

**Under** the Resource Management Act 1991

**In the matter of** hearings of submissions and further  
submissions on the Proposed Wellington  
City District Plan

**By** **The Trustees of the Eldin Family Trust**  
Submitter

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**LEGAL SUBMISSIONS FOR HEARING STREAM FOUR**  
**20 JUNE 2023**

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## **LEGAL SUBMISSIONS FOR HEARING STREAM FOUR**

1. The Trustees of the Eldin Family Trust own a residential dwelling at 9 Selwyn Terrace, Thorndon.
2. The notified version of the proposed district plan (PDP) has included Selwyn Terrace in the City Centre Zone (CCZ). This is a shift from the operative district plan, which has Selwyn Terrace as Inner Residential and subject to a demolition control for pre-1930 buildings.
3. The Trustees have lodged a submission opposing the proposed zoning for Selwyn Terrace. The relief sought by the Trustees is that:
  - (a) Selwyn Terrace is not included in the CCZ;
  - (b) Selwyn Terrace is instead included in the Medium Density Residential Zone (MRZ);
  - (c) Selwyn Terrace is included in a character precinct;
  - (d) As an alternative to the above, that the proposed minimum and maximum heights for Selwyn Terrace are replaced with a maximum height control of three storeys (11 metres); and
  - (e) Viewshafts VS1 and VS4 (which capture The Beehive, Parliament House and the Parliamentary Library) are retained, with minor wording amendments, and a further viewshaft is added from the intersection of Bunny Street and Waterloo Quay.
4. These legal submissions explain the Trustees' position further and in the context of the issues in Hearing Stream 4.

### **Relationship with issues in other Hearing Streams**

5. These submissions focus on the relief sought that relates to Hearing Stream 4. However, there is unavoidable overlap with other Hearing Streams.
6. The Trustees submit that Selwyn Terrace should be changed from CCZ (as notified) to MRZ. This submission logically straddles Hearing Stream 2 (Residential Zones) and Hearing Stream 4 (Centre Zones). The officer's report

deals with the issue in this Hearing Stream.<sup>1</sup> However, the 'downstream' issue of whether Selwyn Terrace should be in a character precinct in the MRZ was argued in Hearing Stream 2.

7. In Hearing Stream 3 the Trustees argued that viewshafts VS1 and VS4 in the notified PDP should be retained. The officer's report in that Hearing Stream identified an ambiguity as to whether the viewshaft provisions apply in zones other than the CCZ, including the high density residential zone (HRZ) and MRZ. In response to that point the Trustees argued that, regardless of the ultimate zoning decision for Selwyn Terrace, the viewshaft provisions should apply to Selwyn Terrace and the other residential zoned areas behind Parliament. The reason for this is to ensure adequate protection of Te Ahumairangi Hill as the backdrop to the Beehive, Parliament House and the Parliamentary Library. These amendments were sought by way of clarification and within the scope of the Trustees' original submission.
8. There are two issues that need to be considered by the Panel for Hearing Stream 4:
  - (a) Issue One: Should Selwyn Terrace be included in the CCZ?
  - (b) Issue Two: Regardless of its zoning, are the proposed CCZ height controls for Selwyn Terrace appropriate?
9. The Trustees' respectfully request that the issues for Selwyn Terrace should be considered in an integrated manner with the points that have arisen in earlier hearing streams all taken into account. They would welcome the opportunity to address the Panel on integration and linkages between their submission points as part of the Panel's "Wrap up hearing" in September 2023.

**Issue One: Should Selwyn Terrace be included in the CCZ?**

10. Selwyn Terrace is zoned Inner Residential under the operative district plan. The PDP changes the zoning to CCZ.
11. The proposed rezoning would be a dramatic change to Selwyn Terrace. It would result in a broad range of central city activities including commercial activities, community facilities and educational facilities having permitted

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<sup>1</sup> Section 42A report for Hearing Stream 4 — Part 1 City Centre Zone at [117].

activity status. These sorts of activities would conflict with the current primary use of Selwyn Terrace as a distinct enclave of residential dwellings.

12. The Council has not supplied a convincing rationale for the proposed change in zoning for Selwyn Terrace from Inner Residential (ODP) to City Centre (PDP). As I now explain, there is no adequate justification in either:
  - (a) The section 32 report;
  - (b) The technical material that supports the section 32 report; or
  - (c) The officer's section 42A report.

*The section 32 report*

13. The section 32 report suggests the Council's rationale for the zoning change in Selwyn Terrace is to accommodate growth and development capacity in response to the National Policy Statement on Urban Development 2020 (NPSUD) directions.<sup>2</sup> The report suggests that the CCZ should extend to Selwyn Terrace because it "currently has a mix of land uses, to support a mixture of activities and growth in these areas".<sup>3</sup> The Council notes that there is a "mixture of uses along the eastern portion of Selwyn Terrace and the surrounding area more widely".<sup>4</sup>
14. These justifications for rezoning Selwyn Terrace are not compelling.
15. First, there is no direction in the NPSUD that requires Selwyn Terrace to be included in the CCZ. It does not contain policies or objectives for the size and shape of a city centre zone, other than a policy for authorities to provide "at least sufficient development capacity to meet expected demand for housing and business land".<sup>5</sup>
16. While urban development is recognised by the NPSUD as nationally significant, this needs to be placed in the context of forecast housing demand in Wellington. A recent assessment is that the PDP (with expanded

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<sup>2</sup> Section 32 Evaluation Report: Part 2: City Centre Zone, Special Purpose Waterfront Zone, Special Purpose Stadium Zone and Te Ngākau Civic Square Precinct at p 73 and 86.

<sup>3</sup> At p 135.

<sup>4</sup> At p 170.

<sup>5</sup> NPS-UD, policy 2.

character precincts recommended in the s 42A report) would enable an additional 61,074 commercially realisable dwellings. This is around double the estimated number of dwellings required (31,242) to meet population growth over the next 30 years.<sup>6</sup> There will, therefore, still be more than ample plan-enabled housing capacity to recognise the need for urban development without the proposed intensification of Selwyn Terrace.

17. Similarly, the most recent Council assessment of demand for business land dated 2019 concluded that “Wellington City has a sufficient supply of land, and subsequent floorspace, to meet all categories of business demand”.<sup>7</sup> The Council did not update that assessment of the demand for business land when it notified the PDP. It is unlikely that the situation has changed materially. If anything demand for business land may have softened in light of the recent increase in working from home and expectation of reduced volumes of people in the city centre.<sup>8</sup> There is therefore sufficient central city business land without needing to rezone Selwyn Terrace for the full scope of city centre zone land uses.
18. Second, it is not correct to say that Selwyn Terrace presently has a “mix” of land uses. All buildings on Selwyn Terrace have a residential land use, except for the British High Commission and the Te Wahanga Atawhai Mercy Conference Centre.
19. While it adjoins Selwyn Terrace, the British High Commission has its primary street frontage on Hill Street. This sole diplomatic building does not significantly interface with the rest of Selwyn Terrace or contribute to a “mix” of land uses on Selwyn Terrace. Likewise, the Te Wahanga Atawhai Mercy Conference Centre is a convent for nuns but also an office, but does not significantly interface with Selwyn Terrace.
20. The surrounding area contains some non-residential land uses, including the Catholic Institute of Aotearoa New Zealand and St Mary’s College. However as with the British High Commission, these educational and ecclesiastical

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<sup>6</sup> Section 42A Report for Hearing Stream 2: Part 3 – Residential Zones: Part 4 – Character Precincts and Design Guides at pages 19–20.

<sup>7</sup> [Housing and Business Development — Capacity Assessment \(Wellington City Council\)](#) (November 2019) at 58.

<sup>8</sup> [Statement of evidence of Kirdan Ross Lees for Wellington City Council \(24 May 2023\)](#) at [27]–[28].

facilities do not interface with Selwyn Terrace or detract from its distinct residential character.

21. Third, the Trustees do not agree with the Council's suggestion that a zone change is necessary to support a mixture of activities and growth in Selwyn Terrace. Selwyn Terrace has very narrow and steep vehicular access, with a single carriageway for much of its length. Access, turning, and parking are already highly constrained for residents, visitors, service providers, and emergency services. The footpath for pedestrians is too narrow for two people to comfortably walk side-by-side or to pass each other without stepping onto the road. A change to commercial and other non-residential land uses would place unreasonable demand on vehicle and pedestrian access.
22. The following photographs shows the narrow access along the single carriageway, including a blind corner:



*Figure 1: Photograph from the bottom of Selwyn Terrace, showing narrow vehicular and pedestrian access (taken 18 March 2023)*



*Figure 2: Photograph continuing up Selwyn Terrace, showing steep and narrow vehicular and pedestrian access (taken 18 March 2023)*



*Figure 3: Photograph showing continuing narrow and steep vehicular and pedestrian access to Selwyn Terrace, including a blind corner (taken 18 March 2023)*

23. Finally, Selwyn Terrace has a high concentration of pre-1930 character and heritage dwellings. The Trustees rely on Boffa Miskell's 2019 report on its review of the pre-1930 character areas in the operative district plan. This concentrated character warrants protection by way of a character precinct — which would not be possible if Selwyn Terrace is zoned as CCZ. The Trustees refer to their submissions in Hearing Stream 2 for further detail.<sup>9</sup>

*The technical reports*

24. The section 32 report refers to and relies on the “Retail and Market Assessment” prepared by Sense Partners and Colliers in 2020.
25. This report identifies that there is already enough capacity in the operative district plan to meet new demand for business land, since much current use is inefficient. New demand can be met from change of use, brownfield redevelopment, and refurbishment projects driving new additions to office and retail stock.<sup>10</sup>
26. The report goes on to comment on the specific proposal for a zoning change for areas of Thorndon (including Selwyn Terrace) to the CCZ. No compelling justification for this change is provided in the report:<sup>11</sup>
- (a) First, the report argues that expansion of the CCZ will “bring about an alignment of the currently residential zoned part of the suburb with the CCZ area to the south”. This amounts to an argument that areas of land next to each other should have the same “aligned” zoning. This cannot be a valid argument, as it leads to an absurd conclusion that the CCZ must creep outwards to all areas it adjoins.
  - (b) Second, the report says that the change in zoning will permit greater intensification and the commercial and residential development of a wider range of properties within the area.

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<sup>9</sup> [Legal submissions of counsel for the Eldin Family Trust](#) (24 March 2023) at [20]–[31].

<sup>10</sup> Sense Partners and Colliers International “[Retail and Market Assessment for Wellington City Council](#)” (30 November 2020) at page 2.

<sup>11</sup> Sense Partners and Colliers International “[Retail and Market Assessment for Wellington City Council](#)” (30 November 2020) at pages 91–92.



That is an accurate description of the consequences of zone change, but not a justification.

- (c) Third, the report goes on to argue that the area has demand for housing underpinned by its location and access to the CBD. The evidence of demand in the area is said to be prices of over \$1 million being achieved for properties in Hobson Street and Selwyn Terrace in 2019–2020. This is, in my submission, more likely to be an indication of the quality of the homes in the area than it is of demand for housing. In any event, the plan already contains sufficient housing capacity to meet demand.<sup>12</sup>
- (d) Fourth, the report states that there is demand for government offices in the area given the proximity to Parliament. Demand for new office development would mostly come from government. That may be the case, however the overall conclusion from the report is that there is already sufficient capacity to meet new demand for business land in any event.
- (e) Finally, the report notes that there is little appetite for private sector tenants to locate in the Thorndon office sector. An inhibitor to development within the area is the current predominantly residential land holdings of individual lots that are relatively small in nature. In my submission, this points to a city centre expansion into Selwyn Terrace and other residential areas of Thorndon as being an inefficient outcome. It counts against any proposal to rezone the area to CCZ, regardless of whether demand is driven by the public or private sector.

27. Overall, the justification from the Council's consultants for the proposed rezoning of Selwyn Terrace and similar areas of Thorndon is weak. The Trustees say it is not a sufficient basis for a dramatic change to a long-established pattern of predominantly residential land use in Selwyn Terrace.

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<sup>12</sup> See above at paragraph 16.

*The section 42A report*

28. The most recent attempt by the Council to justify its proposed rezoning of Selwyn Terrace is provided by the section 42A report. This responds to the submissions seeking to retain Selwyn Terrace as having residential zoning.<sup>13</sup>
29. There are four main arguments presented by the officer's report that are additional to those in the earlier section 32 and technical reports.
30. First, the officer argues that Selwyn Terrace, Hill Street, Portland Crescent and Hawkestone Street should be in the CCZ because they are bounded by the motorway as a clear physical boundary between the CCZ and residential zones.
31. The physical boundary of the motorway is not a relevant factor. There are many examples around the edge of the CCZ where there is no motorway or similar physical boundary between the CCZ and adjoining residential zone. For example, there is a residentially zoned area nearby in Hobson Street, Thorndon, which is not physically separated from the adjacent CCZ.
32. The officer's second point is that Selwyn Terrace and the surrounding streets have a mixture of land uses and densities in a manner more akin to a city centre zoning.
33. However, the officer acknowledges that Selwyn Terrace has a concentration of one to two storey standalone residential dwellings. This points to it being a unique area of Wellington that has remained as a surviving island of residential character surrounded by largely ecclesiastical, educational, diplomatic and government land uses. This established character and the narrow and difficult access makes inclusion in the CCZ and general commercial activity inappropriate. As I have already noted, the mixed nature of the buildings nearby such as the British High Commission do not interface with the residential enclave of Selwyn Terrace.
34. Third, the officer argues that the NPS-UD directs the Council to enable intensification in this area, and that the area is well-located to support increased densification and opportunities for new housing.

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<sup>13</sup> Section 42A report for Hearing Stream 4 — Part 1 City Centre Zone at [117].

35. However, as explained above, there is no requirement in the NPS-UD as to the extent or shape of the CCZ provided sufficient capacity is provided.<sup>14</sup> There is, therefore, a need to consider the specific characteristics of any land that is proposed for inclusion in the CCZ. Selwyn Terrace is not suitable or well-positioned to provide additional CCZ land because of its difficult access and existing residential character.
36. The final point that I comment on from the officer's report is an argument that the areas of Thorndon proposed for CCZ treatment are within walking distance of the Wellington Railway Station and Bus Station and there is significant foot traffic in the area.
37. It is unclear how this consideration could justify including Selwyn Terrace in the CCZ. It is important to bear in mind that foot traffic to the top of Selwyn Terrace is constrained by the steep and narrow pedestrian access.

#### *Concluding comments*

38. The Council has not offered any compelling justification for its proposal to change Selwyn Terrace from a residential zone to the CCZ.
39. The Panel should, therefore, recommend that Selwyn Terrace be removed from the CCZ and instead be included in the residential zones. The Trustees submitted in Hearing Stream 2 that the appropriate zoning treatment was MRZ with a character precinct.

#### **Issue Two: are the proposed height controls for Selwyn Terrace appropriate?**

40. Regardless of the zoning to be applied to Selwyn Terrace, the proposed building height controls are not appropriate.
41. The current proposed CCZ would see new buildings in Selwyn Terrace have a mandatory minimum height of 22m (CCZ-R20 and CCZ-S4) and a maximum height of 27m (CCZ-R20 and CCZ-S1). In essence, new buildings would need to be six to nine storeys high.
42. Such height controls are problematic when applied to Selwyn Terrace.

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<sup>14</sup> NPS-UD, policy 2.

43. Primarily, this is because the height controls are inconsistent with the viewshaft provisions that capture Selwyn Terrace. Viewshafts VS1 (The Beehive) and VS4 (The Beehive and The Cenotaph – Whitmore Street) focus on the Beehive and Parliament buildings, with the backdrop of Te Ahumairangi Hill being a context element to those views.
44. Construction of new six to nine story structures in Selwyn Terrace (and the nearby areas of Hill Street and Guildford Terrace) would almost inevitably intrude upon the view of Te Ahumairangi Hill as the backdrop to nationally significant views of the Beehive and Parliament buildings. Parliament Services itself lodged a statement in Hearing Stream 3 supporting the intent for the viewshafts to protect Te Ahumairangi Hill as the backdrop to views of The Beehive and Parliament buildings.<sup>15</sup>
45. The significant risk of degradation of these views is demonstrated by the expert evidence the Trustees have commissioned from Benjamin Lamason. His statement provides a visualisation of six- and nine-storey building envelopes from VS1 and VS4. Those images speak for themselves. They show a change to the visual outlook from the protected viewshafts that drastically alters the relationship between the Beehive, Parliament House, the Parliamentary Library, and the natural backdrop of Te Ahumairangi (Tinakori) Hill. These visual effects are clearly appreciable and damage the integrity of the viewshafts.
46. If the 22m minimum height control applies (CCZ-R20), then any developer planning a new building in Selwyn Terrace would either:
  - (a) Require a resource consent to depart from the minimum height control and build a lower structure that does not intrude into the viewshafts; or
  - (b) Require a resource consent to build a 22m or higher structure that intrudes into the viewshaft.
47. This inevitable clash makes the proposed planning regime incoherent and difficult to understand. It adds unnecessary compliance costs.

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<sup>15</sup> [Submitter speaking notes — Dave Wills for Parliamentary Services](#)

48. The conflict between the viewshafts and the height controls should be resolved at this stage, rather than left to future resource consent processes. The internationally important and iconic symbolism of the Beehive, Parliament buildings, and the Cenotaph mean that the obvious resolution is to prioritise the viewshafts by adjusting the minimum and maximum height controls in Selwyn Terrace.
49. This plan change process is the best planning opportunity for a holistic assessment of the potential loss of the values protected by the viewshaft. Mr Lamason's expert visualisation enables you to undertake that holistic assessment.
50. It is also important to note that six to nine storey buildings would significantly detract from the established residential amenity of Selwyn Terrace. Tall buildings would create a feeling of "overcrowding" in the context of a narrow and steep street. They would overwhelm and detract from the special character and heritage of the pre-1930s dwellings in the street. And as noted above, vehicular access, parking and turning, and walking access in Selwyn Terrace are already highly constrained and will come under further pressure if housing or commercial development intensifies.
51. Overall, these difficulties with the proposed minimum and maximum height controls for a CCZ make such height controls inappropriate for Selwyn Terrace and the nearby houses in Hill Street and Guildford Terrace.
52. The primary relief sought by the Trustees is for Selwyn Terrace to be zoned MRZ, not CCZ. In the alternative, the height issues just outlined could be addressed by applying a specific and lower height control of three-storeys to Selwyn Terrace, or by ensuring the viewshafts provisions achieve the same effect.

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