

## **Further Submission on District Plan Change (DPC) 77– Curtis Street Business Area**

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**Via Email:** district.plan@wcc.govt.nz

### **Submission Details**

**Name of Submitter** PrimeProperty Group

### **Submitter Details**

This further submission has been prepared by Spencer Holmes Ltd on behalf of Prime Property Group (PPG)

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### **Further Submission**

The submissions made by various parties fall into a number of different subject matters. In that regard, we address the submissions made and points raised in turn under the different category.

### **Legal Process and Background**

PPG opposes those submissions including 8, 9, 27, 32 and 40 that state that DPC 77 should be abandoned on the basis of the Council following incorrect or inappropriate legal processes.

#### Reasons for the Further Submission

These submissions are without basis. Submission 9 in particular is factually incorrect on a number of points.

That submitter also implies that matters in the judicial review of DPC 73 have some determination on matters in DPC 77. The judicial review of DPC 73 was in respect only to the notification of that plan change and the rezoning of Curtis Street. It did not consider the merits or otherwise of the rezoning.

Submission 40 raises a question as to whether the plan change includes Pt Lot 1 DP1746, which is the southernmost section of the DPC 77 site. The diagram on Appendix 2 of the plan change documents makes the subject land clear, without any confusion as to what land is subject to the plan change and that it includes Pt Lot 1 DP 1746..

### **Previous Use of the Site and Precedent**

PPG opposes those Submitters including 13, 14, 19, 20, 21, 24, 40 & 43 which reason that the plan change should be rejected on the basis of misleading or incorrect background information, or on the basis that the original zoning was known to the owner of the site when they purchased the property.

#### Reason for the Submission

The historical background to the plan change is irrelevant to the consideration of DPC 77. The plan change must be assessed against the current situation and historical use or circumstances are not of importance to the considerations of DPC 77.

The fact that the underlying zoning for the site was residential/open space when purchased by the current owner is completely irrelevant to the plan change proceedings. The appropriate test is that set out in section 5 of the Act and whether the zoning is currently appropriate in the “here and now”. Any argument that land cannot be then rezoned by future landowners is contrary to the Act and the principles of natural justice.

PPG opposes submission 8 which raises a concern about the Foodstuffs land covenant on the underlying title that prevents future development of a supermarket. It is an irrelevant matter under the RMA process. It is a civil matter between the former land owner and the current landowner and a common mechanism used by corporates as a trade competition restriction.

### **Transmission Lines**

PPG opposes those submissions including 12, 13, 16, 22, 25, 29, 34, 36, 40, 43, 54 and 62 which seek to have the plan change rejected on the basis of the potential effects on the transmission lines or would alternatively have provisions which would prohibit the use of the land below those lines.

PPG supports the submitter 56 (Transpower) except parts of clause 4.14 of that submission which includes Offices, Retail Activities and Places of assembly as non complying activities under Rule 36.5. This part of the submission by Transpower is opposed.

#### Reason for opposition or support of submissions

Transpower has the responsibility for the high voltage transmission lines through the site. PPG have consulted with Transpower for over 5 years and reached an agreed position on the appropriate land use within the site and will continue to work with Transpower. The provisions of DPC 77 provide an appropriate mechanism to control the use and placement of structures below the transmission lines and the submitters seeking the rejection of the plan change on this issue have no basis.

PPG and Transpower are largely in agreement on the wider planning matters relating to this site and the plan change, including we understand, the changes discussed above with respect to Transpower's original submission on Rule 36.5.

### **Maintenance of Open Space and alternative uses**

PPG opposes those Submitters including 6, 7, 10, 15, 26, 28, 42, 50, 54, 55 and 58 which state that the Open Space provisions should remain.

PPG supports in part those submissions which seek to ensure that DPC 77 makes provision for residential houses and in particular Submitter 6 who states that provision should be made for affordable housing within the subject land.

### **Reasons for the Further Submission**

PPG in particular oppose those submissions which suggest that Council re-purchase the site and keep the open space zone. WCC have long ago determined that the site has little or no value as an Open Space Area. The private ownership of the land automatically excludes it from being considered as Open Space, particularly in respect to the lack of Open Space values in the land.

Council has no power to compulsorily acquire land for Open Space and therefore those submissions proposing this must be disregarded.

### **Economic Demand and Commercial Viability**

PPG opposes those submissions which suggest that the plan change should not proceed on the basis that the commercial use of the site is not economically viable or there is no demonstrated demand for the commercial/industrial use. Those submitters include submitters 7, 8, 11, 12, 14, 17, 25, 27, 30, 34, 37, 38, 40, 41, 43, 51, 53, & 57.

PPG supports submission 35 which acknowledge that Karori is underserved by retail sites and has no capacity for commercial growth.

PPG supports submission 49 in respect to the availability of business land in Karori. The submitter is not supported on other economic matters raised in the submission which are effectively about trade competition.

PPG opposes Submission 33 on the basis that this submission must be construed as relating to restricting trade competition.

### **Reasons for Submission**

PPG strongly opposes those submissions which claim there is no commercial demand for the site and that any subsequent use will not be commercially viable. PPG can demonstrate a high demand for the land for retail and commercial activity.

PPG opposes those submissions which claim that there are better economic uses of the site. The plan change proposal does not have to be the most efficient or even the best land use for the site. It needs to demonstrate that it is an appropriate and sustainable management of the land resource.

PPG opposes those submissions that claim that there is no basis for the owner of the site to expect to make reasonable use of the land. The submitters views in this regard are contrary to s5 and s85 of the RMA.

### **Urban Form and landscape**

PPG opposes Submitters including 4, 8, 11, 14, 29, 45 & 53 which claim that the DPC 77 should be rejected on the basis of urban design and landscape effects or that more restrictive provisions should apply.

### Reason for Further Submission

PPG itself challenges a number of the provisions of the plan change in relation to the permitted bulk and location provisions. PPG has in their primary submission accepted that urban design and external design and appearance are relevant matters for the Council to consider in any development proposal in future. Restricting development so that it has to hide below the gully sides is however an inappropriate urban design outcome. The site needs to be considered in the wider context of the city and its land use patterns.

### **Ecological Effects**

PPG opposes those submitters including 6, 8, 11, 12, 14, 22, 25, 32, 37, 38, 40, 41, 43, 44, 45, 50, 51, 53, 54, 58, 59, 62 & 65 which state that the plan change should be rejected on the basis in the potential ecological effects, or alternatively that a greater degree of protection be provided under the plan change provisions.

### Reasons for the Submission

Many submitters opposing the plan change fail to appreciate that the existing zoning allows for the clearance of all exotic vegetation as a permitted activity throughout the site including the Open Space land. The clearance of all vegetation, including native vegetation, is a permitted activity in approximately two thirds of the total area of the site (i.e. the Outer residential area).

The current plan change information clearly indicates that the site itself contains no ecologically significantly vegetation and therefore many submitters overstate the potential effects.

In relation to managing the stormwater effects, PPG opposes those submitters who would seek that the plan change impose specific stormwater and ecological controls for water run off on the site that are not required under other land use zones of the city. The catchment area in which the site is located is literally many, many hundreds of hectares. The site area would be a fraction of a percentage of this wider catchment area. Any effects from this site, such as flooding and effects on water quality would simply not be perceptible and would unreasonably burden the site with no actual environmental benefit. The increase in impervious areas possible on the site compared to the wider catchment is negligible in terms of increasing time of concentration in the wider catchment. To have any perceivable effects on reduction of flooding risk or improvements on water quality, any District Plan provision would need to be applied on a catchment wide basis.

## **Traffic and Transport Matters**

PPG opposes submitters including 6, 8, 11, 12, 14, 16, 17, 36, 37, 38, 40, 41, 44, 48, 53, 57, 59, & 60 who state that the proposal should be rejected on the basis of the potential effects on traffic and transportation efficiency of the city.

### Reasons for the Further Submissions

There have been a number of professional traffic engineering reports prepared for the site. All those independent expert reports have concluded that the traffic generated by the full commercial development of the site can be safely accommodated by the local roading network.

PPG opposes those submitters who claim the effects of the childcare facility currently under construction to the south of the site have not been taken into account in those assessments. Traffic Design Group who undertook the traffic assessment for the Mitre 10 application included the future effect of that facility together with the proposed Mitre 10 and concluded that the traffic demand can be easily accommodated by the existing roading network and other site specific mitigation/design measures.

The current provisions of the plan change provide for adequate assessment in the resource consent process to consider the effects.

## **Geotechnical and Hazards**

PPG opposes those submitters including 12, 16 & 48 which state that the plan change should be rejected on the basis of geotechnical or other land hazards such as contamination.

### Reason for the Further Submission

PPG has received reports from geotechnical engineers and environmental scientist that the development of the site can be undertaken without undue risk to future users or the surrounding community.

## **Noise**

PPG opposes those Submitters including 13, 16, 22, 27, 29, 43 and 57 which state that the plan change should be rejected on the basis of the potential for noise effects, or alternatively that more stringent noise levels should be applied to the site.

### Reasons for the Further Submission

PPG is of the view that the noise levels should not be any more stringent than those that apply to similar areas under the District Plan. The noise levels throughout the city have been set through experience and work well to allow for land use activity and the protection of the amenity of local residents. The site specific nature of the plan change should not be a reason for unreasonably stringent noise restrictions to apply.

## **Lighting**

PPG oppose those submitters including 22, 29, 34 and 43 which state that the plan change should be rejected on the basis of the potential lighting effects or that more stringent rules should apply.

### Reasons for the Further Submission

The current District Plan limits of 8 lux are appropriate in the urban environment where street lighting and spill from surrounding residential houses and car lights would have a much greater effect.

Streetlights have a lux level of up to 15. The glow worms in the area would have to deal with direct daylight lux levels in excess of 100,000. PPG's expert advice on lighting levels is that light spill can easily be controlled to ensure the nighttime environment on the western side of the site does not cause any adverse effects on the glow worm colony. The current provisions of the plan change provide an appropriate level of management of the potential effects.

## **Concept Plan**

PPG opposes those submissions which support the requirement for a concept plan to be approved and that the concept plan should be publicly notified. Those submissions include Submitter 24, 25, 32, 34 & 65.

### Reasons for the Further Submission

PPG's concerns of the concept plan are set out in its main submission.

## **Heritage**

PPG opposes those submitters including 40 and 43 which state that the plan change proposal should be rejected on the basis that there are potential adverse heritage effects from the proposed rezoning.

### Reasons for the Further Submission

Several submitters claim there is no requirement for a heritage assessment to be undertaken prior to earthworks being undertaken. If that were true, that is the case now under the current zonings. If the site is deemed to be an Archaeological Site under the Historic Places Act 1993, then a permit will be required under that Act. Statements from submitters claim that there is evidence of human habitation prior to 1900. Whether that is correct or not is yet to be ascertained.

Regardless, the matter is covered under the alternative Act and not the RMA. The site has also been subject to landfill activity as late as the mid 2000's.

PPG's opposes the submitters who state that the plan change be rejected on adverse effects on heritage or place additional heritage protection rules on the proposed plan change provisions to address heritage effects. PPG is of the view that the site cannot be considered to be a heritage area or item.

## **Decision Sought From Council**

The decision sought from Council by PPG is set out in its primary submission

## **Conclusion**

The submitter wishes to be heard in support of this submission

**If others make a similar submission, we will consider presenting a joint case with them at the hearing, however PPG is a primary submitter being the landowner .**

**Submission Prepared By:-**



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**Date: 12<sup>th</sup> June 2013**