
REPORT 6
(1215/52/IM)

REQUEST FOR PURCHASE AND/OR REZONING OF PART OF LOT 100 DP 335825, G AND R FAGAN, 28 SUNHAVEN DRIVE, NEWLANDS

1. Purpose of Report

The purpose of this report is to seek a determination from the Committee on the future use and zoning of a portion of Lot 100 DP 335825, located off Sunhaven Drive, Newlands, to resolve a longstanding issue raised by the adjacent owners at 28 Sunhaven Drive.

2. Executive Summary

This report responds to a request from the owners of the property at 28 Sunhaven Drive, Newlands for the Council to purchase and/or rezone an area of land adjacent to their property so it can be used to provide public access to future reserve areas.

The subject land was rezoned from Open Space to Residential (Outer) in 1994 when the Proposed District Plan under the Resource Management Act was publicly notified. The reasons for this rezoning are uncertain but the owners of 28 Sunhaven Drive claim that the rezoning was an error and should be rectified to avoid the disadvantages to them that would arise from any future residential development.

The planning history is traversed in some detail to provide the context for considering the future use of the land. Consideration is then given to the two key options, doing nothing which would permit residential development or initiating purchase and/or rezoning to secure that land for public access. To assist in assessing the options two important questions are considered. The first is whether an error was made in 1994 and the second is whether that land is now actually required for access purposes.

It is concluded that there is little or no public benefit to be gained through Council acquiring the land and it is recommended that no action be taken.

3. Recommendations

Officers recommend that the Committee:

1. *Receive the information.*
2. *Agree that no action be taken to either purchase or rezone the portion of Lot 100 DP 335825 situated between numbers 28 and 43 Sunhaven Drive, Newlands.*

4. Background

Sunhaven Drive forms part of the Bellevue subdivision in Newlands which has been progressively developed since the 1970's.

The land in question is situated at the end of Sunhaven Drive between the houses at numbers 28 and 43 and is identified by a star on the map attached as Appendix 1. The area forms part of Lot 100 DP 335825 which has a total area of some 4.5 hectares. Lot 100 is largely steep, remnant subdivision land in regenerating bush that is intended to eventually form part of the existing Gilbert Bush Reserve. The Appendix 1 plan also shows the current District Plan zonings and the extent of existing residential development in this locality.

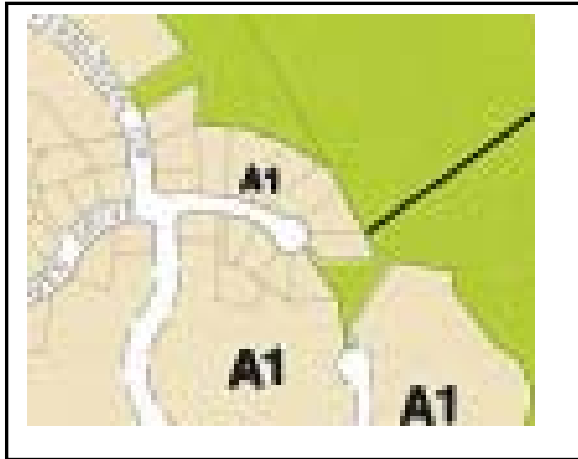
The access to Lot 100 from Sunhaven Drive is generally level with the adjacent residential properties but opens to a lower terraced area before falling steeply to the gully below. The access way and terraced area are grassed and it appears that the land is used and maintained by the adjoining owners.

Mr and Mrs Fagan own the property at 28 Sunhaven Drive which adjoins Lot 100 on the west side.

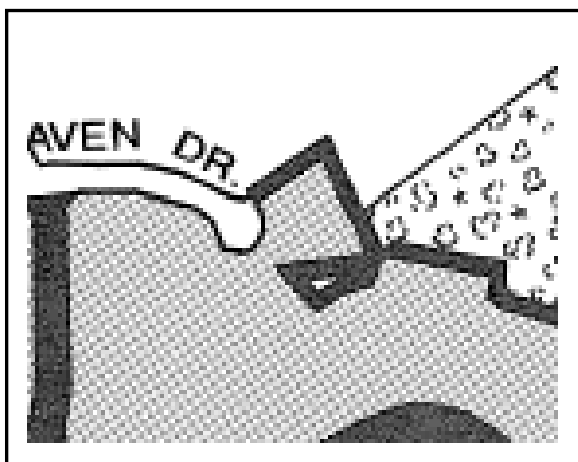
From 1979 under the former District Scheme the subject land was zoned Open Space B and was intended to provide access to a future reserve. In 1991 a plan change was initiated (DSC 91/07) to provide for future stages of the Bellevue subdivision and this affected the configuration of the Open Space zoning off Sunhaven Drive. However, the zoning map for DSC 91/07 was drawn in a manner that made the zone boundaries difficult to interpret and it is believed that this may be the source of the current issue.

In 1994 the proposed District Plan under the Resource Management Act (RMA) was publicly notified and the Open Space zoning off the end of Sunhaven Drive was changed to Residential (Outer). Precisely why the rezoning occurred at this time is not known. It is likely that the imprecision of the DSC 91/07 map resulted in the inadvertent omission of the Open Space zoning of the access from Sunhaven Drive but on the other hand it might have been a deliberate move to provide flexibility for the design of future stages of the Bellevue subdivision on the harbour side of Sunhaven Drive.

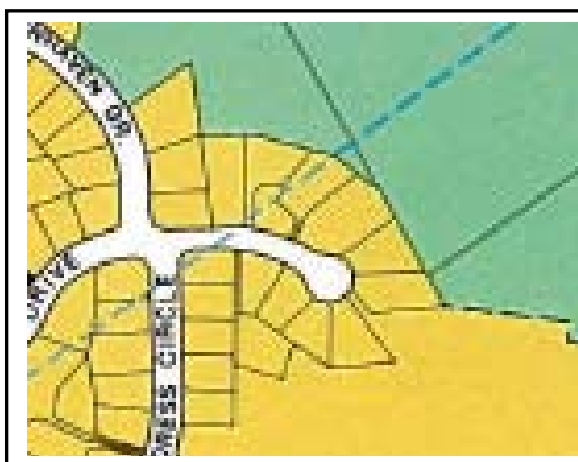
The progression of zoning between 1979 and 1994 is shown in the illustrations below:



Zoning-Proposed District Scheme 1979



District Plan Change 1991



Proposed District Plan 1994

Following public notification there were no submissions on the rezoning of Sunhaven Drive and the amended zoning became part of the approved District Plan in July 2000.

From a historical perspective it is noted that there was always an intention to provide an access from Sunhaven Drive to future reserve land to the east. An archival search has revealed that from at least 1975, various subdivision plans indicated that the future public reserve would extend to Sunhaven Drive to enable the formation of an access track (see Appendix 2 attached). This was supported by zonings in the former District Scheme when this plan was reviewed in 1979.

The wider planning strategy represented by the former District Scheme zonings and the current District Plan zonings is to establish an escarpment reserve around the Bellevue subdivision totalling some 38 hectares that would connect with the existing Gilbert Bush reserve. It is understood that a substantial area above the Hutt Road will be vested in the Council following the resolution of appeal proceedings on District Plan Change 62 and that eventually this will include most of Lot 100 DP 335825.

Notwithstanding the zoning change in 2000 it had always been assumed by officers that all of the land now covered by Lot 100 would eventually be vested as reserve. Lot 100, including the access to Sunhaven Drive was deposited in April 2004 and to this point and later there had been no indication that the owners were intending to develop any portion of the land for residential purposes. As more recent events have transpired the assumption that all of Lot 100 would be vested as reserve proved inaccurate. This is unfortunate because it did influence the early advice provided to the Fagan's that the zoning of the access way from Sunhaven Drive would be restored to reflect the expected public ownership. However, the owners of Lot 100 have since discovered that there is an opportunity to construct a dwelling on the rezoned residential land and now wish to realise this opportunity. A subdivision application was lodged in November 2007 to create a 1120m² residential site from the existing Lot 100 and was approved on 11 September 2009.



Subdivision of Lot 100 DP 335825

In July 2004 the Fagan's first wrote to the Council expressing concern about the rezoning adjacent to their property. The key events from this time are detailed in the chronology attached as Appendix 3. This has culminated in a formal request from the Fagan's for the zoning issue to be resolved by the Council purchasing a portion of Lot 100 and/or rezoning land to restore the former situation (refer to the letter from Simpson Grierson dated 24 June 2009 attached as Appendix 4).

5. Discussion

In response to the Fagan's request there are essentially two options. The first is to do nothing and allow residential development off the end of Sunhaven Drive in accordance with the current zoning. The second is for the Council to purchase the land which would inevitably lead to its rezoning as part of the escarpment reserve.

5.1 Do nothing

In terms of the current zoning the owners would be entitled to construct either a single dwelling or two units as a permitted activity subject to compliance with the residential development standards. It appears that it would be possible to site a fully complying development on the land.

A new development would have some impact on the views from the Fagan property towards the Hutt Valley but the full effect of this could not be determined without proper architectural plans. It is noted that the Fagan's primary view is towards the harbour and city to the south and west.

It is understood that the owners have prepared plans of a dwelling that seeks to minimise the impact on nearby properties but the Council would have no ability to influence any design unless there was some breach of the development standards.

It is noted that in lieu of the Council taking no action the Fagan's would have the right under the RMA to make a private application for a zoning change. However, this would not be a realistic option in view of the potential cost of the process and likely opposition by Council given the implications for public acquisition that would arise.

5.2 Purchase of the land and/or rezoning

With regard to the option of Council purchase and/or rezoning it is believed that there are two important questions to consider. The first is whether the rezoning in 1994 was an error which has disadvantaged the Fagan's to an extent that justifies action now being taken to restore the previous zoning situation.

The second important question is whether public access from Sunhaven Drive is still required.

1. Was there a zoning error?

As indicated in the background comments above there is no definitive answer in this case as to why the zone boundary was realigned in 1994. There may have been confusion as a result of earlier mapping deficiencies but it is also possible that it was done deliberately to provide flexibility for the design of future stages of the Bellevue subdivision. Unfortunately there is no record of the reason for this particular zoning change. The proposed new plan in 1994 involved a comprehensive review of the previous zoning structure which resulted in many zoning changes. In the absence of firm evidence it cannot be confirmed or otherwise that there was a zoning error.

However, it is understandable why the Fagan's have raised the concerns they have. Land that was originally intended to remain as open space gained some potential for development and as a consequence their amenities will be affected to some extent. Under a Conservation Site zoning that would most likely have applied if there had been no zoning change the maximum development would be a pedestrian track with planting. Under the current Residential zoning, development would include a driveway from the street and a new dwelling or two townhouses possibly within 3-4 metres of their existing house.

The Council's criteria for determining the necessity for District Plan changes are outlined below and as can be seen, item 3 covers the question of planning grievances.

- 1. Is the change necessary to respond to a significant resource management issue?*
- 2. What are the risks to the Council, the public and the environment of not proceeding with the change?*
- 3. Is the change required to address a genuine grievance that the Council should respond to?*
- 4. Will the change result in any significant public benefit?*

5. *If the change will result in significant public benefit, is there good reason to initiate the change sooner rather than later?*
6. *Is the change required to rectify an error or omission in the District Plan?*
7. *Will the change improve the efficient administration of the Plan?*
8. *Is there a legal necessity or requirement to undertake the change (e.g. consent order, Environment Court decision, change to legislation)?*
9. *Has the Council made a previous undertaking to initiate a plan change?*
10. *If an undertaking has been made to undertake a plan change, have circumstances changed such that it is no longer necessary or desirable to undertake a change?*
11. *Are there efficiencies to be gained (through for example utilisation of current research or related work) that would be lost if the change was deferred?*
12. *Is there benefit in combining the change with current or future work in other areas? How would this affect the timing of the change?*

If the Committee is of the view that that the Fagan's have a grievance that should be addressed through formal resource management processes then this would require the eventual acquisition of the land at a residential valuation. It is understood that a section in this location with harbour views would be in the order of \$200,000. In the event of any related rezoning proceedings being challenged in the Environment Court, costs in the vicinity of \$75,000 could be anticipated.

The Fagan's lawyer has also highlighted items 1 and 9 above in support of their case.

It is suggested that there is a significant resource management issue, in that the land was rezoned without undergoing proper process or consideration. This assertion is rejected. The Proposed District Plan was prepared and notified in 1994 in full compliance with the RMA (1991). There has never been a formal challenge to the Plan on the grounds that due process was not followed.

With regard to item 9 the officers have previously indicated to the Fagan's that a rezoning would occur but this was in the belief that the owners were intending to vest all of Lot 100 DP 335825 as reserve. As has already been noted this was an inaccurate assumption.

If, after consideration the Committee is of the view that the acquisition and/or rezoning of the land should not be supported then an alternative option might be the introduction of site specific rules to ensure that any new residential building was positioned to minimise the loss of amenities to the Fagan's and the other neighbours. This could involve reduced building height, increased setbacks or a limitation on the number of units. A District Plan change would have to be initiated to achieve this end. Generally, site specific rules in the District Plan are discouraged but they might provide a way forward in this case. However, this would have cost and work programming implications for the Council.

It is understood that the land owner has prepared plans for a new dwelling stepping down the site with a roof line level with the existing lawn area. Given that the two windows in the Fagan's house facing the north east are some 3m above the lawn area it is apparent that a new dwelling could be constructed which will have little impact, particularly on views.

2. Is public access from Sunhaven Drive still required?

As outlined in the introductory comments there was clearly a historical intention to establish a public access way from Sunhaven Drive into the escarpment reserve. Notwithstanding the zoning change in 1994 it was assumed that the creation of Lot 100 DP 335825 in 2004 would still result the vesting of this land for reserve purposes but this is not the case. More recently the question of public access from Sunhaven Drive has been reviewed by the Parks Planners who comment as follows:

The original reserve proposal for this area was to establish an escarpment reserve around the Bellevue subdivision totalling some 38 hectares. Accessways would be developed from the subdivision to link with walking tracks through the reserve network. The vesting of this land in Council will form part of a Reserves Agreement for Bellevue Stage 8 and will satisfy Greenfield and Citywide Reserve contributions under Council's Development Contributions Policy. Signing of the agreement will occur once plan change 62 is resolved and the area of land zoned Conservation Site is confirmed.

The acquisition of the reserve land is consistent with Capital Spaces - Open Space Strategy for Wellington (1998) which emphasises the landscape and ecological qualities of the coastal escarpment between Petone and Ngauranga. In addition the Northern Reserves Management Plan states - Policy 8.6.2.1 "Council will seek to acquire as much as possible the areas of the escarpment with high landscape and/or ecological values through reserves agreements"

The provision of walking tracks is consistent with the Open Space Access Plan (2004) which identifies the Harbour Escarpment Walk between Khandallah and Newlands as one of its top ten initiatives. Construction of this Walkway has commenced with the first stage between Ladbroke Drive and Fernhaven Road completed in 2006. The next 600 metre section will link to the road frontage between 47 and 59 Tamworth Crescent. This section will pass below 43 Sunhaven Drive (see Appendix 5 attached).

A recent assessment of the Sunhaven Drive situation shows that an accessway is not needed at this location to provide access to the Harbour Escarpment Walkway. The current access in Fernhaven Grove and the proposed access on Tamworth Crescent provide surrounding properties with good access to the reserve and walkway within a 200 metres radius. On that basis acquisition of the property, or provision of an easement for access is not required.

5.3 LTCCP Implications

Acquisition of the land would be funded from the Reserve Purchase and Development Fund (RPDF). There is no funding allocated from the RPDF this year for acquisition. If acquisition was agreed by the Committee, then it would also be necessary to agree an over spend of the capex project CX033.

A decision to rezone the land and the processing of any subsequent Environment Court appeals would be met from existing City Planning budgets, project C533.

6. Conclusion

The rezoning of land off Sunhaven Drive as part of the Proposed District Plan in 1994 has created a situation that permits new residential development that potentially impacts on the amenities enjoyed by the Fagan's at 28 Sunhaven Drive. Given the circumstances of this rezoning it can be argued that the Fagan's have a grievance. However, having regard to all of the current circumstances and the fact that little or no public benefit would now be gained from securing the land for reserves access purposes, the acquisition and/or rezoning of the land is not recommended to the Committee.

Contact Officer: *Brett McKay, Principal Planner*

Supporting Information

1) Strategic Fit / Strategic Outcome

This issue covered in this report has no strategic implications.

2) LTCCP/Annual Plan reference and long term financial impact

A decision to acquire the land would involve the purchase of some 1120m² at residential valuation. However, there are no funds allocated this year in the Reserves Purchase Development Fund.

A decision to initiate a rezoning would be covered by existing City Planning budgets.

3) Treaty of Waitangi considerations

The issue has no Treaty of Waitangi implications

4) Decision-Making

This is not a significant decision. The report addresses a localised issue and sets out the options for the future use of the land.

5) Consultation

a) General Consultation

Both the Fagan's and the adjoining land owner are fully aware of the current process.

b) Consultation with Maori

There has been no consultation with Iwi.

6) Legal Implications

The Council's lawyers have advised on aspects of the issue.

7) Consistency with existing policy

There are no significant policy issues.