

Wellington City District Plan - Plan Change 61

Supplementary Section 32 Report

Evaluation following Hearing of Submissions.

1. Statutory Context

Under Section 32(3) an evaluation must examine:

- (a) The extent to which each objective is the most appropriate way to achieve the purpose of the Resource Management Act 1991 (the Act) (i.e. promotion of sustainable management); and
- (b) Whether the policies, rules and other methods are the most appropriate for achieving the objective(s).

In doing so, the evaluation is required to “have regard to” efficiency and effectiveness and under Section 32 (4) “must take into account” the benefits and costs of policies, rules or other methods and the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the policies, rules or other methods.

Changes to section 32 in 2003¹ has shifted the focus of the evaluation required from one of being satisfied as to “necessity” to an examination of the most appropriate way in which each objective achieves the purpose of the Act and, having regard to their efficiency and effectiveness, whether policies and rules are the most appropriate for achieving the objectives.

One of the first cases to address these changes was *Eldamos Investments Limited v Gisborne District Council* (W047-05). To reflect the changes in section 32, but also the practical reality that the objectives of a District Plan can not be assumed to meet the requirements the Act, the approach (or framework) now taken by the Court (as set out in *Eldamos*) is as follows:

An objective in a district plan is to be evaluated by the extent to which:

- (1) it is the most appropriate way to achieve the purpose of the Act (section 32(3)(a)); and
- (2) it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (section 72); and
- (3) it is in accordance with the provisions of Part 2 (section 74(1)).

¹ Resource Management Amendment Act 2003

A policy, rule, or other method in a district plan is to be evaluated by whether:

- (1) It is the most appropriate way to achieve the objectives of the plan (section 32(3)(b)); and
- (2) It assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (section 72); and
- (3) It is in accordance with the provisions of Part 2 (section 74(1)); and
- (4) (If a rule) it achieves the objectives and policies of the plan (section 76(1)(b)).

2. Objectives

In the case of Plan Change 61, no new objectives are proposed, therefore the need for the evaluation in (a) above does not arise.

The District Plan has an identical objective for both the rural and residential areas as follows;

“To maintain and enhance natural features (including landscapes and ecosystems) that contribute to Wellington’s natural environment.”
(Rural Objective 14.2.5 and Residential Objective 4.2.5)

The Plan Change therefore has no effect on this Objective, which clearly assists the Council with its functions in order to achieve the purpose of the Act, and is in accordance with the provisions of Part 2.

3. Recommended Policy 4.2.5.5.

An existing Residential Area policy relevant to the above objective is as follows:

*“Policy 4.2.5.4
Encourage retention of existing vegetation, especially established trees and existing native vegetation.”*

A new policy relevant to the above objective is recommended to be included for the land that is subject to the Plan Change as follows:

*“Policy 4.2.5.5
Ensure that any subdivision or development, including vegetation clearance, earthworks, and construction, alteration and addition to buildings and structures on land identified in Appendix 26 to Chapter 5, is developed and designed in a way that will respect and integrate with the ecological and landscape values of the land.”*

Evaluation

The options to be evaluated are whether to have the recommended additional policy or to have no additional policy.

In general terms, a site specific policy as recommended has more direction than the existing Policy 4.2.5.4. By containing a greater degree of specificity than the existing policy the proposed additional policy will be more effective and efficient in the manner in which it achieves Objective 4.2.5 and other related objectives of the District Plan than having no such additional policy.

The recommended policy will be more effective in achieving Objective 4.2.5 than having no specific policy because it covers the broad range of activities that can occur on the land and links those activities to the protection of the ecological and landscape values of the land.

The recommended policy will be more efficient in achieving Objective 4.2.5 than having no specific policy because it gives more certainty to resource users and the community as to the manner in which the Objective is to be achieved.

There will be environmental benefits in having the recommended policy rather than no policy because of the increased specificity given to the relationship between the physical development of the Plan Change land and its ecological and landscape values.

There will be environmental costs associated with the loss of significant vegetation and habitat if the recommended policy is not adopted and reliance is placed on a more general and less effective policy such as Policy 4.2.5.4.

There will be economic costs on resource users associated with the recommended policy as a result of its specificity and potentially increased intervention in any development of the Plan Change land.

The social costs and or benefits of adopting the recommended policy as opposed to reliance on a more general and less effective policy will relate to the community perception of the balance between the provision of additional housing stock and the protection of ecological and landscape values. In this respect, submissions from land owners both within and outside the Plan Change land also referred to the significant ecological and amenity values of the vegetation and habitat, and that it should be protected from development. On balance, housing stock can be developed on land that does not have the same ecological and landscape values as the Plan Change land, whereas these values will be reduced if development is not managed.

The risk of not acting on the basis of uncertainty as to the quality and/or significance of the values that are sought to be protected by the recommended

policy are moderate given that reliance on existing Residential Area Objectives and Policies alone may not provide the guidance required when resource consent applications for development are considered.

Conclusions as to Recommended Policy

1. Having regard to the above, the recommended policy is the most appropriate way to achieve the objectives of the plan.
2. By requiring that physical development of the land “*will respect and integrate with the ecological values of the land*”, the policy is directly related to the Council’s functions under section 31 of the Act.
3. The proposed policy is also in accordance with the provisions of Part 2 of the Act, specifically section 6(c) and sections 7(c), 7(d), 7(f) and 7(g).

4. Recommended Rules

In summary the recommended rules provide for:

As a Permitted Activity - a small amount of vegetation clearance around existing dwellings to cater for ongoing management of residential activities associated with those dwellings, including additions and alterations.

As a Discretionary Activity (Unrestricted) - any subdivision, use or activity, including the construction, alteration of, and addition to buildings or structures, that is not a permitted activity, subject to the following standards and assessment criteria:

Standards

- The location of new residential buildings and residential structures and the construction of new driveways shall be in accordance with the ‘indicative residential building sites’ and ‘indicative driveways’ identified in Appendix 26. Each building site (excluding driveways) shall not exceed 250m².
- No more than one household unit shall be permitted on each of the ‘indicative residential building sites’ as identified.
- An Earthworks Management Plan shall be provided in respect of any proposed subdivision, use or building development.

Assessment Criteria

- The extent to which the development minimises the amount of vegetation removal and earthworks beyond the indicative residential building sites. This should involve consideration of alternative access, earthwork and vegetation clearance options where relevant.
- The environmental effects caused during the construction phase
- The proposed remediation measures employed during and after completion of the works and the timeframe for giving effect to these.
- Whether traffic, parking and site access issues are adequately addressed through the design of the proposal.
- Whether proposed allotments and subsequent development within those allotments are capable of accommodating permitted activities in general compliance with the relevant District Plan rules.
- The extent of compliance with the relevant parts of the Code of Practice for Land Development.
- The requirements of section 106 of the Act.

5. Rule Evaluation

Appropriateness

The appropriateness of the Recommended Rules is evaluated against:

- the existing Rural zone provisions where only one dwelling per property is permitted; and
- the more intensive development sought to be incorporated into the Plan Change by submitters 96 and 97.

By way of comparative analysis, as set out in Table 1 attached, the recommended Rules are the most appropriate way of meeting the objectives of the District Plan because they strike an appropriate balance between the residential capacity of the Plan Change land and the need to protect indigenous vegetation and habitat with high ecological and landscape values that the community regards as significant.

This is more appropriate than retaining the existing Rural Area rules that have no indigenous vegetation removal controls and allow a range of rural activities without resource consent that could irreversibly damage and/or destroy the ecological and landscape values of the land. The existing Rural area rules therefore do not achieve the Rural Area Objective 14.2.5 - *“To maintain and enhance natural features (including landscapes and ecosystems) that contribute to Wellington's natural environment.”*

The Recommended Rules are also more appropriate than the Rules for the Plan Change proposed by submissions 96 and 97 which request a more intensive level of allowable residential development within 11A Huntleigh Park Way and 83 Heke Street which will result in the loss of a greater amount of indigenous vegetation, particularly vegetation that has been identified as “highly ecologically significant”. The resultant loss of vegetation and ecological and landscape values is less likely to achieve Objective 4.2.5 - *“To maintain and enhance natural features (including landscapes and ecosystems) that contribute to Wellington's natural environment”*- than the recommended Rules.

Council's Functions

The Recommended Rules will assist the Council to achieve the integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district pursuant to its functions under section 31. In addition they will control the adverse effects of residential use and development of the land and assist with the maintenance of indigenous biological diversity.

The control of subdivision is one method that can be used to carry out the Council's functions. Other methods include District Plan Rules.

Part 2 of the Resource Management Act 1991

The Recommended Rules are in accordance with Part 2 of the Act. The Plan Change as a whole, and the Recommended Rules in particular, promote sustainable management of the natural resource of ecologically significant vegetation and the landscape in which it is set by managing the development of the land.

Additional residential development of the Plan Change land to the degree provided for by the rules meets the enabling provisions of section 5 while protecting the indigenous vegetation and habitat for future generations, safeguarding the life-supporting capacity of the ecosystem and avoiding and/or mitigating potential adverse effects on the environment.

The protection of significant indigenous vegetation and habitat is recognised and provided for in accordance with section 6(c) and particular regard has been had to the matters set out in section 7(b), (c), (d), (f), and (g).

Plan Change 61 – Supplementary Section 32 Report - Table 1

	<i>Existing Rural Zone</i>	<i>Recommended Rules</i>	<i>Submissions 96 and 97</i>
Environmental costs	Has the potential to result in high environmental costs through loss of significant vegetation and habitat and through significant adverse effects of permitted rural activities on the ecological and landscape values of the land	Environmental costs are low to moderate as a result of the limitations on residential capacity, the identification of building sites in the less ecologically significant vegetation and the limitations on vegetation clearance. Some environmental effects beyond individual sites.	Environmental costs are moderate to high as a result of higher residential capacity and the identification of building sites in highly ecologically significant vegetation and habitat and the potential for more vegetation to be cleared. Potential adverse effects on Huntleigh Park Forest. Greater environment effects beyond individual sites due to development densities.
Environmental benefits	Provides clarity that no further residential development is permitted on all but one lot in the Plan Change area	Highly ecologically significant indigenous vegetation areas are protected from development; limitations are placed on amount of indigenous vegetation that can be removed; environment will benefit from silt and erosion control through earthworks management plan.	Certainty regarding vesting in Council or covenanting of areas of indigenous vegetation and habitat.
Economic costs	Compliance costs for land owners of making applications for resource consent due to inappropriate zoning	Opportunity costs for land owners through limitations on residential development. Compliance costs in obtaining and processing information and applying for resource consents for discretionary activities. Development costs per dwelling likely to be high. Costs for third parties in participating in resource consent process.	Opportunity costs for some land owners through limitations on residential development. Compliance costs in obtaining and processing information and applying for resource consents for discretionary activities. Costs for third parties in participating in resource consent process.
Economic benefits	Allows owner of vacant lot to develop one dwelling and carry out a range of rural activities	Allows owners of most lots to develop and capitalize on an additional residential site. Allows owner of vacant site to develop and capitalize on two residential sites. Allows all owners to carry out minor building additions and vegetation clearance without the need to obtain a resource consent.	Allows owners of most lots to develop and capitalize on an additional residential site. Allows owner of vacant site to develop and capitalize on multi-unit residential development. Allows owner of 83 Heke Street to develop and capitalize on two additional residential sites. Allows most owners to carry out minor building additions and vegetation clearance without the need to obtain a resource consent.

Social costs	<p>Potential destruction of areas of indigenous vegetation and habitat with ecological and landscape qualities valued by the community.</p> <p>Adverse effects of inappropriate land use zoning on nearby residential neighbourhood.</p>	<p>Some loss of less ecologically significant vegetation and habitat, and landscape qualities valued by community. Housing density increased contrary to wishes of majority of community. No permanent protection of all indigenous vegetation.</p>	<p>Loss of highly ecologically significant vegetation and habitat and loss of less ecologically significant vegetation and habitat, and landscape qualities valued by community. Housing density significantly increased contrary to wishes of majority of community. No permanent protection of all indigenous vegetation.</p>
Social benefits	None	<p>Elimination of inappropriate rural land use zone from residential area. Additional housing within a mature community.</p>	<p>Elimination of inappropriate rural land use zone from residential area. Additional housing within a mature community. Some permanent protection of indigenous vegetation.</p>
Efficiency	<p>The rules are clear that only one dwelling per lot is permitted, but not efficient in regulating the position of dwellings and buildings relevant to significant ecological and landscape features.</p>	<p>The residential capacity assessment and identification of future building sites and driveways provides a clear indication of whether any proposed development is considered acceptable in principle. Resource consent process allows detailed consideration of each development application.</p>	<p>The residential capacity assessment and identification of future building sites and driveways and detailed development plans for some properties provide a clear indication of whether any proposed development is considered acceptable in principle. Resource consent process allows detailed consideration of each development application.</p>
Effectiveness	<p>The rules are effective in limiting further residential development but ineffective in achieving the objectives of the District Plan in respect of ecological and landscape values because there are no constraints on the removal of indigenous vegetation. Buildings and other physical development can occur without regard to the objective to maintain and enhance natural features (including landscapes and ecosystems) that contribute to Wellington's natural environment.</p>	<p>The rules are effective in limiting further residential development and preventing large scale clearance of indigenous vegetation and establishing a resource consent discretionary process to evaluate, control, or refuse development applications based on their merits and whether or not they achieve the objectives and policies of the District Plan. Rules are therefore effective in ensuring that development that does not enhance the natural features (including landscapes and ecosystems) that contribute to Wellington's natural environment does not occur..</p>	<p>The rules are not effective in limiting the amount of further residential development and preventing large scale clearance of indigenous vegetation. Rules are therefore ineffective in ensuring that the only development that may occur is development that enhances the natural features (including landscapes and ecosystems) that contribute to Wellington's natural environment.</p>
Risk of acting or not acting	<p>There is ample information provided by a number of experts about the subject matter of the proposed policies and rules, which relates to the protection of the indigenous vegetation and habitat of the Plan Change land. There is a greater risk of not implementing the Plan Change in a manner that provides reasonable protection to these ecological and landscape values than there is in implementing it in a manner that endangers a large portion of the vegetation. Once the vegetation has been cleared it will take generations to grow again to the same quality and value.</p>		