policy in the District Plan;

- consideration of different options including retaining the status quo; an open space / recreation zoning and various business rezoning options.

Taking all of this into account a business zoning would represent the most “efficient use” of the land in RMA terms. However, there are site and context specific residential amenity, landscape and ecological issues that require specific recognition, and accordingly the blanket application of an existing business zone would be inappropriate.

Ecological values were closely considered with indigenous vegetation, “seepage wetlands”, native birdlife located to the west of the site identified as significant. The Kaiwharawhara Stream which is culverted beneath the site is identified as significant in the Proposed Regional Policy Statement. On-site issues to consider in relation to these values include the impacts of stormwater runoff into the Kaiwharawhara Stream and vegetation within the western site boundary which buffers identified values beyond the site. However, the majority of the site is unconstrained by ecological values (see annotated aerial photo attached as **Appendix 2**).

Site specific responses recommended in light of identified values are:

- policy references or assessment criteria which acknowledge landscape and ecological values along and adjacent the western edge of the site and promote sensitive treatment of the western site boundary (particularly with regard to earthworks);
- a maximum floorplate for individual buildings and associated urban design controls to ensure built development is visually discrete and sensitive to the residential setting;
- permitted limits on the type and scale of certain retail activities which have the potential to generate adverse trade impacts on identified “centres” and adverse impacts on the roading network;
- careful consideration of standards controlling the combined height of earthworks and buildings for the purpose of controlling the visual impact of new development;
- a resource consent requirement for sensitive activities and significant buildings and structures in close proximity to the high voltage transmission lines (and an associated requirement to consider Transpower as an “affected party”);
- carefully considered permitted limits on noise, earthworks, signage and lighting to ensure appropriate protection to the amenity of surrounding residential properties; and
- a permitted limit on the number of on-site car parks to provide Council with control over traffic generation and associated impacts on the roading network.

Implementing these controls would require a site specific “Business (Curtis Street) Area” or similarly titled zoning, which would be a new spot zone with tailor-made planning provisions.

It is specifically noted that officers considered vegetation removal controls over identified “buffer vegetation” along the western boundary and site specific stormwater controls to mitigate impacts on the Kaiwharawhara Stream. Such controls are not recommended at this stage for a range of legal, plan integrity and planning precedent reasons. However, there is an opportunity to consider these matters in greater detail as any plan change is developed.

Another key consideration will be the thresholds for notification of resource consent applications on the site, and whether non-notification clauses should be used in the package of rules - “permitted development rights” and thresholds below which applications will not be notified will need to be identified. These matters are important “trigger points” in term of what development can be established on the site and the level of third party input to resource consent applications.

A summary of the options analysis which led to this recommendation is attached as **Appendix 3**.

7. Plan change process

The Committee has the option to promote a Council led plan change or allow THH to drive the rezoning process via a PPC. The pros and cons of each option are set out below, but it must be noted that if the Committee prefers that Council lead the rezoning, then this would need to occur in the short-term because THH has indicated that delay will cause it to lodge its PPC application. Officers advise that draft plan documents could be prepared for a Committee meeting in November.

7.1 Council led plan change

A Council led plan change would proceed in the normal way pursuant to Schedule 1 of the RMA. This includes the usual notification, submissions, further submissions and hearing process. THH’s PPC intentions dictate that if Council wishes to promote the plan change then it will need to act quickly. Further, THH could lodge a PPC application if it is unsatisfied with the content of a Council plan change.

7.2 Private plan change

The RMA also provides for private parties to “request” changes to a District Plan. This is known as a PPC. The PPC process differs from the usual plan change process and involves a two step decision making process, generalised as follows:

1. determine if the request has sufficient merit to progress through the RMA plan change process, and if so either “accept” the request for Council processing or “adopt” the request and proceed with it as a Council plan change; and
2. assess the merits of the request under the RMA to determine if it should approved as a change to the District Plan.

The RMA sets out criteria which allows Councils to “reject” PPC applications at step 1, however, legal advice confirms that in this case Council’s ability to do this is limited. On this basis Council is likely to be left only with the options of “accepting” or “adopting” the PPC.

“Accepting” PPC requests is the usual approach taken by Councils. Whilst this means relinquishing some control of the plan change it does offer some benefits too. This includes remaining at arm’s length from the proposal and allowing the applicant to pay for a significant proportion of the plan change (user pays process). Council’s control would be limited to processing the plan change in a similar way to a resource consent application (including preparing an “officer’s report” for the hearing), selection of the hearings panel, and also the ability to make a submission.

“Adopting” PPC request essentially means taking over the PPC and running it as a Council led plan change. This would only arise in circumstances where the PPC was compatible Council’s own planning position. The process enables Council to negotiate and to agree modifications with a PPC applicant prior to adoption to ensure that Councils planning position is maintained. On balance we do not believe that adoption is a result to aim for, because it is simply a slower way of commencing a Council led plan change.

8. Community engagement and plan change notification

8.1 *Lessons learned from the High Court decision*

This decision highlighted two key areas in which Council could improve when it comes to conveying technical planning issues and plan changes to the public. These were:

- ensuring that additional plan change summary material, if provided, is accurate; and
- identifying “directly affected parties” and making them aware of a plan change and providing information about how it may directly affect them (e.g. visual impacts).
- These principles would apply even if the rezoning was driven via a PPC, because Council would still be responsible for notifying the plan change and providing information to the community.

The commentary in the High Court decision is especially relevant to site specific plan change proposals, and the following extra steps are recommended for site specific plan changes in light of it:

- clear identification of “impact catchments” to identify which properties are affected and why (e.g. noise, visual impacts) and provide those properties with relevant information;
- placing signage on the affected site with information about the proposal and its potential impact; and
- specific briefings of Ward Councillors to assist their understanding and engagement with their communities.

At a higher level there is an opportunity for Council to enhance the level and usefulness of its engagement with the community on planning matters by running a district plan equivalent to the “law for lunch” seminar series and maximising the potential of electronic media, particularly “e-Planning” initiatives on the Council website which are currently being advanced by officers.

8.2 Consultation and notification proposal for Curtis Street

The meetings with CVRA established a willingness from both parties to work constructively throughout any plan change process. Drawing on this officers have developed a consultation and notification proposal that applies to the period prior to the notification of a rezoning and the period from notification onwards.

Pre-notification period

- Continuation of regular meetings with CVRA (as agreed by them) to enable them to provide ongoing feedback on the process and planning proposal;
- Officers have identified a need for officers to present CVRA with an “impact catchment map” identifying those properties which may be directly impacted by site development and allow the map to be refined with their input; and
- Officers also propose regular contact with THH to inform it of possible planning management tools for the site and enable its input – this is considered essential given THH’s role as landowner and ability to lodge a PPC request at any time.

Notification and post notification period

Once notified, the proposed plan change must follow the standard process set out in the Schedule 1 of the RMA. This includes public notification, two rounds of written submissions and a public hearing. However, within this statutory framework there is some discretion and flexibility for Council to undertake additional measures to ensure an appropriate level of information is circulated and available. Therefore, in addition to the standard public notice published local in newspapers (and also displayed on the Council website) options for targeted stakeholder notification and public input are recommended to include:

- the erection of a notice on site (as above);
- a presentation of proposed plan change to the CVRA;
- directly affected parties identified on the final “impact catchment map” will be sent a copy of the public notice together with letter explaining how they could be affected by the rezoning and inviting their submission; and
- a poster alerting ratepayers to the proposed plan change, providing information and inviting submission, will be displayed at Karori

Officers have taken legal advice and this confirms that this approach will meet the requirements and spirit of the High Court decision.

8.3 Consultation as part of private plan change processes

There is no requirement under the RMA for private parties to consult as part of PPC processes, although it is regarded as best-practice. On this basis Council can suggest, but not compel, applicants to consult with relevant third parties. In a PPC it would also not be appropriate for Council, acting in its processing function, to consult on the applicant's behalf. If an applicant refuses to consult during the development of the PPC documents then third party input would be limited to the formal submission and hearings processes. However, it should be noted that in such a situation Council would have the opportunity to submit on the PPC via its policy arm, and in developing that submission could consult with relevant third parties.

9. Risk mitigation

There are a number of risks inherent in Council leading a plan change for the Curtis Street site in the short-term, and for the sake of clarity these are addressed in one place in the table below.

Risk	Comments	Mitigation
Council determines to lead a plan change but THH lodges PPC before it can be notified (possible)	Based on advice from THH this would occur if they were unsatisfied with the timing or content of a Council led plan change	Council acts quickly to promote plan change (timing) and maintains communication with THH. However, Council must determine its own position on plan change content.
THH pursues its Court of Appeal proceedings and succeeds in overturning the High Court decision – returning the zoning of the site to “Business 2” (unlikely)	This would make a new plan change process largely redundant	Work constructively with THH and maintain communication – at this stage THH sees its Court of Appeal proceedings as a “back stop” option only
THH, CVRA or other third party appeals Council decision on the rezoning to the Environment Court (likely)	The risk of an Environment Court appeal is technically unavoidable. Given the level of interest in this site it could be considered likely that some party will appeal to the Environment Court	Ensure that the plan change is well informed by relevant technical assessments, an appropriate planning / balancing assessment, and is compliant with the RMA and relevant caselaw
THH, CVRA or other third party takes judicial review proceedings against the Council rezoning process (possible)	The risk of a judicial review is technically unavoidable	Risk can be significantly mitigated by ensuring that the plan change process is compliant with the RMA and consistent with relevant caselaw including the Curtis Street decision

10. Discussions with the Ministry for the Environment

At the 3 May 2012 Committee meeting officers were also instructed to approach MfE about the uncertainty caused by the High Court decision in terms of

notification processes under the RMA, and to seek the support of LGNZ in making this approach. LGNZ agreed to support that approach and officers and an LGNZ representative met with officials at MfE on 28 August 2012. Following the meeting MfE agreed to consider its position and provide officers with a written response which is not yet to hand. It is anticipated this can be reported verbally at the Committee pre-meeting on 11 September.

11. Other considerations

11.1 Financial considerations

A new rezoning / plan change process for the site will involve officer time, legal and consultant fees. It is anticipated that this can be accommodated within the existing budget of the District Plan team, though depending on the process that unfolds (e.g. Environment Court appeal) there may be some impact on the timing of other work included in the approved District Plan work programme.

11.2 Climate change impacts and considerations

There are no climate change impacts or considerations.

11.3 Long-term plan considerations

Costs associated with the District Plan work programme agreed by the Committee in February 2012 are included in the Long Term Plan.

12. Conclusion

Officers have considered a range of issues in developing this paper. It is acknowledged that a PPC process has benefits, but overall it is recommended that:

1. Council initiate a rezoning proposal in the short-term;
2. this rezoning proposal be for a site specific “Business (Curtis Street)” zoning as described in Section 6; and
3. the engagement and notification process for this rezoning follow the format set out in Section 8.

It is re-emphasised that this is an “in-principle” decision only and if the Committee agrees this course of action, officers would need to commence work on the actual preparation of plan change documents for notification, including further consultation with CVRA and THH. Draft plan change documents would need to be presented back to the Committee in November for its agreement before the plan change is notified.

Contact Officer: Andrew Macleod, Principal Programme Advisor – District Plan and Sarah Edwards, Senior Policy Advisor – District Plan.

SUPPORTING INFORMATION

1) Strategic fit / Strategic outcome

Consideration has been given to Council's strategic direction and any changes to the District Plan will give effect to this and principles set out in the District Plan Review report approved on 16 February 2012. A plan change arising from this report will deviate from the Committee's intention of avoiding new plan changes until appeals are resolved but this matter is addressed in the report.

2) LTP/Annual Plan reference and long term financial impact

A plan change arising from this report will be funded from the District Plan budget as provided for in the LTP and Annual Plan.

3) Treaty of Waitangi considerations

The Curtis Street site is not known to be significant to Mana Whenua, but any Council led plan change involves mandatory consultation with Mana Whenua under the requirements of the Resource Management Act 1991.

4) Decision-making

This is not a significant decision. The report identifies options and reflects the views and preferences of those with an interest in this matter who have been consulted with.

5) Consultation

Targeted consultation has been undertaken with the landowner and Creswick Valley Resident's Association and a engagement / consultation framework is set out in the report. Any plan change arising from Committee decisions on this report will be subject to the consultation and notification requirements of the Resource Management Act 1991.

6) Legal implications

There are legal implications associated with decisions on this report, relating to Council's responsibilities under the Resource Management Act 1991. These implications are outlined in detail in the report.

7) Consistency with existing policy

There are no immediate policy implications.

CVRA and THH feedback on planning matters

Creswick Valley Residents' Association: Key issues for zoning options for Curtis Street site

Introduction

- The CVRA welcomes the opportunity to collaborate with WCC to develop zoning options for the appropriate development of the Curtis Street site
- We believe that planning decisions should proceed only after proper consideration of alternatives, benefits and costs recognising the full range of consequences of zoning changes on local residents and the environment
- We support the WCC proposal to initiate a Plan Change with provisions specific to this site – not a Private Plan Change to facilitate any specific type of development (i.e. development should be informed by the planning requirements for the site not the other way around)

Context

- The site has remained in an unused state since the Council sold it in 1999 with the exception of dumping land fill
- The site is located in a residential and green/open space area and is visible to a large number of residents in the Karori, Northland and Wilton areas
- There are a large number of residents (100 plus households) who have expressed strong interest in the future of the site and the Association represents this community of interest

The CVRA submits that the following key issues should be carefully considered when developing any package of measures specific to the Curtis Street site:

1. Impact on Noise

- The site is part of a natural amphitheatre and the acoustics amplify sound that particularly affect residents in Paisley Terrace, Curtis Street and Creswick Terrace
- Previous experience with Council recycling bins near the Garden Centre and the construction of Whitehead Road indicate that noise effects can adversely impact a significant number of local residents
- Noise impacts of both construction and on-going activities (e.g. traffic and ambient noise) will need to be clearly identified and controlled for in any site-specific zoning

2. Impact on the environment

- Impacts need to be carefully considered and controls put in place for development options which could affect native biodiversity (including birds, insects and aquatic life) of earthworks, noise, light, storm water runoff, and vegetation removal. In particular, the site is:
 - A highly significant ecological corridor between two key native ecosystems
 - A significant linkage for kaka, kereru and bellbird
 - Adjacent to one of the few easily accessible large glowworm populations
 - A significant habitat for nocturnal bird species.
 - Part of the city's most important urban catchment – Kaiwharawhara
- As part of a linked ecosystem, any development of the site could also impact:
 - biodiversity values and threatened species downstream
 - Otari-Wilton's Bush and Trelissick Park and access for pedestrians and cyclists
 - Increased water runoff from car parking and contamination of the Kaiwharawhara stream from construction and on-going commercial activities

3. Impact on visual amenity

- The site is directly overlooked by residents living in Curtis Street, Paisley Terrace and Creswick Terrace and visible to a large number of households in other parts of Northland, Karori and Wilton
- Issues of bulk, height, dominance, signage and lighting are significant and will need to be specifically controlled given the current residential and residential/open space context

4. Traffic impacts

- Development activity on the site will need to be controlled for traffic and parking demand generation. Any zoning proposal that is permissive of increased traffic volumes could severely impact local residents; already there is congestion with weekend sporting activities in the area. Particular issues of concern include:
 - Impact of increased traffic on narrow side streets off Curtis Street will need to be considered
 - Impact of parking demand (including staff and customers of any new commercial activities permitted by a zoning change) on local residents
 - Impact of any increase in right-hand turning traffic at any of the four nearby intersections as recognised turning-hazard points

5. Other considerations

- Any zoning and development needs to be fully compliant with Transpower's Corridor Management Policy as the site is bisected by high voltage power lines
- The site has a number of historical values as an early access point for Maori and early settlers from the city to Karori as it is the site of the Devil's footbridge built in 1842 to cross the Kaiwharawhara stream
- The impact of land contamination under the northern part of site zoned Open Space B will need to be carefully considered and controlled for in any use of the land

Conclusion

- The CVRA is not opposed to development of the site and notes that a range of commercial uses are possible under the current residential/Open Space zoning
- The Association's position has been that intensive industrial or commercial uses, such as a Mitre 10 Mega Centre, are completely out of keeping with the current residential and green/open space of the surrounding community with unacceptable impacts on residents
- A package of zoning measures should be adopted to ensure community and environmental impacts are avoided or minimised (including limiting intensive activities which would generate a range of negative impacts)
- Zoning measures to provide for commercial uses similar to both the Business 1 and Business 2 zones introduced by PC73 would be unlikely to be supported by residents
 - CVRA does not support zoning allowing bulk or dominance comparable with the Business 2 zoning provisions
 - CVRA regards the gross floor limits of Business 1 as being better suited to the site, but would not support the traffic generation or parking demand permitted for activities within than zoning
 - Zoning must provide controls on use of the land appropriate to the Transpower Corridor Management Policy, which gives effect to Policy 11 of the NPS on Electricity Transmission with regard to this site

S12-0592e02

3rd September 2012

District Plan Policy
Wellington City Council
PO Box 2199
WELLINGTON
Attn: Andrew McLeod



Dear Andrew,

Planning Issues – 55-85 Curtis Street

We are responding to your email of the 29th August 2012 advising that the Creswick Valley Residents had provided a paper on the planning issues. You have advised that this paper would be attached to the Committee Report that is to be put to Council and that on a fairness and equity basis, a similar opportunity is to be made available to Terrace Heights Holdings Ltd (THH).

At this point, we would be of the view that the planning issues are already well explored. Therefore we find it necessary to only provide a short bullet point summary of the planning issues relating to this site.

- The existing zonings for the land are a legacy from the days when it was physically connected to the land known as Ian Galloway Park. The southern part of the site was also owned by Council and it operated as a works depot. Other than the recent DPC 73 process, there has been no specific site analysis of the appropriate zoning for the land.
- The disposal of the site by Council makes the Open Space Zoning an inappropriate one under the RMA, given the long established principles established under the Environment Court decision known as *Capital Coast Health v Wellington City Council* [W 4/2000]. The open space values present in the land are not high. Privately owned land should not be held in private ownership, as it does not reasonably enable the owner to provide for their social, culture and economic wellbeing.
- The southern part of the site is zoned Outer Residential. The site has been formerly used as a cleanfill and as a Council depot. There is also a high voltage power line running through the centre of the site. The land is subject to a covenant requiring an ongoing monitoring of methane creep. All these factors strongly indicate that the underlying Outer Residential zoning is inappropriate. The planning issue here is identifying the most appropriate zone which would contribute to the sustainable management of the land resource.
- The owner of the site has been through the exercise of identifying potential uses for the site, including residential development. While residential use may be possible in a part of the site, it

APPENDIX 1

cannot be considered as a predominant or permitted use. The District Plan objectives and policies should not direct the decision makers to consider uses and activities which are inappropriate for the site. The planning issue here is identification of the appropriate use of the site and the formation of objectives and policies which support the appropriate outcome.

- A business type zone is more appropriate for the land, given that Open Space and Residential uses are clearly not sustainable uses. Appropriate permitted activity provisions should apply to allow reasonable and practical use of the land. Land use consent triggers need to be set which allow a reasonable use of the site, but require assessment of the likely effects if a greater intensity is proposed above that 'base' level of development. The planning issue is identifying the appropriate level of activity that should be allowed for as a permitted activity.
- Further to this, the next planning issue relates to the notification provisions. Any notification provisions should be consistent with the wider District Plan. A planning issue is ensuring that the notification provisions put forward as part of any change are consistent with the way the District Plan's wider provisions function.
- In our view, the development of the site offers no challenge to the Council's centres policy. The level of 'centre' activity that could be contained on the site, is too small to have any impact on the vitality of nearby centres.
- The site's location is adjacent to existing non-residential activities (north and south). The site is also appropriately separated (in distance and height) from nearby residential properties so that there are effectively no shading or privacy issues to consider. The planning issue is that to ensure that there are appropriate triggers in the rules which address design and external appearance matters.
- Traffic reports already prepared for the area indicate that the surrounding roading network can accommodate a larger volume of traffic, including a home improvements store on this site. The planning issues relate to ensuring that there is an appropriate trigger to consider the effects. The existing 70 car parking spaces rules in the business areas of the Plan (as proposed by DPC 73) are in our view adequate.
- The existing District Plan has earthworks rules which apply across the District Plan. Any changes to the zoning for Curtis Street, raises no planning issues in relation to earthworks and contamination. Adequate controls already apply. The new National Environment Standards (NES) for Assessing and Managing Contaminants in Soil to Protect Human Health already apply. As well as Council's contaminated sites rules. No planning issues arise in this regard.
- The site contains no heritage items, areas or buildings. There are no planning issues relating to this aspect.
- Ecological issues have been raised. These issues can be evaluated during the plan change process and the evidence properly evaluated. If deemed warranted, appropriate mitigation measures incorporated into the site specific zoning provisions.

APPENDIX 1

The last matter to be raised is not one which is a planning issue *per se*, but an important issue all the same. The owner of the site has been participating in the planning processes in good faith for nearly four years without a resolution to the process being within sight. THH is attempting to exercise rights that exist under the RMA. The proceedings undertaken by Cresswick Valley Residents Association (CVRA) against Council have affected THH and caused significant delay.

It is our view that Council have obligations on all parties to proceed as expediently as the Act allows towards a resolution of this matter.

On behalf of THH, thank you for the opportunity to outline our issues for the Council committee brief.

Yours faithfully

Spencer Holmes Limited

A handwritten signature in blue ink, appearing to read 'Ian Leary', is placed over a light blue rectangular background.

Ian Leary

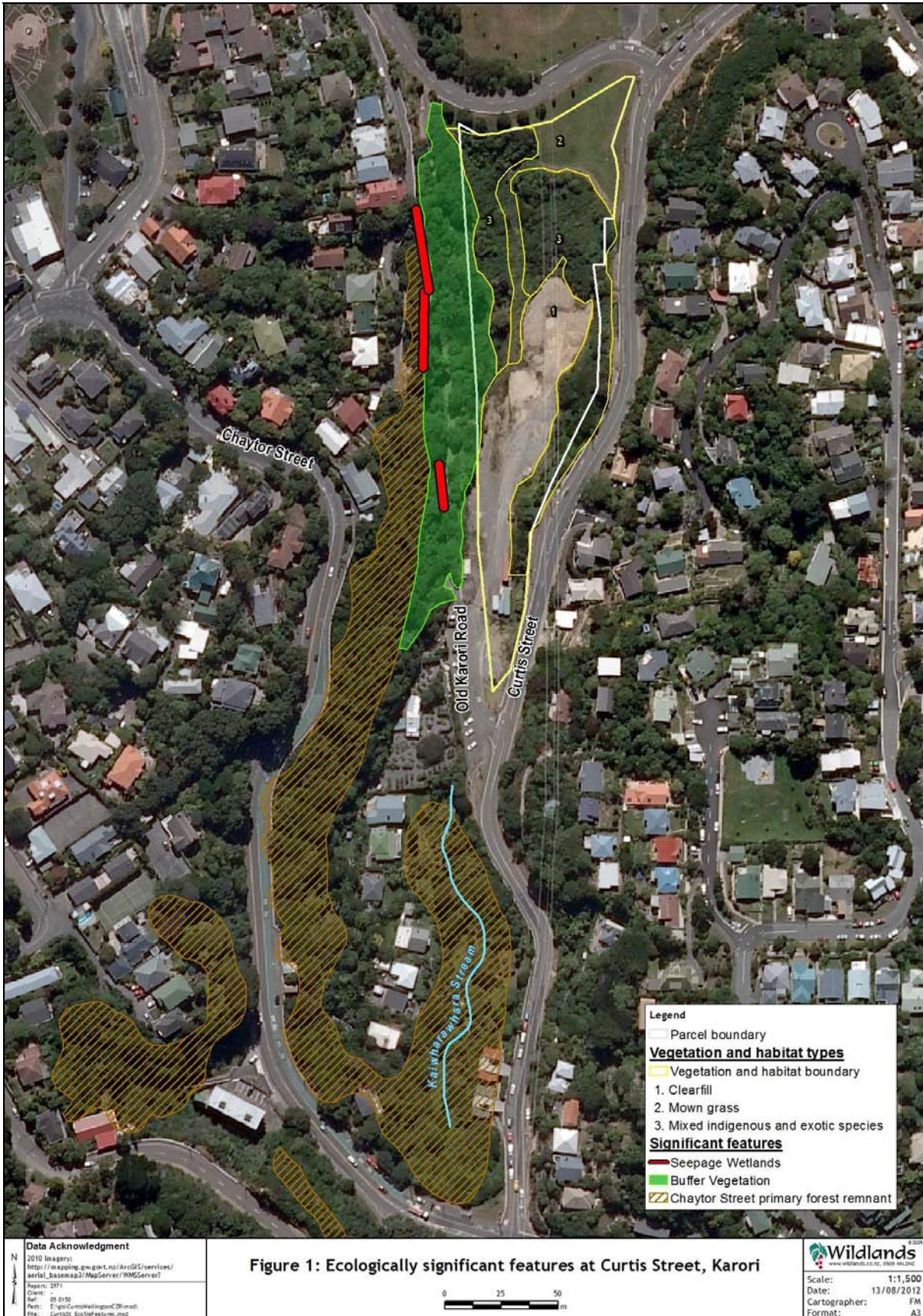
Director – Survey and Planning

E-mail: itl@spencerholmes.co.nz

CC: Terrace Heights Holdings – Attn: Eyal Aharoni

APPENDIX 2

Ecological values on and adjacent subject site



SUMMARY PLANNING ASSESSMENT: CURTIS STREET REZONING

ZONING OPTION	BENEFITS	DISADVANTAGES, COSTS AND RISKS	PLANNING OUTCOME
<p>OPTION 1 STATUS QUO (OPEN SPACE / RESIDENTIAL)</p> <p>LIKELY TO RESULT IN PRIVATE PLAN CHANGE</p>	<ul style="list-style-type: none"> Requires no direct action on the part of Council Avoids costs and risks associated with a Council plan change 	<p>Process related:</p> <ul style="list-style-type: none"> Rezoning process will still commence (private plan change) Under private plan change process Council will still be involved but with a reduced level of control <p>Planning related:</p> <ul style="list-style-type: none"> Does not represent the most efficient use of the land Difficulties in District Plan application (split zones across one property) Overhead power lines create sensitivities in developing the land for residential purposes Opportunities for non-residential activities are limited under these restrictive zonings. 	<p>This option is not recommended because:</p> <ul style="list-style-type: none"> it does not represent the most efficient use of the land A private plan change would be lodged thereby diminishing Councils ability to lead appropriate planning outcomes for the site.
<p>OPTION 2 – SUBURBAN CENTRE / CENTRE</p>	<ul style="list-style-type: none"> Ready made zoning – focus on core retail, offices, mixed-use Would increase the value of the land and potentially attract high amenity uses like core retail / fine grain retail Allows for generous development 	<p>Process related:</p> <ul style="list-style-type: none"> Neither of these two options would be consistent with Council’s centre policy “Suburban Centre” zoning is to be superseded (by PC73) “Centres” zoning could not be 	<p>This option is not recommended because:</p> <ul style="list-style-type: none"> Centres or Suburban Centres zoning would confer significant development rights on the land with actual and potential adverse effects including trade impacts on other centres and impacts on the road network that

APPENDIX 3

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ZONING OPTION	BENEFITS	DISADVANTAGES, COSTS AND RISKS	PLANNING OUTCOME
	opportunities and flexibility	<p>applied until PC73 becomes operative (estimated early 2013)</p> <ul style="list-style-type: none"> • Costs and risks associated with a Council plan change • Possibility of further litigation through appeals to the Environment Court. <p>Planning related:</p> <ul style="list-style-type: none"> • Permissive zoning conferring significant as of right development rights - therefore limited ability to manage some adverse effects, most notably trade impacts on other centres and impacts on the road network. • Does not respond to site specific values including residential character and landscape values • Presence of overhead powerlines would limit the mixed-use potential of a Centres zone • Site setting may not provide the amenity generally expected for centre zonings 	<p>may not be able to be mitigated via a resource consent</p> <ul style="list-style-type: none"> • Does not respond to site specific values including residential character and landscape values • Centres or Suburban Centre zoning would compromise Council's centres policy • Council has made a decision in PC73 to move away from the permissive "Suburban Centre" zone • Once PC73 becomes operative the "Suburban Centre" zone will cease to exist • Centres zone is not yet operative

APPENDIX 3

ZONING OPTION	BENEFITS	DISADVANTAGES, COSTS AND RISKS	PLANNING OUTCOME
OPTION 3 – BUSINESS 1 AREA	<ul style="list-style-type: none"> • Ready made zoning – focus on core retail, offices, mixed-use • Would increase the value of the land and potentially attract high amenity uses like core retail / fine grain retail • Allows for a varied mix of commercial and residential activities to locate as of right • Scope for urban design assessment of new development 	<p>Process related:</p> <ul style="list-style-type: none"> • Business 1 Area under PC73 is not yet operative (estimated early 2013) • Costs and risks associated with a Council plan change • Possibility of further litigation through appeals to the Environment Court <p>Planning related:</p> <ul style="list-style-type: none"> • Does not respond to site specific values including residential character and landscape values • Limited restriction on retail activities which could create adverse environmental effects (e.g. traffic) 	<p>This option is not recommended because:</p> <ul style="list-style-type: none"> • Business 1 Area zoning does not respond to site specific values including residential character and landscape values • Business 1 Area zoning would confer significant development rights on the land with actual and potential adverse effects on the road network that may not be able to be mitigated via a resource consent
OPTION 4 – BUSINESS 2 AREA	<ul style="list-style-type: none"> • Ready made zoning – provides for trade, industry, some retail • Best fit of existing zonings in terms of trade and traffic impacts (relatively “low-intensity” characteristics in terms of retail trade and traffic generation) • Efficient use of land in terms of the activities it provides for 	<p>Process related:</p> <ul style="list-style-type: none"> • Business 2 Area under PC73 is not yet operative (estimated early 2013) • Costs and risks associated with a Council plan change • Possibility of further litigation through appeals to the Environment Court 	<p>This option is not recommended because:</p> <ul style="list-style-type: none"> • Business 2 Area zoning does not respond to site specific values including residential character and landscape values and lack of urban design controls

APPENDIX 3

ZONING OPTION	BENEFITS	DISADVANTAGES, COSTS AND RISKS	PLANNING OUTCOME
		<p>Planning related:</p> <ul style="list-style-type: none"> Does not respond to site specific values including residential character and landscape values Provides for generous (4000m²) building footprints without an urban design assessment, which may not be appropriate for site and surrounding neighbourhood 	
OPTION 5 – BUSINESS (CURTIS STREET)	<ul style="list-style-type: none"> Would generally provide for efficient use of land and resources Allows for tailor-made provisions that recognise site specific values including residential character and landscape values Provides potential for greater commercial/office space in the western suburbs Minimises the risk of inappropriate development and activities 	<p>Process related:</p> <ul style="list-style-type: none"> Costs and risks associated with a Council plan change Possibility of further litigation through appeals to the Environment Court <p>Planning related:</p> <ul style="list-style-type: none"> Would create an additional zoning layer and complexity in the District Plan Potentially site-specific restrictions and less certainty for land owner 	<p>This option is recommended because:</p> <ul style="list-style-type: none"> Allows for a Council initiated plan change process which enables Council to propose appropriate planning provisions for the site. Provisions can be tailored to the site specific values including residential character and landscape values Avoids process related problems of using an existing zoning
OPTION 6 – OPEN SPACE / RECREATION	<ul style="list-style-type: none"> Ready made zoning that provides for recreation and open space use Allows for possible community use of the land Opportunity to further contribute to 	<p>Process related:</p> <ul style="list-style-type: none"> May require Council to purchase the land Ongoing cost to ratepayers for maintenance and upkeep 	<p>This option is not recommended because:</p> <ul style="list-style-type: none"> it does not represent the most efficient use of the land the landowner is rendered with

APPENDIX 3

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ZONING OPTION	BENEFITS	DISADVANTAGES, COSTS AND RISKS	PLANNING OUTCOME
	<p>the site specific values including residential character and landscape values</p>	<ul style="list-style-type: none"> • There is no identified demand for additional open space / recreation land in the area. • Possibility of further litigation through landowner appeal to the Environment Court <p>Planning related:</p> <ul style="list-style-type: none"> • Does not represent the most efficient use of the land 	<p>largely undevelopable land</p> <ul style="list-style-type: none"> • May require Council to purchase the site from the landowner

APPENDIX 3

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