

**PROPOSED DISTRICT PLAN CHANGE 77 - CURTIS STREET BUSINESS AREA****REPORT FOR THE WELLINGTON CITY COUNCIL****PREPARED BY INDEPENDENT HEARING COMMISSIONERS****10 DECEMBER 2013**

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**EXECUTIVE SUMMARY****Introduction**

We were appointed to hear the submissions on District Plan Change 77 (**DPC 77**) and report to Council with recommendations on the submissions.

At present the land known as 55-85 Curtis Street, Karori, which lies immediately to the south of Ian Galloway Park and is bounded by Curtis Street, Whitehead Road and a pedestrian section of Old Karori Road, has a 'split' zoning comprising partly 'Open Space B' and partly 'Outer Residential Area'.

The land comprises a 1.09 hectare site located in a 'valley' that is traversed by the Central Park-Wilton A 110kV electricity transmission lines.

Although the land was previously owned by the Wellington City Council it is now in private ownership.

**The Plan Change**

DPC 77 proposes to rezone the land 'Curtis Street Business Area'.

The Plan Change proposes dedicated objectives, policies and rules to enable various business and commercial activities to establish, subject to 'area-specific' environmental controls which include:

- controls on the establishment of supermarkets and integrated retail developments for the purpose of managing impacts on existing centres;
- building floorspace and height controls to manage visual and landscape impacts;
- retail and commercial floorspace controls to reduce the impact on the surrounding road network;
- control on the establishment of 'sensitive activities' such as schools and residential dwellings to avoid reverse sensitivity conflicts with the electricity transmission lines crossing the land; and
- various provisions encouraging retention and planting of vegetation for landscape and ecological reasons.

**Notification**

DPC 77 was notified on 11 December 2012. At the end of the submission period (11 March 2013) a total of 65 submissions were received, principally from local residents and associations representing local residents and environmental interests, but also from PrimeProperty Group,<sup>1</sup> the Greater Wellington Regional Council and Transpower NZ Limited.

Following public notification of a summary of the submissions eight further submissions were received.

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<sup>1</sup> Prime Property Group is the 'parent' company of the registered land owner Terrace Heights Holdings Limited.

## Principal Issues

Many of the submissions were wide ranging covering both 'process-related' issues and specific 'environmental effects' issues. However, the principal issues/concerns raised were in relation to:

- loss of Open Space B land
- lack of land for business development
- impact on existing centres / existing businesses
- loss of residential character / impact on residential amenities (lighting, noise, privacy and visual)
- loss of ecological values / threat to ecological corridor
- loss of vegetation
- impact on the Kaiwharawhara Stream (stormwater management)
- size and bulk of buildings
- building design and external appearance
- traffic and road safety issues / increased traffic congestion
- site access and parking issues
- proximity to electricity transmission lines and need for restriction on activities within the proposed Business Area
- impact on heritage / archaeological resources
- earthworks
- contaminated land

## The Hearing

The hearing was held over three days in September 2013 when a total of 16 parties appeared representing:

- eleven local residents
- Creswick Valley Residents' Association
- Wilton Residents' Association
- Transpower NZ Limited
- Greater Wellington Regional Council
- PrimeProperty Group

The hearing was also attended by the Council Reporting Officer (Sarah Edwards) and other Council officers and consultants who had contributed to the Section 32 Report. The reporting team included experts in planning, transportation, retail economics, urban design and noise.

Evidence led by the residents and residents' associations was comprehensive and gave the Hearing Commissioners a good understanding of the residents' concerns.

In addition to the Council officers and consultants, expert planning evidence was led by Transpower NZ Limited, the Greater Wellington Regional Council and PrimeProperty Group.

A local resident very experienced in the field of electricity transmission, both as an engineer and a senior manager, who was unable to attend to the hearing, had a written statement read by another submitter.

## Main Findings

Based on our evaluation of the DPC 77 documentation, including the Section 32 Report, the submissions and further submissions, the Council's s42A Report and the evidence presented at the hearing, and informed by our site visits, we have come to the following principal conclusions/main findings:

1. That the proposed Curtis Street Business Area should be established.

2. That the proposed DPC 77 provisions, as amended following adoption of our recommendations, provide a planning framework for the site that strikes an appropriate balance between facilitating business/commercial development whilst also ensuring that such development does not significantly impact on the site's and adjacent lands' amenity and ecological values.
3. With reference to the principal issues raised through submissions, we have concluded as follows:
  - (a) **Open Space B:** many submitters requested that the Open Space B land retain its current zoning. We have concluded that the land is not of such high 'natural environment' quality to justify the retention of the Open Space B zoning. There is no legal impediment to changing the zoning from Open Space B to Curtis Street Business Area.
  - (b) **Threat to Ecological Values:** many submitters expressed concern about the 'threat' to the ecological values associated with the escarpment to the west of the site (the Old Karori Road 'road reserve'). On the evidence of the expert Ecological Assessment we agree that the escarpment forms part of an ecological corridor and that there are significant values associated with indigenous vegetation, wetland seepages and associated glow-worm colonies. Accordingly, we have amended the DPC 77 provisions to mitigate any potential effect on those ecological values, principally through the establishment of a building setback along the site boundary adjacent to the escarpment.
  - (c) **Transportation:** many submitters considered that development of the site for business/commercial activities would result in a significant increase in traffic congestion on the surrounding road network, and also that there would be traffic safety issues associated with site access and parking. We have given careful consideration to those concerns. In the end, however, we have accepted the expert traffic evidence. That evidence confirmed that subject to appropriate development controls, including establishing 'development thresholds' above which a full transportation assessment would be required as part of a resource consent application. The expert evidence also foreshadowed that it may be necessary to undertake changes to the surrounding infrastructure to adequately mitigate effects associated with bulk retail activities. However, that 'need' would be established through the full transportation assessment rather than through the plan change process, hence the importance of incorporating the 'development thresholds' in the plan change.
  - (d) **Residential Amenities:** many submitters expressed concern about the impact on their residential amenity in terms of noise and lighting effects and an anticipated significant change in visual amenities. We accept that if the zoning changes and development proceeds in accordance with the new Business Area zoning, then quite clearly there will be a change in the outlook and view from a number of properties that overlook the site. However, such a change in outlook and view (i.e. visual amenities) is not in itself a significantly adverse effect that brings into question the appropriateness of the proposed Business Area zoning. The DPC 77 provisions seek to avoid, remedy and mitigate any adverse effects, including any adverse effects associated with removal of vegetation on the Curtis Street embankment, vegetation which we consider is important for visual amenity reasons.
  - (e) **Size and Bulk of Buildings:** concern was expressed by many submitters about the potential for large scale buildings, with many submitters expressing the opinion that buildings should be small-scale (i.e. less than 500m<sup>2</sup>). To a large extent building size is going to be related to the activities that are established. Important therefore are the assessment criteria relating to 'site layout, design and external appearance of buildings and structures'. We have given careful attention to this matter and concluded that the proposed provisions, including the assessment criteria under 36.7, will enable the appropriate level of assessment and scrutiny of these 'built form / urban design' issues.
  - (f) **Impact on existing centres:** whether or not the development of the site for business/commercial purposes would impact on existing centres was an issue raised by a number of submitters. The expert evidence was that there is significant leakage in consumer spending from the wider Karori catchment. There was also evidence that there is a 'demand' for land in the wider Karori catchment that can be developed for business/commercial activities, including retail activities. We accept that evidence.

Nevertheless, consistent with the Council's "Centres Policy", and the provisions that apply to other centres and business areas introduced through Plan Change 73 (Suburban Centres Review), we accept that if the site is to be developed for large-format retail activities, which the current landowner advised was the strong likelihood, we endorse the Officer's recommendation that a economic impact assessment should be required as part of the necessary resource consent application.

(g) **Electricity Transmission Lines:** the fact that the Central Park-Wilton A 110kV transmission lines cross the site is clearly a matter to have regard to. We have had the benefit of evidence from Transpower NZ Limited and our recommendations are consistent with that evidence.

(h) **Impact on Kaiwharawhara Stream:** several submitters were concerned about the potential impact on the in-stream ecosystems of the Kaiwharawhara Stream. The stream is piped through the site and to the further north through the former Wilton Landfill (now Ian Galloway Park). Whilst we consider that any impact on the stream from stormwater flows from the site is likely to be negligible, we have nevertheless added policy guidance which we consider will draw attention to this potential effect.

#### **Old Karori Road**

4. Many submitters drew our attention to the significant ecological values associated with the embankment to the west of the site, across which the Old Karori Road walking track (part of the Sanctuary to Sea Walkway) traverses. The ecological values include indigenous vegetation, seepage wetlands and the associated glow-worm colonies.
5. During our site visits we noted that there are some significant gaps in the buffer vegetation in the road reserve land, notably on the down-slope side of the walking track. As a consequence, the seepage wetlands and glow-worm colonies are exposed to light and wind.
6. In addition to our recommendations on DPC 77, we have also recommended that Council request Parks and Gardens to plant the gaps in the buffer vegetation with indigenous species and implement a maintenance programme for the Old Karori Road road reserve land so as to better protect the seepage wetlands and glow-worm colonies.

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## 1.0 INTRODUCTION

- 1.1 Proposed District Plan Change 77 (Curtis Street Business Area) was publicly notified by the Wellington City Council (**Council**) on 6 December 2012. The purpose of the plan change was to amend the District Plan provisions relating to land at 55-85 Curtis Street, in the Creswick Valley situated between the suburbs of Northland to the east and Karori to the west - refer Location Map on the following page.
- 1.2 Under the operative Wellington City District Plan (**District Plan**) the land is zoned partly Open Space B and partly Outer Residential Area. District Plan Change 77 (**DPC 77**) proposes to rezone the land to a 'site specific' Curtis Street Business Area.
- 1.3 The Council appointed, pursuant to s34A(1) of the Resource Management Act 1991, an independent commissioner panel comprising of Alistair Aburn (Chair), Sue Piper and Gavin Lister to hear the submissions on DPC 77 and report to the Council on the proposed provisions, with recommendations on the matters raised in submissions.
- 1.4 This report has been prepared in accordance with our appointment.

## 2.0 DISTRICT PLAN CHANGE 77

### Background

- 2.1 In September 2009, as part of District Plan Change 73 (**DPC 73**), Council proposed to rezone the land at 55-85 Curtis Street (**the site**) from a mixture of Open Space B and Outer Residential Area to Business 2 Area.<sup>2</sup>
- 2.2 The landowner of the site (Terrace Heights Holdings Limited) lodged a submission on DPC 73 requesting that the site's zoning be changed to Centres. The Council's decision did not support a Centres zoning, but instead confirmed the Business 2 Area zoning, a zoning which would allow for a range of industrial activities including warehousing, manufacturing and commercial services to establish.
- 2.3 The Council's decision on the proposed rezoning of the site to Business 2 Area was subject to an application to the High Court for a judicial review lodged by the Creswick Valley Residents' Association (**CVRA**).
- 2.4 The High Court decision upheld the CVRA application and set aside the Council's decision to rezone the site Business 2 Area; but noted, however, that the "*merits of the proposed rezoning*" were not an appropriate subject for challenge by way of judicial review.<sup>3</sup>
- 2.5 Following the High Court's decision the Council commenced a new plan change process specific to the site. We were advised that during this process the Council consulted with CVRA and the land owner and other parties, including Transpower (electricity transmission lines cross the site), iwi groups and the Greater Wellington Regional Council.

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<sup>2</sup> DPC 73, which formed part of the Council's 'rolling review' of its operative District Plan, was a full review of the Suburban Centre chapters of the District Plan. As the public notice stated, one of the key changes proposed was "*splitting the current Suburban Zone into two new zones, Centres and Business Areas, to recognise their differing roles, and better manage the activities that locate in these areas*".

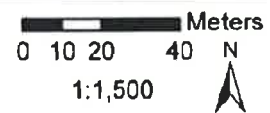
<sup>3</sup> *Creswick Valley Residents Association Inc v Wellington City Council and Terrace Heights Holdings Ltd*, CIV-2001-485-2438 [2012] NZHC 644 at paragraph [87].

# 55-85 Curtis Street Karori



**Proposed Zoning**

-  Open Space B to Curtis Street Business Area
-  Outer Residential to Curtis Street Business Area



2.6 As part of the plan change process the Council commissioned a number of technical assessments addressing the following matters:

- Ecology
- Economics
- Heritage
- Landscape
- Noise
- Traffic
- Geotechnical and Contamination
- Urban Design

2.7 The technical assessments formed part of the Council's Section 32 Report.

### **The Plan Change**

2.8 DPC 77 proposed a site-specific Business Area zone (Curtis Street Business Area). The rationale was that a number of site and context specific resource management issues could best be addressed through a dedicated planning framework with site-specific objectives, policies and rules. The plan change involved the insertion of two new chapters into the District Plan: Chapter 35 (Curtis Street Business Area Objectives and Policies) and Chapter 36 (Curtis Street Business Area Rules and Standards).

2.9 In the Introduction to Chapter 35 it was recorded, *inter alia*, that:

*"The Curtis Street Business Area provides for increased commercial activity in the western suburbs while at the same time reinforcing the District Plan's intentions of facilitating efficient use of land and compact urban development on a city-wide scale. The Curtis Street Business Area provides for a range of commercial, service and employment related uses within a planning framework that takes account of the specific characteristics of the local environment. Sensitive activities such as residential uses, schools and hospitals are discouraged due to the presence of overhead transmission lines.*

*The approach for the Curtis Street Business Area is to clearly signal, through the use of rules, those activities which are encouraged and those which are discouraged. Specifically this is achieved through an approach where activities are listed under different resource consent categories. Activities standards have also been imposed on all activities to ensure that the adverse effects of activities are avoided, remedied or mitigated, particularly with regard to effects on adjacent Residential Areas.*

*Issues of particular importance to the Curtis Street Business Area include urban design, retail distribution effects and traffic. Specific rules and environmental standards have been applied to ensure that these effects can be appropriately managed in terms of effects on landscape and residential character, Council's networks of centres and the road network. Maintaining the character, appearance and environment in and around Business Areas is an important objective of the District Plan".<sup>4</sup>*

### **Notification and Submissions**

2.10 Following public notification of DPC 77 on 11 December 2012 a total of 65 submissions were received by the closing date of 11 March 2013. Subsequently, eight further submissions were received by the

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<sup>4</sup> Note: the quoted section is from the publicly notified version of DPC 77. In the version now recommended for adoption by Council, there are some minor amendments made in response to submissions.



closing date of 12 June 2013. The full list of submitters and further submitters is appended [Appendix 1].

### Principal Issues in Contention

2.11 Principal issues and concerns raised in the submissions were:

- loss of Open Space B land
- lack of land for business development
- impact on existing centres / existing businesses
- loss of residential character / impact on residential amenities (lighting, noise, privacy and visual)
- loss of ecological values / threat to ecological corridor
- loss of vegetation
- impact on the Kaiwharawhara Stream (stormwater management)
- size and bulk of buildings
- building design and external appearance
- traffic and road safety issues / increased traffic congestion
- site access and parking issues
- proximity to electricity transmission lines and need for restriction on activities within the proposed Business Area
- impact on heritage / archaeological resources
- earthworks
- contaminated land

2.12 A number of submitters raised 'process-related' issues including adequacy of consultation and engagement with the community. Other submitters raised technical issues such as adequacy of the Section 32 Report, and various details relating to the proposed objectives, policies, rules and activities standards.

## 3.0 EXISTING ENVIRONMENT

### Site and Locality

- 3.1 The land subject to DPC 77 (55-85 Curtis Street) is 1.09 hectares in area (comprised of Part Lots 1 and 2 DP 1746, Lots 1-3 DP 2089, Part Lot 4 DP 2089 and Part Section 2 SO 37014) and is situated in a remnant gully which runs south to north, with the suburbs of Northland to the east and Karori to the west.
- 3.2 Curtis Street forms the eastern boundary and Old Karori Road, now largely a walking track, the western boundary. Whitehouse Road forms the northern boundary.
- 3.3 Roughly triangular in shape, the site is 'divided' into two distinct parts with the broader part at the northern end being generally level with the adjoining roads (Curtis Street and Whitehouse Road) and the narrower part at the southern end being set well below the level of Curtis Street.
- 3.4 On the western boundary the site abuts a steep vegetated escarpment. At the top of the escarpment is Paisley Terrace, a cul de sac street serving 15 properties. On the eastern side, on the opposite side of Curtis Street are a significant number of residential properties located on west facing slopes. Many of those properties look down into and across the site.
- 3.5 To the immediate south of the site is a recently established pre-school centre (Kindercare) and further south a small number of residential dwellings situated in a continuation of the gully which, some 200 metres south of the site, abuts Chaytor Street, the principal road accessing the suburb of Karori.

- 3.6 To the north of the site on the northern side of Whitehouse Road are recreation playing fields (Ian Galloway Park).
- 3.7 The Central Park-Wilton A 110kV electricity transmission lines traverse the site, although there are no support structures located within the site.
- 3.8 Currently the site has a 'split' zoning, with the northern part zoned Open Space B and the southern part zoned Outer Residential Area.

### Site History

- 3.9 The site, today owned by Terrace Heights Holdings Limited, is highly modified. Previously a gully through which the Kaiwharawhara Stream flowed, ground levels have been raised by extensive fill and the associated culverting of the stream.
- 3.10 The northern part of the site was previously part of a Council landfill (the area now zoned Open Space B): while the southern part (the area now zoned Outer Residential) was for approximately 60 years until the mid-1990s a Council works depot.<sup>5</sup>
- 3.11 Since the mid-1990s the site has been vacant. The land was sold by Council in 1999 to Foodstuffs Properties (Wellington) Limited. In 2007 Foodstuffs sold the land to the current landowner, Terrace Heights Holdings Limited. At that time an encumbrance was placed on the title restricting the development of a supermarket.
- 3.12 In 2010 the current landowner applied for resource consent for bulk earthworks and associated vegetation clearance, which was granted on a non-notified basis on 13 December 2010. A further resource consent application for a Mitre 10 hardware store was lodged in April 2011.
- 3.13 The earthworks consent was subsequently set aside by the High Court as part of the judicial review proceedings initiated by the CVRA (refer Footnote 3 above). The resource consent application for the Mitre 10 store was deferred in August 2011 and remains 'suspended'.<sup>6</sup>

## 4.0 SECTION 42A REPORT

- 4.1 A comprehensive Officer's Report was pre-circulated in accordance with s42A of the Act.<sup>7</sup>
- 4.2 The Reporting Officer was Sarah Edwards, Senior Policy Advisor, District Plan Team. Mrs Edwards' planning analysis was supported by technical input from the following officers or consultant advisors:

Frances Forsyth, Wildland Consultants, in relation to ecology  
 Julia Williams, Drakefield Williams Ltd, in relation to landscape  
 Lucie Desrosiers, WCC Urban Design Team, in relation urban design  
 Tim Heath, Property Economics, in relation to retail distribution / economic effects  
 Sam Thornton, OPUS international Consultants, in relation to traffic and parking effects  
 WCC Heritage Team, in relation to heritage

<sup>5</sup> At the hearing the Creswick Valley Residents' Association (Submitter #43) tabled a photograph dated circa 1930 that showed residential dwelling houses and horse stables on the site.

<sup>6</sup> Being on 'suspension' means that the application has been placed on hold at the request of the applicant. Subsequently, at the request of the applicant the application can either be withdrawn or processing re-commenced.

<sup>7</sup> The Officer's Report is often referred to as the s42A Report given the requirement under s42A of the Resource Management Act 1991 for a report to be prepared by an officer of the local authority or a consultant or other person commissioned by the local authority, on information provided on any matter described in section 39(1) - including a proposed plan change - by any person who made a submission.

Matthew Borich, WCC Senior Noise Advisor and Nigel Lloyd, Acousafe Engineering & Consulting Ltd, in relation to noise  
Tonkin & Taylor in relation to geotechnical and site contamination matters.

- 4.3 Of the above mentioned officers and consultants, Lucie Desrosiers, Tim Heath, Sam Thornton and Matthew Borich attended the hearing. Advice and input from the other officers and consultants was through their technical assessment reports which formed part of the Section 32 Report.

## 5.0 STATUTORY CONTEXT

### Legal Framework

- 5.1 We turn now to outline the legal framework which governs the plan change process, including our assessment and recommendations to Council.

- 5.2 The legal framework which governs the process of plan preparation and review under the RMA consists of inter-related provisions, the key elements being the following:

- Part 2: section 5 sets and defines the purpose of the RMA, and sections 6 to 8 contain a hierarchy of matters which must be specifically considered by decision-makers in this context;
- Section 31 sets out the functions of the Council under the RMA. Those most relevant being:
  - a) the establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district;
  - b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of -
    - the avoidance or mitigation of natural hazards; and
    - the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
    - the maintenance of indigenous biological diversity.
- Section 32 directs the Council to prepare a report prior to the notification of a plan change in accordance with the requirements of this section.<sup>8</sup> Then, under section 32(2) the Council is required to make a further evaluation before making a decision on a plan change. The evaluation must examine/evaluate whether each of its objectives is the most appropriate way of achieving the purpose of the RMA, and then, having regard to efficiency and effectiveness, whether the policies and rules or other methods are the most appropriate way of achieving those objectives;
- Sections 72-75 contain the provisions on the purpose of the plan, plan preparation and change, the matters to be considered by the Council, and the contents of the plan; and
- Schedule 1 Part 1 contains the detailed process under which new plans and changes are prepared, notified for submissions and further submissions, heard and decided, and then formally adopted.

- 5.3 All planning decisions under the RMA, including those relating to plan changes, must be in accordance with the statutory purpose of the Act under Part 2, which is the sustainable management of the City's natural and physical resources (as defined in section 5). Also, the Council must recognise and provide for any relevant matters of "National Importance" under section 6, have particular regard to the

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<sup>8</sup> The required Section 32 Report (December 2012) formed part of the publicly notified plan change.

"Other Matters" in section 7, and under section 8 take into account the principles of the Treaty of Waitangi.

- 5.4 We note that in the context of the RMA the definition of 'effect' in section 3 includes "any positive or adverse effect". While RMA decision-making often focuses on the avoidance of actual or potential adverse effects, resource management planning must, to a significant degree, be concerned with enabling positive effects.
- 5.5 In making a decision on a plan change, the requirements of section 74 of the Act apply, including the following matters of relevance:
- the extent to which the plan change achieves the purpose and principles of the Act, that is Part 2;
  - the extent to which each objective of the plan change is the most appropriate way to achieve the purpose of the Act and whether the policies, rules and other methods are the most appropriate for achieving the objective(s);
  - the extent to which the plan change is consistent with the regional policy statement and any regional plan;
  - the extent to which the plan change is consistent with the District Plan;
  - the submissions and further submissions received; and
  - how the plan change deals with any adverse effects on the environment.
- 5.6 An over-riding principle that has guided us in considering DPC 77 and the submissions and further submissions has been whether (or not) the proposed rezoning represents the best option for achieving the purpose of the RMA.
- 5.7 Where a submission requests that we take a different approach to that proposed in DPC 77, then we must look at that request in the context of the other parts of DPC 77 and the operative District Plan, other relevant plans and policies, and also the over-arching provisions of Part 2.<sup>9</sup>
- 5.8 Against the above background, we turn now to outline the policy context for the issues raised by DPC 77 and the submissions and further submissions on it.

### **Policy Framework**

- 5.9 As we noted above, sections 74 and 75 state the matters which must be considered by the Council in preparing or changing a plan, and the contents of the plan. Section 75 includes the requirement to either 'give effect to' or 'not be inconsistent with' certain other policies made under the RMA. The plans, policies and other documents listed in or encompassed by these two provisions are the policy context for our assessment of DPC 77.
- 5.10 The RMA sets out a hierarchy of plans which must be considered in evaluating DPC 77. Those which we consider potentially relevant to our assessment of DPC 77 are:
- any relevant national policy statement;

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<sup>9</sup> Clause 10 Schedule 1 requires the Council to give reasons for its decisions on the submissions made. However, for purposes of the decision, the submissions may be grouped to subject matter or specific plan provisions. Submissions need not be addressed individually.

- the Wellington Regional Policy Statement; and
- the Wellington City District Plan (including Plan Change 73).

5.11 Under section 74(2)(b)(ii) of the Act we must have regard to any 'management plans and strategies prepared under other Acts'. In accordance with this obligation we have had regard to a number of other plans and strategies that have been raised during the course of the preparation of the Plan Change and in submissions. These are:

Centres Policy 2008  
 Outer Green Belt Management Plan 2004  
 Capital Spaces 1998  
 Biodiversity Action Plan 2007  
 Environmental Strategy 2006  
 Heritage Policy 2010  
 Open Space Access Plan 2008  
 Wellington City Council Long Term Plan 2012-22

5.12 We have considered all these documents where they are relevant to the development and direction of DPC 77. Some we have considered in greater detail in the assessment of specific topics.

## 6.0 HEARING

6.1 The hearing was held over three days (2, 3 and 4 September 2013) when a total of 16 submitters appeared. The submitters who appeared were:

15 Peter Henderson  
 27 Heather Sharpes  
 31 Bev Abbott  
 38 Rod Bryant  
 40 Frances Knight and Wayne Newman  
 43 Creswick Valley Residents' Association Inc  
 44 Wilton Residents' Association  
 45 Greater Wellington Regional Council  
 47 Andrew Monahan  
 49 Andrew Foster  
 50 John Christopher Horne  
 55 Sara Clarke  
 56 Transpower NZ Limited  
 57 Sheena Bennett  
 60 Michael and Rachel Roth  
 61 PrimeProperty Group

In addition, a written statement from John Boshier (Submitter #13) was read by Paul Barker, a member of the Creswick Valley Residents' Association.

## 7.0 EVIDENCE

7.1 A significant amount of evidence was presented over the course of the three-day hearing. It is not possible or indeed necessary to summarise each individual statement. Rather, the summary that follows is organised around the following principal themes or topics:

- plan change v operative District Plan provisions
- private land ownership v retention of Open Space B zoning
- landscape values / ecological values

- business areas and economic effects
- urban design
- residential amenities
- heritage / archaeology
- transportation, traffic and parking
- electricity transmission lines
- site contamination
- earthworks
- impact on Kaiwharawhara Stream (stormwater management)
- planning (objectives, policies and rules)

The intention of the summary is to identify the main issues and points in contention and highlight the key evidential statements that led us to our conclusions and therefore our recommendations on DPC 77.

### Plan Change v Operative District Plan Provisions

- 7.2 The Council-declared principal purpose of DPC 77 was to change the zoning of the site from Open Space B/Outer Residential Area to Curtis Street Business Area. In the Council's Section 32 Report, at section 4 "The Key Resource Management Issue - Rationalising of Zoning", it was stated, *inter alia*, that:

*"... it has become clear that the zoning of the land needs to be properly considered and rationalised to ensure future development of the site occurs within a planning framework that enables local resource management issues to be taken into account. Key aspects of rationalising the zoning include:*

- *That the site is privately owned and there is a legitimate expectation on the part of the landowner that it can be developed.*
- *That although most of the site is zoned for residential use it is constrained for that use by its location in a deep gully and beneath high voltage transmission lines, and tellingly was not developed for residential purposes through the recent residential property boom.*
- *Proposals to develop the site over the last fifteen years have tended towards commercial uses (e.g. a supermarket, commercial storage units, a hardware store) providing some indication of demand for commercial use of the land".*

- 7.3 The majority of the submissions opposed the plan change with a number specifically opposing the change of zoning and/or requesting the retention of the current zoning.<sup>10</sup> Some submitters specifically requested the retention of the Open Space B zoning for some of (e.g. the northern part) or the entire site.<sup>11</sup> Other submitters requested that the Council re-purchase the site and/or develop the land as part of an open space/ecological corridor, with several submitters referring to the Outer Green Belt Management Plan 2004, which they suggested envisaged enhancement of ecological corridors along the Kaiwharawhara Stream.<sup>12</sup>

<sup>10</sup> Submitters who supported the current zoning and requested that it be retained included: Alison McEwan (Submitter #4); Kristin Gibson (Submitter #19); Sean Thompson (Submitter #20); Imogen Thompson (Submitter #21); Frances Knight and Wayne Newman (Submitter #40); Rosemary Tomlinson (Submitter #41); Amanda Otzen (Submitter #42); and Creswick Valley Residents' Association (Submitter #43).

<sup>11</sup> For example: Peter Henderson (Submitter 15); Cecilia Doogue (Submitter #28); and Michelle and Julian Davies (Submitter #59).

<sup>12</sup> For example: Maurice Moore (Submitter #26); Rodney Lewington (Submitter #32); Marsden Village Association (Submitter #33); Gregory Howell (Submitter #36); Paul Oliver and Rowena Cullen (Submitter #37); Rod Bryant (Submitter #38); Frances Knight and Wayne Newman (Submitter #40); Creswick Valley Residents' Association (Submitter #43); Wilton Residents' Association (Submitter #44); John Christopher Horne (Submitter #50); Elizabeth Buckley Bargh and Robert Buckley (Submitter #52); Kathryn Hunt (Submitter #54); Sara Clarke (Submitter #55); and Frances Lee (Submitter #58).

- 7.4 Other submitters supported the rezoning.<sup>13</sup>
- 7.5 In the s42A Report the Reporting Officer's position was that proposed Curtis Street Business Area zoning was appropriate.
- 7.6 The evidence presented at the hearing covered the opposing positions. On the one hand (and not unexpectedly) PrimeProperty Group, the parent company of the landowner (Terrace Heights Holdings Limited), supported the rezoning. Ian Leary, an experienced planning consultant who gave evidence on behalf of PrimeProperty Group, confirmed support for the rezoning provisions and the use of the site for business and commercial use. However, as will be apparent when we address other issues, Mr Leary opposed some of the specific provisions.
- 7.7 Other submitters, including the Creswick Valley Residents' Association (CVRA), opposed the rezoning. The CVRA's position was that the current zoning, which in the opinion of the CVRA did provide for development of some of the land, was appropriate. The CVRA advised that they were not opposed to development per se, a point also made by other submitters who presented at the hearing, including Heather Sharpe who told us that:
- "I am not opposed to development, if this site is suitable to be developed, but do want reasonable planned development"*.
- This was a sentiment that we felt was shared by a number of other submitters as well. Of course, the issue of what is 'reasonable' or 'appropriate' arises, an issue that rather lies at the heart of the DPC 77 plan change process.
- 7.8 Another submitter (Sara Clarke, Submitter #55) told us that she was:
- "... not completely adverse to having some of the land rezoned for business/commercial uses"*.
- In this event, however, she said that she would like the Open Space B land retained on the northern (Whitehead Road) boundary, and would like the Old Karori Road corridor enlarged and enhanced. We pick up on these two points in following sections of this report.
- 7.9 Taking into account the points made by the submitters who appeared at the hearing, as well as the points made in the written submissions, and having regard to the Reporting Officer's evidence presented in the s42A Report, we have reached the tentative conclusion that a change of zoning is appropriate given the circumstances of the site and its history of 'non-use' under the current zoning, and here we are thinking particularly of the Outer Residential Area zoning.<sup>14</sup> In reaching this conclusion we have had regard to the presence of the Central Park-Wilton A 100kV electricity transmission lines which we consider have likely been something of a deterrent to residential development, as has, in all probability, the gully nature of the site.
- 7.10 Thus, our tentative conclusion is that a rezoning of the site along the lines proposed is appropriate. However, before we firm up on this conclusion we want to firstly examine the issue of 'private land ownership v retention of Open Space B zoning'.

#### **Private Land Ownership v Retention of Open Space B Zoning**

- 7.11 Peter Henderson (Submitter #15) presented at the hearing. He said that his focus was on:

*"... ownership and zoning issues, especially in relation to the Capital Coast Health v Wellington City Council decision"*

<sup>13</sup> Submitters who supported the proposed zoning change included: Naomi Lane (Submitter #1), Madeline McAlister (Submitter #5); Paul Francis Broughton and Susan Jane Ryan (Submitter # 35); Andrew Monahan (Submitter #47); and PrimeProperty Group (Submitter #61).

<sup>14</sup> We accept that the Open Space B Area is not a development zone *per se*. Indeed, the District Plan intention is to keep such areas in an unbuilt or natural state (refer 16.3, Open Space B (Natural Environment), District Plan p16/2).

which he considered the Officer's Report questionably relied on to underpin DPC 77.

- 7.12 At the hearing Mr Henderson submitted that the Open Space B component of the Curtis Street site should not be rezoned, a position that a number of other submitters had also advanced. In answer to our questions, Mr Henderson stated that 'alienation' (Mr Henderson's word) of Open Space land was totally unacceptable.
- 7.13 In addition to requesting the retention of the existing Open Space B land, Mr Henderson also advocated for the extension of the open space zoning to incorporate a 'buffer area' along the western margin of the site adjacent to Old Karori Road to provide a "*wider and deeper ecological corridor*". This again was a request made by a number of other submitters.
- 7.14 Our approach to this issue is to assess the character of the Open Space B land and decide whether (or not) an Open Space B zoning is appropriate. Firstly, however, we comment on the site's more recent history.
- 7.15 We understand the Open Space B land south of Whitehead Road was the southern end of a Council managed landfill (Wilton Tip) which was subsequently developed as open space, principally as sportsfields (Ian Galloway Park), following the closure of the landfill in 1972. This use was reflected in the zoning of the site (Open Space E - Multiple Purpose Park) under the previous transitional District Plan.<sup>15</sup>
- 7.16 The Open Space E zoning was 'replaced' with the Open Space B zoning with the public notification (in July 1995) of the then proposed and now operative District Plan.
- 7.17 The 'zone statement' for the Open Space B Area is:

*"Open Space B (Natural Environment)*

*Open Space B land is valued for its natural character and informal open spaces. It involves areas that are used for types of recreation that, in the broadest sense, do not involve buildings or structures. The intention is to keep such areas in an un-built or natural state. This type of open space encompasses both formal and informal open space elements, it includes walkways, scenic areas and open grassed areas where buildings are inappropriate. Its characteristics are minimal structures, largely undeveloped areas and open expanses of land. Most Open Space B areas are vegetated and often have ecological values or may buffer Conservation Sites".<sup>16</sup>*

For completeness we note that the other Open Space Areas are: Open Space A (Recreation Facilities) and Open Space C (Inner Town Belt).

- 7.18 Our approach to addressing the 'ownership and zoning issue' was to put to one side the question of ownership and form a view on whether (or not) the land in question had the characteristics which warranted all or some of it being zoned Open Space B.
- 7.19 Quite clearly much of the land in question has little in the way of 'natural character' having been the cover of a landfill now sown in grass cover. The exception to this is the more western portion which is not grassed but which forms part of the toe of the vegetated escarpment which rises quite steeply to the west to Paisley Terrace. This 'demarcation' between the grassed area and the western escarpment portion of the Open Space B zoned area approximately equates the boundary of the former landfill.

<sup>15</sup> The objectives of the Open Space E Zone were stated as:

1. *The purpose of this zone is to provide for controlled use and development of large city parks outside of the two town belt zones.*
2. *The visual qualities and open space requirements must be balanced with the general recreational needs of the public.*

Wellington City District Scheme, September 1985, p13/11.

<sup>16</sup> Wellington City District Plan (July 2000), p16/2.



- 7.20 The escarpment is traversed by Old Karori Road (now a walking track). It has significance as a topographical feature and also has ecological value as part of a vegetated corridor extending from the Karori Sanctuary (Zealandia) to the Otari Native Plant Museum, and historical and recreational values associated with the Old Karori Road. Of particular note are several seepage wetlands and glow-worm colonies on the uphill side of Old Karori Road.
- 7.21 The DPC 77 site falls mostly outside the escarpment. However, we heard evidence that the vegetation at the toe of the escarpment, which does fall within the site, is important as a buffer for the rest of the escarpment and habitat of the glow-worm colonies.
- 7.22 We consider it important that the vegetated escarpment is protected in its entirety and that a dense buffer of vegetation should be retained or enhanced between activities on the site and the escarpment. The evidence was that the vegetation on the escarpment is important to protect the seepage wetlands from sun, wind, light and weeds. The main tree near to the toe of the escarpment is a karaka tree which should be protected.<sup>17</sup> Otherwise the area is mostly weeds, and the escarpment itself has some significant gaps and weed infestation. We therefore recommend a building 5m offset from the boundary and planting of the offset area in native vegetation. Such a buffer would be to maintain the vegetated escarpment as a feature, the health of its vegetation and habitats, and the amenity of the Old Karori Road walking track for recreational users.
- 7.23 Finally on this point we note that much of the western escarpment where it falls within the site is zoned Outer Residential Area and not Open Space B.
- 7.24 Thus, whilst we agree that the western portion of the site zoned Open Space B does exhibit some characteristics consistent with the Open Space B Area, this is not the case, in our opinion, for the eastern (grassed) portion. As we note above, we see the western portion as having a role to play as a buffer for the evident ecological values of the western escarpment. We consider that this part should be protected.
- 7.25 We note that the landscape assessment that formed part of the Section 32 Report referred to the DPC 77 land as something of an "orphan site in more ways than one".<sup>18</sup> In our opinion this description applies particularly to the Open Space B land which is separated or 'orphaned' from the principal area of Open Space B to the north on the opposite side of Whitehead Road, and which does not, as we have noted, exhibit strong Open Space B values. We agree, however, that the mown grass area does contribute to the 'parkway' character of the lower section of Whitehead Road, which we accept has positive amenity. We consider that such amenity should be retained (and potentially enhanced), which could be achieved by a broad landscape frontage on this part of the site. However, this outcome is not dependent, in our opinion, on retaining the Open Space B zoning.
- 7.26 For the above reasons we do not consider we need address the *Capital Coast Health* decision drawn to our attention by Mr Henderson in any detail. Nevertheless, as we indicated at the hearing, we did seek legal advice on the possible application of the decision. In due course we received a copy of a report previously prepared for Council by Simpson Grierson.<sup>19</sup>
- 7.27 Our opinion is that notwithstanding that an Open Space B zoning applied when the current landowner (Terrace Heights Holdings Limited) purchased the land, given our findings as outlined above, we do not consider that there is any legal impediment to changing the zoning. In short, we do not consider that retaining the Open Space B zoning, particularly the grassed portion, will achieve a valid RMA purpose, such as the maintenance and enhancement of 'amenity values' or the protection of 'intrinsic ecosystems'.

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<sup>17</sup> The karaka is just inside the boundary (i.e. is on the DPC 77 site) but the canopy 'straddles' the boundary with the adjacent Council land.

<sup>18</sup> Landscape Report, 55-85 Curtis Street, Karori, Drakeford Williams Ltd, September 2012, p3

<sup>19</sup> Summary and Assessment of Capital Coast Health Limited v Wellington City Council, Report prepared for Wellington City Council by Simpson Grierson, 28 September 2012. A copy of the Simpson Grierson report was requested by and sent to Peter Henderson (Submitter #15).

- 7.28 In our opinion, if the western escarpment (including that portion that falls within the site) was to be protected through zoning, the zoning along the full length of the Old Karori Road walking track should be either Conservation Site or Open Space B and not a mixture of Outer Residential Area and Open Space B (as it presently is). However, such a zoning change is outside our jurisdiction.

### Landscape Values / Ecological Values

- 7.29 Drawing on the discussion in the above section on 'Private Land Ownership v Retention of Open Space B Zoning' we now address the issue of the site's landscape and ecological values.

- 7.30 Although there was no expert landscape/ecological evidence presented to the hearing by submitters, a number did opine that the site, and especially the land on its western margins, had important landscape and ecological values. Included in the background information supporting the Plan Change were the following two reports:

- *Landscape Report: 55-85 Curtis Street, Karori* (September 2012), prepared by Julia Williams of Drakeford Williams Ltd; and
- *Ecological Assessment of 55-85 Curtis Street, Stage 2* (November 2012), prepared by Frances Forsyth of Wildland Consultants.

The reports formed part of the Council's Section 32 Report.<sup>20</sup>

- 7.31 In the Executive Summary to the Landscape Report (at p1) it was stated that in the opinion of the author (Julia Williams an experienced landscape architect):

*"The site itself has relatively low landscape values. It has been highly modified over time with little of the original landform, vegetation or waterways remaining, However, viewed in its wider context, the site has strong landscape and visual links to the wider valley landform and the open space network in the Kaiwharawhara catchment".*

The natural character of the site was evaluated as being 'relatively low'.

- 7.32 Notwithstanding that the natural character of the site was evaluated as being relatively low, among recommended mitigation measures to manage landscape and visual effects of any development of the site was the protection of vegetation on the Old Karori Road escarpment, both on and off site. It was also considered important to retain the Kaiwharawhara Stream corridor character by maintaining the coherence of the street edge through the retention of vegetation along the Curtis Street road reserve.

- 7.33 The Wildland Consultants' Report provides an assessment of the relative significance of ecological features and values located at, and adjacent to, 55-85 Curtis Street. Among its conclusions are:

- the escarpment on the western side of the valley, which includes forest remnants, forms part of a significant ecological corridor along the Kaiwharawhara Stream;
- seepage wetlands on the western side of old Karori Road host a glow-worm colony of a size and extent, with excellent public access, that is notable in an urban context;
- vegetation on either side of Old Karori Road buffers and enhances the ecological values of the seepage wetlands and indigenous forest, and provides habitat for indigenous birds and insects; and

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<sup>20</sup> We note that neither report author attended the hearing.

- the buffer vegetation on the eastern side of Old Karori Road is patchy, and does not provide protection to all of the seepage wetlands.

7.34 Turning to assess the potential effects of development on the Curtis Street site, the report notes that:

*"While none of the regionally significant ecosystems are present on the site they are so close that the buffering effect of site vegetation, including some exotic species, becomes important".<sup>21</sup>*

7.35 With specific reference to the seepage wetlands, the report opines that:

*"Removal of buffer vegetation or reduction in the structural integrity of the buffer could severely affect the function of the wetland by opening it up to sun and wind. This could result in a major reduction in the population of glow-worms and invasion of wetland by weeds".<sup>22</sup>*

The report then adds:

*"While only a small proportion of the buffering vegetation lies on the Curtis Street site, the land here is very steep and some trees on the Curtis Street site are tall. Some trees on the Curtis Street site make a significant contribution to the buffering effect and their removal would compromise the structural integrity of the buffer, opening the buffer itself up to edge effects such as wind damage, as well as exposing the seepage wetlands ... Of the vegetation on the Curtis Street site, only that which materially acts as a buffer has been delineated as such".<sup>23</sup>*

7.36 In the report's conclusion it is stated that:

*" ... Removal of the buffer vegetation which lies within 55-85 Curtis Street would, potentially, have significant effects on the forest and seepage wetland features"<sup>24</sup>*

features which are considered to be regionally significant.

7.37 A number of submitters who presented at the hearing stressed the significance of the 'green' (ecological) corridor, including the seepage wetlands and the glow-worm colony, and the importance of an effective buffer.

7.38 Having considered the expert information available to us, and the points made both in the written submissions and at the hearing, we have concluded that:

- the bush-clad escarpment adjacent to the western margin of the site has significant ecological values;
- while the escarpment is largely outside the DPC 77 site, for a portion of the western boundary the toe of the escarpment crosses over into the DPC 77 site; and
- development on the DPC 77 site does have the potential to adversely affect the ecological values of the escarpment, including the 'health' of the glow-worm colony through removal of buffer vegetation and hence greater exposure to sun, wind and effects from lighting on the DPC 77 site.<sup>25</sup>

As a consequence, we consider that the DPC 77 provisions should include measures to 'avoid, remedy or mitigate' adverse effects on the buffer vegetation.

<sup>21</sup> Wildland Consultants, 2012, p12.

<sup>22</sup> Op cit, 13.

<sup>23</sup> Op cit, p13.

<sup>24</sup> Op cit, p14.

<sup>25</sup> A number of submitters expressed concern about lighting effects – for example: Mark Casson and Patricia James (Submitter #18), Ryan O'Donnell and Amanda Oliver (Submitter #22) and Sarah Holden (Submitter #24).

- 7.39 Finally under this heading we note that the vegetated bank on the eastern side of the site does contribute to the current amenity of Curtis Street. We return to this matter when addressing 'urban design' issues below.

### **Business Area and Economic Effects**

- 7.40 The intent of the proposed Curtis Street Business Area is clear - i.e. to change the zoning to enable various business and commercial activities to establish. This intention gave rise to submissions both in support and in opposition.
- 7.41 Supporting submissions generally pointed to the lack of appropriately zoned land in Karori to provide for business and commercial opportunities; while opposing submissions considered that Karori was adequately supplied with existing business and commercial activities, including supermarkets and retail shops generally. Many opposing submitters also felt that the site was not suitable for business and commercial development.
- 7.42 As part of the Section 32 Report an economic analysis was undertaken by Property Economics.<sup>26</sup> The author of the report, Tim Heath, also prepared a supplementary retail economic paper (August 2013).
- 7.43 The main conclusions reached by Mr Heath were that: (a) there are significant levels of retail leakage from the Kaori catchment (in the order of 80%); and (b) that sustainable demand forecasts for the catchment would support a significant increase in the amount of commercial floorspace available within the catchment.
- 7.44 On the other hand, it was considered that:

*"The existing centres are unlikely to be adversely affected to a significant degree in an RMA context due to their closer proximity to the markets they serve ...".<sup>27</sup>*

Mr Heath concluded his supplementary report by stating that:

*"On balance, the development will, in my professional opinion, provide net benefits to the social and economic well being of the community though (sic) providing retail and commercial service activity in an easily accessible location, including local employment opportunities, increased competition and its associated benefits.*

*For the foregoing reasons, from a retail economic perspective, Property Economics support PC77 given the scale and type of the proposed development and the provisions associated with PC77 provide a balance between commercial practicality and flexibility for a developer and a high degree of certainty in relation to potential effects for the Council and community".<sup>28</sup>*

- 7.45 The submitter who largely focused on the economic issue was Andrew Foster (Submitter #49).<sup>29</sup> Mr Foster set the scene for his evidence by providing a short synopsis of the history of the Council's

<sup>26</sup> Curtis Street Karori Rezoning: Economic Assessment, Property Economics (October 2012).

<sup>27</sup> PC77 Curtis Street Business Area: Supplementary Retail Economic Paper, Property Economics, August 2013.

<sup>28</sup> Op cit, p13.

<sup>29</sup> For the record we confirm that Mr Foster is a sitting City councillor. Mr Foster made it clear that, as a long-standing Karori resident, he was submitting as an individual.

review of the District Plan's provisions for retail and business centres and the strategic intent of Plan Change 73, noting that Plan Change 73 split the suburban centres into "Centres" and "Business 1" and "Business 2" zones. Mr Foster drew our attention to his original submission and the importance, in his opinion, of the need for an economic assessment in respect of the Curtis Street site.

- 7.46 Mr Foster next commented on the issue of 'retail leakage' and noted that it was true for most Wellington suburban catchments that there was significant leakage, for otherwise the Wellington central area would not *"have remotely the level of retail activity it does"*. Accepting however that the level of leakage was particularly high in the Karori catchment, Mr Foster told us that he considered:

*"The issue is whether people in the catchment should reasonably be able to conduct more of their retail and business within the catchment than is currently the case"*

adding that he considered:

*"... there would clearly be benefits from having more land available for these non-residential activities than there currently is"*.

- 7.47 Mr Foster came to the point where he told us that in his opinion the rezoning of the Curtis Street site for non-residential purposes was entirely logical.

- 7.48 However, Mr Foster had a caveat which was that:

*"... it matters, and matters greatly, what the nature of any non-residential activity permitted as of right at 55-85 Curtis Street is"*.

- 7.49 We think it is important to quote the following paragraphs from Mr Foster's evidence which really go to the 'heart' of his submission:

[52] *Curtis Street is not a Centre. It is not proposed to be a Centre. It is not the centre of a community. It is not on a public transport route. It is not likely to become the centre of an area of more intense residential activity. In short it does not and will not in any likelihood ever fulfil the criteria for being a Centre.*

[53] *Therefore if 55-85 Curtis Street is to be rezoned it can only become a Business zoned site. A planning question is where 55-85 Curtis Street will eventually sit in the District Plan. It would be completely anomalous for just this single site to be exempt from the general requirement for Business zoned sites to undertake an economic impact assessment should a large integrated retail development or large supermarket be proposed.*

- 7.50 Mr Foster essentially concluded his submission with his statement at paragraph 59:

[59] *I note that requiring an economic assessment does not prevent an integrated development or large supermarket at Curtis Street. What it does do though is ensure a comprehensive assessment of the impacts. That would be consistent with the requirements for any other Business zoned site.*

- 7.51 A number of submitters opposed DPC 77 on the grounds that the development of the site could or would have adverse effects on existing businesses within nearby centres (Northland, Marsden Village

and Karori).<sup>30</sup> At the hearing submitters who presented on economic-related matters in addition to Mr Foster included:

Heather Sharpes: Ms Sharpes considered there was no demand for a further commercial centre - she told us that she felt that *"another small collection of shops would kill Northland"* and that *"our community feels well-served by the shops that are available to us now"*.

Creswick Valley Residents' Association: the CVRA opined that 'leakage' is not a proxy for local demand and that there was no evidence of unmet demand. The Association told us that it considered competition effects may be relevant given the Council's emphasis on protecting local suburban centres under the DPC 73 provisions.

Wayne Newman: Mr Newman's main point was that in his opinion a case for commercial zoning had not been established, adding that:

*"... the provision of a new commercial centre far removed from Karori town centre, beyond Marsden Village, beyond Standen Court, halfway to Northland Village, will do nothing to address any putative need for additional business space in the town centre in Karori"*.

Mr Newman also told us that in his opinion there was no suggestion that the existing pattern of commercial activity in the present distribution of centres was an inefficient or unsustainable use of resources.

7.52 Support for the proposed business zoning was presented by Andrew Monahan (Submitter #47). Mr Monahan confirmed that he was a property manager with PrimeProperty Group, the parent company of the land owner. Mr Monahan told us that *"over time dealing with a number of possible occupiers with different uses for the site it is evident that the preferred commercial use of the site is with large format retailing"*, adding that:

*"... We currently have two large national retail brands which wish to open together new stores on the site leaving one further retail outlet for lease ..."*.

7.53 Based on the evidence to the hearing, and taking into account the points made in the submissions, we have concluded that:

- Karori is short of appropriately zoned land for business and commercial activity, including retail activity (reference expert evidence of Tim Heath);
- there is significant leakage from the catchment to other centres (reference expert evidence of Tim Heath), a feature confirmed by the answers to some of our questions to submitters; and
- there is evidence of demand for commercial use of the Curtis Street site.

In coming to these conclusions we nevertheless acknowledge that some submitters held contrary opinions and considered that Karori was currently well served by existing centres and that commercial development at Curtis Street could result in shop closures in existing centres.

7.54 We also acknowledge the point made by a number of submitters that the Council's Centres Policy<sup>31</sup> seeks to 'maintain and strengthen' existing centres and manage new development, including

<sup>30</sup> Submitters who raised economic-related matters, including potential effects on other centres' viability, included: Sarah Holden (Submitter #24), Jitesh Patel (Submitter #25), Heather Sharpes (Submitter 27), Geoffrey Palmer (Submitter #30), Marsden Village Association (Submitter #33), Ian Stockwell (Submitter #34), Paul Oliver and Rowena Cullen (Submitter #37), Rod Bryant (Submitter #38), John Bickerton (Submitter #39), Frances Knight and Wayne Newman (Submitter #40), Creswick Valley Residents' Association Inc (Submitter 43), Mary Munroe (Submitter #46) and Sheena Bennett (Submitter #57).

<sup>31</sup> Centres Policy, Wellington City Council, August 2008.

development outside of existing centres in a manner that does not result in significant adverse effects on the economic viability and therefore the amenity and vitality of those centres.

- 7.55 To this end we have had particular regard to the evidence of Tim Heath and also the submission of Andrew Foster in relation to the need (or otherwise) for an economic impact assessment for significant retail development on the Curtis Street site.
- 7.56 Notwithstanding Mr Heath's comments that he has effectively undertaken such an assessment and concluded that development of the scale that could be accommodated on the Curtis Street site will not adversely affect the economic viability of existing centres, including the Karori Town Centre, we see no reason not to adopt the Officer's recommendation that integrated retail activities over 2,500m<sup>2</sup> gfa and supermarkets over 1,500m<sup>2</sup> gfa should require resource consent such that any potential impact on existing centres could be assessed as part of the consenting process through an economic impact assessment.
- 7.57 The final observation we make is that although the proposal is to establish a Business Area and not a new Centre, much of the discussion at the hearing was around retail activities rather than business activities. This retail focus included the evidence of Andrew Monahan on behalf of PrimeProperty Group. It is partly for this reason that we came to the conclusion that the requirement for an economic impact assessment should be required as it could otherwise be that a retail centre established rather by 'default' in a Business Area, which, we understand, is not the intent of DPC 73 which establishes three different zones: Centres, Business 1 Area and Business 2 Area, with each zone having a different role and function within the hierarchy of suburban centres.<sup>32</sup>
- 7.58 The requirement for an economic impact assessment is consistent with District Plan policy relating to retail development in the Business 1 and Business 2 Areas, and we see no reason to take a different approach (i.e. not requiring such an assessment) for development in the proposed Curtis Street Business Area, which, after all, is proposed to be a Business Area and not a Centre.

### Urban Design

- 7.59 Urban design ('built environment') issues were raised by a number of submitters, including concerns about the size and scale of buildings, about the use of reflective and brightly coloured building materials, and the need to incorporate design features which modulate and break up building(s).
- 7.60 Before addressing these matters we firstly recap on what we consider are important contextual issues:
- the site is located at the bottom of a valley;

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<sup>32</sup> Among the changes initiated under DPC 73 was the 'splitting' of the Suburban Centres zone into Centres, Business 1 and Business 2 Areas to recognise their differing roles, and better manage the different activities that locate in the three 'zones'. The 'focus' of the three zones was:

Centres: these are classified as sub-regional, town, district or neighbourhood centres. The aim is to maintain and strengthen the role of centres and to encourage residential and commercial intensification.

Business 1 Areas: these are mixed use areas where most activities are permitted but consent is required for large shopping centres or supermarkets. The aim is to ensure that they do not undermine existing Centres.

Business 2 Areas: these are predominantly industrial areas where noise sensitive activities (residential) and some retail activities require consent.

- the site is more visible than it otherwise might be, with many residential properties overlooking the site, particularly from the west facing slopes of Northland;
- the bush clad escarpment to the west and the Curtis Street frontage to the east, along with the Whitehead Road frontage to the north, are all important features.

These 'site contextual' features in turn point to the need for a strong focus on urban design outcomes.<sup>33</sup>

7.61 The Section 32 Report included an urban design report by Lucie Desrosiers, a qualified and experienced urban designer. Mrs Desrosiers attended the hearing to respond to questions of the panel. Mr Leary, the planning witness for PrimeProperty Group, responded to urban design matters in his planning evidence. He also provided a plan of a potential development entailing extensive filling of the site. While not directly relevant to the plan change process, the plan was useful in illustrating a type of development which the owners might consider for the site. Submitters also raised issues that fall under the 'umbrella' of urban design.

7.62 Urban design aspects covered in the submissions and during the hearing included the following:

- Activity type and mix
- Site layout
- Character (context)
- Building scale and appearance
- Signs and colour
- Street frontages (relationship to streets)
- On-site vehicle and pedestrian circulation.

7.63 Having regard to the DPC 77 documents, evidence and submissions at the hearing (as confirmed by our site visits) we came to the following observations and conclusions on these aspects.

#### ***Activity Type and Mix***

7.64 We have already determined that business activities are an appropriate use subject to controls that protect the specific qualities and amenity of the area.

7.65 We also concluded that the site does not lend itself as a 'Centre' as the term is used in the District Plan (i.e. centres with a mixed range of activities including residential, but with a strong focus on retail activities). It is not the natural hub of a suburb and, while it is adjacent to arterial roads, it otherwise has poor street connections with surrounding residential areas. This point was reinforced by submitters. Rather, business activities on the site are likely to be vehicle-oriented and draw on a catchment beyond the immediate neighbourhood. Mr Leary's evidence, which we accept, is that a potential use of the site is a small number of large format retail stores, although we note that other activities might also be viable.

#### ***Site Layout***

7.66 Layout options are limited by the narrowness of the site and its difference in elevation below Curtis Street. There appear to be only two feasible vehicle connections to the surrounding streets (Old Karori Road at the southern end of the site and Curtis Street at the north-western end of the site). A

<sup>33</sup> In this respect it is worth noting that DPC 73 introduced greater design controls, including the introduction of new Design Guides for both Centres and Business Areas to improve the quality of new development.



potential layout presented by Mr Leary in his evidence would entail elevating the lower part of the site (by way of substantial earthworks) to integrate the lower and upper parts of the site and increase the visibility of buildings from Curtis Street.

- 7.67 While such earthworks are only one possible approach to development of the site, we considered that they could improve the efficient use and amenity of the site. We confirmed with Mrs Desrosiers that such a potential change in level, and therefore relationship of buildings to the street, had not been considered in formulating the urban design measures.

#### ***Character (Context)***

- 7.68 The site is central within a valley that is characterised by its residential character and strong matrix of vegetation. Development of the site for business activities has the potential to detract from such a character.
- 7.69 In this regard, the site is visible to passing traffic on Curtis Street and from residential properties on the hillside east of the site (i.e. the Creswick Terrace area). Development therefore has the potential to detract from the amenity experienced by those 'audiences'. We noted, though, that the site has restricted visibility from the hill west of the site (with the exception of views from a small number of properties)<sup>34</sup> because of the steep topography and extent of vegetation on the escarpment.
- 7.70 For these reasons we consider it necessary that DPC 77 provisions ensure that any development is designed in a way to minimise adverse effects on the character of the area, particularly with regard to building scale, appearance and colour.

#### ***Building Scale and Appearance***

- 7.71 We heard submissions that business activities would not be in keeping with the scale and appearance of residential activities and would detract from the amenity of the neighbourhood. Mrs Desrosiers' initial assessment,<sup>35</sup> Ms Williams' landscape report,<sup>36</sup> and Mrs Desrosiers' evidence to the hearing, identified similar issues.
- 7.72 We agree that there is potential for large business buildings to significantly detract from residential character, but conclude nevertheless that such potential effects can be minimised by controls on building scale and appearance.
- 7.73 Mrs Desrosiers confirmed that, in this setting, bulk will be as important as height, and that the 'roofscapes' will have a relatively greater significance because of the degree of overlooking from Curtis Street and nearby residential areas. We concluded, as a result of the information provided, that controls should include:
- a. breaking larger buildings, including roof forms, into smaller distinct parts;
  - b. using a variety of materials and architectural forms;
  - c. designing building façades so as to: (i) articulate smaller architectural components that reflect human scale; (ii) create depth and shadows (avoid large blank and flat walls); and (iii) achieve visibility of activity within buildings (a good proportion of glazing);

<sup>34</sup> Properties that would have a view of a significant part of the site would include: 62 Chaytor Street, 31 Old Karori Road and 13 and 14 Paisley Terrace.

<sup>35</sup> "Proposed Curtis Street District Plan Change: Urban Design Advice" - an appendix to the December 2012 Section 32 Report.

<sup>36</sup> Landscape Report, 55-58 Curtis Street, Karori, Drakeford Williams, September 2012.

- d. avoiding large expanses of single colours, in particular eye-catching colours, that are likely to detract from residential amenity; and
- e. avoiding ancillary services, structures and signs (including signs painted on the roof).

### ***Signs and Colour***

- 7.74 We heard from Mrs Desrosiers that the standard 10m<sup>2</sup> signage control was revised to allow for two 5m<sup>2</sup> signs having regard to an anticipated finer grain building. Mr Leary's evidence was that there was no reason to depart from a 10m<sup>2</sup> standard consistent with other Business Areas.
- 7.75 We agree with points made by both Mrs Desrosiers and Mr Leary. For finer grained buildings a 5m<sup>2</sup> sign seems appropriate; however, taking into account the potential use of the site for a small number of large format stores, and the likely set-back of buildings from Curtis Street (and hence the need for signs to be legible from a distance), a 10m<sup>2</sup> sign would be acceptable.
- 7.76 We concluded that it is much more important in this context to avoid large expanses of bright colours, such as commonly used to advertise large format stores. Use of such colour in this setting is likely to have adverse effects on amenity.
- 7.77 We also refer to our previous comments that signs (including painted signs) should be avoided on building roofs.

### ***Curtis Street Frontage***

- 7.78 We observed that the vegetated bank below Curtis Street is important for the following reasons:
- it contributes to the matrix of vegetation within the valley and perceptions of the valley as heavily vegetated;
  - it contributes to the amenity of Curtis Street; and
  - it is a visual buffer between the site and several overlooking properties.
- 7.79 We therefore concluded that controls are necessary to maintain and enhance the vegetated nature of the bank (noting that some of the vegetated bank falls within the road reserve).
- 7.80 We also concluded that it would not be desirable for buildings to directly front onto Curtis Street because of its narrow, winding nature and the value of its vegetated margin. (Nor would it likely be practicable, apart from the north-eastern part of the site, given the difference in elevation between the site and Curtis Street). However, buildings might still be oriented towards Curtis Street from the western part of the site. Such a layout would enable positive urban design outcomes in terms of legibility, visual address to the street and CPTED.<sup>37</sup> Our recommendations with regards to urban design criteria reflect such objectives.

### ***Whitehead Road Frontage and Intersection with Curtis Street***

- 7.81 We received submissions that the Open Space B land at the north end of the site contributes to the amenity of Whitehead Road as a 'gateway' to Karori. We confirmed on our site visits that the road

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<sup>37</sup> Crime Prevention Through Environmental Design.

has something of a 'parkway' character because of its winding alignment and the extent to which it is framed by open space and (further west) a vegetated cutting.

7.82 The urban design report also identified the northern part of the site as more sensitive because of its greater elevation and its location at the intersection of Curtis Street and Whitehead Road. We agree, and observed that a building on this part of the site would occupy a landmark location and would be visible from three sides.

7.83 We therefore concluded:

- there should be controls to the site's frontage to Whitehead Road to maintain and enhance a green corridor for the road; and
- there should be particular controls seeking high quality architecture for a building at the north-east part of the site that, in particular, responds to its landmark location and relationship to the intersection.

#### ***On-site Circulation***

7.84 We noted above that the site is likely to be vehicle-oriented. Circulation matters (in urban design terms) are therefore likely to focus on car parking and internal site circulation. Nevertheless, we also consider it important that the site has positive pedestrian connections with adjacent streets. We therefore consider the following principles are relevant to on-site circulation:

- direct, legible, high amenity pedestrian priority paths between building entrances and (i) car parks and (ii) street entrances to the site;
- canopies (verandas) over pedestrian paths along building frontages and over building entrances;
- legible vehicle entrances and internal circulation;
- separation of servicing areas from car and pedestrian circulation; and
- landscaping that visually breaks up expanses of asphalt. This matter is particularly important given the degree of overlooking of the site.

#### **Residential Amenities**

7.85 The thrust of many of the submissions was that the development of the Curtis Street site for commercial/business activities would negatively impact on residential amenities, including:

- visual amenities and changed outlook and view: *"the development will be very visible and significantly change the outlook from our house"*;<sup>38</sup>
- lighting: *"a general limit of 8 lux across the whole site not to be exceeded to ensure the surrounding residents, green areas and wildlife habitat are not adversely affected"*;<sup>39</sup>

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<sup>38</sup> Submitter #6 Jane Clunies-Ross and Hamish Hill

<sup>39</sup> Submitter #18 Mark Casson and Patricia James

- noise: "sound carries a considerable distance in this area"<sup>40</sup> / "it will not be possible to baffle the noise from the site";<sup>41</sup> and
- signage: "it is hard to understand how any signage could be erected that does not have an adverse effect? Signage by its nature is designed to stand out, and ensure that it is easy to see".<sup>42</sup>

7.86 Based on our consideration of the evidence presented at the hearing we have concluded that there is potential for impact on residential amenities. However, we consider that appropriate provisions can be included in the Plan Change that will adequately 'avoid, remedy or mitigate' such effects.

### **Noise**

7.87 In relation to noise many submitters drew our attention to what they referred to as the 'amphitheatre effect' in that noise from activities down in the valley (e.g. construction noise on the Kindercare site / noise from recreation activities in Ian Galloway Park / traffic noise) is clearly heard at some distance, especially by residences elevated above the site. This was an issue we specifically discussed with the Council noise expert. Before addressing the issue, we firstly summarise the main points that we have drawn from the expert evidence before us.

7.88 Noise evidence was from three sources:

- a report "Proposed Curtis Street District Plan Change - Noise Advice" which formed part of the Section 32 Report;
- a Peer Review report dated 29 July 2013 prepared by Nigel Lloyd of Acousafe Consulting & Engineering; and
- the Officers' Reply statement to the hearing by Matthew Borich the Council's senior noise advisor.

7.89 The Executive Summary of the s32 Noise Advice report stated:

*"The ambient noise levels experienced in the locality are affected by traffic noise and are similar to the ambient levels found in many residential areas in Wellington. The noise limits that are specified in Plan Change 73, for noise received in residential areas adjacent to Business Areas, are well within the upper recommended limits in the New Zealand environmental noise standards for residential areas and can be considered relatively stringent and are suitable for establishing noise limits for this site. Specifically considering Curtis Street, compliance with these limits will afford adequate protection for sleep and amenity for surrounding residents.*

*There is no amphitheatre effect in this area; however some of the residential houses on the hills have a direct line of sight to 55-85 Curtis Street. Noise emanating from the site and received at these houses is mitigated by the separation distance only, as there is little ground absorption of sound or mitigation of sound through screening. Sites located on lower levels with residential housing above are not uncommon in Wellington.*

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<sup>40</sup> Submitter #13 Anne and Gordon Somerville

<sup>41</sup> Submitter #24 Sarah Holden

<sup>42</sup> Submitter #27 Heather Sharpes

*In conclusion, if the site is rezoned to allow for business use, and activities set up in this site comply with the same noise rules as those specified for Business 2 in Plan Change 73, the noise levels experienced by the surrounding residential area will be acceptable and afford adequate protection to residential amenity. Therefore the noise limits specified for Business 2 in Plan Change 73 is (sic) recommended for this site”.*

7.90 The Lloyd peer review report, referring to the s32 Advice Note, commented that:

*“The advice note describes the site and discusses the amphitheatre effect. I agree with the opinion expressed in the advice note regarding the concept of amphitheatre effect. Submitters describe experiencing enhanced sound levels from activities in the valley and this is more likely to result from the elevated nature of the dwellings and the fact that sound is travelling directly from the source (in this case mostly that of road traffic) to the receiver, without sound being absorbed by topography and ground cover.*

*It is accepted that there may be a perception of enhanced noise levels for residents located on the valley sides. In real terms it does not matter if this phenomenon exists or how it occurs because if appropriate noise standards are applied at the residential sites then it becomes the responsibility of the developer to ensure they are met. The District Plan is an effects based document that establishes appropriate standards to protect residents from adverse noise levels. If there is an amphitheatre effect (or any other enhancement of sound propagation) then the developer would need to obtain advice on how any proposed activities could be managed to ensure compliance with the noise standards”.*

7.91 Mr Lloyd noted in his peer review report that *“a number of submitters raise strong concerns regarding amenity issues, particularly noise”*. This concern resulted in the Council undertaking further sound sampling in the area. Mr Lloyd confirms that he had input to determining the best times for the monitoring that was undertaken.

7.92 We do not consider it necessary for us to summarise the ‘technical detail’ of the results of the monitoring. Suffice for us to record that based on the results of the monitoring Mr Lloyd, a very experienced noise consultant, was able to conclude that:

*“Council has undertaken noise sampling in the Curtis Road (sic) area and the standards in rule 36.6.n(iii) are appropriate given the existing ambient sound levels in the area and given that they are more stringent than the recommended upper limits in NZS6802:2008. When compared to the existing ambient sound levels the daytime standards are strict.*

*The noise standards protect the residential areas and apply at or within residential sites. Thus any enhancement in noise propagation that does exist needs to be taken into account by future developers when designing activities within the Business Area. Unless further application is made to exceed these limits (which the consent authority will need to carefully consider and decide whether such a relaxation is appropriate to the circumstances) then compliance will need to be achieved on an on-going basis”.*

Mr Lloyd ended his peer review advice by stating that he considered that the proposed noise limits were appropriate and would suitably protect the health and amenity of nearby residential neighbours to the proposed Curtis Street Business Area.

7.93 The Council’s Advice Note and Mr Lloyd’s peer review report were both available in advance of the hearing. However, and although we did not hear any expert evidence called on behalf of submitters, several submitters spoke of their concern about future loss of residential amenity (‘peace and quiet’)

as a consequence of the anticipated noise associated with activities in the proposed Business Area. Submitters continued to refer to the 'amphitheatre effect' and cited examples of the type of noise that they found disturbing, including traffic noise.

- 7.94 Faced with these concerns being raised by submitters at the hearing, we carefully considered the further comments made by Mr Borich during the Officer's right-of-reply in response to questions we posed. For example:

Question: a submitter living at 73 Creswick Crescent advised us that they could hear the hammers on the Kindercare site. Is there an 'amphitheatre effect'? As a noise expert, what do you have to say about that?

Reply: in my opinion I don't think there is an amphitheatre effect there ... an amphitheatre effect relies on an increase in noise from reflections off hard surfaces ... in my view what's happening here is that houses have a clear line of sight to the site, so there is nothing in the way absorbing the sound or acting as a barrier to the noise ... if you're looking from above, the only thing affecting or reducing the level of sound is distance really, so you can clearly hear a lot of things.

Question: regardless of the mechanics of it, the effect that residents are describing, whether or not it is an 'amphitheatre effect', to residents it is a 'real' effect - is that a fair interpretation?

Reply: it is a real effect, they can hear the sound. We must remember however there is a noise limit that is going to be set and it's a very reasonable limit in my view that is going to mitigate that effect.

Question: given the noise effect we have been talking about, that noise is carrying further than you might otherwise expect given the distance, is it reasonable to impose a restricted noise limit on the site?

Reply: no I don't think so, it would be if the noise limit was set down at the site or the site boundary, but not at the receiver, it doesn't matter that there is nothing intervening in that the noise can quickly carry out, it still must meet this limit. What it really means is that the topography is really affecting the developer not the residents, the residents are protected by the noise limit that is set up at the residential site.

Question: do you think that a development on this site would be able to meet these requirements?

Reply: yes certainly, but it depends on what type of development.

- 7.95 Having regard to the evidence, including that of the submitters, we have concluded that the proposed noise provisions (Rule 36.6(n)), which set the noise limits at or within the boundary of any residential site, are appropriate and 'fit for purpose' - that is, they are appropriate for protecting residential amenity. Therefore we adopt the Officer's recommendation that there be no change to the proposed noise provisions. This will mean that any noise emitted from the Curtis Street Business Area must meet the noise provisions of the 'receiving environment' which, as the Officer's Report notes, is the Outer Residential Area noise standard.

### ***Lighting***

- 7.96 In relation to lighting effects vis-a-vis residential amenity a number of submitters expressed concern about the effect of night time lighting on residential properties. Among the concerns were:

- a general limit of 8 lux across the whole site should not be exceeded to ensure the surrounding residents are not affected (Mark Casson and Patricia James, Submitter #18);
- installation of all-night lighting on the site will severely affect those dwellings which overlook the site (Bridgett Parkin, Submitter #29);
- the proposed limit of 8 lux across the whole site does not provide adequate privacy for residents (Ian Stockwell, Submitter #34);
- the shape of the land means that light will be projected upwards, towards neighbouring properties. If security lighting is installed, which it is bound to be, it will be glaring in through bedroom windows all night (Gregory Howell, Submitter #36);
- a general limit of 8 lux across the whole site is inadequate to provide privacy for residents (Creswick Valley Residents' Association, Submitter #43); and
- concern about lighting on local residents who will look down on the site (Wilton Residents' Association, Submitter #44).<sup>43</sup>

7.97 Frankly, and while some submitters referred to lighting effects on residential amenity at the hearing, more in passing rather than in any detail, there was no expert evidence as such. Consequently, we have had regard to the Officer's statement in the s42A Report, wherein (at page 48) it is stated that:

*"It is considered that the proposed standards and objectives and policies in DPC 77 are appropriate in relation to the potential effects from lighting from an amenity point of view. The setting of an 8 lux standard for lighting for residential and open space areas is stricter than the 10 lux level set for other business areas under Plan Change 73. It is therefore considered appropriate given the concerns raised by submitters that DPC 77 retain the 8 lux levels as proposed".*

7.98 We agree with the Officers that a standard which requires that any direct or indirect illumination must not exceed 8 lux at any point on land zoned residential or open space is appropriate. This is the same standard that applies to any development in the Outer Residential Area which, in our opinion, establishes an acceptable (in District Plan terms) 'permitted baseline' in relation to lighting effects vis-a-vis residential amenity.

#### ***Visual Amenities (Including Signs)***

7.99 We have addressed this matter under "signs and colour" when discussing urban design matters (refer 7.74 - 7.77 above).

#### ***Privacy***

7.100 As the vast majority of residential properties are at a higher elevation than the DPC 77 site and therefore overlook the site, we conclude that 'loss of privacy' for those properties will not be material. The recommended retention of the existing vegetation on the Curtis Street frontage will assist in minimising any loss of privacy for the lower level residential properties on the opposite side of Curtis Street.

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<sup>43</sup> Note: a number of submitters also raised concern about the effect of lighting on the seepage wetlands and hence the glow-worm colony. We covered this point in our discussion under "Landscape and Ecological Values" above.

## Heritage and Archaeology

- 7.101 A small number of submissions raised heritage - not so much as an issue *per se*, but rather a matter for consideration. For example, the New Zealand Historic Places Trust (Submitter #2) stated:

*"NZHPT's position is neutral but we would like to advise that any proposed works on the subject property may require an archaeological assessment and archaeological authority from NZHPT".*

- 7.102 Noting that the site was occupied prior to 1900, the NZHPT confirmed that the site was therefore an 'archaeological site' under the Historic Places Act 1993, noting that:

*"An authority is required from the NZHPT for any activity that may modify, damage or destroy an archaeological site. An authority is required whether the site is recorded or was previously unknown. An authority is required even if resource or building consent has been granted, or the activity is permitted under the regional or District Plan. The authority process ensures that work that may affect archaeological sites is undertaken in an appropriate way and heritage places are not needlessly damaged or destroyed".*

- 7.103 We accept that the provisions of the Historic Places Act 1993 apply to the site. However, that is a separate matter from any future resource consent process under the District Plan, whether the zoning is changed or not.

- 7.104 We are aware that it is the Council's standard practice to draw to the attention of a resource consent holder obligations that may arise under the Historic Places Act 1993. This is done by way of a "Note" on the resource consent. For example, the resource consent initially granted to the land owner for earthworks (SR 221256), which was subsequently 'set aside' by the High Court, included the following "Note":

*"There are recorded archaeological sites in the vicinity of the proposed work. The applicant is advised to contact the New Zealand Historic Places Trust for further information. Work affecting archaeological sites is subject to a consent process under the Historic Places Act 1993. If any activity associated with this proposal will modify, damage or destroy any archaeological site(s), an authority (consent) from the New Zealand Historic Places Trust must be obtained for the work prior to commencement. It is an offence to damage or destroy a site for any purpose without an authority. The Historic Places Act 1993 contains penalties for unauthorised site damage".*

- 7.105 In addition to the NZHPT submission, three other submitters refer to 'heritage' in their written submissions:

- Bridgett Parkin (Submitter #29) pointed out that the archaeological remains on site are unknown and requested provisions be incorporated in DPC 77 that would allow for excavation and research should any be found during construction;
- Fiona Knight and Wayne Newman (Submitter #40) considered that the heritage assessment, which formed part of the Section 32 Report, was based on assumptions that were 'invalid'; and
- Creswick Valley Residents' Association (Submitter #43) contended that the heritage assessment was 'inadequate and off the point' and that no provision is made for a heritage assessment prior to any earthworks or development of the site.

- 7.106 The heritage assessment that the submitters refer to was prepared by the Council's Heritage Team. It was a one-page statement which included a 'significance assessment' and a 'description of the site'. It concluded with the statement that:



*"An archaeological assessment of the site is likely to conclude that the potential risk of damage to an archaeological site is minimal, unless excavations were to go to the former base of the gully and path of the stream".*

7.107 Against the above background we make the following observations:

- a. the provisions of the Historic Places Act 1993 will apply to the site, as the site was occupied pre-1900;
- b. although submitters refer to a 'heritage assessment' it is our opinion that it is an archaeological assessment that may be required. Whether one is required or not is a matter for the New Zealand Historic Places Trust under the Historic Places Act 1993; and
- c. it will be a matter for the NZHPT to determine, if an archaeological authority is granted to 'modify, damage or destroy' the archaeological site as to what research and other methods (e.g. archaeological excavations and recordings) may be necessary to mitigate any loss of archaeological values.

7.108 It seems to us that the 'heritage' that submitters have been referring to is essentially 'sub-surface' heritage - i.e. archaeology.

7.109 We also note that although the District Plan does identify some archaeological sites, as well as other heritage features such as heritage areas, heritage buildings, heritage trees and sites of significance to Maori, we were not advised of any such listed sites on or in the near vicinity of the DPC 77 site.

7.110 Although archaeological values and sites are covered by the RMA definition of historic heritage, and therefore subject to s6(f) of the Act, which requires their 'protection from inappropriate subdivision, use and development', on balance we consider that in the context of DPC 77 there is no need for additional methods, further to those methods available under the Historic Places Act 1993, to sustainably manage the site's archaeological values.

## **Transportation**

7.111 Concerns about transportation related issues were a major focus of submissions and in turn a major focus during the hearing. Concerns related to:

- transport report flaws
- traffic delays and congestion
- site access
- parking issues
- cumulative impact of Kindercare development
- road safety (including pedestrian safety).

7.112 Upfront we note that it is not possible to summarise all the submissions, let alone the evidence presented at the hearing. Rather, we propose to summarise the main concerns/issues raised under each of the above sub-headings and state our principal conclusions with reference to the evidence we heard.

7.113 The expert evidence is provided in an initial report prepared by OPUS International Consultants, which formed part of the Section 32 Report.<sup>44</sup> Prior to the hearing a second OPUS report was prepared.<sup>45</sup> This report was prepared at the request of Council officers to respond to issues raised in submissions.

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<sup>44</sup> Transport Assessment Curtis Street Plan Change, OPUS International Consultants, October 2011.

<sup>45</sup> Curtis Street Additional Information, OPUS International Consultants Ltd, 20 August 2013.

The OPUS report author, Sam Thornton, assisted with the Officer's right-of-reply. We have drawn on the transcript of his answers to our questions.

- 7.114 At this point we note that Mr Thornton provided the only expert transportation/traffic engineering evidence. However, we record that we accept that local residents who have experienced the transportation/traffic situation in the vicinity of the DPC 77 site over a number of years do have valid points to make.

#### ***Transport Report Flaws***

- 7.115 A number of submitters raised concerns about perceived flaws in the October 2011 Transport Assessment suggesting that it did not adequately consider all transportation issues currently facing the area and future transport issues.<sup>46</sup>

- 7.116 One submitter (Michael Gibson) considered that *"the measuring of traffic flow was conducted over a very short period"* and that *"the effect of traffic use on different points of possible access to the site has not been properly identified"*.

- 7.117 As Mr Gibson did not attend the hearing we did not have the benefit of any further comment from him on the concerns he raised. However, it was in response to the concerns raised by Mr Gibson (and other submitters) in relation to the scope of the October 2011 Transport Assessment that the further information report was requested. The further information addressed four key areas of concern to submitters:

- Kindercare impact;
- rat-running / effects on local roads (including Northland roads);
- parking and site access provision; and
- suitability of trucks on narrow roads.

- 7.118 As noted, we also had the opportunity to question Mr Thornton on the issue of 'completeness' of the Transportation Assessment, particularly with regard to traffic survey work undertaken and therefore the 'representativeness' of the information gathered and the likely routes to be taken to access the DPC 77 site.

- 7.119 Based on our assessment of the information contained in the two reports, and the answers to our questions, we have concluded that the transportation assessments that were undertaken were sufficiently robust and have provided information that we feel able to rely on in the context of the Plan Change. In making this last observation we note that we agree with the Officer comment in the s42A Report (at page 57):

*"As a general comment, any traffic assessment prepared for the purposes of a plan change proposal needs to rely on high level scenarios in terms of possible future land uses ... the resource consent process is best placed to identify specific transport impacts once it is known what sort of land use is proposed and therefore the likely traffic impacts associated with that use"*.

- 7.120 We comment on the specifics of the transport-related provisions in the following sections. At this point, however, we record that we are generally comfortable with them, as recommended by the Officers.

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<sup>46</sup> Submitters that the s42A report identified as raising issues under this 'heading' were: Michael Gibson (Submitter #8), Anne and Gordon Somerville (Submitter #12), Jennifer Boshier (Submitter #14), Jennifer and Michael Holmes (Submitter #17), Sarah Holden (Submitter #24), Jitesh Patel (Submitter #25), Bridgett Parkin (Submitter #29), Marsden Village Association (Submitter #3), Rodney Bryant (Submitter #38), Fiona Knight and Wayne Newman (Submitter #40), Creswick Valley Residents' Association ((Submitter #43), Leoni Hawkins (Submitter #51), Sheena Bennett (Submitter # 57) and Michael and Rachel Roth (Submitter #60)

**Traffic Delays and Congestion**

- 7.121 A more general concern about existing traffic congestion and hence delays on the surrounding road network, and the effect of further traffic as a consequence of development of the Curtis Street Business Area, was raised by a number of submitters.<sup>47</sup>
- 7.122 It is accepted that following development of the site, for whatever purpose, there will be additional traffic and hence potential further delays on the road network, especially at key intersections. The expert evidence was that:

*"... the development of the site for industrial purposes would not generate sufficient traffic to significantly affect the traffic efficiency of surrounding intersections".*

However,

*"Development of the site for bulk retail purposes is likely to exacerbate existing delays on the Curtis Street approach to Chaytor Street. This effect would be evident during the weekday PM peak and particularly during Saturday peak hours. Measures to mitigate these effects would be necessary".<sup>48</sup>*

- 7.123 We understand that it was in response to this potential adverse traffic effect that the Plan Change incorporated development thresholds or 'triggers' above which, as part of the necessary resource consent application, a detailed traffic assessment would be required. For example, we note that one of the assessment criteria for activities which exceed the development thresholds is:

*"The Proposal will not result in a significant increase in traffic that would be incompatible with the capacity of adjoining roads and their function in the road hierarchy, or would lead to unacceptable congestion".<sup>49</sup>*

- 7.124 In the Officer's s42A Report it is stated that:

*"A traffic assessment as part of the resource consent process is, by its very nature, able to provide more specific and accurate data about the likely traffic impacts of the proposed land use. Options to avoid, remedy or mitigate any adverse impacts will need to be considered by the applicant (and the Council) to satisfy the District Plan requirements".<sup>50</sup>*

We agree with this statement.

**Site Access**

- 7.125 Site access concerns were raised by a number of submitters, including Fiona Knight and Wayne Newman (Submitter #40) who point to safety concerns with access to and from the site from Old Karori Road and Whitehead Road, but who state that access to the site from either of these streets would be preferable to access directly from Curtis Street.
- 7.126 Addressing the site access concerns raised in submissions, the Reporting Officer in the s42A Report commented that:

<sup>47</sup> Ian Appleton (Submitter #7), Michael Gibson (Submitter #8), Ryan O'Donnell and Amanda Oliver (Submitter #22), Sarah Holden (Submitter #24), Jitesh Patel (Submitter #25), Bridgett Parkin (Submitter # 29), Marsden Village Association (Submitter #33), Gregory Howell (Submitter #36), Paul Oliver and Rowena Cullen (Submitter #37), Rod Bryant (Submitter #38), John Bickerton (Submitter #39), Rosemary Tomlinson (Submitter #41), Creswick Valley Residents' Association (Submitter #43), Wilton Residents' Association (Submitter #44), Alexandra Hill (Submitter #53) and Sara Clarke (Submitter #55).

<sup>48</sup> Transport Assessment for Curtis Street Plan Change, Opus International Consultants, October 2011, p21.

<sup>49</sup> DPC 77, Rule 36.7(f).

<sup>50</sup> Officer's Report, p58.

*"Each area based zone in the District Plan contains a standardised set of provisions relating to vehicle access, parking and servicing. In the proposed plan change, these provisions were included as standard 36.6(m). Of particular note, these standards include the requirement of entry and exit points to be a set distance away from any intersection (10-20m) and sight lines to oncoming traffic (40m) to address traffic safety concerns.*

*These provisions are standardised throughout the plan (irrespective of zone or site) and are based on the joint Australian and New Zealand Standard 2890.1 - 2004. Failure to achieve the standards set out in the Plan requires a resource consent. The resource consent process is specifically designed to assess impacts of any breach of the site access standards on the local transport environment.*

*In developing this plan change (recognising the particular site characteristics and largely undeveloped nature of the site), the provisions have sought to provide scope for (sic) additional planning tool (i.e. the concept plan) to be used to manage the comprehensive development of the site. The concept plan tool, though not mandatory, does provide an additional opportunity to ensure that site access is developed in a comprehensive manner and that site access will comply with the site access requirements set out in the District Plan. If a concept plan is not sought this generally has the effect of raising the activity status of specific proposals, thereby giving the Council further opportunity to assess the adverse effects of the proposal.*

*With both the concept plan and resource consent requirements in place, it is not necessary for this plan change to identify/pre-determine site access when the future site land use and access requirements remain unknown".*

- 7.127 We agree with the Officer's summation and do not consider there is a need to have additional control on site access beyond that already included in the DPC 77 provisions. Certainly at this stage of the process from developing District Plan provisions for the site through to eventual development, we do not consider it appropriate to identify how many site access points there should be and where they should be. Such detail will be appropriately assessed and determined when an actual development proposal is known, or a concept plan is prepared.

#### **Parking Issues**

- 7.128 Parking issues were raised by a number of submitters.<sup>51</sup> Among the points covered were:
- parking spilling out onto Curtis Street;
  - the surrounding road network has little or no ability to provide safe on-street parking for the site;
  - all required parking should be provided on site;
  - need for parking restrictions on surrounding streets; and
  - potential need for short-term parking for the Kindercare facility.

- 7.129 The DPC 77 provisions require all parking associated with activities established in the Curtis Street Business Area to be contained within the site. Given the specifics of the Curtis Street site (i.e. its position in the road network and the nature of those roads) we consider that this is a prudent requirement.

#### **Road Safety**

- 7.130 A large number of submitters raised road and traffic safety concerns, including:

<sup>51</sup> Alison McEwen (Submitter #4), Ian Appleton (Submitter #7), Michael Gibson (Submitter #8), Pauline Swan (Submitter #12), Anne and Gordon Somerville (Submitter #12), Mark Casson and Patricia James (Submitter #18), Sarah Holden (Submitter # 24), Bridgett Parkin (Submitter # 29), Ian Stockwell (Submitter #34), Rosemary Tomlinson (Submitter #41), Creswick Valley Residents Association (Submitter #43), Michelle and Julian Davies (Submitter #59) and Hilary Patton (Submitter #62).

- increased traffic volumes;
- potential increase in crash incidents;
- large trucks on narrow roads; and
- road topography and lack of visibility.

7.131 One submitter (Michael and Rachel Roth - Submitter #60) raised specific concerns around the cumulative 'road safety' effects from additional traffic sharing the 'cul de sac' end of Old Karori Road with traffic (and parking) associated with the recently opened Kindercare childcare centre. They told us that:

*" ... the change of land use resulting in a cul-de-sac becoming an access road will pose an unacceptable road safety risk for users of Kindercare and close neighbours of the site. A commercial/retail development on this site will generate traffic ... making the southern boundary as an entrance for retail and business just further increases the potential road safety risk for everyone. As close neighbours of the site and Kindercare we ask the Council to take into account all the issues surrounding this re-zoning and be mindful of what has already been granted consent".*

7.132 Mr and Mrs Roth requested that the southern boundary not be used as an access to the proposed Curtis Street Business Area site.

7.133 At this point we wish to make two points:

- a. we did seek confirmation from Mr Thornton that he did take into account the Kindercare operation as part of his transportation assessment. He confirmed that he did; and
- b. as we have already noted, we do not consider that as part of the plan change process, we should stipulate the location of the possible future access points to the site (see 7.127 above).

7.134 When an actual development is proposed, a development of any significance or scale is going to require resource consent. At this point we would fully expect that a comprehensive transportation assessment will be required when the capacity of the road network, including the cul-de-sac end of Old Karori Road, to safely accommodate additional traffic, would be assessed.

### ***Pedestrian Safety***

7.135 A number of submitters also raised concerns about pedestrian access and safety in and around the area.

7.136 We agree that the site is not one that is well connected in pedestrian terms to the surrounding residential catchment. We accept, therefore, that future development of the site for business purposes is likely to be vehicle-oriented. In these circumstances, it will be important to ensure that pedestrian convenience and safety is considered as part of the overall transportation assessment.

### ***Summary on Traffic and Transportation Issues***

7.137 As will be apparent from the above summary, many submitters who are local residents have raised multi-faceted concerns around the expected significant increase in traffic coming to the site, if the zoning is changed to a Business Area as DPC 77 proposes. We accept that these are valid concerns. Therefore, we have given careful attention to the points that they have made.

7.138 We have also had regard to the OPUS reports, both the initial assessment and the follow-up further information. We also had the opportunity to question the OPUS consultant during the Officer's right-of-reply. In the end, we have concluded that we can rely on the expert evidence of Mr Thornton. This includes accepting the recommended development thresholds. We fully expect that traffic and

transportation-related issues will be a main focus of any resource consent application for an actual development proposal.

### Electricity Transmission Lines

7.139 As previously noted, the Central Park-Wilton A 110kV electricity transmission lines traverse the DPC 77 site, although there are no support structures positioned within the site, and there is a considerable vertical clearance between the site and the conductors of the transmission lines.

7.140 A number of submitters raised concerns related the development of the site and the presence of the transmission lines.<sup>52</sup> A submission was also received from Transpower NZ Limited (Submitter #56).

7.141 Points made/concerns expressed in submissions included:

- the plan change should comply with Transpower's Transmission Line Buffer Corridors Policy / the 'buffer corridor' is a prudent exclusion zone;
- there should be no structures or buildings built under a 12 metre red zone either side of the line of the transmission lines;
- potential for employees in the Business Area to be exposed to potential EMF;<sup>53</sup>
- as transmission lines are an important health hazard, development within the corridor should be prohibited;
- the Plan Change appears to misrepresent Transpower's Corridor Management Policy in two ways: the nature of the buffer zone and the area it affects; and
- the presence of the transmission lines would seem to preclude any sort of commercial development that has groups of people gathering regularly and working beneath the transmission lines.

7.142 Transpower's submission confirmed support for the rezoning of the land away from residential. It also noted that the *"plan change applies to a discrete area of land within the City that has unique characteristics"*. Transpower requested that 'sensitive activities' be excluded from an area 12m either side of the centreline of the transmission lines. Transpower also requested an amended definition of 'sensitive activities' to cover workplaces or areas where large numbers of people congregate. Transpower's overall position was summarised at clause 3.10 of its submission as follows:

*"Transpower supports that the objective and policy framework has identified the electricity transmission network and the need to ensure that the on-going operation and maintenance is not compromised. Transpower is seeking minor changes to reflect that it (sic) development around the transmission lines can have adverse effects other than just reverse sensitivity effects on the lines"*.

7.143 At the hearing Transpower presented a statement of evidence through its Environmental Advisor, Michael Hurley. Mr Hurley said that the focus of his evidence was:

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<sup>52</sup> Anne and Gordon Somerville (Submitter #12), John Boshier (Submitter 13), Angela Mansell and Anthony Walker (Submitter #16), Ryan O'Donnell and Amanda Oliver (Submitter #22), Jitesh Patel (Submitter #25), Bridgett Parkin (Submitter #29), Bev Abbot (Submitter #31), Marsden Village Association (Submitter #33), Gregory Howell (Submitter #36), John Bickerton (Submitter #39), Fiona Knight and Wayne Newman (Submitter #40), Creswick Valley Residents' Association (Submitter #43), Kathryn Hunt (Submitter #54) and Hilary Patton (Submitter #62).

<sup>53</sup> EMF = electric and magnetic effects.

*"... the reasons why provisions as recommended by the reporting officer (or similar) are required; especially in terms of giving effect to Policies 10 and 11 of the NPSET and addressing the submitters concerns around EMF."*<sup>54</sup>

7.144 Mr Hurley drew our attention to Policies 10 and 11 of the NPSET, which he said were of 'particular relevance' to the hearing:

Policy 10: In achieving the purpose of the Act, decision-makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects on the electricity transmission network and to ensure that the operation, maintenance, upgrading, and development of electricity transmission network is not compromised.

Policy 11: Local authorities must consult with the operator of the national grid, to identify an appropriate buffer corridor within which it can be expected that sensitive activities will generally not be provided for in plans and/or given resource consent. To assist local authorities to identify these corridors, they may request the operator of the national grid to provide local authorities with its medium to long-term plans for the alteration or upgrading of each affected section of the national grid (so as to facilitate the long-term strategic planning of the grid).

7.145 Mr Hurley told us that he considered that the 'buffer corridor approach' was an appropriate and efficient mechanism for giving effect to both Policies 10 and 11, adding that:

*"This includes the provisions making sensitive activities and hazardous facilities a non-complying activity within 12m of the centreline of the transmission lines and a requirement that all buildings on the site maintain a minimum vertical clearance of 6m from the CPK-WIL-A line"*.<sup>55</sup>

7.146 Noting that a number of submitters had raised concern about EMF risk Mr Hurley told us that:

*"The risk of electric and magnetic fields exposure to people under the CPK-WIL-A lines was raised by submitters to the plan change. Transpower's further submission sought to correct the misconception that the 12m setback is to manage EMF effects. Transpower takes safety seriously and operates the National grid well within the recognised safe health limits for EMF exposure. Even directly beneath the lines, the measured field levels are well within the health protection guidelines"*.<sup>56</sup>

7.147 At the end of Mr Hurley's evidence we had a series of questions for him to clarify particular points regarding: the width of the buffer; vertical clearance and maintenance; clarification around the definition of sensitive activities; and Transpower's previous policy that supported a 22m corridor. Through the Chair we also asked if any submitters had any particular matters that they wanted Mr Hurley to clarify. One question that was posed related to the impact of wind on the width of the buffer corridor, given the potential swing in the transmission lines. Mr Hurley confirmed that severe wind conditions are something Transpower takes into account (i.e. models) to ensure that the lines can cope. Mr Hurley also confirmed that the power can be cut to lines if severe conditions are experienced.

7.148 Other evidence on the matter of the transmission lines was given by Wayne Newman (Submitter #40) and John Boshier (Submitter #13).

7.149 It seemed to us that Mr Newman's principal concern was about the apparent inconsistencies between the provisions being recommended by Officers for the Curtis Street Business Area and the provisions

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<sup>54</sup> NPSET = National Policy Statement of Electricity Transmission 2008.

<sup>55</sup> Hurley Statement of Evidence, clause 19

<sup>56</sup> Op cit, clause 20

that apply in other business areas under DPC 73. More specifically, Mr Newman noted that DPC 73 addressed the positioning of high voltage transmission lines as follows:

*"In Business Areas any new buildings and structures (including additions but excluding structures less than 2 metres in height) must be located further than 32 metres from high voltage transmission lines as defined on the Planning Maps. This is in recognition that development in close proximity to lines may result in increased risk to public health and safety (e.g. risk of electrocution) and may restrict the ongoing operation and maintenance of lines".*

Mr Newman opined that this policy is based on a prudent interpretation of the published guidance for implementing the NPSET. In contrast, Mr Newman noted that in the proposed Curtis Street Business Area buildings and structures could be located directly beneath the electricity transmission lines and that only 'sensitive activities' would be non-complying activities, and those within 12 metres of the centre line.

7.150 The other principal evidence we received was a written statement prepared by John Boshier (Submitter #13), which was read by Wayne Newman. We accepted that due to other commitments Mr Boshier was unable to attend the hearing.

7.151 Although Mr Boshier was, as a Creswick Terrace resident, a submitter opposed to the Plan Change, we recognise and accept his expert qualification and considerable experience in the field of electricity transmission, both as an engineer and a senior manager.

7.152 In his statement Mr Boshier requested that in the event that DPC 77 is not declined the Curtis Street Business Area provisions should:

*"... fully comply with Transmission Line Buffer Corridors, September 2012 ... The implications are that any application for a large-scale landfill and building would be declined and that smaller buildings to each side of the transmission corridor might be approved. There would be a 24 metre corridor between the buildings under the transmission line, which would effectively be a road or access way".*

7.153 In his statement Mr Boshier explained that he did not make a further submission on the grounds that he supported the Transpower submission. However, Mr Boshier further explained that Transpower did subsequently make a further submission which Mr Boshier considered altered Transpower's stance, and that it was this change that concerned Mr Boshier. The particular point that Mr Boshier was concerned about was the removal of "other buildings occupied by people for 20 hours per week or more" from the definition of 'sensitive activities'.

7.154 Mr Boshier wrote in his statement that he could see no reason for the change adding that:

*"In a meeting between Creswick Valley Residents' Association and Transpower on 31 July 2013, the latter stated that their revised stance was part of further debate over the 2012 National Policy Statement on Electricity Transmission".*

7.155 Mr Boshier's position was that:

*"... the proposed Curtis St Business Area should adhere to the 20 hour per week occupation guideline first proposed by Transpower. This guideline is practical and pragmatic. It is acknowledged that the 20 hours per week figure does not have epidemiological research behind it and could be said to be arbitrary. But it is a step in the right direction".*



Mr Boshier's position was that the change in Transpower's position was detrimental to the interest of owners and users of a potential Business Area in Curtis Street. He therefore recommended the 20 hour per week guideline which he considered was a *"pragmatic suggestion which will still permit development of the site"*.

7.156 Mr Boshier's statement was presented to the hearing after Mr Hurley's evidence. Accepting that Mr Boshier's opinion was that of an 'expert' we decided that it was necessary to follow-up with Transpower and seek clarification / further explanation for the apparent change in policy.

7.157 Mr Hurley was unable to attend the hearing on the second occasion. We did, however, have the benefit of having Jo Mooar, Transpower's Regulatory Environment Team Leader attend. Ms Mooar firstly reaffirmed that Transpower's approach was to give effect to the NPSET and in this instance Policy 10 (which is about reverse sensitivity) and Policy 11 (which is about sensitive activities). Ms Mooar told us that the NPSET:

*"... does distinguish between sensitive activities and non sensitive activities, and in this instance we are taking a quite conservative interpretation of what sensitive activities are, so those things are listed - hospital, schools, residential buildings ..."*.

7.158 In response to this statement we posed a follow-up question to clarify/confirm that Transpower does not necessarily seek to have commercial activity included in the definition of sensitive activities. In reply Ms Mooar told us:

*"Not within sensitive activities, elsewhere around the country we do rely on Policy 10 to restrict activities, on the basis of compromising operation, maintenance and development of a line. In this instance it is in a valley, and based on the facts of the site it is a bit harder to make those arguments from Transpower's perspective, we have treated this site as an exception"*.

7.159 More specifically in relation to the 20 hour per week criterion, Ms Mooar also told us that:

*"What we do now is look at what those words mean in the plan, we're not trying to take a risk based approach which we were at the time of our original submissions, we started doing some work about that and it just became too hard, our engineers weren't prepared to say 20 people for 20 hours a week or 5 people for 20 hours a week, meant that if you were there for 19 hours there was no risk"*.

Essentially, in the end what we took from the further information provided by Ms Mooar was that Transpower could 'justify' (our word) incorporating commercial/business activities within the definition of sensitive activities for the DPC 77 site.

### Site Contamination

7.160 The issue of contaminated land was raised in three submissions:

- Rosemary Tomlinson (Submitter #40) raised concern over possible leaching from the former land fill;
- Greater Wellington Regional Council (Submitter #45) confirmed its support for the findings of the Contaminated Land Assessment contained in the s32 Report.<sup>57</sup> However, noting that the extent of contamination maybe greater than anticipated, GWRC recommended a precautionary approach in identifying the likelihood of contaminated soil and drew attention to the role of the

<sup>57</sup> Geotechnical and Contamination Assessment, 55-85 Curtis Street, Karori - Stage 2 Report, Tonkin & Taylor, 1 November 2012.

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES), and the District Plan's Contaminated Land provisions, including Rule 32.2; and

- Björn Sutherland (Submitter #48) submitted that he considers the site urgently needs to be investigated to determine what contaminants are on site and what the public health and environmental risks might be.

7.161 In the Officer's s42A Report it was commented that:

*"The issue raised by submitters can be managed through a resource consent process. For example ... soil contamination can be mitigated by removing or sealing contaminated materials in order to comply with the NES for assessing and managing contaminants in soil to protect human health".*

The Reporting Officer reported that proposed DPC 77 provisions will provide the ability to assess site contamination through the resource consent process and consequently was not recommending any further changes.

7.162 In the absence of any evidence to the contrary we see no reason not to accept the Officer's recommendation. We feel confident that the NES provisions and the District Plan's contaminated land rules will ensure that appropriate contaminated land assessments are undertaken as part of any land development process and, if any contaminated material or soil is encountered, an appropriate management regime will be implemented through consent conditions that would ensure that mitigation measures were implemented to prevent any risk to public health or the environment.

### **Earthworks**

7.163 Although earthworks were not identified as a significant issue or concern in submissions, it is perhaps, we suggest, implicit in a number of submissions that opposed significant development of the site that they would also oppose significant earthworks, particularly if those earthworks were to adversely impact on the bush clad escarpment on the western boundary.

7.164 Submitters who did specifically raise earthworks as a concern included:

- Michael Gibson (Submitter #8) - earthworks should be limited along the western boundary of the site, and within 10m of the western boundary should be a controlled activity; and
- Fiona Knight and Wayne Newman (Submitter #40) commented that the earthworks activity standard (36.6(e)) failed, in their opinion, to provide specific assessment criteria for any effect of earthworks on adjacent watercourses.

On the other hand, PrimeProperty Group (Submitter #61) submitted that standard 36.6(e) reflects the standard earthworks rules applicable to other commercial sites in the city, and that any additional or more onerous requirements would be opposed.

7.165 Some submitters identified potential dust nuisance associated with earthworks as a concern.<sup>58</sup>

7.166 With reference to the potential adverse effects of earthworks on the western boundary, in our opinion the 5m setback we are recommending addresses that concern in an appropriate manner.

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<sup>58</sup> For example, Bridgett Parkin (Submitter #29),

- 7.167 The earthworks permitted under standard 36.6 (e) 'earthworks and retaining walls' are relatively modest (e.g. should not exceed a maximum height of cut or fill of 1.5m and an area of 250m<sup>2</sup>). Any earthworks exceeding these standards will require resource consent when full consideration can be given to 'avoiding, remedying or mitigating' any adverse effects.
- 7.168 We accept that it is a very high probability that development of the site will involve earthworks which exceed the permitted activity standards. To this end we draw attention to the information required to accompany a resource consent application for earthworks (refer 36.6(e)(iii)) and the assessment criteria that would guide the assessment of any earthworks application (refer 36.7(f)).
- 7.169 Overall we consider that the earthworks requirements that we are recommending are appropriate and will enable rigorous scrutiny of any earthworks that exceed the permitted activity standards.
- 7.170 We agree with the Reporting Officer's comment that the earthworks provisions:
- "... seek to recognise the local characteristics and ecological values of the wider area which could be adversely affected if not considered at the outset of a development proposal of the site".*
- 7.171 We also consider that earthworks need not necessarily result in adverse effects. For example, during our site visits we noted that earthworks might be a positive if they enable an integration of the lower and upper parts of the site, and resulted in buildings being better able to address their fronts to Curtis Street. We also felt that such earthworks in themselves would not be an issue given the modified nature of the site (taking into account the earlier fill).
- 7.172 The main potential adverse effects would be at the boundary with the escarpment. We consider it appropriate to put in place controls to ensure that earthworks do not adversely affect existing trees in the vicinity of the boundary, and that any earthworks enable a planted buffer to grow in the 5m building offset from the boundary.

### **Impact on Kaiwharawhara Stream (Stormwater Management)**

- 7.173 A number of submitters identified stormwater management as a concern given the potential adverse effects on the Kaiwharawhara Stream from stormwater discharges from the site.<sup>59</sup> Some submitters, including the Greater Wellington Regional Council, requested policy changes. The Trelissick Park Group commented that:

*"One of our concerns is with the cumulative effect of fast stormwater run-off during heavy rainfall from hard surfaces such as roofs, driveways and car parks. All stormwater in the catchment goes into the Kaiwharawhara Stream. During heavy rain the stream quickly floods and destroys stream banks and riparian planting. This causes stream bed sediment build-up, affecting invertebrates and fish life".*

The Group referred to one of the recommendations of the Landscape Report which was:

*"Minimising impacts on Kaiwharawhara Stream by restricting water run-off. This limits paving or roof areas or demands alternative solutions in the form of permeable paving, greenroofs and/or swales and stormwater detention areas"*

<sup>59</sup> These submitters included Michael Gibson (Submitter #8), Ryan O'Donnell and Amanda Oliver (Submitter #22), Trelissick Park Group (Submitter #23), Sarah Holden (Submitter #25), Jitesh Patel (Submitter #25), Rodney Lewington (Submitter #32), Gregory Howell (Submitter #36), Rodney Bryant (Submitter #38), John Bickerton (Submitter # 39), Fiona Knight and Wayne Newman (Submitter #40), Greater Wellington Regional Council (Submitter #45), Mary Munro (Submitter #46), Sara Clarke (Submitter #55), Frances Lee (Submitter #58) and Hilary Patton (Submitter #62).

and recommended the establishment of a wetland area, planted with native grasses, sedges and rushes, which the Group suggested would also help slow/absorb stormwater before discharge into the Kaiwharawhara Stream and enhance the attractiveness of the area.

- 7.174 On the other hand, PrimeProperty Group (Submitter #61) had a strongly contrary view. In its 'further submission' (Further Submission #5) it stated that:

*"In relation to stormwater effects, PPG opposes those submitters who would seek that the plan change impose specific stormwater and ecological controls for water runoff on the site that are not required under 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".*

- 7.175 In evidence to the hearing, Haley Vujcich, a Policy Advisor in Environmental Policy for the Greater Wellington Regional Council, confirmed that the Kaiwharawhara Stream is listed in the Regional Policy Statement (RPS) as 'regionally significant'.<sup>60</sup> To address stormwater management and its effects on the aquatic ecosystem health of the Kaiwharawhara Stream, the GWRC recommended a rewording of Policy 35.2.3.7 as follows:

*"Reduce the adverse effects of stormwater runoff on the Kaiwharawhara Stream, including through a low impact design/water sensitive urban design approach, such as using permeable surfaces, to enhance visual amenity, reduce stormwater contamination and reduce incidences of sudden, large volume stormwater discharges".*

- 7.176 In the alternative, Ms Vujcich suggested that existing Policy 35.2.3.7 could be retained<sup>61</sup> and an additional policy regarding the principles of stormwater management could be added as follows:

*Have particular regard to reducing the adverse quality and quantity effects on the Kaiwharawhara Stream of stormwater runoff from land use and development in accordance with low impact design/water sensitive urban design principles.*

- 7.177 Closing on the matter of stormwater and effects on the ecology of the Kaiwharawhara Stream, Ms Vujcich endorsed the work that Council (i.e. WCC) is currently undertaking to develop a 'water sensitive urban development guideline' aimed at developers of greenfield and infill subdivisions as well as Council operations.

- 7.178 In his evidence Mr Leary, on behalf of the PrimeProperty Group, when referring to Policies 35.2.3.6 and 35.2.3.7,<sup>62</sup> put his position in fairly 'blunt' terms. He told us that:

<sup>60</sup> Regional Policy Statement for the Wellington Region, Table 16 of Appendix 1 at p176. Table 16 lists rivers with "significant indigenous ecosystems".

<sup>61</sup> Policy 35.2.3.7 states: Encourage the use of permeable surfaces to enhance visual amenity and reduce incidences of sudden and large volume discharges to the Kaiwharawhara Stream. Note: this policy becomes 35.2.3.8 as a consequence of re-numbering.

<sup>62</sup> Policy 35.2.3.6 states: Ensure earthworks are managed to minimise the adverse effects of runoff on the ecological values of the Kaiwharawhara Stream. For Policy 35/2/3/7 - refer previous footnote.

[135] I attach a copy of two plans. The first is a copy of the WCC GIS showing the site and the public drainage system in the vicinity. The site's drainage does discharge to the Kaiwharawhara Stream some 500-900m metres of the north.

[136] The second plan I attach is the catchment of the Kaiwharawhara Street (sic). The site is annotated and coloured blue in the middle of the plan.

[137] What can clearly be seen, is that the site forms such a small, insignificant part of the wider catchment, that even if fully developed to its maximum hard surface area, is (sic) will make virtually no effect on flooding in the Kaiwharawhara Stream. I will provide calculations to verify this.

[138] The total catchment of the Kaiwharawhara Stream is 1,770 hectares.

[139] The ecological effects of the site are the potential siltation during construction and then heavy metal runoff from roofs, car discharges and chemicals discharged into the environment.

[140] In respect of the construction period, the site will be subject to appropriate mitigation measures. The layout of the site is ideal for the mitigation of siltation effects.

[141] The long term potential effects from this site, on the Kaiwharawhara Stream, given that the site discharges to an existing stormwater pipe/tunnel, will be simply infinitesimal when compared to the effects already coming from the wider catchment.

[142] This is a site specific plan change. It affects an area of land of just over 1 hectare. The site therefore forms 0.05% of the total catchment.

[143] It could impose significant costs on the developer of the site, but for absolutely no actual return to the environment as there are no controls in 99.95% of that wider catchment.

7.179 Mr Leary concluded his evidence on this matter by saying that placing specific stormwater retention provisions on just the Curtis Street site would be "a pointless exercise" when there are no controls on the rest of the catchment; and that it would be unreasonable and unfair to impose such controls on this small site given that the actual contributions made by the site to water quality and flow within the stream are imperceptible.

7.180 While we support the use of water sensitive design, we acknowledge that the detailed design of such measures would need to take into account the landfill downstream of the site and the fact that the Kaiwharawhara Stream is piped below the site. This may require specific measures to maintain water quality of the downstream catchment and to ensure that the piped section of the stream is able to accommodate any additional capacity

7.181 In the Officer's right-of-reply, Sarah Edwards the Reporting Officer responding to the GWRC's evidence confirmed that her recommendations remained unchanged from those contained in the s42A Report, adding that she was not:

*... sure that the scale of effects potentially generated from the site breach a threshold beyond which strong on-site provisions (e.g. rules or standards) are justified.*

Nevertheless, Mrs Edwards did say that the policies suggested by the GWRC were workable if we were of a mind to accept them, while also drawing our attention to the points made by Mr Leary regarding the comparatively small proportion of the Kaiwharawhara catchment made up by the Curtis Street site and the limited effectiveness on-site measures could have on the stream.

7.182 After careful consideration of the different viewpoints expressed in the evidence (Ms Vujcich and Mr Leary) we have concluded that although we agree that no specific rules or standards are necessary, it could be helpful, in our opinion, to have a clear expression of policy regarding management of stormwater in catchments that feed into streams that are regionally significant. Such policy provides, in our opinion, a sense of direction or 'leadership'. We accept that in this particular instance, for the reasons outlined by Mr Leary, that while there may be no discernible impact on the ecosystems of the Kaiwharawhara Stream, including cumulative effects, as a consequence of stormwater discharging from the Curtis Street site,<sup>63</sup> clear policy demonstrating an intention to have regard to these issues does seem to us to be reasonable. Accordingly, we recommend the adoption of the additional policy recommended by Ms Vujcich.

### Planning

7.183 Under this heading, notwithstanding that we have already commented on a number of the proposed planning provisions in previous sections when discussing the 'topic-related' evidence, we intend to refer more directly to the planning evidence. In this respect, aside from the Reporting Officer's s42A Report, the expert planning evidence that we received was from:

- Hayley Vujcich on behalf of Greater Wellington Regional Council;
- Michael Hurley on behalf of Transpower NZ Limited; and
- Ian Leary on behalf of PrimeProperty Group.

7.184 We are not saying that other submitters did not draw 'planning' issues to our attention. Rather, we are saying that the submitters representing residents and the residential associations and other environmental interest groups, did not call expert planning evidence. One resident (Bev Abbot - Submitter # 31) did however make some very helpful comments on the proposed objectives, policies and rules.

7.185 Before addressing the planning evidence we consider it appropriate to make brief comment on what we will call a 'process-related matter'. To explain, we noted that Michael Gibson in his further submission (Further Submission #7) contended that the PrimeProperty Group (PPG) submission should be disallowed on the basis that PPG was not entitled to make a submission by virtue of Clause 6(3) and Clause 6(4) of Schedule 1 of the Resource Management Act 1991 given that PPG would gain 'trade competition' advantage (in Mr Gibson's opinion).

7.186 We do not agree with Mr Gibson. We accept that PPG was fully entitled to make a submission on DPC 77 and to call evidence in support of its submission. A landowner making a submission on district plan provisions does not, in our opinion, come within the definition of 'trade competitor' as it applies to matters under the RMA.

7.187 Turning now to the planning evidence.

7.188 Firstly Ms Vujcich. Although we are including Ms Vujcich's evidence under 'planning' we note that she has qualifications in science and environmental studies, and not planning *per se*. Her evidence on behalf of the Greater Wellington Regional Council sought to ensure that the DPC 77 gave effect to the Regional Policy Statement policies for the management of ecological values and stormwater. Ms Vujcich requested some changes to proposed policies regarding management of the adverse effects

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<sup>63</sup> In light of the discussion in relation to potential effects on the Kaiwharawhara Stream from stormwater flows from the site, we note that the Mitre 10 application did include a 'soakaway' area for the on-site treatment of stormwater (reference page 11 of the AEE submitted with the application) - also refer paragraph 7.224 below.

on biodiversity values and stormwater management. We have previously commented on these matters in the previous section on 'Impact on the Kaiwharawhara Stream'.

7.189 Secondly Mr Hurley. Mr Hurley is an Environmental Advisor - Policy for Transpower NZ Limited. He has qualification and experience in resource management and environmental planning. The focus of Mr Hurley's evidence was on the methods to be employed to give effect to Policies 10 and 11 of the National Policy Statement on Electricity Transmission (NPSET). Again we note that we have previously covered this matter above in the section on 'Electricity Transmission Lines'.

7.190 Thirdly Mr Leary. Mr Leary, who holds degrees in land development surveying and resource management planning, is a director of Spencer Holmes Ltd. He has approximately 20 years' experience in these fields. He confirmed that he had prepared his evidence, which he gave on behalf of PrimeProperty Group, in compliance with the Code of Conduct for Expert Witnesses set out in the Environment Court Practice Note 2011.

7.191 Mr Leary's brief of evidence was lengthy (40 pages plus attachments). Consequently, it is not possible, or indeed necessary, to provide an extensive summary. Nevertheless, we do consider it appropriate that we highlight what we understand to be the main points.

7.192 Mr Leary confirmed that PrimeProperty Group generally supported the wider provisions of DPC 77, but noted however that:

*" ... the shape, topography, access and existing infrastructure layout results in the site having a number of specific restrictions that make development on the site expensive and difficult to design".<sup>64</sup>*

We were advised, therefore that PrimeProperty Group opposed all provisions that would restrict, or seek to limit the establishment of a large commercial/retail building on the site.

7.193 Mr Leary confirmed that if the zoning change proposed by DPC 77 proceeds *"PPG will be constructing buildings on the site which are greater than 500m<sup>2</sup>".<sup>65</sup>*

7.194 Given PrimeProperty Group's aspiration of establishing larger-sized buildings Mr Leary said he had concerns about some of the proposed provisions, including the concept plan limit of 500m<sup>2</sup> for retail and building area, and how this establishes an expectation of an acceptable level of development. Mr Leary also noted that the rules trigger an urban design assessment of buildings over 500m<sup>2</sup>, yet he considered that the DPC 77 provisions generally discourage buildings of that size from being constructed on the site. He added, however, that:

*"... requiring an urban design assessment is a perfectly acceptable mitigation measure to ensure that design initiatives are used if buildings of a large size are proposed on the site".<sup>66</sup>*

7.195 One of the proposed assessment criteria in relation to 'site layout, design and external appearance of buildings and structures' (Rule 36.7(b)) that Mr Leary said he did not support was:

- *is visually discrete and set generally below the level of Curtis Street.*

<sup>64</sup> Ian Leary, Statement of Evidence, 2 September 2013, clause 64.

<sup>65</sup> Op cit, clause 96. We note that Mr Leary tabled a drawing showing a possible development/layout of the site which provided 5 stores ranging in size from 400m<sup>2</sup> to 1200m<sup>2</sup> in one building with a total gross floor area of 3,995m<sup>2</sup>, and a second building accommodating a single 600m<sup>2</sup> store. Mr Leary stressed that the drawing was a 'concept design' drawing which he tabled for illustrative purposes. It did not represent an actual development proposal. At clause 158 of his evidence Mr Leary stated that *"PPG will make no secret of the fact that their ambition will be to place one or several large buildings on the site"*.

<sup>66</sup> Op cit, clause 127

7.196 Noting that the DPC 77 provisions as notified potentially restricted the permitted height of buildings to 114 metres above mean sea level (which he told us would equate to 4 to 6 metres on the more northern most developable part of the site). Mr Leary opined that this would mean that buildings were *"sunk down into a hole and have no inter-relationship with Curtis Street"*. He told us that:

*"The limitation of height to 114 metres is strongly opposed by PPG. In my view, development on the site should be carefully designed, but not hidden".*<sup>67</sup>

Mr Leary opined that restricting the height of buildings to an RL of 114m *"creates an unreasonable expectation for the community and site owner"*.<sup>68</sup> He told us that buildings should have a minimum height of 10m above ground level.

7.197 Other concerns that Mr Leary drew to our attention included:

- a. the need for an economic/retail impacts assessment. Mr Leary considered that given Mr Heath's evidence that the development of large format retail and supermarkets on the site would not have adverse effects on the surrounding centres or CDB, placing controls on the establishment of retail activity in the Curtis Street Business Area was unnecessary;
- b. Policies 35.2.3.6 and 35.2.3.7 relating to stormwater (we have already commented on this matter in the section above relating to the Kaiwharawhara Stream);
- c. provisions relating to signs including the 5m<sup>2</sup> restriction (refer also our discussion above 7.74 - 7.77); and
- d. provisions relating to earthworks. Noting that the Open Space rules allow retaining walls to be built to 2.5m, yet the permitted activity standard under DPC 77 allows only 1.5m, Mr Leary said that in his opinion *"there is no way that a commercial area's rule restrictions should be greater than that which exists in an Open Space Zone"*.

7.198 If there was an overall summary statement that encapsulated what we understood was Mr Leary's overriding concern it is his comment that DPC 77 as notified is too restrictive such that it defeats its stated purpose, which he noted was expressed in Objective 35.2.1 as:

*Facilitate commercial activity and retail activity in the Curtis Street Business Area to assist in meeting the social and economic needs of Wellington's western suburbs and the wider City.*

7.199 Mr Leary provided us with an annotated copy of the DPC 77 provisions which incorporated all of the amendments he requested on behalf of PrimeProperty Group. We confirm that we have given careful consideration to all of his recommended amendments.

7.200 In conclusion, Mr Leary told us that:

*"PPG fully expect to be required to lodge resource consents for the development of the site, but trust that the provisions against which that future development will be assessed, are fair and set a reasonable expectation for them to develop the site. Also there is an expectation that the rules should appropriately require the mitigation of the potential effects on the residential neighbours and wider community"*.

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<sup>67</sup> Op cit, clause 299

<sup>68</sup> Op cit, clause 303d



7.201 Mr Leary finished his evidence by saying:

[394] *If the commissioners take anything from my evidence, I trust it will be that the site is difficult to develop and has numerous inherent issues that make designing a proposal difficult.*

[395] *The amended provisions attached to my evidence achieve a greater degree of balance and allow a practicable outcome, as well as one which will mitigate the potential effects on the environment, including maintaining and enhancing the amenity of the wider neighbourhood.*

[396] *Therefore, in my view, adopting the plan change, with the attached amendments will be consistent with the purpose and principles of the RMA.*

7.202 Before concluding our summary of the planning evidence we wish to comment on the evidence presented by Bev Abbott (Submitter #31).

7.203 Noting that her submission asked Council to reject or withdraw the proposed plan change "*which would create a business area in the ecological corridor connecting Zealandia and Otari Wilton's Bush*", Ms Abbott advised however that in anticipation that Council could decide to approve the plan change, her submission focussed on ways of strengthening the ecological provisions.

7.204 Referring to the Wildland Consultants Report, which she considered provided a clear description of the ecological values of the area, she confirmed her support for two recommended amendments to the ecological provisions that had been included in the Officer's s42A Report:

- adding the words "*and the ecology of the Kaiwharawhara Valley*" to Chapter 35, section 35.1 Introduction; and
- adding a new policy (Policy 35.2.3.8) relating to minimising effects on the ecological values of the seepage wetlands and glow-worm colony.

7.205 However, Ms Abbott told us that she did not consider the changes, while positive, went far enough. In particular, she considered that a separate objective addressing ecological values should be created and suggested the following:

*"To recognise and protect important ecological values from activities in the Curtis Street Business Area".*

She considered that the emphasis should be 'outcome focused' on 'protecting' rather than 'recognising'.<sup>69</sup>

7.206 A second point Ms Abbott emphasised was the need, in her opinion, to strengthen the protection of the buffer vegetation. To this end, she suggested replacing the word 'encourage' with 'ensure' in Policy 35.2.3.3 so that it reads:

*Ensure the retention of trees and vegetation along the western edge of the area adjacent to Old Karori Road.*

7.207 Ms Abbott also drew Policy 35.2.3.4 to our attention. The recommended version in the Officer's s42A report read as follows:

*Where existing vegetation within the Curtis Street Business Area site cannot be retained:*

<sup>69</sup> The current objective (Objective 35.2.3) is: "*To recognise the residential character, landscape and ecological values of Creswick Valley*".

- *replant with species that are characteristic of the locality, particularly along the northern end of the western site boundary, and/or*
- *consider the use of plant species that provide enhanced habitat for indigenous birds, and/or*
- *consider the use of plant species that provide additional screening protection for the glow-worm colony.*

Ms Abbott said she considered that the first bullet point was a little 'vague' or imprecise - what is meant by the "northern end" of the western boundary? She suggested changing northern end to the northern half of the western boundary. In relation to the third bullet point she recommended the deletion of the word "species" saying that this would direct the developer to avoid using plants that were either small or slow growing thus ensuring that the policy was more outcome focused - i.e. providing 'additional screening protection'.

7.208 Other points that Ms Abbott covered related to:

- how non-regulatory measures might be incorporated into the plan change in relation to the protection and maintenance of ecological values; and
- adding further detail into the Introduction (to Chapter 35) to record some of the site's history.

7.209 In her right-of reply Mrs Edwards, the Reporting Officer, told us after hearing the evidence and having the submission explained in person she agreed with some of the suggested changes, specifically:

- changes to Policy 35.2.3.4 about mitigation planting;
- comments on non-regulatory planting in the Introduction section; and
- more informative site history in the Introduction section, including key dates.

7.210 Like Mrs Edwards, we found Ms Abbott's evidence helpful. We agree with a number of the points she made and are accordingly recommending some further amendments to the proposed Plan Change covering the three bullet points above.

#### **Concept Plan**

7.211 When discussing Mr Leary's evidence we noted that he requested the deletion of the provisions relating to the concept plan. Whilst that was Mr Leary's position a contrary viewpoint was put forward in a number of submissions. In particular, a number of submitters expressed concern that the concept plan was 'voluntary'. One submitter expressed what we understand was a view also held by others, namely that:

*"Given the significant challenges with developing the site, I would like to see a Concept Plan be developed for the site. This plan should be obligatory and publicly notified. Failure to require a comprehensive Concept Plan for development of the site opens the possibility for incremental development to achieve a gross floor area significantly greater than 500m<sup>2</sup> without being subject to proper controls"* [Sarah Holden Submitter #24].

7.212 Other points raised in relation to the Concept Plan included:

- Fioana Knight and Wayne Newman (Submitter #40): the submitter considers that Council has limited its ability to assess concept plans by limiting control to the layout of buildings, car

parking areas, vehicle access ways, servicing areas, and landscaping and suggested that by not also requiring the concept plan to address other matters:<sup>70</sup>

*"... by so excluding early input by the community and by residents likely to be directly effected (sic) by development based on the concept plans the Council is acting against recognised best practice for sustainable management";*

- the Creswick Valley Residents' Association (Submitter #43) considers that the concept plan should contain specific consideration of noise/lighting effects, the relationship of development to the surrounding area, the glow-worms and Old Karori Road, vehicle and pedestrian access, car parking, the protection of the ecological corridor and buffer planting to the western boundary; and
- Architectural Centre Inc (Submitter #61) considers that the concept plan should form part of the plan change proposal and this should also include reinstatement of the Kaiwharawhara Stream.

7.213 As noted above, the concept plan provisions were opposed by PrimeProperty Group (Submitter #61) and also by Andrew Monahan (Submitter #47). In its submission, PrimeProperty Group opined that:

*"The preparation of a concept plan for the level of development likely to occur on the site is effectively detailed design. The policy clearly demonstrates that Council officers have over-anticipated the development potential of the site".*

7.214 In our opinion the Officer's comments on the points made in the submissions highlight a number of important points. Thus, we consider that it would be helpful to record those comments:

*"A concept plan approach requires a cooperative approach between the landowner and Council to work together and pre-plan a vision on what the site may look like. Although not intended to be specific, concept plans can contain drawings on the scale, intensity and appearance of buildings.*

*The reporting Officer recognises that a concept plan that has input from Council, the public, the landowner and/or developer and a committed tenant would be an ideal planning scenario for the site. Officers also acknowledge that a mandatory concept plan for DPC77 would provide some degree of comfort to some residents in that they would know in advance what the site may look like in the future. However, it is also important to point out that a concept plan is not intended to prescribe the details of a development. Its purpose is to act as an intermediary between the zoning rules and the specifics of individual proposals by setting out a broad spatial development framework which addresses good site development principles and within which permitted developments can be accommodated.*

*Officers are aware that the site is not without its challenges in terms of shape, topography and access meaning that it will be difficult and expensive to develop (as pointed out by submitters 47 and 61). Coupled with this, the planning provisions need to be workable for potential developers/tenants in order for them to invest in the site. Officers consider that pre-approving a design layout and outcome for the site can have limitations on the future activity and does not provide flexibility to respond to*

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<sup>70</sup> The other matters identified by the submitter included: design and external appearance of buildings, including colour, reflectivity and brightness of materials; size or location of signage; traffic, on-street parking and road safety; and the effect on the vitality of, and existing investment in infrastructure in other Centres.

*market demands over time. For example a pre-approved cluster of small scale buildings designed for start-up businesses and incubator industry would not provide suitable space or an adaptable layout for a nursery/garden centre that may later be interested in the site. This also applies to the design and external appearance of buildings and structures, including colour, materials, size or location of signage etc - pre-approving such details through a concept plan severely limit options for the site in the future.*

*For these reasons, DPC77 proposes that the concept plan is Controlled Activity to allow the landowner/tenant/future developer the flexibility of understanding what the market demands are at the time and then working with Council to pre-approve basic concepts like layout and building bulk and location before proceeding to a discretionary activity resource consent process to work out the finer design and appearance details. However, what is a more salient point is that the Controlled Activity status is more likely to encourage an applicant to submit a concept plan application and realise a coordinated outcome. The Discretionary Restricted status may discourage concept plans. It is because of this Officers consider that a Controlled Activity status is the most appropriate way to incentivise the use of a concept plan and that it should not be notified (and therefore a Discretionary Activity status)".*

7.215 Although we generally agree with the Officer's comments, we nevertheless make the further comment:

- a. in any event the 'status' of a concept plan may be something of a moot point given the evidence of Mr Leary on behalf of PrimeProperty Group - namely that the current landowner "will be constructing buildings on the site which are greater than 500m<sup>2</sup>;
- b. however, notwithstanding that declared intention, given that we are dealing with District Plan provisions (and not an actual resource consent application), we feel that encouragement and direction through the concept plan approach is appropriate in the circumstances of this particular site.

7.216 Of course a change in circumstances (either the ownership of the land and/or the nature of the development) could result in the concept plan provisions being implemented.

7.217 On the other hand, if the current land owner does proceed with a large format form of development consisting of building footprints that exceed 500m<sup>2</sup> gross floor area, the application would proceed to be assessed as a Discretionary Activity (Restricted) and 'stand or fall' - i.e. be granted consent or not based on its merits relative to the objectives, policies and assessment criteria for the Curtis Street Business Area.

7.218 We do not agree that it would be appropriate to 'strip' DPC 77 of its concept plan provisions based on the declared intention of the current landowner, as stated in the evidence of Mr Leary.

#### **Earthworks Consent and Mitre 10 Application**

7.219 During the course of the hearing reference was made to the earthworks 'consent' and the Mitre 10 application.

7.220 So that any doubt is removed we consider it important that we briefly record our understanding of their current 'status'.

7.221 Firstly the earthworks consent. Consent was granted to Terrace Height Holdings Limited under SR 221256 on 13 December 2010 for 'earthworks and vegetation clearance'. The application was processed on a non-notified basis. The proposal was for significant earthworks to create a

developable area of some 4,000m<sup>2</sup>. The application required assessment against the operative earthworks rules for the Outer Residential and the Open Space B areas. The Council's decision report noted that consent was not required under the DPC 73 (Suburban Centres Review) proposed Business 2 zoning for the removal of vegetation.

7.222 As discussed above in Section 2.0 under the subheading "Background", the Council's decision on the proposed Business 2 zoning (as part of the DPC 73 review) was challenged by the Creswick Valley Residents' Association through an application to the High Court for a judicial review of the Council's decision on the proposed re-zoning (refer paragraphs 2.3-2.4 and Footnote 3 at page 6). The CVRA application also challenged the Council's decision to separate the earthworks consent from the consent for the Mitre 10 development and grant consent for the earthworks on a non notified basis.

7.223 It is not our role to summarise the Court's discussion of its consideration of the earthworks consent.<sup>71</sup> Rather, we simply record that the judgement was that:

*[112] I have held, at [97], that the rezoning decision and earthworks consent are inter-related to a degree where the latter must stand or fall with the former. There must be an order setting aside the earthworks consent.*

As a consequence, there is no extant earthworks consent for the DPC 77 site.

7.224 In April 2011 PrimeProperty Group applied for resource consent for the construction of a 'home improvements building with more than 70 car parking spaces' - the so-called Mitre 10 application. The proposal was for a building with a gross floor area of 4,799m<sup>2</sup>. In addition to the main retail showroom, the proposed building also included a drive-thru, an inwards goods area, a garden centre and a cafe. The Council's decision was to notify the application on a 'limited notified' basis.

7.225 In his evidence Mr Leary advised that:

*"The delays in this process have already seen the Mitre 10 proposal 'fall off the drawing board' for the time being".<sup>72</sup>*

Our enquiries confirmed that the application is currently on 'suspension' at the request of the applicant.

7.226 The consequence of the above (i.e. the setting aside of the earthworks consent and the placement of the Mitre 10 application on suspension) means that there are no 'live' or extant resource consents for the DPC 77 site.

## 8.0 EVALUATION OF ISSUES

8.1 In this section we identify our main conclusions with reference to the 'issues in contention' that we identified at clause 2.11 at the beginning of our report. Drawing on our analysis of the evidence, and informed by our site visits, our conclusions are:

### Loss of Open Space B Land

8.2 We accept that a zone change to Curtis Street Business Zone will result in a portion of the site no longer being zoned Open Space B. However, in our opinion much of the land, which is part of the now

<sup>71</sup> Refer paragraphs [89] and following of the Court's Judgment.

<sup>72</sup> Leary evidence, paragraph 54. Mr Leary added however that: *"the lack of alternative commercial space in the Karori area has seen significant interest in the site. PPG remains confident of being able to gain tenants for commercial buildings on the site".*

'capped' former landfill, does not exhibit the characteristics of the Open Space B (Natural Environment) zone. This is particularly so of the eastern 'half' of the Open Space B land which is partly mown grass and partly the southern edge or 'toe' of the former landfill, which is now largely covered by weed species. We note that the pohutukawa trees fronting Whitehead Road are in the road reserve and not part of the privately owned land.

- 8.3 We note that the toe of the western escarpment very largely falls outside of the Open Space B zoned land and that the karaka tree lies to the south of the Open Space B boundary.
- 8.4 For the reasons we outline in paragraphs 7.19 to 7.25, our conclusion is that the change of zoning will not result in a significant loss of Open Space B land.
- 8.5 We acknowledge that many submitters felt strongly that the land should retain its Open Space B zoning. However, it is our opinion that the land in the vicinity that does exhibit Open Space B (natural environment) characteristics, namely the bush clad western escarpment, very largely falls outside the DPC 77 site and is zoned Outer Residential Area and not Open Space (or Conservation Site).

#### **Lack of Land for Business Development**

- 8.6 We accept that there is a lack of vacant appropriately zoned land in Karori (and the western suburbs generally) for a range of commercial and business activities, including retail - evidence of Tim Heath, which was unchallenged by other expert evidence.
- 8.7 We find that a case has been established for the zoning change.

#### **Impact on Existing Centres and Businesses**

- 8.8 We accept the evidence of Tim Heath that given the scale and location of the site it is unlikely that development for commercial and business activities, including retail, would result in adverse effects on the vitality and economic vitality of existing centres in Karori and the wider catchment. Notwithstanding this evidence, we nevertheless consider it appropriate that if the site is to be developed largely or solely for retail purposes, and therefore take on the role more of a 'centre' as opposed to a 'business area', then in those circumstances a economic impact assessment should be undertaken as part of the resource consent process.

#### **Loss of Residential Character / Impact on Residential Amenities**

- 8.9 This was an issue raised by many of the submitters. We have given careful consideration to the points made. In the end, however, we find that the site itself does not have an established residential character, nor is it likely in our opinion to be developed principally for residential activities. We accept that the wider valley setting is characterised by a residential character, along with a strong matrix of vegetation. However, given the location of the site at the 'bottom' of the valley, and the separated and elevated nature of most of the residential properties, we find that development along the lines envisaged by DPC 77 will not result in a significant diminution of residential character.
- 8.10 In terms of impact on residential amenities, again because of the separation of the site from the majority of residential properties, and given the proposed standards relating to noise and lighting, among other matters, we find that residential amenities will not be significantly affected. In respect of noise we accept the expert evidence which confirmed that compliance with the noise standards (which apply throughout the Outer Residential Area) must be met at the residential boundary.

- 8.11 We accept that visual amenities will be different in the future if the site is developed for business activities. However, this in itself is not, in our opinion, necessarily an adverse effect. With careful attention to urban design outcomes, including colour and signage, we find that while the outlook and visual amenity currently experienced by a number of properties that look out over the site will change, this in itself will not necessarily represent an unacceptable effect.

#### **Loss of Ecological Values / Threat to Ecological Character**

- 8.12 We accept the evidence that highlights the significant ecological values associated with the western escarpment. However, we note that the escarpment is very largely outside the DPC 77 site. Nevertheless, we also accept that there is a risk to some of those ecological values from building development on the DPC 77 site, particularly buildings close to its western margins. Consequently, we have identified the need for a 5m building setback on the western boundary for the most 'sensitive' portion of that boundary. Earthworks in this setback are to be discouraged.

#### **Loss of Vegetation**

- 8.13 We accept that the vegetation on the escarpment is important to protect the wetland seepages and the glow-worm colonies, which are a regionally significant ecological feature. We also accept that the vegetation on the toe of the escarpment, both within the site and outside, is an important buffer.<sup>73</sup>
- 8.14 We also find that the existing vegetation on the eastern margins of the site adjacent to Curtis Street does have some value in that it contributes to the current amenity of Curtis Street. We accept that much of this vegetation is very likely within the road reserve, especially in the central and northern parts of the site.

#### **Heritage**

- 8.15 We find that the site's heritage values are sub-surface archaeological and, as such, will be protected (or managed) under the provisions of the Historic Places Act 1993. We do not consider there is a need to incorporate provisions in the District Plan by way of specific listing of any heritage resource or value associated with the site.

#### **Impact on Kaiwharawhara Stream**

- 8.16 We accept that the Kaiwharawhara Stream is regionally significant for its in-stream ecological values. However the stream is not a natural 'feature' of the site as it is culverted, both through the site as well as upstream and downstream.
- 8.17 Whilst we consider that it is appropriate that DPC 77 does include policies that address stormwater management, we find that it is unlikely that development of the site would result in significant adverse effects, including cumulative effects, on the water quality of the stream.

#### **Urban Design**

- 8.18 The size and bulk of buildings, and their design and external appearance, are very important considerations. We are comfortable that the assessment criteria, which we have 'expanded', will enable these matters to be appropriately assessed. We have, nevertheless considered it appropriate to amend an existing policy and add a new policy.

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<sup>73</sup> We accept that most of the important indigenous vegetation on the toe of the western embankment (i.e. east of the Old Karori Road walking track), with the exception of the karaka tree, is outside of the DPC 77 site.

The amended policy is:

Policy 35.2.4.1 Control the height, bulk, location and appearance of buildings and developments to manage the effects of buildings on the character of the adjacent residential areas.

The new policy is:

Policy 35.2.3.2 Promote a building of high architectural quality at the landmark location near the intersection of Whitehead Road and Curtis Street

- 8.19 To address concerns raised in submissions and during the hearing in relation to 'urban design' outcomes, we have concluded that it is appropriate to expand and recast the assessment criteria relating to 'site layout, design and external appearance of buildings and structures'. We have also amended the assessment criteria relating to signs.

#### **Transportation**

- 8.20 We accept that any commercial or business development of the site along the lines outlined in the evidence of Ian Leary will result in a significant increase in traffic on the immediate road network. However, we accept the overall conclusion/s of the expert evidence of Mr Thornton, which, we note, was not called into question by other expert evidence.
- 8.21 We also accept that any significant development of the DPC 77 site will require a transportation assessment to be prepared as part of the resource consent application. This will provide an opportunity to assess 'actual' development proposals and ensure that any required measures necessary to mitigate adverse transportation-related effects are identified and implemented.

#### **Electricity Transmission Lines**

- 8.22 We accept that the proposed provisions now incorporated in DPC 77 are appropriate given the site-specific considerations. Thus, we are endorsing the evidence of Mr Hurley on behalf of Transpower NZ Limited. We appreciate the one area of 'disagreement' between Transpower and Mr Boshier. However, in the end we have accepted the additional evidence provided by Ms Mooar, again on behalf of Transpower, in relation to the definition of sensitive activities applicable to this site.

#### **Site Contamination**

- 8.23 We find that any site contamination issues would be appropriately addressed under the provisions of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health, and the District Plan's Contaminated Land provisions.

#### **Earthworks**

- 8.24 We consider that future earthworks can be appropriately managed through the proposed provisions. These provisions include making earthworks within a 5m building setback on the western boundary a Non-Complying Activity. Also, we have amended the earthworks assessment criteria under 36.7.

### **9.0 PRINCIPAL FINDINGS**

- 9.1 Our principal findings are:

1. The intention to rezone the site "Curtis Street Business Area" is endorsed;



2. The DPC 77 provisions recommended by the Reporting Officer are generally appropriate and therefore endorsed, subject to the following recommendations:

- (a) Amend the Introduction (to Chapter 35) to incorporate further details reflecting the site history and non-regulatory methods.

*Reason*

To provide more explanatory background comment.

- (b) Insertion of a new policy:

*Policy 35.2.3.2: Promote a building of high architectural quality at the landmark location near the intersection of Whitehead Road and Curtis Street.*

*Reason*

To recognise and respond to the importance of the landmark location - refer paragraphs 7.81 to 7.83.

- (c) Amend Policy 35.2.3.4 in relation to mitigation planting.

*Reason*

To clarify the intention of the policy.

- (d) Insertion of a new policy (Policy 35.2.3.8) as follows:

*Policy 35.2.3.8 Have particular regard to reducing the adverse quality and quantity effects on the Kaiwharawhara Stream of stormwater runoff from land use and development, in accordance with low impact design/water sensitive urban design principles.*

*Reason*

The change is recommended to for the reasons stated in paragraph 7.182.

- (e) Amend Policy 35.2.4.1:

Existing:

*Policy 35.2.4.1 Control the height, bulk and location of buildings and developments for the purpose of managing shading, daylighting, privacy, scale and dominance effects on adjacent residential areas.*

Proposed:

*Policy 35.2.4.1 Control the height, bulk, location and appearance of buildings and developments to manage the effects of buildings on the character of adjacent residential areas*

*Reason*

The amendment is recommended to more appropriately focus the policy on managing the effects of buildings on the character of Residential Areas.

- (f) Adding a new rule making earthworks in the 5m building setback on the western boundary, as shown on Appendix 1 "Building and Frontage Controls: Curtis Street Business Area", a Non-Complying Activity.

*Reason*

As noted in paragraph 8.12, we consider that there is a risk to the ecological values associated with the western escarpment from development close to the site's western boundary. We consider that any earthworks should be discouraged in the setback area, which, we noted above, should be planted and maintained as tall vegetation.

- (g) Adding new rules relating to the removal of vegetation.

Under DPC 77 as publicly notified, vegetation removal was a Permitted Activity. We agree with this activity status with two exceptions. We are of the opinion that the karaka tree on the western escarpment should be protected, as should some of the vegetation on the Curtis Street frontage. We have therefore added two new rules:

- (a) Rule 36.3(g) listing the removal of trees within the Curtis Street Frontage Control (Vegetated Bank) area that are 4m or more in height as a Discretionary Activity (Restricted); and
- (b) Rule 36.5(g) listing the removal of the karaka tree on the western boundary as a Non-Complying Activity.

*Reason*

The vegetated bank on the Curtis Street frontage is an important amenity feature. While much of the vegetation is in the road reserve, especially on the northern two-thirds of the frontage, the southern portion is largely within the DPC 77 site. We consider that the larger trees on this embankment should be retained.

On the western boundary the karaka tree is a major contributor to the ecological values of the western escarpment. In our opinion it should be protected, hence its removal is made a Non-Complying Activity.

- (h) Amending the building height standard (36.6(b)(i)) to the following:

*The maximum height of any new building, alteration, addition or structure in the Curtis Street Business Area is 116m above mean sea level or 6m above ground, whichever is the higher.*

*Reason*

We agree that a small lift in the permitted height limit above mean sea level (msl) to 116m from 114m will assist in establishing an appropriate relationship between buildings on the site and Curtis Street. The 2m increase will not, in our opinion, result in buildings being too dominant visually; whereas lifting to height limit to 120 above msl, as sought by Mr Leary, would potentially result in buildings being unacceptably high and visually obtrusive relative to Curtis Street, taking into account the specific residential context discussed earlier.

(i) Amending the signs standard (third bullet point under 36.6(c)(iii)) to the following:

- Must not be more than 5m<sup>2</sup> in area for buildings with a footprint not exceeding 500m<sup>2</sup> and 10m<sup>2</sup> in area for buildings with a footprint exceeding 500m<sup>2</sup>.

*Reason*

The signage should be appropriate in size to the scale of the building. For finer grained buildings we consider 5m<sup>2</sup> is an appropriate size, while for larger buildings 10m<sup>2</sup> is appropriate to manage any potential for adverse effects on amenities as a result of visual clutter (also refer amended assessment criteria - item (k) below).

(j) Various amendments to the assessment criteria (36.7 (b)) relating to 'site layout, design and external appearance of buildings and structures' to the following:

***(b) Site layout****The proposal:*

- *Is consistent with a concept plan already approved under Rule 36.2 (b)*

*Or, the extent to which the proposal:*

- *Forms an integrated and cohesive development of the whole site (buildings, spaces and circulation).*
- *Locates building bulk predominantly below the level of Curtis Street (with the exception of the north-east corner of the site) and maintains a well vegetated bank between Curtis Street and the site.*
- *Orients building frontages (including public entrances and main windows) toward Curtis Street.*
- *Locates the car parking and pedestrian circulation to ensure surveillance from buildings within the site and from Curtis Street.*
- *Provides direct and legible pedestrian routes between buildings, car parks and adjacent streets.*
- *Provides pedestrian paths with verandas along building frontages within the site.*
- *Provides for universal access.*
- *Provides a high level of internal amenity in the hard and soft landscape design within the site.*
- *Softens elevated views over car parks from nearby residential areas by growing canopy trees throughout the car parks.*

- *Separates and minimises conflicts between service areas and areas of the site used by the public.*
- *Incorporates indigenous vegetation within the 5m building setback depicted on the western boundary on the 'Building and Frontage Controls Plan' (refer Appendix 1) that effectively buffers the escarpment vegetation on Old Karori Road.*
- *Maintains a vegetated bank below the level of Curtis Street (refer Appendix 1).*
- *Maintains a landscaped yard at the intersection of Whitehead Road and Curtis Street that contributes to the 'parkway' character of Whitehead Road (refer Appendix 1).*
- *Minimises any adverse amenity effects of service and storage areas by locating them unobtrusively, and/or through screening and landscaping.*
- *Incorporates principles relating to 'Crime Prevention Through Environmental Design' ('CPTED') (for example as described in the National Guidelines for Crime Prevention through Environmental Design in New Zealand Part 1: Seven Qualities of Safer Places - Published Ministry of Justice, November 2005)*

**(c) External appearance of buildings**

*The extent to which buildings:*

- *Are designed to be complementary to the residential character of the surrounding area (while retaining honesty to the building's business activities).*
- *Are modulated (including both facades and roofs) in a way that breaks building bulk into smaller forms (in recognition of the finer grain of the residential area).*
- *Provide façade depth and relief (avoiding unbroken expanses of flat façade).*
- *Provide richness of architectural detail (in recognition of the variety and human scale of residential buildings in the area).*
- *Use a range of materials complementary to residential character.*
- *Avoid large expanses of a single colour, in particular eye-catching colours (such as colours used for branding).*
- *Use materials and colours with predominantly low reflectivity.*
- *Contain a high proportion of windows to ensure internal activities are visible from Curtis Street.*
- *Avoid large roof planes having particular regard to the extent of overlooking from residential areas (for example by using 'saw tooth' or green roof designs).*
- *Avoid plant on roofs (for example air conditioning plant).*

**(d) Buildings at the intersection of Curtis Street and Whitehead Road**

*The following additional criteria shall apply to any building located near the intersection of Curtis Street and Whitehead Road in the area indicated on the 'Building and Frontage Controls Plan' - refer Appendix 1.*

*The extent to which any building in this area:*

- *Exhibits an architectural quality suitable in particular for such a prominent location.*
- *Has primary frontages designed to be appreciated on at least three sides: from Whitehead Road, Curtis Street and internally to the site.*
- *Is designed to address the intersection of Whitehead Road and Curtis Street.*
- *Contains large windows that enable internal activity to be visible from both Whitehead Road and Curtis Street.*

*Reason*

We found it necessary to amend the assessment criteria to more appropriately focus attention on urban design related matters, for the reasons we discussed in paragraphs 7.64 to 7.84.

- (k) Amending the assessment criteria for signs to the following:

***(e) Signs***

*The extent to which signs:*

- *Are incorporated within building facades (with the exception of single signs at each entrance to the site, and signs for traffic safety and circulation).*
- *Avoid mounting on roofs (including signs painted directly on roofs).*
- *Are in scale and coherent with the architecture of buildings to which they are attached.*
- *Will not result in visual clutter when considered cumulatively with other signs on the site.*
- *Will not be visually obtrusive from nearby residences.*
- *Avoid features (such as movement, flashing or excessive illumination) likely to cause nuisance for residential areas.*

*Reason*

The potential for signs to have detrimental effects on residential amenities is something that we feel needs to be carefully assessed. Hence, any signs not compliant with the permitted activity standards need to be carefully assessed. The assessment criteria have been amended to assist this process.

- (l) Amending the assessment criteria for earthworks to the following:

***(f) Earthworks***

*The extent to which earthworks:*

- *Have been designed by a suitably qualified and experienced person, for example a chartered engineer practising in civil / geotechnical engineering.*
- *Are designed in accordance with NZS4404: Land Development and Subdivision Engineering and NZS4431: 1989 Code of Practice for Residential Earthworks.*
- *Will comply with Greater Wellington Regional Council's Erosion and Sediment Control Guidelines for the Wellington Region.*
- *Include an 'Earthworks and Construction Management Plan' defining acceptable standards for environmental and amenity protection and public safety during the construction process.*
- *Are designed so that any retaining and stabilising structures will effectively support and stabilise earthworks.*
- *Incorporate effective methods to control dust and sediment discharge.*
- *Enable a vegetated buffer to be grown within the 5m building setback on the western boundary with Old Karori Road.*
- *Do not compromise any native trees on the western escarpment, including existing trees within the 5m building setback.*

*Reason*

To provide more direction and focus to the assessment of earthworks.

- (m) Adding assessment criteria in relation to vegetation removal.

*Reason*

The removal of significant vegetation from within the vegetated bank on the Curtis Street frontage bank has been made a Discretionary Activity (Restricted). In the applicable rule we have stated that discretion is restricted to:

*"The extent to which a vegetated bank of trees is maintained on the western side of Curtis Street in a manner which encloses the edge of Curtis Street, contributes to the vegetated matrix of the valley, and softens views of the site from the nearby residential properties".*

- (n) Adding a new appendix - Appendix 1 "Building and Frontage Controls: Curtis Street Business Area".

*Reason*

The building and frontage controls are considered necessary to ensure that any adverse effects on ecological values of adjacent land (on the site's western boundary), on visual amenity (Curtis Street boundary) and on landscape and visual amenity (Whitehead Road boundary) are appropriately 'avoided, remedied or mitigated'.

In recommending the addition of the building and frontage controls for the Curtis Street Business Area, we note that the District Plan 'employs' building setbacks/building line restrictions in situations where it is considered important to 'avoid' development adversely affecting indigenous vegetation, landscape values and ecological values, among other matters.

The building setback on the western side should be planted and maintained as tall vegetation to provide a buffer to the western escarpment and maintain and enhance significant ecological values.

The building setback on the Whitehead Road frontage should be maintained as a landscaped yard with no buildings, car parking and service areas located within the setback.

The Curtis Street frontage control is to maintain existing vegetation which contributes to the amenities of Curtis Street, contributes to the vegetated character of the valley as a whole, and protects the residential amenities of those residential properties on the opposite of Curtis Street which are close to street level.

3. Given that DPC 77 incorporates the above recommended changes, we find that the proposed rezoning of the site to Curtis Street Business Area is consistent with Part 2 of the Resource Management Act 1991 in that it will promote the 'sustainable management' of the natural and physical resources of the site in a manner that will contribute to economic and social wellbeing.

4. We are satisfied that the provisions of DPC 77 now recommended for adoption by Council strike an appropriate balance between facilitating appropriate business/commercial development, whilst ensuring that development does not significantly impact on the site's and adjacent lands' amenity and ecological values.

## 10.0 SECTION 32 ANALYSIS

10.1 Section 32 requires the Council to undertake an evaluation of the proposed plan change in terms of sub-section (3) and (4) before the change is notified. For DPC 77 that evaluation was set out in the Council's Section 32 Report and comprised part of the publicly notified plan change.<sup>74</sup>

10.2 We must make a further evaluation before making any recommendations to Council on submissions and further submissions under Clause 10 of Schedule 1. Our evaluation must examine:

- a. the extent to which each objective is the most appropriate way to achieve the purpose of the Act;
- b. whether, having regard to their efficiency and effectiveness, the policies, rules and other methods are the most appropriate for achieving those objectives;
- c. the benefits and costs of policies, rules and other methods; and
- d. the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules and other methods.

The further evaluation may rely on the initial evaluation, particularly in relation to any matters which are not challenged by submissions, or matters which remain unchanged.

10.3 Before turning to our further evaluation we briefly summarise the points raised in submissions in relation to the initial s32 analysis.<sup>75</sup> In doing so, we note that a number of submitters made specific comment on the individual technical reports that were appendices to the Section 32 Report.

10.4 Without attempting to summarise all the points made in the submissions, the following comments are illustrative of the concerns raised:

- John Boshier: the Section 32 Report does not accurately describe the size and scale of activities previously occupying the site, does not specify when the previous activities were carried out or ceased, and does not comment on whether the activities were a legal use of the land. Consequently Section 3.1 of the report describing the previous use of the site is deficient.
- Jennifer Boshier: the scope of two of the technical reports (economic assessment and transport assessment) is deficient. Also, that the Section 32 Report should have included a social impact assessment.

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<sup>74</sup> Proposed District Plan Change 77: Curtis Street Business Area - Section 32 Report: Considerations of Alternatives, Benefits and Costs (December 2012).

<sup>75</sup> Submitters who specifically raised issues relating to the s32 analysis and report included: John Boshier (Submitter #13), Jennifer Boshier (Submitter #14), Angela Mansell and Antony Walker (Submitter #16), Jennifer and Michael Holmes (Submitter #17), Jitesh Patel (Submitter #25), Bev Abbott (Submitter #31), Fioana Knight and Wayne Newman (Submitter #40), Creswick Valley Residents' Association (Submitter #43) and Kathryn Hunt (Submitter #54).

- Angela Mansell and Antony Walker: the Section 32 Report fails to address a site specific resource management issue associated with the avoidance and mitigation of the impacts of hazards, specifically the high vulnerability of the site to flooding following an earthquake.
- Jitseh Patel: the Section 32 Report does not provide clear evidence of the need to provide for increased commercial activity in the western suburbs and does not properly address the effect of doing so in a new suburban centre rather than in an established suburban centres as proposed by DPC 73.
- Bev Abbott: the Section 32 Report does not present a convincing case for commercial activity as the most efficient use of the site. Nor *"has it provided a robust comparison of all the available zoning options, including retention of the status quo. Open Space B is probably the most appropriate zoning for the area given its location and its physical, social and environmental characteristics"*.
- Fiona Knight and Wayne Newman: raise a number of concerns about the Section 32 Report, including the omission of an assessment of the potential benefits, disadvantages, costs and risks of zoning the site for 'Centres', 'Business 1' or 'Business 2' activities, commenting that:

*"As these activity zones were developed as a result of an extensive and thorough review of Suburban Centres rules within the District Plan and reflect a considered response by the Council to providing for commercial activities in suburban centres, this is a curious omission. This is particularly so as discussion of the potential zoning of the site has previously been in terms of a preference for 'Centre' zoning on the part of the landowner and a conclusion by Council officers that 'Centre' or 'Business 1' zoning was not appropriate for the site"*.

- Creswick Valley Residents' Association: the Section 32 Report makes several erroneous and misleading assumptions about development of the site and misrepresents the legal position regarding the legitimate expectation of use of the site. The report does not provide clear evidence of a need to provide for increased commercial activity.
- Kathryn Hunt: the Section 32 report is predicated on the assumption that the zoning should change from the current Outer Residential and Open Space B zoning to a business zoning. As a consequence the specialist reports focus on the details of how to manage the zone changes, rather than whether they are necessary at all.

10.5 We have reviewed the December 2012 Section 32 Report in light of the comments made by submitters. In our opinion it adequately met the requirements of s32 of the Act. While some submitters may have desired to have even more background description and technical analysis and evaluation we do not find that the report is deficient or misleading. It seems to us that the submitters are more about stating why they oppose the rezoning rather than challenging the efficacy of the s32 analysis.

10.6 We have also reviewed the Officer comments in the s42A Report (at pages 15 to 20) which address the submissions that commented on the Section 32 Report. We do not intend to attempt to summarise those comments. We do, however, confirm that we are in general agreement with the Reporting Officer's summation and recommendations.

10.7 Therefore, based on our review we find that the Section 32 Report was 'fit for purpose'.



- 10.8 Our next 'task' is to provide guidance to Council on its obligation, which is to carry out a further evaluation under s32 before making a decision on the matters raised in submissions (i.e. a decision under Clause 10 Schedule 1). The framework for that further evaluation is the same as for the first evaluation and covers the matters referred to in paragraph 10.2 above.
- 10.9 The essence of the further evaluation is to ensure that before a decision on the plan change is made, the Council has satisfied itself on two issues:
- is any new objective the most appropriate way of achieving the purpose of sustainable management of natural and physical resources?; and
  - is any new policy, rule or other method the most effective way of achieving the relevant objective?

#### ***New / Amended Objectives***

- 10.10 Under DPC 77 objectives are proposed to address the site-specific resource management issues. They establish a zoning and planning framework (Objective 35.2.1) to ensure development occurs in a comprehensive and co-ordinated manner and results in a high quality neighbourhood-scale urban environment (Objective 35.2.2), while, at the same time, recognising the residential character and landscape and ecological values of the location (Objective 35.2.3). The objectives also seek, and rightly so in our opinion, to:
- protect the amenity of adjacent residential areas (Objective 35.2.4);
  - maintain the safety, efficiency and convenience of the surrounding road network (Objective 35.2.5); and
  - manage effects, including reverse sensitivity effects, associated with the development and use of the site for 'business area' activities (Objective 35.2.6).
- 10.11 Other objectives seek to facilitate subdivision which assists the development of the site for its intended use (Objective 35.2.7); to facilitate and enable the exercise of tino rangatiratanga and kaitiakitanga by Wellington's tangata whenua and other Maori (Objective 35.2.8); to encourage energy efficiency and environmentally sustainable building design (Objective 35.2.9); and to prevent or mitigate any adverse effects associated with the use, disposal or transportation of hazardous substances (Objective 35.2.10). All of these objectives seem appropriate to the Curtis Street site and are consistent with similar objectives applicable to the other commercial and business areas (Centres, Business 1 and Business 2).
- 10.12 We note that only relatively minor amendments were made to the proposed objectives as publicly notified, and principally to the associated 'explanations'.
- 10.13 We find that the objectives can be endorsed as being appropriate to address the site-specific characteristics of the site, given the intention, which we also consider is appropriate within the context of Resource Management Act and the District Plan, to zone the site as 'Curtis Street Business Area'. Accordingly, we adopt and reaffirm the initial evaluation at pages 23-25 of the December 2012 Section 32 Report.
- 10.14 We answer the first question, namely:

*Are the objectives the most appropriate way of achieving the purpose of sustainable management of natural and physical resources?*

in the affirmative.

***Policies, Rules and Other Methods***

10.15 The regulatory approach recommended is well established and consistent with the provisions applying to other District Plan 'zones', including the Centres, Business 1 and Business 2 Areas. However, to respond to some of the site-specific characteristics of the site, including its location and proximity to important ecological features, some of the policies and rules take on a specific focus and role to enable appropriate response to these site-specific characteristics.

10.16 We are satisfied, having evaluated the policies, rules and methods as an integrated whole, that they are the most appropriate way of achieving the objectives of DPC 77. We again substantially endorse the initial evaluation at pages 25 to 33 of the December 2012 Section 32 Report. We note that we have added two new policies and amended another. The amendments have been directed toward providing more focus and guidance on achieving key urban design, ecological and stormwater management outcomes.

10.17 Finally in providing guidance to Council in relation to its obligation to carry out a further evaluation under s32, we can advise that we agree with and therefore endorse the conclusion to the December 2012 Section 32 Report, which was that:

*"... a regulatory planning response is required to resolve the planning and development issues for the site. Specifically it (i.e. the s32 analysis) concludes that a site specific Curtis Street Business Area (zoning) is required, accompanied by a mixture of standard and site specific environmental controls. Site specific environmental controls are required to address issues unique to the site (e.g. landscape setting, road network issues).*

*A plan change has been prepared which responds to the issues identified through the planning background, technical investigation, and ultimately the analysis contained in this report".*

10.18 Our review of the submissions and our consideration of the evidence presented to the hearing does not lead us to a different conclusion.

**11.0 OTHER MATTERS**

11.1 At paragraph 5.11 we identified a number of other plans and strategies that have been raised during the course the Plan Change process to date. In particular, submitters drew our attention to the:

- Centres Policy 2008;
- Outer Green Belt Management Plan 2004; and
- Biodiversity Action Plan 2007.

11.2 We confirm that we have had regard to each of these documents.

***Centres Policy 2008***

11.3 In relation to the Centres Policy we confirm that we understand that the 'intent' of the policy is to 'maintain and strengthen existing and planned centres'. We note that as a consequence of DPC 73 the former suburban centres have been 'split' into Centres, Business Areas 1 and 2. We accept the general proposition that it is not intended to have Business Areas duplicate the role of Centres. It is principally

for this reason that we consider it appropriate that if the Curtis Street Business Area is to be developed principally as a retail centre, albeit a 'large format' retail centre, an economic impact assessment should form part of the resource consent application documentation. This would be consistent both with the Centres Policy and also with DPC 73. To this end we agree with the points made by Andrew Foster (Submitter #49) - refer paragraphs 7.56-7.58.

#### **Outer Green Belt Management Plan 2004**

11.4 Several submitters drew to our attention the Outer Green Belt Management Plan. For example:

- Peter Henderson (Submitter #15) gave as one of the reasons for his opposition to DPC 77 that Open Space B is a designation in the District Plan that facilitates the development and protection of ecological corridors *"to recognise and enhance the ecological corridors between the Outer Green Belt and other parts of the city and region ... (Wellington's Outer Green Belt Management Plan)"*;
- Sarah Holden (Submitter #24) requested that the *"Council's existing plan for the valley, namely to enhance the ecological corridor, as indicated in 'future initiatives' of the Wellington Green Belt Management Plan May 2004"* be given effect to;
- Jitesh Patel (Submitter #25) who expressed the view that *"DPC 77 gives no mention to the current published Council plans for this site within the Outer Green Belt Management Plan, which shows the site being included within Council-owned open space in order to enhance the ecological corridor as a future initiative..."*;
- Frances Knight and Wayne Newman (Submitter #40) who noted that while the Section 32 Report listed a number of relevant documents *"the list does not include Wellington's Outer Green Belt Management Plan May 2004, which specifically marks the site on two maps for future initiatives to enhance the ecological corridor of open and green spaces along the valley of the Kaiwharawhara Stream by including the site in Council controlled open space"*; and
- Creswick Valley Residents' Association (Submitter #43) requested the retention of the existing zoning of the site or alternatively *"amend DPC 77 to give full effect to Council's existing plan for this valley such that the site is zoned and managed to be within Council controlled open space to enhance the ecological corridor as indicated in 'future initiatives' of the Wellington Outer Green Belt Management Plan May 2004"*.

11.5 In the Officers 42A Report it was stated that:

*"Several submitters raised concerns that DPC 77 ignores the Outer Greenbelt Management Plan (2004) (OGBMP) and states that it includes a proposal to restore the site to a natural vegetative state. Planning officers consulted widely within Council prior to the development of the plan change, including with Parks and Gardens officers, to ensure consistency with broader Council policies and objectives. Specifically in response to this issue Parks and Gardens Officers have confirmed that the site is not subject to any specific initiatives in the OGBMP but the site is incorrectly identified on page 115 as being in WCC ownership"*.

11.6 We have reviewed the OGBMP, in particular Section 5.4 Sector 4: Otari-Wilton's Bush, which includes two maps at pages 114 and 115. The map at page 114 labelled 'current form' identifies the bush on

the western escarpment adjacent to the DPC 77 site. The map at page 115 labelled 'future initiative' does not show any future initiative on the DPC 77 site, but does show (incorrectly) that the land is in WCC ownership. We note that there is a label on the map "Enhance ecological corridor". This note is positioned on the map significantly north of the site in the vicinity of the Cardinal McKeefry School (at the corner of Curtis Street and Albermarle Road). In our opinion this notation does not refer to the DPC 77 site.

- 11.7 Notwithstanding the above, we consider that our recommendations will result in an enhancement of the ecological corridor which is centred on Old Karori Road to the west of the DPC 77 site.

#### **Biodiversity Action Plan 2007**

- 11.8 As with the Outer Green Belt Management Plan a number of submitters opined that the proposal to rezone the Curtis Street site as a Business Area would result in a lost opportunity to maintain and improve the ecological integrity of the corridor from Zealandia to Otari-Wilton's Bush. For example, Jennifer Boshier (Submitter #14) submitted that enhancing the ecological corridor on the 55-85 Curtis Street site would give effect to the vision statement in the Council's Biodiversity Plan:

*"Wellington is a city that protects and restores biodiversity and proudly showcases its natural areas. It is a city renowned for its kaitiakitanga, its environmental guardianship".*

- 11.9 We acknowledge that some submitters requested that Council undertake a number of initiatives, including: (a) gazetting the land as 'recreation reserve' under the Reserves Act 1977 (John Christopher Horne, Submitter #50); (b) re-acquiring the land (Rod Bryant, Submitter #38 and Elizabeth Buckley Bargh and Robert Buckley, Submitter #52); and (c) rezoning the whole site Open Space B, repurchase the land and restoring it to its natural state (Kathryn Hunt, Submitter #54).
- 11.10 Having regard to all the submissions and evidence, we have concluded that the site can appropriately be rezoned Curtis Street Business Area. However, in coming to this conclusion we consider there needs to be measures in place that enable the maintenance and enhancement of the ecological corridor, which we accept lies largely to the west of the DPC 77 site. The measures we are recommending are, in our opinion, in accordance with the Biodiversity Action Plan. We accept, however, that some of the initiatives we are recommending are on land owned by the Council (i.e. the Old Karori Road 'road reserve'). Nevertheless, in accordance with Council's role as both land owner and advocate for enhancing and protecting biodiversity and ecological values, we consider these recommendations are appropriate, even though they fall outside the scope of DPC 77.
- 11.11 We do not consider it is our role to ask Council to revisit a decision it made a number of years ago (i.e. in 1999) to sell the Curtis Street site. Rather, our role is to assess the appropriateness of the rezoning proposed under DPC 77 and, among other matters, recommend any measures to address potential adverse environmental effects resulting from the proposed business area zoning, including effects in relation to the ecological and biodiversity values of the Old Karori Road ecological 'green' corridor. In doing so, we have had regard to the Biodiversity Action Plan 2007.

#### **12.0 RECOMMENDATION**

- 12.1 Based on our consideration of the Plan Change documents, the submissions and further submissions, the Officer's s42A Report and the evidence presented at the hearing, and after consideration of the requirements of section 32 and other relevant statutory matters, we recommend that:

1. Council accept the recommendations of the District Plan Hearing Panel in respect of Proposed District Plan Change 77 "Curtis Street Business Area" as outlined in the Commissioners' Report dated 10 December 2013; and
2. Council approve District Plan Change 77 (Curtis Street Business Area) as amended in Appendix 3 and that all submissions and further submissions on the Plan Change be accepted or rejected to the extent set out in Appendix 3.
3. Council approve District Plan Change 77 for incorporation in the District Plan.

### 13.0 REASONS FOR RECOMMENDATION

13.1 The reasons for our recommendations are:

1. The proposed Curtis Street Business Area zone will provide appropriate opportunity for business/commercial development in the City's western suburbs.
2. The proposed Curtis Street Business Area zone is consistent with:
  - the Wellington Regional Policy Statement; and
  - the Wellington City District Plan, including proposed District Plan Change 73.
3. The proposed Curtis Street Business Area zone provisions (objectives, policies, rules and assessment criteria) will facilitate business/commercial development in a manner that will appropriately 'avoid, remedy or mitigate' adverse effects on the environment.
4. The proposed Curtis Street Business Area zone is consistent with the Part 2 of the Resource Management Act 1991 and the purpose of 'sustainable management' of natural and physical resources.

DATED AT WELLINGTON THIS 10<sup>TH</sup> DAY OF DECEMBER 2013

Alistair Aburn  
Commissioner (Chair)

Sue Piper  
Commissioner

Gavin Lister  
Commissioner

### APPENDICES

1. LIST OF SUBMITTERS
2. BUILDING AND FRONTAGE CONTROLS DRAWING
3. DISTRICT PLAN CHANGE 77 INCORPORATING RECOMMENDED CHANGES [FOR COUNCIL ADOPTION]

**APPENDIX 1****SUBMITTERS ON PROPOSED DISTRICT PLAN CHANGE 77**

- 1 Naomi Lane
- 2 New Zealand Historic Places Trust Pouhere Taonga
- 3 Bernard O'Shaughnessy
- 4 Alison McEwen
- 5 Madeline McAlister
- 6 Jane Clunies-Ross and Hamish Hill
- 7 Ian Appleton
- 8 Michael Gibson
- 9 Michael Gibson
- 10 Margery Renwick
- 11 Pauline and Athol Swann
- 12 Anne and Gordon Somerville
- 13 John F Boshier
- 14 Jennifer Anne Boshier
- 15 Peter Alexander Henderson
- 16 Angela Fleur Mansell and Antony Maitland Walker
- 17 Jennifer Holmes and Michael Holmes
- 18 Mark Casson and Patricia James
- 19 Kristin Gibson
- 20 Sean Thompson
- 21 Imogen Thompson
- 22 Ryan O'Donnell and Amanda Oliver
- 23 Trelissick Park Group
- 24 Sarah Holden
- 25 Jitesh Patel
- 26 Maurice Moore
- 27 Heather Rose Sharpes
- 28 Cecilia Doogue
- 29 Bridgett Anne Parkin
- 30 Geoffrey Neil Plimmer
- 31 Bev Abbott
- 32 Rodney John Lewington
- 33 Marsden Village Association Inc
- 34 Ian Stockwell
- 35 Paul Francis Broughton and Susan Jane Ryan
- 36 Gregory James Howell
- 37 Paul Oliver and Rowena Cullen
- 38 Rod Bryant
- 39 John Edward Bickerton
- 40 Frances Fiona Knight and Wayne Dexter Newman
- 41 Rosemary Tomlinson
- 42 Amanda Otzen
- 43 Creswick Valley Residents' Association Inc
- 44 Wilton Residents' Association
- 45 Greater Wellington Regional Council
- 46 Mary Munro
- 47 Andrew Monahan
- 48 K Björn W Sutherland
- 49 Andrew J W Foster
- 50 John Christopher Horne
- 51 Leoni Hawkins
- 52 Elizabeth Joy Buckley Bargh and Robert George Buckley

- 53 Alexandra Elizabeth Darvel Hill
- 54 Kathryn Jane Hunt
- 55 Sara Clarke
- 56 Transpower New Zealand Limited
- 57 Sheena Yvonne Bennett
- 58 Frances M C Lee
- 59 Michelle and Julian Davies
- 60 Michael and Rachel Roth
- 61 PrimeProperty Group
- 62 Hilary Freda Patton
- 63 Jessica Jane Campbell
- 64 Ruth Pemberton and Ken New
- 65 The Architectural Centre Inc

**FURTHER SUBMITTERS**

- FS1 Jitesh Patel
- FS2 Creswick Valley Residents' Association Inc
- FS3 Frances Fiona Knight and Wayne Dexter Norman
- FS4 Mark Casson and Patricia James
- FS5 PrimeProperty Group
- FS6 Sara Clarke
- FS7 Michael Gibson
- FS8 Transpower New Zealand Limited





**APPENDIX 3**

**DISTRICT PLAN CHANGE 77 INCORPORATING RECOMMENDED CHANGES [FOR COUNCIL ADOPTION]**

Note: in the version of DPC 77 attached only the further amendments made by the Commissioners are highlighted. Other amendments recommended by the Reporting Officer in the s42A Report are incorporated in the attached version.