BEFORE INDEPENDENT HEARING COMMISSIONERS AT WELLINGTON

IN THE MATTER of the Resource Management Act 1991ANDIN THE MATTER the hearing of submissions on the

Proposed Wellington City District Plan

STATEMENT OF EVIDENCE OF MACIEJ WIKTOR LEWANDOWSKI ON BEHALF OF PARKVALE ROAD LIMITED (SUBMITTER 298)

HEARING STREAM 8 - NATURAL AND COASTAL ENVIRONMENT

29 APRIL 2024

PLANNING

1. INTRODUCTION

1.1 My name is Maciej (Mitch) Wiktor Lewandowski. I am a Resource Management Consultant and Director of Building Block Planning Ltd, a Wellinton based planning and resource management consultancy. I have held my current role since April 2022.

Qualifications and Experience

1.2 I hold a Bachelor of Resource Studies from Lincoln University, a Master of Resource and Environmental Planning from Massey University, and a Post Graduate Diploma in Management from Massey University. I am a Full Member of the New Zealand Planning Institute and accredited resource management commissioner.

- 1.3 I have 22 years' professional experience. In my current role I assist a range of private and public sector clients across a range of resource management matters.
- 1.4 Prior to my current role I was employed by Urban Perspectives Limited as a Resource Management Consultant for a period of 3 years. Prior to that role, I was employed by the Wellington City Council for a period of 5 years, as Principal Advisor Planning within the Council's District Plan team.

Involvement in Parkvale Road Ltd's submission to the Proposed District Plan

- 1.5 I assisted Parkvale Road Limited ("**PRL**") in preparing its submission to the Proposed District Plan ("**PDP**").
- I provided evidence on behalf of PRL as part of Hearing Stream 7 relating to PRL's submission to rezone a portion of the PRL site from General Rural Zone to Medium Density Residential Zone.

Code of conduct

1.7 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

2. SCOPE OF EVIDENCE

- 2.1 PRL's submission sought to:
 - Rezone an area of the Site at it's Parkvale Road frontage, from
 General Rural Zone to Medium Density Residential Zone ("MDRZ");
 - (b) Rezone an area of the Site at it's Montgomery Avenue frontage, from General Rural Zone to Large Lot Residential Zone;
 - (c) Remove the proposed Ridgelines and Hilltops Overlay from those portions of the Site proposed to be rezoned; or
 - (d) If the Ridgelines and Hilltops Overlay is not removed, then to amendPolicy NFL-P2 as set out in the submission; and
 - (e) Amend Rule NFL-R10.2 as set out in the submission.

- 2.2 Matter (a) was addressed as part of Hearing Stream 7. I note that the reporting officer for that topic, Mr Patterson, recommended that the relief sought by PRL was accepted.
- 2.3 Matter (b) has not been pursued by PRL.
- 2.4 This evidence will therefore address matters (c) (e) as the outstanding matters relevant to PRL's submission.
- 2.5 In preparing this evidence I have reviewed and considered:
 - (a) The PRL submission;
 - (b) The Council's section 32 evaluation report relating to Natural Features and Landscapes;
 - (c) The two technical reports underpinning the Ridgelines and Hilltops Overlay prepred by Isthmus Group;
 - (d) The section 42A report prepared for this hearing stream;
 - (e) The evidence of Mr Clive Anstey on behalf of the Council; and
 - (f) The evidence of Mr David Compton-Moen on behalf of PRL.

3. 200 PARKVALE ROAD

The Site

- 3.1 200 Parkvale Road ("**the Site**") has an area of some 335 hectares and is shown below as Figure 1, along with Attachment 1. Areas of the wider Site are variously subject to a range of notations and overlays in the PDP, including:
 - (a) National Grid Transmission Lines;
 - (b) The Ohariu Fault Hazard Overlay;
 - (c) Flood Hazard Overlay areas;
 - (d) Ridgelines and Hilltops Overlay;
 - (e) Significant Natural Areas; and
 - (f) Wellington International Airport Obstacle Limitation Surface.

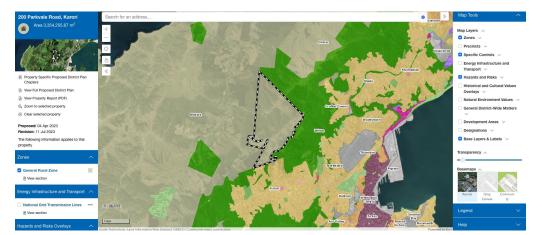


Figure 1. The Site at 200 Parkvale Road.

- 3.2 I note that Mr Anstey states in his evidence for the Council that "much of the property is captured within the Special Amenity Landscapes overlay..."¹. Mr Anstey is incorrect on this point the Site is not subject to a Special Amenity Landscape overlay.
- 3.3 Figure 2 below (and Attachment 2) shows the southern edge of the overall Site adjoining the existing Karori urban area, which is the area to which the submission relates. It shows the Ridgelines and Hilltops Overlay, along with Significant Natural Areas in purple:

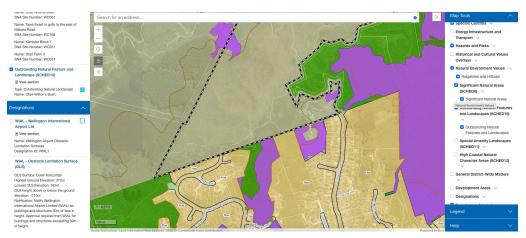


Figure 2. The southern edge of the Site interfacing with the existing Karori urban area.

3.4 The area which PRL seeks to rezone is shown in Attachment 1 to the PRL submission, and is replicated in Figure 3 below and in Attachment 3 to this evidence. The relevant area is the area shown in yellow on the right hand side of the image:

¹ Evidence of C Anstey – paragraph 74.

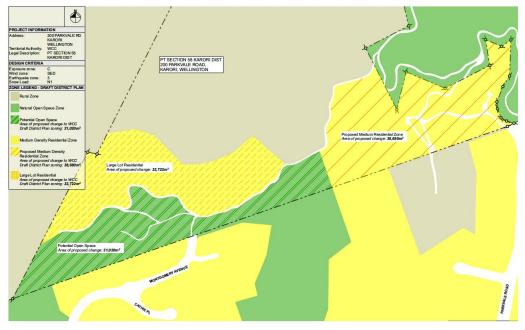


Figure 3. The areas of the Site that PRL sought to rezone through its submission. The area on the right is the area sought to be rezoned to Medium Density Residential Zone.

- 3.5 The area which is sought to be rezoned measures some 3.8ha (38,680m²), and adjoins existing residential zoning at Parkvale Road. Access to the Site stems from the head of Parkvale Road by way of an existing driveway that climbs up to an area akin to an amphitheatre, with areas of flatter ground being surrounded by hills to the north and west.
- 3.6 The area presently contains 3 dwellings, and provides access to a further two dwellings/sites to the south of the Site that carry a rural zoning. A resource consent for a further 5 dwellings was previously granted for the Site in this area. That consent has since lapsed.
- 3.7 Of relevance to this hearing stream, the area which PRL seeks to be rezoned is in part located within the proposed Ridgelines and Hilltops Overlay. Figure 4 below, and Attachment 4, shows the extent of the overlay compared to the area sought to be rezoned.



Figure 4. The proposed Ridgelines and Hilltops overlay compared to the area sought to be zoned as MDRZ by PRL.

3.8 Attachment 4 also shows an indicative layout of a potential development on this area. Attachment 5 provides further detail on this indicative concept.

4. RIDGELINES AND HILLTOPS PROVISIONS

- 4.1 The Ridgelines and Hilltops provisions are contained within the Natural Features and Landscapes chapter of the PDP. I set out the relevant provisions (as notified) below.
- 4.2 There is one relevant objective, NFL-O3, which states:

NFL-O3 Ridgelines and hilltops

The natural green backdrop provided by identified ridgelines and hilltops is maintained.

4.3 One policy addresses objective NFL-O3, as follows:

NFL-P2 Use and development within ridgeline and hilltops

Enable use and development within ridgelines and hilltops where:

- 1. The activity is compliant with the underlying zone provisions; and
- 2. There is a functional or operational need to locate within the ridgeline and hilltop area; and

- 3. Any adverse effects on the visual amenity and landscape values can be mitigated.
- 4.4 Rule NFL-R2 pertains to activities, is relevant to all zones, as states:

NFL-R2 Any activity within ridgelines and hilltops not otherwise listed as permitted, restricted discretionary, or non-complying

1. Activity status: Permitted

Where:

- a. Compliance can be achieved with the underlying zone provisions and district wide provisions.
- 4.5 Where compliance with NFL-R2.1 cannot be achieved, resource consent is required under rule NFL-R2.2 as a restricted discretionary activity. Discretion is restricted to the matters contained in policy NFL-P2.
- 4.6 And rule NFL-R10 provides for "the construction of, alteration of and addition to, buildings and structures within the ridgelines and hilltops" as a permitted activity, subject to compliance with the underlying zone provisions and district wide provisions.
- 4.7 As for rule NFL-R2, non-compliance with zone or district-wide provisions triggers a resource consent requirement as a restricted discretionary activity. Discretion is again restricted to the matters in policy NFL-P2.

5. SECTION 42A REPORT

- 5.1 Ms van Haren-Giles, in her section 42A (***s42A***) report, has addressed the three relevant points of the PRL submission.
- 5.2 Ms van Haren-Giles has not supported the relief sought by PRL to remove the Ridgelines and Hilltops Overlay from the area which PRL sought to be rezoned to MDRZ.
- 5.3 Ms van Haren-Giles has also not supported the relief sought by PRL in respect of changes to Policy NFL-P2.
- 5.4 Ms van Haren-Giles has supported the changes proposed by PRL to rule NFL-R10.2. I support the change she recommends and do not comment on that matter further.

5.5 I therefore address each of the points that remain in contention in the following sections.

6. AMENDMENT TO THE EXTENT OF THE RIDGELINES AND HILLTOPS OVERLAY

- 6.1 As an introductory matter, it is important to clarify that PRL is not seeking to remove the Ridgelines and Hilltops Overlay from its property entirely as Mr Anstey states², but rather from the 3.8 hectares it seeks to rezone to MDRZ zoning. Ms van Haren-Giles has not suppoted the PRL relief on this point.
- 6.2 While the relief sought by PRL remains the preferred position and would be consistent with the broader PDP approach that does not appear to have included any residential zoning within the overlay, the evidence of Mr Compton-Moen has further considered a potential refinement of the proposed Ridgelines and Hilltops Overlay boundary.
- 6.3 His evidence has considered the visibility of the Site from a range of viewpoints across Karori. In doing so, Mr Compton-Moen has considered the positioning of the Ridgeline and Hilltops Overlay relative to the visibility of the Site.
- 6.4 He has concluded that delineating the overlay at a contour of 260masl through the Site would provide for the residential development of the Site without adversely affecting the purpose of the overlay. Mr Compton-Moen considers that above the 260masl contour, development could lead to adverse effects on the purpose of the overlay and that it is therefore appropriate to consider the potential for adverse effects through a resource consent process. Mr Compton-Moen supports the retention of the overlay at this contour as a means to consider the effects of urban development on the values of the overlay.
- 6.5 This position is well-captured by Mr Anstey for the Council, where he states³:

Any development of the Parkvale property would tend to be on the easier lower slopes where visibility would be limited and could be managed; structures can be integrated into the landform and their impacts softened with planting.

6.6 Mr Anstey has struck at the heart of the matter and I agree with his statement.It is precisely the outcome which PRL seeks. However, the provisions of the

² Evidence of Clive Anstey, paragraph 74.

³ Evidence of Clive Anstey, paragraph 76.

PDP do not presently allow for the management of effects to occur as Mr Anstey contemplates. In order to facilitate the outcome that Mr Anstey describes, changes are required to the applicable policy.

7. AMENDMENTS TO POLICY NFL-P2

7.1 PRL sought to amend policy NFL-P2 by re-ordering the matters listed in the policy as follows:

As notified		As proposed by PRL	
Use and development within ridgeline and hilltops		Use and development within ridgeline and hilltops	
Enable use and development within identified ridgeline and hilltops where:		Enable use and development within identified ridgeline and hilltops where:	
1. 2.	The activity is compliant with the underlying zone provisions; and There is a functional or operational need to locate	1.	Any adverse effects on the visual amenity and landscape values can be mitigated; and The activity is compliant
	within the ridgeline and hilltop area; and	Ζ.	with the underlying zone provisions; and <u>or</u>
3.	Any adverse effects on the visual amenity and landscape values can be mitigated.	3.	There is a functional or operational need to locate within the ridgeline and hilltop area.

7.2 Ms van Haren-Giles has disagreed with the relief sought⁴ on the basis that the amendments would "significantly alter the intent of the policy". She considers that all three criteria are relevant to achieving the outcomes of objective NFL-O3. She considers that policy NFL-P2 "does not in my view inappropriately constrain development, but instead provides a pathway via NFL-R2.2 to ensure the visual amenity and landscape values of ridgelines and hilltops are maintained."

⁴ Section 42A report, paragraph 169.

- 7.3 I agree with Ms van Haren-Giles that all three matters may be relevant to achieving the objective. However as notified, each of the three matters is linked with an 'and' meaning that all three matters must be satisfied. Therefore the pathway that Ms van Haren-Giles describes is only open where there is an operational or functional need to locate within the overlay.
- 7.4 As set out above at section 5, rule NFL-R2 provides for any activity as a permitted activity within the Ridgelines and Hilltops Overlay not otherwise listed as a permitted, restricted discretionary, or non-complying activity where it meets underlying zone and district wide provisions. Rule NFL-R10 similarly provides for the construction of buildings and structures.
- 7.5 I have not identified any other rules within the chapter that list activities within the ridgelines and hilltops overlay as restricted discretionary or noncomplying. Therefore, rules NFL-R2 and NFL-R10 appear to permit any activity or building, provided it meets underlying zone and district-wide provisions.
- 7.6 However, the moment an activity or building does not meet a zone or districtwide provision, policy NFL-P2 is engaged as a matter of discretion. And at that moment, the activity or building must have an operational or functional need to locate within the area. Clearly residential development does not have an operational or functional need to locate in any area and would be contrary to the policy. The 'and' linkages mean that this matter is a requisite consideration.
- 7.7 The PRL submission sought to overcome this issue by reorganising the listed matters. It still provided for the consideration or operational and functional need, but separated this matter with an 'or'. The remaining matters were unchanged including the critical consideration of mitigating any effects on visual amenity and landscape values.
- 7.8 Having considered the matter further, I agree with the PRL submission that policy NFL-P2 requires amendment, and I support the separation of the specified matter relating to functional and operational need. However, in my view there is a potential further issue in the drafting of the policy, including in the relief sought by PRL.
- 7.9 The policy firstly supports the permitted activity rules through matter (1) i.e. ensuring that an activity meets underlying zone provisions⁵. However, where

⁵ While outside the scope of the PRL submission, I note that there appears to be an error in this drafting. Where rule NFL-R2 refers to the underlying zone and district wide standards, the policy only refers to the underlying zone standards.

that compliance cannot be achieved and resource consent is required, Council's discretion is limited to the matters in policy NFL-P2. This enables development where compliance is achieved with the underlying zone provisions. It creates a circular situation, and an inconsistency with the policy where resource consent is required, because the reason for the resource consent trigger is the very non-compliance with the underlying provisions.

7.10 In my view, the structure of the policy can be further amended as follows:

NFL-P2 Use and development within ridgeline and hilltops

Enable use and development within identified ridgeline and hilltops where:

- 1. The activity is compliant with the underlying zone provisions; and <u>or</u>
- 2. Any adverse effects on the visual amenity and landscape values can be mitigated; and or
- 3. There is a functional or operation need to located within the ridgeline and hilltop area <u>and any adverse effects on</u> the visual amenity and landscape values can be mitigated.
- 7.11 Such an approach ensures that the policy:
 - (a) Continues to support the permitted activity rule through matter (1);
 - (b) Continues to ensure adverse effects on visual amenity and landscape values are considered and mitigated where necessary; and
 - (c) Continues to provide for functional and operational needs while ensuring visual amenity and landscape values are considered and mitigated where necessary.
- 7.12 Most importantly however, my proposed amendment overcomes the issues created by the 'and' linkages of the policy. It sets up a situation where an activity that is otherwise permitted by rules NFL-R2 or NFL-R10 does not need to have a functional or operational need to locate within an area. Rather, the functional and operational need becomes an additional test, not a required one. And contrtary to Ms van Haren-Giles' view, it does not significantly alter the intent of the policy.
- 7.13 And therefore, in terms of the overall relief sought by PRL, it provides for the very outcome contemplated by Mr Anstey. It provides for the management of

the effects of built development within the overlay, and ensures that such development can be integrated into the landform and its effects mitigated. Where that cannot occur, then resource consent can be declined.

7.14 This is consistent with the approach of managing the effects of development.As noted in the Isthmus Group 'Ridgelines and Hilltops Phase 2 Report':

"Development in the Overlay is not precluded by the operative District Plan and this is not expected to change in the draft Plan, and proposals can be dealt with through the resource consent process."⁶

- 7.15 The Panel can therefore take comfort that a future development proposal for the rezoned Site, where located within the overlay, would be subject to a resource consent process that would consider the potential effects on the visual amenity and landscape values of the overlay.
- 7.16 For completeness, I also note that the approach of policy NFL-P2 of including the operational and functional need requirement creates a more stringent test than use and development within a Special Amenity Landscape as set out in policy NFL-P3. Special Amenity Landscapes are ostensibly a higher order landscape classification than the Ridgelines and Hilltops overlay and do not specify an operational or functional need test.

8. FURTHER SUBMISSIONS

- 8.1 Four further submissions were received in respect of the PRL submission and were addressed as part of Hearing Stream 7. The further submissions were received from:
 - (a) Mr Andy Foster (FS86);
 - (b) Forest and Bird (FS87);
 - (c) Karori Residents Association (FS42); and
 - (d) Ms Andrea Skews (FS43).
- 8.2 The further submission from Mr Foster (FS86) opposed the rezoning of the Parkvale Road area. However, further direct enagegement between PRL and Mr Foster resulted in Mr Foster confirming during his appearance at the Hearing Stream 7 hearing, that he was comfortable with the rezoning sought by PRL.

⁶ Ridgelines and Hilltops Phase 2 Report, 2020, Isthmus Group Limited. Page 26.

8.3 The further submission from Forest and Bird was not concerned with the Ridgelines and Hilltops Overlay on this portion of the Site, rather it referenced the Significant Natural Area located on the Site. The Forest and Bird further submission also acknowledged that rationale for the proposed rezoning, stating:

We can see that a change from General Rural Zone to MRZ in the vicinity of Parkvale Road has merit given the proximity to existing urban development. Appropriate ecological assessment is required to ensure biodiversity values are protected however.

8.4 Lastly, the further submissions from the Karori Residents Association and from Ms Skews both support the PRL submission.

9. CONCLUSION

- 9.1 Mr Patterson, as part of his Hearing Stream 7 s42A report, has recommended that the area identified by PRL at Parkvale Road is rezoned from a General Rural to a Medium Density Residential zoning.
- 9.2 However, the ability to develop that area of the Site that is within the Ridgelines and Hilltops Overlay is hamstrung by the current policy and rule framework applicable to the Ridgelines and Hilltops Overlay. I consider that the amendments I propose will overcome that issue, while maintaining the intent of policy NFL-P2.
- 9.3 The evidence of Mr Compton-Moen has considered the most appropriate boundary for the Ridgelines and Hilltops Overlay should the Panel not remove it in its entirety from the area PRL has identified for rezoning. Such an approach would still maintain the overlay over the balance of the Site, and would allow for the consideration of the effects of future development on the visual amenity and landscape values of the Ridgelines and Hilltops Overlay.
- 9.4 I consider that the amendments proposed in my evidence, and the evidence of Mr Compton-Moen, are the more appropriate provisions to achieve the sustainable management purpose of the Act.

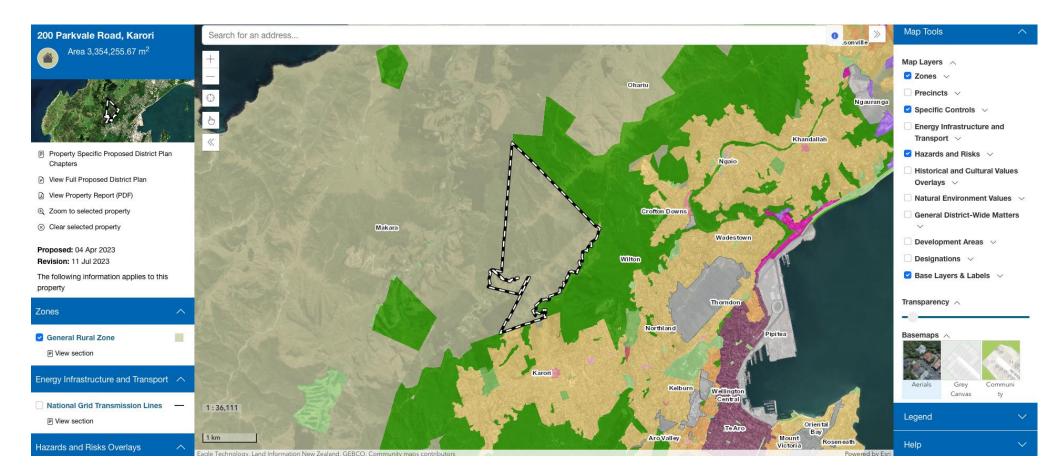
pull.

`

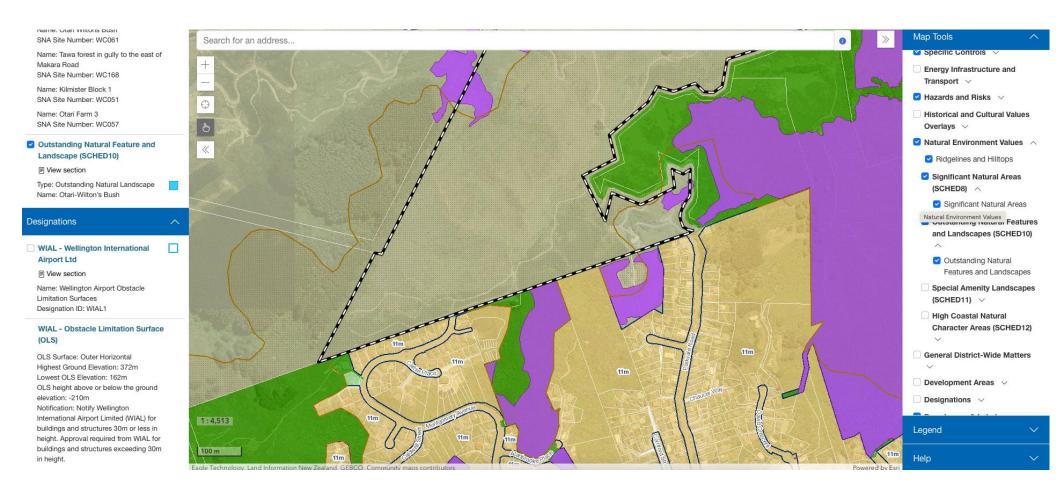
Mitch Lewandowski

12 April 2024

Attachment 1 – PDP Zoning Map



Attachment 2 – PDP Zoning Map at Urban Interface



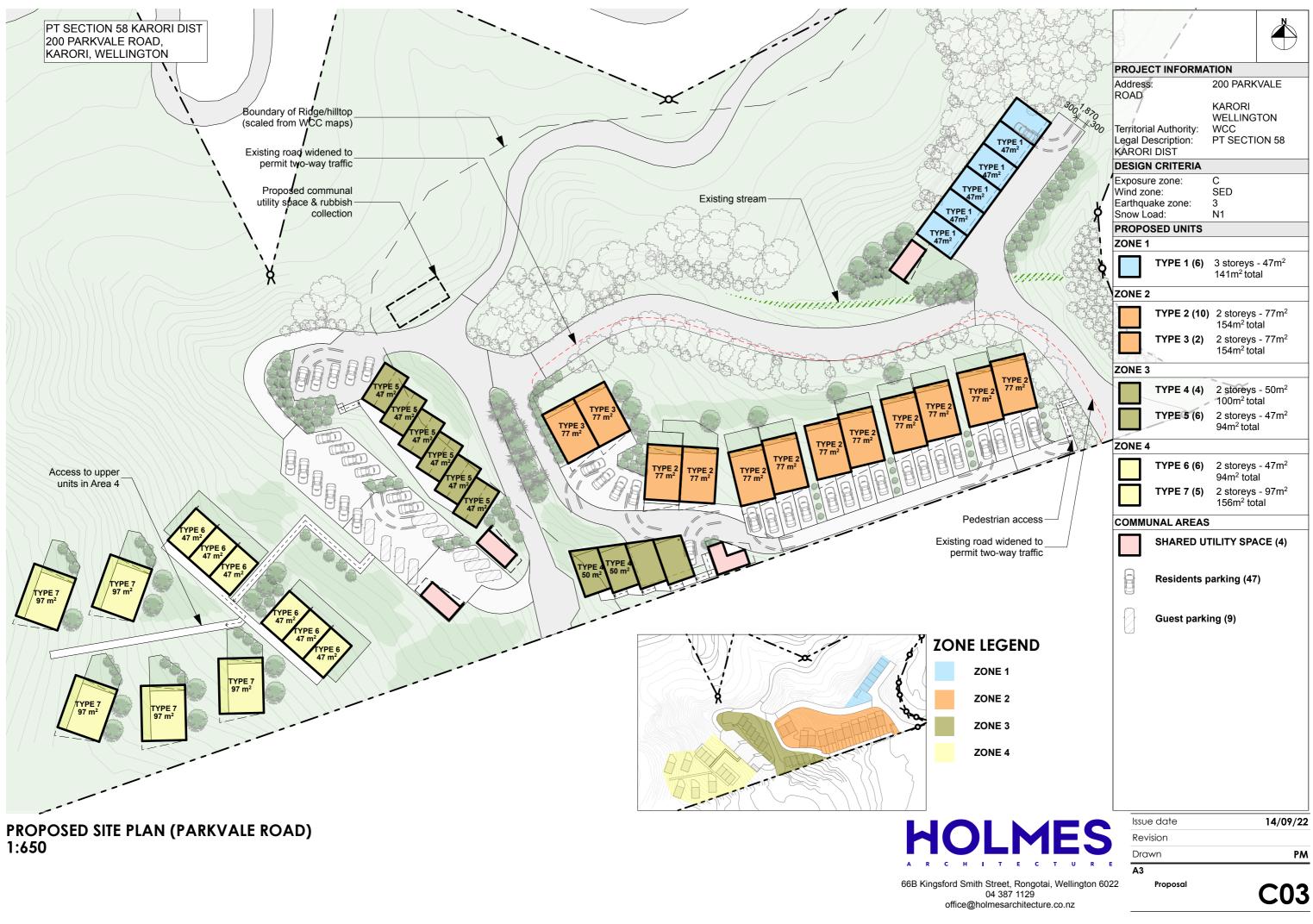
Attachment 3 – Areas of zoning change sought by PRL





Attachment 4 – Areas of zoning change sought by PRL with Ridgeline and Hilltops Overlay

Attachment 5 – Indicative Concept Plan and Visualiations





VIEW 1.3





VIEW 2.3





VIEW 4.3



14/09/22 Issue date Revision PM Drawn A3 Proposal P05