

## PROPOSED DISTRICT PLAN CHANGE 78:

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

## Officer's Report

July 2014

**OFFICER’S REPORT FOR:** District Plan Hearings Committee  
**SUBJECT:** District Plan Change 78: General Minor Amendments to District Plan Text and Maps  
**DATE OF HEARING:** 4 August 2014

---

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

Proposed District Plan Change 78 is one of a series of changes that are initiated from time to time to make minor amendments to the District Plan.

### **1. Recommendations**

It is recommended that the Hearing Committee:

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 both rivers and streams, as detailed in Appendix 1.*
3. *Accept submissions 1, 2 and 5.*
4. *Accept (in part) submissions 3, 4 and 6.*

### **2. Submitters**

A total of 6 main submissions were received to the Plan Change. No further submissions were received. The submitters are listed below:

#### **Submissions**

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

Donna Sherlock is the only submitter wishing to be heard in support of her submission.

The detailed summary of submissions is attached as Appendix 1.

### 3. Background

This proposed 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.
- zone changes to:
  - 79 Dixon Street, Te Aro – from legal road to Central Area
  - an area of open space between Kentwood Drive, Cedarwood Street and Woodridge Drive – from Outer Residential to Open Space B
  - an area of land at Gibraltar Rock (Breaker Bay Road) – from Open Space A to Conservation Site 2D
  - 68A Victory Avenue, Karori – from Open Space A to Outer Residential.

Plan Change 78 was publicly notified on 6 May 2014 and submissions closed on 6 June 2014. Six submissions were received. The summary of submissions was publicly notified on 24 June 2014. No further submissions were received. This report focuses on the points raised by the submitters.

### 4. Submissions and Discussion

#### 4.1 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 the rezoning of a parcel at the corner of Dixon and Victoria streets. 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:** That the submissions be accepted and that the changes be adopted as publically notified.

## 4.2 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 both terms 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.

**Recommendation:** That the submissions be accepted in part, by making the changes outlined in Appendix 1.

### 4.3 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 4.2 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.

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 generally 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.

For these reasons, it is 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:** That the submission be accepted in part (in relation to points 5 and 6 above) and otherwise rejected (in relation to points 1-4).

## 5. 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.

It is recommended 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 4.2 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. It is recommended 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 adopted in the existing District Plan and therefore are considered to be outside the scope of the Plan Change.

*Contact Officer: Nathan Stocker, Planning Officer - District Plan Team*

## 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 Streams, <u>Rivers</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 stream, <u>river</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 stream, <u>river</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 streams rivers and the coastal marine area where the cut or fill is closer than the following (measured on a horizontal plane) to a stream, <u>river</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 streams, <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 stream, <u>river</u> or the coastal marine area:



## Appendix 2. Summary of Submissions

Submission No.	Name	Address for Service	Wishes to be heard
1	Mighty River Power	c/o Jo-Anne Cook-Munro PO Box 445 Hamilton 3240	No
<p><b>Submission</b></p> <p>Supports the proposed changes to Chapter 23 – Utilities Rules.</p> <p><b>Decision requested</b></p> <p>That the amendments to Chapter 23 are retained as notified, or with wording with a similar intent.</p>			
2	Jared Shepherd	135 Panorama Drive Enner Glynn Nelson	No
<p><b>Submission</b></p> <p>Supports the rezoning of Lot 1 DP 82741 (79 Dixon Street) from Legal Road to Central Area. Feels that the rezoning would allow development on the site in a manner consistent with Wellington City Council's WGTN2040 plan.</p> <p>The submission includes the submitter's thesis, which involved the design of an apartment building that would have a positive outcome and be a catalyst design in line with the WGTN2040 plan recommendations and goals. The building site used for the thesis relates to the land that Plan Change 78 proposes to be rezoned as Central Area.</p> <p><b>Decision requested</b></p> <p>That Lot 1 DP 82741 (79 Dixon Street) is rezoned from Legal Road to Central Area.</p>			
3	Lynette Eustace	5 Van Der Velden Way Horokiwi Wellington 5016	No
<p><b>Submission</b></p> <p>Opposes the removal of the term 'streams' in Chapter 30. Does not agree that the term could lead to confusion.</p> <p><b>Decision requested</b></p> <p>That the word 'streams' not be deleted and that the existing terminology is retained.</p>			

Submission No.	Name	Address for Service	Wishes to be heard
4	Brenda Stevens	5 Hillcroft Road Horokiwi Wellington 5016	No
<p><b>Submission</b></p> <p>Opposes the removal of the term ‘streams’ in Chapter 30. Believes that this could lead to confusion and legal debates as to when a stream becomes a river. The submitter desires the protection of creeks/streams/rivers due to their importance as rural water supplies and considers the issue as particularly relevant in relation to the area that could be affected by the proposed road linking Petone and Grenada.</p> <p><b>Decision requested</b></p> <p>That the word ‘streams’ not be deleted and that streams be protected.</p>			
5	Woodridge Planters	c/o Peter Gilbert 42b Kentwood Drive Woodridge Wellington 6037	No
<p><b>Submission</b></p> <p>Supports the rezoning of Lot 441 DP 352897 (between Kentwood Drive, Cedarwood Street and Woodridge Drive) from Outer Residential to Open Space B. Woodridge Planters is a community group that has planted more than 5,000 native trees on this land. The submitter comments 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.</p> <p><b>Decision requested</b></p> <p>That Lot 441 DP 352897 is rezoned from Outer Residential to Open Space B, as notified.</p>			
6	Donna Sherlock	110 Rowells Road Glenside Wellington	Yes
<p><b>Submission</b></p> <p>Considers the definition of ‘river’ to be too broad and unquantifiable. The submitter comments that this leads to it being impractical and unclear.</p> <p>Considers that the approach taken in the District Plan of limiting rural properties to a single dwelling is inconsistent with the rest of New Zealand and globally. Feels that allowing multiple dwellings on a property would support wider land uses, for instance by having extended family on the same land. The submitter considers that this would be helped by allowing conversion of non-residential buildings and that the rigid approach of restricting rural allotments to a single dwelling is excessive, inconsistent with other areas, and contributes to tension.</p>			

The submitter considers that some land zoned rural is not suited to traditional rural uses and that the District Plan should be flexible enough to allow uses that are suitable in these instances. The submitter states that rural land is also more sustainable due to low impact design and other opportunities to reduce environmental impacts. This, combined with the more affordable nature of rural land, makes it an area of opportunity for easing market pressures on land and housing. As a result, the submitter opposes the proposed amendment restricting the number of dwellings on rural allotments to one, as well as the amendment to ensure that conversion of buildings to residential purposes is captured by a Discretionary Activity rule (Rule 15.3.3a). However, the submitter supports the protection of hilltops and ridgelines and feels that any additional dwelling on rural land should be discreet.

Supports the reinstatement of Principal Road status to Victoria Street between Vivian and Webb streets. Would also like the 'no stopping' zone to be extended to ease traffic congestion. The submitter considers that parking is sufficient in nearby areas to allow for this.

Opposes the proposed amendment of Rules 30.2.1.1(iii) and 30.2.1.2(iii), which would allow for an assessment of visual amenity for earthworks over a certain size. The submitter considers that not all change to visual amenity is bad and that visual amenity effects need to be considered in conjunction with the overall impact of proposals, which may have benefits in other areas.

Supports the rezoning of land at Gibraltar Rock from Open Space A to Conservation Site 2D. In addition to the flora and fauna listed in the document, the submitter comments that there is a significant population of penguins living in this coastal area and that Wellingtonians have been working hard for a long period of time to support the wellbeing and protection of penguins in this and other areas of Wellington's coastline.

#### **Decision requested**

- That further clarity is provided around the definition of 'river', for example setting a limit of 'X' cubic litres per 'Y' time period before the definition applies.
- That rural rules are amended to define a minimum lot size, or to accept multiple dwellings on rural allotments.
- That the 'no stopping zone' on Victoria Street is extended to accommodate afternoon peak traffic (4-6pm).
- Opposes changes to earthwork assessment triggers. Sufficient application should be addressed in the overall consideration of land improvement.
- Amend in considering requirement for additional residential dwellings.
- That land at Gibraltar Rock is rezoned from Open Space A to Conservation Site 2D in order to provide greater ecological protection.