

# Memorandum

Date: 24 March 2017  
To: **John McSweeney**  
From: **Kate Pascall, Senior Advisor - Planning**  
Subject: **Huntleigh Park/Kilmarston Development - Ngaio**

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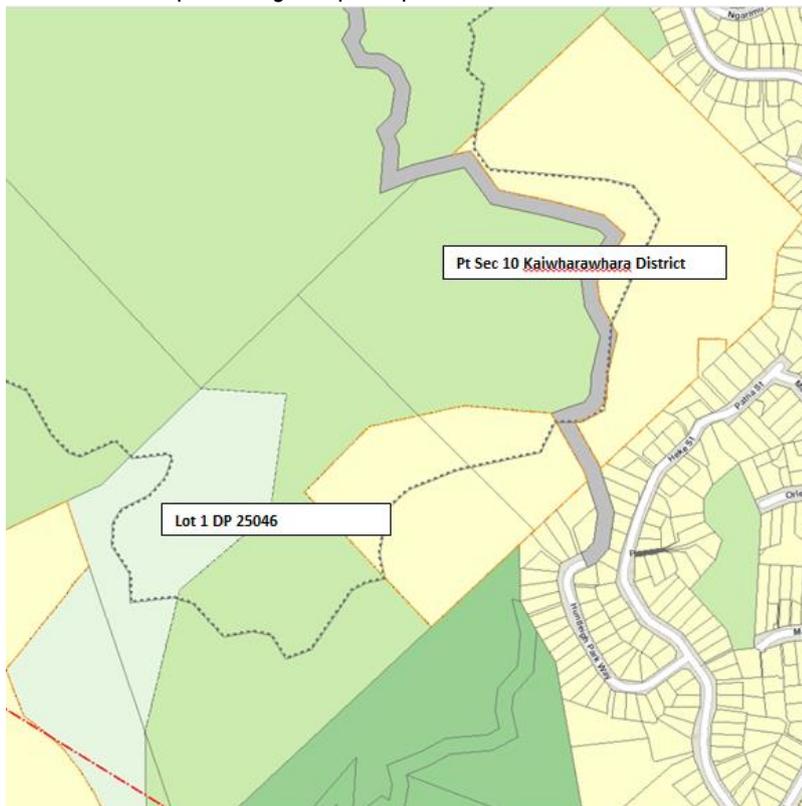
## Introduction

This memo provides a summary of the development history of the site at Patna Street/Huntleigh Park Way, Ngaio owned by Kilmarston Developments Ltd. The site has been the subject of rezoning and development proposals since the District Plan was notified in 1994. The property owner has recently approached Council with a request to make the site a Special Housing Area. This request has been rejected. But the developer still intends to pursue a development proposal that is more intense than currently provided for under the District Plan.

## The site and current zoning

The site is located on the Western hills in Ngaio and incorporates Crow's Nest Hill, and the informal walking track that leads to this area.

The site has a split zoning of Open Space B, Outer Residential, and Rural, as shown in the following map.



The Planning Maps also show that the 'Ridgeline and Hilltops' overlay applies to this site. This overlay primarily serves to identify those parts of the City that have particular visual values. Other values also contribute to these areas, namely natural, recreational and heritage values that are to be protected. The District Plan provisions seek to manage development within these areas on a case by case basis. In the Rural Area the Plan provisions are aimed at maintaining the relatively undeveloped character of the important ridgelines and hilltops, while taking into account variations in local character. In the Residential Areas, the Plan anticipates residential development in areas of ridgelines and hilltops, but this development must be carefully planned at the subdivision design stage and the visual effects of such development.

## **Site History**

### Transitional District Plan

In the early 1980s, the Planning Tribunal confirmed the zoning of the site. The site consisted of 2 blocks. Block 1 was zoned part 'Residential A1' and part 'Residential G' (akin to rural residential) while Block 2 was zoned 'Residential G'. In the late 1980s, a proposal to subdivide Block 1 was approved, however this was never progressed.

### Proposed District Plan 1994

Under the Proposed District Plan in 1994, the site was zoned Rural. However this was opposed, as follows:

- By the property owner who sought to retain the existing residential zoning.
- By 11 residents who sought an Open Space zoning for the site

Council's decision was to retain the Rural zoning as proposed. However, the committee's decision report noted that:

'If future discussions result in firmer plans for the area then a change of mapping could be considered through the Plan Change process which would allow for a full assessment of the adverse effects of any proposed development.'

The property owner appealed this decision, seeking an Outer Residential zoning. Seven residents in the vicinity of the site became parties to the appeal.

Boffa Miskell was commissioned in 1997 to undertake an assessment of the landscape values of the sites and the implications of future subdivision. The report concluded that large lot rural/residential subdivision over the sites would have adverse landscape effects but that residential development restricted to particular areas could be appropriate.

Council staff recommended that the appeal be resolved by allowing subdivision on a limited basis. The following reasons were provided for this approach:

- The policies in the Plan provide for general containment of urban development and encourage new development to locate within the established urban area. Cumulative effects of expansion would need to be

avoided, remedied or mitigated. New developments must maintain or achieve a high standard of amenity and integrate with existing infrastructure.

- While the proposal would result in expansion of the existing area, this would be to a limited extent and would not have significant ongoing implications for the City. Topographically, the sites represent the limit of what could be reasonably developed. It was thought that the steep land to the West would always remain undeveloped and integrate with the Outer Town Belt.
- The assessment by Boffa Miskell concluded that provided appropriate controls were adopted any adverse effects, particularly adverse landscape or visual effects could be reduced to an acceptable level. Officers recommended that proposed development be clustered or constrained to localised areas of the sites in order to mitigate the visual effects of scattered residential development.
- The proposed controls would achieve a relatively low intensity transition area between the existing suburban housing below and the undeveloped hillsides above (similar to rural/residential development).
- It was concluded that the land could be developed for residential use without compromising the Crow's Nest. In addition, the top portion of Block 2 would be vested in as reserve and zoned Open Space. As such it was considered that future subdivision would not compromise the Outer Town belt proposals.
- An assessment in 1998 also revealed that new subdivisions could be integrated with existing infrastructure.

Based on these recommendations to Council, the appeal was resolved by way of consent order.

The result of the Environment Court's consent order was Appendix 12 of the Operative District Plan which sets out particular restrictions for development of this site. In summary, Appendix 12 provides for subdivision of the site on a limited basis as follows:

- Any subdivision which is not provided for as a Permitted Activity is a Discretionary Activity (Unrestricted). Rules 5.2.2 and 5.2.3 do not apply to this site.
- On Pt Sect 10 Kaiwharawhara District the maximum number of allotments is 30
- On Lot 1 DP 25046 the maximum number of allotments is 11
- Subdivisions which exceed the maximum number of allotments will be assessed as a Non-Complying Activity
- Rule 5.1.7 relating to the construction of residential buildings and accessory buildings does not apply in the areas identified by shading on Map 1 of Appendix 12. Building within these areas is a Non-Complying Activity.
- No more than 1 household unit per allotment is permitted
- Additional household units are a Non-complying activity.
- Rule 30.1.1 of the District Plan does not apply to the shaded areas on the map in the appendix. All earthworks in these areas are a Discretionary Activity (Restricted) under rule 30.2.1.

In 2003 Kilmarston Developments Ltd applied for consent to subdivide three existing parcels to create:

- 43 residential allotments,
- a balance lot,
- a lot to be transferred to WCC to be vested as reserve (incorporating the Crow's Nest),
- one reservoir lot
- 7 lots to vest as roads/legal access

In conjunction with the above, the application also included a proposal to construct services and undertake mass earthworks. This included new roading (extension of Huntleigh Park Way) and several rights of way.

The proposal required consent for the following reasons:

- The subdivision did not meet the standards of Appendix 12 as it exceeded the number of allotments. This pushed the consent to a non-complying activity.
- Subdivision in Open Space B zone is a discretionary activity.
- The proposed earthworks exceed the conditions for earthworks as a permitted activity under rule 5.1.9 and 17.1.6 and required assessment as a discretionary (unrestricted) activity
- Construction of a road on Huntleigh Park Way required land use consent as a discretionary (unrestricted) activity

The application was publicly notified. A total of 83 submissions were received. Of those submissions, 4 were in support of the application, 3 provided conditional support/opposed the application in part, and 76 opposed the application outright.

Those who supported the application did so based on the proposed pedestrian links, the proposal to vest the Crow's Nest as reserve, and completion of the earthworks in one continuous period.

The key concerns raised in submissions in opposition related to:

- pedestrian links and capacity of the existing road network,
- the potential for further infill subdivision,
- servicing of the site,
- impacts on native vegetation
- Effects of earthworks – visual as well as effects on ecology and natural landform
- The architectural design of the future dwellings
- A range of general and some site-specific concerns, including some that are out of Council's control.

A more detailed list of the issues is provided in Appendix 1.

The application was granted by the Council in 2006 subject to conditions. The conditions related to the proposed earthworks, geotechnical requirements, landscaping, traffic and servicing. Of particular note, are conditions relating to bush protection in relation to Lots 6 to 11 and Lots 12 to 16. These conditions required that the areas of protection be shown on the survey plan and that a consent notice be issued to specify that removal of vegetation in these areas is prohibited. The land use consent decision also included a condition requiring that prior to the commencement of earthworks, the extent of the earthworked areas and all areas of vegetation to be protected within the development were to be identified and marked out.

A further condition restricted the number of household units to one household unit per allotment and any further subdivision would be prohibited.

Three appeals against the decision were lodged, and one subsequently withdrawn. The two remaining appeals were from the Ngaio Progressive Association (Inc) and Frank and Noeline McGuire of 14 Patna Street. The McGuire's property directly adjoins the subject site and would be bounded on the Western side by the proposed pedestrian access, and on the eastern side by new residential development.

- The points of appeal by the McGuires centred around the effects of the pedestrian access to the proposed ROW on their privacy, security and amenity and the ability to retain vehicular access to their property. The McGuires sought that this pedestrian link be removed from the plans in the event that the Court granted consent. The McGuires also submitted that Council did not correctly address the effects of earthworks, stormwater and construction activities on owners and occupiers of existing residential properties on Patna St, Heke St and Huntleigh Park Way.
- The appeal from Ngaio Progressive Association focused on the effects of the development on landscape character, the potential for future subdivision of the lots, and that the decision gave no certainty to future ownership and public access to the Crows Nest.

There were five s274 parties to these appeals. A further two parties had lodged s274 notices but later withdrew their interest.

The consent was granted by consent order in October 2012 with revised conditions. The key amendments of note included:

- A new condition requiring that the development occur over five stages
- More specific requirements for landscaping
- The construction of a fence either side of the accessway adjacent to 14 Patna St (the McGuire property),
- The provision of visitor parking to serve the scenic reserve once this was vested in WCC,
- Specific requirements relating to the protection of areas of bush on certain identified lots,
- Specific requirements for construction of greenfill on Lot 35.

The Consent Order is attached as Appendix 2.

### **Current issues**

The resource consent is due to expire in October 2017 and as yet the developer is yet to give effect to it. Consultants for Kilmarston recently approached council to seek a Special Housing Area designation for the site with a view to develop the site with an increased number of dwellings. The concept currently being developed includes:

- Approximately 90-100 residential allotments, including medium density development (e.g. duplex and terrace housing).
- The additional allotments would be contained within the existing consented residential allotments.
- Vegetation protection areas that were the subject of conditions in the earlier subdivision consent would be protected in the new development
- If the site were a SHA, the developer would still seek to sell the land beneath the Crow's Nest (being proposed 'Lot 45' in the consented development) to Council in order for public access to be provided to the Crow's Nest. (While WCC agreed to purchase the land, the sale and purchase agreement requires that in order for the sale to proceed, the consented development must take place).
- Investigations around servicing and traffic impacts are currently being undertaken by consultants for the developer.

The proposal for an SHA was rejected by council planning staff due to the high level of prescription of provisions for this site in Appendix 12. Moreover, the process for development within an SHA is a streamlined process that would remove the ability for affected parties to voice their concerns.

It should also be noted that the recent assessment of Wellington's natural areas does identify this site as a significant natural area. The SNA across the site is #64 - *Forest and scrub above Patna Street, Upper Ngaio* and is identified as 'May be significant but requires confirmation'. The earlier consent decision does contain conditions around the protection of native bush, and the developer intends to meet this requirement.

Further ground truthing will help to understand the level of significance of this site. Nevertheless, consent has already been given for development to occur here; as such the level of significance has already been reduced, particularly if the consented development were to proceed. The SNA may become a consideration if more intense development is proposed on the site (noting that at this stage the SNA does not form part of the District Plan).

Since the proposal for an SHA has been rejected, the most likely scenario is an application for a plan change to amend Appendix 12 and develop the site more intensively. Key considerations will be visual effects, servicing and traffic impacts

for the wider area. Surrounding residents will likely raise similar concerns to those raised in submissions on the resource consent application. Access to the Crow's Nest is will be a key concern.

A key argument for more intensive development of this site will be the current housing supply issues, and the provision of medium density housing in a desirable location. However, this will need to be tempered with the practicalities of developing an area that has previously been assessed as being appropriate for 'large lot/rural residential' development but anything more intense would begin to compromise the landscape. While the site has not been identified as an outstanding landscape or feature, it does fall within the 'ridgelines and hilltops' overlay of the District Plan.

In terms of servicing, the earlier subdivision consent was granted on the basis that the proposed infrastructure was sufficient. However, given the current proposal for an additional 50-60 houses, there will need to be an assessment of the feasibility of servicing the extra lots. It may be prudent for Wellington Water to be involved in these discussions.

**APPENDX 1: SUMMARY OF ISSUES RAISED IN SUBMISSIONS ON APPLICATION FOR SUBDIVISION  
CONSENT FOR LAND ABOVE PATNA STREET, NGAIO**

Topic	Issues raised in submissions
<u>Transport &amp; roading</u>	<ul style="list-style-type: none"> <li>• That pedestrian footpaths should be constructed on both sides of all new roads and the pedestrian link should be extended to Karamu Street.</li> <li>• Pedestrian access to Patna Street should be maintained.</li> <li>• WCC to review placement of white centre line and broken lines along Heke Street.</li> <li>• Review of parking requirements at Ngaio Railway Station. Investigate into the traffic congestion on Huntleigh Park Way / Heke Street and tunnel.</li> <li>• Development should include public parking areas to reserve.</li> <li>• Upgrading of any traffic related works to be carried out by the consent holder rather than the WCC and to take place prior to site development.</li> <li>• Traffic issues with junction at Heke Street / Chelmsford Street; Collingwood Street railway bridge tunnel.</li> <li>• Additional parking is needed for the Ngaio Train Station.</li> <li>• Increase of traffic noise.</li> <li>• Increase of traffic on existing streets that are already narrow with on-street parking.</li> <li>• Roothing system is too narrow for emergency vehicle(s).</li> <li>• Rights of Way agreement between No.14 Patna and the Council are not finalised yet.</li> <li>• Right of Way in favour of the WCC to the reservoir site should be extended for public as well.</li> </ul>
<u>Future subdivision</u>	<ul style="list-style-type: none"> <li>• That a covenant should be placed on titles restricting no further in-fill development and restricting development to areas of building platforms as shown on submitted plans.</li> </ul>
<u>Servicing</u>	<ul style="list-style-type: none"> <li>• WCC to review stormwater and sewer system.</li> <li>• Question about location of sediment ponds.</li> <li>• No mains to be laid up Heke Street to the reservoir.</li> <li>• Reservoir to be completed and functional prior to completion of subdivision.</li> <li>• Upgrade to stormwater / sewer systems shall be completed prior to development going ahead.</li> <li>• Present water supply pressure is unsatisfactory and the development will reduce this further.</li> <li>• Question about drainage within proposed Lot 16 as there is a history of flooding.</li> <li>• Recent flooding issue on 10 Feb 2006 at No.20 Chelmsford Street.</li> </ul>
<u>Landscaping and native vegetation</u>	<ul style="list-style-type: none"> <li>• Planting of native trees around the proposed reservoir.</li> <li>• Retention of native bush as much as possible.</li> </ul>
<u>Earthworks:</u>	<ul style="list-style-type: none"> <li>• Opposition to cuts in Open Space Areas and Area 'E'.</li> <li>• That proposed batter slope does not take into account the existing natural land form.</li> </ul>

	<ul style="list-style-type: none"> <li>• Loss of natural habitats of bird life, native forest and ecology.</li> <li>• Adverse visual effects from earthworks areas, including reservoir site and its track.</li> <li>• Covenant areas to be identified on lots where planting is to be retained.</li> <li>• Stability of land, lack of assurance in geo-tech report. Geo-tech report needs to be reviewed; Nick Perrin is not a geo-tech engineer but an engineering geologist.</li> <li>• Objection to the duration of earthworks, five years.</li> <li>• Effect on the existing stream running through Nos.113 – 115 Heke Street.</li> <li>• Proposed Lots 33 and 34 requires long cuts to create the Right of Way that is to be benched into the hillside.</li> <li>• Instability of 'Icon Rocks' in hillside.</li> </ul>
<u>Aquatic ecology</u>	<ul style="list-style-type: none"> <li>• Ecological values are compromised, development is next to an ecological corridor between Otari and Kaukau.</li> <li>• Against development of Lots 1 to 11, they should vest as reserve.</li> </ul>
<u>Architecture</u>	<ul style="list-style-type: none"> <li>• Lack of control over Architecture of new building(s) – Ngaio being viewed as a historic suburb consisting of Colonial &amp; Art Deco Architecture.</li> </ul>
<u>General matters</u>	<ul style="list-style-type: none"> <li>• Restriction hours of usage of heavy machinery / equipment and heavy vehicle usage on public road.</li> <li>• Improve capacity of Ngaio School to cater for increase in residents.</li> <li>• Development to include 'cats-free' zone / area.</li> <li>• Development is not aimed at the social-economic of Ngaio, ie residency with young families.</li> <li>• Future of Lot 44 is being asked.</li> <li>• The need to consult with Iwi.</li> <li>• Credit from any development contributions should not be used / banked for future developments within the subject site.</li> <li>• Query about ownership of pedestrian accessway (Rights of Way), private vs public.</li> <li>• Loss of amenities, privacy, sunlight, character, views to No.28 Patna Street.</li> <li>• Loss of property values.</li> <li>• Consent approved by the Greater Wellington Regional Council (GWRC) didn't address issues regarding earthworks.</li> </ul>