

## REPORT OF THE HEARING COMMITTEE

### WELLINGTON CITY COUNCIL REPORT OF THE HEARING COMMITTEE

**SUBJECT:**

PROPOSED DISTRICT PLAN CHANGE 56: MANAGING INFILL HOUSING DEVELOPMENT

**COMMITTEE MEMBERS:**

ALICK SHAW (Chair)

CELIA WADE-BROWN

HAYLEY WAIN

**DATE OF HEARING:**

7, 10, 12 and 14 September 2007

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## GUIDE TO THE REPORT

**Submitter list:** Given the length of this report, all submitters have been referred to by number. A pull-out A3 sheet containing the names of all submitters for quick reference is attached at the end of this report.

**Revised provisions:** Where the Hearings Committee have agreed to make changes to the provisions, the changes are highlighted using the following format:

- Underlined text refers to text introduced by Plan Change 56. e.g. Plan Change 56
- Text that is proposed to be added as a result of submissions will be underlined and highlighted. e.g. Plan Change 56
- Text that is proposed to be deleted as a result of submissions will also be highlighted and will be struck out. e.g. ~~Plan Change 56~~

## 1. RECOMMENDATIONS

It is recommended that the Council:

1. *Approve Proposed District Plan Change 56 as set out in the Public Notice of Saturday 5 May 2007, subject to the amendments outlined in Appendix 2 (annotated chapters).*
2. *Accept or reject all the submissions and further submissions to the extent that they accord with Recommendation 1 above.*
3. *Note the following areas of investigation that the Committee recommends be carried out for inclusion in future plan changes (if necessary) to the Residential rules:*
  - *Overall maximum height rule*
  - *Sunlight access plane rule*
4. *Investigate the creation of a 'Plain English' guidance document which explains the main points of the provisions in user-friendly language.*

## 2. INTRODUCTION

This decision relates to Proposed District Plan Change 56 (DPC 56) Managing Infill Housing Development.

Plan Change 56 was publicly notified on Saturday 5<sup>th</sup> May 2007.

DPC 56 was a Council-initiated plan change in response to concerns about the quality of infill development occurring throughout the Residential Areas of the city. Key components of the plan change included:

- Strengthening the residential amenity and residential streetscape policies
- Reducing the permitted height of the second unit on a site to 4.5m (ie. a single storey)
- Introduction of an open space requirement per dwelling (ie. 35m<sup>2</sup> for Inner Residential zoned areas or 50m<sup>2</sup> for Outer Residential zoned areas)
- Tighter controls on subdivision, and a revised subdivision design guide
- Updated Multi-unit Design Guide, renamed the Residential Design Guide
- Revised definitions of 'site area' and 'access strip'
- Revised non-notification statements for development that enables infill housing, with a view to increasing affected party involvement in resource consent processes.

A public notice was sent to all ratepayers in Wellington City, outlining the Plan Change in brief. A total of 122 submissions were received. 85 submissions were lodged with Council during the first submissions process, with a further 37 submissions received by the end of the further submissions process (being 13<sup>th</sup> August 2007). A pull-out A3 sheet at the end of this report lists all submitters by name and submitter number.

The Hearing for District Plan Change 56 was held over 4 days in September 2007.

At the onset of the hearing the Council's Planning Policy Advisor Liz Moncrieff spoke to the Officer's Report on the plan change. Twenty-one submitters appeared at the hearing and spoke to their submissions (in order of appearance):

- Roger Walker (FS25)
- Stelio Kasoulides (FS24)
- Heather Sharpes and Margaret Graham (27)
- John Macalister - Brooklyn Residents Association (28)
- Ian Athfield (FS7)
- Bruce White (83 & FS36)
- Shane Crowe (FS2)
- Paul Kerr-Hislop (FS8)
- Sarah Clarke and Dan Rodie – Cuttriss Consultants (65)
- Dave Gibson - NZIS (NB: evidence adjourned partway through, hearing reconvened Friday 14<sup>th</sup> September to hear evidence of this submitter following procedural issue being raised by the submitter) (67 & FS20)
- Rhys Phillips – Truebridge Callander Beach Ltd (69 & Fs19)
- Nathan Baker and Christine Chong – Housing New Zealand (29 and FS23)
- Robin Boldarin – Wellington City Labour Local Government Committee (49)
- Louellen Bonallack (52)
- Martin Hanley with support from Peter Frater and Steve Dunn - Newtown Residents Association (76)
- Joanna Woodward (72)
- Esther Wallace (FS10)
- Ian Leary – Spencer Holmes Ltd (38)

- Graham Calcott on behalf of Cathy Wood and Greg Neville (84)
- Frances Robinson (50)
- Michael Fox (10)
- Dave Gibson - New Zealand Institute of Surveyors (67 & FS20)

A further four submitters tabled further written evidence at the hearing:

- Alistair Wilson (5)
- Greater Wellington Regional Council (15)
- Dave Russell (77)
- New Zealand Institute of Architects Inc (67 & FS20)

The Committee gave careful consideration to all the issues raised by the submitters, including those issues elaborated on in presentations by the individuals who appeared before the Committee. The following discussion sets out the key issues and the Committee's reasons for making its decision.

The Committee wished to acknowledge the volume breadth and quality of the submissions received on Plan Change 56 and the wide range of viewpoints on the many issues raised in the Plan Change had been covered. The Committee was particularly impressed with the quality of presentations by submitters at the hearing, particularly those that illustrated both good and poor quality developments as these helped the Committee immensely in understanding the ramifications of the provisions introduced with Plan Change 56.

In deliberations, the Committee was mindful of a number of general issues that continued to emerge from the many submissions on the Plan Change. These are outlined below in brief as they help to set the scene for the Committee's decision.

- This Plan Change represents an 'interim' approach to managing infill housing in Wellington, whilst the Council continues developing a 'Targeted Approach' which will identify the areas for where, and to what extent infill will be appropriate. In some areas of the city rules to ensure minimum densities of development may be appropriate. Other areas may have rules (like those adopted in PC 56) to allow modest infill to occur development, and others may have still more restrictive provisions in place to prevent further infill occurring. While the Committee was conscious that Plan Change 56 must stand on its own merits, it is the beginning of a process that will explore further changes and refinements in the management of infill.
- It was acknowledged by the Committee that Plan Change 56 was, in part, designed to respond to the public angst about poor infill housing development. Whilst the Committee has sought in this decision to restore public confidence in the planning process, it is not signalling a retreat on the City's overall goal of a contained city.
- The Committee considered it is possible to achieve a balance between allowing further infill development (in order to meet the contained city policy and population growth) and ensuring that such development is of a quality that fits in well with surrounding properties. The way residents feel about their city (i.e. sense of place) is partially derived from the features and qualities of the city's residential suburbs. As a result, new development that is proposed to be sited in these residential areas must respect the character of that neighbourhood.
- Contrary to the views expressed by some submitters who considered the real problem lies with multi-unit developments and not small scale infill, the Committee was firm in its belief that many of the poorest development outcomes it had seen during the hearing and on site visits were those developments that had been purposefully designed to meet the permitted (or Controlled) rules of the Plan. In this respect the Committee had

significant sympathy for submitters who expressed frustration that, developments that fit in well with the neighbourhood but make one or two breaches to the planning rules, are the developments that get delayed by the planning process. As noted by submitter 24, “at the end of the day, a lasting, attractive looking, and community appreciated building, with minor technical infringements is more worthy than an ugly compliant one”. Whilst this issue has not been totally resolved by this Plan Change, the Committee is satisfied the Plan Change must ensure that both multi-unit housing and smaller scale infill housing are better managed as both have the potential to create significant adverse effects. The Committee looks forward to a planning regime in which there are incentives for good design outcomes, not just a development that ‘fits the rules’ in order to have an easier path through the planning approval process.

- Public expectations for greater notification of infill housing and subdivision developments were particularly problematic for the Committee. Aware of the need to restore public trust in the ‘process’, the Committee was concerned that this might actually result in poorer quality ‘outcomes’. Landowners may reject “the best” design solutions for a site (which breach some rules) in favour of mediocre design solutions which fit the rules perfectly and avoid the need for neighbour approval. In the end, the Committee felt that the non-notification statements (which have the effect of increasing the likelihood of requiring neighbour approvals) were appropriate, but noted they would need to be reconsidered when a ‘targeted approach’ to infill development was further developed.
- One particular theme to emerge from submissions was the extent to which the Plan (and therefore the Council) should seek to influence the on-site amenity of developments rather than simply managing the external effects of on neighbouring properties. In considering both the open space provision and the contents of the Residential Design Guide, the Committee noted that the RMA requires Council to maintain and enhance amenity values. In the context of this plan change, the Committee felt that such provisions would benefit Wellington’s residential character and quality of life for its residents.

### **3. Decision Discussions**

#### ***3.1 Submissions on the whole of Plan Change 56***

Seventeen submitters sought that the Council either adopt Plan Change 56 in full (submissions 1, 7, 12, 15, 17, 33, 47 and FS3) or sought that the Plan Change be withdrawn in its entirety (submissions 4, 38, 55, 59, 78, 79, 83 and FS4 and FS36). Further submitter 23 opposed a number of the supportive submissions noting that the Plan Change was unduly restrictive and would limit infill opportunities, whereas FS10-14 supported these submissions and opposed submitters who sought the plan change be withdrawn. Further submitters 21, 22 and 36 outlined a number of comments about the approach taken to developing the plan change.

A selection of the main points raised by these submitters is outlined below:

*In support:*

- Infill housing should not block sunshine or main view of adjoining neighbours (sub. 1, FS10-14)
- Concerned at the inevitable cumulative effects of infill development on the amenity and character [of Ngaio] (sub. 12)

- In the hilly suburbs, the present rules allow designers to excavate and create structures up to 4 stories high, completely out of scale with the residential context (sub. 12)
- Plan Change 56 identifies good urban design and protection of amenity values as key elements in achieving environmental quality in urban areas (sub. 15)
- Support Plan Change 56 so that the dramatic impacts of infill housing will be dealt with before the character of older suburbs is ruined (sub. 33)

*In opposition:*

- Plan Change 56 unfairly burdens those who bought property with the intention of being able to build additional structures on it (sub. 4)
- The existing regulations are sufficient, and if used properly, would stop many of the ugly examples of high density infill (sub. 4)
- The proposed provisions are too restrictive and onerous (sub. 59)
- The plan change significantly restricts the efficient use and development of land to occur and the policies now send mixed messages (sub. 78 and 79)
- The proposed provisions are likely to be detrimental to suburbs rather than beneficial as suburbs that attract development and renewal invariably benefit from it (sub. 83)
- The plan change should focus more tightly on 'controlling externalities' that arises from infill housing (eg. privacy, access to sun, avoidance of shading, openness of outlook, streetscape) and less on 'internal amenity values' (sub. 83, FS36)

*General comments (further submitter 36, with similar comments made by further submitters 21 and 22):*

- Infill housing has been identified as having an important role to play in easing the imbalances of supply and demand in the housing market and in maintaining housing affordability. Infill housing should therefore be facilitated by the Plan, whereas PC56 could seriously curtail infill housing.
- Flexible application of PC 56 rules and guidelines may provide a solution, but first need to be reviewed to ensure that are strongly grounded in clearly defined purposes.
- Flexible, more principles-based administration with high quality administrative processes, including review and appeal mechanisms
- More consideration needs to be given to mechanisms that help to achieve better alignment of the incentives facing developers and potential adversely affected parties.

During the hearing itself, a number of the submitters made comments of a more general nature about the plan change, as discussed below.

At the hearing, submitter 83 (also FS36) spoke to the Committee on a number of matters. In general, the submitter acknowledged that there were some issues with recent infill housing, but considered that Wellington City Council should not overreact to these issues. The submitter told the Committee that if PC56 led to a decrease in infill housing then it will have failed, and specifically noted that the combination of the height rule and the open space rule will reduce housing supply unless administered flexibly.

The submitter strongly advocated an approach whereby greater flexibility in applying the rules is needed, provided that decision-making is grounded in strong, clear policies. This would in fact remove the need for complex rules. It was important however that flexibility and discretion be administered consistently.

The submitter outlined the need for a simple appeal process distinct from the Environment Court processes and suggested the Small Claims Tribunal as a model that should be considered.

In response to questions by the Committee, the submitter noted that if Plan Change 56 is done correctly then there wouldn't be a need for a targeted approach to locating infill housing (with the exception of preventing it in heritage areas). The submitter considered there was room for both densification and affordable housing in existing residential suburbs; the important factor is to adequately manage the quality and effects.

The submitter agreed that the approach outlined by Ian Athfield in respect of an 'external panel' was consistent with what he was seeking. He considered there is such a diversity of situations that it is impossible to develop one rule to cover them all. Consequently there is a need to consider things on a case-by-case basis but again noted the need for very strong policies to guide that decision.

The submitter noted that the concerns of developers around the notification process must be seen as a signal that they do not have confidence in the final 'discretionary' outcome.

Further submitter 10 spoke to the Committee on a wide variety of issues, but in her introductory comments provided an overview of provisions in the draft Annual Plan 07/08 and the Long Term Council Community Plan relevant to the way the Council would seek to manage and monitor land development and subdivisions. In light of this, it was clear to the submitter that the Council should approve PC56 and considered that the rule changes impose very clear prescriptive rules which should be applied consistently by council officers. The submitter was concerned that the current approach by Council is significantly lacking or inconsistently applied and was of the view that it is developers who are the ones controlling the process.

The submitter was looking for minimum and maximum rules to protect the environment and surrounding properties and to prevent 'false written approvals'. The submitter noted that there are many reasons why people will live in unsuitable dwellings and just because such developments may be approved it does not mean that this is what is right for an area or the wider public good.

The submitter finished her presentation with a case study of an infill development that was approved affecting her parent's property. The submitter outlined that the 5 lot subdivision and land use consent had been processed on a non-notified basis as the effects had been considered *de minimus* by the consents officer. The submitter considered that this example clearly showed why the current process is inadequate to deal with infill development of this nature.

Submitter 38 began his presentation to the Committee noting that the Plan Change was prepared on the basis of a view by Councillors and Council officers that there is a high degree of concern at the rate and type of infill housing occurring. This submitter considered however that the level of submissions on this plan change does not appear to support the Council's perception that there is a high level of interest in this matter (in comparison to other plan change or resource consent applications which have previously attracted hundreds of submissions). The submitter also questioned the consultation approach carried out prior to the notification of the plan change.

In commenting on the Section 32 report to the Committee, submitter 38 provided an overview of population and housing statistics. He concluded that the city's containment policies had worked well with most development located in the city centre and established suburbs, and only modest growth in the "Greenfield areas". It was his view that the rate of growth had been successfully incorporated within the city with relatively few teething problems, and that it was to be expected for some individuals to express some concerns as the city deals with this unprecedented growth. The submitter also noted however, that if infill is to be removed as an option for managing growth, then the Northern Growth Management Framework areas will come under extreme pressure for new dwellings.

In conclusion, the submitter considered that the plan change should be abandoned, also noting that the purpose of the plan change seemed to be to weed out the bad development, but in the

opinion of the submitter the provisions were just as likely to see a lot of 'good developments' go with the bad developments.

Submitter 84 spoke to the Committee predominantly about the Residential Design Guide, but did also note that it is time for the planning rules to be amended to keep in step with changes occurring in the market and to give better controls to ensure a more positive way forward. The submitter noted that on the surface, the plan change intentions are good, but did remain concerned at the philosophy behind the changes. The submitter considered that the rules needed that work for both flat sites and sloping sites. The submitter finished by saying that sometimes rules do get in the way of better design outcomes.

Submitter 10 noted that the plan change has increased uncertainty for developers and noted concern at the level of discretion given to Council officers. He noted that it might cost a landowner \$10,000 - \$15,000 just to find out whether a development was possible. He considered that neighbours were often unhappy with change of any kind (good or bad) but generally once a project is finished they are okay with the final product. Therefore there is an issue of dealing with *reality* versus *perceptions*. He also considered that land values will continue to increase exponentially because of the clamping down on infill as a result of this plan change. The submitter provided the Committee with examples of both good and bad developments, the inference being that most of the bad developments are actually multi-unit developments rather than projects resulting in two units on a site, or where one house is proposed for a site recently subdivided.

Submitter 15 (Greater Wellington Regional Council) was unable to attend the hearing, but did table some additional written evidence which outlined that they supported the Officer's recommendations in respect of its original submissions. Support was given for the way the plan change encourages good urban design, the protection of amenity values and the Subdivision Design Guide.

Submitter 77 (Dave Russell) was also unable to attend the hearing, but tabled some additional information. The submitter considered that much of the concern seemed to be associated with large scale developments and it is these, rather than small scale developments which has been the catalyst to tighten up the rules. The submitter considered that there has been no information provided on the extent of the problem and while there has clearly been a lot of thought gone into the rules, some of them are too simple for such a complex subject (e.g. rule 5.1.3.4.3).

Submitter 67 (New Zealand Institute of Surveyors) spoke to the Committee at the hearing. The Institute noted that while it is not generally concerned with the policy direction that the Council may wish to take under the District Plan, as this plan change proposes significant changes to the subdivision regime the Institute feels strongly about the changes proposed and generally feel that the extent of the changes go beyond what is considered to be reasonably necessary to manage the concerns driving this plan change.

## Discussion

The Committee noted the support of the submitters outlined (submissions 1, 7, 12, 15, 33, 47, FS3 and FS10-14), but also the concerns of those in opposition to the Plan Change (submissions 4, 38, 55, 59, 78, 79, 83 along with FS23). The range of views of the submitters that appeared at the hearing also demonstrated to the Committee that there are diverging views on how best to manage infill housing development across the city. The Committee was persuaded that changes to the way the current Plan manages infill housing are needed and supported the intent of Plan Change 56. However, the Committee did agree with some submitters that amendments to some of the notified provisions were required to achieve a more effective approach to infill housing development, especially in light of Wellington's topographical constraints. The Committee did not consider that these changes weakens the original intent of the Plan Change, rather they strengthen decision-making and increase confidence in planning outcomes.

The Committee also noted that while this plan change is the first to consider the issue of managing infill housing better, it will not be the last. The Committee noted the Council's strategic policy work on a more targeted approach to infill housing will address some of the concerns raised by those opposed to the Plan Change. In particular, it anticipated that the policy work will identify areas of the city that can absorb further intensification, as well as those areas where little or no change is expected. In this respect, this Plan Change is an interim measure. Concerns about the implications of the Plan Change on future residential development should be viewed in that context.

The Committee noted submissions 83, FS21, FS22 and FS36 regarding the need to follow firm and clear processes and for the Plan Change to be grounded in strong, clearly defined principles. The Committee agreed that the Plan should provide clear messages about the Council's objectives in respect of residential development in the city (in particular infill development). For this reason, the Committee paid particular attention to the wording of the policies, which it considered are the primary tool in the Plan for assessing the suitability of particular developments. The Committee noted that the policies are now more specific than previously and it expected that this would result in greater consideration being given to the policies during the assessment of resource consent applications.

### Decision

- **Accept** submissions 1, 7, 12, 15, 33, 47, FS3 and FS10-14 insofar as they support Plan Change 56 and seek its adoption. Note however that changes are recommended to various provisions in response to other submissions and this may impact on these submissions in support.
- **Reject** submissions 4, 38, 55, 59, 78, 79, 83 and FS23 that seek the abandonment or revocation of Plan Change 56.
- **Accept in part submission 83** regarding various wording changes throughout PC56, especially those that seek to clarify the intent of the plan change.
- **Note FS21, FS22 and FS36**, regarding firm and clear processes.
- **Note submissions 84, 10, 15, 77, 67**

### 3.2 Residential Chapter – Introduction, Policy 4.2.1.1

Two submissions were received on the proposed wording amendments to the Introductory text of Chapter 4 of the Plan (submissions 33 and 83), whilst two specific submissions were received on the proposed wording amendments to Policy 4.2.1.1 - Encourage new urban development to locate within the established urban area (submissions 44 and 83).

#### Discussion

Section 4.1 (the Introduction section to Chapter 4) was fully supported by submission 33, particularly the phrase in the 10<sup>th</sup> paragraph which acknowledges that infill housing has reduced the spaciousness of some Outer Residential properties. Submission 83 sought an amendment to that same sentence to qualify the statement somewhat. In considering the wording suggested by submitter 83, the Committee noted that there is no doubt that infill housing will generally change the sense of spaciousness of a given area, but whether this is beneficial or detrimental to the neighbourhood will depend on the site context and nature of the proposed development. That is, there will be some sites or neighbourhoods where infill housing can easily be absorbed due to topography and other characteristics, but other sites or neighbourhoods will not respond in the same way. The site context will also be influenced by the policy approach that has yet to be included in the Plan, but which aims to identify those areas where further infill and intensification is appropriate and those areas where it is not appropriate. The Committee altered the wording slightly to reflect this decision.

The explanatory text of Policy 4.2.1.1 was proposed to be amended slightly in order to acknowledge that rules will be adopted to ensure that not only will more intensive building development be allowed to maintain a compact city, but that the development should be of a good quality. Submitter 44 sought that a definition of 'good quality' is provided and similarly submitter 83 considered that 'good quality' needs to be tied to the quality of the neighbourhood and streetscape rather than the specific attributes that are internal to the development site.

The Committee agreed that the question of what is 'good' or 'bad' quality development is the key issue for this plan change, but noted it is not readily defined. A good quality development will have been designed to respond to its site circumstances; it will respect the context of the surrounding environment (i.e. respecting established patterns of development and the primary bulk and form of surrounding housing and open space areas) and it will respect the intentions of the District Plan zoning for that land. In this respect then, the phrase good quality does refer to neighbourhood and streetscape characteristics. The phrase 'good quality' has been removed and replaced with more specific wording.

#### Decision

- **Accept** submission 33 in respect of its support for section 4.1.
- **Accept** submission 83 in part regarding wording changes to section 4.1 by making the following changes to section 4.1:

- In the 10<sup>th</sup> paragraph of section 4.1 make the following changes:

*In the Outer Residential Area, houses are usually located on larger sections and developments are more spacious. Infill housing on these larger sections will reduce the setting spaciousness of these residential properties. Whether this is detrimental or beneficial to the overall character and amenity value of the neighbourhood will depend on the site context and the nature of the proposed development.*

- In the proposed new paragraph 11, make the following changes:

*The benefits of infill housing to the neighbourhood can be diminished where the housing is poorly designed and results in reduced amenity for adjoining property owners and a reduction in streetscape quality.*

- **Accept submission 44 and submission 83** in respect of the phrase 'good quality' referred to in the explanatory text for policy 4.2.1.1:

*The edge of the urban area of the city is defined by the interface between the Outer Residential Area and nearby Rural and Open Space Areas. Council generally intends to contain new development within the existing urban area, as it considers that continuously expanding the city's edges will not promote sustainable management. Expansion beyond the existing urban form will only be considered where it can be demonstrated that the adverse effects, including cumulative effects, of such expansion can be avoided, remedied or mitigated. Adopting rules to encourage more mixed-use activity and provide for more intensive ~~good quality~~ building development (that maintains or enhances neighbourhood and streetscape residential character) will help keep the city compact.*

### **3.3 Residential Area Amenity Policies (Policies 4.2.2.1, 4.2.2.1A, 4.2.2.1B)**

The Plan Change proposed the addition of two new policies to help maintain amenity values. The first related to controlling development density to ensure new development is 'consistent' and 'compatible' with surrounding residential development. The other policy specified that new development be sited, and of a scale and intensity to be compatible with surrounding patterns of residential development. Eight new paragraphs of explanatory text were also proposed.

Submitters in support (e.g. 2, 6, 9, 11, 18, 28, 33, 36, 52, 60, 68, FS2, FS5 and FS10-14) all agreed and were supportive of the policies as they believed that development should fit in well to the existing character of the neighbourhood. FS23 opposed many of these submissions. Some specific comments made include:

- Infill housing should be sympathetic to the character of existing and surrounding homes (sub. 28 and FS5)
- Support these policies as this is the heart of the infill problem (sub. 33)
- Support Plan Change 56 in particular the objective to limit the number of houses per site (sub. 36, Fs10-14)
- Supports policies but holds concerns that the policy may be interpreted to support further infill in areas that have already been subjected to infill. Keen to ensure that previous infill does not create a presumption that new infill will be approved (sub. 60)
- Older suburban areas with larger properties need to have their specific characters preserved because this is why people move into these areas (sub. 68, FS2 and FS10-14)

Two specific submissions opposed these policies (59, 69) and two other generic submissions (78, 79) were made. Submitter 59 was opposed to the restriction of the number of units allowed on site as of right (and supported by FS23), whilst submitter 69 considered that these policies should be deleted as they conflict with the subdivision and containment policies in the Plan. Submitters 78 and 79 sought the revocation of the Plan Change (as noted earlier) largely on the basis that the policies now send mixed messages about future residential development. These submissions were generally opposed by FS10-14.

Concern about the impact of Plan Change 56 on future residential development was also held by a number of other submitters who sought amendments to the wording of these policies. A summary of the comments by these submitters (29, 44, 57, 65, 67, 70, 83 and 84) is outlined below:

- Policies unduly restrictive, particularly the word 'consistent' which should be deleted. Further explanatory text should be included to outline when intensification of housing might be appropriate (sub. 29)
- Need policies to acknowledge that neighbours, other than immediately adjoining neighbours, can be affected by infill developments and secondly the loss of sound amenity, which is also a valid effect that needs consideration (sub. 57)
- Concerned that text about cumulative effects and the written approvals of affected parties do not follow the provisions and intent of the RMA (sub. 65)
- Policy not justified in context of reasons for this plan change and is in conflict with subdivision policies. The wording of the explanatory text is also subjective (sub. 67)
- Concerned about the text surrounding cumulative effects (sub. 67), clarify how the cumulative effects of very small breaches to the rules are to be judged (sub. 84)
- The choice of which unit is to be single storey should be based on streetscape, topography and site orientation, not on which was built first (sub. 84)
- Needs flexibility to allow for good design, ie. policies should not enforce a rigid repetition of character of a few existing houses where those houses are not of good design (sub. 84)
- Submitters 44 and 83 offer a number of wording amendments to the policies and explanatory text to achieve greater clarity.

Further submitter 2 spoke to the Hearing and outlined his concerns with infill development. He was keen to see the intent of Plan Change 56 implemented properly to prevent overdevelopment of poorly designed dwellings with little consideration given to privacy, spaces between houses, and other effects such as safety, infrastructure and services. The submitter also made a powerpoint presentation which included many images of poor infill development (in the view of the submitter). He was seeking an assurance from the Committee that the Council is serious about ensuring infill housing is done in a reasonable manner, and considered the plan change should encourage a holistic approach to infill buildings (and housing in general) and do away with ad hoc isolated developments with no individual or cumulative merit.

The submitter stated that most people would accept that sooner or later large plots of vacant or surplus land will be developed, but it is the scale of development that has been allowed which people are concerned about as some large developments can destroy the reasons people choose to live in that area themselves. The submitter is waiting to see a vision demonstrated by the Council which allows a reasonable level of development whilst retaining character, personal space and individuality.

### Discussion

The Committee accepted the support by submitters (2, 6, 9, 11, 18, 28, 33, 36, 52, 60, 68, FS2, FS5 and FS10-14) but also noted the concerns of those in opposition or who sought changes, as outlined below.

#### *Conflict between plan policies*

The Committee took particular interest with the concern that these new policies now introduced a serious conflict with other long-established policies in the Plan, in particular the containment of the City and facilitating infill subdivision to achieve that containment. The submitters in opposition to the new policies expressed the view that a contained city cannot be achieved if the current wording of the residential amenity policies remains. The concern being that the residential amenity policies (and the related rules) will prevent new development from occurring in existing suburbs, leading to greater pressure for subdivision at the edge of the city. In considering these concerns the Committee was however mindful of the concerns from numerous other submitters who either wrote of, or spoke of the adverse impact that infill development had had on them and their families. That is, the submitters felt that the Plan's policies encouraging infill development had contributed to allowing infill development anywhere regardless of the negative impacts on adjoining neighbours and the general qualities of the street or neighbourhood.

In considering both sides of the issue, the Committee were of the view that the goal of a contained city is still a crucial element of the Plan, but this does need to be balanced with the need to maintain and enhance residential amenity values. In coming to this view the Committee noted that the purpose of the Act and in considered that the new policies proposed in Plan Change 56 sought to acknowledge that infill development, while necessary to achieve a contained city, still needs to be of a quality that will maintain and enhance residential amenity. Infill development should not occur at all costs; it is important that it be designed to fit well into the neighbourhood. The Committee also acknowledged the amount of undeveloped Outer Residentially zoned land (greenfield subdivision potential) and the opportunities for greater densification in the Central Area.

Having established that a balanced approach needs to be taken in considering all of the Plan's policies, the Committee noted the recommended changes by the Officer as a result of submissions and also the comments subsequently made by submitters who attended the hearing. Submitter 28 explained at the hearing that they did not support the proposed wording changes suggested in the Officer's Report (ie. the replacement of the words 'consistent and compatible' with the words 'does not significantly disrupt'). The submitter stated that if there was to be a weakening of the policy then there needs to be a corresponding increase in the notification of developments to neighbours.

Submitter 69 and FS 19 noted the revised wording at the hearing, but questioned what a 'significant disruption' really means and suggested that this would be difficult for applicants, neighbours and the Council to define.

Submitter 67 noted their opposition to Policy 4.2.2.1A at the hearing. The submitter argued that the Plan Change seeks to manage the effects of poorly designed infill, not changing the density of developments. It was argued that as the Council had not amended the site coverage rules (considered the main density control) then there was no justification to include policies about density. The submitter also outlined that the policy conflicts with the subdivision policies which seeks to control subdivision effects. This implies that subdivision should be approved but with conditions to control effects. Subdivision by its nature increases density therefore that policy is in conflict with policy 4.2.2.1A. The submitter stated that even with the changes made by the officer to the policy, that it should in fact be deleted. Policy 4.2.2.1B should be retained as it is meaningful and appropriate to achieve the purpose of the plan change.

The Committee considered this submission carefully but accepted that exercising control over the density of development was a means of helping to maintain and enhance residential amenity. It was noted for instance, that a development could be designed using the best architect and built with the finest materials but if, in light of the site's surroundings, too many units are built, the development then will not sit comfortably alongside its neighbours.

The Committee was comfortable with the use of the word 'compatible' in the policies and believes that compatibility of new development with its surroundings is exactly what the Plan Change is trying to achieve. They considered that a new development can look different from other surrounding properties, but still be compatible in scale and form. The Committee also noted that streets and neighbourhoods develop a character of their own, which may or may not involve regularity or uniformity of development patterns. Each situation needs to be considered in its own right. In situations where the streetscape or residential character is strongly defined by uniformity of built form and in the layout of properties then it is expected that new development in that area respects that consistent built form character.

The Committee agreed that the issues raised by the various submitters could be resolved by deleting Policy 4.2.2.1A, but incorporating the concept of density into Policy 4.2.2.1B. The Committee considered that the revised policy conveyed the same messages, but did so more clearly. Policy 4.2.2.1B already includes the concept of new development being of a scale that is compatible with surrounding development patterns. The Committee amended the explanatory text to reflect these policy changes and clarified its expectation that the assessment of an areas development patterns may highlight the need for new developments to respect patterns of uniformity or consistency where that character exists. The Committee also noted that subsequent changes to the Plan to incorporate a targeted approach to residential infill and intensification (assuming this concept gains support) will almost certainly result in the need for very specific policy guidance on density expectations for certain areas (as distinct from the more general wording of proposed policy 4.2.2.1A). Until such time, the Policy 4.2.2.1B (revised to include a reference to density) is sufficient to manage the development density of a given proposal if it is clearly incompatible with surrounding residential development patterns.

Submitter 29 noted at the hearing that they supported the revised wording in the Officer's report for Policy 4.2.2.1A and Policy 4.2.2.1B, but noted that the suggestion for additional explanatory text regarding the need for good quality, affordable housing to meet the city's housing needs was not supported by the Officer. The submitter noted in its remarks to the Committee that it fully supports the proposed targeted approach to managing infill development and likewise generally supports the intent of Plan Change 56, though notes concern that some aspects have been prematurely introduced without the benefit of the strategic vision for managing infill housing. As a result, the concern is that PC 56 will reduce development potential for sites and create significant uncertainty without also providing for areas that enable good quality, affordable housing. The submitter maintained its position at the

hearing that it is not premature to incorporate into the plan change the key principles that promote sustainable communities by providing for good quality, affordable housing and requested the Committee include the explanatory text suggested by them or words to similar effect.

As noted later in this report (Section 3.6), the Committee agreed that the Plan should acknowledge the Strategic direction the Council is heading with respect to the future development of the city. The Committee considered that the Urban Development Strategy should be referenced in the Plan. This will enable, until such time as the anticipated 'Targeted Approach' is clarified, proposals such as that mentioned by this submitter to be considered by the Council in a more holistic manner.

#### *Cumulative Effects*

A number of submitters made particular comment on the paragraph referring to the cumulative effects of developments. The paragraph stemmed from ongoing concern within the Council that it was becoming routine practice for some applications to breach a number of permitted activity standards (ie. up to the upper limit provided for in the standard and Terms for Rule 5.3.3). The expectation had developed that so long as affected party approvals were provided then the consent would be approved. However, as noted in the policy a breach of several permitted activity standards could conceivably result in a development that is not in keeping with the surrounding residential character. Cumulative effects are difficult to assess. This policy helps to ensure that this particular effect is given due consideration. At the hearing, FS10 expressed serious concerns that it had become routine practice for some applications to breach a number of the permitted activity standards, which ultimately will mean that the development is not in keeping with the surrounding character.

Clarity was sought from some submitters (especially submitter 84) about how the effects of several minor breaches of the standards would be considered in light of this cumulative effects statement and sought that the length and height of a minor breach be outlined. The Committee agreed that it is not possible to define the scope of a 'minor' breach in the Plan as this can really only be assessed on a case by case basis. What is a minor breach for one situation may actually be more than minor for another situation. That decision can only be made by planning professionals exercising their expert assessment of what is a minor effect. The Committee considered that a holistic view was needed when considering cumulative effects. That is, the number of breaches proposed and the degree of those breaches are the relevant considerations.

#### *Affected Party Approvals*

Submitter 65 questioned the legality of the wording in the Policy relating to 'the written approval of affected parties', saying that this statement does not follow the provisions and intent of the RMA. This statement was written in response to the very common scenario (especially for infill subdivisions) where the resource consent applicant who also owns the neighbouring site, designs the development in such a way as to avoid seeking approvals from other neighbours. This involves siting the development in a place that may create 'non-compliances' with the other property also in their ownership in order to avoid creating non-compliances with property boundaries shared by other people. By providing 'affected party approvals' to these 'non-compliances' there is a greater likelihood of the development proceeding. Further submitter 2 specifically outlined that this practice should be disallowed and at the hearing provided an example whereby a developer of one section also bought the neighbouring property (the neighbours being keen to sell due to the effects of the development next door to them) and then proceeded to give himself approval to a number of 'effects', allowing a greater number of units on the site.

With a greater focus now on development density and residential character as a result of Plan Change 56, the Council will be required to assess not only the direct amenity effects on surrounding properties, but also how the development relates to the amenity of the wider residential area. Therefore it is conceivable that even if an applicant supplies some written approvals at the time the resource consent is lodged, the Council may still determine that due to

the effects on the broader residential character, a wider number of people in the neighbourhood could be identified as affected parties. Whether the application is subsequently notified will depend on whether all those other approvals are able to be provided by the applicant. FS 10 explicitly supported this proposed approach in her presentation to the Committee.

The Committee agreed that the wording notified in Plan Change 56 did not strictly convey the intention as clarified in the Officer's report and decided that minor wording amendments be made to correct this. The Committee noted that this approach was supported by submitter 65 at the hearing. The Committee also noted the concerns of that submitter regarding the need for applicants to be told as soon as possible if notification of a proposal is likely.

#### *Precedent effect of past infill development*

Submitter 60 (supported by FS10-14) sought that the policies be clarified to ensure that just because an area had been subjected to infill in the past that this wouldn't be seen as a precedent for allowing new infill to occur in the future.

At the hearing, FS10 expressed her support for this approach, noting that all infill developments should be considered on a case-by-case basis and that there should be no given's. Conversely, submitter 69 questioned the ability of the Council to treat past examples of infill as not necessarily setting a precedent. It was noted that a significant portion of infill dwellings in Wellington date back to the 1960s and 1970s and so contribute significantly to the permitted environment. Taken literally the proposed statement recommended by the Council officer would not allow the Council to consider the land use patterns which are almost 60 years old. It was argued that the statement needs to be deleted or at the very least reworded to recognise the historical nature of much infill development.

The Committee was firmly of the view that when considering any proposal for new development, Council officers should assess the site's surroundings and make decisions about the appropriateness of the development based on the context, even if that surrounding context includes poor examples of residential development. It would be inappropriate to simply ignore bad examples of existing development and only take reference from the good examples. However, the Committee did not accept that the wider context (whether good or bad) that this would automatically establish precedents, justifying new infill developments that would not otherwise be acceptable. The Committee made minor amendments to the proposed wording in the explanatory text to reflect this view.

#### *Affected parties of infill development*

Submitter 57 and FS6 sought recognition in the policies that others living nearby, but not necessarily directly adjacent to a proposed infill, might also be affected by such developments. Who is affected by any given development is a decision that needs to be made on a case-by-case basis. The Committee agreed that the explanatory text be amended to remove the reference to 'adjoining neighbours' and refer instead to 'surrounding properties', enabling the assessment of which properties are affected to take place on the case-by-case basis. It is noted here that FS7 sought that only adjacent neighbours be considered affected parties. This is rejected for the reason that decisions about who is affected must be based on the actual effects generated by a development.

#### *Number of units on a site*

Submitter 59 and FS 23 were opposed to the wording that referred to a possible reduction in the number of units on a site. The Committee noted that the plan change does not actually reduce the number of permitted units on a site. The permitted activity standards for residential development have been set at a level to ensure each unit is provided with the basic requirements for a quality residential unit and generally to achieve an appropriate balance of development across the site. In the situation where a development seeks to maximise the number of units, but not provide the associated requirements for each unit (e.g. open space, car parking), then the Committee felt it was appropriate for Council officers to suggest the development to be reduced by a unit or two rather than reduction of open space or provision for on site parking.

## Decision

- **Accept submissions 2, 6, 9, 11, 18, 28, 33, 36, 52, 60, 68, FS2, FS5, FS10-14** in so far as they support the proposed policies, but note that changes to those policies are recommended in response to other submissions.
- **Accept submission 60 and FS10-14; accept in part submission 69** in that new wording is proposed to clarify that examples of past infill on a street will not necessarily create a precedent effects for allowing new infill development of a scale below that which is now expected under Plan Change 56.
- **Reject in part submissions 58, 68, 78 and 79** that seek the policies be deleted, as only Policy 4.2.2.1A is to be deleted, although the concept of 'density' is now included in Policy 4.2.2.1B.
- **Accept in part submissions 29, 44, 57, 65, 67, 70, 83, 84 and FS6** which seek changes to the wording of the proposed policies.
- **Reject submissions 59 and FS23** regarding the wording on the policy around the number of units per site.

Recommended changes to Policies 4.2.2.1 – 4.2.2.1B and explanatory text as a result of submissions:

4.2.2.1 Control the potential adverse effects of residential activities.

~~4.2.2.1A Control residential development density so that new developments do not result in a density of land use that is consistent and compatible with the surrounding residential environment.~~

4.2.2.1A Control the siting, scale and intensity of residential development buildings (particularly infill housing and multi-unit developments) to ensure such developments are appropriately located and of a density and scale that is compatible with existing surrounding development patterns in order to reduce adverse effects on residential amenity values.

## **METHODS**

- Rules
- Residential Design Guide
- Subdivision Design Guide
- National standard access design criteria
- Advocacy

*People expect that the amenity standards of the Residential Areas of the city where most people live will be maintained to a level that sustains the residents' enjoyment of their suburb. For this reason District Plan rules have been imposed.*

*In Residential Areas the rules are based on the use-list approach of former Plans, as Council believes that this provides the most secure mechanism to avoid unsuitable or incompatible development.*

*Permitted residential activities are allowed with few restrictions. Rules set minimum standards for all dwelling houses and associated buildings. The sunlight access rules are intended to protect people's access to a reasonable amount of direct sunlight. It is accepted that because of Wellington's hilly topography and form of development, full sunlight protection in all cases is not possible.*

*There are three tools in the Plan used to manage development density of a site. Over development of a site can result in adverse amenity effects for adjoining neighbours, and may affect residential character of a street or neighbourhood. Site coverage is the main tool used to control development density. Thresholds are set for different areas to reflect existing patterns of development density, and to allow some scope for additions and alterations. Careful consideration will be given to any proposed breach of site coverage to ensure the effects are able to be managed appropriately. ~~Two other tools that influence development intensity include~~ The car parking requirement per unit and the open space requirement per unit can also influence development density. ~~The open space requirement primarily acts to require buildings to be adequately separated from each other and to ensure that each unit on a site has sufficient outdoor space associated with it and also acts to reduce the visual dominance of buildings within a site (35m<sup>2</sup> in the Inner Residential Area and 50m<sup>2</sup> in the Outer Residential Area).~~ A proposal that seeks to ~~breach exceed~~ one or more of these requirements is likely to result in site ~~that is not compatible with surrounding properties. a highly developed site relative to surrounding properties. n over developed site.~~ Solutions to mitigate the effects of such development proposals ~~a highly developed site include an overdeveloped site~~ may require a reduction in the number of units on the site or ~~a reduction in~~ the overall site coverage.*

*The permitted bulk and location standards that apply both within the Inner and Outer Residential Areas are reflective of the area's predominant development type, which is typically one dwelling per site. A single dwelling on a site, built in accordance with the bulk and location standards, will generally be of a scale and mass that is consistent with the character of the surrounding area. Single dwellings, even when built up to full site coverage and height, retain a significant degree of openness and greenery on site. However, infill housing and multi-unit developments designed and built in accordance with the bulk and location controls can have quite different effects on the amenity of ~~surrounding properties adjoining neighbours.~~ for example ~~The increase in the number of units and residents on a site may adversely impact on reduced~~ privacy, shading and reduced daylight and sunlight access for neighbouring properties. These effects are typically generated when the new units are located near boundaries and built taller than adjacent dwellings. ~~in order to maximise the development potential of the site. At the same time, it is noted however that~~ infill housing on smaller lots can result in positive outcomes where both the subdivision and residential dwellings ~~are well designed to fit well~~ into the existing neighbourhood.*

*The permitted activities for the Outer Residential Area provide for one dwelling to be up to 8m high and a second unit is permitted where the height of that second unit is limited to 4.5m (approximately one storey). This acknowledges that the adverse effects associated with a second unit on a site can be significantly reduced where the height of the dwelling is restricted to a single storey development. Most Inner Residential Areas only permit one dwelling per site, with a maximum height limit set to reflect the characteristics of that particular area. As comprehensively designed multi-unit developments are Discretionary Activities and assessed against the Residential Design Guide, any adverse amenity effects associated with two or more storied dwellings are able to be addressed through the design assessment process. The assessment ~~of the proposal against the District Plan~~ will seek to ensure that the development is ~~consistent and~~ compatible with the scale of dwellings in the surrounding residential environment.*

*~~In considering resource consent applications for new infill development, an assessment of the proposal's compatibility with surrounding residential development patterns will include an assessment of the primary built form characteristics and layout of surrounding properties. Where a neighbourhood contains regular patterns or consistency of residential development (eg. regular front yard setbacks, spacious rear yards, single storey dwellings, double storey dwellings) it is important that new development respect those patterns to safeguard the amenity values of that area. For example, a two storey, rear yard infill house in a street characterised by spacious rear yards will may severely affect the amenity of surrounding properties, adjoining owners. Any such development should minimise such effects by appropriate siting of the proposed dwelling and/or reducing the size and scale of the dwelling.~~ Conversely, where the dominant housing pattern includes two storey dwellings on*

*smaller sections (eg. new Greenfield subdivisions), it is reasonable for further development to also be of a two storey nature. However, while site context is important in considering a development proposal, past examples of infill development will not always be an applicable precedent for the density or scale of new development that should be approved, particularly where existing examples of infill development do not reflect the policies of the current Plan.*

*Due to the more intensive living environments often created through infill and multi unit developments, the open space requirements of the Plan are also important for achieving quality on-site amenity. Of the open space that is required for each unit (i.e. a minimum of 50m<sup>2</sup> in the Outer Residential Area and 35m<sup>2</sup> in the Inner Residential Area), it is important to note that the Residential Design Guide seeks that a minimum of 35m<sup>2</sup> of that space is of high quality and able to cater for the private recreation needs of residents. This space should be practical to manage and easily accessible from the unit itself.*

*The adverse effects associated with one breach of the permitted activity conditions can usually be mitigated on site, depending on the degree of the breach. However, the cumulative effects of several breaches (depending on the degree of breaches) to the permitted activities standards (particularly site coverage, sunlight access planes, height) are more likely to ~~can~~ result in developments that are out of scale with the surrounding environment and more are likely to generate adverse effects on surrounding properties, adjoining properties. As development of this nature is not generally anticipated by the Plan, the assessment of the consent will include consideration of whether the amenity values of adjoining neighbours surrounding properties are affected and whether the proposed development is out of scale with the surrounding residential environment.*

*Where written approvals are supplied as part of a resource consent application by those who may be affected by a ~~obtained from all persons who may be adversely affected by the proposed development~~, the Council will still need to consider the effects on the amenity ~~in~~ of the surrounding environment and unless those effects are no more than minor, then public notification will be required.*

*The amenity values of the City's residential resource are adversely affected by the significant lack of dwellings which are not easily accessible, including by people with mobility restrictions. Consequently Council will firmly promote the use of the accessible housing design criteria in NZ Standard 4121 (or its successor) in both new housing and in housing alterations.*

*The environmental result will be the maintenance of reasonable amenity standards for residents and high quality infill developments that do not detrimentally disrupt that reflect surrounding patterns of development density.*

*The Plan seeks to ensure that residential development maintains and enhances amenity values and that such development does not diminish surrounding patterns of development density at the expense of reasonable amenity standards for residents.*

### **3.4 Residential Area Streetscape Policies (Policies 4.2.3.1, 4.2.3.1B, 4.2.3.1C, 4.2.3.3)**

#### A: Policy 4.2.3.1: Siting, scale and intensity of new residential buildings

Four submissions were received in response to this policy (subs. 9, 33, 44 and 84), three of which were supportive and one that highlighted some concerns:

- Support policy, but notes it risks generalising the Outer Residential Area as “more diverse” (sub. 33)
- Support the policy (sub. 44)
- Seek that policy be strengthened further to keep streetscapes from being unchanged, especially for groups of houses built to a pattern (sub. 9)
- Concerned that it is now too late to respect existing designs in most streets and questions why new house design should be pulled back to the lowest common denominator of existing house designs (sub. 84).

Further submissions 10-14 were generally supportive of the submissions that supported this policy.

#### Discussion

The comment that the character of the Outer Residential Area is ‘more diverse’ is made in comparison with the tightly defined character of the Inner Residential suburbs. Taken as a whole, the Outer Residential Area includes a number of suburbs that have developed at different times and with widely varying topography, leading to different characteristics. As has been noted previously in this decision, the Committee acknowledged that there will be certain streets and neighbourhoods in the Outer Residential Area that have very similar characteristics which deserve particular attention when considering a new development in such an area. This is something that is able to be more fully considered now with the revised policies as a result of Plan Change 56. No change is recommended in response to submitter 33 or submitter 9 for this reason.

The Committee agreed that the intent of the Plan change is not to control the aesthetics of new house design, but it does look to ensure the scale, siting and intensity of new houses does reflect the general characteristics of the surrounding environment (re. submitter 84). In streets where the houses are of a very diverse nature, then there is wide scope to design a new house that will generally fit the diverse character of that area.

#### Decision

- **Accept** the support of submissions 9, 33, 44 and FS10-14.
- **Note** the comments in submission 84.

#### B: Policy 4.2.3.1B: Minimise hard surface areas

Nine submissions were received on the wording of this new policy. Seven submitters offered total or conditional support to the policy (sub. 9, 29, 36, 43, 44, 67 and 80) while two others (sub. 69 and 83) sought wording changes:

- The need for greater hard surfacing for vehicle access and parking detracts from streetscape quality (sub. 9)
- Support policy but it does not sufficiently spell out the reasons for limiting impermeable surfaces (sub. 80)
- Reword policy so that it does not refer to ‘green’ open spaces as hard surfaced areas can include well designed outdoor hard surfaced living areas such as decks and paved areas which are not ‘green’ but do achieve openness (subs. 67, 69, 83)

- Support the policy, but seek that that long term compliance and monitoring costs of consent conditions that are imposed be acknowledged and that funding is allocated for this (sub. 43).
- Add Subdivision Design Guide to the 'Methods' under this policy (sub 36).

Further submissions 10-14 were generally supportive of the submissions that supported this policy. Further submitter 2 also commented on the environmental effects associated with infill housing. Of particular note was the comment that we need to preserve local bush corridors used by birds, and similarly protect our natural waterways. Infill housing has lead to an increase of impervious surfaces which is affecting the quality and actual existence of our waterways.

### Discussion

The support of the submitters is acknowledged.

In noting the comments of submitter 80, it is considered that the wording of the policy is sufficient and does not need further reference to other effects associated with impermeable surfaces as the two main effects of hard surfacing (visual dominance and flow volumes of storm water) are covered in the current policy wording.

The Committee noted that the Officer had recommended some wording change to the policy in response to the concerns of submitters 67, 69 and 83. The changes replaced references to "green space" with "permeable space". It also allows for flexibility in type of landscaping materials used to achieve a reduction in the amount of hard surfacing and not impose one solution (ie. grassed lawn).

At the hearing, submitters 29, 67 and 69 supported the revised wording of the policy as suggested in the Officer's report. Submitter 69 added however that the addition of the words "permeable open space areas" was duplication of words within the policy and so should be deleted. FS10 did not support the removal of the word 'green' from the policy and stated to the Committee that open areas should not be allowed to comprise purely of decks and paving. The submitter suggested that if the Committee was particularly concerned about this requirement, then perhaps at least half of the open space requirement needs to be 'green'.

In considering these contrasting views the Committee agreed that significant amounts of hard surfacing on a site does not enhance amenity values and in particular does not assist new development to fit in well with its surroundings. In addition, the Committee noted the environmental effects of hard surfacing being that it increases run-off. The Committee acknowledged that the policy outlines an aspiration rather than something that the Council can exercise continuous control over. This is because the Council cannot reasonably control what people do to their sections as properties change ownership (i.e. whether the open space be grassed, landscaped into garden areas, or transformed by decks and paving) (i.e. submission 43). In spite of this, the Committee decided the policy was appropriate because it enables the Council to influence how much hard surfacing is used in a new development. The Committee considered that if the development was well designed from the beginning, the likelihood of subsequent owners adding significant new amounts of hard surfacing would be reduced. The Committee agreed that the use of the wording 'permeable open space areas' was appropriate as it sends a clear message that not only should hard surfacing be reduced but that the desired outcome is for open space areas is that they be designed and landscaped with appropriate materials to increase permeability.

Submitter 36 seeks that the Subdivision Design Guide be included as a Method under this Policy. The Committee agreed that the design guide is a useful addition to this Policy, particularly in respect of G6.10 of that guide which seeks to incorporate on-site water quality treatment measures.

## Decision

- **Accept submissions 9, 29, 36, 43, 44, 67, 80 and FS10-14.**
- **Accept in part submissions 67, 69, and 83** which seek the removal of the word 'green open space' from the policy and explanatory text, as shown below.
- **Accept submission 36** in respect of a reference to the Subdivision Design Guide

*4.2.3.1.B Minimise hard surfaced areas associated with new residential development and increase opportunities for ~~green open space~~ permeable open space areas and planting to enhance visual amenity and to integrate the development into the character of the surrounding area.*

### METHODS

- Advocacy
- Subdivision Design Guide
- Residential Design Guide

*Though the Residential Areas are diverse, they can be characterised by a sense of openness and landscape features that enhance soil permeability, ~~greenery and the presence of mature vegetation~~. Infill housing and multi-unit developments can compromise ~~this~~ these characteristic features due to the percentage of the site taken up with building footprint, and vehicle parking and manoeuvring space. For this reason Council will seek to ensure that the hard surfacing associated with new residential developments is kept to a minimum. A reduction in the use of hard surfacing on a site will also generally help to maintain permeability of the site, reducing storm water run-off.*

## C: Policy 4.2.3.1C: Retention of mature, visually prominent trees and bush

A number of submitters supported this policy (submitters 27, 28, 29, 33, 36, 43, 44, 47 and FS5), with one submitter (no. 36) seeking that the policy be even stronger than just 'encourage'. Two submitters seek clarification (submitter 9 and 51), as outlined below:

- How does the policy relate to the preservation or replanting of mature exotic trees? (sub. 9)
- Policy needs more work as mature trees cause problems around shading and leaf drainage disruption. Considers that landscaping plans are all that are needed rather than trying to prevent the removal of trees (sub. 51).
- Support the policy, but seek that that long term compliance and monitoring costs of consent conditions that are imposed be acknowledged and that funding is allocated for this (sub. 43).

Further submissions 10-14 were generally supportive of the submissions in support of this policy, and sought that existing vegetation is protected so the visual impact of housing could be reduced.

## Discussion

The Committee agreed that the policy should not differentiate between native or exotic trees on the basis that any mature, visually dominant tree helps to integrate new development into an existing streetscape. The Committee was also clear that the policy should not refer to vegetation generally as it is well established, taller trees and mature bush (as opposed to small shrubs) that are important to reduce to visual dominance of new buildings.

The Committee felt that if certain prominent trees were to remain on-site it would force more careful thought about the building design and how such trees can be incorporated into the development, rather than being removed as the 'easiest solution'. The Committee noted that

this policy will provide a much needed focus on the preferred solution, being the retention of existing trees and bush rather than their removal and replacement with smaller sized alternative vegetation.

In respect of submitter 51, the Committee acknowledged that large trees do have adverse effects for neighbours (such as loss of direct sunlight and shading) but these effects can be resolved with appropriate pruning. In contrast, the complete removal of such trees, leaving a bare section ready for redevelopment can result in visually dominant buildings that no longer have vegetation of an appropriate scale to reduce the impact of the new buildings on the streetscape. The Committee further agreed that the 'belt and braces' approach was needed here. That is, the policy was needed to outline the main goal of the Council; and landscaping plans were needed to show how a particular site would be treated in respect of the policy.

In respect of submitter 36, it is agreed that it would be suitable to provide a cross reference to the Council Indigenous Biodiversity Plan when it is finalised. Such a change would require a further plan change, but it is possible this could occur in the regular 'general amendments to the Plan' plan changes that occur on an almost yearly basis now.

Again, in response to submission 43 the Committee considered that this policy would be used often by the Council in considering new development proposals, but accepted that as time moves on and properties change ownership there is little the Council can do to ensure the long term retention of trees and bush by subsequent owners. The Committee did however note that the Council is working towards changes to the District Plan for greater protection of trees and bush in accordance with the Council's Biodiversity Action Plan. If adopted into the Plan, these protection measures would enable the Council to exercise more control over the removal of certain trees and bush.

#### Decision

- **Accept submissions 27, 28, 29, 33, 36, 43, 44, 47, FS5 and FS10-14.**
- **Reject submission 51** insofar as it suggests the policy needs further work to recognise the problems caused by mature trees.
- **Accept submission 36**, regarding a future plan change to provide a suitable cross reference to any finalised Indigenous Biodiversity Plan.

#### Policy 4.2.3.3: Control the potential adverse effects of infill housing and multi-unit residential development

Eleven submissions were received on this revised policy and explanatory text. Two of the submitters expressed support for the changes (submitters 33 and 76), but the remainder sought further clarification or some changes, as summarised below:

- Without wanting to impose aesthetic control, the submitter seeks greater control over tall solid fences, window and door size and shape especially in areas of older building stock (sub. 9).
- Outline why the policy says that 'aesthetic control' will not be imposed, and clarify with a definition what aesthetic control might include (sub. 44).
- Define what 'compatibility with the surrounding residential environment means' - hopefully it does not restrict the aesthetic of new buildings (sub. 84).
- Objectives stated in this policy have a contradiction between the effective and efficient use of sites and the perceived effects, resulting in rules that are over-controlling. Seeks design guide assessments at the 'Controlled Activity' status, rather than 'Discretionary Restricted' (subs. 58, 62, 63) - (NB: strongly opposed by FS10-14).
- Concerned about the 'permitted baseline' statement in this policy in that it is inconsistent with the case law (sub. 70) and that the word 'will' should be changed to 'may' to provide Council officers with the discretion to consider permitted baseline streetscape effects of multi-unit developments (sub. 65). Submitter 84 notes that permitted baseline has been abused in the past but that good clear rules should address

this. Submitter 44 seeks that a plain definition of a 'permitted baseline assessment' be included in the Plan.

- Wording changes recommended by submitter 83.

## Discussion

### *Aesthetic control*

The issue of what aesthetic control means is raised by more than one submitter, but it is noteworthy that the submitters do not necessarily agree with the level of control imposed over aesthetics of new buildings. A dictionary definition of 'aesthetics' states that it is 'the appreciation of beauty' or 'in accordance with the principles of good taste'. While the Committee accepts that aesthetics may be subjective from person to person (and hence why the Plan seeks not to control it), the Committee were also of the view that new buildings would ideally be built 'beautifully'. That is, with careful attention given to good design principles and the use of appropriate materials, new dwellings need not look out of place. The Plan (through the design guides) seeks to ensure the basic principles of good urban design are met for developments that are not permitted activities (ie. building form, scale, height, position on a site, design of open spaces, how it relates from one site to the next). If done well, these should lead to a dwelling that fits in well with its neighbours. In coming to its decision, the Committee was satisfied that the word 'aesthetics' was an appropriate in the policy explanation and considered instead that the problem was more with the word 'control' which had been used alongside 'aesthetics'. The Committee amended the wording of the phrase to emphasise the outcome desired, rather than the control to be imposed.

To this end, 'compatibility with the surrounding residential environment' (re: submission 84) does not mean the imposition of aesthetic control, but it does mean consideration of fundamental urban design principles (outlined in the Residential Design Guide) during the design phrase to ensure the new development fits in well with the environment. In respect of submission 9, some of these elements are addressed in the design guide as they are issues that need to be considered for a number of different reasons. As a result, no further changes are required in response to these submissions.

### *Permitted baseline*

Permitted baseline assessment/scenarios involve the situation where applicants make a comparison between the proposed development and a development that is permitted by the Plan. The Committee understood that the point of such comparisons is to demonstrate that what is being proposed by the applicant does not create any 'more than minor' effects on the environment than a development that is permitted by the Plan. If a reasonable permitted baseline scenario is put forward and the Council accepts it, then all other things being equal, it is likely that the consent will be granted.

The Committee noted that the RMA now provides Councils with discretion to consider permitted baseline scenarios or not. The Committee considered that a statement in the Policy was useful to clarify how Council Officers should approach the use of this discretion. The Committee noted that the Officer had suggested amending the wording of that policy statement in light of the concerns of four submitters (subs. 65, 70, 84 and FS19), but also considered the views expressed at the hearing before making its final decision. At the hearing, Submitter 65 noted that the revised wording by the Officer would alleviate their original concerns. However, FS 10 was most concerned that using the permitted baseline can lead to 'rubber stamping' development proposals and did not support the recommendations by the Officer. The submitter asked the Committee to keep the original wording of the permitted baseline statement.

The Committee concluded that there can be a place for permitted baseline scenarios and noted that had Parliament intended to do away with this common law concept entirely it would have

done so when it amended the law in 2003. Instead Parliament chose to 'permit' its use, but gave Councils discretion. The Committee considered the revised wording suggested in the Officer's report and agreed it follows the intent of the discretionary powers set out in the RMA. However, in addition, the statement sends a strong signal that permitted baseline scenarios will not necessarily be considered appropriate in assessing residential character issues, so greater consideration of the appropriateness and likelihood of such scenarios will need to be given consideration before a permitted baseline scenario can be accepted. The Committee noted that the statement should also refer to infill developments.

In response to submitter 44, the Committee agreed that the phrase was 'planning jargon' and further agreed that the wording suggested in the Officers' report would help to clarify the term.

Three submitters have requested that design guide assessments be treated as Controlled Activities rather than Discretionary Restricted Activities. See section 3.5, for the full discussion on this issue.

Submitter 83 outlines a number of changes to the policy explanatory text. The Committee agreed that some of these changes helpfully clarify the policy intent and it is recommended that these changes be accepted. Other changes stem from the submitter's concern that the Plan over reaches its core responsibilities by exercising control over the 'internal amenity' of multi-unit developments. See section 3.10 for a full discussion on this issue, where it was decided that these changes would not be made.

Finally, the Committee noted that submitter 76 gave their support for this policy during the hearing.

### Decision

- **Accept submission 9**, in that the Residential Design Guide does generally cover these issues.
- **Note submission 84.**
- **Accept submission 44 in part**, in relation to aesthetic control, by rephrasing the sentence to remove the word 'control'.
- **Accept submission 44** regarding clarification of what permitted baseline assessment means.
- **Accept in part submissions 65, 70 and FS19, and reject FS10** in relation to the permitted baseline, but note that wording changes are recommended below to further clarify this statement.
- **Accept in part** some of the wording changes to the explanatory text outlined by **submitter 83.**

#### 4.2.3.3 Control the potential adverse effects of infill housing and multi-unit residential development.

##### METHODS

- Rules
- National standard access design criteria
- Advocacy
- Residential Design Guide

*To allow effective use of land in the developed parts of the city, the Plan provides for infill housing and multi-unit residential developments. Infill housing and multi-unit housing can significantly alter neighbourhood character and streetscape, particularly where smaller sites are amalgamated and established development patterns are changed. Council seeks to promote excellence in the design of multi-unit residential developments **to ensure that***

neighbourhood amenity values are maintained and enhanced. To ensure that all multi-unit developments are designed to fit in well be compatible with existing residential development; proposals will be assessed against the Residential Design Guide as Discretionary (Restricted) Activities. Infill housing that does not meet the height requirements will also be assessed against the Residential Design Guide to ensure residential character and streetscape is maintained and enhanced. design excellence and compatibility with the surrounding residential environment is achieved. The Residential Design Guide identifies various design principles, which if followed, will achieve improved building aesthetics. to be followed but does not seek to impose aesthetic style control. The benefits of achieving high standards of development and more efficiency in the city are expected to be greater than the costs of promoting good development in this way.

The permitted bulk and location standards that apply both within the Inner and Outer Residential Areas are reflective of the area's predominant development type, which is typically one dwelling per site. A single dwelling on a site, built in accordance with the bulk and location standards, will generally be of a scale and mass that is consistent with the character of the surrounding area. Single dwellings, even when built up to full site coverage and height, retain a significant degree of openness and greenery on site. However, multi-unit developments (and some infill housing developments) designed and built in accordance with the bulk and location controls can have quite different effects on neighbourhood character because:

- The increased number of units and residents on a site can potentially adversely impact on privacy and overlooking.
- The height and mass of buildings, being often substantially larger than is characteristic of the surrounding neighbourhood can adversely affect the quality of the streetscape character.
- The configuration of multi-unit developments is such that the Sunlight Access Plane controls do not apply between units within the site which would otherwise provide a sense of openness and help to break up building form.
- Increased site area required for vehicle manoeuvring and parking (including visitor carparking) can adversely affect the streetscape, reduce green space and landscaping opportunities on site and visual appearance of the property due to the greater use of hard surfacing.

For ~~this~~ these reasons the Council will carefully assess whether it is appropriate to ~~will not~~ apply a permitted baseline assessment (ie. a comparison of the proposed activity against the permitted activities outlined in the Plan) when considering the effects of ~~new~~ infill and multi-unit developments on the surrounding residential character.

The accessibility of multi-unit dwellings is an important design issue, as it affects the amenity values and the sustainability of the resource over the long term. Council will promote the accessibility of multi-unit development to ensure that a high proportion of new dwelling units are designed to be accessible and usable by older people and all others with mobility restrictions.

The environmental result will be new multi-unit residential developments with better design standards.

### **3.5 Height of a second household unit (rule 5.1.3.4.3)**

Of all provisions proposed in Plan Change 56, this rule (which sought to limit the height of the permitted second unit on a site to 4.5m) attracted the most submissions, with strong support and equally strong opposition.

Twenty-one submissions were received in support of the rule (2, 12, 14, 16, 21, 22, 27, 30, 33, 35, 36, 37, 44, 52, 66, FS3, FS10-14). A selection of the comments representative of these submitters is noted below:

- Infill housing should not be substandard and should be single storey houses or units which do not obstruct the sun from existing properties (sub. 16).
- This rule is especially important because of Wellington's topography...the construction of double storey infill dwellings can adversely affect properties (eg. privacy, visual dominance and shading). Neighbours need to have the opportunity to raise their concerns regarding new dwellings greater than 4.5m in height (sub. 22).
- The submitter strongly supports the reduction of the bulk and scale of infill housing, given the experiences of infill housing in their local neighbourhood (sub. 30).

Note that FS23 opposed many of these submissions stating that the provision was unduly restrictive and would limit infill housing opportunities, where as submissions FS10-14 supported these supportive submissions and strongly opposed those submitters who opposed the introduction of this rule.

At the hearing, submitters 27 provided an example of an infill development that had been granted consent adjacent to their homes. The submitters provided photos and spoke of their concerns over the scale and height of the development outlining how they believe they have been considerably adversely affected by the development. They also outlined their concern that the Council planner who assessed the development and granted consent did not consider the effects to be more than minor. The Committee subsequently viewed the consented plans and the decision report, and heard from a senior consents planner who explained the process involved in making the decision.

In a similar themed presentation, further submitter 10 (also representing further submitters 11-14) outlined her family's recent experience with an infill development to the back of their property. The submitter expressed serious doubt over the robustness of the decision making process and considered that the family's property had been adversely affected by the development. The submitter provided examples of shading diagrams and analysis to demonstrate her concern over the height of the development. The submitter conveyed to the Committee that the proposed 4.5m height limit on the second unit was very important, as the current 8m height limit can squeeze in 3 stories. She encouraged the Committee to further refine the policy to clearly state 'single storey building'.

Among other things, Submitter 52 also voiced at the hearing her support for the 4.5m height rule for the second unit. Submitter 52 explained to the Committee that her concerns as a resident were not directed at infill *per se*, but rather the scale (height, bulk and the number of units) of what is often proposed for a given site. She strongly supported the approach adopted in Plan Change 56 which she considered would mean that new housing would be more sympathetic. When questioned by the Committee about the height of new developments, she noted that provided over height developments go through a rigorous process and neighbours are involved in the process then higher buildings may be acceptable.

24 submissions were received in opposition to the rule (4, 10, 13, 29, 31, 32, 38, 46, 55, 58, 59, 62, 63, 65, 69, 72, 77, 78, 79, 85, FS4, FS17, FS19 and FS36). A further 11 submissions that

sought the rule be amended in some manner (19, 39, 44, 48, 56, 64, 67, 70, 71, 83 and 84). A wide variety of reasons were outlined for the deletion or amendment to the rule:

- Limiting the height to 4.5m is unrealistic as most of Wellington's sections are sloping in nature and excessive excavation can lead to bigger problems (sub. 4)
- The rule will stifle city growth, push land prices up, encourage urban sprawl and the proliferation of tiny single level dwellings (sub. 10)
- Wellington's topography plus the smallish size of many infill sites would mean development of those sites is impractical if a 4.5m height is imposed (sub. 13)
- Decisions about infill housing should recognise topographic differences within the city – 'one size does not fit all' (sub. 19). NB: FS10-14 agrees topography important but only in regard to the fact that it can make effects on surrounding properties worse.
- The rule will mean fewer developments will fit within the rules and power falls to Council staff opinion as to what is acceptable (sub. 32).
- If adopted, the rule should only apply to the flat suburbs with predominantly single storey dwellings, not the whole city (sub. 38)
- "This clause seems to be a sledge hammer cracking a peanut", suggest the Residential Design Guide be used instead to protect privacy as a Controlled Activity (subs. 58, 62 63 and FS17).
- Note that concern stems from where the heights of buildings are measured from. Suggest that the 8m height limit is taken from the ground floor level for proposed buildings on excavated parts of the building platform (rather than existing ground level or assessed ground level). This would avoid ability of people to gain extra building height by carrying out earthworks and being able to create 3 storey dwellings in some areas (sub. 67).
- The rule is likely to encourage stepped houses on sloped sites with rooftop decks and mono-pitched roves (sub 69).
- Two or more stories should be allowed to achieve the minimum open space requirements and in keeping with the neighbourhood (sub. 77).
- Will not necessarily improve the quality of infill housing and will instead discourage infill housing and make cost of housing less affordable (sub. 85).

At the hearing submitter 83 (also FS36) emphasised that New Zealand has some of the least intensive housing in the world and he believed suburban New Zealand is barren and planning restrictions are, in part, responsible. The submitter conceded that there are examples of bad infill to be found, but stressed there was no need to overreact and changes should only focus on the issue alone. The Submitter believed that Plan Change 56 fails due to 3 potential problems, namely:

- 1) The 4.5m height restriction and open space requirement
- 2) The over reaching externalities vs. externalities
- 3) Lack of discretion in administration policy

In terms of the submitter's points 2 and 3, these are discussed in more detail in sections 3.10 and 3.1 respectively. With specific references to the 4.5m height restriction of the second unit, the submitter considered that such a blanket provision did not take into account Wellington's hilly topography and that a 'one size fits all' approach could not cater for a vast range in situations.

Submitter 84 outlined to the Committee his view that the 4.5m height limit was restrictive and felt that a rule could be devised to allow a second storey with reduced bulk. The submitter felt that if a development was in the rear of a site, the submitter believed that the streetscape would remain intact. The submitter also thought that rules that governed privacy and shading should also be included.

Submitter 65 also spoke in person on the height of the second household unit at the hearing. The submitter considered that the prescribed 4.5m rule is unreasonable and impractical, citing that Wellington has a varied topography which often requires development over 4.5m in height. The submitter believed that possible yard set backs could be used instead of the height restriction and that the rule poses a huge question mark over the ability to achieve a compact and sustainable built form. They considered that the Council is listening far too closely to one small portion of the community rather than taking a considered, holistic and balanced view of allowing development to occur in a sustainable manner. The submitter also considered that the reference to 1000m<sup>2</sup> allotment size (condition 5.1.3.4.3) would be better as 800m<sup>2</sup> as this equates more evenly to the 'rule of thumb' 400m<sup>2</sup> lot size which is advised as being suitable size to accommodate a dwelling in terms of its effects.

Submitter 69 (also FS19) conveyed to the Hearing Committee that the 4.5m height limit is a very blunt tool that is unworkable in Wellington due to the hilly nature of the city. The submitter questioned whether limiting the second storey of a development would address issues of loss of privacy, shading, sense of enclosure and loss of openness. The submitter suggested that a rule which limits the bulk of the second storey and the placement of windows should be developed by the Council as the alternative to maintaining the 4.5m rule. In response to questions by the Committee, the submitter stated that better design can lead to good outcomes without having to sacrifice bulk and height *per se*. The submitter also considered the 1000m<sup>2</sup> site reference inconsistent with the assessment criteria that 400m<sup>2</sup> is capable of accommodating a wide variety of building forms. The submitter requested that condition 5.1.3.4.3 should only apply to lots less than 800m<sup>2</sup>.

Submitter 29 expressed its concerns to the Committee that the Officer has continued to support the introduction of rule 5.1.3.4.3 in spite of its acknowledged weaknesses (in the s32 report). Providing for single-storey development as a blanket approach to the Outer Residential Area may result in a vulnerable section of the population (i.e. elderly, single-parent households and those that can only afford single storey infill housing) being housed in inappropriate Outer Residential Areas, far from the growth spine. The submitter maintained its view that the rule should be deleted and the implications of such a rule could be considered within the scope of the proposed comprehensive targeted approach to infill housing. If the Committee is to retain the rule, the submitter sought that its proposed assessment criterion be added to provide sufficient flexibility for decision-makers.

Submitter 72 spoke to the Committee about this provision, stating the rule was of questionable merit and unlikely to limit development in the way the Council envisages. The main concerns of this submitter related to how it would affect development on steep slopes, stating there are many outer residential areas which could be easily infilled without adverse effect but which would be restricted with this provision. The submitter considered that it is not practical to build a 4.5m dwelling on a sloping site that is in keeping with the character, and noted that it is possible that stepped developments will occur instead which would be out of character. The submitter outlined that the Council has received numerous submissions seeking a slope based rule and urged the Committee to seriously consider these submissions. In response to a series of questions from the Committee about these comments, the submitter stated that stepped developments would be out of character with dwellings that have one storey on one elevation and two storeys on another. She also noted that most of the reaction from the community about infill housing has come from 'flatter suburbs', rather than suburbs with sloping topography. The Committee asked whether a sloped section could help to avoid a bad design, versus what could be produced on a flatter section. The submitter responded by saying that the sunlight access plane control helps to avoid the worst effects of infill as this control forces buildings away from boundaries. Site coverage also helps to reduce adverse effects.

The submitter considered that a lot of people don't proceed with developments because they can't do them as permitted activities. She outlined that taking into account the various experts involved in a resource consent application (surveyors, planners, architects) the upfront fees could be \$2000-\$3000 per expert and then the resource consent application fee on top of that.

She considered that it would be better to have a little more complexity in the rules to allow more building projects to be permitted activities.

Submitter 38 also spoke to his submission at the hearing and stated quite simply that this height restriction provision would be the end of the Council's containment policy on the basis that the number of dwellings that will be able to comply with the provision will be negligible in terms of catering to household demand. In terms of the 4.5m limitation of the second household unit, the submitter felt that the rule had been developed for the flat areas of Miramar, Rongotai and Lyall Bay with the remaining hilly land in Wellington not considered i.e. where two storey development was the norm as this is the most practical way of making use of such land. The submitter believed that it will be virtually impossible to build housing on sloping infill sites and that the height standard would completely stifle residential infill. Further to this, the submitter conveyed that the requirement to obtain neighbour consent for dwellings over 4.5m will result in the majority of applications being notified. The cost, delay and uncertainty of this process will make low intensity infill development unviable. The submitter noted the irony was that it is the multi unit developments, which are most opposed by neighbours, that are more likely to continue under this new regime as the scale enables the developer to absorb the additional costs involved. The submitter emphasised that realistic permitted activity standards are important and that the rules need to reflect this. The submitter also raised concern with the requirement to obtain written consents and notification. Of particular interest to the Committee was the point made by this submitter that this provision will kill off both good and bad development alike.

In his address to the Committee submitter 10 outlined, among other things, that the 4.5m height restriction was unrealistic and overly restrictive. The submitter stated that most sites in Wellington are small and that the proposed height restriction would encourage the proliferation of small single unit developments which would have a negative impact. The submitter was of the opinion that most people live on the ground floor, with bedrooms located at second floor level. As the sleeping spaces were not heavily used, the privacy impact to neighbours would not be to the degree they might expect.

FS10 explained to the Committee that the 4.5m height restriction was very important if this rule change is to have any real and effective control on infill housing. The submitter also noted her opposition to the 1m extra height allowance given for pitched roofs, stating that this could allow a two storey building to 5.5m, not the 4.5m intended.

Submitter 67 spoke to two of the options outlined in Table 1 of the Officer's Report, being option F (second option) and Option I. In respect of option F (4.5m height limit for flat sites and 6m for sloping sites) the submitter felt this was a reasonable compromise, depending on the threshold selected for the slope. The submitter proposed a slope threshold of 1 in 3<sup>1/3</sup> (or 17 degrees) as measured over the footprint of the proposed building. In respect of option I (requiring new dwelling to comply with a nominal subdivision boundary) the submitter noted that this is used by many local authorities and that it is worth investigating as it would give a level of certainty to a landowner and would fit with the public's expectations that a site with enough vacant space should be able to be developed in consistency with the subdivision standards. The submitter did note however that they did not support the area on the basis that they do not advocate the use of a minimum lot area.

Submitter 77 (who tabled information at the hearing) stated that this rule is too simple and will result in a significant increase in resource consent applications as well as a tremendous increase in costs and delays. Given that the main concerns appear to be focused on multi-unit developments, it is logical to target those developments and free up the processes for others who are doing infill housing in keeping with the neighbourhood. The submitter proposed that the rule be amended to provide more flexibility. The submitter outlined a number of mechanisms that could be introduced to allow for two storey infill housing:

- A dwelling on its own section of 300m<sup>2</sup>.

- Increase the open space requirements as a trade-off to meeting the open space and car parking requirements
- Include garage or carport within the footprint of the two storey dwelling, creating more space around the dwelling
- Increase in the minimum dwelling to boundary requirements to protect against privacy, sunlight shading and loss of view
- Consider whether the majority of existing houses are two or more storeys
- Dwellings on sloping sites built as one and a half storeys are treated as a single storey
- Sizing restriction increased to 350m<sup>2</sup> for outer suburb developments
- Increase open space requirements in outer suburb developments.

### Discussion

In considering the submissions on this part of the Plan Change, the Committee's attention was particularly drawn to the primary residential amenity considerations that must be provided for in the District Plan. These include:

- Privacy
- Sunlight/increased shading and daylight
- Increased sense of enclosure from new large bulky infill dwellings
- Openness of sites

The Committee noted that community concern over the loss of these factors was the impetus behind Plan Change 56, and that such factors were commonly associated with 2-3 storey dwellings where once there was a spacious yard.

The Committee noted the Officer's explanation for the rule was to retain an element of simplicity to the Plan. The 4.5m height threshold was development for the second unit on a site. 4.5m was considered appropriate as it would provide for a stud height suitable for a single storey dwelling, knowing that if a pitched roof was added, then the height of the dwelling could in fact go up to 5.5m (see Building Height Definition). Consequently a 5.5m building is a generous single storey dwelling, but not tall enough to convert to a 'liveable' two storey dwelling.

The submissions in support are acknowledged by the Committee and these provide the foundation and backbone to justify the approach taken by Council in notifying a rule of this nature. For these reasons, the submissions in support are noted and are accepted to the extent that they support greater controls over infill housing.

However, the submissions in opposition and those that seek changes to the rule did raise some valid arguments for why the rule needs to be amended in some form. To help with this decision, the Committee found the comparison table contained in the Officer's Report of ten alternative options extremely useful (a copy of which is provided for in Appendix 3 of this Decision Report). The Committee felt that the table clearly demonstrated that no one option provided the magic solution to address the concerns around bulky infill housing. Whilst many of the ideas did have merit in addressing one of the key concerns, they did not sufficiently address the other adverse effects. As a result, the Committee recognised a suite of permitted activity building standards would be required in order to act as a suitable replacement for rule 5.1.3.4.3. The Committee did not believe that this would be helpful and would add a significant degree of complexity to the Plan, complicating the planning environment more than it already is for the lay person.

A compelling argument was put forward by various submitters to the Committee was that the rule was unreasonable for sloping sites and that the rule may lead to more earthworks to create flat sites; a result that would not be favoured for other environmental and amenity reasons. The Committee agreed with this line of reasoning and on this basis recommended an amended rule

that caters for slope. It noted one of the options in the Officer's Report was designed to work for flat and sloping sites and it is agreed that this option should be worked into a rule.

In making the decision to cater for both flat and sloping sites, the Committee recognised that the rule would still be a very blunt tool, but considered it did not represent a threshold between what is permitted as of right and what will need resource consent. The Committee were keen to highlight that it does not mean that consent will be declined for over-height buildings (though it is noted that some submitters do expect this to be the case). The Committee weighed up the benefits of a simple, easy to understand rule that possibly triggers more resource consents against more complex suite of rules that may provide more up front certainty but which may not lead to satisfactory outcomes on the ground. In the mind of the Committee, the balance firmly rests with the revised rule which accounts for site slope and which now contains 2 possible applicable building heights (4.5m or 6m). It is considered that 6m for a sloping site would provide for a generous 'single story building with enough room left to put in adequate foundations or a basement. The Committee noted that the 6m height would provide sufficient flexibility to create a number of design solutions that could meet that requirement.

In determining how to define 'slope' for the purpose of the rule, the Committee took guidance from Council officers and accepted a slope of 3:1 (approximately 15 degrees) would be the simplest, but also robust, slope to measure. The Committee noted also that the 'slope' referred to in the rule should only be that part of the site which is to be built on, rather than an average across the whole site. This would help to recognise the situation where a site may involve both flat and steep slopes, but the proposed house location is to be on the flat portion of the site, not the steep sloping section.

The Committee also gave particular consideration to Option I outlined in the Officers Report (being the requirement for new buildings to comply with notional internal sub division boundaries). The Committee could see the advantages with such a provision, but did also comment that it would considerably reduce design flexibility. Depending on the site, the Committee considered that 2 dwellings sharing a common wall (i.e. semi-detached) could produce a better amenity outcome both for occupants and neighbouring residents if done well. This could also mean that open space areas were of a higher quality rather than being made up of small strips of land between units which had no privacy. On balance, the Committee did not favour this approach over the sloping height rule.

In considering those submissions opposed to the rule outright, the Committee were of the strong opinion that the deletion of the rule outright with a return to the status quo of two units at 8m each per site was not acceptable on the basis that it would not address the primary issues that instigated this Plan Change. It was very clear to the Committee, from the research carried out prior to notification of the Plan Change, the written submissions received in support of the rule, and from the submitters that spoke in support at the hearing, that some form of additional control is needed to improve the quality of infill houses so that they do not adversely affect the amenity of neighbours. In this regard, the Committee particularly noted submitter's 10 and 27 presentations and felt that they were very telling of the impact additional dwellings of a higher nature can have in an already established neighbourhood.

*Applicability of second household unit rule to vacant sites or to sites where two semi-detached dwellings are to be constructed.*

In their submission, submitter 67 queried how the rule applied where a vacant site is involved and a set of semi-detached units are to be built (within one footprint). The Committee acknowledged that the rule, as drafted, was not precise enough to deal with the 'vacant site scenario'. The issue is complicated slightly by permitted baseline scenarios that might be offered to show that there is no difference in effect between a very large single dwelling built to 8m and a set of 2 semi-detached units being built to 8m. The Committee accepted the view that while the building bulk may not represent a difference in effect, the increased intensity of use does change the nature and scale of effects (i.e. two households living there instead of just one –

potentially leading to two sets of households overlooking a neighbouring property, significantly reducing privacy for that neighbour).

That particular issue aside, the Committee felt that this situation could be clarified by way of a definition of what an 'Infill Household Unit' is for the purpose of this Plan. In recommending this, essentially the intent of the definition is to include two scenarios: 1. a site containing an existing dwelling, and 2. where a vacant site is to be developed containing two units, then the applicant is required to nominate which of the two units will be an 'Infill Household Unit'. Refer to this new definition in the decision at the end of this section.

*The rule should apply to sites where the existing house has been, or is to be, removed/demolished*

Submitter 71 (supported by FS10-14) noted that infill housing should not proceed on the basis that a second household unit can be constructed to 8m if the existing dwelling has been or is intended to be removed/demolished as part of the development. In light of the discussion above about vacant sites, it is considered that a definition of Infill Household Unit will act to clarify the situation.

*Define an Infill Household Unit and clarify how it relates to multi-unit development (for the purposes of the building height permitted activity standard)*

Submitter 56 sought that a definition of an infill household unit be created (instead of referring to it as a 'second unit on the site') and at the same time to clarify that the height limit for an infill unit does not apply to multi-unit developments (this latter request was not supported by FS10-14). As noted already, the recommended definition is to be included in section 3 of the Plan. The second part of the relief sought by the submitter in relation to multi-unit developments is discussed below in more detail as it raises a number of important issues for the application of a height rule to multi-unit development.

As multi-unit developments are Discretionary Activities, there is no permitted height, however it has been customary practice to use the height of permitted residential buildings (8m) as the "anticipated height" of multi-unit developments (stemming from a permitted baseline argument). The effect of the 'height of a second unit rule' in PC56 has been to change the permitted baseline for the multi-unit development height. A legal interpretation of rule 5.1.3.4.3 says that the Plan as amended by Plan Change 56 is now silent on what the anticipated height of units within a multi-unit development can be.

As a result, a pragmatic interpretation of the rule based on a permitted baseline scenario is that one unit may be 8m whilst all others will need to be 4.5m. This interpretation was considered by the Committee to be of paramount importance to deciding who is likely to be affected by a multi-unit development, rather than the actual final height of the units, which will be determined against the Residential Design Guide.

In practice, most multi-unit developments that have been lodged with the Council since the notification of PC56 have still sought permission for units to be of a 2-3 storey nature and the final decision on height comes from the consideration of the proposal against the Residential Design Guide as to whether the effects of that development have been sufficiently addressed by its design. This is, in fact, the form of decision-making originally intended by the Plan when first notified in 1994 and this approach has been reconfirmed by Plan Change 56. The main 'sticking point' with these consent applications has been the determination by Council of who, if anyone, will be considered affected parties.

The Committee were entirely comfortable with this position, and whilst they accepted that there is need for clarity in the rules about the anticipated height of multi-unit developments, they adamantly believed that it was not appropriate that a more lenient height threshold be identified for multi-unit developments than for 'Infill Household Units' given that the scope of effects associated with multi-unit developments are of as much concern to neighbouring properties as single 'Infill Household Units'.

The Committee also considered that the issue of height for multi unit developments went hand in hand with the concerns as to what stage neighbours could reasonably be expected to be involved via the notification process. (See section 3.12 for a fuller discussion on the notification submissions).

It is recommended, in light of the discussion elsewhere on notification issues, that the specific relief sought by submitter 56 is not granted. However, as the submitter raises a valid point about the need for greater clarification around the height of MUD, the Committee agreed that:

- the height of both an Infill Household Unit be explicitly excluded from the 8m height provision (rule 5.1.3.4.2).
- a new rule (rule 5.1.3.4.3) outlines the height of an Infill Household Unit.
- Rule 5.3.4 include a non-notification statement for units that do not exceed 4.5m (or 6m) in height and a standard and term setting the maximum height limit at 8m.

The effect of these provisions is that applicants for a multi-unit development will know that the anticipated height for all units across the site will be 4.5m (or 6m), but that it will be possible (in rule 5.3.4, being the multi-unit development rule) to go as high as 8m provided the design assessment of the development against the Residential Design Guide agrees that the adverse effects of the height of those units on the amenity of surrounding properties has been sufficiently addressed in the proposal design. This approach is already supported by the explanatory text proposed for Policies 4.2.2.1 – 4.2.2.1B.

The Committee were aware that there will be criticism that this approach may inevitably bring about the requirement to obtain the approval of affected parties for any units higher than 4.5m and that in turn is may necessarily hold up construction of multi-unit development across the city. The Committee accepted that until a targeted approach to infill housing policy has been developed, the city may have to accept that this revised process may result in some multi unit development not being pursued. However, the Committee was confident this would only be an interim effect. It is hoped that this approach will encourage developers to engage neighbours early in the design process to address amenity concerns as much as possible. If they subsequently fail to obtain written approvals (because they have not done enough to mitigate the effects in the view of the neighbour), then the matter will go to a hearing before an independent group of decision-makers. At the hearing, submitter 69 noted that it is their experience that developers do amend their proposals to take into account concerns of neighbours.

*Reference to 1000m<sup>2</sup> in the rule should be 800m<sup>2</sup> to be consistent with other statements in Plan Change 56*

Submitter 69 considered the reference to a 1000m<sup>2</sup> site in the rule should be changed to 800m<sup>2</sup> in recognition that both the subdivision policy and assessment criteria 5.3.14.11 both refer to sites of 400m<sup>2</sup> generally being an appropriate size to contain permitted activity developments. Submitters 65, 67 and 69 confirmed at the hearing that they supported the change from 1000m<sup>2</sup> to 800m<sup>2</sup> in the revised Infill Housing Definition. This is a fair suggestion and was supported by the Committee (note that the definition of Infill Household Unit below refers to an 800m<sup>2</sup> site). This change will increase the number of properties able to carry out two units at 8m each on the site as permitted activities but it is considered that a property of that size should provide enough room for two large dwellings to co-exist with limited impact on adjoining neighbours.

*Concern about consequential effects of this rule on residential development in Suburban Centre zoned land*

Submitter 64 (supported by FS10-14) cited particular concerns that the consequential effect of this rule may place additional pressure for residential development in Suburban Centres. The submitter seeks the early introduction of rules that more specifically address the effects of 'permitted maximum infill development' in Suburban Centres on adjoining Residential Area zoned land.

The Committee noted that a review of the Suburban Centre chapter of the Plan has begun (as part of the Council's rolling review of the Plan) and that this issue is being addressed within the scope of that review. A plan change as a result of that review is not expected to be notified till late 2008 at the earliest. In so far as this review is being carried out, it is recommended that this submission be accepted.

#### *Other matters*

Submission 44 queried whether the height is measured above mean sea level or not? The definition of building height in chapter 3 of the Plan states that building height is measured from ground level except where the Plan specifically mentions that heights are measured above mean sea level. All Outer Residential Areas (to which this rule applies) are measured from the ground level.

#### Decision

- **Accept submissions 2, 12, 14, 16, 21, 22, 27, 30, 33, 35, 36, 37, 44, 52, 66, FS3, FS10-14** in so far as they support rule 5.1.3.4.3.
- **Reject submissions 4, 10, 13, 29, 31, 32, 38, 46, 55, 58, 59, 62, 63, 65, 69, 72, 77, 78, 79, 85, FS4, FS17, FS19 and FS36** which seek that rule 5.1.3.4.3 be deleted.
- **Accept submission 56, 67, 71, FS10-14** regarding the need for clarity around how rule 5.1.3.4.3 applies by inserting a definition of Infill Household Unit.
- **Reject submission 56 and accept FS10-14** in respect of clarity needed between multi-unit development height and the permitted height standards in the Plan.
- **Accept submission 69** regarding the reference to a 1000m<sup>2</sup> site being changed to 800m<sup>2</sup>.
- **Accept submission 64, FS10-14** regarding the consequential impacts of rule 5.1.3.4.3 on Suburban Centres

#### **Infill Household Unit for sites of less than 800m<sup>2</sup> in the Outer Residential Area means:**

- In relation to a site already containing one household unit, the second unit on the site located where it is outside the footprint of the existing unit (ie. the site coverage of the household units will increase as a result of the proposed 2<sup>nd</sup> unit).
- In relation to a vacant site, where the proposed development results in 2 household units, the unit nominated by the applicant.

#### **5.1.3.4 [Maximum]<sup>1</sup> Height. Subject to rules 5.1.3.5 and 5.1.3.6, the following applies:**

5.1.3.4.1 In the Inner Residential Area....

5.1.3.4.2 In the Outer Residential Area the maximum height is 8 metres, except for the following:

- in the Roseneath area (as shown in Appendix 7) the maximum height is 10 metres
- [within the land shown in Appendix 24 (16-50 Rhine Street, Island Bay) no part of any building or structure shall extend above or penetrate a horizontal line over the land at a height of 70 metres above mean sea level.
- For the avoidance of doubt proposals shall comply with whichever is the lesser (i.e. the lower height) of this height plane condition and the maximum building height of 8 metres.]<sup>5</sup>
- **An Infill Household Unit in the Outer Residential Area (ie. condition 5.1.3.4.3)**

#### 5.1.3.4.3 Height of a second an Infill Household Unit on an Outer Residential Area site

In the Outer Residential Area, the maximum building height of an Infill Household Unit a second household unit which is outside the footprint of the existing household unit and on a fee simple site area of less than 1000m<sup>2</sup> is 4.5 metres shall be:

- 4.5 metres on a building site that has a slope of no more than 3:1 (approximately 15 degrees)
- 6.0 metres on a building site that has a slope of more than 3:1 (approximately 15 degrees)

For the purposes of this rule only:

1. A building site is the footprint of a building + 2m (or less if the site boundary is within that 2m); and
2. A slope is determined by the longest section of sloping ground on a building site that falls at the same angle.
3. The longest section of slope is measured horizontally, from where the slope of the same angle starts to where it finishes, and excludes any vertical bank or wall less than 1.5m in height.

### **3.6 Rule 5.3.4: Multi-unit developments and 'infill household units' that do not meet the 4.5m height limit.**

Nineteen different submissions were received on this rule, the majority of which were about specific elements of the rule, rather than general comments on the whole rule. As such, the discussion below discusses each issue in turn, outlining the nature of support, opposition or amendments requested. FS 10-14 supported those submissions who agreed with the approach outlined in PC56, and strongly opposed those submitters that did not support these proposed changes.

*Infill Housing developments should not be the same activity status as multi-unit developments*  
In their written submission, submitters 58, 62 and 63 (opposed by FS10-14) considered that the perceived problems which initiated this plan change are actually associated with multi-unit developments rather than adding a second household unit. They considered that the creation of a second household unit should be assessed as Controlled Activities, to treat them differently from multi-unit developments. The Committee did not share this view point and were of the strong opinion that the back yard second household unit infill development can have as great an impact in an area as a multi unit development. The Committee referenced many examples which they had viewed where much larger new build houses were dwarfing the original house to the front of the section. They believed that the streetscape and neighbourhood effect of such developments could not be ignored and should be assessed against the Residential Design Guide. In this regard the Committee did not support these submissions; and accepted FS10-14.

#### *Submissions on the non-notification statement*

Two specific submissions were received on the technical drafting of the non-notification statement (subs 44 and 67), i.e. not the substance of it per se. It is noted in respect of submission 44, that the wording of these statements are largely uniform throughout the chapter and it is not desirable to amend the main structure format of the sentence as this would create inconsistencies raising questions about the intent of the different statements.

Submitter 69 noted at the hearing that the revised non-notification statements in the Officer's Report were overly wordy and should be amended. It was also noted that the statement should be reworded to reflect the permitted baseline (whereby at least one dwelling on a site may be constructed to 8m).

For a more fulsome discussion on the intent of these clauses, refer to the more general discussion on non-notification statements in section 3.12 of this report. Those discussions, more than these submissions specifically has highlighted some need for amendments to this particular non-notification statement and the draft wording below reflects that discussion.

#### *Submissions on the standards and terms*

Several submitters considered that the standard and term relating to the maximum height of a second unit on a site needed to be increased from 7m to 8m, or 8m plus an additional 1m for pitched roofs (subs 58, 62, 63, 65, 67, 69 and 70, although these were generally opposed by FS10-14). The Committee accepted that 7m is unnecessarily strict and agreed that the standard and term should be 8m.

In line with this, the Committee also recommended that the additional 1m for pitched roofs be made available for discretionary unrestricted activities (partly addressing the request made by submitters 67 and 69). In making this decision, the Committee noted that the 1m pitched roof rule was originally developed as an incentive to develop pitched roofs as part of a permitted activity development, but it has been used most commonly in recent times, to facilitate three storey buildings within a 9m height limit. The Committee felt that making this additional 1m pitch a discretionary unrestricted activity would enable officers to assess the wider effects of the development which would require a more stringent assessment of the proposal against the Plan's policies but were keen to emphasise that this activity status should not be viewed as a higher level of protection or a quasi-hierarchy in rules. The Committee were comfortable that

this activity status would provide options for developers, but would also provide officers the ability to assess the wider effects and ultimately refuse an application if it was deemed inappropriate. It is noted that FS16 asked that any provisions that create incentives for three storey developments be removed and so by restricting the maximum height of development to 8m this will satisfy this submitter. The Committee considered that that the proposed standard and term (see wording below) has been drafted in a deliberate way so that the definition of Building Height cannot be said to apply to it (i.e. that the additional 1m pitched roof does not applied).

Submitter 69 noted the recommendations of the Officer in respect of the 8m limit on buildings, but stated at the argument of the Officer ignored several facts:

- That the assessment criteria in rule 5.3.4 already allows for the consideration of amenity effects on neighbours
- Any application under this rule can of course be declined; and
- It is still possible to building a three-storey dwelling within 8m with mono-pitched or flat roof designs. This provision will simply encourage that design outcome.

The submitter maintained that the Standard and Term should be 8m plus the 1m gable and roof allowance.

The Committee acknowledged the points raised by of submitter 69, but were confident that the 8m overall building height provision would be workable. The Committee recognised that it would still be possible to build a three-storey dwelling with a flat roof but noted that flat roofs do have some advantages (i.e. opportunities for roof gardens/decks and the use of space in a creative way) that pitched roofs do not.

Conversely, FS 10 in her presentation to the Committee noted that because of the fact that an 8m building height can still provide for three storeys as noted by submitter 69 then the standard and term should be 7m plus the 1m pitched roof allowance, or that the 8m height remain but specify that only two storeys are allowed.

The Committee did not accept that there should be no three storey development should be proscribed as buildings of a higher and more intensive nature can be accommodated in some situations. They felt that that the 1 metre allowance for a pitched roof as a discretionary unrestricted activity was sufficient.

Submitter 44 asked for clarification of whether the height referred to is above mean high water spring. As noted previously, the building height definition clarifies those areas where building height is measured mean high water spring. The submitter also seeks changes to the way the standard and terms are drafted. These changes are not supported, as the sentence structure of those statements is the same throughout the Plan and was adopted originally by Plan Change 11.

Submitter 67 sought minor wording amendments to further clarify the scope of the standards and terms. These changes are accepted in part (see wording below).

#### *Submissions on the assessment criteria*

Submitter 55 and FS4 opposed the assessment criteria (and the entire Plan Change), noting that they will add significant upfront costs to multi-unit developments and a reduction in the flexibility of design. These submissions were not supported by the Committee. The criteria merely reflect the increased attention in the policies on residential amenity effects and residential streetscape and character effects of such developments. Because this Plan Change has not sought to remove assessment criteria (as happened recently in Plan Change 48), these criteria are needed to support the intent of the policies.

Submitter 29 sought the deletion of rule 5.1.3.4.3 (opposed by FS10-14), but noted that if it did remain then an assessment criterion be added to this rule which assesses “the ability of the proposal to meet Wellington’s housing needs in terms of a targeted approach to infill housing”.

The Committee acknowledged the Council's obligation under Part II of the RMA to make reasonable provision for the needs of future generations. In the context of provision for housing, the Committee agreed it was important to acknowledge the social, economic and environmental benefits of developments. The Committee did consider it appropriate that if a development could be said to respond well to the Part II requirements then this should be acknowledged. The Committee also stated however that it would be difficult to make such decisions until such time as the Council has made a decision on its proposed 'Targeted Approach'.

In the meantime, to address the specific request of the submitter, the Committee noted that the Urban Development Strategy is a Council approved document that sends signals about how the Council intends to manage future residential growth. The Committee felt it would be entirely appropriate to refer to that strategy as a 'method' in the planning rules. This would allow arguments to be put forward by landowners that their proposed development are consistent with the approach outlined in that strategy. A reference and additional explanation has been added to the 'methods' for Policy 4.2.1.2 which provides for a greater mixture of residential Activities in Residential Areas – Refer to Chapter 4 in Appendix 2, of this report.

Submitter 57 (supported by FS10-14) seeks that the loss of sound amenity be a factor that is considered as part of developments under this rule. It is agreed that increased noise levels (as a direct result of more people living in the same environment) may be an effect of such a development. The Committee noted that the Information Requirements for multi-unit development consent applications do require an assessment of the noise effects associated with the proposed activity (section 3.2.4.2.1 item 5). However, it is not considered necessary that noise be an explicit consideration of this rule as there are other noise standards in the Plan that seek to control noise in Residential Areas between different sites (specifically rule 5.1.1.1). In the situation where there are several semi-detached units within one site (ie. a multi-unit development) there are Building Code standards that seek to reduce noise impacts between attached units. It is noted also, that those Building Code standards are currently being reviewed with the intention that the standards for noise insulation be increased.

Submission 71 sought that criterion 5.3.4.7 refers specifically to the 'blocking of significant existing view shafts', in order that the Plan recognise that views from existing houses can be as significant effects as being overlooked (loss of privacy). This is not supported by the Committee because the Plan specifically does not seek to protect private views (a long standing position in the Plan, that the Committee do not feel needs to be altered). Concerns about loss of outlook generally are considered to be a genuine amenity effect, but specific views are not protected. It is noted that the Plan does protect public viewshafts of important features within and across the central business district, but does not protect views from individual properties.

Two other submissions also comment on the 'privacy' assessment criterion. Submitter 11 supports it, seeking that privacy is protected at all costs as it is 'something that Kiwis hold very personal'. Submitter 9 makes the point that overlooking of adjacent properties can be mitigated by placing new dwellings obliquely or at an angle. This is noted and it is something that can be addressed through the design assessment process.

Submission 84 questioned the monitoring of the assessment criterion relating to kerbside carparking, whilst noting it is an admiral provision. Traffic and parking reports can easily establish the level of demand for kerb-side parking so monitoring of this is not considered to be an issue. However in looking at this issue more closely it is noted that the standards and terms of this rule require developments to also meet the parking and site access standards of the Plan. In hindsight this particular criterion is duplication of the standard and terms so it is recommended to be deleted.

Submissions 64, 65, 69 and FS19 opposed the need for criterion 5.3.4.11 regarding the removal of trees from the site in the previous two years. Submitter 83 noted that the removal of trees can also be an amenity benefit for some, (presumably allowing extra light into a property).

Submitter 65 specifically pointed out that a current owner may be penalised for the removal of trees by a previous owner. This assessment criteria stems directly from proposed new policy 4.2.3.1C which encourages the retention of mature trees and bush during a site redevelopment process. The criterion seeks to get around the situation where a site is cleared of vegetation prior to a consent application being lodged, thereby reducing the likelihood that the consent (via a landscaping conditions) would seek to retain certain trees and bush areas. The Committee considered that this was an extremely important criterion for applicants to consider. One key function of the criterion is to alert people to the fact that the replacement of previously large vegetation with smaller vegetation is not an acceptable alternative to mitigate any visual effects of a new building on adjoining neighbours. Landscaping plans should look to include replacement vegetation of a similar nature and scale as what was previously planted to help reduce the visual effects.

Whilst the concerns of the submitters are noted it is considered there are benefits to retaining the concepts encapsulated by the criterion. It is recommended that the specific criterion be deleted in response to submitters, but that criterion 5.3.4.10 is amended to retain the key concept of replacing 'like with like' (see wording below). Submitter 65 commented to the Hearing Committee that while the revised wording did go some way toward alleviating their concerns, they noted that this issue may still be difficult to determine where a previous owner has removed vegetation. How will the Council determine what would be a fair replacement of like for like?

Submitter 69 expressed several concerns about the revised criteria to the Hearings Committee. Of note was that vegetation is typically removed from a site to facilitate its development and new owners typically want landscaping that complements the new dwelling, rather than having to live with landscaping that replicates the former environment. It was suggested that landscaping which replants large undesired trees will either not be maintained or will simply be removed by future owners. As there is no formal protection of vegetation under the Plan (ie. in the form of rules) the Council should focus on ensuring that any new landscaping mitigates the visual effects of new dwellings, not on the species of vegetation planted there or their scale. It was also noted that the cost of replacing large trees would be prohibitively expensive.

The concern about the costs of replacement mature trees was effectively dismissed by FS10, who noted to the Committee that the costs would be avoided or mitigated by developers if they retain existing trees on site instead of being required to replant.

In response to these specific issues, the Committee again noted that at best, the Council can control what happens as part of a new development, but it can not influence what happens to such vegetation in the long term or as properties change ownership. The Committee considered that with appropriate landscaping done during site redevelopment then it was more likely that this would be maintained by the subsequent owners. The Committee agreed it was important to signal in the assessment criteria of the need to replace existing vegetation with trees of a similar nature and scale. However, it is also signalled that sometimes it is better to plant species for their future potential i.e. of the choice is between planting 'cheap solutions' for the immediate effect and planting trees of a scale that will prove to be more enduring then the latter should be seriously considered.

### Decision

- **Reject submission 58, 62 and 63 and accept FS10-14**, in respect of treating second household units as Controlled activities rather than Discretionary Activities, and **Reject FS4**, particularly in respect of opposition to the application of the design guide to small scale developments.
- **Reject submission 44 and Accept submission 67 in part**, in respect of the wording of the non-notification statement. Refer also to recommendations in sections 5.6 and 5.13 regarding non-notification statements.

- **Accept submissions 58, 62, 63, 65 and 70 and reject FS10-14** in respect of the standards and terms being amended to refer to 8m instead of 7m. **Reject** submissions 67 and 69 which sought that the same standard and term also provide for the 1m pitch roof allowance.
- **Reject submission 44 and accept submission 67** regarding minor wording amendments to the standards and terms.
- **Reject submission 55 and FS4** which seeks the deletion of the assessment criteria.
- **Reject submission 29** which seeks a new assessment criteria to reflect the housing needs of Wellington and **accept FS10-14** in this regard.
- **Reject submission 57 and FS10-14**, in respect of noise amenity.
- **Reject submission 71**, in respect of protecting significant existing view shafts.
- **Accept submissions 9 and 11** in respect of the privacy assessment criterion.
- **Accept submission 84 in part**, by deleting criterion 5.3.4.12 relating to kerbside parking.
- **Accept submissions 64, 65, 69, 83 and FS19** in so far as they seek the deletion of criterion 5.3.4.11. But note that criterion 5.3.4.10 has been re-worded to retain the key element of the deleted criterion.

NB: A complete set of the relevant Chapters is contained in Appendix 2 of this report.

- 5.3.4a** The construction, alteration of, and addition to residential buildings, accessory buildings [and residential structures]<sup>3</sup>, where the result will be three or more household units on any site, except
- in the area shown in Appendix 9 (Thorndon, Mt Victoria and [Aro Valley]<sup>1</sup>)
  - in the Thorndon and Mt Victoria North Character Areas
  - [in the circumstances where Rule 5.4.8 applies]<sup>2</sup> in a Hazard (Faultline) Area
  - inside the airnoise boundary depicted on Map 35;
- or
- 5.3.4b** where the result will be two household units on any site and the proposal does not meet condition 5.1.3.4.3;
- the proposal is a Discretionary Activity (Restricted) in respect of:
- 5.3.4.1** design (including building bulk, height, and scale), external appearance, and siting
- 5.3.4.2** site landscaping
- 5.3.4.3** parking and site access (in particular the proportion of the site devoted to parking, site access and manoeuvring)
- 5.3.4.4** where relevant, height of 2nd dwelling on a site

#### Non-notification

In respect of rule 5.3.4 applications do not need to be publicly notified and do not need to be served on affected persons. This non notification clause does not apply if the proposal for residential development requires land use consent under rule 5.3.3 for failure to meet the permitted activity conditions, or where consent is required under rule 5.3.4 for failure to comply with rule 5.1.3.4.3.

applications do not need to be publicly notified and do not need to be served on affected persons, unless:

- for an application under rule 5.3.4a, the height of any proposed building or structure exceeds 4.5 metres, or
- for an application under rule 5.3.4b, the building height of an Infill Household Unit exceeds 4.5 metres, or
- the residential development requires concurrent land use consent for failure to meet the permitted activity conditions required to be met by the standards and terms and a non-notification or non service clause does not apply to the concurrent consent.

### Standards and Terms

[All activities, buildings and structures must meet the conditions for parking (5.1.1.2), site access (5.1.1.3) and building (5.1.3.2, 5.1.3.2A, 5.1.3.2B – 5.1.3.3, 5.1.3.4.1 – 5.1.3.4.3, 5.1.3.5 – 5.1.3.6, and 5.1.3.9) unless consent is concurrently sought and granted for the condition(s) not met.]<sup>5</sup>

A proposed development under Rule 5.3.4.4 (relating to the maximum height of a second unit on a site) may not exceed 7 metres.

No part of the building or structure (excluding chimneys, flues, ventilation shafts, aerials, spires, flag-poles or other decorative features that do not exceed 1 metre in any horizontal direction) shall exceed 8m above the ground level immediately below.

### Assessment Criteria

**In determining whether to grant consent and what conditions, if any, to impose, Council will have regard to the following criteria:**

- 5.3.4.4 The Design Guide for Residential Development.
- 5.3.4.5 Where rules 5.1.3 for yards, site coverage, building height, sunlight access, and open space are not met and the written approval of any affected person has not been obtained, whether new building work will cause significant loss of sunlight, daylight or privacy to adjoining sites.
- 5.3.4.6 The extent to which building bulk, scale and siting of the proposal respects the scale, building form and topography of the neighbourhood.
- 5.3.4.7 The degree to which the proposal (through inappropriate siting, building height and bulk) significantly increases the opportunities for overlooking into adjacent properties (both indoor and outdoor spaces), reducing amenity for neighbours.
- 5.3.4.8 Whether additional hard surfacing for on-site parking and manoeuvring areas is minimised or mitigated by appropriate site landscaping.
- 5.3.4.9 The extent to which the landscaping plan ensures that buildings, accessways, parking areas, visible earthworks and retaining structures are integrated into the surrounding neighbourhood and the degree to which sufficient space is provided for maturing trees, and the retention of existing trees. Where trees or other vegetation is removed as a result of site redevelopment, whether replacement trees and vegetation are of a similar nature and scale.
- 5.3.5.6 Whether any trees removed from the site in the previous two years will be replaced by planting of a similar nature and scale.

*For the avoidance of doubt on the meaning of this standard and term, the definition of Building Height in section 3 of the Plan does not apply.*

~~5.3.5.6 Whether the amount of kerbside parking is reduced as a result of the development (ie additional vehicle access way or a widened kerb crossing), especially in areas where on-street parking is at a premium.~~

~~5.3.4.10 The extent to which parking, vehicle accessways and manoeuvring areas makes up a significant proportion of the site area reducing opportunities for adequate open space and whether additional hard surfacing for on-site parking and manoeuvring areas is minimised or mitigated by appropriate site landscaping.~~

*Multi-unit developments can include both comprehensive townhouse development proposals as well as additional detached dwellings associated with infill housing. Although both of these development scenarios provide desirable variety and diversity of accommodation, they can detract from the visual character or amenities of residential neighbourhoods. The Design Guide for residential development provides the criteria for assessment. The general intention of the Guide is not to impose specific design solutions but to identify design principles that will promote better development and enhance existing suburban environments.*

*A second household unit on a site are generally over height that breaches the 4.5m height requirement can result in adverse amenity effects on surrounding neighbours, especially where the second dwelling is located so that it overlooks and shadows living areas of adjoining dwelling and valued outdoor open space areas of adjoining properties. The residential design guide provides guidance on the design of such dwellings, seeking to ensure that adjoining properties will not be adversely affected by an infill development resulting in a much greater intensity of development on a site.*

*[Multi-unit development within the Hazard (Fault Line) Area is classified as a Discretionary (Unrestricted) Activity because intensive development of sites within this area is generally inappropriate except where site specific conditions and design proposals can mitigate the risk to personal safety.]*

### **3.7 Residential Building Discretionary Restricted rule (rule 5.3.3)**

The submissions on this rule are relatively minor, and the more significant aspects have been addressed elsewhere in this report (primarily section 3.8: open space). There were two explicit submissions in support (sub 44 and 33), with submission 33 providing particular support to two of the proposed new assessment criteria for the rule (5.3.3.11 and 5.3.3.12).

Submitters 23, 67 and 69 all note that an incorrect reference to rule 5.1.4.3.4 needs to be amended to 5.1.3.4.3. This change is agreed by the Committee. Submitter 67 also notes that one reference to the Multi-unit Design Guide was not amended to read Residential Design Guide (in 5.3.3.7). Again this change has been made.

Submitters 67 and 69 both ask that provision is made for a non-notification statement for the failure to provide all of the open space (though this was opposed by FS10-14). This issue is discussed in full in section 3.8, and there it is agreed that a non-notification is included in this rule for the failure to provide up to 15m<sup>2</sup> of open space, or if it has a minimum dimension of less than 3.5m. Also, the open space not provided is only able to be the portion of space that could have been allocated as vehicle manoeuvring or access way. So, provision of less than 35m<sup>2</sup> of open space will result in the possibility that the approval of affected parties will be required. As a result, it is considered that these submissions be accepted. Note that a recommendation in relation to submission 23 on revised open space assessment criteria was made in section 5.9 of this report. The revised wording is included below for completeness.

Submitter 67 and 83 seek some wording changes to assessment criteria 5.3.3.11 – 5.3.3.13. FS4 considers these assessment criteria as being too restrictive on development. It is considered that some of these changes are appropriate and reflect recommendations made elsewhere in this report (particularly on policy 4.2.2.1 – 4.2.2.1B).

Further submitter 4 opposes rule 5.3.3 – 5.3.3.4C in its entirety. It is noted that the rule is an existing rule, needed to allow consideration of applications that do not meet a range of permitted activity building standards. The main change made to this rule is to add the open space item. It is not appropriate to remove this rule.

#### Decision

- **Accept submissions 44 and 33**, in support of the rule, subject to the changes proposed below.
- **Accept submission 23, 67 and 69** seeking the reference to 5.1.4.3.4 be corrected to 5.1.3.4.3 and that a reference to the Multi-Unit Design Guide be changed to 'Residential Design Guide'.
- **Accept submission 67 and 69 and reject FS10-14** in so far as they seek a non-notification statement relating to the open space requirement.
- **Accept in part submissions 67 and 83**, which seek some wording changes to criteria 5.3.3.11 – 5.3.3.13 (see wording changes below). **Reject FS4** which opposed these criteria.
- **Reject FS4** which opposed rule 5.3.3-5.3.3.4C.

[5.3.3 The construction, alteration of, and addition to residential buildings, accessory buildings [and residential structures]<sup>2</sup>, which do not comply with any one or more of the following conditions for Permitted Activities in rule 5.1.3:

5.3.3.1 Yards

5.3.3.2 site coverage

5.3.3.3 [maximum]<sup>3</sup> height (except the requirement in ~~5.1.4.3.4 5.1.3.4.3~~ – Height of an Infill Household Unit second dwelling)

*Proposals to exceed the permitted activity condition for the height of the second dwelling require consent under Rule 5.3.4*

5.3.3.4 sunlight access

[5.3.3.4A maximum fence height]<sup>4</sup>

5.3.3.4B open space

are Discretionary Activities (Restricted) in respect of the condition(s) that are not met.]<sup>1</sup>

#### **Non-notification**

*In respect of item 5.3.3.4B, applications do not need to be publicly notified and do not need to be served on affected persons where:*

- *the site is in the Outer Residential Area site and rule 5.1.3.2B.6 applies; and*
- *the open space provided under rule 5.1.3.2B.6 is greater than 35m<sup>2</sup> or the open space area under 5.1.3.2B.9 has a minimum dimension greater than 3.5m; and*
- *the open space area not provided is the portion of open space that may be used for vehicle accessways and manoeuvring as outlined in rule 5.1.3.2B.7.*

#### *Standards and Terms*

...

#### *Assessment Criteria*

**In determining whether to grant consent and what conditions, if any, to impose, Council will have regard to the following criteria:**

...

5.3.3.7 Whether the form, scale and character of the new building [or structure]<sup>1</sup> is compatible with that of buildings [and structures]<sup>2</sup> in the immediate vicinity of the site, and streetscape amenities can be maintained. For multi-unit residential development Council will have regard to the Residential Design Guide. For all development subject to this rule in Thorndon, Mt Victoria and [Aro Valley]<sup>3</sup>, Council will have regard to the relevant area related appendix to the Multi-unit Residential Design Guide.

...

5.3.3.9 Where a proposal results in a breach of site coverage, the extent to which that breach will adversely affect the amenity of adjoining sites as well as the cumulative effect of a highly developed site over development on the surrounding environment.

...

5.3.3.11 Where a proposal fails to provide the specified open space requirement per unit:

- the degree to which it results in a development density that is not consistent or compatible with the surrounding residential environment (see Policy 4.2.3.1A), or
- in respect of multi-unit developments assessed against the Residential Design Guide, the degree to which the entire development, including the open space areas, is of a high quality and responds well to its surrounding residential context.

5.3.3.12 Where a proposal involves breaches to several permitted activity conditions, the extent to which the cumulative effects of that proposal results in a development that is out of scale with the surrounding residential development and whether it will create adverse effects on the neighbourhood amenity of that residential environment. that are not reasonably anticipated by the Plan.

### **3.8 Open Space Provisions (Policy 4.2.3.1A, rule 5.1.3.2B)**

The open space provisions were one of the main new provisions added as a result of Plan Change 56. The requirement to provide open space was considered an essential element to ensure the effects of infill housing on existing residential areas could be better managed. These provisions attracted a large number of submissions from all sides of the issue.

Supportive submissions were received from 9, 36, 43, FS10-14 (on the policy) and 2, 14, 18, 22, 28, 30, 33, 37, 66, 76, FS3, FS5, FS16 and FS10-14 (on the rule). In essence these submitters considered the rule and policy were needed to ensure dwellings were not 'crammed in', would help reduce privacy concerns and to provide a sense of open space on residential sites. Submissions 28 and FS5 noted in particular that residents who require no open space have the option of apartment dwellings, and submitter 66 considered the rule would help to encourage more gardens.

Submitter FS23 opposed many of these submissions stating that the open space provision was unduly restrictive and will significantly limit infill opportunities, whereas FS10-14 supported these provisions (seeking they be increased rather than decreased) and vehemently opposed those submissions below which sought to delete or reduce the scope of the open space provision.

There were a number of other submissions that supported the provisions in principle but considered that they needed amendments to make them more workable, flexible and reasonable. Submissions on the policy were received from 23, 29, 33, 44, 47, 65, 67, 83, 84 and FS19. Submissions on the rule were received from 23, 31, 44, 48, 51, 58, 62, 63, 67, 69, 70, 83, 84 and FS17. These submitters raise a wide variety of issues with the current construction of the rule and wording of the policy which are discussed in turn below.

Submissions in complete opposition were received from 69 (on the policy) and 4, 10, 21, 38, 46, 55, 59, 72, 85 and FS4 and FS36 on the rule. Overall, these submitters considered that the rule is not justified and is particularly restrictive and excessive for the needs of residents. In particular, submitter 10 notes that the rule (and plan change) will stifle city growth, push land prices up and encourage urban sprawl. Submitter 55 considers the rule will reduce the number of units able to be placed on a site, and also restrict how and where those dwellings will be able to be sited within a property.

A number of submitters also spoke to this issue at the hearing, as outlined below. Submitter 83 (also FS36) considered that the open space requirements are written in a way to make it impossible to meet the standards considered 'good developments' and he considered it was a positive step by the Council officer to make some concession in respect of allowing some open space area for vehicle manoeuvring. He doubted that many existing properties would be able to comply with that open space requirement, and did not believe that the rule would achieve separation between houses.

Submitter 29 also spoke to the hearing on this matter and again outlined their view that the open space policy should be revised to be consistent with the approach taken with policies 4.2.3.1B and 4.2.3.1C, which are implemented using advocacy and guidance in the Residential Design Guide rather than with a rule. The submitter was very supportive of the design guide approach to achieving high-quality, useable open space areas and considered the introduction of a rule was unnecessary and unduly restrictive. The submitter drew the Committee's attention to their own Site Design Guide for residential development which encourages good quality, useable open space.

In response to questions from the Committee, the submitter considered that the open space areas provided do need to be 'green' or 'permeable' but that there should be flexibility to provide decks etc. They did not consider that vehicle access ways could be considered as 'useable open space'. The submitter also acknowledged that it is their general policy to put families into

dwellings that have their own private outdoor space, rather than into apartments with little outdoor space. This prompted the Committee to ask whether the open space requirement should be linked to the size of the dwelling (ie. number of bedrooms) but the submitter responded that the design guide was good enough to address these issues and the provision of open space areas should be considered on a case by case basis rather than having a rule in place.

Submitter 52 emphasised her support for the open space requirement, noting particular concerns (in light of her occupation as a primary school principle) about less space for children to play safely. She explained that it is no longer safe for children to play in the street as was common years ago. She considered that the home was the first area that children could safely play and exercise.

Submitter 72 acknowledged that the proposed amendments to the open space provisions in the Officer's Report are an improvement (especially around the non-notification) but did point out to the Committee that it is coverage rather than open space that limits development and was concerned that two controls would reduce design flexibility (i.e. the net result may not be a better outcome) and also that the trend appears to be moving away from larger sections.

Submitter 76 supported the open space rule as they considered it will help to mitigate bad design, but also noted that the greening of the suburbs is what makes the suburbs alive. They agreed that they'd prefer the open space to be 'green' as they do not like infill that is all driveway and asphalt. Similarly they would prefer the open space at ground level to encourage it to be green.

## Discussion

The submissions in support were noted by the Committee, particularly as they clearly demonstrated the concerns that many residents have had in relation to infill housing properties that do not provide sufficient open space in the development, and as a result create adverse effects for surrounding neighbours. As the other submissions show however, the rules as notified in Plan Change 56 may have produced some uncertainty and not allowed for sufficient flexibility. These issues are discussed in turn below, and the Committee has made some amendments to the provisions in response to those submissions. However, in recommending this, the Committee were mindful that these changes will not in any way reduce the original intent of the provisions.

### *Amount of open space required*

A number of submitters stated that the amount of open space required was excessive, particularly in respect of the 50m<sup>2</sup> required for Outer Residential Areas. A wide variety of options were put forward by submitters, both in their written submissions and at the hearing, who sought that the open space required be reduced. Suggestions included; 35m<sup>2</sup> – 40m<sup>2</sup> per unit, a regime whereby the first unit provided requires 50m<sup>2</sup>, the second requires 40m<sup>2</sup> and the third unit requires 30m<sup>2</sup> and so on. Many submitters also noted that the slope and orientation of many Wellington sites make the open space rule difficult to comply with. Submitters were also concerned that the rule would reduce the density and number of units able to be placed on a site.

The Committee noted that the open space rules themselves (as opposed to the Design Guide provisions) do not outline that the space must be flat, or even useable. In particular the Committee used the hypothetical example of an owner's prerogative to use outdoor space for tables and chairs or alternatively plant that space in a stand of trees. The Committee were of the mind, that it was not how the space was used, but rather, the 'spaciousness' that is created with an outdoor space provision. This is how the rule differs from the 'useable open space' rule of the Wellington District Scheme/Transitional Plan. That 'useable open space rule' was not carried over into the 1994/2000 Plan developed under the RMA because of the subjective nature of determining just what was usable and what was not. The re-introduction of the open space requirement as a rule (rather than just a design guideline for multi-unit developments)

acknowledges that there is a place for such a rule to provide a sense of open space and space, but it now recognises that the land does not need to be flat or 'usable' to provide this sense of spaciousness and separation (particularly for permitted activity developments). The Committee were entirely comfortable with this position.

In line with this, the Committee were also acutely aware of the deliberate intention of the rule in that it seeks to control residential density and will impact on the number of units that will be able to be placed on a site. As the policy outlines, there are three key elements of the plan that affects residential density (site coverage, open space and car parking requirements). Residential density is a key element of residential character and for this reason an open space requirement per unit is endorsed by the Committee.

The Committee also noted that an open space rule was recently proposed in Plan Change 39 (Residential Character provisions in Newtown, Berhampore and Mt Cook). The Inner Residential Area open space rules proposed in Plan Change 56 are taken directly from the decision of Plan Change 39, whilst the Outer Residential open space requirements were modified to reflect its lower density characteristic. The 35m<sup>2</sup> for Inner Residential Areas was largely based on the existing Design Guide requirement for 35m<sup>2</sup> and because it was relatively consistent with the 30m<sup>2</sup> previously required by the Transitional District Plan.

The suggestion by submitter 70 that the shared open space requirement be enlarged for Inner Residential areas to 60 – 100m<sup>2</sup> was not supported by the Committee. The Committee was satisfied that the 35m<sup>2</sup> per unit was appropriate especially as the rule does allow for some of this space to be shared across the site.

The Committee accepted that these thresholds may be difficult to meet (especially if a landowner has certain expectations about the number of units planned for a site), but they have been set at a level which represents the current residential character of these suburbs and for this reason should be retained. See also decisions below regarding the ability for some of the open space area in the Outer Residential Area to be used for vehicle manoeuvring.

At the hearing, submitter 38 noted that the rule essentially imposes a site coverage restriction on development that goes beyond the 35% site coverage standard that is currently in place for the Outer Residential Area. The submitter noted that the 35% coverage standard is the density standard that has been considered appropriate for development of urban areas in Wellington and the majority of other cities in New Zealand. Hence this open space standard will place a restriction on development that goes well beyond the established density standard. The Committee did not support this view point and note that other Council's, including Auckland City have open space area requirements in addition to the site coverage requirements. The Committee did not consider this outdoor space provision inconsistent with the approaches of other major cities.

Also at the hearing, submitter 10 commented that the open space size requirements were too large given Wellington's inclement climate. He argued that most people don't want that much outdoor space. The Committee did not support this position and, as discussed above, noted that the rule is not designed to stipulate how people are expected to use the space and individuals could plant or pave their space if they so desired.

#### *Size of open space for units above ground level*

Further submitters 24 and 25 both submitted that the rule does not respond well to the situation where a multi-unit development may involve units that are sited above the ground floor and that it is unreasonable to require 50m<sup>2</sup> of open space for those areas. Both of these submitters attended the hearing and expanded on their written submissions. Submitter FS25 was of the view that the open space requirement was introduced as a blunt instrument to reduce the visual impact of poor quality town housing. The submitter was of the view that the size or amount of space provided is not the important factor, rather, but that the emphasis should be on the quality of the design submitted. The submitter concluded that design quality does

necessitate decision-making of a more subjective nature, but considered that the Council's urban design team have the expertise to make such decisions and that they should be given greater powers to make planning decisions in order to achieve better results.

Submitter FS24 agreed with the statement by FS25 and noted that the combination of the existing and proposed rules (particularly the open space rule) has the effect of reducing site coverage to something below 27%.

Both submitters suggested a pro-rata 'deck/balcony' requirement should apply in these situations (ie. approximately 10-15m<sup>2</sup>) and noted that the previous Multi-Unit Design Guide included a guideline for the size of decks where space could not be provided at ground level.

In response to this, the Committee noted the concerns outlined in the Officer's Report regarding the deck size guideline that was previously set out in the Multi-Unit Design Guide. That guideline was deliberately removed due to long held concerns within Council that the intent of the 'deck' provision was being abused in order to avoid having to provide the much larger 35m<sup>2</sup> ground level open space. The Committee were also very concerned that this guideline had been favoured as a default position in developments and were keen to ensure this trend was not continued.

However, it is noted that the proposed open space rules provide scope for decks and balconies in the Inner Residential Area (with a minimum size outlined). The Committee were of the opinion that if open space at ground floor level could not be provided in the Inner Residential context, then there is the expectation that some open space (in the form of decks and balconies) will be provided. The Committee considered that the space was extremely important to ensure healthy homes and the wellbeing of occupants.

The Committee were also comfortable that the deck and balcony provision was not included for Outer Residential sites to ensure lower density development was in keeping with the Outer Residential character. The Committee were very much of the view that people's expectations about what space they have with their home changes the further they are situated away from the CBD. Expectations for more private outdoor space are greatest in the Outer Residential suburbs and this is one of the main characteristics of these suburbs. The Committee was keen to ensure the rules reflected these expectations. The justification behind this was that if a deck/balcony requirement was specifically included for Outer Residential areas, this could potentially lead to a greater density of units on a given site reducing the effectiveness of the rule. In light of this, it is preferred that developments which have some units above ground with no direct access to ground level open space are seen as the exception, rather than being specifically provided for in a rule. At the hearing, FS24 considered that this approach would be acceptable if the Committee did not support a specific requirement for upper level open space areas. The Committee was explicit in its view that situations should be considered on a site by site basis where the effects generated by the development can be suitably assessed. The Committee were very keen to emphasise that this was an exception and not an automatic default position for all new developments. Clear justifications would need to be made as to why this option had been pursued. To aid this interpretation, the Committee recommended two changes to the notified provisions that will help Council officers exercise their discretion in such scenarios.

The first relates to the Residential Design Guide, which had submissions that it does not cater well to low-rise apartment style development. Refinements have been made to address this, and these include how best to provide for outdoor open space in apartment style development (see section 3.10). In addition, the proposed new assessment criteria (see discussion below) provide scope for the Council planners to reduce the amount of open space provided where the development has been assessed as being of a very high quality and the effects suitably mitigated. These changes should provide enough flexibility to consider applications that do not strictly meet the open space requirements. At the hearing, FS24 asked that the Committee accept the recommendations of the Officers Report in respect of the changes to the Residential Design Guide.

As with other elements of this Plan Change, the Committee recognised that the Open Space requirement is one aspect that will be reassessed as part of the targeting work. It is anticipated that the rule will be refined to cater for residential development that won't necessarily need open space. However, until such time as those areas have been identified, the Committee is entirely comfortable with the open space provisions of this Plan Change.

*Open space must be green / not covered with decks/not be used for parking and manoeuvring – Policy 4.2.3.1A and provisions 5.1.3.2B.2 and 5.1.3.2B.7.*

This issue of whether the open space requirement meant that 'green' open space was required was raised and discussed in section 3.4. The Committee agreed that the main point of the open space requirement is to provide a sense of openness and space between buildings. Whilst it is generally characteristic of residential areas for this space to be 'green' (i.e. grassed lawns, gardens, trees and bush), it is also typical for such properties to have some outdoor space as paved recreation areas or decks to allow for all year usability of the outdoor space. The rule itself does allow for outdoor space to be provided by way of 'permitted decks'. The Committee acknowledged that it is not necessary that the policy be so specific as to state that the open space area should be either green or landscaped, as noted by submitter 65. This opinion was supported by submitter 65 at the hearing. In order to create consistency between the policy and the rule, the Committee has therefore deleted references to 'green'. At the hearing, submitter 28 made the Committee aware that they did not support this recommendation by the officer. It is noted once again that Council can not control the long term use and nature of these open space areas, particularly as properties are bought and sold over an extended period of time.

The Committee did not consider it appropriate (as requested by submissions 58, 62, 63 and FS17) to allow enclosed decks or decks 1m above ground level to be open space as such decks are treated as site coverage and add to the bulk of buildings which defeats the purpose of the open space rule. This conclusion was supported by submitter 28 at the hearing, who felt that people do react different to built structures and on that basis decks should not be able to be used as part of the open space area.

In their written submissions, submitters 38 and 67 queried why vehicle access ways, parking and manoeuvring areas could not be treated as open space, especially as such spaces do create separation between houses and can serve a dual purpose (e.g. places for children to play and ride bikes). In the report prepared for the hearing, the Planning Officer recommended that in Outer Residential Areas, 15m<sup>2</sup> of the required 50m<sup>2</sup> open space requirement could be used for vehicle access and manoeuvring space.

At the hearing, submitters 67 and 69 noted their support for this revised approach. However submitter 69 did question why it did not extend to Inner Residential Areas, suggesting that it should also be amended so that up to 10m<sup>2</sup> of the open space requirement could consist of vehicle access ways or manoeuvring. Upon further questioning by the Hearings Committee, the submitter conceded that the use of open space areas for vehicle manoeuvring may not be appropriate for some multi-unit developments in respect of safety concerns for children, but considered it was perfectly reasonable for small lot development.

Also at the hearing, FS10 noted her concern that the open space provision was already being proposed for some dilution (in respect of the ability for up to 15m<sup>2</sup> being used for vehicle accessways etc). The submitter considered that, in spite of the concerns of other submitters, 50m<sup>2</sup> of open space is not a significant amount of land for an average 3 bedroom infill dwelling. Diluting this to 35m<sup>2</sup> will mean that applicants only strive to achieve 35m<sup>2</sup> rather than the 50m<sup>2</sup> and the submitter implored the Committee to make the requirement a strict 50m<sup>2</sup>.

The Committee noted the concerns of FS10 that this maybe perceived as a dilution of the rule, but did not share this view. The Committee considered the 15m<sup>2</sup> vehicle access and manoeuvring space recommended by the officer was a reasonable proposition for Outer Residential Areas, but only in relation to vehicle access ways and manoeuvring areas, not hard

standing parking areas (which may not be available as open space if permanently parked on). In making this decision, the Committee were very keen to highlight that the vehicle access and manoeuvring space could help with street safety (i.e. avoid people backing out on to roads) and could also be finished in a permeable surface, such as gravel, which could break up the built form. However, the Committee were resolute that the area would not become a default car park area and were confident that every effort would be made to ensure this was not the case. With regard to the Inner Residential Areas, the Committee were of the opinion that this provision should not apply to Inner Residential areas as it was their view that 35m<sup>2</sup> of open space should be the absolute 'bottom line' to ensure a suitable degree of openness on a site. This is even more crucial for the more densely packed Inner Residential Areas. The position also ties in closely with the longstanding expectations of how much open space should be provided for multi-unit development in the Multi-unit Design Guide; now replaced by the Residential Design Guide.

In their written submission, submitter 51 specifically queried why buildings are excluded from being able to extend out over open space by 1.5m. The reason why buildings are excluded from this provision is that there is no sense of openness to them in the same way that balconies and verandahs provide openness. At the hearing, submitter 67 accepted these reasons, but did feel that a lesser intrusion could be appropriate (say 0.5m). The submitter also felt that a clarification was needed in respect of whether an eave of a building (up to 1m wide) could overhang the open space area. Whilst recognising that there is a distinct difference between the bulk of an uncovered deck and an overhanging built form of a building, the Committee recognised that both scenarios added a level of bulk to a building that has to be measured against the amount of land available on site (i.e. site coverage). The Committee considered that the suspended bulk of a building had a greater visual impact than that of an uncovered deck and that this design form could severely affect the openness of the open space below. The Committee were of the opinion that although uncovered decks did add some additional bulk to a building, their presence was not as intrusive. The Committee noted that this position is reflected in rule 5.1.3.3.2 that allows for an additional 5% of site coverage to be made up of decks in the Outer Residential Area. Based on this reasoning, the Committee did not support submitters 51 and 61 in their suggestions.

Submitter 36 sought that the Policy recognised the benefits of green open space as helping to neutralise storm-water run-off effects. The Committee agreed that this should be explicitly recognised as proposed by the submitter, but it is noted that decks or paved areas can still provide for soil permeability if materials with permeable qualities are used. The submitter also sought that the Subdivision Design Guide be referred to as a Method under this Policy. Once again the Committee agreed that the design guide can be a useful addition to this Policy, particularly in respect of G6.10 of that Guide which seeks to incorporate on-site water quality treatment measures.

*Can the open space area requirement be split across the site?*

Submitters 65 and FS 19 stated that it is unclear whether the open space can be split into a number of areas, provided that the minimum dimension is maintained. This is what is intended by the rule, and should be interpreted as this by the wording in provisions 5.1.3.2B.3 and 5.1.3.2B.7 which states "all areas of ground level open space...". The Committee did not believe that this needs to be clarified further. At the hearing, submitter 65 stated that while it was helpful to know that the open space can be split, they remained concerned about whether or not the Council was also seeking to exercise control over the orientation of that open space (i.e. north, east or west of a dwelling). The submitter suggested that this does need to be clarified in the Plan so that applicants and the Council have a clear understanding of what is required. It is noted that the Residential Design Guide does specify that the 'principle area' of open space must be orientated to the "north, west or east of the dwelling to ensure that it can receive over a substantial portion of its surface no fewer than 3 hours of direct sunlight on 21 June between the hours of 9am and 3pm" (G1.9). The Committee did not feel any further explanation was needed in the rule itself regarding orientation of the open space.

*Minimum width requirement of open space*

Submitters 48 and 69 considered that the 4m minimum width was excessive, inflexible and would result in the siting of houses much closer to one boundary (or specifically for front lots the road boundary where there is no sunlight access plane) in order to meet the required minimum dimension on the other side. The Committee noted that the 4m minimum dimension was taken directly from the Multi-Unit Design Guide which sought that the principle private open space areas was at least 4mx4m. Therefore this requirement is not new, and whilst up until now it has not been a rule per se, it is not considered excessive. It is noted that a non-notification statement for rule 5.3.3 is recommended (see decision below) for failure to provide up to 0.5m of that minimum width to provide some flexibility in how the rule is applied. The Committee were entirely comfortable with this level of flexibility.

*Application of open space rule to existing vacant sites*

Submitter 67 was particularly concerned that this rule will now apply to vacant sites and sites that were previously subdivided according to the rules of the day but now may not meet the open space requirement.

In the Officer's Report, the implications of providing such an exemption was outlined for the Committee, as shown in the table below:

**Provision of waiver to open space requirement for all vacant lots prior to notification of PC 56 and those vacant lots granted subdivision consent prior to notification of PC 56**

**For**

Result in a 'fair and pragmatic approach' for those landowners who bought vacant lots in good faith thinking they could build a house or houses as permitted activities.

Similarly for those who have gained a subdivision consent for a site that could contain 'permitted activities' but which now no longer can and would have to now apply for a land use resource consent for failure to provide the open space required.

**Against**

Unable to verify just how many vacant lots would be eligible to apply such an exclusion.

Unlikely to achieve the aims and intent of PC 56 on these lots. Would result in a number of sites being developed in a way that is inconsistent with new intentions of PC 56.

If an exemption clause were considered, in order to achieve consistency and fairness to all landowners affected by the Plan Change, other provisions in the plan change will also need to adopt similar exclusions (e.g. height of second unit rule, any new height provisions for multi-unit developments). This has the potential to severally impact on the effectiveness of the Plan Change

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Previous District Plan Changes have not provided for such exemptions so doing so now would be inconsistent with previous plan change processes. Of note is Plan

Change 6 which significantly changed the permitted activity standards for residential building and subdivision activities.

At the hearing submitter 67 requested that an exemption should be given to those who had subdivisions approved prior to the notification of Plan Change 56, that now may not necessarily comply with the new open space rule. The submitter agreed with the Officer's Report table above that such an exemption would be about fairness and reasonable expectation.

The Committee felt that the public had significant expectations of Plan Change 56 that the public expected Council to ensure that applications for infill would be considered under the new rules. It was the view of the Committee that the reasons against providing this exemption outweigh the reasons in support of it.

*Affected party approvals for failure to provide required open space*

As notified, failure to meet the open space standards would result in a resource consent being required under rule 5.3.3. Unlike many rules in the plan, there is no 'non-notification' statement in this rule meaning that for any matter outlined under that rule, the approval of affected parties, if any identified, will need to be obtained or otherwise the consent will be notified.

Some submitters queried the lack of a non-notification provision in respect of the open space requirement. To elaborate, while the remaining elements of rule 5.3.3 (yards, site coverage, height, sunlight access, fence height) are the primary bulk and location controls designed to protect a neighbour's amenity, the open space provision does stand out as primarily providing for the protection of wider residential characteristics. However, by the same token, it was clear to some submitters and to the Committee that the open space provisions also contribute to retaining a sense of spaciousness and openness, thus contributing to residential amenity.

The Officers Report recommended a non-notification statement along the lines of that proposed by submission 67 be adopted. It is agreed that failure to meet the standards by up to 15m<sup>2</sup> and/or up to 0.5m of minimum width will be dealt with by the Council as a non-notified consent. However, the portion of open space not provided must only be that which might have been used for vehicle access ways or manoeuvring areas. This will ensure that the true intent of the open space requirement is not extensively abused. Limiting the scope of the non-notification statement to the portion of open space able to be used for vehicle access ways or manoeuvring areas should reduce pressure from applicants to constantly approve breaches of the open space requirements up to the maximum provided in the non-notification statement.

At the hearing, submitter 69 supported the inclusion of a non-notification statement as recommended by the officer, but considered it was too wordy and did not provide enough flexibility. A suggested replacement statement was outlined. Likewise, submitter 67 noted that the Officer had largely agreed with their written submission, but considered it needed to be re-written.

FS 10 outlined that 50m<sup>2</sup> should be the absolute minimum and so any failure to provide this should be notified. In this respect the submitter did not support the non-notification statement suggested by the Officer.

The Committee noted the concerns of FS10, but considered that this was one area of the Plan Change where some flexibility should be provided. The Committee were satisfied that this would not cause significant 'mischief' and noted that its scope was limited in that it would only regulate the same open space area used for vehicle access to be taken out of the total 50m<sup>2</sup> requirement.

*Open space rule and link to the Residential Design Guide requirements for Open Space*

In their written submission, submitter 67 queried the relationship between the requirements of the rule and what is required by the Residential Design Guide, particularly that these two sets of provisions are confusing and contradictory.

The confusion is unfortunate and stems from the different primary purposes of the open space rule and the open space design guidelines. As stated in the explanatory text for policy 4.2.2.1 – 4.2.2.1B, the more intensive living environments created by multi-unit and infill developments do lead to a need to ensure that the design and use of the spaces within the multi-unit development is of a high quality to reduce amenity effects from immediately adjoining units. This does seek to imply then that a hierarchy of open space provisions applies to certain situations. For a standard residential development that can meet the permitted activity standards, then there is no need to refer to the Residential Design Guide and consequently the additional 'quality' standards of that guide will not be considered. However, as stated in the policy and the rule structure, additional standards are imposed to assess the quality of that open space where the development involves a multi-unit development (or an infill development that does not meet the permitted activity standards) and these guidelines are found in the Residential Design Guide.

It is noted that one submitter in particular (submitter 83) questions the validity of the Plan and the Design Guide to exercise control over what is perceived to be 'internal amenity' issues.

When considering these submissions, the Committee were that aware, this market led approach (or 'hands-off' *laisse faire* approach) was heavily promoted by Central government at the introduction of the RMA in 1991. However the Committee was satisfied that the adverse effects caused by that approach on residential amenity provides adequate justification for exercising greater influence over these matters now.

In light of this, it was the view of the Committee that the additional level of 'quality control' for such developments is needed and justified. While these units may occur within one 'site', in actual fact that one site contains several dwellings and the occupants of those dwellings have similar expectations to some outdoor space and privacy from adjoining units as those who live in more traditional freehold sections containing one or two dwellings.

The Committee agreed however, that some additional explanatory text along side the rule would be useful to alert applicants to the requirements of the Residential Design Guide as well.

Submitter 23 (the Council) supported by FS19, FS20, FS24 and FS25, notes that since the introduction of Plan Change 56, there has been a considerable lack of flexibility for planners in allowing small breaches of the rule even though the proposed development gets the 'green light' in terms of its assessment against the Residential Design Guide. An example of this would be where a high quality residential development is proposed which incorporates high quality open space, then there should be scope for the total amount of open space to not be provided. FS19 considered that this should not be limited to just multi-unit developments but any development. In response to this, it is noted that the key issue is that the development has been assessed by the Council's Urban Design Team. As many developments (particularly those that may be permitted on all aspects except for the open space) will not go through such as urban design assessment against the Residential Design Guide, so there will be no opportunity for the urban designers to assess the application.

To help provide some level of flexibility, the Officer's Report for the hearing proposed an additional assessment criterion which would allow officers to excuse small breaches to the open space in multi-unit scenarios. Again, submitter 28 opposed this proposed change, considering that if there is to be a weakening of the policy/rule approach then there needs to be a corresponding increase in the notification of developments to neighbours. The Committee did not share this view point and agreed that flexibility in some cases may well be the means by which to achieve good design outcomes for the site. The Committee felt that in some cases

'trade offs' would need to be made, for example taking into account site orientation and good sun, but at the same time expressed confidence that the Council's Urban Design Team were able to make well considered judgements in this regard.

*Need for an open space requirement where conversion of an existing residential dwelling to two units is proposed?*

In response to the submissions by those that opposed the adoption of this rule, the Committee agreed with the Officer's Report that there is one scenario where the rule is considered to be unjustified and for these reasons an exemption is outlined in the proposed rule. The situation involves the internal conversion of an existing building to create 2 residential units.

In this situation, where no external alterations to the site are proposed, meaning the external appearance and density of the site are retained, it is questionable (in light of the reasons for the policy) why the additional open space should be required. The Committee recommend that the rule is amended to exclude the scenario where an existing dwelling is converted to provide no more than 2 units on a site providing that no external alterations of the dwelling are associated with the conversion. As soon as any further intensification or subdivision of the site is to occur, ~~then it is noted that~~ both units (plus any additional proposed units) would need to be capable of providing the required open space. The Committee did not consider that this is appropriate for the Inner Residential Areas as 2 or more units on a site are treated as multi-unit developments and a different set of requirements are then triggered (see 5.1.3.2B.10 below).

*Other comments*

There were other more generalised comments from submitters regarding the confusing nature of the rule, with some submitters offering suggestions to improve legibility. These have been taken on board as appropriate below.

Concerns about how it will be monitored were also raised. The Committee is referred to the earlier discussion in section 3.4 on similar issues.

### Decision

- **Accept submissions 9, 36, 43, FS10-14 (on the open space policy) and 2, 14, 18, 22, 28, 30, 33, 37, 66, 76, FS3, FS5, FS16 and FS10-14 (on the open space rule)**, in so far as they generally support an open space requirement, but note the changes recommended below.
- **Reject submissions 69 (on the policy) and 4, 10, 21, 38, 46, 55, 59, 72, 85 and FS4 and FS36 (on the rule)**, in so far as they propose deletion of the rule, but note that in response to these submissions one development scenario has been exempt from meeting the open space requirements.
- **Reject submission 70**, regarding the comments on open space areas for the Inner Residential Area
- **Reject submissions 4, 10, 21, 31, 51, 58, 62, 63, 67, 70 and 84** that seek a reduction in the open space required.
- **Reject FS24 and 25** regarding deck requirements for units above the ground floor
- **Reject submissions 58, 62, 63, FS17** regarding certain decks be treated as open space
- **Accept submissions 38 and 67** regarding use of some open space in Outer Residential Areas for vehicle manoeuvring and access ways.
- **Reject submission 51** regarding buildings being able to extend out over open space
- **Accept submission 36** regarding a reference to subdivision design guide as a method under policy 4.2.3.1A
- **Reject submission 44** in respect of amending the wording of policy 4.2.3.1A
- **Reject submission 48 and 69** regarding the width of the open space requirement
- **Reject submission 67** regarding the application of the rule to vacant sites and sites previously subdivided before PC56 was notified

- **Accept submission 67** regarding a non-notification statement for the failure to provide a certain amount of open space
- **Accept submission 67** regarding the links to the Residential Design Guide.

**4.2.3.1.A Require on-site open space to be provided as part of new residential developments to ensure a suitable degree of on-site green open space is provided on-site to mitigate potential adverse effects and assist with the integration of new developments into the existing residential environment.**

#### **METHODS**

- Rules
- Advocacy
- Residential Design Guide
- Subdivision Design Guide

*The traditional development pattern in both the Inner and Outer Residential Areas is a single dwelling per site. As a result most properties retain a reasonable area of open space on site. Rear yards with mature visually prominent vegetation and well landscaped front gardens are typical features that contribute to the character and amenity of most established suburbs. The building bulk of new development (whether it is one additional unit or several additional units) together with the hard surface areas required for vehicle parking and manoeuvring, can alter the valued character and amenity by reducing the sense of greenness and open space and degree of separation from other buildings. The requirement to provide open space is an important tool for ensuring that new developments are of appropriate density and are capable of providing a suitable degree of openness and greening on-site. It can also help to:*

- *Provide a setting for the new buildings and structures on site*
- *Integrate the new development into the surrounding area*
- *Soften the visual impact of new buildings and structures as viewed from surrounding public spaces*
- *Provide open space allowing for substantial trees and vegetation on site.*
- *Enable open space areas that can help to increase soil permeability, reducing storm water*
- *Enhance the on-site amenity of the development where the space is well-designed and connected to the main living areas.*

*For these reasons, open space is an integral part of new residential developments. When a development seeks a reduction in the amount of open space provided on a site in order to maximise permitted site coverage or to make provision for off-street car parking, it is often a signal that that the site is being overdeveloped. As open space is also a means of managing development density of a site in order to retain residential character, the provision of adequate open space on a site may mean that the maximum permitted site coverage is not able to be achieved. In this situation reduced site coverage, or a reduction in the number of household units will generally be the appropriate way to manage development density on the site (rather than a waiver of the open space requirement) to ensure streetscape amenities and residential character is maintained.*

### **5.1.3.2B Open Space**

#### *Inner Residential (except in the Oriental Bay Height Area)*

5.1.3.2B.1 On-site ground level open space shall be provided at a minimum of 35 square metres per household unit. Open space shall be calculated as an aggregate total for the site and may be provided as either private or shared open space.

5.1.3.2B.2 No area of ground level open space shall be used for vehicle accessways, parking or manoeuvring areas, or be covered by buildings, provided that:

- Balconies, or verandahs may extend out of over ground level open space up to a maximum depth of 1.5 metres.
- Uncovered decks less than 1m above ground are regarded as ground level open space for this rule.

5.1.3.2B.3 All areas of ground level open space must have a minimum width of at least 3 metres and be directly accessible from adjoin the dwelling.

5.1.3.2B.4 Any household unit that has less than 20 square metres of private ground level open space must also provide private open space in the form of a deck or balcony. A total deck area of at least 6 square metres is required for one bedroom units, while units with two or more bedrooms must provide a deck area of at least 10 square metres.

- All decks must have a minimum dimension of at least 2 metres.
- Open space provided as decks does not contribute towards the aggregate open space total for the site.

5.1.3.2B.5 For the purpose of this rule:

**Private Open Space** means open space that adjoins the unit to which it relates and which is for the exclusive use of the occupiers of that unit.

**Shared Open Space** means open space that is provided on-site but which is not for the exclusive use of any specific occupier. Shared open space may be provided in more than one area on site, but each area of shared open space shall have a minimum area of 30 square metres and a minimum width of 3 metres.

#### *Outer Residential Area*

5.1.3.2B.6 On-site ground level open space shall be provided at a minimum of 50 square metres per household unit.

5.1.3.2B.7 Not more than 15m<sup>2</sup> of ground level open space area shall be used for vehicle accessways or manoeuvring areas.

5.1.3.2B.8 No area of ground level open space shall be used for vehicle accessways, parking or manoeuvring areas, or be covered by buildings, provided that:

- Balconies, or verandahs may extend out of over ground level open space up to a maximum depth of 1.5 metres.
- Uncovered decks less than 1m above ground are regarded as ground level open space for this rule.

5.1.3.2B.9 All areas of ground level open space must have a minimum width of at least 4 metres and be directly accessible from adjoin the dwelling.

5.1.3.2B.10 Rules 5.1.3.2B.6 – 5.1.3.2B.9 do not apply to the conversion of an existing residential dwelling from one to two household units if the conversion does not involve external changes to the building that results in an increases in the site coverage of the existing dwelling.

**NB: Multi-unit developments and infill developments that do not meet the permitted activity standards will be assessed against the Residential Design Guide. That Guide outlines additional requirement for the provision of open space, designed to ensure such space is of the highest quality for its users.**

[5.3.3 The construction, alteration of, and addition to residential buildings, accessory buildings [and residential structures]<sup>2</sup>, which do not comply with any one or more of the following conditions for Permitted Activities in rule 5.1.3:

5.3.3.1 Yards

5.3.3.2 site coverage

5.3.3.3 [maximum]<sup>3</sup> height (except the requirement in 5.1.3.4.3 – height of Infill Household Unit)

5.3.3.4 sunlight access

[5.3.3.4A maximum fence height]<sup>4</sup>

open space

5.3.3.4B

are Discretionary Activities (Restricted) in respect of the condition(s) that are not met.]<sup>1</sup>

#### Non-notification

*In respect of item 5.3.3.4B, applications do not need to be publicly notified and do not need to be served on affected persons where:*

- *the site is in the Outer Residential Area site and rule 5.1.3.2B.6 applies; and*
- *the open space provided under rule 5.1.3.2B.6 is greater than 35m<sup>2</sup> or the open space area under 5.1.3.2B.9 has a minimum dimension greater than 3.5m; and*
- *the open space area not provided is the portion of open space that may be used for vehicle accessways and manoeuvring as outlined in rule 5.1.3.2B.7.*

#### *Standards and Terms*

....

#### *Assessment Criteria*

....

5.3.3.10 Where a proposal results in a breach of site coverage, the extent to which that breach will adversely affect the amenity of adjoining sites as well as the cumulative effect of over-development on the surrounding environment.

5.3.3.11 Where a proposal fails to provide the specified open space requirement per unit:

- the degree to which it results in a development density that is not consistent ~~or compatible~~ with the surrounding residential environment (see Policy 4.2.3.1A), or
- in respect of multi-unit developments assessed against the Residential Design Guide, the degree to which the entire development, including the open space areas, is of a high quality and responds well to its surrounding residential context.

5.3.3.12 Where a proposal involves breaches to several permitted activity conditions, the extent to which the cumulative effects of that proposal results in a development that is out of scale with the surrounding residential development and whether it will create adverse effects on the neighbourhood amenity of that residential environment. ~~that are not reasonably anticipated by the Plan.~~

### **3.9 Subdivision (Policy 4.2.4.1 – 4.2.4.1A, Deletion of rule 5.2.5a and 5.2.5b, Rule 5.3.14, Rule 5.4.5, Subdivision Design Guide)**

The amendments to the subdivision regime for Residential Areas are one of the most significant elements of Plan Change 56.

Two supportive submissions (9 and 33) were received on the amended policies, and five supportive submissions (14, 35, 47, 74 and FS3) were received on the rules. The submitters typically felt that tighter subdivision provisions would ensure better subdivision outcomes for their residential areas. Submitter 74 noted particular concern regarding subdivision on unstable hillsides, which would increase the number of households and increase potential instability.

Six submissions in opposition to the proposed subdivision changes were received (8, 42, 55, 72, FS4 and FS36). These submitters were very concerned that the Council was taking the wrong approach with these subdivision controls in that it would lead to people moving further away from Wellington, resulting in additional pressure on transport infrastructure (sub. 42). Likewise, submitter 8 felt the rules would put an end to subdivision in Wellington because, in combination with the other proposed rules nobody with an average sized section of 700m<sup>2</sup> would be able to build as the value of the second house would be outweighed by the costs of the development project. The submitter concluded that the rules represent a cynical and unwarranted intrusion into property rights and will push house prices higher.

Four submitters sought changes to the policies (sub. 44, 65, 67 and 83), and 11 submitters sought amendments to the proposed subdivision rules (sub. 3, 24, 43, 44, 65, 67, 69, 70, 71, 75 and FS19). These submitters raise a wide variety of issues, dealt with in turn below.

FS7 considers that all re-subdivision within the existing planning area should require a resource consent and that these applications should be treated in a similar manner through a comprehensive development and include the structures to be erected on the site.

FS10-14 supported those submissions that sought stricter subdivision requirements and generally opposed all those submissions that sought to make subdivision easier. Particular concern was expressed over the submissions in opposition that came from companies that make their living from designing and processing subdivision applications.

#### Discussion

##### *New subdivision rules will halt facilitating infill development*

Concern has been expressed by those in opposition to the proposed new subdivision regime (8, 42, 55 and 72) that the proposed elevation of subdivisions to Discretionary Activity status in combination with the other changes to the permitted activity standards will make it almost impossible to create infill housing in Wellington. Whilst the Committee has made changes to the notified subdivision provisions (see below), it was resolute in its view that the current subdivision regime had facilitated many examples of infill housing that did not fit well with the surrounding environment and noted that many developments would not have been allowed had subdivision not been a component of the development. Such outcomes necessitated the need for the Council to reconsider the way the Plan controls the subdivision process. The Committee unanimously agreed that the intent of the Plan should be to facilitate new infill housing (as one mechanism to achieve a contained city), but not be at the expense of ensuring that the new housing is appropriate for the area. The Committee was particularly concerned that up until Plan Change 56, it was possible to use the subdivision process (followed by permitted activities) to reach a development outcome that would not have otherwise been possible. In light of this, the Committee was satisfied that there was sufficient need for a review of the subdivision regime in the Plan, but as noted previously it did make some amendments to the provisions originally notified to achieve a more balanced approach.

*Permitted subdivision (and cross-lease subdivision)*

Submitter 67 has asked that the requirements for being a permitted activity subdivision (ie. subdivision around an existing dwelling that does not result in the creation of a vacant allotment) be re-worked to make it easier for such subdivision to take place. Submission 3, supported by FS 19, FS20 and FS36 sought that the Plan does not make it more difficult for cross-lease properties to be converted to freehold titles.

The Committee noted that the Officer suggested the permitted activity standards be worked on to increase their use, but considered that in light of other changes to be made to the subdivision provisions amending the permitted activity provision as part of this Plan Change would not be necessary. However, it did consider that the permitted activity standards should be reconsidered by the Planning Policy Team as part of its general review of the Plan.

*Deletion of Controlled Activity Subdivisions, replaced by rule 5.3.14*

Plan Change 56 proposed the deletion of all Controlled Activity Subdivisions by elevating rule 5.2.5(a) and (b) to be Discretionary Activities (rule 5.3.14). The principal reason for the change was that the Council lacked sufficient control over the subdivision process due to the 'Controlled Activity' consent category (i.e. being unable to decline resource consent and having limited scope for the imposition of conditions). As lot size and shape directly influence the nature of any subsequent buildings able to be constructed, having a greater degree of influence over the subdivision process is one of the most crucial elements to ensure infill housing developments respond appropriately to the surrounding residential context.

A number of submitters argued that the present controls are sufficient and should not be amended (sub. 3, 8, 42, 55, 72, opposed by FS10-14). Others have sought that at the very least the Council retains a Controlled Activity subdivision rule for certain subdivisions (subs. 65, 67, 69), as noted below:

- cross-lease
- company share
- unit title developments (where a concurrent land use consent for residential buildings is not also being sought)
- minor boundary adjustments that do not create 'small' vacant lots or increase the degree of non-compliance with the Plan's building standards
- permitted activity subdivisions that do not meet the permitted activity standards
- freehold subdivision greater than a certain size (e.g. 350m<sup>2</sup> – 400m<sup>2</sup>)

These submitters considered that these subdivisions are merely a method of 'space allocation' and will not result in changes to land use patterns (sub. 69). Submitter 67 points out that the four other local authorities in the Wellington Region (Kapiti Coast Dc, Porirua City Council, Lower Hut City Council and Upper Hutt City Council), do retain controlled activities for certain sized subdivisions. The submitter acknowledged the concerns around Council's inability to control small lot subdivision and as a result considered that the only way for the Council to retain a sufficient degree of comfort with the Controlled Activity Subdivision process is to apply a minimum lot size or a minimum shape factor. At the hearing, submitter 65 commented that a Controlled Activity provision for lots greater than 400m<sup>2</sup> would provide owners with a degree of certainty and these consents typically take less time to process, have fewer considerations and are not likely to require the consent of neighbours. They considered that if an applicant is able to meet all of the Council's requirements then shouldn't they be rewarded for doing so, rather than going through a more rigorous process than is necessary.

Submitter 67 (NZ Institute of Surveyors) noted it particular disappointment to the Committee with this aspect of the plan change; disappointed that the Council's priority appears to be not on the development of appropriate and workable subdivision rules, but rather the removal of all controlled activities. The submitter stated that the Council does not appreciate that the controlled activity subdivision is the basis for many subdivisions as it is the equivalent of /or nearest to the 'permitted baseline' that applicants can fall back to with certainty. The submitter

noted that their members prefer to make one comprehensive application for subdivision and land use (even if it becomes fully discretionary) on the basis that the same end result could be achieved by a series of controlled subdivisions. The submitter noted that many of the 'discretionary' subdivisions are only so due to the 'technical non-compliances' (with the internal proposed boundaries) which would not be relevant if the applicant was not deciding to make the subdivision application at the same time. The proposed rule approach effectively removes any baseline for subdivision and gives total discretion to the Council over everything. The submitter restated that if adopted as proposed, Wellington would then have the hardest and strictest subdivision approval regime in the greater Wellington region. The submitter did comment on the possible option of a Controlled Activity rule (Appendix 4 of Officer's Report) but did not favour that as it includes a 400m<sup>2</sup> threshold for being able to remain as a Controlled Activity.

Submitter 69 noted at the hearing that company lease, cross lease and unit title subdivisions are a form of space allocation and involve existing or approved buildings. It was considered that the Council would have already controlled the design of the buildings, amenity areas and parking requirements through any relevant land use consents. The submitter maintained there was no reason for these forms of subdivision to be discretionary activities. In relation to fee simple subdivision, the submitter preferred an approach which provides flexibility of lot sizes rather than a rule which limits fee simple lot sizes to 350-400m<sup>2</sup>. The concern is that such a rule would create an expectation that this is an absolute minimum which cannot be breached.

Submitter 72 (Joanna Woodward) made the point to the Committee that small scale subdivisions are often the ones that have the tightest cost margins and so the uncertainty introduced by the restricted discretionary activity status will discourage this type of subdivision.

FS 10 (Esther Wallace) supported the deletion of the Controlled Activity rule, noting that it will allow the Council to have the ability to ensure the best possible subdivision outcome for a site.

The Committee was persuaded by the weight of the submissions that there had to be some scope for certain subdivisions to be treated as Controlled Activities. It preferred the position that where subdivision proposals would not alter the nature of established land use, or where it would not result in increased non-compliances with the permitted activity standards, it was reasonable that such consent applications be processed as Controlled Activities. Further, it was of the view that the subdivisions of most concern to it in order to better managing infill housing were those which sought to create very small lots, which then affected the final form and position of future dwellings. The Committee felt it was entirely appropriate (and consistent with its view that subdivision should not be used as a means to achieve a different development outcome) that the Controlled Activity rule not apply to those scenarios, and instead that a Discretionary (Restricted) Activity rule be used. Accordingly, the Committee has reinstated the operative Controlled Activity rule (with some amendments) and amended the Discretionary rule 5.3.14 (proposed in PC 56) so that it complements the Controlled Activity rule. For clarity, the Controlled Activity rule now provides for the following situations:

- cross-lease
- company share
- permitted activity subdivisions that do not meet the permitted activity standards
- unit title developments (provided that any concurrent landuse consent for residential buildings is granted)
- minor boundary adjustments that do not create increase the degree of non-compliance with the Plan's residential building standards
- subdivision that creates lots greater 400m<sup>2</sup> (with a shape factor circle of 7m radius)

In coming to its decision on this last bullet point, the Committee acknowledged that freehold subdivision of itself was not a problem if the lots created had dimensions compatible with surrounding residential lots. This would ensure that an equally compatible dwelling could

easily fit within that lot. The Committee considered that 400m<sup>2</sup> was an appropriate size for a lot to be processed as a Controlled Activity. It represented a lot size that could easily accommodate a permitted dwelling of a size and shape commonly found in both existing residential suburbs, and greenfield subdivisions. The Committee was persuaded that lots which met those dimensions could be processed as Controlled Activities with relatively little impact on surrounding properties, when the lot is eventually developed.

The Committee was conscious that this decision might be viewed as re-introducing a defacto minimum lot size provision back into the Plan, and inhibiting infill development potential across the City. However, the Committee was strongly of the view that in light what had been permitted under the previous subdivision and land use planning regime, there was clear need for the Council to be able to differentiate (by way of a lot dimension threshold) between subdivisions that caused greater adverse effects on the surrounding environment and those that would clearly have fewer future land use effects. This approach will ensure that the Council focuses its energy on managing the effects from smaller lots, and will allow larger lot subdivisions to be processed with greater certainty of outcome.

Again, the Committee was conscious that this decision will almost certainly be revisited in the future as the Council works towards a targeted approach to infill housing. It is likely, for instance, that in areas where the city wants to encourage greater density that having a threshold of 400m<sup>2</sup> for a controlled activity subdivision will not be appropriate to facilitate the Council's desired outcomes for those areas.

The Committee felt that the submissions by submitters 43, 65, 67, 71, FS10-14 and FS 19 for the re-introduction of a minimum lot size were met in part by this decision. It noted the particular submission of submitter FS10 who had requested a minimum lot size of 450m<sup>2</sup>, but for the reasons outlined above considered that 400m<sup>2</sup> was more appropriate. For the sake of clarity, the Committee emphasised that these revised provisions do not prevent owners from applying to create lots less than 400m<sup>2</sup>. The threshold merely ensures that the developers of such lots give greater consideration to managing the likely effects. Provided that the developer can satisfy the concerns of the Council then there should be no reason for the subdivision not to proceed. Wellington's characteristic topography does mean that it is highly likely the Council will continue to receive applications for less than 400m<sup>2</sup>, and these will need to be considered on their merits. As noted in the Officer's report, a well designed small lot, along with a well designed dwelling to fit the lot which also relates well to its neighbours should not have consent approval withheld purely because the lot is less than 400m<sup>2</sup>.

The Committee recognised that some amendments to the relevant policies and rule 5.3.14 would be required in response to this revised approach.

#### *Earthworks in association with subdivision*

Submitter 67 raised concern with the removal of 'earthworks' as a matter of discretion within the subdivision rule. The submitter notes that consideration of earthworks with the subdivision rule would alleviate the need for a separate consent under any earthworks rule (possibly at a separate time involving more cost to the applicant).

The Council has encountered significant problems with the consideration of earthworks as part of subdivision consents, particularly 'controlled activity subdivisions'. Because those subdivisions had to be approved, it also meant that earthworks (particularly those of a significant scale) also had to be approved, with little ability of the Council to manage the environmental effects and subsequent land use implications.

As the submitter acknowledges, the Council is currently preparing an earthworks plan change as a result of the Earthworks Bylaw being withdrawn in 2008. The Committee was satisfied with the position that earthworks be treated separately from subdivision applications, and understood that this would be consistent with the forthcoming plan change. In this respect it did not agree with submitter 67.

*Assessment criteria for rule 5.3.14*

Four submissions (23, 67, 69, 70) made explicit references to the assessment criteria for this rule. Changes have been recommended (see below) in response to submitter 67 who sought that the criteria be less subjective and leading and other minor wording changes to the introductory text of the assessment criteria. As the Committee has already agreed to use lot dimensions (ie. lot size and shape factor) as a threshold between a Controlled Activity or a Discretionary Restricted Activity, it no longer considers it necessary for assessment criterion 5.3.14.12 to refer to these dimensions.

The Committee agreed that it is not considered necessary to amend the criteria to reflect that infill housing is a desirable activity with benefits to the city (as proposed by submitter 69) as such a statement is more appropriately written into the relevant policies.

Submitter 23 (supported by FS 20) seeks that the references to the Residential Design Guide in criterion 5.3.14.13 be amended to narrow the assessment of a subdivision from the whole design guide, to just section 1 of that Design Guide (Building form, location and planning). Early feedback from professionals on this particular provision suggested that assessment of a subdivision plan against the Residential Design Guide was simply too onerous given that many subdivisions merely outline 'indicative building plans' which may wish to be altered by a later purchaser of the property. The Committee agreed that a narrowed assessment against these elements of the Design Guide (which do closely relate to matters that will be assessed under the Subdivisions Design Guide) is appropriate. However, in coming to its decision on subdivision matters generally, the Committee considered it was vitally important to know what the final form of the land use could be created on that lot, and in this respect agreed with FS7. In respect of Discretionary subdivisions (i.e. those that do not meet the 400m<sup>2</sup> and shape factor lot dimensions of a Controlled Activity), the Committee accepted that the Information Requirements in the Plan (in addition to an assessment of the proposal under section 1 of the Residential Design Guide) would help to ensure that the Council has have a much clearer idea of the likely future end use of the new lot.

*Greater consideration of environmental impacts for subdivision applications*

Submission 24 (supported by FS10-14) cites particular concerns regarding the need for subdivision application assessments to properly take account of the existing storm-water capacity of a given street. This assessment is carried out at present for every subdivision consent, as the existing subdivision rules provide the Council with discretion over how the subdivision will be 'serviced' (see 5.2.5.6).

Every application is assessed by the Council's drainage engineers. It is acknowledged that because subdivisions were Controlled Activities, the application would have to have been granted even if there was some concern about the management of storm-water. If any issues were identified by the drainage engineer, conditions would have been placed on the consent to manage those potential problems. The Committee noted that the subdivisions likely to be of most concern in respect of storm water issues (i.e. smaller lots within establish residential neighbourhoods) are still likely to be processed as Discretionary Activities. Accordingly, if there are outstanding concerns with how storm water is proposed to be treated then this may provide cause to decline consent.

Submission 75 outlines a number of environmental impacts that poorly placed infill housing can have on the green corridors, watersheds, amenity values of greenscape, and considers that these need to have greater recognition in the subdivision standards. The Committee considered that these matters are largely covered by the recently revised Subdivision Design Guide (notified as Plan Change 46). The Design Guide was revised to bring it in line with more recent thinking on subdivision design and development and it included new content on environmental sustainability (e.g. streams, landforms, and stormwater).

### *Notification of subdivision applications*

Submitters 11 and 44 requested that all subdivision applications be notified. Submitter 44 specifically considers all parties should be informed of a subdivision proposal, whether or not they are later identified as affected parties officially. As explained later in section 3.12, the Council has begun trialling a service which does just this – an alert system where letters are sent to neighbours of a proposed development to inform them that a resource consent application has been received.

The Committee noted that Plan Change 56 proposed that all Discretionary Restricted subdivision applications be processed on a non-notified basis. This presumption was carried over from the previous Controlled Activity subdivision rule, which also included a non-notification statement. The Committee also noted that on the basis of submissions to the Plan Change calling for greater notification generally, the Officer recommended that a revised notification statement be applied to this rule so that only subdivisions, which would not lead to a household unit greater than 4.5m in height on site, could rely on the non-notification provision. The Committee understood that this was suggested because, without it, the revised subdivision rules could still facilitate a level of development that would not be permitted as of right were it not for the subdivision. That is, a subdivision proposal that seeks to create a new section at the rear of an existing site will be able to develop an 8m dwelling as a permitted activity, whereas had the subdivision not occurred then only a 4.5m dwelling would be permitted as of right. Further, if resource consent was sought to allow that second dwelling on the site to be higher than 4.5m then the approval of affected parties is highly likely to be required.

At the hearing, during the presentation of the Officer's report on the submissions, the officer outlined that further amendments were needed to this particular non-notification statement. She noted that it should not apply to situations involving 'greenfield' type subdivisions, which by their nature created lots of around 400m<sup>2</sup>, but almost always contained two storey dwellings. A revised non-notification statement was recommended, as follows:

#### *Non-notification*

In respect of rule 5.3.14 applications do not need to be publicly notified and do not need to be served on affected persons, except where the application involves a lot less than 400m<sup>2</sup> and does not ensure that a household unit will be constructed to a building height of less than 4.5m. provided that application ensures that no household unit will be constructed to a building height of greater than 4.5m.

Submitter 65 made comments about the non-notification statement as noted in the Officer's report, rather than what had been subsequently suggested at the beginning of the hearing. These comments were to the effect that the statement as written does not provide for discretion where allotments are greater than 400m<sup>2</sup>, the proposed dwellings comply with all other bulk and location standards and where two storey dwellings are not out of character for the area. They submitted alternate wording for the statement to convey this position.

Likewise, submitter 69 commented on the wording of the statement outlined in the Officer's report, rather than the version submitted at the hearing. Essentially it was noted that the statement would include subdivision in Greenfield areas as well as the Urban Development and Structure Plan Area outlined in Plan Change 45. On this basis it is considered that the statement should remain as it was in the notified version of PC56. Upon further questioning of the submitter by the Hearings Committee, the submitter noted that the wording suggested by the Council Officer at the beginning of the hearing (the wording highlighted in yellow) should all be deleted, i.e. that the status quo remain whereby all subdivision proposals are processed on a non-notified basis.

Submitter 67 noted that while the amendment to the non-notification statement is an improvement, they still cannot accept it. The submitter noted that if the Committee decides against the retention of the current controlled activity rule (which would result in such applications being non-notified), then their preference is for a flexibility of lot sizes which can be assessed by the Council but on a non-notified basis.

FS 10 noted during the hearing that all subdivisions should be notified given their impact on the scale and intensity of residential infill.

Having considered these submissions, the background to the Plan Change being proposed and in particular the changes suggested to the subdivision regime, the Committee determined there should be no difference in process or outcome between a proposal involving just a land use consent, and a proposal involving subdivision first and subsequent reliance on the permitted activity rules in the Plan. The Committee agreed unanimously with the principle that if the outcome is the same as that which triggers a neighbour approval under a land use consent process only, then a subdivision proposal should be subject to the same level of affected party involvement.

In light of the Committee's other decision to allow some scope for Controlled Activities (which do not in law have a presumption towards notification), it believed that it was entirely appropriate for subdivisions processed under the Discretionary Restricted rule to only be allowed to rely on that non-notification statement where the subsequent land use is of a nature allowed for by rule 5.1.3.4.3. The wording of the non-notification statement outlined in the Officer's Report (as distinct from what was suggested by the Officer during the hearing) remains appropriate in light of the decision to provide for lots of greater than 400m<sup>2</sup> to be processed as Controlled Activities.

#### *Subdivision Design Guide*

Plan Change 46 notified in September 2006 sought to revise the Subdivision Design Guide which was first drafted in 1994. New practices in subdivision design and development meant that the design guide had become out of date. The revised Design Guide adopted in Plan Change 46 did not however address the issue that the Design Guide was not generally applicable to small scale infill subdivisions. It was designed to cater more for larger subdivision proposals, typically associated with Greenfield subdivisions at the edge of the city. Consequently a new section for the Design Guide covering "Individual Lot Design" was proposed as part of Plan Change 56.

Five submissions were received on the Design Guide, and the support of submissions 44 and 76 is particularly noted. Submitter 12 queries the status of the Design Guide. Simply put, every application for a subdivision application must show how it meets the relevant components of the Subdivision Design Guide, and similarly Council officers in assessing the subdivision application, must consider the extent to which the application complies with the design guide. It is noted however that the introductory wording of the main Subdivision Design Guide (amended by Plan Change 46) does not make it sufficiently clear that the Design Guide is equally relevant to small scale infill as it is for larger Greenfield subdivisions. The Committee agreed that the proposed consequential changes need to be made to the wording of the Introductory Statement to ensure that the status of the design guide is clear.

Submitter 67 queries the applicability of many of the guidelines. In this case it is noted that as with all design Guides in the Plan, applicants are required to meet the intent of all those that are *relevant* in any given situation. The submitter also seeks a relaxation of the landscaping guidelines in light of the fact there are no rules in the Plan for the protection of trees or vegetation in the Plan. The Committee agreed with the Officer, that it is precisely because there are no rules in the Plan that guidelines are needed. A new policy has been introduced that encourages the retention of mature trees and bush, and this policy is to be implemented by guidelines in the Residential and Subdivision Design Guides rather than rules.

Submitter 47 seeks some amendments to clause G6.5 which are recommended (see changes below) and supports guidelines G6.7 (retention of large trees and vegetation) and G6.10 (on-site water quality treatments).

At the hearing, in response to questions from the Committee, submitter 38 noted that the Subdivision Design Guide had not been prepared with any input of the New Zealand Institute of Surveyors and considered it does not deal with some issues of servicing individual lots; issues which may require amenity issues to be varied or reduced. In response to this, the Committee noted that the Design Guide was just that – guidance. It also noted that the Design Guide works alongside the Code of Practice for Land Development, which in the view of the Committee was more targeted at managing lot servicing issues. As with all design guides within the Plan, the Committee acknowledged it will not be possible to meet every guideline and as noted by the submitter it may be necessary for certain aspects of the subdivision design to be altered to cope with servicing issues. These are matters which are best worked through on a site by site basis, during the resource consent process.

*Minor wording changes/clarifications*

Submitter 44 seeks some small changes to various statements in the policy and rules. One change is to define ‘allotment’. That word is defined in the legislation and has a plain English meaning as simply a ‘lot’. Changes have been made to the text to refer to ‘lot’ rather than a more precise word ‘allotment’. The comment regarding further clarification of “all persons” in the 6<sup>th</sup> paragraph of explanatory text of Policy 4.2.4.1 is not needed given the wording in the remainder of the sentence which refers to those persons who are adversely affected. Such persons are always identified by Council officers. Lastly, the Code of Practice for Land Development is referred to in Rule 5.3.14 (specifically in the second assessment criteria of that rule).

Submitter 65 (supported by FS19) strongly opposes the imposition of covenants (or consent notice) against titles to ensure that the residential dwelling proposed at time of subdivision consent is built (see policy explanatory text). It is acknowledged that this is a strong tool, but in the case where very small lots are proposed and there is little flexibility in how another dwelling type may be able to ‘fit’ in that lot, then it is necessary to ensure that future owners of those lots are aware that there may be limitations imposed on what can be built there. The Committee noted that the Officer had amended the wording of the policy to reflect this submitter’s concerns, but also recalled from the hearing that while the submitter felt the revised policy wording had partially alleviated their concerns, the submitter felt that having to resort to the use of covenants and consent notices on every subdivision consent highlights an inadequacy in the rules proposed. FS 10 noted her support for the ability of Council’s to impose covenants and noted that the applicant has the choice of this or having the application notified so it is not an oppressive provision.

In light of the changes proposed to the subdivision rules by the Committee, the Committee firmly believed it was appropriate for Council officers to be able to impose such covenants in respect of subdivisions that were processed as Discretionary Activities, especially where there was concern that the lot would create significant potential adverse effects. As noted previously in this decision, Council should know as much as possible about the likely future land use on that site as to be confident that it will not create significant adverse effects once established. The only way to achieve this confidence is to require to applicant to outline as part of the subdivision the nature of the land use intended for the site and for the Council to then impose restrictions on the title to ensure that what is built is within the scale (i.e. height and bulk) of what was originally proposed.

Submitter 67 notes some changes to the standards and terms for this subdivision rule which are helpful clarifications and are recommended. At the hearing the submitter also noted and endorsed the recommendation by the Officer, which had accepted the submitter’s suggested wording changes for the subdivision policy (4.2.4.1A). The Committee concurred with these changes, as it did with some of the suggestions made by submitter 83.

#### *Rule 5.4.5 Unrestricted Activity rule for Subdivision*

Six submissions were received on rule 5.4.5, being the Discretionary Unrestricted rule for subdivision. Submitter 44 supported it, whilst submitters 38, 67, 70, FS19 and FS4 either opposed it or sought clarification.

At the hearing, submitter 38 considered that assessment criterion 5.4.5.2B was unworkable, and noted that assessing the size and shape of an allotment should be sufficient. The Committee did not consider the assessment criteria to be unworkable (sub 38, FS 4 and FS19). The assessment criteria are merely a reflection of the revised policies that seek appropriately sized lots for their intended future uses. Being a Discretionary Unrestricted Activity, the Council can of course consider any matter it considers relevant in processing subdivisions under this rule, but the proposed addition of those criteria are there primarily as a reminder of the key issues associated with infill subdivisions.

Submitter 70 questions how a restricted discretionary activity can become unrestricted? Essentially rule 5.3.14 states that any subdivision that creates more than 5 lots, creates more than 10 linear metres of legal road, is on a ridgeline or hilltop or involves a requirement to set aside esplanade reserves are not covered within rule 5.3.14 and so default to rule 5.4.5.

Changes suggested by submitter 67 to remove subjective wording are accepted by the Committee.

#### Decision

- **Accept in part submissions 9, 33, 14, 35, 47, 74 and FS3** who supported the policy and rules
- **Reject in part submissions 8, 42, 55, 72, FS4 and FS36** who opposed the policy and rules.
- **Reject submission 67** regarding the need to amend the permitted activity subdivision standards, but note that these should be worked on at a future opportunity by the Planning Policy Team.
- **Accept in part submissions 3, 8, 42, 55, 72, 65, 67 and 69** seeking to retain a Controlled Activity rule for some or all of the aspects proposed to be covered by rule 5.3.14
- **Reject submission 43, 65, 67, 71, FS10-14 and FS 19 and accept FS23** regarding a minimum lot size, but note that the Committee has introduced a lot size requirement as a threshold between Controlled Activity subdivision and Discretionary Restricted subdivision.
- **Reject submission 67** regarding earthworks approval at the time of subdivision consent
- **Accept submission 67 and 70** regarding changes to the assessment criteria, but **reject submission 69** in this regard.
- **Note submission 24, FS10-14** regarding stormwater capacity assessment
- **Note submission 75** regarding the environmental impacts of subdivision
- **Accept submissions 11 and 14 in part**, in that subdivision applications that propose to limit the height of future dwellings on a lot to the permitted building height can proceed on a non-notified basis.
- **Accept submissions 44 and 76** regarding the subdivision design guide
- **Accept submission 12** in terms of the scope and application of the design guide, seek to make consequential changes to the introductory text of that design guide.
- **Accept submitter 47** regarding G6.5 of the Subdivision Design Guide
- **Accept submission 44** in terms of clarifying the word 'allotment', **but reject** other suggestions for clarification. **Accept submissions 67 and 83** that sought other minor wording changes or clarifications.
- **Accept in part submissions 65 and FS19** regarding covenants

- **Accept FS7** in so far as the plan change does require resource consent for subdivision and that rule 5.3.14 requires information about proposed structures, particularly for small lots.
- **Accept submission 44 and 67** who supported rule 5.4.5, or sought minor amendments
- **Reject submission 38, FS4 and FS19** regarding the unworkable nature of the assessment criteria

#### POLICIES

To achieve this objective, Council will:

4.2.4.1 **Allow Control** infill subdivision within **suburban residential** areas to **facilitate future residential land use** subject to conditions or criteria which ensure adverse effects, including cumulative effects, are avoided, remedied or mitigated and that sites are suitable for intended uses.

4.2.4.1A **Control subdivision lot size and design** within established residential suburbs to **provide for flexibility in allotment sizes future land uses** without unduly compromising the overall density of the surrounding residential area. This will assist to **avoid minimise** adverse effects on residential character and amenity of adjoining properties, particularly where subdivision facilitates an infill dwelling of more than one storey.

#### METHOD

- Rules
- Subdivision Design Guide
- Residential Design Guide

*To help promote a sustainable city Council seeks to minimise the peripheral expansion of urban development and to allow more intensive development within the existing urban area where the adverse neighbourhood effects of such development can be minimised. Plan controls will work to ensure that the general residential character and amenity of particular neighbourhoods or character areas is maintained upon the subdivision of land.*

*The Plan does not use a 'minimum lot size' tool to control the density of subdivisions. This is a deliberate measure, recognising that Wellington's hilly topography makes it difficult to facilitate infill subdivisions that maintain a traditional allotment lot size and shape. The approach recognises that well designed residential dwellings, provided they meet all the permitted activity conditions, are possible on smaller sites. This approach has led to numerous examples of dwellings being constructed on very small sites, particularly in the Outer Residential Area where lot sizes are larger and able to be subdivided.*

*The subdivision rule regime recognises that subdivision can be used to formalise or modify land tenure arrangements around lawfully existing landuses without creating significant adverse effects. Also, subdivisions that create lots of a certain size which are easily capable of containing residential activities that will fit with the typical residential character of an area are also less likely to create adverse effects on residential amenity or streetscape character. As a result, these types of subdivisions are categorised as Controlled Activities.*

*Where subdivision is used to facilitate new development that may not be in keeping with the surrounding residential character then these will be processed as Discretionary Activities. This approach has resulted in a development pattern whereby dwelling footprints are smaller (to meet the site coverage requirements of the Plan) and dwellings are correspondingly taller in order to create the necessary floor space. The adverse effects associated with small sections can be avoided if the subdivision is well designed (and of a sufficient size and shape) to allow future residential dwellings to be built at a density appropriate to the character of the surrounding neighbourhood.*

*The Council exercises control over lot size and design with assistance from the Subdivision Design Guide to ensure that the resulting development is compatible with the*

surrounding area. For such infill development to be properly assessed against the Subdivision Design Guide, it is necessary that subdivision applications include plans outlining the proposed development. These plans will also be assessed against some parts of the Residential Design Guide to ensure the proposed allotment is capable of facilitating a residential dwelling that respects the surrounding residential amenity values. Covenants may be imposed to ensure that future residential dwellings will be of a scale or height that is appropriate for the surrounding residential context. ~~the residential dwelling proposed is built in accordance with any approved subdivision.~~ This requirement need not be imposed for Controlled Activity subdivision as such lots of that size are likely to be capable of facilitating a dwelling that is compatible with the surrounding residential environment.

Subdivision of land often requires the written approval of affected landowners, due to the proposed position of a new boundary which results in an existing dwelling not complying with the Plan. Where written approvals are supplied as part of a resource consent application by those who may be affected by a ~~obtained from all persons who may be adversely affected by the~~ proposed development, the Council will still need to consider the effects on the amenity ~~in~~ of the surrounding environment and unless those effects are no more than minor, then public notification will be required.

**The environmental result will be the efficient and sustainable use of existing residential lots in Residential Areas that are well designed to maintain and enhance residential amenity and character.**

**5.2.5 Any subdivision that is not a Permitted Activity and;**

**(a) creates five or less allotments, except those that:**

- create more than 10 linear metres of legal road; or
- are on a ridgeline or a hilltop; or
- involves a requirement to set aside esplanade land; or
- **results in an allotment less than 400m<sup>2</sup> and cannot contain a circle with a radius of 7m; or**
- **is the result of boundary adjustments that increase the degree of non-compliance with the residential permitted activity conditions**

**is a Controlled Activity in respect of:**

**5.2.5.1 site design, frontage and area**

**5.2.5.2 standard, construction and location of vehicular access**

**5.2.5.3 road design and construction**

**5.2.5.4 earthworks**

**5.2.5.5 landscaping**

**5.2.5.6 utility and/or services provision**

**5.2.5.7 protection of any special amenity feature.**

**(b) is a company lease, cross lease or unit title subdivision is a Controlled Activity in respect of:**

**5.2.5.8 stormwater, sewerage and water services**

**5.2.5.9 the allocation of accessory units to principal units and the allocation of covenant areas to leased areas to ensure compliance with rule 5.1.1.2 (vehicle parking) and to ensure practical physical access to every household unit.**

#### *Non-notification*

The written approval of affected persons will not be necessary in respect of items 5.2.5.1 to 5.2.5.9. [Notice of applications need not be served on affected persons]<sup>1</sup> and applications need not be notified.

#### *Standards and Terms*

[All activities, buildings and structures (existing and proposed) must meet the conditions for vehicle parking (5.1.1.2), site access (5.1.1.3) and building (5.1.3) in relation to all existing and proposed fee simple allotments **or** meet the terms of any relevant resource consent **or** have **existing use rights under section 10 of the Act**<sup>2</sup>, **or in the case of unit title subdivision, concurrently seek and obtain landuse consent for the building or buildings to be subdivided**

#### *Assessment Criteria*

**In determining the conditions to be imposed, if any, Council will have regard to the following criteria:**

- 5.2.5.10 The requirements of Section 106 of the Act.
- 5.2.5.11 Whether proposed allotments are capable of accommodating Permitted Activities in compliance with the Residential Area rules.
- 5.2.5.12 The extent of compliance with the relevant parts of the Subdivision Design Guide, City Bylaws and if applicable the Council's Code of Practice for Land Development.
- 5.2.5.13 In respect of cross lease or unit title subdivisions:
- the need for permanent site access and access to and around buildings
  - the current and future allocation for use of land area, accessory buildings and amenities
  - the need to service and use land and buildings efficiently.

*Subdivisions involving few allotments **and which are of a size capable of containing permitted residential activities that will fit well with the surrounding residential environment** are a*

Controlled Activity to facilitate the process of infill and Greenfield development, whilst ensuring the adverse effects of such development on residential character are minimised.

The more significant subdivisions will be assessed as Discretionary Activities (Restricted) or (Unrestricted). [It is intended that the design of each allotment can accommodate permitted developments under the District Plan. If the activities, buildings or structures (either existing or proposed) do not meet the specified conditions for permitted activities the subdivision will be assessed as a Discretionary Activity. However, the application will remain a Controlled Activity where the land use was established under an earlier resource consent or it has existing use rights under the Act<sup>1</sup>, or in the case of unit title subdivisions, obtains a concurrent landuse consent for the proposed buildings.

Conditions will be imposed by Council to ensure that a quality subdivision design is attained. In particular, Council will assess the proposal against the Subdivision Design Guide, and assess access requirements, allotment size and the potential for development.

Council is seeking to retain in a permanent manner appropriate site arrangements that are established at the time of cross leasing. This is intended to ensure the efficient use of land. Flexibility of use can be addressed through private arrangements or by reapplying to Council for alterations to the lease arrangements.

Applicants are reminded of the need for proposed subdivisions to comply with the City Bylaws. In addition, where private infrastructure is proposed to be vested in the Council or where private stormwater, water and sewerage lines are connected or proposed to be connected to public infrastructure, applicants will need to liaise with the Council concerning the requirements set out in the Council's Code of Practice for Land Development so that the Council will either accept the vesting of such infrastructure or will authorise connection or continued connection to public infrastructure. Refer to Section 3.9 of the Plan.

**5.3.14 Any subdivision that is not a Permitted or Controlled Activity and:**

**(a) creates five or less allotments, except those that:**

- create more than 10 linear metres of legal road; or**
- are on a ridgeline or a hilltop; or**
- involves a requirement to set aside esplanade land**

**is a Discretionary Restricted Activity in respect of:**

**5.3.14.1 site design, frontage and area**

**5.3.14.2 lot size**

**5.3.14.3 standard, construction and location of vehicular access**

**5.3.14.4 Road design and construction**

**5.3.14.5 landscaping**

**5.3.14.6 utility and/or services provision**

**5.3.14.7 protection of any special amenity feature.**

**(a) is a unit title subdivision that does not meet the standards and terms for unit title subdivision in rule 5.2.5b is a Discretionary (Restricted) Activity in respect of:**

**5.3.14.8 stormwater, sewerage and water services**

**5.3.14.9 the allocation of accessory units to principal units and the allocation of covenant areas to leased areas to ensure compliance with rule 5.1.1.2 (vehicle parking) and to ensure practical physical access to every household unit.**

**Non-notification**

In respect of rule 5.3.14 applications do not need to be publicly notified and do not need to be served on affected persons, except where the application involves a lot less than 400m<sup>2</sup> and does not ensure that a household unit will be constructed to the permitted building height provided for in rule 5.1.3.4.3.

**Standards and Terms**

For all lots containing existing buildings and structures, all activities, buildings and structures ~~(existing and proposed)~~ must meet the conditions for vehicle parking (5.1.1.2), site access (5.1.1.3) and building (5.1.3) in relation to all existing and proposed fee simple allotments or meet the terms of any relevant resource consent or have **existing use rights under section 10 of the Act.**

**For all other lots the application must show that the proposed development complies with the conditions for permitted activities, meets the requirements of the residential rules.**

### Assessment Criteria

**In determining whether to grant consent and what the conditions are to be imposed, if any, Council will have regard to the following criteria:**

5.3.14.10 The requirements of Section 106 of the Act.

5.3.14.11 The extent of compliance with the Subdivision Design Guide, City Bylaws and if applicable the Council's Code of Practice for Land Development.

5.3.14.12 Where the subdivision is used to create a vacant lot, and where there is no landuse consent sought in conjunction with the subdivision consent, whether the proposed lot size is capable of accommodating a wide variety of building forms compatible with the surrounding residential environment.

5.3.14.13 Where the subdivision process is used to facilitate a residential infill development within an existing residential area:

- Whether the proposed lot is capable of accommodating permitted activity residential buildings that are compatible with the predominant housing pattern or density of the surrounding residential area.
- The degree to which any lot size, which is significantly smaller than surrounding lots, will result in a dwelling which creates adverse effects on adjoining properties that are generally not anticipated by the permitted activities of the Plan (were subdivision not a feature of the development), eg. position of dwelling on the lot, its height and bulk, due to its 'infill nature'. That is, due to its position on site, its height and bulk, the extent to which the proposed development results in adverse effects not generally anticipated by the permitted activities of the Plan (were subdivision not a feature of the development).
- The degree to which the proposed lot will result in a residential dwelling that is not capable of complying with the Residential Area objectives and policies for residential development and Section 1-relevant guidelines of the Residential Design Guide (Building form, location and planning).

5.3.14.14 In respect of cross lease or unit title subdivisions:

- the need for permanent site access and access to and around buildings
- the current and future allocation for use of land area, accessory buildings and amenities
- the need to service and use land and buildings efficiently.

*Subdivision is an important process used to facilitate land tenure; either a Greenfield subdivision or residential infill subdivision within an existing suburb.*

*If designed poorly, subdivision can adversely affect the quality of developments subsequently created on the newly formed lot as well as the amenities of neighbouring lots. Greater emphasis on the design of the subdivision is needed to ensure future developments are compatible with the surrounding residential area. The Subdivision Design Guide is applied to both residential infill subdivision as well as large subdivision proposals typically associated with Greenfield subdivision.*

*Subdivisions will be assessed to ensure they are capable of containing residential activities that are in keeping with the surrounding residential environment. Council will assess access requirements, allotment size and shape and the potential for development against the permitted activity conditions and the Subdivision Design Guide. Covenants may be imposed to ensure that future residential dwellings will be of a scale or height that is appropriate for*

the surrounding residential context. the residential dwelling proposed is built in accordance with any approved subdivision.

If the activities, buildings or structures (either existing or proposed) do not meet the specified conditions for permitted activities the subdivision will be assessed as a Discretionary Activity (Unrestricted). However, the application will remain a Discretionary (Restricted) Activity where the land use was established under an earlier resource consent or it has existing use rights under the Act. The more significant subdivisions will be assessed as Discretionary Activities (Unrestricted).

Council is seeking to retain in a permanent manner appropriate site arrangements that are established at the time of cross leasing. This is intended to ensure the efficient use of land. Flexibility of use can be addressed through private arrangements or by reapplying to Council for alterations to the lease arrangements.

Applicants are reminded of the need for proposed subdivisions to comply with the City Bylaws. In addition, where private infrastructure is proposed to be vested in the Council or where private stormwater, water and sewerage lines are connected or proposed to be connected to public infrastructure, applicants will need to liaise with the Council concerning the requirements set out in the Council's Code of Practice for Land Development so that the Council will either accept the vesting of such infrastructure or will authorise connection or continued connection to public infrastructure. Refer to Section 3.9 of the Plan.

**5.4.5 Any subdivision which is not a Permitted, Controlled or Discretionary (Restricted) Activity is a Discretionary Activity (Unrestricted).**

*Standards and Terms*

[For any subdivision incorporating new roads, all services must be reticulated underground.]<sup>1</sup>

*Assessment Criteria*

**In determining whether to grant consent and what conditions, if any, to impose, Council will have regard to the following criteria:**

- 5.4.5.1 The requirements of section 106 of the Act.
- 5.4.5.2 Whether proposed allotments are capable of accommodating Permitted Activities in compliance with the Residential Area rules.
- 5.4.5.2A Where the proposal involves a subdivision where permitted activities are not demonstrated ~~cannot be achieved~~, the extent to which mitigation measures have been adopted in the proposal to ensure that future landuse activities will not cause significant adverse effects on the amenity of adjoining neighbours.
- 5.4.5.2B Whether a dwelling of two or more storeys is proposed as the future intended land use and the degree to which site topography, subdivision design and the nature and scale of surrounding land uses mitigate any ~~the~~ adverse effects ~~typically associated with such dwellings~~ on the amenity of adjoining properties.
- 5.4.5.3 The extent of compliance with the relevant parts of the Subdivision Design Guide and the Code of Practice for Land Development.
- 5.4.5.4 Where the activity is within a Maori Precinct, the outcome of consultation with tangata whenua and other Maori.

## Subdivision Design Guide

### Changes recommended to the Introductory text of the Subdivision Design Guide in response to submitter 12:

#### Application

This Guide provides design assessment criteria for subdivision consent applications. It provides guidance to give effect to the Council's *Urban Development Strategy*, *Environmental Strategy*, and the *Northern Growth Management Framework*.

This design guidance should be read with any structure plan prepared for the area. The structure plan will provide strategic guidance on a number of the issues identified in this design guide including activity location, access and interconnection and landform and natural features. Technical and engineering criteria relating to the implementation of development are contained in the separate Code of Practice for Land Development.

This Guide applies ~~primarily~~ to new 'greenfield' subdivision, ~~but many of its objectives and policies may also apply to significant as well as~~ subdivisions within the existing urban footprint, on either 'infill' sites (undeveloped land within the existing urban footprint) or 'brownfield' sites (previously developed land). ~~While this Guide provides some guidance on where these~~

provisions might apply outside of greenfields, allowance is made for flexibility and judgment by Council in considering the applicability to infill and brownfield sites. In general, provisions of this Guide are more applicable to larger infill or brownfield subdivisions that extend the roading network (e.g. cul de sac extensions or creation of new legal road) or that would support additional public space (e.g. a neighbourhood park or neighbourhood centre), than to smaller subdivisions.

In terms of scale, the Guide generally applies to greenfield subdivision of any size for which consent is required. Specific objectives and guidelines, however, may be less relevant to smaller subdivisions (e.g. less than 20 lots) than to larger subdivisions. Examples include provision for parks and open spaces, neighbourhood centres, and street connections, which may not be required in smaller subdivisions. Again, flexibility and judgment by Council is permitted on where the Guide's objectives and policies are relevant. The guidelines for Individual Lot Design will apply equally to individual lots within larger subdivisions through to small scale subdivision applications creating just one lot.

Besides this Guide, other design guides like the Multi-Unit Design Guide and Central City Design Guide may also be applicable to subdivisions. Relevant District Plan rules for the underlying zoning will also apply.

#### **Change proposed to guideline G6.5 in response to submitter 47.**

G6.5: Offset or otherwise articulate long vehicle accessways to reduce vehicle speeds, and to landscape them to make them visually attractive.

*Avoid long narrow lanes or expanses of asphalt that are unrelieved by landscape elements. Space should be provided for landscape treatments along their length that will enhance their appearance for both users and neighbours, and Enhance the visual appearance of these spaces for users and neighbours with landscaping or other design elements. This will also help to minimise the impact on neighbouring lots of passing cars.*

### **3.10 Contents and application of Residential Design Guide**

#### **Background**

The Residential Design Guide, formally known as the Multi-Unit Design Guide (MUDG), has brought about a new way in which Council will assess residential development. Much of the original content from the MUDG version has been reviewed and carried over into the new guide, together with proposed new content specifically focusing on infill and its effect on adjoining properties. The intent behind this move is to require explicit consideration and acknowledgment of amenity effects created by a development, whether inside or outside of the site. It is anticipated this will ensure better streetscape outcomes and help new development integrate more smoothly with adjoining neighbours.

Design Guides have been used comprehensively in the District Plan since 1994 (and to a lesser extent before then). The newly named Residential Design Guide has been re-organised and re-worded to emphasise existing and new guidance on effects external to the site.

The written submissions on the Design Guide highlighted areas that needed further clarification to help with ease of use and application of the guide. One area of omission highlighted by the submitter's, is the guide's lack of specific reference to low-rise apartment development. As a result, new text is recommended that caters for this type of development. The Officers Report included revised text of the Guide in response to these submissions.

#### **Submissions**

For ease of reference, the submissions on the Residential Design Guide have been addressed in submitter order and where the submitter refers to a specific guideline number this relates to notified copy of the guide.

Submitter 12 supported the principles behind the Residential Design Guide, but sought clarification as to how the Residential Design Guide will be used. The Residential Design Guide is applied to developments that trigger further assessment under a particular rule. The use of this type of guidance has been present in the District Plan since 1994 so in this regard, their use in development assessment is not a new concept. One such example is Rule 5.3.4 (i.e. MUD or infill units over 4.5 m in height) where any development in that rule would be assessed against the Residential Design Guide.

Submitter 31 felt that changes needed to be made surrounding the residential infill issue, but feels that the Residential Design Guide is too prescriptive. The concerns of the submitter were noted, however the Committee did not agree that the Design Guide is too prescriptive. One of the aims of the re-write of the Design Guide was to make it less prescriptive and to allow more flexibility in design situations. Design Guides have been in the District Plan and used by Council officers since 1994. Over the years the former Multi-Unit Design Guide has been an extremely useful tool in guiding applicants and officers to ensure residential development is of good design and responds to local context. The Committee were keen to point out that the Design Guide is exactly that - guidance. Officers deal with every application on a case by case basis using discretion where necessary to apply the guidelines that are relevant. The Design Guide allows for sufficient ability to depart from a guideline when necessary.

Submitter 35 supported the Residential Design Guide stating that it restores its effectiveness in deciding the appropriate size and character of multi-unit developments. The support of submitter 35 is noted and the submission is confirmed by the Committee.

Submitter 38 asserts that the Residential Design Guide is *ultra vires* in that it proposes to control activity on a site where that activity does not have an effect on the properties outside the site or where neighbours have given written approval. This view was maintained at the hearing, where the submitter was particularly concerned about the provisions that related more to internal amenity of multi-unit developments. The submitter also spoke of his concern that the

Design Guide was being used more rigidly as a 'rule' to enforce various outcomes pursued by urban designers.

The Committee noted that the use of Design Guides in the Plan (especially MUDG) is now well established and needed to ensure the amenity values of the built environment are upheld and improved. The Act requires the Council to maintain and enhance amenity values. In the context of the residential environment, this is interpreted to mean that any resident has the right to expect a certain level of amenity regardless of the form of housing they choose to live in. This position was strongly supported by the Committee who believed that although certain expectations around levels of amenity do differ depending on how close people live to each other, the requirement to maintain and enhance amenity values required for all. The Committee did not accept that designing a development simply to get around rules was an acceptable or a way of progressing and enhancing our city. To combat this, the Committee acknowledged the extremely important role that the Residential Design Guide plays in achieving good design outcomes.

The former Multi-Unit Design Guide had specific references to dwelling design, streetscape character and neighbourhood context. These elements have been built on in the new Residential Design Guide to provide a much clearer direction for applicants and officers to consider. Council has an explicit obligation to maintain and enhance values that are important to neighbourhoods and local content. The Committee felt it is entirely appropriate, indeed expected by the community, to consider how a development will fit in with its local neighbourhood context, and in this regard the Committee felt that this submission could not be accepted.

Submitter 39 supported the Plan Change but raised concern about the requirement in the Residential Design Guide for open space areas to be flat as this represents problems for hilly sites. Although the Design Guide does make specific reference for the preference of nominally flat private open space (Guidance point G3.1), it is recognised that not all development sites can accommodate this. For this reason, the rules and design guide are flexible in that they allow for the use of decks which will help to achieve this aim. The introduction section of the Design Guide also spells out how to interpret the guide and acknowledges that not all of the design guidelines will apply to every site or development type. In such situations, the Committee considered it justifiable to depart from the relevant guideline if it can be demonstrated that an alternative design solution better satisfies the design objective. Given this existing flexibility, the Committee did not consider it necessary to add specific reference to hilly terrain in the Design Guide.

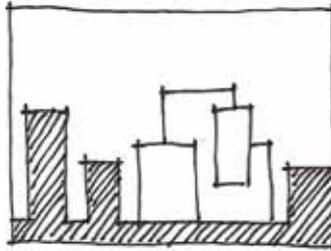
Submitter 44 supported the intent of the Residential Design Guide. The support of submitter 44 is noted and the submission is confirmed by the Committee.

Submission 47 generally supported the principles of the Residential Design Guide but made a number of suggested amendments relating to apartment design, larger buildings, variance of roof planes, planting and landscape patterns and recycling provisions among other things.

With regards to apartment type housing, as mentioned earlier in this section, it is recommended by the Committee to amend the Residential Design Guide to cater for low rise apartment living in response to this submission. In making this recommendation, the Committee recognised the difference between low rise apartment units in a residential setting as opposed to buildings located on the fringe of a Suburban Centre. The Committee acknowledged that identifying where the latter could be provided for is expected to be further explored as part of the overall strategic targeting work. In the meantime, the Committee were confident that the Residential Design Guide and discretion of officers would provide appropriate responses to such proposals. The amended Residential Design Guide is contained in Appendix 2 of this report.

In response to the submitter, the Committee recommended other minor editorial changes to the text where it is felt further emphasis is needed to highlight contextual scale and relationships. Further,

To help with interpretation of G1.11, an additional bullet point has been added to recognise transitional forms and volumes along with a new illustration to promote scale variation (as shown below).



*Use of transitional volumes to achieve a positive scale relationship*

The submitter's point that the Guide should discuss variance in roof planes is not supported by the Committee who acknowledged that G2.1 addresses roof planes as a secondary character element that may be taken into account by the guide. Further, the Committee felt that arbitrary difference for the sake of difference should not be promoted as a default position, as this undermines the practice of relation to context

In terms of the submitter's comments on landscaping, the Committee were satisfied that the Design Guide allows for design flexibility and responsiveness to site context and not believe that changes needed to be made in this regard.

Finally, submitter 47 highlighted the fact that recycling bins were not mentioned in G3.16 which deals with service facilities. The Committee was eager to promote space for recycling bins and therefore included a new guideline is as follows:

- G3.19 Provide space conveniently at the street edge to allow temporary location of recycling bins for collection.

Submitter 59 noted in their written submission that the Multi-unit Design Guide as it exists provides all the necessary tools to control building quality, scale and amenities and states that the Plan Change is revoked in its entirety. This submission was not supported by the Committee. Wellington City has experienced, and continues to experience, considerable pressure on the existing urban area from infill housing development. The Committee heard compelling evidence at the hearing that, in some areas, infill development is impacting on valued suburban character and amenity as a result of poor design quality. Community unease about the scale and intensity of residential infill has been raised with both Council officers and Councillors for some time, and as a result, the Council has had to look at the way in which it deals with residential infill and in turn how effective the existing guidance is. The Committee recognised and endorsed that after over a decade of use, the Multi-unit Design Guide content and the way in which it is applied needs to be updated to respond to these issues.

Submitter 70 considered that the Residential Design Guide is a more appropriate guide than the Multi-unit Design Guide and encouraged the use of more diagrams. The support of submitter 71 is noted and their attention is drawn to the inclusion of a new diagram and explanation as shown below in the amended version contained in Appendix 2. Submission 70 is confirmed by the Committee.

Submitter 73 supported the intent of the Plan Change but felt that the Residential Design Guide should recognise that the view from existing houses is as significant issue as being overlooked

by new developments. The protection of private views is not something that the District Plan can specifically protect. The only areas in the Plan where views are protected are recognised *public view shafts*. These areas are only in the Central Area and are very often associated with particularly iconic views of Wellington i.e. the view from the Cable Car. Residential views, especially views which 'borrow amenity' from adjoining properties or a nearby bush clad hill, are more difficult to define and protect. The Committee was of the opinion that other planning tools, such as bulk and location and the new open space provisions all help in small ways to maintain private views but felt that it could not include specific guidance and protection of private views.

Submitter 73 supports the intent of the Plan Change but noted that the Residential Design Guide provisions need careful wording to ensure they do not undermine the existing protections for character and streetscape. Although the Residential Design Guide does discuss neighbourhood character, it has been designed to work alongside any other existing provisions that may be in place in a certain area.

Submitter 78 and submitter 79 both raised concerns that there will be increased numbers of consent applications that will need to be assessed against the Residential Design Guide and that the guidelines will end up being 'must comply with' leading to further delays in the consent process. For this reason, both submitters stated that the Plan Change should be withdrawn in its entirety. The concerns of the submitters are noted, however are not supported by the Committee. Design Guides have been in the District Plan and used by Council officers since 1994. Over the years the former Multi-Unit Design Guide has been an extremely useful tool in guiding applicants and officers to provide residential development that is of good design and that responds to local context.

In his written submission, submitter 83 supplied a detailed assessment of the Residential Design Guide which he had broken the guidelines down into 'externalities' (which deal with key fundamental planning considerations such as shading, privacy, streetscape patterns etc) and 'internal amenity effects' (which deal with onsite factors such as open spaces between and around buildings, positioning windows to receive sun etc). The submitter believed that provisions relating to 'internal amenity values' should be deleted, or amended so as to tie them more clearly to the external effect that the Guide is intended to address. At the hearing, submitter 83 (also FS36) emphasised that New Zealand has some of the least intensive housing in the world and that he believed suburban New Zealand is a barren place to which planning restrictions are aiding. The submitter reiterated this view stating he was not advocating a laissez faire approach but also did not believe that the Council should be overstepping the regulation. He considered that controlling aspects of internal amenity would make development more costly. The submitter conceded that there are examples of bad infill to be found, but stressed there was no need to overreact and changes should only focus on the issue alone. The Submitter believed that Plan Change 56 fails due to 3 potential problems, namely:

- 1) The 4.5m height restriction and open space requirement
- 2) The over reaching externalities vs. externalities
- 3) Lack of discretion in administration policy

In terms of point 1, made by the submitter, this is discussed in more detail in Section 3.8 of this report. In response to points 2 and 3, the Council no longer accepts an 'anything goes' approach to development of this nature is acceptable due to the effects that multi-unit developments can have on both neighbours external to the site and also 'neighbours' within the development. Whilst unit owners within a multi-unit development may have slightly lower expectations of amenity due to the nature of multi-unit development living, this does not mean that the Council can forgo its RMA responsibilities to maintain and enhance residential amenity values.

Many of the 'external amenity values' that the submitter recognises and supports are closely aligned to what is identified as 'internal amenity values' to which he would like deleted or amended. Although some guidelines promote different things, they do all generally work together and complement each other.

The submitter also objected to guidelines that promote the positioning of buildings to receive sun, or optimal accessibility to private open space. Again, this comes down to differences in philosophies as to what Council should be looking at. The Committee felt that new development should not be substandard as everyone should enjoy a basic level of amenity value. For example, open space and the resulting sunlight that a building and site receives, provides 3 different benefits;

- 1) Spaciousness and 'breathing space' between buildings
- 2) Recreational space
- 3) Utility space

The Committee strongly believed that even if one of these elements was denied to occupant then that development would be of a lower quality than desirable.

The submitter did not agree that the 'internal amenity values' identified in the guide are extremely important for protecting the fundamental amenity values for occupiers of multi-unit/town house or apartment style living. For example, guidelines G3.1 (principle open space area for each dwelling), G2.11 (positioning of sleeping of noise sensitive areas) and G2.12 (defining individual entranceways to dwellings) are all key considerations to ensure that more intensive town house dwellers have acceptable levels of privacy and comfort. Again the Committee were adamant that these guidelines were fundamental tools to help steer quality development.

Given the philosophical differences in what role Council should take when assessing development, the Committee considered that the submitter could not be supported in his suggested amendments to the Residential Design Guide.

In their written submission, submitters 84 believed that sky lights should be referenced as an alternative option. The Committee considered there was scope within the guide to include skylights if necessary but that that specific reference to skylights should be avoided to minimise interpretation of skylights being taken as a default option. Further, the Committee did not support the submitter in that guideline G1.7 should also refer to mid summer/mid winter sun. As with the above, the Committee felt that this would be a default position that would potentially lead to developments with substandard sun exposure in winter.

At the hearing, this submitter acknowledged that most of the individual design guidelines are practical and make good design sense, however you'd need to be a contortionist to jump through all of the hoops for any one design. Even if the Council has approved of the design, there is concern that neighbours can still have their say, affecting the final design of the site. The submitter made particular comments on some of the guidelines:

- *G1.5 Sunlight and daylight to living areas:* Wellington's topography and south facing sites mean that many sites don't even get four hours of sun onto the site in winter. (Discussed above)
- *G1.6 Locate building form to avoid unnecessary or unreasonable shading...:* if the proposal complies with the sunlight access plane then why isn't that sufficient?
- *G1.7 Locate the 'principle area' of private open space...to the north, west or east of the dwelling...:* This is impractical on hillsides with the winter sun angle low and the azimuth so narrow.
- *G1.8 Relate established patterns and precedents to ensure new development is in keeping with the neighbourhood:* Character needs to be defined as it is open to interpretation. The submitter questioned whether we really want to design out streetscapes of the future to be based on the Californian bungalow.
- *G1.16 Ensure any open car parking space can be viewed from the dwelling to which it is allocated:* This is not always practical.
- *G3.3 Plan outdoor living areas and position upper level windows so that they do not have a direct short-range view into the private outdoor space of adjacent dwellings...:*

no consideration has been given for Wellington's topography, which will mean it is difficult to the 35m<sup>2</sup> requirement. What about upper floor living and decks as suitably outdoor living spaces?

In response, the Committee point out that the Design Guide is designed to steer development, not prescribe it. Officers deal with every application on a case by case basis using discretion where necessary to apply the guidelines that are relevant. The Design Guide allows departure from a guideline when appropriate and does not promote uniform streetscapes that capture certain models of design.

### Decision

- **Accept submission 35, 44 and 70** that generally support the Residential Design Guide (RDG), but note that several changes are proposed in response to submission below.
- **Reject submission 31** regarding the overly prescriptive nature of the RDG.
- **Reject submissions 38 and 59** which either regard the RDG as ultra vires or unnecessary
- **Accept in part submission 47**, which seeks numerous amendments to the RDG
- **Reject submission 73** regarding the protection of views
- **Reject submission 83** regarding concerns that the RDG over reaches its purpose by controlling internal amenity effects
- **Reject submission 84** regarding the specific references to skylights and mid-summer sun.

*Note – refer to the annotated 'Residential Design Guide' appended to this report to view all changes recommended by the Hearing Committee.*

### **3.11 Definition of Access Strip and Site Area**

#### Background

One issue associated with infill housing and especially multi-unit developments is that depending on what type of land tenure arrangement is used to define property boundaries (ie. freehold fee simple v unit title) then this can have an effect on the allowable site coverage and ultimately how 'dense' a development may look to passers-by. This occurs because the land tenure arrangements used for the site influences whether or not the driveway is able to be included within the overall site area or not, which ultimately affects how site coverage is calculated.

Plan change 56 sought to address this inequity by amending the definition of 'Access Strip' to include areas used for permanent access within unit title, cross lease and company lease subdivisions. This would have the effect of removing these areas from the definition of 'Site Area' which would in turn reduce the available area of land able to be used for calculating site coverage. The intent was that the Plan should become tenure neutral, in that it does not create more development opportunities for one form of land tenure over another.

In addition, the Plan Change amended the definition for 'Site Area' so that the area of any access lot or access strip to any part of the site (whether it is front, middle or rear properties) could not be used in the calculation of site area. Previously, access strips (such as right of way instruments) that were created over front lots to provide access to rear lots could still be used as site area for the front lot. The decision of the Hearings Committee for Plan Change 6 stated that the reason for this being acceptable was that *"the loss of open and green space to access is mitigated by the relationship to the legal road."* In pursuing Plan Change 56, this issue was raised again by Councillors and it was noted that in many instances, these right of way areas were fenced off from the front lot losing any relationship it once had to the front lot. This results in a front lot that appears overdeveloped from a site coverage perspective, though not technically on paper.

#### Submissions

The changes to these two specific definitions attracted submissions from 10 submitters, with one submitter supporting the changes (sub 33) as they help to give greater clarity, two submitters seeking further changes to the definitions (sub. 23 and 44) and three submitters opposing the revised definitions (55, 67 and 69), as summarised below:

- The definition of access strip should be re-worded to provide greater clarity (subs 23 and 44)
- The definition of site area also needs to exclude areas of land used for permanent access with multi-unit developments where a unit title subdivision is not being sought at the same time as the land use consent for a multi-unit development (sub 23).
- The definitions will lead to unnecessary complications for unit title subdivisions (sub 55)
- Definition of access strip should be deleted or needs significant refinement due to issues around how access ways are defined as 'common property' in unit title subdivisions (subs 67 and 69)
- Concern that the definition of site area would, in combination with the open space requirement' result in a doubling up effect on front lots and also that the site coverage requirements should be sufficient to control development density (sub. 67 and 69).

FS10-14 opposed any submissions that sought the deletion or change to the definitions as notified in plan change 56. Further submissions on the suggestion by submitter 23 were received from submitter FS20 (also known as submitter 67). Further submitter 20 opposed the suggestion that the definition of site area needs to exclude areas of land used for permanent access within multi-unit developments. Specifically, submission 20 found this suggestion 'lamentable' for a number of reasons including that *"if the council is concerned with the site*

*coverage of multi-unit development and the proportion of area for permanent access then this should be addresses as a component of the multi-unit assessment at the initial land use consent stage".* The nature of unit title subdivisions is that they are created to mirror approved multi-unit developments, and the proposed change may result in undesirable design outcomes as it would encourage parking areas towards the front of developments or for buildings to be built over driveways.

Further submitter 20 made a neutral submission on submission 23's request to reword the definition of access strip to provide more clarity, noting one minor wording change.

## Discussion

### *Definition of Access Strip*

Submitters 55, 67 and 69 outline that the definition change to Access Strip will create significant practical difficulties due to the way that access ways and parking areas are defined as 'common property' on unit title plans, along with other commonly owned areas such as open spaces. It is not possible, for instance, due to the Unit Title Act to identify areas of common property used specifically for driveways on unit title plans.

The Committee noted that the Officer had responded to these concerns by recommending that greater scrutiny of the proportion of sites devoted to access ways and parking as part of the multi-unit development land use consent (i.e. FS20). The Officer had noted that this could occur by making one small change to the relevant multi-unit development rules. The relevant policy and Residential Design Guide already seek to reduce the impact of vehicle access ways. The Officer also considered that this approach would only be acceptable if the open space requirement remains in place as this would ensure a certain amount of land is not used for buildings or driveways.

At the hearing, submitters 67 and 69 noted that the recommended approach by Officer's was supported by them. However, FS 10 maintained at the hearing that the definition should remain in place as it was originally notified given the concern that when a driveway is able to be included in site coverage then this can significantly reduce the amount of openness on the site.

In considering these concerns, the Committee was persuaded by submitters it was not practical due to the way that the Unit Titles Act works (allowing only Principle Units, Accessory Units and Common Property to be outlined on unit title plans). Further the Committee did feel that with is decision to maintain the open space requirement, albeit with some small changes to it, that the proposed definition of Access Strip in Plan Change 56 would have the effect of double-dipping. The Committee was satisfied that the open space area requirement (in addition to the changes suggested by the Officer to the multi-unit rule) would more than adequately manage the concerns previously held about the perceived overdeveloped nature of multi-unit developments (subsequently formalised by unit titled subdivision).

The Committee also noted the concerns outlined in the Officer's report regarding the fact that applications for unit title developments do not always reflect the multi-unit land use consent granted (e.g. where an area identified as open space in the land use consent is later identified as a 'car park' on the unit title plan). While this is a compliance issue with the land use consent, it will be necessary for the Council to remind the consent holder that the ability to gain Council certification of the subdivision will depend on consent for the development being adhered to. As the Committee has outlined a rule regime whereby unit title subdivisions may be processed as Controlled Activities where the land use consent has already been granted, it will be crucially important that the Council flag to the consent holder the importance of ensuring the unit title consent mirrors what was approved at the land use consent stage. (e.g. where an open space area is identified on the land use consent plans, that this is not later identified as a car parking area on the unit title plans). Conditions will be placed on the unit title subdivision consent to ensure this occurs.

Submitters 23 and 44 offered suggestions on re-writing the Access Strip definition to make it easier to understand. The Committee agreed that the revised wording by submitter 23 was useful, and as a result considered that the concerns raised by submitter 44 are adequately dealt with. Note also the suggested change by further submitter 20 (see revised wording below).

#### *Definition of Site Area*

In dealing with the concerns about access strips, the Committee agreed that the main concerns from submitters regarding the definition of site area were also addressed.

The one outstanding issue is that the definition now applies to all lots, not just rear sites. At the hearing, Submitter 67 maintained their view that front lots should not be excluded from the definition of Site Area. Front lots are different from rear lots in that one side faces legal road and as a result it can carry 'extra' coverage within the context of the openness of the streetscape. The submitter sought that the Committee reject the recommendations of the Officer (being to apply the definition to all lots) and instead maintain the current operative definition of site area. In contrast, FS10 maintained her view that the definition apply to all lots to ensure sites do not look overdeveloped.

In its deliberations on this issue, the Committee were mindful of a much broader issue facing the future of the city, being whether or not every site should have vehicular access. Whilst not an explicit part of Plan Change 56, the Committee considered that for many streets in existing residential suburbs, vehicular access is not characteristic and to require such access (as is now the case with the 'one park per unit rule in the Plan) can lead to adverse effects on the streetscape without any corresponding benefit to the streetscape (i.e. the loss of an on-street car park in order to provide vehicle access to a site). Having established that off-street parking was not always the desirable outcome (especially where this would affect streetscape character), the Committee then considered how that would affect its consideration of this definition of Site Area in respect of front lots.

The Committee agreed with the Officer's view that access ways across front lots are not always viewed as being associated with that lot (especially when they are fenced) and so can lead to front sites that look over developed. In addition, the Committee noted that in many cases such access ways draw attention to infill at the rear of a site which, if carried out poorly, will also create adverse effects on the streetscape. Taking into account all these matters, the Committee believed it was appropriate that access lots or access strips should be excluded from the definition of site area for front sites as well as rear sites. The Committee noted that in areas where it could be argued that there was no need to provide the required off-street car park (i.e. on-street parking availability was more than adequate to meet the demands of the proposed new site), then this revised definition might encourage pedestrian only access to rear sites therefore helping to minimise the adverse effects associated with rear lot infill development on the front lot and the streetscape.

Submitter 44 seeks a wording change to this definition, but it is noted that the change requested relates to text that has been proposed to be deleted from the definition as part of Plan Change 56. Therefore this submission should not be accepted.

Submission 69 notes that if this definition is to remain in place, then lots created before 5 May 2007 should be exempt from the revised definitions. For the same reasons as the Committee did not accept this to be appropriate in respect of the Open Space requirement, it also considered it inappropriate here.

## Decision

- **Reject submission 33**, as the definition of Access Strip is proposed to be altered in accordance with other submissions.
- **Accept submission 55, 67, 69 and FS20, and reject submission 23 and FS10-14**, regarding the deletion of the change to the 'Access Strip' definition which includes unit title, cross lease and company lease subdivisions. Instead, amend rules 5.3.4 and 5.3.10 to clarify that that scope of discretion regarding parking and vehicle access includes the proportion of the site devoted to these uses, and amend an existing assessment criterion relating to parking and vehicle access.
- **Accept submission 23, further submission 20 and reject submission 44** in relation to the improved wording of the definition of Access Strip (ie. to remove the 'double negative').
- **Reject submissions 44, 55, 67, 69 and accept FS10-14** in relation to the definition of Site Area.

ACCESS STRIP: means [an access leg or]<sup>†</sup> an area of land [defined by a legal instrument, providing or intended to provide access to the site or sites, or ~~an area of land allocated for permanent access within a unit title, cross lease or company lease subdivision.~~

However, if that area of land is:

- ~~5m or more wide, and~~
- ~~not legally encumbered to prevent the construction of buildings, it is excluded from the definition of access strip]<sup>‡</sup>.~~

within the above meaning, an area of land is an access strip if:

- it is less than 5m wide, or
- it is 5m or more in width and is encumbered by a legal instrument, such as a right-of-way, that prevents the construction of buildings.

**5.3.4a** **The construction, alteration of, and addition to residential buildings, accessory buildings [and residential structures]<sup>3</sup>, where the result will be three or more household units on any site, except**

**• ....**

**or**

**5.3.4b** **where the result will be two household units on any site and the proposal does not meet condition 5.1.3.4.3;**

**the proposal is a Discretionary Activity (Restricted) in respect of:**

**5.3.4.1** **design (including building bulk, height and scale), external appearance, and siting**

**5.3.4.2** **site landscaping**

**5.3.4.3** **parking and site access (in particular the proportion of the site devoted to parking, site access and manoeuvring)**

**5.3.4.4** **where relevant, height of proposed 2nd dwelling on a site**

**Assessment Criteria**

**In determining whether to grant consent and what conditions, if any, to impose, Council will have regard to the following criteria:**

...

**5.3.4.10** **The extent to which parking, vehicle accessways and manoeuvring areas makes up a significant proportion of the site area reducing opportunities for adequate open space and whether additional hard surfacing for on-site parking and manoeuvring areas is minimised or mitigated by appropriate site landscaping.**

### **3.12 Notification provisions**

Whether or not an infill and multi-unit development application is notified to neighbours has long been a matter of contention for residents. In many situations, neighbours find out that a proposal has been approved only when construction or earthwork activities begin on a site. There were a number of submissions on this issue (mostly from individuals and residents) which sought greater notification of neighbours for these types of developments (subs 2, 5, 11, 12, 18, 27, 35, 43, 71, 84, FS16, FS21, FS22, FS36 and FS10-14).

Submission 35 explicitly supported the non-notification statement included for multi-unit developments, but all other submitters sought changes or clarification as to how they consider the notification process should work. Some of these submitters outlined specific development scenarios that should automatically be notified to neighbours. A selection of these submitters is outlined below:

- Include a real, not nominal, notification requirement so that those adjacent property holders and others in the immediate vicinity have the opportunity to comment/object to a proposal (sub 2, supported by FS10-14)
- Requested that rules be amended so that every infill or subdivision is notified to immediate neighbours...landowners spend significant time and money getting their properties the way they like them and yet the Council gives developers the right to ruin their living standards (sub 11)
- That the Council stop people being able to develop sites in this way without the consent or discussion with those who will be affected by the developments (sub 27)
- Developers should be required to consult with neighbours as neighbours are better placed to identify what may or may not cause adverse effects. Where neighbours do not agree there should be a mechanism that enables issues to be weighted by an independent adjudicator (FS 21, FS22 and FS36)
- More consideration needs to be given to mechanisms that help to achieve better alignment of incentives facing developers and potentially affected parties (FS36)

It is noted that FS23 opposed many of these submissions stating that the relief sought is inconsistent with an effects based notification process set out in the Resource Management Act. Submitter 5 was unable to attend the hearing, but requested that further evidence be tabled with the Committee. This evidence outlined his concern that Housing New Zealand Corp. had opposed his submission on the notification provisions. Submitter 5 considered that given Housing New Zealand Corp. is a potential developer or benefactor of infill housing then they have a biased opinion. The submitter emphasised his request that all infill housing developments be notified where affected party written approvals are not provided with the application and he considered that this was consistent with the legislation.

Submitter 84 comes from a different perspective, arguing that minor encroachments to the rules should not need approval of affected parties especially where these result in a better urban design outcome. The submitter sought more clarity over this element of the process. Likewise FS7 considered that the only parties to resource consent should be the immediately adjoining neighbours and Council.

Submitter 27 spoke at the hearing about a specific development proposal which, for a variety of reasons was determined by Council as not requiring neighbours consent. The Committee saw photographs of how the three storey development resulted in a loss of privacy for one of the submitters and had created numerous other effects for the submitter. The Committee later heard from one of the Council's resource consent planners who helped them to understand the reasons why the development was considered on a non-notified basis. The submitter accepted that developers are there to make money from such developments, but given that these developments are essentially commercial activities occurring in residential areas, then there needs to be greater protection for surrounding residents. They considered that this protection

could occur by ensuring that neighbours are involved in the process. The submitters accepted that development on the site was inevitable, but were upset at the scale of the development allowed and the inability to be involved in the consenting process.

FS 10 noted at the hearing that the current system for appealing non-notified decisions to the High Court is not acceptable as it is an inaccessible avenue for most ratepayers. In light of this, it is important that PC56 ensures that there is a real notification requirement allowing adjacent property owners and others to be able to comment on a proposal.

Submitter 10 considered that neighbours approval was not always a healthy thing and noted particular concern to the Committee that this plan change might increase the need for side agreements (where the applicant and neighbour come to a financial settlement or some other form of agreement in order to get their written approval to the proposed work).

The Committee noted that following background information to the notification provisions in the Officer's report and felt it should also be included in the decision report also.

#### Background information on Notification/non-notification

The notification process followed by the Council is dictated by the notification provisions of the Resource Management Act (specifically sections 93 – 95). Those provisions set out:

- When public notification of a consent is required
- When public notification of a consent is *not* required
- How the Council form an opinion as to whether adverse effects are minor or more than minor
- How the Council form an opinion as to who may be adversely affected

The provisions also set out a 'limited notification' process whereby if some people are identified as affected parties to a consent proposal and if they do not give their written approval to the work, then only those persons will be notified of the application and will be invited to make a submission to the Council on the proposal. A hearing may also be held.

In addition the Act provides ability for Plans to explicitly state when an application does not need to be notified or that service of the application does not need to be given to affected parties. This provision (94D of the RMA) has been included in many of the Plan rules as 'non-notification statements'. Generally these statements were used where the Council needs to assess technical matters such as traffic safety or urban design, which are best assessed by experts.

It is noted that there is no 'non-notification' statement for rule 5.3.3, which is the rule that many residential buildings fall into when they breach the yard, site coverage, height, sunlight access or fence height permitted activity standards. This is because breaches of these matters may result in adverse effects on neighbours and it is important for those neighbours to be asked for their written approval.

There has historically been significant concern associated with the non-notification statement in the rule for multi-unit developments (5.3.4). That non-notification statement outlines that notification of a multi-unit proposal is not required (ie. the actual design of the proposal is a technical matter that is negotiated between the Council and the applicant's architect). However, if any aspect of that multi-unit proposal breached the permitted activity standards (eg. height or sunlight access plane), then these breaches would trigger rule 5.3.3 and may need neighbours approval.

Plan Change 56 revised the non-notification statement proposed in revised rule 5.3.4 so that infill houses that do not meet the 4.5m height limit are likely to result in the approval of affected parties. As noted before, if that approval is not gained then those parties will be asked to make

submissions to the Council on the proposal and a hearing held. Similarly, multi-unit developments that breach the 4.5m height limit may also now be subject to the requirement to seek affected party approvals. In summary, the threshold for potentially considering the need for affected party approvals has been lowered to allow more involvement of affected parties.

### Discussion of submissions

Considering how the Plan should deal with the many concerns around the notification of infill and multi-unit developments was one of the most significant elements of the Committee's deliberations on Plan Change 56. Conscious of the need to maintain public trust and confidence in the planning process, but also aware of the significant costs and delays to developers when a project faces public notification, the Committee was keen to find a solution where people could be reassured that the quality of developments would be lifted, but without a drastic increase in the number of developments that would be notified.

In listening to the submissions from both sides of the 'notification debate' the Committee wanted it noted that people should not confuse a Council decision not to notify an application with the belief that the Council supports the proposal. As noted previously the decision to notify rests solely on the effects of a proposal and who is deemed to be affected. The Committee was concerned that some submitters felt that because the Council had processed certain applications on a non-notified basis then this meant it had the endorsement of Council officers. It has been made plainly clear to the Committee during the hearing that many landowners will design their development to comply with the Plan's rule for the express purpose of not having to require neighbour approval. In these instances the Council has little choice but to process the application without notification.

Conversely the decision to notify a consent should not be seen by people as an indication that the Council does not support the proposal. The Committee understands that it is very common for a developer to work with Council officers for months on the design of a project, and while it may eventually receive the endorsement of the Council's urban designers, for one reason or another it still breaches one or more of the rules. In such cases notification may be required due to the effects. The Committee often referred back to the example cited by one of the submitters which seemed to illustrate their concerns perfectly. The submitter (a developer) started off a development concept with one architect, but when the Council's urban designers suggested a number of issues needed to be worked through, the submitter engaged another architect. The second design was a significant improvement for the site and as a result received the 'tick-off' from the Council's urban designer. However, in spite of this the design still did not fit all the necessary rules of the Plan and so faced the prospect of notification.

In considering these issues, it became plainly obvious to the Committee that urban design and notification processes were intricately linked. A persistent concern of the Committee in deliberating on this Plan Change was the fact that many landowners design new buildings to comply with the permitted activity rules explicitly to avoid the required neighbours' approval. But often it is these permitted activity dwellings that lead to a less desirable built outcome than if one or more of the standards were breached in order to get a design that fits in better with the surrounding neighbourhood. The Committee was very concerned about this, but accepted that the planning system under the RMA requires that if a dwelling creates an effect on a neighbour then that neighbour has the right to be involved in the process.

With this in mind, the Committee were of a view to accept the notification approach outlined in the Officers report. The Committee noted its particular support for the Limited Notification process as the preferred way forward (assuming it was appropriate in light of the RMA notification requirements) until such time as the Plan adopted a more explicit targeted approach to infill development which would provide everyone with more certainty around the likely future development of their neighbourhood.

The Committee acknowledged the impacts that greater notification of proposals might have on successful conclusion of proposed developments. It considered it would be an unfortunate outcome for the city if it meant that certain developments did not proceed as planned. However, the Committee felt that this would be an interim price the city must pay until it has clearly outlined the direction it will take in respect of a targeted approach to residential development. As that policy work develops, identifying areas of greater development opportunity, areas where some infill will be allowed under the PC56 approach, and yet other areas where development will be further restricted, the Committee felt that the notification processes would need to be amended to reflect the desired outcome. There will be some good proposals stalled by Plan Change 56 but they need not be abandoned for all time.

Turning to the specific submissions, the Committee noted the support of submission 35 for the notification of multi-unit developments. Likewise the Committee considered its decision would meet the relief requested by submitters 2, 12, 18, 27, 43, FS6, FS10-14 and FS16.

Submitter 2 sought that where the approval of affected parties is not gained then Council must decline resource consent. FS6 seeks an amendment to the wording suggested by submitter 2. The Committee noted that both submissions are not sanctioned by the notification provisions of the Resource Management Act (as noted by FS23). Instead, if affected party approvals are not given then the Council invites those parties to make a submission and a hearing will be held which fully canvasses the issues. In these cases the hearing is always decided by Commissioners (these may be elected Councillors or independent commissioners). This submission cannot be accepted.

Likewise, submissions 5 and 71 (supported by FS36), which propose certain thresholds which would trigger in limited or full public notification of consents, cannot be accepted as this is not provided for by the notification provisions outlined by the Resource Management Act. Plan Change 56 has however clarified that approval of affected parties is required for both infill household units and multi-unit developments when the height requirements are not met, or some other aspect of the permitted building requirements.

Submitter 11 sought that every infill development and subdivision application is notified to neighbours. Note that a discussion about the notification of subdivision applications is discussed in section 3.9. In respect of permitted activity infill developments, because those activities are 'permitted' then there is no resource consent process and no ability to require that neighbours give their written approval. This is why it is critical what level of activity is deemed to be permitted and what then needs a resource consent by the Council. The Committee considered this was sufficient, although appreciated the difficulties where certain developments are designed to meet the rules, but still do not fit in well with surrounding character.

Submitter 18 also requested that dispensations to the rules be approved by Council Committees, not Council officers. It is noted that any resource consent which does not gain the approval of affected parties goes to a hearing before a group of elected Councillors or independent Commissioners. For consents that do not require the approval of affected parties or where approval has been given (and this is the majority of consent applications) the Committee considered it entirely reasonable and appropriate that the decisions be made by qualified planners to ensure an efficient and effective implementation of the Plan and Council's responsibilities under the Act.

Submission 84 states it is unclear in many cases whether neighbours will be required to give approval for minor non-compliances even if the non-compliances are supported by the urban designers as providing a better design outcome. As noted earlier, the Committee has particular sympathy with these situations, but accepted that it will not always be possible to provide greater certainty over when affected party approvals will be required as it will always depend on the site circumstances – hence the requirement for the planner to assess every application and to visit every site to determine whether or not there are any affected parties. A minor non-compliance on one site may not produce any legal effect on a neighbour and so no approvals

will be required. However the same level of non-compliance on another site may produce an effect that is noticeable for an affected party, resulting in the need for their approval.

FS7 outlined a number of issues around notification, as summarised below:

- The only parties to a resource consent should be the immediately adjoining neighbours and Council. No other party can be deemed to be affected unless determined by the Council.
- It is assumed that any neighbour approval given to such a development will also result in a mutual right of that neighbour to carry out similar activities on their site
- The consent would be approved by all immediate neighbours giving approval.
- If consent by any affected party is not forthcoming then an independent Urban Advisory Panel will adjudicate the matter and be paid for by the applicant.

This submitter (Ian Athfield) spoke to the Committee at length about the need for a new approach to development and that this Council was well placed to lead by example. He considered that the current planning rules aren't working, with many opportunists using the current rules to deliver poor quality outcomes hence the public backlash. As noted in his written submission, he considered that rules should be used as guidelines and should not be the most important aspect of considering a development. His view was that infill really only affects immediate neighbours so it is important to understand the effects on those neighbours and approval of these neighbours should be obtained. Where approval cannot be gained then the application should be assessed by an advisory panel (filled with retired architects and the like).

The Committee was initially attracted to the ideas raised in this submission, particularly regarding the concept of an independent review panel. However, in the end, having considered the position of all submitters and the revised peer review practices of the Council's urban design team (i.e. independent peer review of design proposals as required), the Committee felt that the approach outlined by the submitter would not provide the level of consistency desired. The Committee noted that the Council had reviewed the effectiveness of all other design panels currently operating in the country. That review concluded that there were inherent problems with such panels and so suggested a simple peer review process involving one independent architect as required. The Council has amended its internal procedures to allow for this independent design peer review as part of the Officer assessment and the Committee accepted that this was appropriate (NB: this is consistent with the Committee decision on Plan Change 48 where similar requests were made for the introduction of a design panel). The Committee also noted the Officer's report in respect of the requirements of the RMA in relation to notification.

#### *Non-regulatory methods to improve communications over new developments*

As an aside to these submissions, submitters should be aware that the Council is currently trialling a system of improving communications with neighbours to proposed development applications. This process comes as a direct response from residents, who say that in many cases they just want to be told that something is happening next door, rather than finding out after construction begins on site.

The intent of this communication is for neighbours to be aware that the Council has received a resource consent application for a particular site. The letter to nearby residents states that if they want information about the proposal they are entitled to request that information as all resource consent applications are public documents. The letter makes it clear that this does not mean the Council has specifically identified who, if anyone, is affected by the work and any later decisions about affected party approvals will need to follow the normal requirements for notification of the Resource Management Act.

Submitter 65 spoke to this new communication method by the Council at the hearing, seeking an assurance that the cost of this new process would not be passed onto applicants as this would not be fair or reasonable and would be outside the scope of s36(e) of the RMA which requires

that information which is requested is paid for by the person requesting it. They noted also their concerns around consents not meeting existing timeframes set out in the Act, and on that basis considered the Council should be focussing its efforts meeting basic statutory requirements before venturing out into non-statutory requirements.

Submitter 69 also commented on this new procedure by the Council at this hearing, noting many of the same concerns as submitter 65. The submitter is extremely disappointed they weren't consulted first about the new procedure and considered that the practice will create an expectation what those notified of an application are affected and that they will be able to have a say in the proposal outcome.

Submitter 39 (New Zealand Institute of Architects – Wellington Branch) was unable to attend the hearing but tabled further evidence. In respect of this new process, the submitter considered that while it is based on sound principles, it is particularly worrying when coupled with Plan Change 56 and the requirement for consents on all proposed alterations to existing non-compliant buildings. They outlined a number of problems they perceived with the process.

The Committee noted that, while this process was of relevance to the outcomes also sought by the Plan Change, they did not have authority to make any decision on its future operation. The Committee passed on the comments raised by the submitter's issues to the Manager of the Development Guidance Team who instigated this new process and who has stated that trial process will be reviewed.

#### *Notification provisions for plan changes*

FS16 considers that greater notification should be made for changes to the rules. As with notification provisions for resource consent applications, the RMA clearly sets out the requirements for notifying plan changes. The Committee considered that these requirements were met for Plan Change 56 in that every ratepayer received a letter in May 2007 containing information about the Plan Change. This was backed up a public notice in the Dominion Post, which subsequently generated considerable publicity about the proposed changes.

#### Decision

- **Accept submission 35**, in respect of multi-unit development notification processes
- **Accept submission 2, 12, 18, 27, 43, FS6, FS10-14 and FS16** in so far as they seek notification of applications which affect neighbours.
- **Reject submissions 2, 5, 11, 71, FS6, FS7, FS21, FS22 and FS36** which seek to require notification for a range of different scenarios. **Accept FS 23** in this regard.
- **Reject submission 18** in so far as it requests that Council Committees decide all dispensations from the Plan rather than Council officers.
- **Note the comments of submission 84** in respect of the affected party approval process for minor non-compliances, but take no further action.
- **Note** that the Council is trialling a system of informing neighbours of proposed development applications.
- **Note comments of FS16** regarding the plan change notification process.

### **3.13 New 'existing use rights' permitted activity rule (Rule 5.1.3A)**

#### **Background**

This new permitted activity rule, relating to 'existing uses' stems from an idea first raised as part of the discussions on Plan Change 39 (Character controls in Newtown, Berhampore and Mt Cook). It became apparent in those discussions that many additions to properties (that complied with the bulk and location rules in the District Plan) were triggering the need for a resource consent due to existing non-compliances of the building. This problem arises with many older buildings built prior to the current planning rules, particularly those in the Inner Residential Area, as they were often constructed close to neighbouring boundaries.

Non-compliances with the rules created by the existing building can mean that even if an addition or alteration complies with the planning rules of the day, it is still necessary to carry out an assessment of the proposed works against s10 of the Resource Management Act to establish whether existing use rights have been retained or lost. Section 10 of the Act states:

#### ***s10 Certain existing uses in relation to land protected***

***(1) Land may be used in a manner that contravenes a rule in a district plan or proposed district plan if –***

***(a) Either –***

- (i) The use was lawfully established before the rule became operative or the proposed plan was notified; and***
- (ii) The effects of the use are the same or similar in character, intensity, and scale to those which existed before the rule became operative or the proposed plan was notified;***

***[(2) outlines that s10 doesn't apply if use of land has been discontinued for a continuous period of more than 12 months. ]***

***(3) This section does not apply if the reconstruction or alteration of, or extension to, any building to which this section applies increases the degree to which the building fails to comply with any rule in a district plan or proposed district plan.***

As part of the preparation on Plan Change 39, it was acknowledged that the application of Section 10 by the Council resulted in a lack of certainty for architects and landowners about whether or not their proposed works (which complied with the Plan) would be permitted or not. In these situations, the Council currently carries out a section 10 assessment to determine whether existing use rights are retained or lost.

It was considered that there was scope for a permitted activity rule in the Plan that outlined the scope of works able to be done to a 'non-complying building' which would not generate adverse effects for neighbours. Hence Rule 5.1.3A was proposed.

#### **Submissions**

A number of submissions were received on this rule, most seeking amendments or clarification. Submitters 29 and 67 supported the intent of the rule with minor drafting changes suggested. Submitters 55, 58, 62, 63, 65, FS4 and FS19 opposed it (specifically the intent to limit the height of additions to 4.5m), though these submissions were not supported by FS10-14 and FS23. Submitter 65 opposed it on the basis it went too far and should be reworded to only apply where the existing dwelling is not already two stories. Submitters 23, 39, 50, 44, 47, 76, 83 and 84 sought changes to the rule; as summarised below:

- Clarify what happens procedurally to applications that are not able to take advantage of the new rule i.e. s10 should still be able to be considered and failing a positive

assessment against that, rule 5.3.3 should be used to assess the proposed works (sub. 23)

- Rule does not go far enough, allow all additions and alterations to non-complying buildings' provided that the work does not worsen the non-compliance and preferably reduces the level of non-compliance (sub 39)
- Need to define 'footprint' (sub 44)
- Supports sentiment of rule, but outlines concerns with the footprint being exempt (sub 47)
- Amend the rule to allow site coverage to be considered within its scope (sub 50)
- Strongly supports rule but outlines various changes (sub 76) – see discussion below.
- Concerned that rule may be interpreted to not provide for well designed modern additions as these can still be sympathetic to the existing building (sub 84).

FS10-14 disagreed with submitter 39, stating that if a dwelling is already non-compliant then there should be no way they should be exempt. The maximum of 4.5m is there for a reason, building on hills have greater impact on surrounding properties particularly with privacy and blocking sunlight.

Sixteen further submissions were received in support of the comments by submitter 76 and sought that the changes sought by that submitter be accepted (FS 8, 9, 15, 17, 18, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 37). The main reasons for support included:

- It would encourage building owners to retain existing buildings even if they don't comply with current planning rules
- Existing buildings contribute to the character of older suburbs and the rule helps to value the existing building stock in Wellington
- The present interpretation of the existing use rights provision in the RMA penalises the preservation of existing non-complying buildings. The interpretation is the total converse of what the public and many owners expect and why developers often demolish rather than work with existing homes.

Paul Kerr-Hislop (FS8) spoke to the Committee noting his support for the submission prepared by the Newtown Residents Association (sub. 76) on this provision. He considered that the original intent of the provisions has been lost in its inclusion in PC 56. In particular he considered that the wording of the rule is alienating and difficult to understand. He questioned why the rule should be different for non-complying buildings in the Outer Residential Areas and Inner Residential Areas.

At the hearing, submitter 29 noted their support for the revised recommendations for this provision in the Officer's Report.

Submitter 39 (unable to attend the hearing, but who tabled written evidence) outlined that there are a huge number of non-compliant houses in the older suburbs and the requirement to obtain resource consents for work on these houses would create significant work for an 'already understaffed' council. The submitter supported Council's wish to control major effects on neighbours from large scale developments, but was concerned that if a blanket consent process for every alteration on a non-compliant houses was the way forward then the Council must retain the right to make judgement calls and waive a full application on works that are of a minor nature. They suggested the following process:

- A pre-application process with the council for alterations to existing non-compliant buildings to see if the proposal worsens the existing non-compliance and whether this would lead to a resource consent process.
- If the existing non-compliance is not increased the proposal should then be checked to see if its compromises things such as privacy. If there was such a compromise then this would require a resource consent process, but only the neighbour affected would be notified.

- All other proposals that increase the existing non-compliance should be handled as full resource consent applications.

Submitter 76 (Newtown Residents' Association) supported by Peter Frater (FS 37) and Steve Dunn (FS 29) spoke to the Committee about this provision aided by presentation containing many photographs to illustrate why the 'existing building bonus' was needed to help protect the character of existing dwellings. The submitters maintained that a simple rule was needed with clear wording which allowed any element of a 'non-complying' building to be worked on provided it was within the existing building volume. Of particular note, this included buildings that were already over site coverage or which had decks above 1.5m within 2m of a boundary (a common feature of two storey character homes). Further, in contrast to the revised provisions recommended in the Officer's Report, the submitters felt the provisions should apply equally to the Inner and Outer Residential Areas. In response to a question from the Committee, the submitters confirmed that this rule doesn't need to apply in Suburban Centres or other commercial areas as the main issues arise with additions and alterations to residential buildings.

Submitter 38, who generally supported the rule, explained to the Committee that the provision limiting the height of any extension of a house beyond its current footprint to 4.5m was not supported, was unjustified and simply unfair. The submitter cited an example where a dwelling that is under its permitted site coverage is not able to take advantage of extending the house above 4.5m due to a sunlight access plane breach on both side boundaries.

### Discussion

Submission 23 sought to clarify what happened in a situation where the proposed works was outside the scope of the proposed permitted activity rule 5.1.3.a. It is fair, in such an instance, that the landowner should still be entitled to see whether a s10 assessment of the work would allow it to continue without a resource consent. In the situation where the s10 assessment does find the proposed works goes beyond existing use rights, then the work needs to be assessed against rule 5.3.3 of the Plan. The Committee agreed that this was eminently sensible as it would clarify how the permitted activity rule was intended to work. The Committee considered that this clarification should also address the primary concerns of submitter 65, in that a proposed two storey addition to an existing two storey dwelling may still be able to claim existing use rights under s10 if it can be demonstrated that the effects are indeed negligible as suggested by the submitter.

At the hearing, Submitter 65 considered that if an existing dwelling is non-compliant then an assessment under section 10 must be undertaken no matter the suggested provisions. They considered that the note attached to the rule should state that 'compliance with the rule does not preclude the need to obtain resource consent pursuant to Section 10. i.e. their view is that the rule is going to far. The Committee understood that the provision was legally reviewed by the Council's lawyers before being adopted in Plan Change 56 and was shown to be an acceptable way of managing the issue. As a result, the Committee is satisfied that, from a legal perspective the permitted activity rule works alongside s10; it does not seek to nullify it. Given the issues that have been caused as a result of the strict legal interpretation of s10 by the Council, the Committee agreed that a permitted activity rule, such as that adopted in this decision, is needed to provide flexibility to homeowners to carry out certain additions and alterations, which will not create significant adverse effects on neighbouring properties. The Committee also acknowledged the benefits of the rule e.g. safeguards height etc and on balance that these outweighed the costs.

Submitters 55, 58, 62, 63 and to some extent 39 have submitted in opposition to the rule (or seek amendments) but it appears to be on the basis on a misinterpretation of how the rule would apply. Proposals to carry out new works to a building with existing encroachments have always required an assessment against s10 to see whether existing use rights were lost or

retained. The point of this permitted activity rule is to provide certainty to homeowners (without the need for a s10 assessment) by providing for a level of works that will be a permitted activity. If a proposal intends to do more than what the rule provides for as a permitted activity, then a s10 assessment will be required and failing to achieve a positive outcome from that, then work will need a resource consent under rule 5.3.3. One particular part of the proposed permitted activity rule 5.1.3.a (works outside the footprint of the existing house) is limited to 4.5m in height on the basis that this scale of building work is unlikely to generate adverse effects on neighbours. It is right therefore that a proposal to build beyond that should be assessed firstly against s10 of the Act, and failing approval under that section, then resource consent should be required allowing a full consideration of the effects of neighbours. The Committee considered submissions should be rejected on the basis that the 4.5m height is necessary to effectively manage the potential effects of neighbouring properties.

Submitter 50 seeks that this rule should also be able to be applied to existing buildings that breach the current site coverage rules. The submitter considers this an unwise exception which unfairly penalises a significant number of traditional dwellings which many people would wish to see preserved. A material concern with this suggestion is that as site coverage is one of the main tools in the Plan that helps to control density of dwellings and dwelling bulk, allowing further additions and alterations to already highly developed sites may result in adverse effects for neighbours. The Officers Report considered that it was appropriate that this type of proposed work be assessed against s10 in the first instance to establish what the effects are, i.e. a case by case assessment of the effects. The submitter spoke to the Committee on this issue specifically and demonstrated with illustrations that many dwellings in the older character suburbs are over site coverage and so would not be able to take advantage of this permitted activity rule. The submitter noted that it would also be unlikely for such dwellings to take advantage of s10 of the RMA, so works on such dwellings will almost always need resource consent. The submitter considered that applying any rules to Wellington's topography will always be a challenge, but considered that in the case of this rule particularly, there is no justification for creating a rule that from day one does not allow a level playing field.

The Committee was persuaded by the arguments put forward by this submitter (and submitter 76 requesting the same outcome) and agreed that there should be scope for dwellings that already exceed permitted site coverage to have work done on them, provided it is within the existing building envelope. The Committee has amended the rule to reflect this decision. The Committee was concerned however about the scenario where the proposed work is planned to go outside the building volume of the existing dwelling. It did not believe it would be appropriate in this instance to allow buildings that already exceed their site coverage to have their bulk increased further as a permitted activity. The Committee could see the situation occurring where, in the case of a street characterised by single storey character dwellings that were over site coverage (even though the rules permit a height of 10metres) then a landowner could easily add a second storey to the dwelling. This would almost certainly create amenity effects on the neighbours as well as affecting the streetscape. Such additions should go through the normal consenting processes to be sure that the effects can be adequately managed.

Submitter 44 seeks clarification of the reference to footprint in the rule, i.e. does it mean the main building or loosely attached outhouses commonly found on older homes? "Footprint" was intended to have a plain English meaning and was intended to include any part of the site that is covered by buildings (ie. in the same way that site coverage would be calculated).

Submitter 76 outlines a comprehensive submission on this rule, citing its conception as part of Plan Change 39 (Character controls for Newtown, Berhampore and Mt Cook). The submitter, whilst supporting the intent of the rule, outlines four main changes that should be made:

1. Modify title of rule to call it the "Existing Building Bonus" and explain that the existing height, sunlight access planes, frontage setbacks, side yard configuration, position of decks to boundary can be worked on if they are not exceeded further.

2. 5.1.3A.2: reword to clarify when working on the existing volume within the existing footprint that provided the work does not alter the existing non-compliance (but is outside the permitted height or SAPs) then this will be possible.
3. 5.1.3A.2: also, when working on existing volume within the existing footprint that work to the existing structure which does not comply with frontage set backs or position of decks, then this work will be possible.
4. 5.1.3A.4: remove the site coverage requirement is work is undertaken within the existing footprint.

Submitter 47 appears to seek similar changes.

The Committee generally agreed with the arguments put forward by this submitter and was keen for the Plan to actively encourage the retention and re-use of existing buildings. The Committee noted that reusing existing buildings would have advantages for the streetscape and character of Wellington's residential suburbs, but also noted the sustainability benefits that derive from enabling continued use of existing built resources.

In relation to a renaming of the rule, the Committee did agree that the wording suggested in the Officer's report did not satisfactorily convey the intention of the rule, but was also adamant that the rule name should not include the word 'bonus'. This was because the connotations associated with the word 'bonus' were inappropriate for a document such as a District Plan. The Committee noted that the rule does not actually provide additional development rights; it merely allows certain works to proceed down a different process pathway. Accordingly, the Committee preferred the "Adaptation and re-use of existing buildings".

In considering the rest of the submitter's comments about the proposed rule, the Committee felt that the rule (as set out in the Officer's report) was revised to allow for any work to be carried out provided it is within the existing building volume as requested by submitter 76 and the numerous further submitters. The Committee was entirely comfortable with that proposed change and felt it should address many of the concerns identified in the submitter's presentation.

The Committee noted the request for the rule to be kept simple. In considering this, the Committee noted that to achieve this simplicity then the rule should be limited in scope to what is outlined by provisions 5.1.3.A.2a and 5.1.3.A.3a, as this is all that the submitters appeared to be seeking. However, the Committee could see the value of the two other building adaptation scenarios being included in the permitted activity rule and felt that they should be included even though this increases the complexity of the rule. The scenarios the Committee referred to include works that are outside the existing building volume, but involve:

- any additions to the building that are within the footprint of the building (5.1.3.A.2b and 5.1.3.A.3b), and
- any addition that goes beyond the footprint of the existing building (5.1.3.A.2c and 5.1.3.A.3c)

The Committee felt that taken as a whole the rule allows for a reasonable range of different activities to occur on existing buildings, and was satisfied that the scope of the rule was such that works carried out under it were unlikely to generate adverse effects on neighbouring properties or the streetscape generally. The Committee acknowledges that the rule was slightly 'clunky', but felt that it needed to be absolutely unambiguous.

The Committee did not agree with submitters who opposed the way the rule had be revised in the Officer's Report to reflect the differences of the Inner and Outer Residential Areas. As has been noted elsewhere in this decision, the Committee were firmly of the view that people living within the two different residential areas do have different levels of expectations around the

amenity provided for in these areas (especially in respect of privacy). They considered that the further away from the central business district a person resides, the greater the level of protection of residential amenity is expected. These expectations have come about directly as a result of the different building characteristics of the high rise Central Area, the more densely packed inner residential character areas and the low density, spacious outer residential suburbs. In light of this, the Committee felt that this rule should respect and recognise those differing expectations of residential amenity protection. It noted also that this approach was entirely consistent with the other permitted activity residential rules in the Plan which outline different standards for the two residential areas.

With respect to the issue raised regarding decks, the Committee noted that work on non-complying decks is actually possible within the rule as already drafted. This is possible because decks are outlined in the Plan under the 'yards' provisions (specifically 5.1.3.2.5A) and this new permitted activity rule clearly states upfront that it applies to works on buildings that cannot comply with yards (among other things).

Submission 84 seeks clarification that the rule will not prevent well designed modern additions. This rule is primarily about the bulk and location of the primary form of the building and so there is no intent that it will control the style of addition designed.

### Decision

- **Accept submissions 29 and 67** in support of the rule.
- **Reject FS10-14** which appears to oppose the concept of being able to do certain works on non-complying buildings.
- **Accept submission 23 and reject submission 65, FS4 and FS19** in so far as it seeks to clarify what happens when proposed works do not meet the scope of rule 5.1.3A.
- **Reject submissions 50, 76 and further submissions 8, 9, 15, 17, 18, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 37**, in relation to site coverage being a part of rule 5.1.3A.
- **Accept submission 44**, regarding further clarification of 'footprint'.
- **Accept in part submission 76 and further submissions 8, 9, 15, 17, 18, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 37**, in relation to the first three changes to the rule spelt out in their submission.
- **Accept submission 83** in relation to a topographical error.
- **Note comments of submission 84.**

Note: this rule has been substantially revised in content and structure in response to submission 76 and the further submissions. It was considered a tracked changes version of the rule would not assist the readability of the recommended replacement rule.

<p>5.1.3.A</p> <p><b><u>Adaptation and re-use of existing buildings</u></b></p> <p><u>The alteration of, and addition to existing residential buildings that do not comply with any of the following permitted activity conditions:</u></p> <ul style="list-style-type: none"> <li>• <u>5.1.3.2 (yards)</u></li> <li>• <u>5.1.3.3 (site coverage) but only in relation to 5.1.3.A.2a and 5.1.3.A.3a</u></li> <li>• <u>5.1.3.4 (maximum height)</u></li> <li>• <u>5.1.3.5 (sunlight access)</u></li> </ul> <p>are a Permitted Activity provided <u>any new part of</u> the existing building <u>(and proposed works)</u> comply with the following conditions:</p>	<p><b><u>NB: Failure to meet the requirements of Rule 5.1.3A does not preclude an assessment of the proposed works against s10 of the RMA.</u></b></p> <p><b><u>Where proposed works fail to meet 5.1.3A and s10 of the RMA, then the proposed works will be assessed against the relevant items of Rule 5.3.3.</u></b></p>
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- 5.1.3.A.1 the existing non-compliance was lawfully constructed before 27 July 2000.
- 5.1.3.A.2 For Inner Residential Area sites:
- 5.1.3.A.2a: any internal or external alteration, including the insertion of windows, may be made provided it is contained within the existing building volume.
- 5.1.3.A.2b: any additions within the footprint of the existing building must comply with conditions 5.1.3.2 (yards), 5.1.3.4 (height) and 5.1.3.5 (sunlight access).
- 5.1.3.A.2c any addition that increases the footprint of the existing building must not exceed a building height of 4.5 metres
- 5.1.3.A.3
- For Outer Residential Area sites:
- 5.1.3.A.3a: any internal or external alteration, including the insertion of windows, must be limited to the complying parts of the existing building.
- 5.1.3.A.3b: any additions within the footprint of the existing building must comply with conditions 5.1.3.2 (yards), 5.1.3.4 (height) and 5.1.3.5 (sunlight access).
- 5.1.3.A.3c any addition that increases the footprint of the existing building must not exceed a building height of 4.5 metres
- 5.1.3.A.4 the alterations and/or additions provided for under 5.1.3.A.2b-c and 5.1.3.A.3b-c must not increase the degree of non-compliance of the building.
- 5.1.3.A.5 Any work undertaken under this rule must comply with conditions 5.1.3.1 (number of household units), 5.1.3.2.A and 5.1.3.2.B (open space), 5.1.3.3 (site coverage), 5.1.3.7 (Hazard (Fault Line) Area), 5.1.3.8 (noise insulation: Airport Area) and 5.1.3.9 (high voltage transmission lines), and

In relation to provisions 5.1.3.A.2b –c and 5.1.3.A.3b-c, any work undertaken must comply with condition 5.1.3.3 (site coverage).

**Definitions for the purposes of Rule 5.1.3A:**

**Footprint** means any existing building or structure that would be included within the site coverage definition.

**Building Volume** means the total three dimensional bulk of the existing building on the site.

**Alteration** refers to any modification of the fabric of the building that does not result in an increase of mass, bulk or height to any part of the building.

*Rule 5.1.3 contains bulk and location provisions that guide the scale of building works that can occur on sites within Residential Areas. The provisions are set at levels that provide for a reasonable scale of development, while at the ~~some~~ same time providing neighbouring properties with appropriate access to sunlight, daylight and amenity.*

Many older buildings, particularly in the Inner Residential Area, do not comply with the bulk and location provisions. This is because these buildings are often built close to side boundaries and are unable to comply with the yard and sunlight access requirements. Because of the non-compliance created by the existing building, undertaking 'complying' additions and alterations to these buildings often requires an assessment to consider the combined effect of the proposed work and the areas of non-compliance created by the existing building (or structure). Rule 5.1.3.A stipulates the scale of work that can be undertaken on an existing 'non-complying' building as a permitted activity.

Rule 5.1.3A is specifically designed to encourage the adaptation and re-use of existing buildings which do not comply with the current planning provisions by allowing certain works on those buildings to be treated as permitted activities. The scope of works able to be conducted within the rule are set at a level which is not expected to create adverse effects on the residential amenity of adjoining neighbours or on the streetscape generally.

Additions and alterations to an existing building are permitted provided they are contained within the existing building footprint, and comply with the rules for maximum height and sunlight access. Additions that increase the footprint of the building are limited to a single storey (measured as being below 4.5 metres in height) are considered appropriate as the potential for shading or loss of privacy on adjoining sites is limited. Accordingly Rule 5.1.3.A provides for these additions as a permitted activity, provided they comply with the other bulk and location standards contained in Rule 5.1.3. This will make additions to character houses easier, encouraging their retention and adaptation.

When an existing building does not comply with the bulk and location standards in the District Plan, any new works to that building not provided for under Rule 5.1.3.A will be subject to an existing use rights assessment under section 10 of the Resource Management Act.

In order to carry out work under existing use rights, the proposal must be able to demonstrate that the combined effects of the proposed works and the existing dwelling, will be the same (or similar) in character, scale and intensity, as the effects created by the existing dwelling. If the proposed work does not fall within the ambit of existing use rights, a resource consent would need to be sought and granted before work can be undertaken.

### **3.14 Vehicle parking and access (Visitor parking – rule 5.1.1.2, Site access – 5.1.1.3)**

#### Visitor Parking Standard

There is a divergence of views from submitters on the need for a visitor car parking requirement in the Plan (submissions 4, 11, 14, 22, 23, 29, 33, 44, 51, 55, 70, 84, FS3, FS10-14). Some submitters agreed it is a good idea, while others argued it is unnecessary and “too harsh”. The key issues raised by submitters are discussed below. FS23 opposes submission 23 (and some other submitters) on the basis that car parking should be considered in more detail in the future as the strategic approach to parking has not yet been resolved.

At the hearing, FS 24 outlined concerns about the visitor parking standard, noting that visitor parking requirements will differ from proposal to proposal based on existing street parking and the site location.

#### Discussion

Submitters in support agreed that the provision is necessary, especially for streets that are already at capacity with cars being parked at the kerbside and in light of the fact that infill will put a further strain on street parking capacity (subs. 11, 14, 22, 84). One concern for submitter 14, FS3 and FS10-14 is that the car parking might be placed in the front yards, adversely affecting streetscape character and causing a hazard to pedestrians. The submitters sought that it should only be required if it can be placed discreetly on the site. The Committee agreed that this was an issue of concern and noted that a new guideline has been included in the Residential Design Guide along these lines and the assessment criteria already outlined in the Plan, which include a new focus on protecting front yards from the dominance of vehicle parking. Submitters 33 and 84 agreed it is a good idea but questioned how it will be monitored and enforced. Conditions on a consent can require that the visitor parking spaces be identified as such with the use of signage, but the day to day monitoring of the parks would largely fall back on the residents (and body corporate) of the development. The Committee considered that if complaints were made to Council about space not being kept for visitors, Council officers would be required to respond and seek appropriate solutions.

Submitters 23, 51 and 70 seek changes to the actual number of car parks required. Submitter 23 seeks that the rule be relaxed somewhat so that it does not trigger for 2 unit multi-unit developments (that can often occur in the Inner Residential Area). Submitter 70 however seeks that the visitor parking should be rounded down, rather than up to ensure the minimum standards are maintained. Submitter 51 states that the provision is too harsh and suggest that one park in 6 is more appropriate.

Submitters 4, 29 and 55 oppose the provisions either in its entirety or in the case of submitter 29 and FS19, notes that the section 32 report does not justify its inclusion. The Committee referred to the section 32 report and found that it noted that while the general parking rules have not been considered as part of Plan Change 56 due to an ongoing parking policy review occurring within the Council, a visitor car parking requirement has been proposed. It was considered that regardless of any other review that may or may not change the ‘one car park per unit’ provision in the Plan, multi-unit developments do create particular visitor parking issues and that this Plan Change was an appropriate and convenient place to address the issue. It is noted that at the hearing, submitter 29 offered support for the recommendations within the Officers’ report on this provision and sought that it be adopted by the Committee.

On this issue, the Committee took the view that it is not a question as to whether the provision is needed at all, but rather the point at which it is triggered. The Committee did not deem the provision to be necessary for smaller scale multi-unit developments (ie. 1-6 units). However, the same cannot be said of larger developments where the need for visitor parking is usually essential. The Committee concurred with the view of Council Officers that the provision is

justified, noting that in many parts of the inner city suburbs and in other hotspots across the outer suburbs that the capacity for kerbside parking is severely restricted. As these parts of the city intensify with new multi-unit developments it will result in further congestion on the streets. The Committee also considered that for sites with difficult access if no visitor parking were provided then this could create serious pedestrian safety issues for people trying to access units within the development. Having agreed with the need for a provision for larger developments, the Committee revised the rule in line with what was proposed by submitter 23, but that it would not trigger developments involving six units or less.

Having established that a default visitor parking rule was needed, the Committee did hold some reservations with the generic effects that parking can create on a site, especially on the design of a development, streetscape character and the environment generally. With the introduction of the visitor parking requirement, the Committee acknowledged that these effects may occur more frequently, contributing to poorer outcomes in some circumstances. As a result, the Committee was keen to ensure there was some balance in how the provision is administered and considered that there should be some flexibility in the Plan to provide for situations where the benefits of providing the car parking would be outweighed by its adverse effects.

The Committee reviewed the current assessment criteria used to assess the failure to provide parking as required under rule 5.1.1.2, and considered that at least two more criteria were needed to provide this flexibility. These include acknowledgement of the situation where on-street car parking is lost in order to provide better access to the site, and where the additional parking is created by significantly increasing the amount of hard surfacing used on the site thereby affecting the visual appearance of the property and increasing the developments environmental effects. The criteria have been revised to recognise this decision along with the multi-unit development policy (4.2.3.3). The Committee felt that these additional assessment criteria would go some way to addressing the concerns expressed by the submitters who opposed the visitor parking provision.

NB: A complete set of the relevant Chapters is contained in Appendix 2 of this report.

#### 5.1.1.2 Vehicle Parking

On-site parking shall be provided as follows:

- residential activities: minimum 1 space per household unit.
- visitor parking for residential activities: minimum 1 dedicated space for every four household units for any proposal that results in 7 units or more, considered under Rules 5.3.4, 5.3.10, 5.4.6 or 5.4.8.

Where an assessment of the required parking standards results in a fractional space, any fraction less than or equal to 0.5 under one half shall be disregarded. Any fraction of one half and greater than 0.5 shall be counted as one visitor space.

#### 5.3.1: Activities not meeting permitted activity standards

....

- 5.3.1.6 Whether the creation of on-site (including visitor) parking (particularly if located in the front yard) will detract from the visual appearance of the property, and adversely affect the streetscape.
- 5.3.1.7 Whether suitable alternative provision for parking can be made.
- 5.3.1.8 Whether the required on-site (including visitor) parking can instead be easily accommodated on nearby streets without causing congestion or danger.

5.3.1.9 Whether the requirement to provide on-site (including visitor) parking is offset by the loss of kerbside parking in areas where kerbside parking is at a premium.

5.3.1.10 Whether the creation of on-site (including visitor) parking results in a significant increase in hard surfacing, adversely affecting the visual appearance of the site and creating adverse environmental effects.

**Policy 4.2.3.3** Revised text to be added into Policy 4.2.3.3 (specifically the fourth bullet point outlined in the explanatory text of that Policy):

...

- Increased site area required for vehicle manoeuvring and parking (including visitor carparking) can adversely affect the streetscape reduce green space and landscaping opportunities on site and visual appearance of the property due to the greater use of hard surfacing.

#### Site Access Standards - 5.1.1.3.2 and 5.1.1.3.4

Four submissions were received on the amendments to the site access standards. Submitter 44 supported both changes, whereas submitters 58, 62, 63 and FS17 noted that there is a conflict between 5.1.1.3.4 (which seeks to lower the width of Inner Residential Area vehicle access to a site to 3.7m instead of 6m) and the assessment criterion outlined in rule 5.3.1.6 which relates to whether or not on-site parking will detract from the visual appearance of the property. FS10-14 opposed the submissions of submitters 58, 62 and 63.

#### Discussion

The support by submitter 44 for the rule change to 5.1.1.3.2 (site access must be formalised by a legal instrument) is noted and, with no other submissions on this issue, it is recommended that the change be adopted.

In relation to the concerns raised by submitters 58, 62 and 63, it is noted that assessment criterion 5.3.1.6 relates to the failure to provide any on-site parking whereas the standard referred to by the submitters (5.1.1.3.4) relates to the width of the site access to be provided. Accordingly the correct assessment criterion in rule 5.3.1 that needs to be referred to (in the situation where 5.1.1.3.4 is not met) is the proposed new assessment criterion 5.3.1.11. If a wider site access to a site is required then the key matters to be considered by the Council will be whether a wider access will reduce the availability of parking on the street where demand is at a premium, and whether vehicle dominance in the front yard will detract from streetscape values. The Committee did not consider that any further change is necessary in response to these submissions.

#### Decision

- **Accept in part the support of submissions 11, 14, 22, 84**, in relation to the provision of a visitor parking standard.
- **Reject submission 23 submissions 44, 51 and 70** in relation to amendments to the visitor parking standard.
- **Reject submissions 4, 29, 55 and FS19** which seek that the visitor parking standard be withdrawn.
- **Accept the support of submission 44**, in relation to site access standards 5.1.1.3.2 and 5.1.1.3.4.
- **Reject submissions 58, 62, 63 and FS17** in respect of provision 5.1.1.3.4.

### **3.15 Information requirements (Chapter 3)**

Plan Change 56 sought to make some changes to the Information Requirements set out in Chapter 3 of the Plan. The Information Requirements outline the scope of information that must be provided as part of land use and/or subdivision consents.

Three changes were proposed:

- one in relation to the range of information provided for subdivision consents
- another change in relation to multi-unit housing, that 'common furniture items' would be drawn to scale on floor plans'
- to clarify the existing requirement to provide a landscape plan with all applications submitted.

#### *Subdivision requirements*

Four specific submissions were received (38, 44, 67 and 70) each seeking some change or another to the proposed changes.

- Submitter 38 suggested that it is superfluous in the Plan to explain that aerial photos must show existing trees, vegetation and other features (3.2.3.9). The Committee agreed that this is a valid point and so deleted this provision.
- Submitter 44 sought further wording be added to the requirement to show proposed earthworks and any retaining walls, such that the words 'intended construction be replaced with 'form or type of construction'. The Committee agreed these are helpful clarifications. It is noted however that as a subdivision consent application may precede any earthworks or building consent to construct retaining walls then it will not always be possible for an applicant to state exactly the proposed form or type of retaining wall. For this reason the Committee recommend that the word 'intended' needs to remain.
- Submitter 44 also sought clarification on the term 'amenity' in the margin note adjacent to 3.2.3.7. The word amenity refers to amenity values which is defined in the Act and a term commonly used throughout the Plan. It is not considered that further clarification is needed. The submitter also questioned the word 'frontages' in the third bullet point of 3.2.3.9. The point of seeking this information is to help establish what the typical lot characteristics are of adjoining properties as well the lots on the opposite side of the road to help establish whether the proposed development will be significantly out of step with that environment. The Committee were of the opinion that defining frontage in this context will only add further complexity to the Plan, besides which it is covered in more depth in the Subdivision Design Guide.
- Submitter 67 sought that a number of the requirements only apply to proposed allotments of less than 400m<sup>2</sup> as it should be relatively easy to establish that permitted activities can be contained within lots larger than that. The only concern with this approach is that allotments on difficult topography may limit where the building and vehicle accessways can be located. In such situations it will be necessary for the Council to have the flexibility to require information about building footprints, vehicle accessways and open space areas to be sure they can comply. Revised wording (see below) was suggested in the Officer's Report to help meet the intent of what the submitter sought, but also retained flexibility to the Council. At the hearing, submitter 67 conceded that slope was a relevant factor, but suggested that the provisions be revised to refer to slopes with an average gradient of greater than 17 degrees (or 1 in 3<sup>1/3</sup>). The submitter stated that a slope of 17 degrees would allow as a permitted activity an 8m wide, two storey dwelling with an earthworks cut of 2.5m high on one side to accommodate the sloping site. As discussed in Section 3.5 of this report, a slope threshold rule has been developed which determines a height limit of 4.5m on sites less than 15 degrees in slope. Sites that have a slope over 15 degrees would have a height limit of 6m. Refer to Rule 5.1.3.4.3 in Appendix 2 of this report. Accordingly, the Committee agreed these provisions should be amended in line with the submitters' request, but use of a slope ratio of 3:1

(approximately 15 degrees) instead of 17 degrees. It is not recommended by the Committee that the other deletions sought by the submitter are upheld.

- Submitter 70 queried the accuracy of aerial photographs and also the time and cost to produce such information. The Committee noted that aerial photographs are already a requirement of any subdivision consent; this provision merely acts to require such photos at a larger scale to see more of the surrounding site context and to see property boundary and contours. The Committee did not consider this an overly onerous task.

Submitter 76 spoke to the Hearing Committee briefly on this issue, requesting that applicants supply a photo montage of the subdivision proposal. Certainly the Committee agreed that in respect of small lot subdivision proposals, any detailed information given to the Council help it to understand how the future land uses will fit on the site would be helpful.

#### *Requirement to show 'common furniture items' on floor plans*

Four submissions were received on this requirement, five supporting it and seeking additional wording (Sub 44, FS10-14), the three others questioning its need in the context of a review on infill housing and seeking to improve the amenity effects on adjoining neighbours ( Sub 33, 51 and 83).

The provision was added after concerns were expressed at the size of some infill housing units (designed to fit the small allotment sizes) and whether or not these spaces were actually liveable for future occupants. That is, in some cases it was unclear whether a 'bedroom' could actually fit a bed with circulation space for the occupants.

Although the Committee recognised that the Plan at the moment does not look to control the size of units *per se* for their 'liveability' and that the Council is unlikely to refuse an application solely on this information component but it was a useful tool to help officers better assess very small units. The justification behind this position was not about the design of a unit (i.e. dictating dimensions), but rather about capacity and the use of innovative space saving features. The Committee noted, for instance, that a studio unit may well prove to be of a better design solution given the unit size rather than a substandard 1 bedroom unit. The studio unit may very well create variety to a development and appeal to a different market. On this basis the submissions of 44 and FS10-14 are accepted by the Committee, whilst 33, 51 and 83 are rejected.

#### *3.2.2.7.2 Landscaping requirements*

Provision 3.2.2.7.2 was amended to clarify that a landscaping plan was required with all land use consents which showed landscape design, site planting and fencing.

Submitters 38 and FS4 and FS19 considered that these landscaping requirements are excessive and should only be required where landscaping is considered to be necessary to mitigate the effects of a development. Submitter FS19 maintained its position at the hearing, noting that not all developments will require landscaping to mitigate the effects, and should it become clear to the Council that a landscaping plan is required, it could simply request this under section 92 of the RMA (request for further information).

The Committee considered that the change is necessary and justified. The Council has had considerable difficulties in the past from the failure of applicants to provide appropriate landscaping to mitigate the effects of a proposed development. Previously, it was common practice to require landscaping plans as a condition of the consent and this would be followed up by the Council's monitoring and compliance team. However, it has proven much more difficult to get effective landscaping in place once the consent is granted. How a development effect will be mitigated is a key piece of information for a consent planner making an assessment about the overall effects of the application and, in the end, making the decision to approve or decline consent.

Also, it is noted that the existing information requirements for resource consent already states that landscaping information must be provided as part of the site development plan. It is possible that the landscaping plan will merely show existing vegetation that is to be retained in order to mitigate any effects. The requirement does not necessarily mean that 'new landscaping' features will always need to be proposed. The Committee were very comfortable with this level of information requirement.

## Decision

- **Accept submission 38**, regarding the deletion of the first bullet point in 3.2.3.9.
- **Accept in part submission 44** regarding additional wording to clarify the information requirement for retaining walls
- **Accept in part submission 67** regarding the need for some information depending on the site of the proposed allotment
- **Reject submission 70**, regarding the comment on aerial photography
- **Reject submissions 33, 51 and 83 and accept submission 44 and FS10-14** regarding the requirement to provided floor plans showing common furniture items.
- **Reject submission 44** in terms of defining 'amenity' and 'frontages' where those words are used in these information requirements.
- **Reject submissions 38, FS4 and FS19** in respect of landscaping plans.

3.2.3.8 The applicant must provide a site development plan detailing the proposed subdivision development including:

- the position of all proposed allotment, and certificate of title, boundaries
- the areas of all new allotments (except in the case of a subdivision to be effected by the grant of a cross lease, company lease or by the deposit of a unit plan)
- indicative building sites and building footprints\*
- indicative vehicle accessways and indicative parking and turning manoeuvring areas if applicable\*
- proposed site contours
- indicative open space areas\*
- location and type of all proposed trees and other vegetation, including all existing vegetation to be retained
- major new landscaping elements (eg. fences, trees and hedges)
- any proposed earthworks, including retaining walls (indicating height, and intended form or type of construction)
- areas of on-site drainage
- the street reserve proposed to be set aside as new road, including all areas of public open space intended for recreational purposes, together with drawings sufficient to describe the plan and three dimensional qualities of typical and unique or special areas of the development
- formation widths and grades of proposed roads and rights-of-way, parking bays, bus stops, speed control devices and pedestrian walkways
- proposed easements and covenant areas
- the location of proposed public transport stops and pedestrian walkways, and walking distances to public transport stops

Site information such as contours, existing vegetation and the position of dwellings on neighbouring lots is essential to allow impact on amenity of proposed development to be determined, especially in respect of subdivision within established residential areas.

Indicative building footprints, parking and access provisions should demonstrate that the lots created within the subdivision provide a realistic means of addressing the District Plan standards for building.

- the location and areas of new reserves to be created, including any esplanade reserves to be set aside on a survey plan under section 231
- the location and areas of esplanade strips proposed to be created under section 232 to meet the requirements of the District Plan
- the location and areas of any land below mean high water springs of the sea, or of any part of the bed of a river or lake, which is required under section 237A are to be shown on a survey plan as land to be vested in the Crown
- information to show compliance with any other District Plan rule.

\* Note: this information may not be required for proposed allotments over 400m<sup>2</sup>, depending on the topographical constraints of the site (e.g. slopes greater than approximately 15 degrees).

3.2.3.9 1:200 – 1:500 **colour aerial photograph:**

The applicant must provide an annotated print from the most recent 1:500 aerial photograph:

- showing existing trees, vegetation and all other landscape features
- overlaid with existing contours and property boundaries
- extending at least 20 metres beyond all side and rear boundaries, and showing frontages of properties across the street.

**3.2.4.2 Specific requirements**

**3.2.4.2.1 For multi-unit housing:**

...

**3. Indicative typical dwelling floor plans at a scale of not less than 1:200 showing:**

- the indicative internal layout of typical and any non-typical dwellings, with common furniture items drawn to scale and door opening arcs illustrated.
- the location of the private open space, car-parking and external storage space for each dwelling.

### **3.16 General Changes requested**

Many of the submitters made a number of general statements in relation to the Plan Change. These have been analysed and considered by the Committee, with recommendations outlined in the following table on the following pages. Of the general changes requested/suggested, several were of particular interest to the Committee:

1. Submitter 22 (and FS5, SF10-14) identified an area where the Sunlight Access Plane (SAP) can allow for an 8m high corner of a dwelling within 1m of a neighbouring boundary. Similar problems with the application of the SAP rules were highlighted by submitter 84. The Committee acknowledged that the SAP rules do not work ideally in certain situations, but also acknowledged that there is no legal scope within this Plan Change to make amendments to the Sunlight Access Plane rule. In light of this, the Committee recommends that further work is undertaken to look specifically the SAP rules.
2. Similarly, submitter 84 (and FS10-14) also raised concern with the site coverage rules which do not account for differing areas within the city. The Committee noted this submission, but was mindful that any changes in this regard would be outside of the scope of the Plan Change as that these changes have not been proposed and as a result potential submitters have not had sufficient opportunity to make comment on the proposed suggestions. Site coverage was deliberately not addressed by this Plan Change as it is something that will almost certainly be looked at in a future plan change that responds to a 'Targeted Approach to Infill Housing'
3. Submitter 35 felt that new buildings should not be allowed to be higher through ground excavation. The Committee was particularly concerned at this issue and felt that there was some capacity to develop an 'overall building height rule' that would take into account ground excavation. The Committee considered that without a rule like this it would continue to be possible for people to built taller structures than was expected under the Plan. These may or may not be out of character with surrounding homes. The Committee specifically requested that Council Offices carry out further work on this issue as part of a future plan change.
4. Submitter 11 (and FS10-14) felt that an independent ombudsman should be appointed to oversee Council decisions on residential infill. The Committee did not support this view point and noted that there are already statutory systems in place to deal with disputes over development; namely the appeal process and the judicial review processes. Decisions are able to be reviewed by the Environment Court, by processes set out in the Resource Management Act. Therefore the approach would be *ultra vires* by the Committee as it would take a change of the RMA to facilitate an ombudsman role.
5. Submitter 21 felt that trees can, among other things, block out views and sun. The Committee noted that trees (like buildings) can have positive and negative amenity effects. The Plan does not contain rules regarding trees as they are more difficult to control given their ever changing size and shape. The Committee felt that such a rule would not be desirable and would also be impractical to administer, most likely involving considerable enforcement resources from the Council.
6. In their submission, submitter 34 (and FS10-14) mooted the idea of a 'design police team', where proposed buildings go before a group of architects for sign-off or to make

recommendations. The Committee was particularly interested in this idea. This concept has been discussed in further detail in Section 3.12 of this report, where the Committee conceded that while the concept has merit, there were several disadvantages. The Committee noted that Council's own internal design review processes had recently been amended to allow for independent design reviews. It considered that in the circumstances this approach should be given the opportunity to work.

7. Many submitters picked up on the idea of defining areas where infill would be better suited as opposed to some areas where it would be completely out of character. Submitters 40, 41 and 44 in particular felt that heritage areas and identified view shaft areas should be examples where infill development should be discouraged. The Committee were attracted to this approach, but noted that these issues are being considered as part of the Council's concurrent review on a Targeted Approach to Infill Housing and it would be premature of the Committee to define such areas through this Plan Change.
8. Submitter 49 (and FS10-14) submitted that the Plan Change should include sunshine hours as well as sunlight access to housing units. The submitter also spoke to the Hearings Committee about this issue and noted her concern about cold and damp housing in Wellington and the requirement for people to use energy and money on heating their homes. This is especially an issue when sun to a dwelling is lost as a result of development adjacent to the dwelling. She considered that people may talk about the loss of views, but this generally also equates to loss of sun to their property. The submitter's view was that the key issue was the height of the spine of the roof. Whilst acknowledging the points of the submitter, the Committee also believes that coupled with compliance with the sunlight access planes, this would be an extremely onerous requirement and extremely difficult to comply with, given Wellington's topography.
9. Submitter 53 felt that sheltered housing should be given more promotion in the Plan Change. The Committee recognised that there is a social responsibility for everyone to provide sheltered housing in the community, but also were of the firm position that the Plan should not seek to favour certain residential uses over others. Aside from this, the Committee considered that there was enough scope in the District Plan to allow for these developments can occur anyway as part of a multi-unit development regime. The Committee also noted that the Targeted Approach to Infill Housing could possibly assist with this particular development scenario in the future.
10. In their submission, submitter 75 (and FS10-14) focused on aspects of the Plan Change that they considered needed greater emphasis, including the environmental impacts of infill (e.g. city green corridors, existing watersheds, amenity value of greenscape, quality and durability of buildings, the living quality of people). The submitter felt that the rules should include reference to potential impacts from poorly sited infill on the city greenscape with particular regard to the adverse effects from building in shaded and persistently damp sites. The Committee noted that given Wellington's predominantly hilly topography, there will always be a large proportion of existing and new dwellings that are sited in shaded and damp areas. The Committee also noted that the Design Guides do address the need for dwellings to be sited to receive a certain amount of direct sun each day.

This aside, the Committee did acknowledge that sustainable building practices should be encouraged and that good design responses and use of appropriate building materials can address these sorts of problems whilst also responding to the larger environmental impact of building in general. The Committee recognise that there are no rules included in the District Plan requiring minimum building standards for energy efficiency or building sustainability and they felt this submission highlighted the need for some form of provisions in this regard. The Committee recommended the inclusion of a new policy that recognised environmentally sensitive design features of a building are identified as

positive attributes that can be taken into account when Council is assessing the environmental effects of new building works. Refer to new objective and policy below:

## OBJECTIVE

**4.2.1 To promote the efficient use and development of natural and physical resources in Residential Areas.**

## POLICIES

To achieve this objective, Council will:

**4.2.1.1 Encourage new urban development to locate within the established urban area.**

## METHODS

- Rules
- Operational activities (management of infrastructure)

*The edge of the urban area of the city is defined by the interface between the Outer Residential Area and nearby Rural and Open Space Areas. Council generally intends to contain new development within the existing urban area, as it considers that continuously expanding the city's edges will not promote sustainable management. Expansion beyond the existing urban form will only be considered where it can be demonstrated that the adverse effects, including cumulative effects, of such expansion can be avoided, remedied or mitigated. Adopting rules to encourage more mixed-use activity and provide for more intensive ~~good quality~~ building development (that maintains or enhances neighbourhood and streetscape residential character) will help keep the city compact.*

*The environmental results will be that the city's development occurs in a manner which will reduce transport distances, make public transport systems more viable, and make better use of existing infrastructure.*

**4.2.1.2 Provide for a greater mixture of residential and non-residential activities within Residential Areas, provided character and amenity standards are maintained.**

## METHOD

- Rules

*In keeping with the aim of promoting a sustainable city, residents should have the opportunity to work from home, or close to home, and should have convenient access to necessary services and facilities.*

*For this reason, working from home is provided for in Residential Areas and other uses compatible with residential environments may also be established.*

*The environmental result will be a greater mix of uses within Residential Areas which will help to reduce travel and save energy.*

**4.2.1.3 Encourage subdivision design and housing development that optimises resource and energy use and accessibility.**

**4.2.1.4 To promote a sustainable built environment in the Residential Area, involving the efficient end use of energy and other natural and physical**

**resources and the use of renewable energy, especially in the design and use of new buildings and structures.**

## METHODS

- Rules
- Design Guides (**Residential** and Subdivision)
- National standard access design criteria
- **Advocacy-Other Mechanisms (Advocacy of Environmentally Sustainable Design principles, Education)**

*The form of a subdivision or housing development can promote efficiencies, for example by making the most effective use of available land and by such measures as orienting developments to the sun and improving public transport and pedestrian access. Equally, it can promote greater equity of opportunity and choice for older people and all others with mobility restrictions by employing, wherever practicable, the accessible housing design criteria in NZ Standard 4121 (or its successor). Flexible siting provisions and design guides for subdivision and multi-unit residential development have thus been included in the Plan.*

*The environmental result will be improved subdivisions and housing developments.*

*New residential housing developments are users of natural and physical resources that can have adverse effects on the environment (including cumulative effects) for example, through increased storm water run off or electricity consumption. Opportunities to incorporate sustainable building design features and to use sustainable, low impact building materials and construction methods will be encouraged to minimise potential adverse environmental effects. A development that proposes an environmentally sustainable designed building will be viewed as having a positive effect of the proposal on the environment.*

*Because sustainable building design involves the site-specific context and function of the dwelling or housing development, the options for taking up different design features and methods will vary from case to case. Ongoing developments in the technology and information about sustainable housing design means that options for this type of approach are likely to evolve over the life of the Plan. Accordingly, the Council will look to other research and industry organisations for guidance on the latest technology, methods and tools to achieve environmentally sustainable buildings.*

*Many matters relating to sustainable building design are addressed by the minimum standards outlined in the Building Act 2004 (specifically the Building Code). However, where it is practicable, sustainable building design and associated methods that go beyond the minimum standards of the Building Code will be promoted.*

*The environmental result will be improved subdivisions and greater uptake of environmentally sustainable design of housing developments within the Residential Area.*

### 3.16 General Changes requested

General Comments			
Sub Number	General Comments	Decision Requested	Committee Response
23	The submitter noted that there are a number of issues that have come to light since the Plan was notified that require further clarification. These are mostly minor matters, and as such, may not be picked up by other submitters on the Plan Change.	Residential Design Guide reference: a consequential change to remove the reference to the Multi-Unit Design Guide in rule 7.3.5 (Suburban Centre multi-unit development) needs to be updated to refer to the Residential Design Guide.	Agree that this is a consequential change and should be amended as requested. <b>ACCEPT submission 23.</b>
1 and FS10-FS14	Infill housing only permitted if it is at least 2m from all boundaries...	Note concerns about building infill housing closer than 2m to boundaries.  FS10-FS14 sought a 3m setback from all boundaries.	The detailed yard requirements were removed from the Plan in the 1994 version, primarily to provide more flexibility in the location of dwellings on a site. The requirements that do remain include a front yard rule, a requirement to retain 1m access to the rear of the site and, if one property is sited on the boundary, then the adjoining property must set back one metre from that boundary. It was considered that the sunlight access plane (SAP) rules, which encourage setback from boundaries to maximize sun, would help to generally ensure suitable setbacks were created. Also it is noted that Building Act requirements do make it costly to build on or close to a boundary. See the table in Appendix 3 which discusses an idea about requiring new dwellings to comply with all SAPs on future internal boundary lines as well as existing external boundary lines. That concept would help to set back buildings within a site. <b>Reject submission 1, FS10-FS14.</b>
2, FS10-14	The submitter supported the Plan Change ... The submitter cites concerns about poor quality development in their neighbourhood.	Provide an opportunity for an appeal process on any infill consents granted before any work actually commences. Similar request is made by FS10-14.	Appeal opportunities are prescribed by the RMA, and as such the Committee has not ability to change those processes. There are two appeal processes particularly relevant here. One relates to an appeal against a Council decision to grant a resource consent, but only submitters or applicants are able to pursue this option. Secondly, a 'process' appeal may be lodged by any person; referred to as a judicial review. It assumes that someone is aware that a consent has been granted. The Council is steadily improving its communications systems in this regard, including

			information on its website of resource consents lodged and approved, and as noted previously is trialing a new system of letting neighbours know about proposed developments in their area. <b>Note submission 2, FS10-14.</b>
9	The submitter made a number of comments in relation to the proposed plan change: 1. Retaining walls already in place at time of subdivision consent need thorough inspection to be sure they are capable of supporting future development. 2. Aerial photographs need to be kept up-to-date to ensure the Council has current information about a site (eg. existing vegetation).	That the Council notes the comments and suggestions of the submitter in making its decision.	Any retaining wall that is relied upon for a new building or structure will be assessed at the building consent stage. It is noted that the Council has an on-going programme to keep aerial photographs up-to-date. Parts of the city are done annually; others are done every 3-5 years. <b>Note submission 9.</b>
11, FS10-14	The submitter made a number of comments regarding infill housing and Council processes, as outlined in the decision requested.	Developers must not inconvenience neighbours during construction.	Agree that this should not happen and construction effects are typically addressed by the Council's compliance and monitoring officers. Enforcement action is often taken to redress such effects. <b>Note submission 11, FS10-14.</b>
18, FS10-14	The submitter fully supported limiting the height of the second unit to single storey, introducing open space requirements for each dwelling, tightening subdivision controls and introducing requirements for visitor car parking.	Views and sunlight enjoyed by neighbours should be preserved and adequate separation between buildings and also from boundary fences to avoid shading and dampness.	Believe that the provisions set out in the Plan change will address most of these concerns, but it is noted that the District Plan does not seek to protect private views per se, but does seek to enhance amenity by reducing the visual dominance of buildings and increasing spaciousness of sites. <b>Note submission 18, FS10-14.</b>
19	The submitter supported improving the quality of urban design.	But sought that the Council Urban Designers also provide input into the design of one or two unit developments in addition to the current three or more units on a site.	The Council's urban designers are involved in any application that requires assessment against the Residential Design Guide. So, with the rule changes proposed in PC56, this may result in one or two unit developments being assessed as well. <b>Accept submission 19.</b>
20, FS10-14	The submitter welcomed the changes to the Council policy on infill, particularly the changes that strengthen the case for infill housing to be tempered. The submitter's major concern is that infill has been permitted that is too close to other houses, it has allowed housing density and building quality that will lead to substandard living conditions in the future. The density also affects roading infrastructure and parking space that was not designed for more intensive use.	That the Council adopt the new changes that will allow more room for consideration of the above factors when planning permission is given for infill housing.	It is considered that the changes outlined in PC 56 will largely address the submitters concerns. <b>Accept Submission 20 and FS10-14.</b>

25	The submitter supported the generalised intentions of the Plan Change. The submitter cited the example of a development in Agra Crescent, Khandallah as being totally out of character with nearby residential properties. The current standards need to be significantly tightened to preclude such massive and out of character future developments.	That approval should not be given for infill housing developments that exceed two storeys or for any more than three detached townhouses. An exemption to these rules could be considered based on it being suitable for the locality, be suitable for the local character and there should be a requirement for all adjoining property owners to give their written approval.	It is the intent of Plan Change 56 to address such issues, but it is noted that decisions need to be based on the 'actual effects' of a development in a given location. A two storey development may be completely acceptable in one location, but not another. <b>Reject submission 25.</b>
26, FS10-14	The submitter does not oppose infill housing per se, but states that we need to keep in mind that Wellington's capacity to allow infill housing is finite unless we chose to reduce our quality of life.	That criteria be developed that assess individual applications as well as reserving streets and suburbs from such development that alters its character and reduces quality of life and environment for occupants. Suggestions for criteria include. 1. Sufficient space for each infill unit, which would also allow space for trees and other screening to create privacy. 2. The practice of walls being thrown up directly outside windows must not be allowed. Regards must be given to quality of life, light and views available to all. 3. Parking difficulties as more residents means more cars. 4. Building a 'granny flat' should be encouraged. 5. Areas and buildings with historical values and architecture need to be protected from such changes. 6. Views are not ours by right, "this needs to be amended to protect everyone and our living environment".	It is considered that the changes outlined in PC 56 will largely address the submitter's concerns, specifically the open space requirement, visitor parking requirement, lowered height for second unit on a site. Existing character rules in the Plan address item 5. As noted previously private views are not protected by the Plan (and never have been), but general amenity can be enhanced by controlling the visual dominance and density of buildings and the openness of a site. <b>Note Submission 20, FS10-14.</b>
28	That new houses should be well insulated and not pose a safety risk to existing houses.	That the Council notes the comments/concerns and suggestions of the submitter in making its decision.	The Building Act controls this. <b>Note Submission 28.</b>
28 and FS5 and FS 10-14	That people should have a choice of housing and lifestyle, however they believe that choice may be limited through infill housing. More data analysis of future society trends needs to be carried out.	That the Council notes the comments/concerns and suggestions of the submitter in making its decision.	This work is currently being carried out by the Council's Strategy Team as part of the policy work on a Targeted Approach to Infill Housing. <b>Note submission 28 and FS5 and FS 10-14.</b>
44		That greater attention be given to ensuring that this plan change be written in plan language eliminating unfamiliar words and phrases that could obscure the intentions of the rule.	Some of the changes recommended by the Submitter throughout the document have been accepted, but others have not for the reasons noted in the main discussion. <b>Note submission 44.</b>
44	In rule 5.3.1, define what streetscape means.	That the matters covered by the submission are considered by the Committee.	There is no one definition for streetscape, given that an assessment will vary from location to location. However an assessment of streetscape will consider a number of elements, all of which are clearly outlined in the Residential Design Guide (G2.1) and more generally in the streetscape policies. The word is used frequently throughout the plan and it is not considered appropriate to define it in this specific instance. <b>Reject</b>

			submission 44.
45, FS10-14	The submitter raised concerns about the quality of infill housing and sought that only housing that blends with the area be allowed.	The submitter requests that 1. the Council not allow developers to degrade areas of Wellington with bulky housing unsuitable for the area and blocking neighbours views and sun. 2. that developers not use materials that rust and corrode only 6 months after completion. 3. encourage more environmentally designed or converted buildings and/or additions to buildings in the Wellington area.	Believe that PC 56 will help to address these concerns. Note that the Plan cannot control the use of certain building materials as such matters are controlled by the Building Act/Code. Work is ongoing in Council to encourage sustainable building practices, including a set of Sustainable Building Guidelines, which are to be made public later this year. <b>Note submission 45, FS10-14.</b>
51	The submitter was generally in favour of the changes though, as a result, suspects the site coverage will be reduced to 28% and that three levels will become the norm. The submitters also note their belief that the plan change has nothing to do with the quality of housing, rather it is more about amenity.	A third residential zone be introduced along main arterial routes suitable for multi-unit development.	This issue is being fully considered as part of the Council's concurrent review on a Targeted Approach to Infill Housing. As this approach has not yet been endorsed it would be inappropriate to include within PC56. <b>Reject submission 51.</b>
51	The submitter was generally in favour of the changes though, as a result, suspects the site coverage will be reduced to 28% and that three levels will become the norm. The submitters also note their belief that the plan change has nothing to do with the quality of housing, rather it is more about amenity.	How will the Council administer the greatly increased workload that PC56 will generate?	No specific resourcing implications have been identified as part of this Plan Change, apart from the initial additional resources put in to answering queries about the Plan Change when it was first notified.
54, FS10-14	The submitter supported the Plan Change but sought one amendment.	That a supervising drain layer be appointed to keep an eye on developments and also that access ways be fully investigated.	This is carried out by the Council's Building Consents Team. <b>Reject submission 54, FS10-14.</b>
61, FS10-14	The submitter raised concerns to do with privacy, building height, permeable surfaces and provisions for vehicles on the development.	That option 3 (outlined in the section 32 report) be adopted as it controls the issues listed above.	This is not supported for the reasons outlined in that section 32 report and it is evident from submissions in opposition to this plan change that such an approach would be even more inappropriate. <b>Reject submission 61, FS10-14.</b>
70, FS10-14	The submitter presented a neutral submission and offers comments, suggested amendments, and seeks clarification on a wide variety of matters.	Better assessment of cumulative effects onsite is appropriate.	The Committee agreed. See policy explanation 4.2.2.1. <b>Accept submission 70, FS10-14.</b>
73	The submitter supported the intent of the Plan Change but does identify certain issues that need to be addressed.	Site amalgamation as a means of circumventing the intent of the changes needs to be addressed.	It is agreed that site amalgamation can have as much effect on streetscape as the splitting of one section into two. Note however that the subdivision process does actually include the two scenarios and so the revised subdivision rules should help

			address this issue. <b>Reject submission 73.</b>
73	The submitter supported the intent of the Plan Change but does identify certain issues that need to be addressed.	Compact urban form is not sufficient to deliver on sustainability objectives and the overall approach needs to be more holistic.	The Committee agreed and noted the Council's concurrent policy work on a targeted approach to infill housing. <b>Note submission 73.</b>
75	The submitter focused on aspects of the plan change that need greater emphasis, including the environmental impacts of infill (eg. city green corridors, existing watersheds, amenity value of greenscape, quality and durability of buildings, the living quality of people).	That the Council consider strengthening the provisions that relate to assessment of cumulative effects for consents.	Agree. See policy explanation 4.2.2.1. <b>Accept submission 75.</b>
80	The submitter generally supported the plan change but considered the new provisions do not sufficiently explain the reasons for limiting impermeable site coverage. The submission outlines a variety of environmental effects that can result from increased hard surfacing of sites.	That the Council produce a booklet, which gives an understanding of the relationships between underlying geotechnics, vegetation and earthworks involved in infill housing to land stability and catchment run-off issues.	Greater Wellington Regional Council, along with the local authorities in the Region have produced an information booklet (Sediment Control on small sites) which appears to cover most of these issues. It is noted also that the Council is working on revising its earthworks controls in the District Plan. <b>Reject submission 80.</b>
81, FS10-14	The submitter generally supports the Plan change, but notes some additional comments.	The submitter seeks 1. More creative use of existing buildings. 2. Pedestrian friendly access and driveways. 3. Mixed uses. eg commercial and residential . 4. Historic character empathy.  NB: that FS10-14 supports this submission except for the aspect about mixed uses.	Rule 5.1.3A allows for more creative uses of existing buildings without requiring resource consent. The Residential and Subdivision Design Guide include guidance on driveways and pedestrian access. Mixed uses tends to occur mostly as of right in the Central Area and Suburban Centres. Mixed use can occur in Residential Areas subject to seeking a resource consent. Many of the city's inner city suburbs are now protected by character controls, and the use of Heritage Areas to protect distinct heritage qualities is becoming more widely adopted. <b>Note submission 81 and 82, FS10-14.</b>
82	The submitter generally supported the proposed changes but notes some additional comments.	The submitter seeks: 1. More provision for mixed use 2. Better provisions for character areas 3. And better facilities for subdivisions.	
84	The submission was the result of the combined effort of five architectural designers. All support the intent of the proposal but sought some clarification and amendments to numerous provisions.	Sought that a committee of urban designers, town planners and designers be formed to come up with a better outcome than the proposed changes.	The plan change was developed with input from planners and designers (mostly internal, but some external also). The submissions process is the appropriate tool to attract comments from other parties. <b>Reject submission 84.</b>
FS7	Comprehensive development should include all the immediately adjoining properties and a requirement that this be recorded in the application.		This requirement is outlined already in the Information Requirements of the Plan (specifically section 3.2.4.2.1) for multi-unit developments. Where this information is not provided with

			applications, and is deemed to be particularly necessary, then the information is usually requested under the s92 RMA process for requesting further information. <b>Reject submission FS7.</b>
FS7	The existing regulatory environment of measurement and control and tenure and site boundaries presents difficulty in promoting change (ie. zero yards, sunlight ingress controls and comprehensive development versus land subdivision.	Zero yard requirements and site coverage as guidelines should replace yard and setback rules and give rise to the objective that internalised open space provides a better solution than external open space subject to the neighbours resolution	The Plan now only contains minimal yard requirements compared with previous planning documents, precisely to provide more flexibility to land owners in developing their sites. However it is considered that the bulk and location controls that do remain (SAPs, height, site coverage etc) provide the underlying foundations for ensuring a reasonable amount of amenity is maintained for neighbours, which is the primary goal of the rules. <b>Reject submission FS7.</b>
FS1	Submission was largely in response to Council's Discussion Document on a Targeted Approach to Infill Housing, but notes some other concerns more related to the provisions outlined in Plan Change 56. <ul style="list-style-type: none"> <li>• Consideration of specific areas for infill housing should include the scale of current development</li> </ul>	Set up a group with the department whose job it is to work with a 'why not' mentality for proposals that lie within the general ambit of the requirements, but may not be completely compliant.	The point of the consents process is to allow the Council to consider applications that do not adhere strictly to the rule requirements. Some further changes to the provisions as recommended by the Committee do allow greater flexibility for the Council to waive certain requirements where the overall design concept is good. <b>Note FS1.</b>
FS1	Submission largely in response to Council's Discussion Document on a Targeted Approach to Infill Housing, but notes some other concerns more related to the provisions outlined in Plan Change 56. <ul style="list-style-type: none"> <li>• Consideration of specific areas for infill housing should include the scale of current development</li> </ul>	Consideration of specific areas for infill housing should include the scale of current development and whether area within easy walking distance of CBD	This issue is being fully considered as part of the Council's concurrent review on a Targeted Approach to Infill Housing. <b>Note FS1.</b>
FS1	Submission largely in response to Council's Discussion Document on a Targeted Approach to Infill Housing, but notes some other concerns more related to the provisions outlined in Plan Change 56. <ul style="list-style-type: none"> <li>• The requirement for off-street parking in areas very close to town (ie. 15 minutes) doesn't take sufficient account of the nature of flatting population or other ecological considerations. You demand car parks in areas relatively close to city centre when major cities through-out the world are trying to limit car use.</li> </ul>	Counter productive to insist on housing cars on site when the opportunity to house the population might be foregone.	The car requirement per unit has not been changed in PC56, but it is acknowledged that a visitor parking requirement was introduced. Whether this applies or not is determined by how many units on site are proposed. The Committee was sympathetic to this submission and in favour of an approach that could be more flexible when considering consent applications that did not provide the required amount of car parking. The assessment criteria in Rule 5.3.1 has been amended to introduce great flexibility in this regard. A more targeted approach to infill housing may yet see a change to the way the carparking requirement is applied. <b>Note FS1.</b>

FS2	Supported the submitter's comments and the decision requested because considers that buyers pay a premium to purchase stand alone houses to maintain space, privacy, outlook, landscape, sun and daylight. The over development of neighbouring properties severely detracts from the enjoyment of those properties. Wellington's infrastructure best protected by encouraging infill/apartments closer to the city centre. We don't want ad hoc poor quality over developments fragmenting areas leading to degradation of values.	Council produces a designated map where infill is allowed and to what extent and where it is not allowed as all.	This issue is being fully considered as part of the Council's concurrent review on a Targeted Approach to Infill Housing. As this approach has not yet been endorsed it would be inappropriate to include within PC56. <b>Note FS2.</b>
FS2	Supported the submitter's comments and the decision requested because considers that buyers pay a premium to purchase stand alone houses to maintain space, privacy, outlook, landscape, sun and daylight. The over development of neighbouring properties severely detracts from the enjoyment of those properties. Wellington's infrastructure best protected by encouraging infill/apartments closer to the city centre. We don't want ad hoc poor quality over developments fragmenting areas leading to degradation of values.	Council needs to stop completely the process of allowing developers initial greed to build large numbers of poor quality housing purely for the developers profit first.	It is certainly the intent of PC56 to ensure that there is a balance of dwellings on any one site relative to the open space areas, rather than allowing land owners to 'cram' as many units on a site as feasible. <b>Note FS2.</b>
FS4		Opposed 5.3.1b	No such provision in the Plan.
FS10-14	That Plan Change 56 is approved without any reduction to limitations on infill housing, and would support even stricter rules that are presently being discussed.	Rule Change 56 <u>must be for all suburbs</u> of Wellington – areas such as Johnsonville and Newlands should <u>not</u> be exempt from its protection – the rights of these residents to be protected from excessive infill housing etc are just the same as residents in other suburbs of Wellington.	Plan Change 56 is designed to cover all suburbs, with stricter controls for Outer Residential zoned suburbs because of their lower density character than for Inner Residential Areas (which are in many cases largely protected for character reasons). However, as noted elsewhere, should the Council adopt suggestions of a Targeted Approach to infill housing, then a new set of planning provisions will need to be developed to implement those goals. Any such changes will also have to go through a Plan Change process to incorporate them into the Plan.
FS10-14	That Plan Change 56 is approved without any reduction to limitations on infill housing, and would support even stricter rules that are presently being discussed.	Ensure that each dwelling (existing house and new additional house) has enough off street parking to side or rear of property for at least 3 cars.	Apart from visitor carparking, the issue of an appropriate amount of parking for each dwelling was not covered in this Plan Change as it is considered that one space per dwelling is enough. It is noted that Council's own traffic engineers would prefer it were at least 2 parks per unit, but that there are many others that

			consider the Council should not require any parking (in order to achieve a more sustainable city reliant on public transport). One carpark per unit is a reasonable balance. <b>Note FS10-14</b>
FS10-14	That Plan Change 56 is approved without any reduction to limitations on infill housing, and would support even stricter rules that are presently being discussed.	Ensure that developers have to pay for the extra costs resulting from their developments i.e. storm water, sewerage, roading, increased consultation and monitoring of ALL aspects of development from initial application right through to final sign off for road been fixed, plants established & growing (not just planted and left to die) etc;	This is certainly what is required. Every new household unit developed in the city attracts a 'development contribution' that the developer must pay to council to pay for infrastructure. All other costs should be met by the developer. <b>Note FS10-14</b>
FS10-14	That Plan Change 56 is approved without any reduction to limitations on infill housing, and would support even stricter rules that are presently being discussed.	The Council should consider all submissions made on this issue. The Council should also take into account all the feedback that was received in regards to the 'discussion document' for infill housing as many residents thought their submission was made to support Rule Change 56.	The Committee was aware of the concurrent feedback process on the targeted approach discussion document and noted with particular interest the high public level of 'support in principle' for the proposed approach.
FS16	Concerned that promoting high density around train stations is social engineering and that the market can easily decide whether people value vicinity to public transport. Also concerned about why some suburbs are treated differently from others (ie the character inner residential suburbs). Considers not all need to be protected from high rise development and if high rise density is to be promoted then more efficient for these to go near the centre than cramped low rise developments on the periphery.	<ul style="list-style-type: none"> <li>• Consideration of more high-rise development in the inner city suburbs</li> <li>• Remove 'closeness to public transport' as a criterion for developments, let the market decide.</li> </ul>	These issues are being fully considered as part of the Council's concurrent review on a Targeted Approach to Infill Housing. As this approach has not yet been endorsed it would be inappropriate to include within PC56. <b>Note FS16</b>

### **3.17 RMA considerations**

The Committee noted that the proposed District Plan Change 56 could only be endorsed (taking in account Council's responsibilities under s32 of the RMA) if they were satisfied that provisions proposed would better meet the requirements of the RMA and the objectives of the District Plan. The proposed changes of particular importance to the Committee were the amended permitted building height provision for second household units, the open space requirement, the revised subdivision regime, and the notification provisions.

In making its decision, the Committee was mindful of its responsibilities set out under the Resource Management Act, 1991 (RMA), in particular the requirement to promote the sustainable management of natural and physical resource (section 5). The Committee acknowledged the additional obligations under sections 7 and 8 of the Act, in particular:

- Section 7
  - (b) The efficient use and development of natural and physical resources:
  - (ba) The efficiency of the end use of energy:
  - (c) The maintenance and enhancement of amenity values:
  - (f) The maintenance and enhancement of the quality of the environment:
  - (g) Any finite characteristics of natural and physical resources:

The Committee noted that the review of the Plan's approach to managing infill housing had been guided by those provisions of the RMA, in tandem with the Council's strategic policy framework, and research carried out by Council officers.

Mindful of its obligations under s32, the Committee noted that the Plan Change had not amended any of the objectives of the Plan. The Committee did make numerous changes to the policies and methods (rules and standards) however, in order to ensure that they were the most appropriate and effective way to achieve the objectives. The changes, made in response to submissions, generally sought to improve clarity of the intended approach (in respect of the objectives and policies) and allow for flexibility in the application of the rules and standards – important in light of Wellington's hilly and flat residential suburbs. In this respect, the provisions (as a result of this decision) represent a refinement, rather than a weakening, of the approach originally notified in Plan Change 56.

The Hearing Committee was satisfied that the provisions of Plan Change 56 struck a better balance between facilitating new development within the Residential Areas and so maintained a commitment to the Plan's containment policy, whilst ensuring that the development maintains and enhances amenity values associated with the residential environment.

#### Decision:

- **Adopt** District Plan Change 56 on the grounds that it is consistent with Part II of the RMA.

## **4.0 Conclusion**

The Committee gave careful consideration to all the issues raised by the submitters, including those issues elaborated on in presentations by the individuals who appeared before the Committee.

A number of submitters opposed the plan change in its entirety on the grounds that the provisions were too restrictive and unnecessary. Many submitters supported the plan change in its entirety as they considered the plan change would enable the adverse effects of infill to be better managed and would provide more opportunities to be involved in the planning process. Most of the remaining submitters supported the intent behind the plan change, but considered significant amendments were needed to some of the rules to make them more realistic for Wellington's specific characteristics, most notably its topography.

Having considered the requirements of the RMA and the issues raised in submissions, the Hearing Committee considered that the plan change was generally appropriate and would allow the Council to better manage the effects of new infill development in the Residential Areas. However, the Committee did recommend a number of amendments to the provisions, precisely to address the concerns by some submitters that the provisions should be more flexible to allow people to respond to particular site circumstances. The most significant of the changes to the notified provisions made by the Committee include:

- Revision of rule 5.1.3.4.3 (height of a second household unit) so that it is applicable to flat and sloping sites.
- A definition of Infill Household Unit is introduced.
- Some increased flexibility in the Outer Residential open space requirement of 50m<sup>2</sup>, so that no more than 15m<sup>2</sup> of the open space area may be used for vehicle access ways.
- A Controlled Activity rule for a narrower range of subdivisions has been re-introduced. One such subdivision scenario outlined as a Controlled Activity is the situation where a freehold lot greater than 400m<sup>2</sup> is proposed. Any lot less than 400m<sup>2</sup> will be processed as a Discretionary Restricted Activity.
- A return to the pre-plan change 56 definition of 'access strip', albeit that improvements to clarify the definition (but not change its effect) have been retained.
- Amendment of the visitor parking rule so that it triggers for developments containing more than 6 units
- Improvements to the Residential Design Guide and include references to apartment style developments

Alick Shaw

**Chair, Hearing Committee**

**District Plan Change 56 – Managing Infill Housing Development**