

**Hearing Stream 7 – Open Space Zones
Wellington City Council**

In the matter of

Proposed District Plan review incorporating the Intensification Streamlined Planning Process (ISPP), and the first schedule of the Resource Management Act.

Hearing 7 – Open Space Zones

Expert Evidence of Cameron de Leijer on behalf of Boston Real Estate Limited

Date: 04/03/2024

Next Event Date: 20th March 2024
Hearing Chair: Robert Schofield
Hearing Pannel: Jane Black, Lindsay Daysh, Miria Pomare.

Introduction

- 1 My full name is Cameron Peter de Leijer. I am a Senior Surveyor and Planner at Spencer Holmes Ltd. I specialise in Cadastral Surveying, Resource Management, and Land development.
- 2 I am giving evidence on behalf of Boston Real Estate Limited.
- 3 I am authorised to provide this evidence on their behalf.
- 4 This evidence has been reviewed and accepted by Ian Leary, Spencer Holmes Planning Director, who will also provide comments at the hearing.

QUALIFICATIONS

- 5 My qualifications and experience are as follows:
 - 5.1 I have a Bachelor of Surveying from the University of Otago and Bachelor of Science from the University of Canterbury.
 - 5.2 I have 6 years post graduate experience as a surveyor in private practice at Spencer Holmes Limited. During that time, I have worked on a variety of survey projects. I now work closely in the land planning field which includes the preparation of resource consent applications, as well as developing land use strategies for clients.
 - 5.3 In October 2021 I achieved the requirements to be a Licensed Cadastral Surveyor under the Cadastral Survey Act 2002, which is a rigorous set of exams that require knowledge in the law surrounding Cadastral Surveying. Upon obtaining my license to undertake cadastral surveys, I became full member of the surveying professional body, Survey and Spatial New Zealand.

5.4 I previously sat on the Board for the Survey and Spatial Wellington Branch executive team. I currently have a position on the Board of the Positioning and Measurement Stream for Survey and Spatial New Zealand, which is the one of the governing streams of the survey profession.

6 My involvement in these proceedings (via Boston Real Estate Ltd) has been to prepare the original submission and to provide this evidence for the heritage hearing.

CODE OF CONDUCT

7 I have read the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023. Whilst this is a Council hearing, I have complied with the Code of Conduct in preparing my evidence and will continue to comply with it while giving oral evidence before the commissioners. My qualifications as an expert are set out above. Except where I state I rely on the evidence of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise, and I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions.

ORIGINAL SUBMISSION

8 The original submissions seeks to zone the proposed Natural Open Space area of 62 Kaiwharawhara to Medium Density Residential Zone, and remove the Significant Natural Area Overlay from the site.

BACKGROUND

9 Under the ODP 62 Kaiwharawhara is split into two zones. The area that is fronts Kaiwharawhara Road is Business 1 Zone, while the vast majority is zoned Outer Residential, shown below. It is also noted that the Boundary Transmission Line is located on this site.

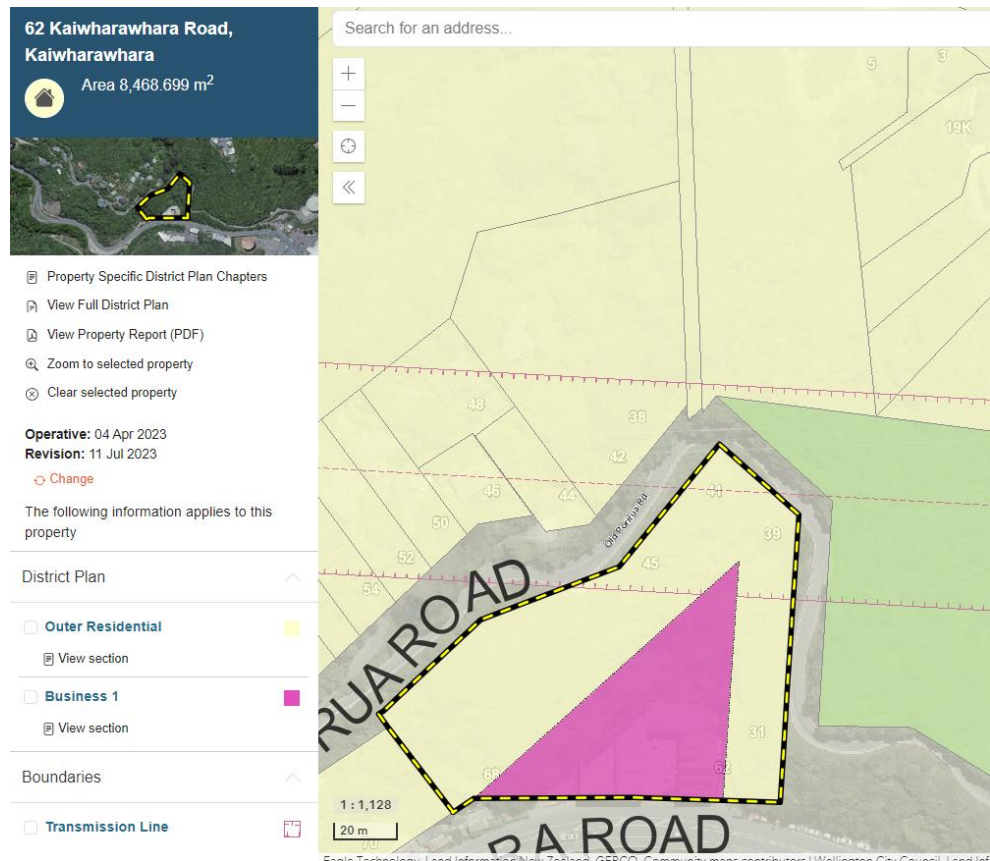


Figure 1: ODP Zones - ePlan.wellington.govt.nz

- 10 In August 2022, a 6 lot Subdivision Resource Consent was lodged with WCC, along with a request for a Certificate of Compliance with respect to vegetation clearance. Whilst the subdivision resource consent has not been issued to date, the Certificate of Compliance for the removal of vegetation was issued on 23rd of September 2022 under SR518268 (attached).
- 11 The notified Proposed District Plan sought to rezone the Outer Residential Area to Natural Open Space, and the Business Area 1 to Mixed Use Zone. The district plan also proposes to add overlays to the property namely, a SNA over the residential area and flood hazard overlays in located where the public stormwater discharges on site.



Figure 2: Proposed district plan 62 Kaiwharawhara - eplan.wellington.govt.nz

SECTION 42A REPORT AND EXPERT EVIDENCE

- 12 Wellington City Council released the Section 42A report with respect to Hearing Stream 7 on 20th February 2024. The report was prepared by James Sirl and the submission was addressed in paragraph 133 – 137.
- 13 The section 42A report has summarised that it would be ‘inappropriate to apply a NOSZ to parts of the site, given that it has not occurred on other sites’. We concur with this finding in that there were many surrounding properties have similar ecological values, however are still zoned Medium Density Residential in the PDP. We therefore support the recommendation to rezone this area as MDRS, as outlined in the original proposal.
- 14 It has also been a long established principle that open space and reserve zones are not appropriate for privately owned land.

- 15 It was stated in the section 42A report that the zoning to MDRS is ‘a matter of plan consistency’. We agree that is an important aspect to making this decision, however the report then goes onto state that the SNA overlay would protect the ecological values of the site.
- 16 In 27th June 2022, Wellington City Councils Planning and Environmental committee determined that SNAs would be removed from private residential area land of the PDP, and that this overlay would “only apply to public and rural land”¹.
- 17 Under the Proposed District Plan, the land fails to meet the criteria of ‘public and rural land’, as it is privately owned land that is not zoned or deemed rural land. Therefore the Overlay should have been removed from this land as part of the decision from the WCC planning and environmental committee. We note that this was likely an oversight as the vast majority of Natural and Open Space Zones are publicly owned and thus the SNA would be appropriate to place over these zones.
- 18 However, WCC has issued a Certificate of Compliance for Vegetation Removal for 62 Kaiwharawhara Road. The applicant has 5 years to undertake these works under the Certificate and is planning to do this. This will also significantly change the ecological value of the land, and therefore will not accurately reflect the findings in ecological reports. Therefore, it will not be appropriate to implement this overlay on land which is soon to have no ecological value.
- 19 This further adds to the argument that the site should be rezoned from NOSZ to MDRS. Once the vegetation is removed, the site will not reflect the objectives and policies sought in the NOSZ. The high ecological values related to the land will no longer exist, and it will continue to be privately held, which means that the informal recreation activities , such as tramping and mountain biking will not be possible.

¹ <https://wellington.govt.nz/your-council/plans-policies-and-bylaws/district-plan/proposed-district-plan/whats-in-the-proposed-district-plan/significant-natural-areas>

RELIEF SOUGHT

- 20 Rezoned the NOS that is proposed to MDRS as identified in the section 42A Report. Removal of the SNA overlay from the land on 62 Kaiwharawhara.

CONCLUSION

- 21 We support the section 42A reports conclusion that the land should be rezoned from NOSZ to MDRS.
- 22 We reinforce that the SNA should not have been applied to the site as it did not meet the requirements outlined by the Planning and Environment Committee.
- 23 Finally the Certificate of Compliance currently allows the owner to remove the vegetation, and therefore the SNA overlay would no longer be appropriate for the site.

Date: 04/03/2024

A handwritten signature in blue ink, appearing to be 'I. Leary', is written over a faint circular stamp.

Review and Agreed by: Ian Leary.

23 September 2022

Spencer Holmes Limited
PO Box 588
Wellington 6140

Service Request No: 518268
File Reference: 1039771

Attn: Cameron de Leijer

Dear Cameron,

Application for Certificate of Compliance Issued

I write in relation to your application for a Certificate of Compliance to be issued for vegetation clearance on the site at 62 Kaiwharawhara Road, Kaiwharawhara, Service Request No. 518268.

The application has now been issued, for the reasons set out in the report below.

Report for Certificate of Compliance

APPLICATION DETAILS

Site Address:	62 Kaiwharawhara Road, Kaiwharawhara
Legal Description:	Lot 2 DP 61601
Applicant:	Spencer Holmes Limited
Proposal:	Certificate of Compliance: Vegetation removal
Owner:	Boston Real Estate Limited

STATUTORY PROVISIONS

The relevant provisions of section 139 of the Resource Management Act 1991 (the Act) include:

- (1) *This section applies if an activity could be done lawfully in a particular location without a resource consent.*
- (2) *A person may request the consent authority to issue a certificate of compliance.*
- (5) *The authority must issue the certificate if—*
 - (a) *the activity can be done lawfully in the particular location without a resource consent; and*
 - (b) *the person pays the appropriate administrative charge.*

- (8) *The authority must not issue a certificate if—*
- (a) *the request for a certificate is made after a proposed plan is notified; and*
 - (b) *the activity could not be done lawfully in the particular location without a resource consent under the proposed plan.*
- (10) *A certificate is treated as if it were an appropriate resource consent that—*
- (a) *contains the conditions specified in an applicable national environmental standard; and*
 - (b) *contains the conditions specified in an applicable plan.*

PROPOSAL

The application seeks a Certificate of Compliance to be issued under section 139 of the Act. The proposal is for vegetation clearance at 62 Kaiwharawhara Road, Kaiwharawhara. The vegetation clearance will be undertaken by cutting down and felling trees and shrubs. The vegetation will be cut just above the ground without requiring any soil disturbance (i.e. no earthworks are proposed).

The site and activity are further described in the application.

DISTRICT PLAN

Operative District Plan:

District Plan Area and Notations:

The site has a split zoning of Outer Residential and Business 1 under the Operative District Plan. A transmission buffer zone runs through the northern part of the site.

The site is also listed on the Selected Land Use Register (SLUR) (Site No. SN/05/108/02) as having been used in the past for the reprocessing of waste oil which is included on the Hazardous Activities and Industries List (HAIL) under the category of “cemeteries and waste recycling, treatment and disposal”. However as the applicant has noted in the application that the vegetation clearance will be carried out without the need for soil disturbance (ie earthworks), it is considered that this clearance method will meet the permitted activity requirements of both the Operative District Plan’s contaminated land rules (Chapter 32) and the National Environmental Standard for Assessing and Managing Contaminants on Soil to Protect Human Health (NES-CS).
Relevant Provisions:

The relevant provisions of the Operative District Plan are as follows:

Under the Operative District Plan (Chapters 5 and 34) there are no rules pertaining to vegetation clearance other than some site specific restrictions and those relating to listed heritage trees. The subject site is not one of the sites where vegetation clearance is restricted and there are no listed heritage trees on the site.

Accordingly, I confirm that the proposal for vegetation clearance is deemed to be a Permitted Activity under the Operative District Plan.

Proposed District Plan Change:

On 18 July 2022 the Council notified the Wellington City Proposed District Plan (PDP).

The PDP gives effect to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the Amendment Act), enacted in December 2021, as well as the NPS-UD policies 3 and 4 (intensification and qualifying matters). The following provisions in the PDP have immediate legal effect:

1. Historic Heritage
2. Significant Natural Areas
3. Medium Density Residential Standards (MDRS) – being intensification provisions within the Medium Density Residential Zone (MRZ) and High Density Residential Zone (HRZ) that give effect to the Amendment Act.

At the time this application was lodged, on 7 July 2022, this Plan Change had not yet been notified. The rules of the Proposed District Plan are therefore not considered for this Certificate of Compliance application.

CONCLUSION

The proposal for vegetation clearance at 62 Kaiwharawhara Road, Kaiwharawhara meets the District Plan requirements for a Permitted Activity. **Therefore, the Certificate of Compliance is issued under section 139 of the Act.**

Please note:

1. This certificate is to be treated as though it were a resource consent and is subject to section 125 of the Act (see section 139(10) and (12)). Accordingly, this certificate must be given effect to within five years of the date of issue of the certificate, or within such extended period of time as granted by the Council pursuant to section 125.
2. In accordance with section 139(10) of the Act, the activity must be carried out in accordance with the conditions for permitted activities specified in the District Plan, or any applicable National Environmental Standard, existing at time of issue of this certificate or resource consent may be required.
3. This certificate does not authorise works that may require consent from the Greater Wellington Regional Council.

Report prepared by:



Angela Jones
Consultant Planner

We have read the above Decision Report, the AEE and the associated documentation provided with the application and confirm that we agree with the consultant planner's recommendation. Accordingly, the application is **granted** subject to conditions.



Sally Clarkson
Delegated Officer



Caleb Tien
Delegated Officer

Date 23 September 2022