

## PROPOSED DISTRICT PLAN CHANGE 78:

### *General Minor Amendments to District Plan Text and Maps*

## Report of the Hearing Committee

August 2014

## REPORT OF THE HEARING COMMITTEE

**SUBJECT:** District Plan Change 78: General Minor Amendments to District Plan Text and Maps

**COMMITTEE MEMBERS:** Councillor Andy Foster (Chair)

**DATE OF HEARING:** 4 August 2014

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## Proposed District Plan Change 78 – General Minor Amendments to District Plan Text and Maps

### 1. Recommendations

The Hearing Committee recommends that Council:

1. *Receive the information.*
2. *Approves Proposed District Plan Change 78 as publicly notified on 6 May 2014, subject to the following amendment resulting from submissions:*
  - i. *Amend references to rivers in the notified documents to refer to “rivers (including streams)”, as detailed in Appendix 1.*
3. *Note that officers will consider the setting of a time frame in which earthworks will be assessed cumulatively as part of the next appropriate Plan Change.*
4. *Note that officers will evaluate whether the new Supreme Court building should be listed as a non-heritage building in Appendix 16 of Chapter 21 (Heritage).*

### 2. Background

This Plan Change is the result of ongoing District Plan maintenance and monitoring work. The Plan Change does not involve any changes to existing objectives and policies; instead it proposes to make minor amendments to the District Plan in order to ensure its efficient functioning. Specifically, the Plan Change comprises 33 separate changes to the District Plan. The changes include:

- clarifications to various zoning and text provisions
- fixing of map errors
- updates to reflect recent changes and updated noise standards
- rule changes relating to:
  - light from road utilities in Open Space areas
  - assessment of visual amenity effects from earthworks
  - provision of multiple household units on individual parcels of land in the Rural Area
  - earthworks in the Ridgeline and Hilltops overlays of Open Space B areas

- smoke extractor fans in the Central Area
- aerials too small to be classed as ‘antennas’
- the methodology for assessing wind effects and associated standards.
- changes to Volume 3 (Maps):
  - showing 79 Dixon Street, Te Aro as zoned Central Area rather than the existing legal road symbology
  - rezoning an area of open space between Kentwood Drive, Cedarwood Street and Woodridge Drive from Outer Residential to Open Space B
  - rezoning an area of land at Gibraltar Rock (Breaker Bay Road) from Open Space A to Conservation Site 2D
  - rezoning 68A Victory Avenue, Karori from Open Space A to Outer Residential.

Plan Change 78 was publicly notified on 6 May 2014, with submissions closing 6 June 2014. Six submissions were received. The summary of submissions was publicly notified on 24 June 2014 and no further submissions were received. The submitters were:

1. Mighty River Power
2. Jared Shepherd
3. Lynette Eustace
4. Brenda Stevens
5. Woodridge Planters
6. Donna Sherlock

A hearing was held on 4 August 2014, at which Ms Sherlock spoke in support of her submission.

### **3. Submissions and Discussion**

#### **3.1 Submissions in support**

Three submissions supported various parts of the Plan Change:

- Submitter 1 (Mighty River Power) supported the changes to Chapter 23 – Utilities Rules. These focused on clarifying the permitted activity status of aerials below certain pre-existing size limits.
- Submitter 2 (Jared Shepherd) supported showing a parcel at the corner of Dixon and Victoria streets as Central Area. This parcel is currently shown as legal road, however this is incorrect and it is proposed that it is zoned Central Area, matching the surrounding land. The submitter felt that this would be conducive to the constructive redevelopment of the site, which is currently underutilised as a car park.
- Submitter 5 (Woodridge Planters) supported the rezoning of an area of open space in Woodridge (between Kentwood Drive, Cedarwood Street and Woodridge Drive) from Outer Residential to Open Space B. This land is

already classified as a reserve under the Reserves Act and is owned by Wellington City Council. The proposed rezoning reflects the existing and future use of the site, as well as the existing restrictions.

The submission comments that Woodridge Planters have planted more than 5,000 native trees on this land and that this has significantly increased diversity of the flora and helped bring native birds to the area. Several hundred individuals from the community and various organisations have contributed to this transformation of bush and stream.

The support from the above submitters is noted. The points raised reinforce the benefits of the related proposed changes.

**Recommendation: Accept the submissions.**

### 3.2 Submissions in opposition

Two submissions were received in opposition:

- Submitters 3 (Lynette Eustace) and 4 (Brenda Stevens) both opposed the replacement of the term 'streams' with 'rivers' in Chapter 30 and requested that the existing terminology be retained. Both submitters felt that the term 'stream' is more suited to the Wellington context (which does not have any major rivers) and that using 'river' could cause confusion around what is included in the definition.

The term 'river' is defined by the Resource Management Act (RMA) 1991 and this definition, which includes streams, has been carried through to the District Plan. Alternatively, the term 'stream' is not defined in either the District Plan or RMA and is consequently open for differing interpretations. This was the reason behind the changes proposed, which would reduce the potential for legal challenges relating to earthwork rules.

It is considered as still important to link the rules to the defined term of 'rivers'. However, it is acknowledged that District Plan users may not check the definitions and instead presume that only large watercourses are relevant. A recommended compromise is to use explicitly state "rivers (including streams)" in the relevant parts of the Earthworks Chapter. This would allow the rules to have the legal certainty of including a defined term, but also draw attention to the inclusion of streams within the definition.

Under section 32AA of the Resource Management Act, a further evaluation has been undertaken (including considering alternatives, examining the appropriateness of the changes, and assessing possible effects). For the reasons given above, it is considered that the proposed changes are most appropriate.

**Recommendation: Accept the submissions, by making the changes outlined in Appendix 1.**

### 3.3 Submission in both support and opposition

Submitter 6 (Donna Sherlock) submitted on a number of matters in the Plan Change:

1. Opposing the change of terminology in Chapter 30 (Earthwork Rules) from 'streams' to 'rivers'. The submitter felt that the definition of rivers is too encompassing.

Section 3.2 of this report outlines recommended changes to the relevant provisions to use both 'streams' and 'rivers'. In relation to the broadness of the definition of 'rivers', this is considered to be beyond the scope of Plan Change 78. The definition is set by the Resource Management Act and was recently included in the District Plan by Plan Change 70 (Earthworks) in recognition of the benefits of using a nationally-set definition.

It is recommended that the submission point is rejected and the changes outlined in Appendix 1 are made to the notified Plan Change.

2. Opposing the proposed changes relating to the residential conversion of rural buildings.

This submission point relates to the proposed change to Rule 15.3.3a. This rule currently states that, with some exceptions:

*The construction, alteration of, or addition to, residential buildings, accessory buildings (associated with a residential activity) and residential structures... are Discretionary Activities (Restricted)*

This rule is intended to capture the conversion of existing buildings to residential use and this is how it is interpreted and applied. However, there has been some misunderstanding about whether the rule includes conversion. The proposed change would clarify the existing situation and ensure that conversions continue to require resource consent, allowing possible adverse effects to be assessed.

The submitter opposed the change, considering that having multiple dwellings on rural land is often appropriate, as it strengthens the economic viability of rural properties and is an efficient use of land and natural resources. The submitter felt that this was particularly true for land which is zoned Rural but which is not suited to farming.

At the hearing, Ms Sherlock spoke of inconsistencies in the management of residential conversions, particularly between residential and rural areas, despite her view that they were no less appropriate in a rural environment. An example was converting garages to sleepouts. She also requested more clarity over when land owners could have multiple household units on their property or could subdivide (e.g. by further use of minimum lot sizes).

The proposed change to Rule 15.3.3a relates only to clarifying the status of residential building conversions in Rural Areas. If conversion was not captured by this rule, it would allow rural land owners to construct 'rural' buildings and then convert them to housing without the appropriate controls and assessments being applied. Converting rural buildings to residential use has the potential to have significant adverse effects and certain issues need to be assessed, including site landscaping, hazard management and the design and location of waste water disposal.

Any change to the underlying policy intent (as requested by the submitter) would require a significant in-depth review of existing provisions and possible alternatives. This is not considered to be within the scope of Plan Change 78, which is limited to clarifying the existing situation and not making policy changes.

For this reason, it is recommended that the submission point is rejected and the change is adopted as publically notified.

3. Opposing the proposed changes relating to establishing additional dwellings on rural land.

Under the existing District Plan provisions, establishing a second (or subsequent) dwelling on a rurally-zoned parcel is a Non-Complying activity. However, this would only be a Discretionary (Unrestricted) activity within an identified ridgeline or hilltop area. As the ridgelines and hilltops overlay is intended to provide a greater level of protection to prominent and visible parts of the Rural Area, it is illogical that multiple dwellings would have a more lenient activity status in these areas.

The proposed change would make the construction of a second (or subsequent) household unit on a rurally-zoned allotment a Non-Complying activity, regardless of whether it is in an identified ridgeline or hilltop. The submitter opposed this change for the reasons discussed in the submission point above, namely that multiple dwellings are appropriate on some rural properties.

The District Plan has an underlying policy of limiting the number of dwellings on rural parcels, which is a result of substantial consideration and debate in the mid-late 2000s. The proposed change does not seek to move away from this policy, but is instead limited to ensuring that Rural Chapter rules are consistent and reflect the policy intents. Any change to the underlying policy would be outside the intent and scope of Plan Change 78.

It is recommended that the submission point is rejected and the change is adopted as publically notified.

4. Opposing the changes relating to consideration of visual amenity resulting from earthworks.

In the decision on Plan Change 70 (Earthworks), a change was confirmed to allow Council to consider the effects of earthworks on visual amenity if they exceed an area standard or a height/depth standard. However, this was not correctly incorporated into the District Plan due to a drafting error and the current rules state that both the area and height/depth standards need to be exceeded to allow an assessment of visual amenity. The proposed change would correct this error and allow visual amenity to be assessed if either the area standard or height/depth standard is exceeded, as intended by Plan Change 70.

The submitter opposed this change for two key reasons. Firstly, the impact on visual amenity may be offset by the purpose of the earthworks. Secondly, the submitter considered that visual amenity is too subjective to have objective standards. However, the submissions also states that “visual amenity should be considered in conjunction with overall impact”.

Earthworks have the potential to cause significant adverse effects on visual amenity. This can be the result of the earthworks either having a large height/depth, or from

covering a large area. The use of standards does not presuppose that all developments above the standards would be inappropriate, but only requires an assessment due to their potential to be significant and inappropriate. A holistic approach of balancing positive and adverse effects is dependent on resource consent being required so that Council can assess the actual effect on visual amenity and balance it with other considerations.

At the hearing, Ms Sherlock spoke about the ambiguity in the Plan regarding the time frames in which earthworks standards cannot be exceeded. She gave her own experiences as an example. Having completed some earthworks (below the standard at which resource consent would be required), she subsequently undertook more earthworks approximately one year later. However, Council's Compliance Team informed her that as the cumulative earthworks would exceed the District Plan standards, a resource consent was required. She was also informed that the 'wait period' in which earthworks would be considered cumulatively was 20 years. The submitter felt that a time period should be explicitly stated in the District Plan and should be set at roughly 5 years. This seems to be a sensible request, as the current situation is ambiguous and overly restrictive.

As Plan Change 78 is not the appropriate process to introduce a time frame for earthworks due to being beyond its scope, it is recommended that officers consider this idea in the next appropriate Plan Change process. It is otherwise recommended that the submission point is rejected and the changes are adopted as publically notified.

5. Supporting an additional part of Victoria Street being shown as Principal Road on Map 34.

The support for this proposed change is noted. The additional request that the 'no stopping' zone is extended is outside of the scope of the District Plan and Plan Change 78. Officers have passed this submission point on to the Roding Traffic Operations Team for their consideration.

6. Supporting the rezoning of land in Breaker Bay to Conservation Site.

The support for this proposed change is also noted. The proposed rezoning is further supported by the information included in the submission that there is a significant population of penguins living in this coastal area that are appreciated by Wellingtonians.

**Recommendation: Accept the submission in part (in relation to points 5 and 6 above) and otherwise rejected (in relation to points 1-4).**

### 3.4 Non-Submission Points

In addition to the points raised in the submissions, the Hearing Committee has also reviewed the remainder of the Plan Change. As part of this, it was noted that the new Supreme Court building is not explicitly listed as a non-heritage feature. While a decision on this is beyond the scope of Plan Change 78 and this decision report, it is recommended (as a procedural note) that this is reviewed by officers.

It is also desirable to be clear on the status of 'Legal Road'. While the notified Plan Change referred to various 'rezonings' to and from Legal Road, the District Plan does not have a Legal Road zone. Legal Road is an overlay on the District Plan maps which

is used for specific rules and land which is shown as Legal Road is subject to the provisions of the adjoining zone. Changes have been made to the wording of notations in the amended provisions (Appendix 2) to reflect the Hearing Committee's determination that the changes relate to where land is shown as Legal Road but are not zone changes.

Having reviewed the proposed changes to methods for assessing noise and wind, the Hearing Committee feels that a brief explanation of these changes may be useful.

Plan Change 78 proposes amending the methodology for measuring wind effects by adding data to the District Plan that is necessary to undertake assessments. This would allow a greater range of experts to assess the potential wind effects from proposed developments. The proposed changes also clarify that computer-based wind tunnel testing can be used instead of a physical wind tunnel test, provided that the accuracy of the computer model can be demonstrated. In addition, wind standards are proposed to be amended to allow the stated wind strengths to be exceeded more often and for the measurements to be made in days per year, rather than the current hours per year. Plan Change 48 inadvertently made it more difficult to meet the wind standards and this Plan Change seeks to reverse that change.

Changes to noise provisions are proposed to reflect updated best practice standards. The District Plan currently uses New Zealand Standards NZS6801:1991 "Measurement of Sound" and NZS6802:1991 "Assessment of Environmental Sound" and it is proposed to update these to the current 2008 versions of each document. As part of this, updated notations are proposed for sound measurements to reflect changes in the 2008 documents. Specifically, this includes changing measurements in  $L_1$ ,  $L_{10}$  and  $L_{max}$  formats to  $L_{Aeq}(1 \text{ min})$ ,  $L_{Aeq}(15\text{min})$  and  $L_{AFmax}$  respectively.

#### **4. Conclusion**

Out of the six submissions received, three were in support, two were opposed to replacing the term 'stream' with 'river' and one supported and opposed various aspects.

The Hearing Committee recommends that the submissions in support be noted and accepted. In relation to the submissions in opposition, it is recommended that they be accepted in part and that the changes discussed in section 3.2 and outlined in Appendix 1 are made to the notified Plan Change.

A submission by Donna Sherlock was also received, which supported some changes and opposed others. The Hearing Committee recommends that the support is noted and accepted, but that the points in opposition are rejected. These points are considered to involve matters that affect the existing policy approach in the District Plan and therefore are considered to be outside the scope of Plan Change 78. However, it is recommended that, in a future appropriate process, officers review the possibility of including time frames in which earthworks are to be assessed cumulatively. In addition, it is recommended that officers consider adding the new Supreme Court building as a non-heritage feature in the Stout Street Precinct Heritage Area.

**Andy Foster**

**Chair PC78 Hearing Committee**



## Appendix 1. Recommended Changes

Key to Changes	
Abcdefghijklmnop	Operative unaltered text
<u>Abcdefghijklmnop</u>	Text recommended to be added
<del>Abcdefghijklmnop</del>	Text recommended to be deleted

Provision	Changes as Notified	Changes as Recommended
30.1	Permitted Activities... Effects on <del>Streams</del> <u>Rivers</u> , Wetlands and the Coastal Marine Area	Permitted Activities... Effects on <del>Streams</del> <u>Rivers</u> (including <u>Streams</u> ), Wetlands and the Coastal Marine Area
30.1.1.2	The cut or fill is no closer than the following (measured on a horizontal plane) to a <del>stream</del> <u>river</u> , a wetland or the coastal marine area...	The cut or fill is no closer than the following (measured on a horizontal plane) to a <del>stream</del> <u>river</u> (including <u>streams</u> ), a wetland or the coastal marine area...
30.1.2.2	The cut or fill is no closer than the following (measured on a horizontal plane) to a <del>stream</del> <u>river</u> , a wetland or the coastal marine area...	The cut or fill is no closer than the following (measured on a horizontal plane) to a <del>stream</del> <u>river</u> (including <u>streams</u> ), a wetland or the coastal marine area...
30.2.1.1(v)	Earthworks and structures associated with streams rivers and the coastal marine area where the cut or fill is closer than the following (measured on a horizontal plane) to a <del>stream</del> <u>river</u> , wetland or the coastal marine area...	Earthworks and structures associated with <del>streams</del> <u>rivers</u> (including <u>streams</u> ) and the coastal marine area where the cut or fill is closer than the following (measured on a horizontal plane) to a <del>stream</del> <u>river</u> (including <u>streams</u> ), wetland or the coastal marine area...
30.2.1.2(v)	Earthworks and structures associated with <del>streams</del> <u>rivers</u> and the coastal marine area where the cut or fill is closer than the following (measured on a horizontal plane) to a <del>stream</del> <u>river</u> or the coastal marine area...	Earthworks and structures associated with <del>streams</del> <u>rivers</u> (including <u>streams</u> ) and the coastal marine area where the cut or fill is closer than the following (measured on a horizontal plane) to a <del>stream</del> <u>river</u> (including <u>streams</u> ) or the coastal marine area...