

# APPENDIX 1

**COMMISSIONERS' RECOMMENDATION: FOR WELLINGTON CITY COUNCIL**

**SUBJECT: DISTRICT PLAN CHANGE N<sup>o</sup> 62 – REZONING AT BELLEVUE RESIDENTIAL ESTATE (NEWLANDS) AND ASSOCIATED POLICY AMENDMENT**

**DATE OF HEARING: 10 & 12 NOVEMBER 2008**

**COMMISSIONERS: Stuart Kinnear (Chair)  
Robert Armstrong**

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## **1 RECOMMENDATION**

As Hearing Commissioners with delegated authority to hear submissions and recommend a decision on Proposed Private Plan Change 62, pursuant to clause 10 of Part 1 of the First Schedule to the Resource Management Act 1991 (“the Act”), we have given careful consideration to the advice from Council officers, the evidence and/or submissions of submitters that appeared, and other submissions, and we recommend that Council:

- 1. Receive the information.*
- 2. Approve District Plan Change 62 with the following amendments, additions and deletions resulting from the consideration of the submissions and the further submission as follows:*
  - (i) Amend Volume 3, District Planning Map 24 to rezone the land currently zoned Residential or Rural Area on the periphery of the Bellevue Estate to Conservation Site (as notified). The area to be rezoned is shown on the map attached as Attachment 1 to this decision report.*
  - (ii) Amend Volume 3, District Planning Map 24 to rezone two areas of land currently zoned Conservation Site to Outer Residential at the end of Tamworth Crescent and Bendigo Avenue (as notified). The area to be rezoned is shown on the map attached as Attachment 1.*
  - (iii) Amend Volume 3, District Planning Map 24 to rezone an area of land from Rural to Outer Residential (to provide for Stage 8 of the Bellevue Estate) as shown on the map attached as Attachment 1.*
  - (iv) Insert a new Appendix area into Volume 1, Chapter 5 of the District Plan as set out in Attachment 2 attached to this decision report, to provide additional site specific controls with respect to the Stage 8 Bellevue Estate area.*
  - (v) Amend Policy 4.2.9.2 to include reference to the provision of a connector road between Glanmire Road and Domett Street as follows (new text underlined):*

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*“Provide for and, in some circumstances, require extensions to the existing road network. In particular the actual development or potential for future development of the following routes will be sought.....*

- *From Domett Street to Glanmire Road*”

3. *Adopt the findings as to section 32 considerations set out in section 5.6 of this report.*
4. *Accept and/or reject in whole or in part all submissions and the further submission to the extent that they accord with the above recommendations.*

## 2 PROPOSED DISTRICT PLAN CHANGE 62

### 2.1 THE PLAN CHANGE AS NOTIFIED

Proposed District Plan Change 62 is a private plan change requested by Jarden Properties. The purpose of the plan change is to rezone land around the fringe of the Bellevue Residential Estate in Newlands. The owner of the site is Bellevue Lands Limited and Ngaio Forest Suburb.

As notified the plan change request sought the following changes to the Wellington City District Plan:

#### *Change in Zoning on Planning Map 34*

1. The existing Rural zoning over approximately 4.87ha of land between Domett Street and Glanmire Road would be replaced with an Outer Residential Area zoning. This would enable the development of Stage 8 of the Bellevue Residential Estate.
2. The existing Conservation Site zoning over two small areas of land at the end of Tamworth Crescent and Bendigo Avenue (a total of 0.79ha) would be replaced with Outer Residential Area zoning.
3. Strips of land currently zoned either Outer Residential Area (5.77ha) or Rural Area (0.52ha) on fringe areas of the Bellevue Residential Estate would be replaced with Conservation Site zoning.

#### *Amendment to Policy 4.2.9.2*

4. Policy 4.2.9.2 which signals that new extensions to the existing road network will be provided for in some circumstances, would be amended to include “*From Domett Street to Glanmire Road*” as one of the actual or potential future road extensions.

In addition ‘indicative’ subdivision layout and earthworks plans for the Stage 8 area (between Domett Street and Glanmire Road) were provided with the plan change request application. As noted in the officer’s report, the plan change process does not enable or require a decision to be made on the detailed layout and design of the subdivision. The issue for consideration is at a higher level as to whether or not the land is suitable for residential development. Resource consents from Wellington City Council (for subdivision, earthworks, and encroachment in part into the ridgelines and hilltops overlay) would be subsequently required for the development as shown on the

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indicative plans; and from the Greater Wellington Regional Council with respect to earthworks and impact on the local stream - with details of the final design to be determined at that stage. However, we find the inclusion of the 'indicative' plans as part of the plan change documentation particularly helpful as it enables a more robust assessment of the likely environmental effects of the proposed change in zoning.

Key features of the indicative subdivision and earthworks plans include:

- forty eight residential allotments ranging in size from 410m<sup>2</sup> to 970m<sup>2</sup>, with a large balance lot of approximately 2ha adjacent to Glanmire Road. The plan change application states that there will be one house per site.
- an area of regenerating bush to be covenanted is identified.
- a reserve of 1400m<sup>2</sup> is shown - and this would provide a connection to the land zoned Conservation Site below.
- an indicative road connection is shown between Glanmire Road and Domett Street. A small cul-de-sac extends off this link to provide access to the allotments at the southern end of the site.
- the earthworks involve the lowering of the hilltop at the end of Domett Street, with the material placed at the head of the adjoining gully (to achieve a balance of cut to fill). The total quantity of cut to fill is 85,000m<sup>3</sup>. The maximum cut is 9m high with a 5m high average.

Following the receipt of submissions, and discussions with Council officers, the applicant provided modified plans prior to the Council hearing and two of these plans were attached to the officers' report. The modified plans show a small reduction in the extent of fill to be placed within the lower gully (shortened by 25m to reduce the amount of the ephemeral stream that would need to be filled), and indicate an area of landscape planting over the fill. Further, the applicant has identified the extent of the area in which buildings could be constructed.

## 2.2 BACKGROUND

### 2.2.1 Stage 8 Area

#### *Description of the Site*

The area to be rezoned from Rural to Outer Residential Area to provide for the Stage 8 area is located between the recently developed Stage 7 of the Bellevue Residential Estate (located in Domett Street) and Glanmire Road. The site is a hilltop plateau, with a steep V shaped gully on the western side that runs parallel with Glanmire Road. An ephemeral stream in the upper part of the gully becomes a permanent water body in the lower gully.

Regenerating bush predominates on the southern hill top escarpment slope, and this adjoins a Conservation Site Gilberts Bush (Site 5I) to the south. Fill from previous stages of the Bellevue residential development has been placed on the hilltop plateau, and the vegetation in this location is mainly grass, gorse and weed species. The upper section of the gully around the top of Glanmire Road is predominately pasture, currently grazed by several horses.

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To the north-west, and north, the site adjoins established residential areas within Newlands that were built around the 1970's. Adjacent to the site to the north there is a communications site designated by Airways Corporation and Wellington Airport (reference A1). To the west (on the opposite side of Glanmire Road) three new three-level dwellings have recently been constructed immediately adjacent to the road, with a vacant section in-between. Land to the south, and south west, is zoned Rural Area with regenerating native bush and scrub and recently developed low density rural residential housing. Brandons Rock, a distinctive rocky peak, is located to the west of the site off Edgecombe Street. There is also a smaller rocky outcrop on the southern side of the escarpment that is visible from Glanmire Road.

Domett Road is a two lane road that does not have a turning head, probably in anticipation that it would continue into the plan change land. Glanmire Road in the vicinity of the site is a very narrow, windy, one way rural road.

The lower portion of the lower fill area near Glanmire Road extends into the Ridgelines and Hilltops overlay. Part of the southern area of the proposed cut, and six of the proposed allotments, encroach into the Greater Wellington Regional Council Hazard Line (Moderate Slope Failure Risk).

## ***Zoning History***

The Stage 8 area was zoned Residential A1 (this being the general residential zone) in the Wellington City Transitional District Plan (1985). However, in the Proposed District Plan (notified in 1994) the Stage 8 area was zoned Rural. Bellevue Lands Ltd made a further submission seeking that the land be rezoned back to Residential. The Council decision on the Proposed District Plan in 1996 resolved that it should remain Rural, and no appeal was subsequently lodged.

In 2004 the Council received a request from Bellevue Lands Ltd to rezone approximately 5.5ha from Rural to Outer Residential to form Stage 8 of Bellevue Residential Estate. This request coincided with the notification of Proposed Plan Change 33 (Ridgelines and Hilltops (Visual Amenity) & Rural Area), with the Ridgelines and Hilltops overlay affecting the bulk of the Stage 8 development area. Because of uncertainties at the time, with the inclusion of the area into the Ridgelines and Hilltops overlay untested, the following resolutions were made by the District Plan and Reserves Management Committee in 2004:

- “3. Agree that the adoption of a private plan change for the rezoning of the proposed Stage 8 of the Bellevue Estate subdivision will only be considered where the change will not prejudice Plan Change 33.*
- 4. Note that the rezoning of the proposed Stage 8 of the Bellevue Estate subdivision may be addressed as an entirely private plan change.*
- 5. Notes that the position regarding possible Council adoption of a private plan change may be able to be clarified once further submissions have been received or after relevant decisions are made on submissions on Plan Change 33.”*

Bellevue Lands Ltd did not pursue a plan change at that time but later made submissions on Proposed Plan Change 33, to rezone Stage 8 to residential and to remove the Ridgelines and Hilltops overlay. The rezoning request was declined as it was determined to be outside the scope of the proposed plan change, and the removal of the Ridgelines and Hilltops overlay was declined due to a lack of visual information.

Bellevue Lands Ltd subsequently appealed the Council's decision to the Environment Court. To assist with the resolution of the appeal the Council commissioned landscape architects Boffa Miskell Limited to provide advice on whether the Ridgelines and Hilltops overlay should remain, be modified or removed in relation to the Stage 8 area. The appeal was resolved through mediation with the majority of the Ridgelines and Hilltops overlay subsequently removed from the Stage 8 site (to its present alignment). This was predominantly on the basis of the findings of the Boffa Miskell report that the site is located below the main ridgeline and immediately adjacent to a portion of a ridgeline that has already been significantly modified by residential development.

### ***Draft Reserves Agreement***

The applicant has offered to vest approximately 38ha of land located below the Bellevue Estate, in the event that Stage 8 proceeds. This area is zoned Conservation Site (Gilberd Bush – Site Reference 5I). It contains remnants of the original coastal forest and regenerating forest, and could be developed to link into the Council's Harbour Escarpment Walkway. The Council has agreed in principle to accept the Conservation Site in lieu of development contributions, should the subdivision of Stage 8 proceed. A draft reserves agreement has been prepared to this effect.

### **2.2.2 Land to be rezoned from Conservation to Outer Residential**

There are two pockets of land to be rezoned from Conservation Site to Outer Residential Area.

#### ***Tamworth Crescent***

Resource consent was granted on a publicly notified basis in 2002 (SR 82467) for a subdivision to enable Stage 9 of the Bellevue Residential Estate development to proceed, including an area of land on the western side of Tamworth Crescent currently zoned Conservation Site. The issue of the ecological and amenity values of the wider site (including land zoned Outer Residential Area and Conservation Site) for the Stage 9 development were addressed through specialist evidence provided at the resource consent hearing from Victoria Lamb (Technical Assistant to the Town Belt and Reserves Curator), Boyden Evans (landscape architect) and Paul Blaschke (ecologist). As a result of this evidence the Council's decision concluded that:

*“...although some of the area designated for conservation would be lost if developed for residential use as proposed, this area is not considered to be as ecologically valuable as some of the land to be retained. The outcome of this trade-off would be the protection of the land containing more significant vegetation growth situated within residentially zoned land”.*

The Council's decision was appealed to the Environment Court and resolved through a Consent Order issued on 19 December 2002. On 28 September 2006, resource consent (SR151510) was granted for earthworks over the site to facilitate the subdivision approved in 2002, and these works have been completed with the site predominantly clear of vegetation.

In 2007 Ngaio Forest Suburbs applied for resource consent to construct a multi-unit development on the site and to undertake an associated subdivision around it. The Council has determined that the application will be processed on a limited notified basis, unless written approval can be obtained from five adjoining property owners. Processing of the application has been subsequently suspended at the request of the applicant. In the meantime, the resource consent for the subdivision granted in 2002 over this site has lapsed (on 19 December 2007).

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## *Bendigo Avenue*

The area to be rezoned at the end of Bendigo Avenue is also part of Stage 9 of the Bellevue Residential Estate development. This land has been cleared and subdivided for residential housing (also as part of SR 82467). Houses have recently been constructed on some lots and others are vacant or for sale.

### **2.2.3 Land to be rezoned from Rural or Outer Residential to Conservation Site**

The area to be rezoned is comprised mainly of strips of regenerating bush along the edge of the Bellevue Estate that is adjacent to land currently zoned Conservation Site land (that is, Gilberts Bush).

## **3 SUBMISSIONS AND HEARING**

The private plan change was publicly notified on 3 November 2007. A total of 15 submissions and 1 further submission were received as set out in the table below:

<b>Sub No.</b>	<b>Submitter</b>	<b>Physical Address of Landowner</b>
1	Douglas Blackwood	73 Tamworth Crescent
2	Justine Cannon and Michael Caldwell	190 Glanmire Road
3	Llewlyn and Judith Richards	185 Glanmire Road
4	Wellington Harbour Landscape Protection Group	N/A
5	George Thomson and Louise Delaney	128 Glanmire Road
6	Shane Leonard and Mary Dudley	113 Glanmire Road
7	Royal Forest and Bird Protection Society	N/A
8	Jimmy and Sarah Gopperth	43 Sunhaven Drive
9	Tibor Gabanyi	58 Tamworth Crescent
10	Pamela Whittington	5B Edgecombe Street
11	Julie Russell and Rob Lapsley	111 Glanmire Road
12	Graham and Rosalie Fagan	28 Sunhaven Drive
13	Spencer Morris and Margaret Cosgrove	Mt Biggs Road, Fielding
14	Neville Williams	3 Edgecombe Street
15	Greater Wellington Regional Council	N/A

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Further No.	Sub	Further Submitter	
FS 1		George Thomson and Louise Delaney	128 Glanmire Road

A petition signed by thirty five people in opposition was also received, with several of the signatories also submitters.

Eleven of the submitters were concerned with the rezoning of Stage 8 from Rural to Outer Residential Area, with nine of these in opposition, and two in either support or conditional support. The relief sought by the submitters in opposition was either to retain the existing zoning, or rezone the land to Conservation Site. The majority of the submitters also opposed the associated provision of the proposed amendment to policy 4.2.9.2 to acknowledge the provision of a connector road between Glanmire Road and Domett Street.

The proposed rezoning of the areas of Outer Residential Area or Rural Area to Conservation Site was generally supported (ten submitters). A further submitter supported the rezoning of the Outer Residential Areas to Conservation Site only (seeking a review of the proposal to rezone land from Rural Area to Conservation Site).

Responses to the proposal to rezone the areas of Conservation Site at the end of Tamworth Crescent and Bendigo Avenue to Outer Residential Area were mixed, with the majority concerned with the Tamworth Crescent site only.

It should be noted that the scope of our deliberations and recommendations is confined to the matters raised by submitters and to the content of the notified plan change.

## 3.2 EVIDENCE HEARD

The following parties gave formal evidence at the Hearing, which took place on 10 November and 12 November 2008:

### Monday 10 November – The Applicant

- **Andrew Beatson** – opening submissions of Counsel for the Applicant
- **Ian Prentice** – surveyor and manager of the Bellevue subdivision
- **Rodney Halliday** – resource management planner
- **John Hudson** – landscape architect

### Thursday 12 November – Submitters

- **Justine Cannon and Michael Caldwell** – submission 2
- **Llewelyn and Judith Richards** – submission 3
- **George Thomson and Louise Delaney** – submission 5
- **Wellington Harbour Landscape Protection Group** – submission 4
- **Spencer Morris and Margaret Cosgrove** – submission 13
- **Greater Wellington Regional Council** – submission 15 (Ling Phang, resource management planner)
- **Graham Fagan** – submission 12
- **Tibor Gabanyi** – submission 9

Other persons present for the duration of the hearing were:

- **Louise Miles**, the Council's contracted Reporting Officer
- **Angela McArthur**, the Council's contracted Landscape Architect
- **Cameron Walker**, Reserve Planning Officer

## 3.3 OFFICER'S REPORT

Ms Miles introduced her report early in the proceedings, and made further comments at the closing of the hearing in response to the evidence presented. Her report:

- addresses the Plan Change proposal and the likely form of future development resulting from it
- describes the site, and relevant background history
- outlines the legislative requirements
- identifies and discusses the relevant plan provisions
- provides an analysis of the submissions and an assessment of the issues raised for each key part of the plan change.
- discusses the Section 32 requirements.

In respect of the submissions and the issues raised by them, Ms Miles discussed these in relation to the three key components of the Plan Change, these being:

- (i) the rezoning of Outer Residential or Rural Areas to Conservation Site
- (ii) the rezoning of the two areas of Conservation Site to Outer Residential (Tamworth Crescent and Bendigo Avenue); and
- (iii) the rezoning of land from Rural to Outer Residential (this being the Stage 8 area of the Bellevue Residential Estate), and the associated policy amendment to acknowledge a connector road between Glanmire Road and Domett Street.

As the most complex and controversial part of the Plan Change, the discussion on the Stage 8 area was dealt with in more detail under the following headings:

- Urban form
- Visual/landscape effects
- Ecological effects
- Privacy
- Recreational effects
- Traffic effects
- Climate change
- Flooding/earthquake risk
- Consistency with the objectives and policies of the District Plan
- Northern Growth Management Framework
- Part 2 of the Act; and
- Other matters including the subdivision of 57 Tamworth Crescent, the previous removal of the Ridgelines and Hilltops overlay, and the transfer of the 38ha of Conservation Land.

Ms Miles recommends that the applicant's request be approved without modification with respect to the areas of land to be rezoned Conservation Site on the periphery of the Bellevue Residential



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Estate; and the areas in Tamworth Crescent and Bendigo Avenue currently zoned Conservation Site be replaced with an Outer Residential Area zoning. She describes these zoning changes as “essentially ‘tidy ups’ to rectify zoning anomalies that have resulted from patterns of development established through granting of resource consent approvals for subdivisions within the Estate”. Further, she highlights that as part of the prior resource consent process the landscape and ecological impacts of the areas of Conservation Site to be rezoned were considered by specialists, with the conclusion being that there would be a significant benefit in the zoning of these areas being swapped with some areas zoned Outer Residential Area land with greater ecological values. Ms Miles did not alter these recommendations having heard the evidence of the submitters.

In relation to the Stage 8 area, Ms Miles considers that the district plan policy framework does not preclude greenfield development provided that the adverse effects can be avoided, remedied or mitigated. She states that the site does have some natural features (including the hilltop escarpment, the area of regenerating bush, and the lower gully) that have been identified as significant in the landscape and ecological assessments prepared by the Council officers. Overall, Ms Miles concludes that the site is suitable for some residential development subject to a number of amendments to the Plan Change to provide greater protection to the visual and ecological values of the area. The modifications include:

- the inclusion of a new Appendix area in Chapter 5 of the District Plan with:
  - a plan which shows the area to be covenanted; the area to be zoned Outer Residential Area (which is reduced from that requested in the plan change application to exclude the large balance lot adjacent to Glanmire Road); and indicative pedestrian and road links
  - additional assessment criteria against which a future subdivision and earthworks proposal can be assessed.
- a rule requiring the provision of a visual assessment, including visual representations with any future subdivision application.
- a rule requiring an area of regenerating bush to be covenanted.

The amendment to the policy that signals “*From Domett Street to Glanmire Road*” as one of the actual or potential future road extensions, was supported (as notified).

The ‘indicative’ subdivision and earthworks plans were not supported by either Ms McArthur (Council landscape architect) or Ms Miles in terms of the potential adverse landscape and ecological effects resulting from the level of modification proposed.

After the applicant and the submitters had given evidence Ms Miles advised that she stood by her original recommendations, however several additional recommendations were also advanced. These included:

- that the additional indicative road link as proposed by the applicant in evidence presented at the hearing be adopted.
- that an amendment be made to the wording of the third assessment criterion set out in Attachment 1 to her report, to make it clear that the visual impact of housing proposed on all the lots around the western, south and south-eastern boundaries needs to be considered at the time of the subdivision application.

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- that the relief sought by the Greater Wellington Regional Council requiring as additional information an earthworks management assessment/plan be adopted.

Following the presentation of the planning officers' report, Mr Walker (the Council's reserve planning officer) advised that he considers that overall the ecological effects of the Stage 8 development including on upper gully will be minimal - as the site is already cleared and grazed. The benefits of the areas of conservation land that could be potentially acquired were also noted.

Ms McArthur, the Council landscape architect, commented that residential development can be accommodated on the site, but she is concerned at the extent of modification being proposed through the earthworks and proposed subdivision layout, and the resulting extent of visual intrusion when viewed from the rural area below.

## 3.4 APPLICANTS EVIDENCE

A summary of the legal submissions/evidence presented by the applicant is as follows:

### ***Andrew Beatson – Legal Counsel***

Mr Beatson (representing the applicant) provided legal submissions on the proposed plan change. The key issue for resolution identified by Mr Beatson was “*essentially whether or not the proposed zoning is more appropriate than the existing zoning, and if so the extent of the controls and criteria assessment that should be incorporated with the approval*”. Mr Beatson noted that the specific details of the subdivision and earthworks design and layout will be resolved through the consent process that will follow.

Mr Beatson outlined the applicant's position that the proposed rezoning of the Stage 8 area from Rural Area to Outer Residential Area would be more consistent with Council objectives and policies, and it would represent the most efficient use of the land as promoted under section 7(b) of the Act. No changes to the district plan policy framework for the Outer Residential Area zone would be required.

Mr Beatson summarised the positive environmental results of the residential subdivision in the Stage 8 area that would result if the plan change were successful, and outlined the reasons why the development would not have any significant adverse effects. He disagreed with the extent of adverse effects as described in the officer's report considering them to be overstated. He advised that a revised version of the appendix area plan (which the applicant referred to as a 'structure plan'), and associated assessment criteria modified from that proposed by the reporting officer, would be tabled in evidence from the applicant's expert witnesses.

Mr Beatson emphasised that a benefit of the proposed plan change was that it would result in zonings that are in line with the actual use of the land, and rectify zoning anomalies resulting from the wider development of the Estate. The benefit of the significantly greater addition of land to be zoned Conservation Site (compared with the area to be rezoned from Conservation Site to Outer Residential) was also highlighted, as well as the applicant's offer to vest 38ha of land located below the Estate (which the Council has agreed to in principle in lieu of development contributions if the Stage 8 subdivision proceeds).

Mr Beatson referred to *Eldamos Investments v Gisborne District Council W047/2005* in terms of the matters that should be considered. He also noted that the Court has commented on many occasions

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that the role of the Council under the RMA “*is essentially a passive or enabling one. As such plan changes such as DPC62 that seek to streamline residential development for future use should be able to proceed, unless there is a sound resource management reason why that streamlining should not occur*”.

Mr Beatson outlined the relevant objectives and policies for the Rural Area, stating that there is nothing in the provisions that would suggest that the proposed development is unacceptable. He also highlighted that under the existing rural zoning a residential subdivision would be assessed as a non-complying activity.

Mr Beatson concluded that the approval should be granted to the proposed plan change with the applicant’s revised appendix area. Key reasons given by Mr Beatson include:

- The plan change represents a logical and planned extension to the Bellevue residential area that has been signalled over a number of years and documented in Council committee reports.
- There is no issue with servicing, and a roading connection is provided.
- The potential loss of visual amenity and loss of rural outlook is not significant. Reasons given for this include that the Stage 8 area is not in a ridgeline and hilltop overlay area, the existing context includes residential dwellings, and views from across Wellington Harbour are at a distance, and because the site is in the NGMF area and the policies of the plan support appropriate development in this area by way of plan changes.
- The use of the site for non-productive rural purposes does not represent an efficient use of natural and physical resource.
- The plan change should be viewed as an integrated proposal or package with benefits to the Council and community.
- It is supported at a policy level and consistent with the purpose and principles of the Act.

Overall Mr Beatson submitted that the plan change to rezone the Stage 8 area to Outer Residential is consistent with sound resource management practice, with the Residential Area objectives and policies more appropriate than the Rural Area provisions in terms of considering the future residential development of the site.

In response to our request, Mr Beatson presented copies of the following documents during the course of the hearing:

- Boffa Miskell Landscape analysis of Bellevue Stage 8, dated March 2008
- a revised section32 analysis prepared by Rod Halliday; and
- a copy of the draft reserves agreement.

It is noted that at the commencement of the second day of the hearing Mr Beatson also presented a revised appendix area plan which differed from the appendix area plan tabled on the first day of the hearing in Mr Halliday’s and Mr Hudson’s evidence.

## ***Ian Prentice***

Ian Prentice is a surveyor and a director with Cardno TCB Ltd. He has been responsible for managing the Bellevue subdivision since 2000. His evidence covered the background to the zoning; the key aspects of the design of the subdivision and the earthworks; the consideration of alternative designs; and he commented on the officer’s report.

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Mr Prentice outlined the fundamental design components in the development of the subdivision layout submitted as part of the plan change application. These are to provide roading connectivity between Domett Street and Glanmire Road and a connection through to the reserve; to achieve a balance of cut to fill; to enable the transfer of areas of Conservation zoned land from public to private ownership; and to achieve a residential layout and density.

Mr Prentice submitted that the proposed roading connection will comply with the Subdivision Design Guide and the Council's Code of Practice for Land Development. Further, in his view the proposal will meet best practice urban design principles (including the proximity of the new connection to public transport). The extent of the earthworks was described, along with proposed contouring and landscaping of the fill area - with the quantum of earthworks described as moderate. Photographs of other sites were appended to his evidence to demonstrate how the landscaping and the development of the housing will blend in with the existing environment over time. Mr Prentice also emphasised the positive benefits of the transfer of 38ha of bush as reserve contribution for the development of the Stage 8 land.

He described alternative development layouts that had been considered, with plans showing the extent of earthworks that would result from a more intensive and less intensive options. He advised that the midway approach, that forms the basis of the indicative plans submitted with the plan change application, was selected as it would give a density consistent with the adjoining Stage 7 area, it provides a road connection (which the less intensive option wouldn't achieve), and because the earthworks required for the more intensive option would require the entire gully to be filled.

Mr Prentice commented on the officer's report, noting two corrections in terms of the maximum depth of cut being 9m not 12m, and referring to an error in the reference to the contour line being 226 metres above sea level, not 126m above sea level. He also expressed concern that the officer's report does not support the earthworks proposal, commenting that the imposition of earthworks restrictions arbitrarily, without the consideration of other necessary design elements, will compromise the overall development. He also emphasised that this is a moderate design approach compared with industry standards.

### ***Rodney Halliday - Resource Management Consultant***

Rodney Halliday is a resource management consultant and the principal planner of Halliday Resource Management Limited. His evidence covered the background to the removal of the ridgelines and hilltops overlay from the site; the public consultation undertaken with respect to this proposal; amendments proposed as a result of submissions and discussions with the Council; the statutory considerations; and section 32 and Part 2 matters.

Mr Halliday outlined a proposed amendment to the earthworks plan to shorten the extent of landscape fill by 25m in order to reduce the amount of fill that would need to be placed in the ephemeral stream.

Mr Halliday described the rezoning of areas of Conservation Site to Outer Residential Area as reflecting the outcome of a resource consent approved in 2002, in which areas of high value land zoned Outer Residential land were set aside in exchange for the development of areas of lower value Conservation Site. Similarly, in his view the rezoning of the Outer Residential Area and Rural Area land to Conservation Site rectifies zoning anomalies that have resulted following the actual development of the Bellevue area.

In relation to the rezoning of the Stage 8 area to Outer Residential Area, Mr Halliday concurred with the reporting officer that there are no identified geotechnical or traffic issues. While

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acknowledging that there will be some loss of the ephemeral stream through earthworks, he submitted that it would not be possible to construct a road link without earthworks in the gully due to the topography of the site. Further, in his view possible mitigation of the stream effects should be considered at the subdivision consent stage, noting that resource consents will be required from the Greater Wellington Regional Council with respect to streams. Mr Halliday relies on the evidence of Mr John Hudson with respect to the extent of landscape/visual effects and appropriate mitigation measures.

While agreeing with the reporting officer that an appendix area plan be inserted into the District Plan along with assessment criteria to set the basic parameters of site development, concerns with the specific details proposed in the officer's report were identified. An amended proposed appendix area plan was attached to Mr Halliday's evidence (though this was later superseded by another revised plan presented by Mr Beatson on day two of the hearing). Proposed amendments to the wording of the assessment criteria set out in the officer's report, and the removal of the requirement to provide visual information with the subsequent resource consent application, were also highlighted.

In his evidence Mr Halliday disagreed with the reporting officer that the balance lot (lot 449) should be left with a Rural zoning (rather than zoned Outer Residential as requested). However, a revised appendix area plan which shows the balance area to be zoned Rural Area was subsequently tabled by Mr Beatson for the applicant on day 2 of the hearing.

Mr Halliday concluded that the proposed plan change should be approved subject to the amendments recommended in his evidence. Specifically, Mr Halliday considers that the proposal with the modifications he outlined represents the most appropriate way to achieve the purpose of the Act; it will assist the Council to carry out its functions in order to achieve the purpose of the Act and it accords with Part 2 of the Act.

In response to our questioning, Mr Halliday agreed to provide a supplementary section 32 report, and this was later tabled by Mr Beatson.

### ***John Hudson - Landscape Architect***

Mr Hudson is a landscape architect and principal of Hudson Associates. His evidence covered the existing setting; planning issues, the landscape and visual effects and mitigation.

Mr Hudson commented that the Stage 8 area lies outside the ridgelines and hilltop overlay, and emphasised that the Boffa Miskell report relating to the removal of the overlay from the site identified the acquisition of the 38ha of Conservation land as a critical factor in forming their recommendation to relocate the ridgeline and hilltop boundary.

Mr Hudson agreed with the Council landscape architect that the effect of the housing development in the Stage 8 area will be minimal from distant views. In his opinion, the adverse effects are limited to local visual impacts for neighbouring properties. He concluded that the plan change is appropriate in terms of its effects on landscape and visual amenity taking into account the following issues:

- *It is abutted on 3 sides by existing residential development;*
- *It is almost entirely outside the ridgeline and hilltop overlay;*
- *It has minimal adverse visual effects from distant views;*
- *It is a development on the edge of a long established area, therefore is not sporadic but is instead building on existing land use patterns;*

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- *The landscape character of large –scale vegetated hillside and outward sea views will not be lost as the edge location of the development allows this to remain; and*
- *There is a significant benefit to be gained from vesting 38ha of Conservation Area land on the escarpment.*

Mr Hudson disagreed with several of the mitigation measures recommended by the Council's landscape architect. These included the requirement for a buffer strip around the edge of the building platform to ensure that the houses are set back so the lifestyle properties below have limited visibility; as well as the requirement to provide detailed visual simulations at the resource consent stage, and need to retain the rock outcrop. Mr Hudson presented a diagram to show that a 40m set back would be required to obscure new 8m high dwellings from the lifestyle properties below, with little benefit in his opinion. As an alternative he considered that the visual dominance of the dwellings on the south side of the subdivision could be reduced, with a restriction to single storey dwellings and a maximum height of 6m. In response to Ms McArthur's recommendation that the rock outcrop below the site be retained, Mr Hudson responded that in his view there is little merit in this as the context will be lost. He also argued against the requirement to provide visual simulations at the resource consent stage, on the basis that there is little point in rezoning a large tract of land now if a subsequent investigation deems the effects of housing as inappropriate.

## 3.5 SUBMITTERS EVIDENCE

*Submitter 2, Justine Cannon and Michael Caldwell* reside at 190 Glanmire Road, this being a rural residential property located below the proposed Stage 8 site. The submitters were both present at the hearing with the evidence presented by **Mr Michael Caldwell**. The submitters oppose the proposal to rezone Rural and Conservation land to Outer Residential Area.

Mr Caldwell stated that they disagree with the assertion in the proposed plan change application that with respect to the Stage 8 residential development, the character of the surrounding area will not be adversely affected. He noted that while there are no productive farming activities on the site, the land is productively regenerating native vegetation, and residents in the area enjoy the natural rural environment.

Mr Caldwell considered that the privacy from their property will be adversely affected with 49 houses looking down on them, and with no ability to regain privacy through the construction of fences or vegetation. He also commented that in terms of the wider visual impact for the City, the proposal to cut off the top of a hill and fill a valley for residential development is inconsistent with Policy 14.2.5.1 of the District Plan that seeks to "*protect significant escarpments and coastal cliffs from development and visual obstruction.*"

Concerns were expressed at the proposal to fill the head-waters of the stream, and with the impact of the stormwater being piped into the gully which they believed had not been addressed adequately in the officer's report. The possibility of the extra flow of water and sediment causing flooding across Glanmire Road and State Highway 2 was also highlighted.

Mr Caldwell expressed the view that the applicant does not offer any real argument that should warrant a change that would result in land zoned Rural and Conservation to Outer Residential, which he believes is inconsistent with the direction of the District Plan. He believes that the argument given for the Plan Change that it represents "*a logical extension to the existing residential zone*" is flawed. This is because the logical extension of this is that the entire city fringe should be

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expanded which is contrary to the intent of the District Plan to control unsustainable development. He also stated that the officer's report glosses over the higher level analysis required by the RMA in relation to how it fits with the principles of sustainability.

While the "gifting" of land for conservation purposes is linked to the proposed plan change, he considers that this should be addressed at a resource consent stage (if it is reached).

**Submitter 3, Llewelyn & Judith Richards** oppose the rezoning from Rural Area to Outer Residential Area to provide for the Stage 8 development. They have a rural residential property (185 Glanmire Road) located below the Stage 8 site. **Mr Llewelyn Richards** presented the evidence on their behalf, with Mrs Richards also present. The evidence presented included a visual presentation which Mr Richards spoke to.

Mr Richards commended the officer's report for its attempts to mitigate a 'carte-blanche' acceptance of the zone change. However, he believes that several points in the submissions were undervalued, and expressed concern at the jargon used in the proposed assessment criteria.

Mr Richards advised in response to our questioning that the main reason for his opposition to the proposal for a change in zoning is that no reason has been given for it. He considers that the Council should protect the land under consideration for the reasons set out in their submission. He also pointed to a quote in the Dominion Post (12 February 2008) in which the WCC planning director advised that there is enough land zoned for housing already. Mr Richards' presentation contained visual information that had been part of the original submission, including before and after photographs of viewpoints to the Stage 8 site with housing transposed onto the Stage 8 site.

**Submitter 5, George Thomson & Louise Delaney** were both present at the hearing. **Mr George Thomson** presented the evidence on their behalf. The submitters reside at 128 Glanmire Road to the west of the Stage 8 site.

The key points made by Mr Thomson in evidence include:

- criticisms of the officer's report including that:
  - it does not consider the future adequately, focussing on the immediate development consequences
  - it does not adequately consider recreational impacts; or amenity impacts such as noise levels, relative darkness, and relative absence of traffic
  - it has flaws including the assertion that the main development area is within the submitters' peripheral view
- the application is based on the premise of need for housing that can only be filled by rezoning, which is contradictory to a statement made by the urban planning director in February 2008 in a local newspaper.
- the proposal is inconsistent with objectives and policies of the District Plan concerning limiting urban expansion and maintaining rural character and the protection of natural features.

Mr Thomson's evidence included the presentation of two photographs of the Stage 8 site taken from locations within their dwelling.

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**Submitter 4, Wellington Harbour Landscape Protection Group** was represented by **Ms Louise Delaney**. She explained that the group comprises the neighbours and residents most affected by the rezoning application. They oppose the rezoning of the Stage 8 area.

Ms Delaney stated that the land on offer as reserve is not a relevant factor in the decision making process under the RMA, rather the decision making should be based simply on whether there is any need to change the present zoning. She also expressed the view that the burden of proof is on the applicant, not on the submitters.

Ms Delaney advised that they consider that the landscape is beautiful, wild, special and worthy of protection. She highlighted the importance of protecting hills around Wellingtons harbour as recognised in Council documents (e.g. policy 14.2.5.1 of the District Plan). Further, as there has been significant development over the last 10-15 years in this area, she considers that it is even more important to protect what is left to prevent the cumulative effect of changes.

Ms Delaney disagrees with the applicant's assertion that the loss of the natural landform through earthworks is unavoidable (as it could be avoided by not undertaking them), and with the statement that the visual effects are considered minor and can be mitigated.

She considers that a case could be made for the rezoning if it met the criteria of being needed and appropriate, and if the adverse effects were able to be avoided or remedied. However, she does not believe that any of these issues has been addressed in a serious way. Ms Delaney quotes from the 1995 Council Planning Committee's decision on the proposed rezoning of this area in which it was stated:

*"Having visited the site, the committee has serious doubts about the appropriateness of the intensity of the proposed development. The land, particularly the land in the valley to the north of Glanmire Road, is visually and topographically distinct from the adjacent Outer Residential land. Furthermore, the scale of cut and fill required in order to complete the subdivision according to the concept plan may be excessive."*

Ms Delaney submits that the general factual findings of the officer's report regarding the effects on amenity and landscape values are consistent with the views and feelings of residents. However, she expressed criticism of the recommendations of the officer's report on the basis that it does not reflect the findings of the Council's landscape consultant's report, and because it seems to focus not on the strength of the applicant's arguments, but on whether flaws can be found in the submissions. In addition, she was concerned that the wording of the proposed modifications in the officer's report was totally inadequate; as it does not provide certainty as to what might happen, and does not provide an appropriate framework to ensure that the significant landscape features are adequately addressed in subsequent applications.

We questioned Ms Delaney as to whether there were any modifications to the proposal that the group would support. Ms Delaney responded that they would support the Rural zoning remaining over the gully, but not otherwise. She also made the point that they haven't had a chance to have a look at the modifications proposed by the applicant during the hearing.

**Submitter 13, Spencer Morris & Margaret Cosgrove** own an undeveloped property in the vicinity of the Stage 8 area. They were both present at the hearing and **Mr Spencer Morris** presented evidence on their behalf. Mr Morris advised that they support the proposed plan change with respect to the rezoning of the Stage 8 area to Outer Residential.



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Mr Morris notes that there has been a large increase (50%) of the net value of New Zealand residential dwellings since 2004. He expressed the view that Councils and land developers must ensure that the availability of land keeps pace with demand. He considers that this plan change should be viewed as a way of satisfying this demand, particularly as the land is not productive, and it is within easy reach of Wellington, Porirua and the Hutt Valley. Mr Morris also believes that the proposed residential development of the area will provide an opportunity to address roading issues arising from ad hoc development on Glanmire Road.

Mr Morris disagrees with other submitters in opposition that the Stage 8 land should be preserved for conservation purposes, advising that he is fundamentally opposed to the idea that private land be used as a public amenity without the consent of the owners, or at least an acceptable level of compensation.

We questioned Mr Morris as to what he meant in his submission in relation to the request to consider rezoning Rural land to Conservation Site (which appeared inconsistent with the statement in the evidence that they supported the plan change with no amendment). Mr Morris responded that their concern is that the rezoning will have implications for future residential development of their land below.

**Submitter 15, Greater Wellington Regional Council (GWRC)** was represented by **Ms Ling Phang**. GWRC generally supported the recommendations in the officer's report in relation to the GWRC's submission points.

Ms Phang advised that the original relief sought in relation to the proposed rezoning of the two areas of Conservation Site to Outer Residential Area at the end of Tamworth Crescent and Bendigo Avenue is no longer sought. This is because an ecological site analysis of the values of the area was previously undertaken as part of previous approved resource consents, and earthworks approved in previous consents have now been implemented with the sites cleared of vegetation.

In relation to the Stage 8 site, GWRC supports the four proposed assessment criteria and the requirement to provide a visual assessment with subsequent subdivision resource consent applications in the officer's report. In addition, Ms Phang advised that GWRC considers that there is merit in requiring an earthworks management plan/assessment to be required with a subsequent resource consent application. A draft provision to this effect had been provided by the GWRC for consideration. Ms Phang emphasised that GWRC considers such a provision is necessary to ensure that any earthworks effects associated with subdivision and building developed are adequately managed with respect to the impacts on land and water quality.

In relation to the large balance lot Ms Phang advised that the GWRC is happy for the large balance lot to be zoned residential as sought by the applicant provided the additional assessment criteria and information requirements be adopted. Following our questioning, Ms Phang confirmed that the Rural Area zoning proposed in the planning officer's report would also cover the GWRC concerns in relation to the balance lot.

Ms Phang noted that the GWRC has no concerns with the geotechnical report provided with the plan change application in relation to the identification of a part of the site as having a 'moderate slope failure risk'. She also advised that GWRC agrees with the assessment of the Chief Transportation Engineer and Principal Planner as set out in the planning officer's report.

**Submitter 12, Graham & Rosalie Fagan** reside at 28 Sunhaven Drive, and were represented at the hearing by **Mr Graham Fagan**. Their submission and subsequent evidence oppose a proposal by

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the applicant to subdivide 57 Tamworth Crescent adjoining their property for residential development. Mr Fagan outlined that their concerns with this proposal are that it will preclude pedestrian access from Sunhaven Drive to the Conservation Site below, and the views from their property and lifestyle will be compromised.

Mr Fagan contends that it was always understood by all interested parties, including the applicant that this land was to be handed back to the Council as Conservation land when the “tidy up” of the zoning in the area was completed. He submits that the information in the officer’s report supports this view in terms of the documentation held by the Council, and advises that this direction has been confirmed in a formal communication to him, and during verbal discussions held with Council officers. In his opinion, this understanding is further supported by the fact that the applicant did not include this area as part of their initial subdivision of Tamworth Crescent. The submitter seeks that the Council retain 57 Tamworth Crescent to provide access into the Conservation land and proposed walkway development below the site.

**Submitter 9, Tibor Gabanyi** owns 58 Tamworth Crescent. Mr Gabanyi seeks that the applicant’s request to rezone that large area of land on Tamworth Crescent adjacent to his property from Conservation to Outer Residential be rejected. He considers that the residential development of the Stage 8 area will seriously impact on the view from the city centre to the harbour. He also believes that the applicant has misled the Council in relation to this proposal.

Mr Gabanyi’s evidence highlighted why he disagrees with the reasons given in the planning officer’s report as to why his submission should be rejected. In relation to the statement in the officer’s report that *the conservation land has been assessed as being suitable for residential purposes through prior resource consent*”, he notes that the 2002 resource consent for subdivision and earthworks has lapsed, and the 2006 resource consent for earthworks was limited to earthworks only and was not notified. In his view prior resource consents should not be used to justify the proposed plan change. He also disagrees with the argument put forward in the officer’s report that *the site has been extensively earthworked through an approved resource consent” – leaving the site with no conservation value*. Mr Gabanyi believes that this argument is completely unacceptable as it sends a message that if someone destroys the vegetation of a conservation site that site should not be protected anymore and can be used for property development.

Other concerns highlighted included the reporting officer’s interpretation of the comments from Cameron Walker of Parks and Gardens, which he believes is not factually correct; and with the assertion in the officer’s report that the 2007 resource consent application for a townhouse development over the site is not relevant.

## 4 STATUTORY REQUIREMENTS

In making a decision on this Private Plan Change, the requirements of section 74 of the Act apply and these are the same as for a Council initiated Plan Change. Under section 74(1) the District Plan must be changed in accordance with:

- The Council’s functions under section 31
- The provisions of Part 2
- The Council’s duty under section 32.

Under section 75(3) the plan change must give effect to any regional policy statement.

Section 31 sets out the functions of the Council under the Act, those relevant being:

- a) 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:
- (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—
  - (i) the avoidance or mitigation of natural hazards; and
  - (ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
  - (iii) the maintenance of indigenous biological diversity:

In addition, section 31(2) provides that the methods used to carry out any functions under subsection (1) may include the control of subdivision.

The Plan Change must also be in accordance with the purpose and principles of the Act under Part 2, including section 5, which is the promotion of the sustainable management of the natural and physical resources of the City. In addition, the Council must recognise and provide for any relevant matters of “National Importance” under section 6, have particular regard to the “Other Matters” in section 7, and take into account the principles of the Treaty of Waitangi (section 8).

In regard to section 32, the applicant prepared a Section 32 report prior to the notification of the Plan Change in accordance with the requirements of this section. Under section 32(2) the Council is required to make a further evaluation before making a decision on the Plan Change.

In order to meet the requirement of s74 (1) it is necessary to examine:

- The extent to which the Plan Change is consistent with the District Plan;
- The submissions and further submissions received; and
- How the Plan Change deals with any adverse effects on the environment.

## 5 ISSUES, RECOMMENDATIONS AND REASONS

We have addressed the issues raised in the submissions and further submission in the same groupings provided by the reporting Council Officer in her report.

### 5.1 REZONING OF OUTER RESIDENTIAL OR RURAL AREAS TO CONSERVATION SITE

#### *Relief sought*

- support for the rezoning of Outer Residential or Rural Area to Conservation Site (submissions 1, 2, 3, 4, 5, 6, 7, 10, 11 and 15)
- support for the rezoning of Outer Residential Area land to Conservation Site, but seeks a review of the proposed zoning from Rural to Conservation (submission 13, opposed by further submission 1)

#### *Discussion*

The rezoning of the land from Outer Residential or Rural to Conservation Site was generally supported in ten submissions. Four of these submitters presented evidence in relation to this point at the hearing (Justine Cannon and Michael Caldwell, submission 2; Llewelyn and Judith Richards, submission 3; Wellington Harbour and Landscape Protection Group submission 4; and Greater Wellington Regional Council, submission 15). The reasons for the support included that it is consistent with the objective 2, and policies 7 and 9 of Chapter 9 Ecosystems of the Regional Policy Statement (submission 15, Greater Wellington Regional Council); or it will provide a more extensive buffer between the Bellevue Residential Estate and the Conservation Site (Gilberds Bush) below.

There was one exception to this general support, this being from Spencer Morris & Margaret Cosgrove (submission 13); with a further submission in opposition from George Thomson and Louise Delaney (further submission 1). The submitter considered that the proposed rezoning of the area of land from Rural to Conservation Site should be reconsidered as it may hinder the future extension of the Stage 8 subdivision into other areas of undeveloped land further to the south with limited productivity.

We have considered these submissions and the officer's report and are satisfied that a Conservation Site zoning is more appropriate for these areas than the Outer Residential or Rural Area zonings to which the District Plan would revert if this Plan Change is not approved. We believe that the rezoning will provide a positive environmental benefit with additional regenerating bush being added to the reserve below, and that the rezoning will better reflect the current use of the land. Further, we find that the rezoning is consistent with the objectives and policies of the District Plan (Objective 14.2.5 and Policy 14.2.5.4), and Objective 2 and Policies 7 and 9 of Chapter 9 Ecosystems of the Regional Policy Statement (as identified by the Greater Wellington Regional Council), and is consistent with Part 2 of the RMA including in particular section 7 (c) the maintenance and enhancement of amenity values. In these respects the proposed rezoning also satisfies the tests of section 32.

We do not agree with the request in the submission from Spencer Morris and Margaret Cosgrove that consideration be given to the rezoning of the Rural Area land to Outer Residential, for the

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reasons given above. We also note the advice in the officer's report that the area of Rural land to be rezoned thus to Conservation Site is relatively small, being approximately 0.52ha and therefore providing a relatively limited scope for additional residential development.

## *Recommendations*

- **Accept** submissions 1, 2, 3, 4, 5, 6, 7, 10, 11 and 15 in full.
- **Accept in part** submission 13 insofar as it supports the rezoning of the Outer Residential land to Conservation Site
- **Reject in part** submission 13 insofar as it seeks review of the rezoning of land from Rural to Conservation Site, and **accept in part** further submission 1 which opposes this requirement.

## 5.2 REZONING OF THE TWO AREAS OF CONSERVATION SITE TO OUTER RESIDENTIAL

### *Relief sought:*

- Oppose the rezoning of the area located at the end of Tamworth Crescent from Conservation Site to Outer Residential (submission 9)
- Oppose the rezoning of both areas of Conservation Site to Outer Residential (submission 2)
- Support the rezoning of both areas (submission 1)
- Conditional support of the rezoning of the land located at the end of Tamworth Crescent (submission 15, with support from further submission 1) with the following modifications:
  - a site analysis be undertaken and any significant ecological values be protected in the plan change;
  - an additional appendix area be inserted into the Residential Chapter with a specific objective, policies, methods and an explanation relating to the protection of the ecological values of the area;
  - a new permitted activity rule be applied restricting any earthworks (other than for private roads or tracks or to maintain residential gardens) to within 20 metres of a stream, wetland or other waterbody;
  - that a new rule be inserted into the Residential Chapter specifying that any subdivision, use or activity, including the construction, alteration of and addition to buildings or structures that is not a permitted activity is a Discretionary Activity (Unrestricted) and requiring that an Earthworks Management Plan be required as a standard and term.
- Conditional support of the rezoning of the area located at the end of Tamworth Crescent from Conservation Site to Outer Residential, subject to Stage 8 being dropped (submissions 5, 6 and 11) or the Stage 8 area being zoned Conservation Site (submission 7).

### *Discussion*

The submissions on these areas were mixed. Two submitters specifically opposed the rezoning of land from Conservation Site to Outer Residential and both attended the Council hearing. One of these submitters (Justine Cannon & Michael Caldwell, submission 2) opposed both of the areas of land and the other (Tibor Gabanyi, submission 9) was specifically concerned with the proposed rezoning at the end of Tamworth Crescent only. The Greater Wellington Regional Council (submission 15) supported the rezoning, however, at the same time sought the implementation of a number of additional controls and requirements. Several submitters sought a trade off whereby

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they supported the proposal provided that the rezoning of the Stage 8 area would be rejected, or the Stage 8 area rezoned Conservation Site.

As outlined earlier, in evidence Ms Phang representing the GWRC (submission 15) advised that the GWRC no longer seeks the modifications requested in its submission with respect to these two areas of land. This change of stance acknowledged the findings of the officer's report that the ecological values of these sites had already been addressed in previous resource consent approvals, with these sites having already been cleared for residential development (and in some areas development has already commenced).

We have considered the submission and evidence presented by Tibor Gabanyi (submission 9), and agree with the planning officer's recommendation (including the reasons) as to why this submission should be rejected. In particular, we note that Mr Gabanyi's concern with the current resource consent application for a multi-unit development on the property lies outside the scope of the matters that we can address as part of this plan change. The planning officer's report states that the Council has identified Mr Gabanyi as a potentially affected party in relation to this resource consent application, and he will therefore have an opportunity to pursue his concerns with this proposal through this avenue should the developer proceed with the application. We also wish to record that we do not find any basis for the claim that the applicant has not followed due process with respect to this plan change. For the reasons given above, we agree with the planning officer's recommendation that this submission be rejected.

Submissions 5, 6, 7 and 11 all conditionally support the rezoning of the area at the end of Tamworth Crescent from Conservation Site to Outer Residential, subject either to the Stage 8 area being zoned Conservation (submission 7, The Royal Forest and Bird Protection Society) or the Stage 8 plan being dropped (submissions 5, 6 and 11 – all private landowners in the vicinity of Stage 8). We accept these submissions in part insofar as the end of Tamworth Crescent is rezoned to Outer Residential for the reasons previously given. The request to drop the Stage 8 plan or to zone the Stage 8 area to Conservation Site is not supported, for the reasons set out in section 5.4 below.

Overall, we support the proposed rezoning of both Conservation Sites to Outer Residential. The environmental effects of the residential development of both areas to be rezoned have previously been considered in some detail through resource consent applications for earthworks and subdivisions associated with future residential development. At that time the land in question was assessed as being suitable for residential development, with an overall environmental benefit derived from a swap of these areas for other areas zoned Outer Residential land nearby with higher ecological values. Overall we find that the proposed rezoning is more consistent with the actual or intended use of the land than the existing Conservation Site zoning, is a more appropriate way to manage the effects of residential development, and will better meet the purpose of the Act than the existing zoning. In this respect the proposed rezoning also meets the section 32 tests as is shown in the applicant's analysis of the costs, benefits, efficiency, effectiveness and appropriateness of achieving consistency between land use and zoning.

## *Recommendations*

- **Reject** submission 9 insofar as it opposes the change of zoning from Conservation Site to Outer Residential at the end of Tamworth Crescent
- **Reject** submission 2 insofar as it opposes the change of zoning from Conservation Site at the end of Tamworth Crescent and the end of Bendigo Avenue to Outer Residential
- **Reject** submission 15 and further submission 1 insofar as they request that additional requirements (objective, policy, rules, methods, and a site analysis) apply to the area to be rezoned from Conservation Site to Outer Residential at the end of Tamworth Crescent
- **Accept in part** submissions 5, 6, 7 and 11 insofar as they support the change of zoning from Conservation Site to Outer Residential at the end of Tamworth Crescent.
- **Accept** submission 1 insofar as it supports the rezoning of both areas of Conservation Site in Stage 9 to Outer Residential.

## 5.3 REZONING OF RURAL TO OUTER RESIDENTIAL (STAGE 8 AREA) AND AMENDMENT TO POLICY 4.2.92

### *Relief sought:*

#### Stage 8

- Decline the proposal to rezone the Stage 8 area from Rural to Outer Residential (submissions 2, 5, 6, 7, 10, 14)
- Decline the proposal to rezone the Stage 8 area from Rural to Outer Residential and consider:
  - initiating a plan change to rezone the Stage 8 land to Conservation; and
  - revoking the decision to remove the Ridgelines and Hilltops designation from the Stage 8 area of the application (submissions 3, 4, 5, 11)
- Consider:
  - encouraging Bellevue Lands and other similar developers to change their development strategy from major earthworks to infill housing in existing suburbs and the redevelopment of inner city buildings and sites for high density accommodation
  - requiring emissions calculations (immediately they become available) for all construction work, as part of resource consent procedures (submission 3)
- Support the rezoning (submission 13)
- Conditional support on the basis that:
  - An additional appendix area be inserted into the Residential Chapter with a specific objective, policies, methods and an explanation relating to the protection of the ecological values of this area;
  - A new permitted activity rule be applied restricting any earthworks (other than for private roads or tracks or to maintain residential gardens) to within 20 metres of a stream, wetland or other waterbody;
  - A new rule be inserted into the Residential Chapter specifying that any subdivision, use or activity, including the construction, alteration of and addition to buildings or structures that is not a permitted activity is a Discretionary Activity (Unrestricted) and requiring that an Earthworks Management Plan be required as a standard and term (submission 15 – Greater Wellington Regional Council, supported by further submission 1).

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## Connector Road

- Decline the proposed amendment to Policy 4.2.9.2 to include a reference to the provision of a new connector road between Domett Street and Glanmire Road (submissions 3, 4, 5, 6, 7, 11, 14).

Of the eleven submissions to the rezoning of Stage 8 from Rural to Outer Residential Area, nine opposed the proposed rezoning, with two in either conditional support or full support.

## *Summary of issues raised in submissions*

The key issues raised in the submissions are set out in the officer's report as follows:

- the urban development that will occur is unsustainable/will result in urban sprawl
- there will be adverse ecological impacts on waterways and ecosystems
- the area is suitable for ecological restoration
- concern regarding the flooding and earthquake risks due to the filling of the gully
- adverse visual impact (from private properties, the harbour, Petone and other viewpoints)
- there will be an adverse amenity impact and loss of rural outlook
- concern at the prominence of housing
- loss of privacy from houses overlooking
- the proposed development is out of character with existing housing
- the development will detract from the recreational use of the area and there will be a further loss of green areas
- public access should be provided from the Stage 8 area to the adjacent Conservation Site
- reduced traffic safety including concerns about increased traffic onto a blind corner of Glanmire Road/Edgecombe Street
- an increase in carbon emissions and adverse impact on climate change
- the adverse effects have not been adequately avoided, mitigated or remedied
- the proposal is inconsistent with Part II of the RMA
- the proposal is inconsistent with the objectives and policies of the District Plan, including the Ridgelines and Hilltops policy
- the proposal is inconsistent with the Northern Growth Management Framework
- the section 32 report is inadequate
- the plan change is supported as it will allow for the development of an underutilised area of land close to the residential area of Wellington; and
- other issues:
  - concerns regarding the proposal to subdivide No 57 Tamworth Crescent
  - concern with the way land is being swapped and used as a bargaining tool
  - the ridgelines and hilltops overlay should be reinstated
  - the proposed fill areas will encroach into the road reserve requiring realignment of the road and encroachment permissions
  - concerns regarding procedural issues
  - issues with inaccurate information provided.

## **Urban Form**

### *Discussion*

Two submitters expressed concerns relating to the future form of the City resulting from an extension of the residential zone into the Stage 8 area, and commented on this in evidence presented at the Council hearing (Justine Cannon and Michael Caldwell (submission 2), George Thomson and Louise Delaney (submission 5)).



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The submitters disagree with the applicant's argument that the rezoning of this land represents a logical extension to the urban area and is flawed in that this same argument could be used to rezone all land on the urban fringe - which would be inconsistent with the Council's intention in the District Plan to contain new development within existing urban areas. Another submitter Spencer Morris and Margaret Cosgrove (submission 13, opposed in further submission 1) supports the expansion of the residential area onto the Stage 8 site on the basis that the site has little productive capacity and is within easy commuting distance of Wellington, the Hutt Valley and Porirua.

We agree with the reporting officer, the applicant's planning evidence and legal submissions that the District Plan policy framework, in particular Objective 14.2.4 and Policy 14.2.4.1, anticipates that there will be some "greenfield" subdivisions to extend the urban area via the plan change process, provided the adverse effects can be avoided, remedied or mitigated. Any other plan changes for an expansion of the residential zone on the fringe of the urban area will need to be similarly assessed on their specific merits in terms of the wide range of matters required to be considered under the RMA as set out under section 4 above.

We concur with submitter 13 (Spencer Morris and Margaret Cosgrove), the reporting planner and the applicant that there are several benefits of the proposed extension of the existing urban area. This includes its location close to a public bus route that runs regularly, the proximity to existing infrastructure, the provision of a roading connection between Domett Street and Glanmire Road, and the close proximity to Wellington City. We agree with the applicant's position that the existing land has limited productive capacity and is unlikely to be used for any productive rural purpose.

Overall in terms of urban form we see residential use of the land as proposed as a coherent extension of the existing development within the Bellevue Estate rather than a sporadic or piecemeal development.

## **Visual/Landscape Effects**

### *Discussion*

In our view this is a key matter for consideration. Eight of the nine submissions in opposition to the Stage 8 development cited landscape/visual effects as a concern (submissions 2, 3, 4, 5, 6, 10, 11, 14), with four of these submitters presenting evidence at the hearing. The key issues raised in these submissions include:

- the impact on views from the wider City, including the harbour and Petone
- the effect on views from specific properties
- the prominence of housing
- the development is out of character with existing housing; and
- the loss of rural outlook.

Several submitters expressed concerns at the impact on the views from the wider City, and two of these commented on this in evidence presented at the hearing ((Justine Cannon & Michael Caldwell (submission 2), the Wellington Harbour Landscape Protection Group (submission 4)).

The Council's and the applicant's landscape experts agree that the visual impact when viewed from other points in the City will be minimal. In reaching this conclusion, both of these experts referred to a report prepared by Boffa Miskell (Bellevue Estate Stage 8 Landscape Analysis, dated March 2006<sup>1</sup>) with photographic images which they consider demonstrates their conclusion. Having

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<sup>1</sup> This report was prepared for the Wellington City Council in relation to the Environment Court appeal on Proposed Plan Change 33 concerning the extent of the ridgelines and hilltop overlay over the Stage 8 site.

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visited the site and viewed it from various points around the City, we concur with the landscape experts that any adverse visual effects of residential development on the Stage 8 site when viewed from the wider City, including the harbour and Petone, will be minimal. In particular, we believe that the visual effects will fall within a reasonable expectation for peripheral expansion of the built environment in a city of harbour, hills and views.

Eight of the submitters have expressed concerns regarding the visual impact in relation to their specific properties. These properties are broadly located in two areas, these being the adjacent residential zone to the north-west of the site in Glanmire Road (111, 113 and 128 Glanmire Road) and Edgecombe Street (3 and 5B Kenmore Street); and the rural residential area (on land zoned Rural Area) located below the site (179, 185, and 190 Glanmire Road).

Both of the landscape experts acknowledge that there will be some adverse local visual effects as a result of the proposal. While Ms McArthur, the Council's landscape architect, considers that the rural residential properties to the south and south west below the site will be potentially most affected, Mr Hudson believes that the visual effects will be greater for the adjacent residential properties on Kenmore Street and Glanmire Road. Notwithstanding this variance, both experts conclude that with mitigation the site is suitable for residential development in terms of the degree of visual effects that will be generated, but they differ on the nature of the mitigation measures that are required. Ms McArthur also emphasised that she does not support the scale of modification proposed in the indicative subdivision and earthworks plan.

Key reasons given by the two landscape specialists as to why the level of effect from properties in the local area is considered to be acceptable include:

- the residential properties to the north are at a higher elevation and will overlook the site and accordingly their distant views will not be lost (Mr Hudson and Ms McArthur)
- the site sits in a thread of existing housing, abutting existing development on three sides and it will be viewed in the context of this existing development (Mr Hudson and Ms McArthur)
- the site is in the peripheral view of the residential properties to the west of the site, and housing within the Stage 8 site could be located outside the main field of vision (Ms McArthur)
- it is outside the ridgeline and hilltop overlay (Mr Hudson)
- the potential to mitigate the adverse effects through additional controls (Mr Hudson and Ms McArthur).

Mr Thomson (128 Glanmire Road, submission 5) provided photographs with his evidence to demonstrate that the claim in the officer's report that the main potential development site is in their peripheral view is incorrect. The photographs provided include when sitting up in bed, and working at the kitchen sink. While clearly the photos show that the site will be visible from some angles at these locations, we note that neither are the principal views from main living spaces.

The Council landscape architect has identified 190 Glanmire Road (Justine Cannon & Michael Caldwell, submission 2) as one of the rural residential properties that will be potentially most affected by the development of the site for residential housing and associated earthworks, due to the orientation of the house so that the hilltop is their dominant view. Visual and privacy effects on their property were key considerations expressed by these submitters in their original submission and their evidence at the hearing. In terms of visual effects, our visit to the property confirmed that these would be partly mitigated by the distance between the proposed development and 190 Glanmire Road and partly by the proposal to limit the height of new dwellings along the escarpment

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edge to 6 metres. In addition, it appeared to us that the main aspect of their dwelling is to the south, away from the Stage 8 site.

Our visit to the property of Llewlyn & Judith Richards (submission 3) at 185 Glanmire Road confirmed for us that views of the proposed Stage 8 development from their dwelling and surrounding land are obscured by tall trees along their northern boundary. We note that Ms McArthur also recorded this fact in her visual assessment and that the photographs attached to the submission (and produced in evidence) must have been taken from somewhere beyond the site. However, we note that Ms McArthur did comment that these “before and after” photos/montages “*were probably a good indication as to what housing on stage 8 would look like*”. We record that the applicant challenged the accuracy of these photo simulations on the basis that the houses shown were too large. In our opinion, simulations of this type need to be carefully produced by someone expert in the field and accompanied by an appropriate description of the methodology and technical details. We do not believe this to be the case on this occasion.

The Council’s landscape architect has also identified that views of the proposed Stage 8 development from houses at 179 Glanmire Road, and 128, 130 and 134 Black Rock Road will be adversely affected on the basis that their outlook is currently distinctly rural and would be impacted by views of urban development. However, no submissions were received from the owners of these properties. In the case of the Black Rock Road properties, the visual impact of the proposed development will be partly mitigated by the separation distance and partly by the limitation of the heights of the new dwellings on the southern edge of the proposed development. In the case of 179 Glanmire Road, although nearer, the angle of view will be steeper which should maximise the mitigation of set-back and height limitation for the new dwellings on the southern edge of the proposed development.

Having considered the evidence and submissions, and the officer’s report, we concur with the findings of the two landscape experts that with mitigation measures, the level of visual effects of residential development within the Stage 8 area for properties in the local area will be acceptable for the reasons set out above.

As to the nature of the mitigation measures to be adopted, there is agreement between the reporting officer, and Mr Halliday, that the addition of another appendix area to Chapter 5 (the Residential Rules) is the most appropriate method of ensuring that the environmental effects are adequately addressed at the subdivision resource consent stage. As explained in the officer’s report where areas are rezoned which have specific site features that require careful consideration at the resource consent stage, the appendix area approach is commonly used to provide additional controls in the District Plan to supplement the existing controls.

In terms of the content of the appendix area, the reporting planner has advanced several assessment criteria against which the visual effects of a subsequent subdivision proposal can be considered. She has also recommended that an application for a residential subdivision of the area must be accompanied by a visual assessment including visual representations from all important viewpoints. These requirements were supported by the Greater Wellington Regional Council in the evidence presented by Ms Phang.

In evidence the applicant has sought modifications to the assessment criteria recommended by the reporting planner, and opposes the requirement for a visual assessment at the resource consent stage on the basis that this will not provide for certainty that the site can be developed for residential housing. Other controls proposed by the applicant in evidence to mitigate visual effects include the identification of an area of fill to be replanted and a strip along the south and south-western edge of

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the site where there is to be no building or vegetation removal. Further, an area along the southern edge is proposed where the height limit of buildings is to be restricted to 6m.

Taking all these recommendations into account we recommend the following additional controls to be included in a new appendix area, as providing an appropriate level of mitigation of the visual effects for local residents, including the residential properties to the north west of the site and the rural residential properties to the south and south-west.

These include:

- Additional standards and terms for Rule 5.4.5 to limit the use of each residential lot to one household unit. This will maintain a low density of overall development that will in turn reduce the massing effect of buildings and allow a greater proportion of the sites to be landscaped and planted to reduce visual impact.
- Additional standards and terms for Rule 5.4.5 to restrict the height of new dwellings at the southern and eastern edges of the proposed residential area to single storey/6 metres, and prohibit building and vegetation removal near to the southern and eastern edge of the escarpment. These measures will reduce the visual impact on the rural area below by keeping buildings back from the edge of the escarpment and limiting their height.
- Additional assessment criteria and information requirements relating to visual effects of earthworks and native vegetation removal and mitigation landscape and planting.
- Retention of the large balance lot in the rural area to limit the scope and adverse effects of residential development.

## Ecological Effects

### *Discussion*

Concerns in the submissions focus on the potential adverse impact of the earthworks and residential development on the stream and ecosystems, including the adjacent Conservation Site (submissions 2 (supported by further submission 1), 11 and 15 (supported by further submission 1). Submitter 7 (also supported by further submission 1) seeks that the ecological values of the site be restored and the zoning altered to Conservation Site.

We accept the evidence of Cameron Walker from Parks and Gardens that the key issues for consideration are the protection of an area of regenerating bush, and the impact on the stream. The applicant has advised that the bush remnant will be covenanted, and to ensure that this does eventuate we have included a requirement that this occur at the subdivision stage (refer to Attachment 2 to this decision).

The stream in the gully adjacent to Glanmire Road is described in the following extract from the GWRC submission:

*“There appear to be two spring sources that run at least intermittently, probably charged by rainwater. At their source they lack distinct stream sides, but the vegetation occurring in the swales indicates that they are wet for much of the time (e.g. Blechnum minus, native buttercup, sedges and rushes). Running water could be distinctly heard. The stream remains swale – like and filled with vegetation until about 195m asl when it becomes more distinct. By the time it reaches Glanmire Road at about 145m asl it is distinctly channelled and free of vegetation, runs over a gravel*

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*substrate, and there is evidence of aquatic invertebrate life. It passes through a small culvert under Glanmire Rd to continue down the valley.”*

In evidence Ms Phang from the GWRC (submission 15) supported the recommendation of the reporting officer for the inclusion of specific assessment criteria relating to the ecological values of the site. As set out in the GWRC original submission she also requested the inclusion of a requirement for an earthworks management plan/assessment to be required with subsequent subdivision resource consent, and provided a draft provision to this effect. We note that the requirement in the GWRC original submission (supported in further submission 1) for the inclusion of additional objectives and policies; and a rule requiring that there be no earthworks within 20 metres of a stream, wetland or other waterbody, except in specified circumstances was not pursued by the GWRC at the hearing.

As discussed earlier, Mr Caldwell (Justine Cannon & Michael Caldwell, submission 2, further submission 1 in support) expressed concern that the filtration process of the headwaters will be destroyed by the fill, particularly with the addition of the stormwater from the proposed residential development. He also highlighted concern with the extent of the ecological assessment in the officer’s report, in particular that it does not address the additional ecological impact of the development’s proposal to pipe all the stormwater from the subdivision down the stream, and the possibility of extra flow causing flooding of Glanmire Road and State Highway 2 below. We note that the applicant has slightly reduced the amount of fill to be placed in the head of the gully since the plan change application, in response to concerns raised by Council officers prior to the hearing.

In response to the criticism as to the level of information provided in relation to the stream we are satisfied that the effects both on the ecology and any potential downstream effects will be able to be addressed in detail in the subsequent subdivision resource consent application once all the details of the proposal are known. We have recommended an additional information requirement for an earthworks management plan/assessment along the lines of that proposed by the GWRC, as well as an assessment criterion relating to ecological effects, to ensure that a robust assessment of these issues is undertaken at the subdivision resource consent stage (refer to Attachment 2). We note that a further assessment of these effects will also occur in the regional resource consents that will be necessary from the GWRC.

The Royal Forest and Bird Protection Society (submission 7, supported in further submission 1), and several other submitters, have requested that the Stage 8 site be restored and rezoned to Conservation Site - to underpin the ecological values of the existing Conservation Site below. However, the ecological assessment provided in the officer’s report confirms that the site has been largely cleared of native vegetation and the top of the hill modified by earthworks. Our site visit confirmed that most of the land in question is in grass, weeds or regenerating gorse (other than the area of bush to be covenanted). On this basis we do not agree that setting aside the Stage 8 area as a Conservation Site is warranted. Further, we concur with the reporting officer that such a requirement would be an undue restriction on land that is privately owned.

## **Privacy Effects**

### ***Discussion***

Mr Caldwell (Justine Cannon & Michael Caldwell, submission 2) are concerned with the impact on their privacy from houses being located in a prominent location overlooking their rural residential property. We visited their property as part of our site visit and for the same reasons as recorded above in relation to visual effects, namely that the submitter’s property is some distance from the site and their outdoor areas are to the south, we do not believe that privacy and overlooking are

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significant issues. Further, we consider that it would be possible to establish a vegetative screen on the north side of the property, though we acknowledge that this would take time and may cause shading effects.

The requirement we have proposed that buildings along part of the south and south-eastern boundary be single storey in height (up to a maximum of 6m), will also assist as it will reduce the dominance of buildings along this edge.

## **Recreational Effects**

### *Discussion*

The potential impact on the recreational values of the area for walking, running and exercising dogs was an issue raised in three submissions (Wellington Harbour Landscape Protection Group (submission 4), George Thomson and Louise Delaney (submission 5), Shane Leonard and Mary Dudley (submission 6)). Another submitter Julie Russell and Rob Lapsley (submission 11) expressed a general concern that the future needs for accessible green space would be compromised.

We concur with the reporting officer that any recreational effects will be minimal with significant opportunities already present in the locality for recreation that will be added to with the proposed area to be set aside as a passive reserve and the inclusion of a the proposed pedestrian link to the Conservation Site below. We also agree with her observation that while the Stage 8 site may be currently utilised for recreation as an green open space, it is privately owned land with no guaranteed right of access.

The Royal Forest and Bird Protection Society (submission 7) seeks that public access be provided from the Stage 8 area to the adjacent Conservation Site and this was supported in the comments from Parks and Gardens. The applicant has subsequently provided a plan which shows an indicative pedestrian link into this area. We support this indicative connection being identified on a plan to be included in the District Plan as this will ensure that this matter is addressed at the time of the subdivision resource consent.

## **Traffic Effects**

### *Discussion*

Issues highlighted in the submissions range from concerns regarding adverse safety effects due to increased traffic levels and a blind corner on Glanmire Road; increased noise levels due to greater traffic volumes; and the landscape effects of the proposed connector road (Llewlyn & Judith Richards (submission 3), Wellington Harbour Landscape Protection Group (submission 4), George Thomson & Louise Delaney (submission 5), Julie Russell & Rob Lapsley (submission 11), and Neville John Williams (submission 14).

The Council's traffic experts have not identified any issues with the proposal either in terms of the roading layout shown in the indicative subdivision plan or the ability to link into the existing roading network. Further, we agree with the comments on these issues in the officer's report and believe that the majority of the issues can be adequately dealt with through the detailed subdivision design phase and subsequent resource consent process.

Submitters 3,4,5,6,7,11 and 14 have sought that the proposed amendment to Policy 4.2.9.2 to include a connector road between Glanmire Road and Domett Street be declined. We concur with the applicant and the Council officers that the proposed roading and pedestrian connections are a

positive aspect of the proposal, and we support the request in the plan change application for an amendment to Policy 4.2.9.2 to include reference to a connector road in this location as follows (new text underlined):

*Provide for, and in some circumstances, require extensions to the existing road network. In particular the actual development or potential for future development of the following routes will be sought....*

- *From Domett Street to Glanmire Road*

Greater Wellington Regional Council (submission 15) suggested the implications of the connector road between Domett Street and Glanmire Road be assessed with the introduction of new zoning provisions to manage the effects of future roading development. However, following a review of the officer's report, Ms Phang stated in evidence that the GWRC considers that *"the roading effects have been adequately addressed and no new zoning provisions are required."*

## **Climate Change and Flooding/Earthquake Risk**

### ***Discussion***

Climate change issues were a key concern in the submission from Llewlyn & Judith Richards (submission 3, supported by further submission 1), and the evidence presented by Mr Richards at the Council hearing. We agree with the reporting officer that the relief sought by the submitter is unable to be resolved in the context of this plan change application. In our opinion, positive aspects of the proposal in terms of climate change emissions are the improved connectivity it will provide and the opportunity for residents to utilise the existing bus route which is in close vicinity to the Stage 8 site.

The submissions from Justine Cannon & Michael Caldwell (submission 2), George Thomson & Louise Delaney (submission 5) and Neville Williams (submission 14) highlight potential flooding or earthquake risks with the proposal. In relation to the earthquake risk, and the location of part of the site within the an area identified as 'moderate slope failure risk' the evidence from Ms Phang is that the GWRC has considered the geotechnical assessment provided by the applicant and has no concerns and believes that this matter can be adequately addressed to the required standards in the subdivision resource consent application and any future building designs detailed subdivision. Accordingly we are satisfied that there is no matter with respect to stability that we need to deal with through this plan change.

## **Objectives and Policies**

### ***Discussion***

Justine Cannon & Michael Caldwell (submission 2), Wellington Harbour Landscape Protection Group (submission 4), George Thomson & Louise Delaney (submission 5) and Shane Leonard (submission 6) consider that the Stage 8 proposal is inconsistent with the District Plan policy of containing urban development (Objective 14.2.1 and Policy 14.2.1.1). Submitters 4 and 5 also comment that the proposal is inconsistent with the Open Space objectives. The objectives of the Open Space area are not relevant to this plan change which seeks that the Stage 8 area be rezoned from Rural Area to Outer Residential Area.

The officer's report includes an analysis of the plan change against the objectives and policies of the District Plan and as set out in the following extract concludes:

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*“...while acknowledging that the Council seeks to ‘encourage’ new urban development within established urban areas (and more recently through Plan Changes 33 and 36 to within identified rural residential areas, and the areas specifically identified in the NGMF), it does not preclude the subdivision of other Greenfield areas where the adverse effects can be avoided remedied or mitigated (Policy 14.2.4.1). In my opinion, on the basis of the above analysis (particularly the visual and ecological effects), and with the modification of the plan change to apply the additional requirements outlined in Attachment 1, I consider that the rezoning of the Stage 8 land to Residential will be consistent with the policy framework of the operative plan and proposed plan changes.*

*The objectives and policies for the Open Space zone are not specifically relevant to the proposal as the site is not either currently or proposed to be altered to this zoning. However, I note that the issue of protection of landform in the Open Space policies referred to by the submitters, is covered to some extent by the following identical objective and policies in the Rural Area and Residential zone (the wording in these both have the same wording):*

*Objectives 14.2.5 and 4.2.5*

*To maintain and enhance natural features (including landscapes and ecosystems) that contribute to Wellington’s natural environment.*

*Policies 14.2.5.1 and 4.2.5.1*

*Protect significant escarpments, coastal cliffs and areas of open space from development and visual obstruction.*

*Policies 14.2.5.4 and 4.2.5.4*

*Encourage retention of existing vegetation, especially established trees and existing native vegetation.*

*In my opinion, the modifications proposed to the plan change (including the bush covenant area, retention of the lower gully as Rural zone and the additional assessment criteria), in conjunction with the existing district plan provisions, will provide an appropriate framework to ensure that the significant landscape features are adequately addressed in subsequent resource consent applications.*

We agree with the above analysis and are satisfied that the rezoning of the Stage 8 area from Rural to Outer Residential is not contrary to the objectives and policies of the District Plan.

As previously discussed, the GWRC (submission 15, supported by further submission 1) initially sought the inclusion of a new objective and three associated policies and an explanation with respect to ecological values. However, these objectives and policies were not subsequently pursued in evidence presented on behalf of the GWRC; rather the reporting officer’s recommendation that additional assessment criteria be adopted was supported by the Council.

## **Northern Growth Management Framework**

### ***Discussion***

The site is located within the wider Northern Growth Management Framework (NGMF) area, but is not identified as an indicative future residential area. However, the NGMF strategy is relevant to the wider area, and we note that the reporting officer has considered the proposal against this document.



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Three submitters (Wellington Harbour Landscape Protection Group, submission 4; George Thomson and Louise Delaney, submission 5; Julie Russell and Rob Lapsley, submission 11) have commented that the proposal will conflict with the principle of a ‘*strong distinction between urban and natural environments*’ in the NGMF. We agree with the reporting officer’s comment that although the urban edge will be extended, it will be clearly defined with the Conservation Site forming a barrier to future residential development. We also note that the retention of the balance lot as Rural, and the limit of one dwelling on it will assist in this regard.

Other points made by the submitters include that the proposal is inconsistent with the principle of keeping significant hilltops and ridgelines intact, protecting streams and wetlands, and with the neighbourhood design recognising landform and other features. We do not agree with the submitters on these points. The Stage 8 area proposed for housing is not within the Ridgelines and Hilltops overlay, and we note that the housing development will be considered against the Subdivision Design Guide which aims to provide high quality neighbourhood design, at the subdivision resource consent stage.

Overall, we concur with the reporting officer’s finding that the proposal is broadly consistent with the principles in the NGMF strategy for the reasons set out below:

- *It will build on an existing community – this being Newlands*
- *The proposed connector road will provide an improved link to an existing community through an alternative link to Domett Street*
- *It is close to an existing public transport route*
- *It will allow for an efficient use of existing infrastructure*
- *It incorporates measures to ensure that the significant natural values of the area are maintained.*

## **Recommendations**

**Reject** submissions 4, 5 and 11 insofar as they consider the plan change is contrary to the principles in the Northern Growth Management Framework.

## **Overall Recommendations - Stage 8 Rezoning & Amendment to Policy 4.2.9.2**

For the reasons discussed above, the recommendations on rezoning land from Rural to Outer Residential (to provide for Stage 8 of the Bellevue Residential Estate) and the amendment to Policy 4.2.9.2 are as follows:

- **Accept in part** submissions 2, 3, 4, 5, 6, 7, 10, 11 and 14 insofar as it is recommended that the lower gully area (as shown on Attachment 2) be retained as Rural, as shown in Attachments 1 and 2 to this decision.
- **Accept in part** submission 15 (and further submission 1) insofar as it is recommended that additional requirements be applied to the Stage 8 area, as set out in Attachment 2.
- **Accept in part** submission 13 insofar as it is recommended that the majority of the Stage 8 area be rezoned to Residential (as shown on Attachment 1).
- **Reject** all other submissions, and further submission, for the reasons outlined in section 5.3 above.

## 5.4 OTHER MATTERS

## **Subdivision of 57 Tamworth Crescent**

### ***Discussion***

Jimmy and Sarah Gopperth (submission 8) and Graham and Rosalie Fagan (submission 12) are concerned about a proposal by the applicant to subdivide 57 Tamworth Crescent. Mr Fagan attended the Council hearing and presented evidence on this matter.

The issue is summarised in the officer's report as follows:

*The submitters advise that it has been their understanding for many years that the entire lot (including the access from Sunhaven Drive) would be vested back to the Council by the developers as conservation land. Concerns with the proposal to now subdivide off the portion with access to Sunhaven Drive include the loss of an accessway into the Conservation Site, as well as potential amenity impacts on their properties that could result from the construction of a new dwelling on the site (i.e. potential loss of view, privacy, and shading). The submitters request that the Council work with the developers to seek agreement to 57 Tamworth Crescent being vested with the Council to provide an access point into the Conservation Site below.*

The reporting officer advises that this issue is outside the scope of the district plan change, as the site in question is not within the boundaries of the area to be rezoned. However she advises that from a review of the material available on the Council files there “*is clearly an issue in my view in terms of what was the original intention with respect to this land (and any associated obligations), as well as whether the land is required for an access link to the Conservation Site.*” She recommends that we request the Council to investigate the zoning and future use of 57 Tamworth Crescent as access into the Conservation Site below.

We agree with the reporting officer that 57 Tamworth Crescent is outside the site and therefore outside the scope of the plan change. We indicated to Mr Fagan at the hearing that this was our preliminary view. Having further considered the matter we confirm that we are unable to make any recommendations as to land outside the plan change area.

### ***Recommendation***

- **Reject** submissions 8 and 12 as the relief sought is outside the scope of matters that can be considered as part of this plan change application.

## **Removal of the Ridgelines and Hilltops Overlay**

### ***Discussion***

Four submitters, Llewlyn & Judith Richards, submission 3; Wellington Harbour Landscape Protection Group, submission 4; George Thomson and Louise Delaney, submission 5; Julie Russell & Rob Lapsley, submission 11) are concerned that the Ridgelines and Hilltops overlay has been removed from the area proposed for housing development in the Stage 8 area. Specifically, the submitters seek that the decision to remove the overlay be revoked. Neville Williams (submission 14) has also expressed the view that the proposed plan change violates the Ridgeline and Hilltop policy. The officer's report outlines the background to the removal of the overlay, which occurred through an Environment Court consent order on an appeal to Plan Change 33.

We agree with the reporting officer that the removal of the overlay is outside the scope of this plan change, and there is no process available to us that would enable the Consent Order to be reversed. Accordingly, these submissions must be rejected.

## *Recommendation*

**Reject** submissions 3, 4, 5 and 11 as the relief sought with respect to the reinstatement of the Ridgelines and Hilltops overlay is outside the scope of this plan change.

## **Transfer of the 38ha of Conservation Land**

### *Discussion*

The applicant has offered to vest approximately 38ha of regenerating bush below the Bellevue Estate as conservation land in lieu of development contributions if the development of Stage 8 for residential housing proceeds. The Council has agreed to this in principle with a draft agreement drawn up between the two parties.

In evidence the applicant has linked the vesting of this land to the approval of the Stage 8 development citing it as one of the benefits to be weighted up in the consideration of the effects. Four submissions are concerned that the land is being used as a bargaining tool (Justine Cannon & Michael Caldwell (submission 2), Wellington Harbour Landscape Protection Group (submission 4), George Thomson & Louise Delaney (submission 5), Shane Leonard and Mary Dudley (submission 6)). They note that the land is already zoned Conservation Site and is therefore of little use to the developer, and it will remove a green area that is not being replaced elsewhere.

We regard the possibility that this land will be transferred to the Council in the future as an entirely separate matter from the plan change to be dealt with at the time of the subdivision. We have not taken it into account in our weighing up of the merits of the plan change.

### *Recommendation*

**Accept** submissions 2, 4, 5 and 6 in so far as the potential benefit of the 38ha of Conservation Site has not been taken into account in reaching this decision.

## **Adequacy of the Plan Change Application**

### *Discussion*

Three submitters (Wellington Harbour Landscape protection Group, submission 4; George Thomson & Louise Delaney, submission 5; Julie Russell and Rob Lapsley, submission 11) have raised concerns with aspects of the plan change application that they believe are inaccurate or misleading and highlighting arguments that they consider are flawed.

We have considered these issues in detail and are satisfied that the plan change request has been properly made and notified in accordance with the requirements of the Resource Management Act 1991. While the submissions highlight a number of differences of opinion and interpretation, overall there is nothing that would lead us to conclude that the plan change application is fundamentally flawed.

One further issue raised in submissions was that the applicant had given no reason for the plan change and had not established a need for it. In these respects we understand that the applicant has developed the Bellevue Estate, of which the subject land forms part, in stages over a number of years and that Stage 8 is the last stage and will complete the residential development. We do not believe that the applicant is required to show need as such for the plan change, rather that it will be judged on how it meets the purpose of the RMA.

## 5.5 PART II

Overall, we are satisfied that the plan change is consistent with the enabling function of the RMA by allowing further residential development on the fringe of an existing suburb in a way that complements the existing residential area, makes more efficient use of existing infrastructure, provides for improved connectivity in the roading network, and mitigates the adverse effects on the environment of the future activities associated with urban development.

We believe that rezoning part of the land as residential while retaining some in rural zoning provides for the reasonably foreseeable needs of future generations in accordance with sustainable management principles. In our view, and confirmed in the evidence that we heard, the plan change land has no particular qualities as land for primary production or outstanding natural features. Part of the land to be retained in the rural zone where indigenous bush is regenerating is to be protected by covenant as recommended by the Council's Parks and Gardens staff.

No matters of national importance under section 6 of the RMA are relevant. We are satisfied that the plan change will result in an efficient use of the land resource and infrastructure while ensuring that any potential significant adverse visual, ecological and amenity effects are avoided remedied and/or mitigated. No section 8 matters relating to Treaty of Waitangi principles have been raised.

Finally we record that both the reporting officer and the applicant's planning consultant consider that with the adoption of appropriate controls the plan change will meet the requirements of Part 2 of the RMA.

## 5.6 SECTION 32

Following *Eldamos*,<sup>2</sup> section 32 of the RMA requires that the proposed objectives, policies, rules, and other methods (which include zoning) need to be evaluated as to whether they are the most appropriate way to achieve the objectives of the plan, assist the territorial authority to carry out its functions and are in accordance with Part 2.

Section 32 does not have an explicit requirement to consider alternatives. However, in practice, in order to evaluate what is 'the most appropriate', a comparative assessment needs to be undertaken which requires an evaluation of at least two options. The applicant has prepared an analysis of alternatives and concluded that the plan change is the most appropriate way of providing for urban development of the site consistent with the purpose of the RMA.

Following comments from submitter 7 that the section 32 analysis fails to address any aspects of the plan change except Stage 8, and a recommendation from the reporting officer that this be addressed, the applicant supplied a further analysis of the other aspects at the hearing.

As seen in our discussions of the various aspects of the plan change set out earlier in this report, we are recommending that only part of the land in Stage 8 be rezoned and that the lower part of the site containing the bulk of the gully be retained as rural. In addition we have recommended that further measures be introduced by way of rules to mitigate adverse effects that may arise when the land is subdivided and developed.

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<sup>2</sup> *Eldamos Investments Limited v Gisborne District Council* (W047-05)

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On the basis of this additional information provided by the applicant, and subject to the amendments that we have recommended being incorporated into the plan change, we are satisfied that the plan change is the most appropriate way to achieve the objectives of the District Plan, that it will assist the Council to carry out its functions, and it is in accordance with Part 2 of the RMA.

## 6 CONCLUSIONS

1. The private plan change has been initiated by the owner of the Bellevue Residential Estate, which is an area of housing in Newlands that has been developed in stages over a number of years.
2. The requests for areas to be rezoned around the fringes of the residential estate from Rural or Outer Residential to Conservation Site; and from Conservation Site to Outer Residential are tidy ups. Essentially the purpose of these plan changes is to rectify zoning anomalies that have occurred through the development of past stages of the residential estate, so that the zoning matches the use of the site.
3. In respect of the other part of the plan change, the proposed rezoning part of the Stage 8 area from Rural Area to Outer Residential Area, we have concluded that the part of the land that relates to the indicative subdivision proposal submitted with the application can be rezoned but the other part should be retained in the rural zone on the basis that:
  - 3.1 The District Plan policy framework anticipates that there will be some “greenfield” subdivisions to extend the urban area via the plan change process, provided the adverse effects can be avoided, remedied or mitigated;
  - 3.2 With the additional controls regarding the location and maximum height of future dwellings and the requirements to protect regenerating indigenous vegetation and prepare an earthworks management plan, significant adverse visual, ecological and amenity effects will be avoided, remedied and/or mitigated;
  - 3.3 The rezoning will result in a number of positive effects including better connectivity in the roading network, more efficient use of existing infrastructure, proximity to public transport and being complementary to the existing Newlands community.
4. The Stage 8 land should not be set aside as a “Conservation Site” because its natural resources do not warrant that status under the District Plan and such zoning would be an unjustified restriction on land that is privately owned.
5. The plan change is not inconsistent with or contrary to the objectives and policies of the District Plan or Regional Policy Statement and is broadly consistent with the strategies of the Northern Growth Management Framework.
6. The plan change in the form now recommended is 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.
7. The plan change in the form now recommended should be approved and incorporated into the District Plan.

# APPENDIX 1

A handwritten signature in black ink, appearing to read "Stuart Kinnear", with a stylized flourish at the end.

Stuart Kinnear (Chair)

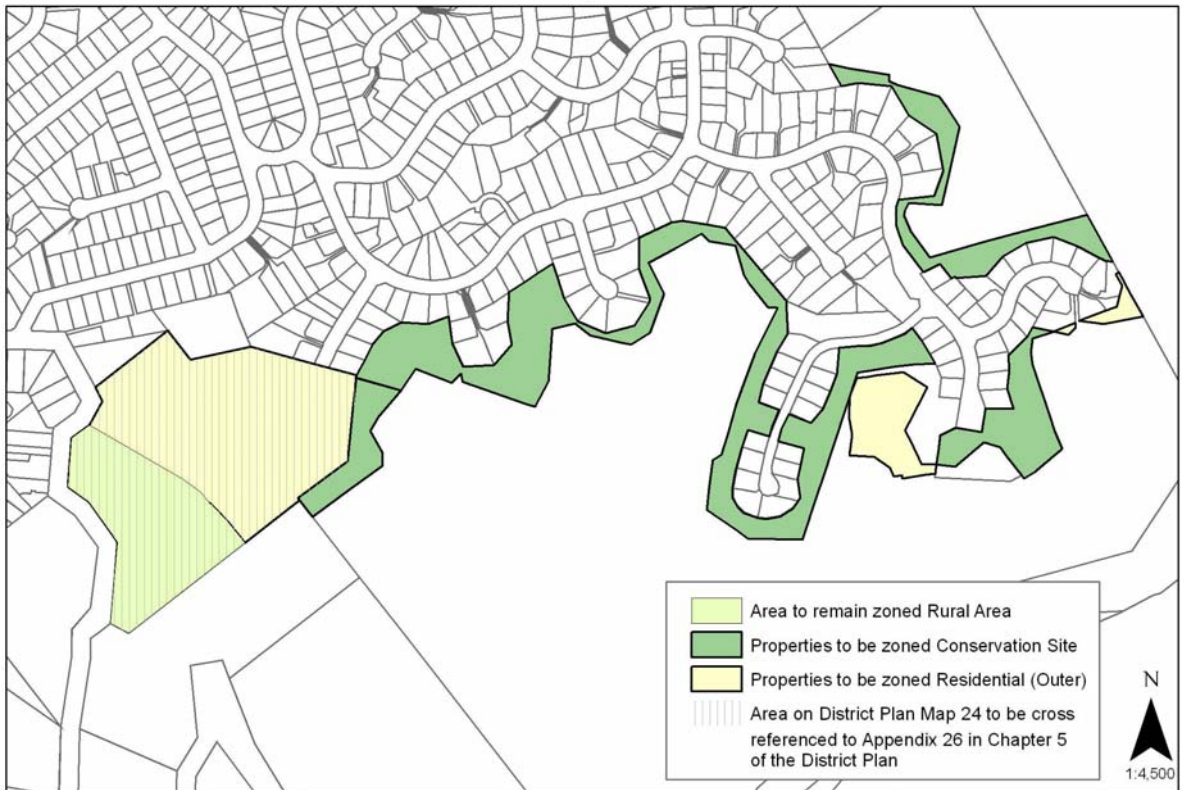
Resource Management Commissioner

7 May 2009

# APPENDIX 1

## ATTACHMENT 1: Areas to be Rezoned

Proposed District Plan Change 62 - Areas to be Rezoned



# APPENDIX 1

## ATTACHMENT 2: New Appendix Area

### **Appendix 26      Subdivision of Outer Residential Area, Part Lot 103 DP 340021 & Part Lot 15 and 16 DP 2205**

The following provisions are a result of Plan Change 62, which included (among other matters) the rezoning of Part Lot 103 DP 340021 & Part Lot 15 and 16 DP 2205 to Outer Residential Area.

**The following rules will apply:**

#### **Subdivision**

Rule 5.4.5 of the Residential Area rules applies to any subdivision in the area zoned Outer Residential Area on the following map. All subdivision is a Discretionary Activity (Unrestricted). In addition to the requirements under Rule 5.4.5 the following additional requirements shall apply:

#### **Additional Standards and Terms**

- No more than one household unit shall be erected on the residential lots that result from the subdivision of the land zoned Outer Residential Area on the following map.
- Buildings within the “Building Height Restriction Area” shown on the following map shall be single storey and shall not exceed 6 metres in height.
- No vegetation shall be removed from and no buildings shall be erected on the area so identified on the following map.

#### **Additional Assessment Criteria**

- The extent to which the effects of earthworks and the removal of native vegetation on the ecological values of the site and the immediately adjoining rural land can be avoided, remedied or mitigated.
- The extent to which any adverse visual effects resulting from earthworks and the removal of native vegetation can be mitigated particularly through the use of landscaping and/or planting.
- The extent to which any proposed subdivision provides for the roading and pedestrian connections as shown on the following map.
- The extent to which any proposed subdivision provides reasonable public access into the area zoned Conservation Site (Gilberd Bush - reference 5I) below the site.

#### **Additional Information Required**

In addition to the relevant information requirements of section 3.2 of the District Plan, an application for a residential subdivision of the area must be accompanied by:



# APPENDIX 1

- (i) a landscape and planting plan demonstrating how the relevant criteria will be complied with, including details of the planting proposed for the “indicative planting” area shown on the following map; and
- (ii) an earthworks management plan/assessment demonstrating how the relevant assessment criteria are complied with. The plan should include the location and extent of proposed cuts and fills in relation to the stream and the area of native vegetation to be removed. The information should be consistent with the principles and guidelines in the Greater Wellington Regional Council’s Small Earthworks, Erosion and sediment control for small sites (June 2006) and/or Greater Wellington Regional Council’s erosion and sediment control guidelines (reprinted 2003).

## **Area to be Covenanted**

In the event that the area zoned Outer Residential on the following map is subdivided, the resource consent authorising that subdivision is to record as a condition that the “Area to be covenanted” (located on Part Lot 16 DP 2205) and shown on the following map cannot be built on and trees and native bush cannot be removed. The Council shall issue a consent notice under s221 which shall be registered against the titles created and shall be a covenant running with the land binding all subsequent owners.

## **Rural Area**

- Any activities in the Rural Area shown on the following map that are not Permitted Activities under Chapter 15 the District Plan will require resource consent under the Rural Area Rules.
- The position of the house site within the Rural Area shown on the following map is indicative only and subject to resource consent.

## **Explanation**

*The land zoned Outer Residential Area shown in Appendix 26 follows an application for a private plan change which included an indicative subdivision layout, including roading, pedestrian access, and earthworks. The plan change process does not allow that level of detail to be included in the District Plan. The rezoning indicates that the land is suitable for residential development, subject to further consideration of an actual development by way of resource consent. However in order to mitigate potential adverse effects of residential development, any future subdivision will be guided by the additional standards and terms, information requirements and assessment criteria which have been included in Appendix 26. These include:*

- *a limitation of one dwelling per residential lot to reduce the overall density;*
- *the delineation of an area between a future road and the southern edge of the area where future buildings are limited in height to reduce the visual impact of the site when seen from below;*
- *the identification of other areas, including within the Rural Zone, where vegetation must not be removed.*

## Stage 8 - Bellevue Subdivision

