

## **Under the Resource Management Act 1991**

**IN THE MATTER OF** the Wellington City Operative District Plan and Proposed District Plan Changes 32 and 33 to that Plan.

### **REPORT AND RECOMMENDATIONS TO THE WELLINGTON CITY COUNCIL BY HEARING COMMISSIONERS APPOINTED PURSUANT TO SECTION 34 OF THE ACT**

#### **INTRODUCTORY REMARKS**

Euan McQueen

Chairman, Panel of Commissioners

These remarks set out to give an overview of the background to, conduct of, and conclusions from, the hearings conducted for the Wellington City Council (“Council”) into Plan Changes for Renewable Energy (Plan Change 32), and Ridgelines and Hilltops (Visual Amenity) and Rural Area (Plan Change 33).

#### **BACKGROUND**

Renewable energy is not currently covered by the operative District Plan. Awareness of the increasing relevance of this subject, and especially the amendments (in 2004) to the Resource Management Act, prompted the Council to work toward provisions in the District Plan covering renewable energy (Plan Change 32). While the use of wind energy dominated the hearing, there was considerable time devoted to submissions on other either current or prospective forms of renewable energy, especially solar.

Plan Change 33, dealing with Ridgelines and Hilltops (Visual Amenity), aims to develop a methodology which will allow the protection and management of those physical features within Council boundaries. The existing measures are difficult to define and administer. The Plan Change also includes new rural rules and a Rural Design Guide that provide a framework for assessing and addressing potential development in rural areas.

There was some comment through the hearing process that the Panel should not have heard both Plan Changes 32 and 33 at the same time. As it is likely that wind turbines would be sited on ridgeline and hilltop sites in rural areas, it was reasonable that the options for control and protection of those areas would be considered at the same time as submissions for Plan Change 32. A number of submitters commented on both subjects within their submissions at the hearing.

The Panel was comfortable that the two proposed plan changes be dealt with at the same time. The single hearing for both avoided much repetition, as well as allowing submitters with interests in both to appear only once.

## **THE HEARING**

The hearing Panel comprised the following four Commissioners:

Euan McQueen (Chair) – Independent  
Julia Williams – Independent  
Celia Wade-Brown – Councillor  
Ian McKinnon - Councillor

Submissions were invited in mid 2004, with a closing date of 17 July 2004. They were distributed to the Panel in January 2005; the hearing began on 25 January 2005. The Panel sat for 10 full days and two part days, for a total of some 92 hours. The hearing closed at 9.45 pm on 15 February 2005. Deliberations began shortly afterwards, and finished on 16 April. Some 90 submitters were heard by the Panel. All written submissions were read by the Panel.

The Commissioners visited Makara, Te Apiti wind farm near Ashhurst (without meeting Meridian staff), and several of the “Appendix” sites during the deliberations.

## **THE SUBMISSIONS**

Plan Changes 32 and 33 generated a total of 1308 main submissions and 223 further submissions. A total of 631 main submissions and 106 further submissions were received on Proposed Plan Change 32. A total of 677 main submissions and 117 further submissions were received on Proposed Plan Change 33. Approximately 90 percent of these made reference to the ridgeline and hilltop provisions, the remainder related to other rural provisions.

The submissions could be broadly divided into five groups:

- Those who supported Plan Changes 32 and often 33, although often with suggestions for amendments;
- Those who opposed wind energy sites in particular locations, and within that group, many residents of Makara and their supporters from elsewhere. These submitters were vehemently opposed to wind turbines being erected on the hills around Makara, and particularly on Quartz Hill;
- Those for whom the application of the overlay concept provided insufficient protection for ridgelines and hilltops;
- Those who perceived the proposed changes as creating a serious disadvantage on certain land holdings. These objections came largely from developers and owners of undeveloped land areas on the urban fringe, and especially to the north of the city; and
- A small group who commented dispassionately on the various proposals.

There was strong support for the energy conservation provisions. There was widespread, but not quite universal, support for the use of renewable energy, especially from wind turbines. The Panel shares these views and has recommended the new Chapters 24 and 25 be retained.

Energy sources such as solar heating, biomass and tidal flows were all acknowledged as having at least possible, and in some cases an immediate, potential for the future. The Panel has noted the need to recognise these, especially solar energy, and the need for a role for the Council as an adviser/advocate in this area. The Panel particularly noted the relevance of the Council's own Sustainability Framework in this matter. As sustainable energy is one of the five key items in the framework the Panel believes the renewable energy and energy efficiency provisions in the District Plan will be an important implementation tool.

The concentration on renewable energy issues and the perceived effects of wind turbines upon Makara and other settled areas dominated the Hearing.

Some submitters took their case close to the format and detail required for a resource consent hearing rather than maintaining it at the more general level appropriate to a District Plan Change. The Panel had no confusion about what it was considering, i.e. the policy and regulatory framework for a possible future application. There was no doubt as to the sincerity and concern about the possible effects of wind energy facilities on settled areas within rural Wellington.

The proposed Policies, Objective, Methods and Rules that have been recommended for amendment allow recognition of points raised by submissions. Should a wind energy facility proposal be put forward this will contain the specifics of a resource consent application to be traversed by all parties involved.

There was a constant theme in the submissions of protecting the natural character of Wellington's most visible hilltops and ridgelines. This would include buildings and other structures which could be perceived as "clutter" on the higher points of a landscape which gives Wellington its distinctive character. Some very substantial submissions were heard, ranging from the site-specific through the scientific, to well presented visual presentations, as well as passionate and, at times, emotional pleas to minimise any potential effect on the existing landscape.

We pay tribute to the submitters, many of whom researched, prepared, wrote and presented their submissions in their own time and at their own expense. On this issue there was a significant number of submissions from Makara.

## **THE CASE OF MAKARA**

The Panel takes this opportunity to make some general observations from the hearing process about Makara.

The Makara community of some 140 houses and 300 residents has experienced a period of uncertainty about their local environment since 1997 when the then Electricity Corporation of New Zealand suggested that wind turbines be sited on

Quartz Hill. When Meridian Energy took over ownership of ENCZ's property, it was soon made clear that Quartz Hill, and other parts of the Makara area which along with much of the Wellington area represent ideal sites in climatic terms and in other ways for a wind energy base.

In the midst of this the Council worked in a very positive way with residents to prepare and publish the Makara Community Plan in 2003 which left local people comfortable about their place in the city, and with a feeling that their status as rural dwellers on the edge of a busy city had been recognised.

It became clear to the Panel when listening to the many submitters that their comfort level has been sharply reduced, if not eliminated for some residents, with the appearance of the proposed Plan Changes and the implied threat of significant change in their local landscapes. The content and tone of Makara residents' submissions reflected both disappointment and continuing tension of uncertainty about their future in this regard. The trust developed with the Council in the period up to the Community Plan completion has, according to many of the submitters, been broken. While it is a small community, it is still part of the city. The Panel does not wish to comment specifically on the status and value of the Community Plan, except to say it is clear that the Council faces a real challenge in restoring the trust which will be an important underlay to discussions on the effects of renewable energy proposals, and their effect on the Makara community.

## **RESOURCE MANAGEMENT ACT 1991**

The Resource Management Act 1991 (RMA), the legislation at the heart of planning and development in New Zealand, provides the context within which the Hearing has been held. It is to that contextual framework that we now turn.

### **Part 2**

The RMA provides the legislative context within which the hearing was conducted as well as the context within which the District Plan is set. Any subsequent resource consent hearing's format and conduct are determined by the RMA and the Policies, Objectives, Methods and Rules in the relevant District Plan and Regional Policies Statements.

Part 2 of the RMA sets out the purpose and principles of the Act. Section 5 describes the purpose of the Act as "to promote the sustainable management of natural and physical resources". It goes on to define sustainable management as:

*“ . . . managing the use, development and protection of natural and physical resources in a way, or at rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –*

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonable foreseeable needs of future generations;*

- (b) *Safeguarding the life-supporting capacity of air, water, soil and ecosystems;*  
*and*
- (c) *Avoiding, remedying or mitigating any adverse effects of activities on the environment.”*

The points set out in section 5 have primacy over all parts of the RMA. This is the framework and context within which the new Chapters 25 and 26 of the District Plan have been drafted.

Section 6 of the RMA (Matters of National Importance) sets out six particular areas of national importance to be taken into account when applying the general provisions of section 5.

Section 7 (Other Matters) contains twelve topics to which particular regard should be paid. All have relevance to the new chapters, and a few are especially topical:

- (b) – *The efficient use of natural and physical resources.*
- (ba) – *The efficiency of the end use of energy.*
- (c) – *The maintenance and enhancement of amenity values.*
- (i) – *The effects of climate change.*
- (j) – *The benefits to be derived from the use and development of renewable energy.*

These principles will apply to the context of any resource consent hearing, the point at which specific proposals will be presented.

All this may seem glaringly obvious to some, but for many it needs to be reiterated and emphasised. The proposed District Plan Changes provide a framework, a context, drawn from the RMA, within which a case can be considered for a wind energy development proposal, and for any other project affected by the changed plan provisions. The Policies, Objectives, Methods and Rules are set out based on these principles. They do not provide a blanket approval for, say, wind turbines all over the Wellington area: they simply provide the context within which such a proposal can be considered, and a place at which all views, both for and against, can be aired. Within this context the Panel is not recommending any absolute “no go” areas for wind energy facilities in the city.

There are a number of key points to emerge from the hearing. These are reflected in the Policies, Objectives, Methods and Rules recommended for adoption.

## **RIDGELINE AND HILLTOP OVERLAY**

In 1999 consultants were retained by the Council to create an inventory of “outstanding” and “significant” ridgelines and hilltops. In 2001 a revised brief was given for a study which would develop new rules for the management of activities on undeveloped ridgelines and hilltops. They were to be assessed in terms of:

- natural values;
- visual values;

- heritage values; and
- recreation values.

In 2004, the Council decided to adopt only *visibility*, one of the visual values, as a basis for identifying significant hilltops and ridgelines. In principle the Panel has no difficulties with this approach. In particular it accepts as appropriate the visibility values as providing the primary threshold for identifying the most important ridgelines and hilltops in the city. However, the Panel came to believe that other values associated with these areas should also be recognised.

Submitters presented cogent evidence that landscape values include much more than just visibility.

The Panel believes that the 2001 study that identified the intrinsic natural values and the amenity values of Wellington's ridgelines and hilltops should be fully implemented in order to enable landscape features to be appropriately protected, maintained and enhanced. Submitters noted that omitting to identify and address those landscape issues restricts the Council in fulfilling its obligations under the RMA.

The Panel recognises that Wellington will continue to grow, and the currently undeveloped ridgelines and hilltops will come under increasing pressure. We are of the view that the overlay provisions will provide an effective framework for controlling development in those areas.

## **QUARTZ HILL**

Quartz Hill has been variously included and excluded at different times from the area protected by the draft overlay and landscape identification exercises. The Panel heard many submissions on the Hill's status, and the merits of its inclusion within the overlay. We also heard strong submissions from the Makara community and the Quartz Hill Reserve Charitable Trust, about the geological and landform significance of Quartz Hill.

The Panel had some difficulty in reconciling the decision to exclude Quartz Hill from the overlay with the evidence presented about it. We have concluded that Quartz Hill and its associated peneplain ridgeline should be included in the overlay map for reasons of landscape continuity values and visibility.

We noted, as well, the submission from the Director General of Conservation arguing that it is "entirely appropriate and necessary to refer to the impact on geological values". He was referring to Meridian Energy's submission 13, and the Officer's report that recommends the deletion of Assessment Criterion which refers to the impacts of geological features. The Director General argues that this would be inconsistent with Part 2 of the RMA. That ensures impacts on geological and archaeological values are recognised.

## **REFERENCE TO REGIONAL POLICY STATEMENTS**

The RMA is clear that there is a hierarchy in the planning structure which should be followed – from national through regional policies to district policies.

Comments were made by submitters on the omission at times of references to the Regional Policy Statement and associated Regional Plans.

The Panel believes that the Regional Policy Statement should guide the Council in the preparation and review of all parts of the District Plan as part of the normal work programme.

## **THE CONSULTATION PROCESS**

The importance of providing good advice to the community about Plan Changes became very clear during the hearing. There have been Council projects (Rural Rules, Rural Design Guide, Makara Community Plan, Northern Growth Management Framework [NGMF]) where consultation has been extensive, with a high degree of community acceptance achieved. The accelerated consultation for Plan Change 32, and the publication of Plan Change 33 (after acceptance of the NGMF) without consulting directly with the Northern Growth interests, have been less successful in this regard.

Consultation does not imply the need for total agreement: it is about giving full information to potentially affected parties, offering time to consider it and the opportunity to discuss it. There is robust case law on the subject. A perceived lack of opportunity for discussion sours a subsequent hearing, and broader relationships.

We commend the Council for its successes in this area; they offer a standard which should in time become the norm. While it is not for the Panel to tell the Council how to carry out its business, including how to conduct consultation, we do make the observation that our job may well have been significantly easier had more full consultation been carried out.

## **PLAN CHANGE 32 AND OPEN SPACE B**

Submitters noted that there had been little debate, especially in the initial phase of public consultation, on the role of Open Space B land in Plan Change 32. The Panel considers that the Policies and Objectives of Open Space B are in direct conflict with the Policies and Objectives of Chapter 25 Renewable Energy. Land in Open Space B includes privately owned sites and Council-owned parks and reserves. Most of this land is protected by some form of Management Plan that precludes or limits development in the form of buildings and structures. If the Council wishes to put a wind energy facility on its own land in an area zoned Open Space B, it can apply to do that as a non-complying activity under the resource consent process.

The Panel recommends that the specific rules relevant to wind energy facilities apply only to Rural Areas and are not applied in Open Space B Areas.

## **APPENDIX CASES FOR PROPOSED RESIDENTIAL DEVELOPMENTS IN THE URBAN FRINGE AFFECTED BY THE OVERLAY – REF DPC 33**

Extensive submissions were made to the hearing on these areas, spread throughout the city. The areas tend to be on the upper fringe of steep sites that have been historically considered too steep to develop and in many cases have a high degree of visibility within the local community.

The Commissioners have considered each of these sites, and reviewed the impact of the proposed overlay. Specific recommendations are given. Our general approach has been to recommend modifications, rather than significant changes to these areas.

### **PROJECTS TO BE CONSIDERED IN THE FUTURE COUNCIL WORK PROGRAMME**

Earlier we noted the need for a more complete assessment of landscape values than just visibility in relation to identified ridgelines and hilltops.

There are other related topics which the Panel invites Council to include in its future work programme. All these are topics raised at the Hearing, in many cases by several submitters.

***Renewable Energy:*** Many submissions addressed the need for the Council to more actively promote energy efficiency. The Panel believes that, in response to the Council's obligations under the RMA, the Multi-Unit and Subdivision Design Guide should be updated to include references to renewable energy, e.g. the solar envelope and small scale wind turbines. We are suggesting that the Council takes a more active role in advocating and implementing energy efficiency, conservation and use of renewable energy.

***Landscape Inventory:*** The Panel believes it is essential to complete a landscape inventory with a comprehensive land use and catchment mapping of the whole district. We note policy on coastal areas including coastal ridges, escarpments and hilltops has always been considered a matter to be dealt with by a future plan change. We recommend the Council commits to giving this work priority.

***Vegetation and Ecology:*** A review is recommended to implement policies and recommendations included in "Wellington Wet and Wild" (Bush and Restoration Plan), a Council policy which seemed to have had little public exposure. The Panel believes that at least some regulatory controls are required for its objectives to be achieved. This could include a framework for the protection of the natural character of streams, and appropriate protection for significant natural areas and indigenous vegetation.

***Esplanade Provisions:*** A review of the esplanade policy for waterways in properties of 4 ha or over, and for smaller streams within both urban and rural areas is recommended by the Panel. This should also include access track linkages to such waterways. This recommendation comes from hearing a number of submissions which identified an apparent gap in the regulatory powers for Council to meet its obligations under Section 6 of the RMA: promoting public access to and along waterways.

**Forestry:** The Panel believes there may be a need for forestry (i.e. plantation) guidelines to address the potential for forestry developments to have visual impact in mixed-use land areas, in the rural parts of the city. The possibility of guidelines should be investigated to identify the need to mitigate the visual impacts.

The Panel suggests that these proposals be evaluated and, where appropriate, followed up in the Council's District Plan work programme.

## **CONCLUSION TO INTRODUCTORY REMARKS**

The Panel has set out to provide clear, robust, consistent and fair Policies, Objectives, Methods and Rules for the new Chapters 25 and 26 and the existing District Plan provisions. Our approach in this evaluation has been determined by Part 2 of the RMA, the relevant sections of the Regional Policy Statement, and the evidence put forward by submitters both at the Hearing and in written submissions. Various guideline documents prepared by the Council in recent years have provided both valuable background information, and a welcome emphasis on the principles of good design in enhancing our rural landscapes.

It is important to follow the guidelines set by the RMA and RPS to protect the natural environment and to avoid later confusion, frustration and delays to planned developments within the city boundaries.

It has been a complex and arduous hearing. In spite of clear differences of views amongst submitters, there were only rare moments of tension. The New Zealand style of fairness and respect for the right of others to state their views, however disagreeable they might be, was clearly evident.

We have received throughout the hearing positive and professional support from Council Planning Group staff and the consultants retained by the group for particular projects. Other Council support staff have always been helpful. We are grateful for their always ready accessibility in busy work lives.

Below are the Panel's recommended amendments to the specific provisions in Plan Changes 32 and 33, and our reasons for those amendments.

## RECOMMENDATIONS

1. That proposed District Plan Change 32 (Renewable Energy), publicly notified on 26 May 2005, be approved including the additions, deletions and amendments identified in the Plan Change text attached as Appendix A to this report.
2. That proposed District Plan Change 33 (Ridgeline and Hilltops (Visual Amenity) and Rural Area), publicly notified on 26 May 2005, be approved including the alterations, deletions and amendments identified in the Plan Change text attached as Appendix B to this report.
3. That all submissions seeking the inclusion of Quartz Hill in the ridgeline and hilltop overlay area be accepted and that on District Plan Maps 8, 9, 19 and 20 the ridgeline and hilltop overlay lines be amended to include the Quartz Hill area as shown on Appendix C to this report, including consequential amendments to the associated Inventory Maps.
4. That the submission from Ridvan Garden Developments Limited (409) be accepted in part to the extent that District Plan Map 20 showing the ridgeline and hilltop overlay line on the submitter's property off Downing Grove Ngaio be amended as shown on Appendix D attached to this report including consequential amendments to the associated Inventory Maps.
5. That the submission from West Tawa Developments Partnership (452) be accepted in part to the extent that District Plan Map 30 showing the ridgeline and hilltop overlay line on the submitter's property off Kiwi Crescent, Tawa be amended as shown on Appendix E attached to this report, including consequential amendments to the associated Inventory Maps.
6. That the submission from R and E Dunlop (470) be accepted in part to the extent that District Plan Maps 22 and 23 showing the ridgeline and hilltop overlay on the submitters property off Spenmoor Street, Newlands be amended as shown on Appendix F attached to this report including consequential amendments to the associated Inventory Maps.
7. That the submission from the Brooklyn Residents Association (225) requesting the identification of the existing landfill in Maori Gully which is situated within the Appendix 4 area to Rule 15.4.6 be accepted and that the landfill be identified as shown in Appendix G attached to this report.
8. That the submissions from Truebridge Callendar Beach (412/7) and the New Zealand Institute of Surveyors (643/9) requesting the identification of the Horokiwi area for the application of Rule 15.4.5 be accepted and that a new Appendix 9 map be included in the District Plan as shown in Appendix H attached to this report.
9. That the submission from the Wellington City Council (211/14) be accepted and the land not intended for inclusion in Appendix 6 to Rule 15.4.6 be deleted as shown on Appendix I to this report.

10. That the Section 32 reports for proposed Plan Changes 32 and 33 be adopted.

11. That all submissions and further submissions be accepted or rejected to the extent that they accord with recommendations (1) – ( 10) above.

## **SECTION 32 REPORTS**

In accordance with the requirements of section 32 of the RMA the Council prepared a record of its evaluation undertaken of Plan Changes 32 and 33. That record was made available from the time the Changes were publicly notified as required by the RMA and it formed part of the background material considered by the Panel. The Panel recommends that these reports be adopted.

## **REASONS FOR RECOMMENDATIONS**

The discussion below provides the composite decision of the Panel on Proposed District Plan Changes 32 and 33. All recommendations relating to the Objectives, Policies or Rules are shown in the annotated copies of the relevant Chapters of the Operative District Plan attached as Appendix A and Appendix B to this report.

All recommendations relating to the District Plan Maps are shown in Appendices C- I attached to this report.

Euan McQueen  
Chairman, Panel of Commissioners