



Council Decision on Proposed District Plan Change 61

**Rezoning of land off Huntleigh Park Way,
Heke Street, and Thatcher Crescent (Ngaio)
from Rural Area to Residential (Outer)**

November 2008

**COMMISSIONER'S
RECOMMENDATION:**

FOR WELLINGTON CITY COUNCIL

SUBJECT:

**DISTRICT PLAN CHANGE N^o 61 –
REZONING OF LAND OFF HUNTLEIGH
PARK WAY, HEKE STREET, & THATCHER
CRESCENT (NGAIO) FROM RURAL AREA
TO RESIDENTIAL (OUTER) AREA**

DATE OF HEARING:

19-21 MAY 2008

1 RECOMMENDATION

As Hearing Commissioner with delegated authority to hear submissions and recommend a decision on Proposed Plan Change 61, pursuant to clause 10 of Part 1 of the First Schedule to the Resource Management Act 1991 (“the Act”), I have given careful consideration to the advice from Council officers, the evidence and/or submissions of submitters that appeared, and other submissions, and I recommend that Council:

1. *Receive the information.*
2. *Approve District Plan Change 61 with the following amendments, additions and deletions resulting from the consideration of submissions:*

2.1 *Insert a new Policy 4.2.5.5 after existing Residential Area Policy 4.2.5.4 of Chapter 4 of Volume One of the District Plan follows:*

4.2.5.5 Ensure that any subdivision or development, including vegetation clearance, earthworks, and construction, alteration and addition to buildings and structures on land identified in Appendix 26, is developed and designed in a way that will respect and integrate with the ecological and landscape values of the land.

METHODS

- Rules
- Conservation Strategy
- Capital Spaces – Open Space Strategy for Wellington City
- Biodiversity Action Plan
- Provision of information (Wellington City Council, Greater Wellington Regional Council)
- Other mechanisms
 - Greater Wellington Regional Council’s Managing your bush block- A guide to looking after indigenous forest remnant in the Wellington region.
 - Greater Wellington’s Restoring our Natural Heritage – A guide to Greater Wellington’s biodiversity assistance for private landowners.

- Mind the stream – A guide to looking after urban and rural streams in the Wellington Region.”

The majority of the land identified in Appendix 26 is of high landscape and ecological value. Some further limited residential development of the land is permitted provided it maintains the ecological significance and integrity of the land. This will be achieved through limiting residential development to the ‘indicative residential building sites’ identified in Appendix 26. Discretionary activity (unrestricted) Rule 5.4.10 requires that applicants undertake a comprehensive assessment of environmental effects.

Vegetation clearance exceeding 250m² for each ‘indicative residential building site’ is not permitted. Some minor vegetation clearance and earthworks is permitted for maintenance purposes associated with existing houses or future houses associated with an ‘indicative residential building site’ (Rule 5.1.13).

The environmental result will be the greater protection of existing native vegetation on land identified in Appendix 26 with some tightly controlled residential development provided for on three of the five properties.

- 2.2 *Delete the reference “15.4.10” from the second line of the proposed table to be inserted into the Guide to the Rules in Chapter 5 of the District Plan and replace with the reference “5.4.10”.*
- 2.3 *Delete the number 25 from the proposed reference to a new Appendix to be inserted into the Schedule of Appendices Chapter 5 of the District Plan, and replace with the number 26.*
- 2.4 *Insert the words “and any future residential use or activity approved pursuant to Rule 5.4.10 and Appendix 26” into the proposed Rule 5.1.13 so that the Rule reads as follows:*

- 5.1.13 Within the land shown in Appendix 25 (11A Huntleigh Park Way, 79 and 83 Heke Street, 19 and 21 Thatcher Crescent, Ngaio):

Any existing use or activity, and any future residential use or activity approved pursuant to Rule 5.4.10 and Appendix 26, including the alteration of, and addition to existing buildings or structures, is a permitted activity, provided it complies with the following conditions:

- 2.5 *Insert the word “already” into the second line of proposed Rule 5.1.13.3 immediately following the word “area” and add a Note to the proposed Rule so that the Rule and Note read as follows:*

- 5.1.13.3 Compliance with Rule 5.1.9 (Earthworks), except that no earthworks shall extend beyond the area already developed for residential purposes at the date of 8 September 2007. This ‘area’ shall include land occupied by the existing dwellings, driveways, paths, lawns, and outdoor areas associated with the dwelling.

Note:

Any minor building works such as the enclosing of an outdoor area associated with a dwelling is a permitted activity provided it complies with the bulk and location requirements under 5.1.3.

- 2.6 *Insert the words “a maximum of” and “from” and delete the words “more than” and “as of” from Rule 5.1.13.4 so that the Rule reads as follows:*

5.1.13.4 The activity does not involve modification, damage, removal or destruction of indigenous vegetation totalling a maximum of 100m² from 8 September 2007. This shall not apply to:

- wind thrown trees, standing dead trees that have died as a result of natural causes, or vegetation that has become dangerous to human life or property as a result of natural causes.
- The pruning around existing residential buildings or residential structures.

2.7 *Delete proposed Rule 5.4.10.1, (as notified) which reads:*

The erection of new residential buildings, residential structures and the construction of new driveways shall be restricted to the ‘indicative residential building sites’ and ‘indicative driveways’ identified in Appendix 25.

and replace with a new Rule 5.4.10.1 as follows:

The location of new residential buildings and residential structures and the construction of new driveways shall be in accordance with the ‘indicative residential building sites’ and ‘indicative driveways’ identified in Appendix 26. Each building site (excluding driveways) shall not exceed 250m² in area.”

2.8 *Delete proposed Rule 5.4.10.2, (as notified) which reads:*

No more than two household units shall be permitted on each of the ‘indicative residential building sites’ as identified in Appendix 25.

and replace with a new Rule 5.4.10.2 as follows:

No more than one household unit shall be permitted on each of the ‘indicative residential building sites’ as identified in Appendix 26.

2.9 *Add a new Rule 5.4.10.3 (Standard and Term) as follows:*

5.4.10.3 For areas denoted ‘indicative residential building sites’ in Appendix 26, an Earthworks Management Plan shall be provided in respect of any proposed subdivision, use or building development. The plan shall detail sediment control, erosion protection and construction management. The information must be consistent with the principles and guidelines in the Greater Wellington Regional Council’s Small Earthworks, Erosion and Sediment Control for Small Sites (June 2006) and/or Greater Wellington’s Erosion Control and Sediment Control guidelines (reprinted 2003)

and make consequential changes in numbering to the provisions that follow.

2.10 *Insert the words “and subsequent development within those allotments” into proposed renumbered assessment criterion 5.4.10.8 (notified number 5.4.10.7) following the word “allotments” where it first occurs so that the Rule reads:*

5.4.10.8 Whether proposed allotments and subsequent development within those allotments are capable of accommodating permitted activities in general compliance with the relevant District Plan rules.

2.11 *Delete the notified Appendix 25 and include Appendix 26 to Chapter 5 as shown in Attachment 2 to this report.*

3. Adopt the supplementary section 32 report in Attachment 3.

4. Accept and/or reject all submissions and further submissions to the extent that they accord with the above recommendation.

2 PROPOSED DISTRICT PLAN CHANGE 61

2.1 BACKGROUND

Council-initiated Proposed District Plan Change 61 (“the Plan Change”) relates to six Rural Area-zoned properties on the northern edge of Ngaio and Crofton Downs. The properties gain access off Huntleigh Park Way, Heke Street and Thatcher Crescent, Ngaio (refer to the maps attached in Attachment 2 to this report). These allotments range in size from 1,471m² to 1 hectare, and apart from where the existing dwellings are sited, all of the land is covered in remnant and regenerating indigenous vegetation.

Under the Transitional District Plan the land was given a Residential G, or ‘rural residential’ zoning, that provided for large residential lots with a minimum average of 6,000m². As there was no similar zoning provided for in the Proposed District Plan (1994) it was decided at the time that the land would be zoned Rural Area.

The Rural zone provisions do not provide for any further residential development, except on the undeveloped land at 11A Huntleigh Park Way where one dwelling is permitted.

Reports prepared by Paul Blaschke (ecologist) and Clive Anstey (landscape architect) and more recently by Boyden Evans of Boffa Miskell, Landscape Architects and Planners, all acknowledge the ecological importance of the Huntleigh Park land and the need to protect this land from inappropriate use and development. Many permitted rural uses would require the land to be cleared and there are no indigenous vegetation clearance controls in the District Plan that would prevent this from happening. Any of the present or future landowners would be able to clear all of the land as of right.

An explorative, ‘in principle’ report was provided to the Strategy and Policy Committee on 17 August 2006. The report outlined an option for the land to be rezoned from Rural to mostly Outer Residential and Conservation Site, with the small portion of land owned by The Girl Guides Association of New Zealand (off Silverstream Road) zoned Open Space A.

The Committee asked that officers undertake further consultation and explore impacts of the proposed change on private property rights.

The Council commissioned Boffa Miskell Limited to prepare a development framework for this land. Their report identified the ecological and technical issues around the potential for further

development of the land and supported the previous ecological and landscape assessments that the majority of the land is of high ecological value.

The report recommended that the western portion of the land should become “Conservation Area” with the balance rezoned to “Outer Residential”, with nominated building sites identified where it would be possible to develop the land for residential use with the least adverse ecological and landscape impact. Two options were offered, one with a “straight-line” boundary between “Conservation Site” and “Outer Residential” and one with a “stepped” and more irregular boundary between the two areas. The first option showed 5 building sites spread throughout the proposed “Outer Residential” portion of the land and the second showed 7 such sites. The report recommended that indigenous vegetation protection measures be put in place to protect the balance of the land.

Consultation with land owners was carried out by the Council between April and May 2007. Three options were presented, the two described above, and a third option that proposed that all the land be zoned “Outer Residential” but with an additional building site included for 11A Huntleigh Park Way (making three in total) and a building site for 79 Heke Street with indicative access through 83 Heke Street to the north.

Following land owner comments and community consultation, Council Officers presented a proposed plan change to Council in September 2007 based on the third option as described above. Council resolved to notify a modified version of this recommended plan change as Proposed District Plan Change 61 (“the Plan Change”). As seen below, the notified Plan Change reduced the number of buildings sites for the properties concerned to three in total.

2.2 DESCRIPTION OF THE PLAN CHANGE

Main elements of the plan change as notified are as follows:

Zone

1. The current Rural Area zoning is replaced with a Residential (Outer) Area zoning over the six properties listed below.
 - 11A Huntleigh Park Way, Ngaio
 - 83 Heke Street, Ngaio
 - 79 Heke Street, Ngaio
 - 69 Heke Street, Ngaio
 - 21 Thatcher Crescent, Crofton Downs
 - 19 Thatcher Crescent, Crofton Downs

Indicative residential building sites (IRBS)

2. A new map appendix (Appendix 25) indicates the location of ‘indicative residential building sites’ for 11A Huntleigh Park Way, 79 Heke Street and 21 Thatcher Crescent. The other properties contained within the appendix (83 Heke Street, and 19 Thatcher Crescent) have no ‘indicative residential building site’. (*NOTE – while forming part of the land to be rezoned, 69 Heke Street was not considered for inclusion in the Appendix 25 area*)

3. Each residential building site is permitted to accommodate up to 2 residential dwellings.
4. All residential development associated with these 'sites' are a *Discretionary Activity (unrestricted)*. Development could be notified if the written consent of adversely affected parties is not able to be obtained or the environmental effects are more than minor.
5. A full environmental impact assessment is required as part of the Resource Consent process. Applications are to address vegetation removal and earthworks, construction effects, remediation measures, traffic, parking and site access, compliance with the Code of Practice for Land Development and natural hazards.

Development outside of the indicative residential building sites

6. Any development proposed outside of the residential building sites would be a non-complying activity.

Indigenous vegetation clearance

7. Indigenous vegetation clearance would generally be permitted as part of a Resource Consent application when developing an 'indicative residential building site' and in the creation of vehicular access to the site. This rule does not preclude the landowners using other mechanisms such as QEII open space covenants and other conservation covenants to protect indigenous vegetation on their land.

Minor activities

8. A new permitted activity rule (5.1.13) enables landowners to undertake some residential extensions and development associated with their existing dwellings, subject to compliance with the relevant Residential (Outer) Area provisions. This includes minor vegetation clearance (up to a maximum of 100m² in total) associated with general property maintenance for the existing and any future dwellings on each of the properties contained within the plan change.

3 SUBMISSIONS AND HEARING

The plan change was publicly notified on 8 September 2007. A total of 119 submissions and 13 further submissions were received. A full list of all submitters and further submitters is contained in Attachment 1.

Responses to the plan change were mixed, with many submitters either partially supporting and/or partially opposing the proposal. Submitters were generally concerned with specific aspects of its provisions, yet some objected to the plan change in its entirety. It should be noted that the scope of my deliberations and recommendations are confined to the matters raised by submitters and to the content of the notified plan change.

3.1 OMISSION OF MATERIAL FROM THE SUMMARY OF SUBMISSIONS

The Officer's Report identified that two submissions were inadvertently omitted from the Summary of Submissions. These were submissions by Daniel Aguilar (no. 43), and David and Margaret Allison (no. 112). Mr Aguilar's submission is a pro forma submission identical to at least 11 other submissions. The points raised by the submissions were also made by a number of other submitters.

Both submitters were notified of this oversight by letter – no further comments were received by either party, nor did the submitters appear at the hearing.

In the plan change process the summary of submissions is intended to alert any interested party (whether or not they have made a submission) to the substance of submissions on the plan change and the amendments requested. Because the two submissions do not raise any matters not already included in the Summary of Submissions as a result of other submissions, I agree with the Reporting Officer that no party is prejudiced by the omission. Copies of the two submissions were appended to the report for reference. Therefore, I was satisfied that there was no barrier to the hearing proceeding.

3.2 SUBMITTERS HEARD

The following submitters gave formal evidence at the Hearing, which took place on the 19th-21st of May 2008:

Monday 19 May

- **Jane Harding** – submission 107
- **Gordon Purdie** – submission 85 / further submission 6
- **Dianne Stanley** – submission 74
- **New Zealand Business Roundtable** – submission 35
- **Christopher McCallum** – submission 102 / further submission 10
- **Wellington Botanical Society** – submission 119
- **David Hingston** – submission 75 / further submission 7

Tuesday 20 May

- **Kirsten Jensen & Graeme Clark** – submission 73 / further submission 1
- **Friends of Tawa Bush Reserves** – submission 70
- **Greater Wellington Regional Council** – submission 117
- **Andrew Foster** – further submission 8
- **Jeff Jewell & Cathy Wood** – submission 54

Wednesday 21 May

- **Gary & Peggy Taylor** – submission 97 / further submission 2
- **David Chester & Suzanne Kubala** – submission 96 / further submission 3
- **Keith Rodgers** – submission 89 / further submission 4
- **Ngaio Progressive Association** – submission 21 / further submission 9
- **Kathleen Kelly** – submission 101 / further submission 11 ¹

¹ Mrs Kelly was not present but supplied an audio tape and transcript of her evidence

- **Bruce Kelly** – submission 100 / further submission 12

In addition, Council Policy Officer, Jason Jones and the Council's contracted Reporting Officer, John M'Sweeney were present for the duration of the Hearing. Amber Bill from Council's Parks Planning Unit was present for part of the hearing.

3.3 OFFICER'S REPORT

Mr. M'Sweeney introduced his report early in the proceedings and made further comments at the closing of the hearing in response to matters in respect of which I requested further advice. His report described the affected land, the Plan Change and its preparation, consultation with land owners and the wider community, the submission process and the legislative requirements.

In respect of the submissions and the issues raised by them, Mr McSweeney discussed these under a number of headings as follows:

- General Support for the Plan Change
- Opposition to the entire Plan Change
- Council to buy the area for protection/reserve
- Consultation
- Part 2 RMA and Section 32 Report
- Objectives and Policies
- Private Property Rights
- Rules
- Indicative residential Building Sites
- Controls applying to indicative residential building sites
- Earthworks and effects on Urban Stream

In his report, following his assessment of submissions, Mr McSweeney recommended a number of amendments to the Plan Change as notified including:

- The addition of a Policy as suggested by the Greater Wellington Regional Council that requires subdivision and development to be designed and implemented in a way that respects and integrates with the ecological values of the land.
- A modification to Rule 5.1.3 as requested by the Greater Wellington Regional Council to clarify the permitted activity rules for future buildings as well as existing ones.
- A modification to Rule 5.1.13.4 to clarify the extent of vegetation clearance permitted without a resource consent.
- A modification to Rule 5.1.13.3 to clarify the intent of this rule relating to the degree of earthworks permitted.
- An amendment to assessment criteria 5.4.10.7 to include subsequent development in the assessment.

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- The addition of a standard and term associated with Rule 5.4.10 to require applicants to prepare an earthworks management plan.
 - Most significantly, he recommended that the indicative residential building sites be amended as follows:
 - an additional ‘indicative residential building site’ for 11A Huntleigh Park Way
 - one ‘indicative residential building site’ for 83 Heke Street
 - no ‘indicative residential building site’ for 79 Heke Street due to access and topographical constraints

Mr. McSweeney also called an expert witness. Mr. Boyden Evans, landscape architect and author of the Boffa Miskell Ltd report referred to in section 2.1 above. In his evidence Mr Evans described that in preparing the report and reaching the options that it proposed he reviewed the work of Dr Blaschke and Mr Anstey, carried out his own field assessment and engaged a consultant surveyor to provide a development assessment. Mr Evans confirmed the statement in his report that the two options presented represented a combination of the specialist consultants reports prepared previously; his discussions with the authors of these; his own field assessment, and the opinions of Mr Sayer, the consultant surveyor.

Mr Evans gave evidence that residential development of the five sites investigated that involves removal or disturbance of the native vegetation, as was proposed by some of the landowners, will have adverse ecological and landscape effects. He described this as including the “forest edge effect” which will result in a frittering away of the forest and opening it up to potential wind damage and the introduction of pest plants. Mr Evans confirmed that his recommended Option 1 sought to strike a balance between a limited amount of tightly controlled development on some of the sites and securing long term protection for as much of the area as possible. He generally agreed with the recommendations in the Officer’s Report.

After submitters had given evidence Mr McSweeney advised that he did not resile from his original recommendations. However, he did express the opinion that the indicative building sites should be limited to a single household unit per site and that a maximum “footprint” for each site of 250m² should be included in the relevant assessment criteria. In respect of Rule 5.1.13, contrary to what he had said earlier in response to the submission from Greater Wellington Regional Council, Mr McSweeney recommended that the rule remain as notified, but the explanation could be expanded to make it clear that it applied to existing houses plus houses that might be developed in the future. He agreed to include the word “landscape” within Policy 4.2.5.5 but did not agree with the Greater Wellington Regional Council that there was a need for an additional objective.

3.4 SUBMITTERS' EVIDENCE

A summary of the evidence and/or submissions presented by submitters that appeared at the hearing is as follows:

Submitter 107 Jane Harding now lives in Wilton Road but grew up in the Huntleigh Park area. She spoke to her submission and said that to allow further subdivision and development of the land is contrary to City Council plans (including the Biodiversity Action Plan) and the draft Regional Policy Statement. She said that the Council needs to be seen to be abiding by its own plans. In her opinion, Plan Change 61 (as proposed) does not provide an adequate level of protection to the bush. She thought that given the topography, necessary earthworks and other development works, 3 of the 4 proposed indicative building sites would have a severe impact on the “highly significant” parts of the vegetation. In her opinion there should be no further development of the land and the Council should take steps to protect the land, if necessary by purchasing it and zoning it as *Conservation Site*.

Submitters 74 (Diane Stanley) and 85 (Gordon Purdie) of 19 Thatcher Crescent made a joint presentation at the hearing. They highlighted a number of points from their original submissions, and commented on the Officer’s Report. Their opinion was that the current Rural zoning has not left the area in danger of being cleared - and that since the Rural zone has been in place the only losses to the forest have occurred in relation to residential activity. They submitted that forest clearance for rural activity seems very unlikely and would not be economic. Further, they submitted that a plan change allowing five new dwellings in the area is the main threat to the forest and “*could result in up to half a hectare of significant forest in Wellington being destroyed.*” They believe that additional building sites on 21 Thatcher Crescent, 79 or 83 Heke Street would represent an infringement of their rights, and adversely affect their privacy and property value, as well as their social, economic, and cultural wellbeing. They submitted that there should be no further residential development on the subject land or any other portion of the Huntleigh Park forest.

They also submitted that the Plan Change is not consistent with Council’s Biodiversity Action Plan, and approval of the Plan Change would be a failure to implement necessary protection for an ecologically significant forest through District Plan provisions. They suggested that the proposal should consider the Regional Policy Statement, particularly in respect to forest fragmentation.

Mr. Purdie and Ms. Stanley submitted jointly that “*the plan change does not meet the Resource Management Act requirement to maintain and enhance amenity values and the quality of the environment...*” – nor does the Plan Change “*...protect areas of significant indigenous vegetation and significant habitats of indigenous fauna.*”

Likewise, they consider the Plan Change did not comply with Section 32 of the RMA in that it did not reasonably identify benefits and costs, and that analysis is subjective in some instances. They cited that one such example of cost/benefit analysis that was omitted was the impact of property values. They believed that, if approved, the proposal would allow increased property gains for the three landowners who are granted further development potential, while decreasing those values for many more neighbours.

They noted that the Plan Change specifies no size limit for the indicative residential building sites, and commented that this does not give a clear indication of the amount of vegetation that will be cleared on each site. Further, Mr Purdie stated that the Officer's Report misrepresented his original submission. He clarified that he wished to see no further residential development on any of the sites in the Plan Change area – the Officer's report simply indicated that Mr. Purdie did not wish to see an IRBS on his own site. Mr. Purdie and Ms. Stanley stated in their joint submission that Council could achieve an outcome that the community is seeking by purchasing the land subject to the Plan Change (especially at 11A Huntleigh Park Way).

Submitter 35 New Zealand Business Roundtable was represented by Mr R Kerr who said that he was mainly concerned with the effect of the Plan Change on individual private property rights. Mr. Kerr stated that he did not know the owners or the details of the sites in question, but had a wider interest in the precedent being set. He stated that the benefits of this Plan Change fall with the neighbours and general public and that these groups should pay for any gain.

Mr. Kerr suggested that purchase or covenanting could be explored between the Council and landowners. Since Council has indicated it can't purchase the land under present conditions, the costs of the proposal are needlessly falling on the landowners. In his opinion the necessary funds could be raised/allocated through the annual plan process, rates increases, borrowing, selling other assets, etc. and that the process should be better managed and prioritised. He also noted that the Public Works Act provided for voluntary negotiation of land purchase by local authorities and the setting of a fair market price.

Submitter 102 Mr Christopher McCallum of 14 Huntleigh Park Way opposed the Plan Change and supported a conservation status for the land in line with the Council's Biodiversity Plan. He believed that 11A Huntleigh Park Way was sold to the present owners as a rural site. He submitted that the Council should resist development pressures and support the views of the experts that it had engaged to investigate the ecological values of that land. He preferred the notified "Appendix 25" to that recommended in the Officer's Report. In his opinion some of the existing houses that had been built on the land had resulted in clearance of the vegetation in order to let sunlight in and further development would lead to the same adverse effect on the vegetation. He supported the Council purchasing the land.

Submitter 119 Wellington Botanical Society was represented by **Mr Chris Horne**. Mr Horne described the Huntleigh Park Forest area as one of considerable recreational and educational value in addition to its high ecological significance and referred to the listing in the publication "*Biological Resources of the Wellington Region*". Mr. Horne cited the existence of Pre-European relics in the forest and commented on the dramatic understory growth that had occurred in recent years due to pest control and maintenance.

The Society submitted that they opposed the rezoning from Rural to Residential as allowing further development in the area could create significant long term risks to the local ecosystem. Mr Horne discussed the possibility of edge effect whereby a newly created forest edge (arising from vegetation clearance) could have adverse effects some 50 metres further into the forest itself.

Mr. Horne acknowledged the reasonableness of allowing one residence per site on privately owned land but said that his preference was to see no further building in the area. He reiterated the Society's wish for Council to abandon the rezoning, purchase the land subject to the Plan Change, and place protective covenants on the bush.

Submitter 75 Dr David Hingston of 85 Heke Street presented submissions on behalf of himself, Lydia Hingston and Wendy Stockwell. He said that they agreed with the Council's goals of preserving the bush and supported it in this endeavour. They are seeking conservation of the bush and the wildlife particularly adjacent to their property. He was concerned with some matters of process and said that if all information is not available there is not a fair opportunity to fully comment on issues. He was also concerned that the previous access to Huntleigh Park through 11A Huntleigh Park Way was now blocked and submitted that his understanding was that this public right of way created legal road status on that part of the land which could not be removed.

Dr Hingston submitted that by allowing two units per indicative building site the Plan Change was allowing four units on a site which was contrary to the existing Outer Residential rules and also to the recommendations of Council's consultant. Dr Hingston also pointed out that allowing two dwellings on the eastern part of 11A Huntleigh Park Way would mean that bush on the ridgeline between their property and 11A would be removed, in contravention of the Council's policy on ridgeline protection. He was concerned that any new dwellings on 11A should not be visible from 85 Heke Street.

Dr Hingston supported the inclusion of Rule 5.1.13.4. However, he noted that there is an ambiguity with respect to the 100m² clearance – specifically, there is no defined 'enduring plan' with respect to subsequent bush clearance once the initial 100m² are exhausted. Dr. Hingston submitted that such a definition is necessary to achieve Council's goals of bush protection. He thought that Policy 4.2.5.5 was inadequate because it did not define limits to bush clearance.

Dr Hingston was firmly of the view that the Council should purchase the land affected by the Plan Change. He noted that there was a surprisingly high degree of public support expressed for complete preservation of the bush. He acknowledged that the Officer's Report suggested Council might not be able to afford to buy the land at market rate for Residentially-zoned land. He submitted that this would be grounds for the Plan Change to be abandoned, thereby reverting to the more affordable operative zoning.

Council purchase of the land was his preferred relief sought through the Plan Change process. Failing that he wanted new buildings to be at least 3 metres from boundaries, the right to comment on plans submitted for resource consent, the statement of enduring bush preservation limits, and provision for one or two additional dwellings in return for preservation of the balance of the bush.

Submitters 73 and Further Submitters 1, Graeme Clarke and Kirsten Jensen, of 73 Heke Street supported protection of significant vegetation and fairness to all affected landowners who have purchased their properties under the current zoning. They submitted that the residential development allowable under the Plan Change would have significant negative impacts including loss of vegetation, adverse visual impacts on the wider neighbourhood, and loss of privacy and sunlight for their property.

They sought to protect the ecologically significant vegetation in the area and their preference was for any future development there to be prohibited, with Council purchasing the land for Conservation purposes. In the event that this action is not taken by Council, the submitters suggested a series of alternatives including rezoning to Outer Residential with use of Rule 5.1.13 for minor activities but no further residential development. If that was not acceptable, one building site could be allowed for the undeveloped land at 11A Huntleigh Park Way.

If the above scenario is not adopted by Council and the Plan Change progresses in accordance with the notified version (or similar) the submitter asked that the revised IRBS arrangement proposed in the Officer's Report be utilised and that a maximum building size of 200-250m² plus accessways be a threshold added to Rule 5.4.10 – further, that clearance of bush on a similar scale to that at 83 Heke Street and 21 Thatcher Crescent would be inappropriate for the remaining undeveloped area and a 'scar on the landscape.'

Submitter 70, Friends of Tawa Bush, was represented by **Mr Fraser Jackson** who indicated that he was not directly affected by the Plan Change, but had a strong interest in wider policy implications contained in the proposal. He suggested that Council investigate a longer-term management of areas such as Huntleigh Park rather than dealing with them in localised, one-off plan changes.

He noted that sections 6 & 7 of the RMA require Council to give attention to the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and to maintenance and enhancement of the quality of that environment. Mr. Jackson said that he believed the Plan Change achieved this "in a particular way." Mr Jackson supported the Policy 4.2.5.5 as proposed by the Greater Wellington Regional Council and recommended approval of the Plan Change. He further urged the Council to progress plan changes that address the sentiments conveyed by numerous submitters which seek further protection of significant indigenous forest throughout Wellington.

Ling Phang appeared on behalf of the **Greater Wellington Regional Council (GWRC) – submission 117**. Ms. Phang first spoke to the matter of GWRC's request to include new Objective and Policies within the Plan Change. She noted that the Officer's Report recognised GWRC's original submission by recommending a new Policy 4.2.5.5. Ms. Phang indicated support for this policy but said that it would not fully address the "ecological issues of needing to maintain and enhance natural features in the Outer Residential Area that contribute to Wellington's natural environment." She submitted that a new Objective is needed to "*ensure that adequate recognition is given to the relationship between the subject site and the adjoining Conservation 5D site.*"

She also recommended the wording "*native vegetation*" be replaced with "*indigenous vegetation*" to be consistent with the wording in the corresponding rules (5.1.13 & 5.4.10) and that a new standard and term be included under Rule 5.4.10 requiring the preparation of an earthworks management plan in respect of subdivision and/or development due to the risk of silt and sediment runoff into nearby streams.

Ms Phang confirmed that the stream was located to the west of the plan change area, in the Huntleigh Park Conservation Site and indicated that the permitted activity rule 5.1.13 is adequate in addressing GWRC concerns about any future construction adjacent to the stream as it requires compliance with earthworks rule 5.1.9. She also confirmed that GWRC is comfortable with effects of future subdivision, use or development being addressed at the resource consent stage – and therefore believes it unnecessary to include the urban stream network as part of the Plan Change.

Further Submitter FS8, Mr Andrew Foster, supported the Plan Change as notified and stated that the proposal allowed a fair balance of development and bush protection with the notified version not preventing any existing development right.

By way of history, Mr. Foster stated that Otari-Wilton's Bush is considered Wellington's most significant native bush and that Huntleigh Park is generally thought to be second best. He also linked the proposal with the requirements under Section 6 of the RMA to protect areas of significant indigenous vegetation. It was these reasons, he believed, that led Council to produce the Appendix 25 map included with the notified Plan Change.

With respect to proposals for the property at 11A Huntleigh Park Way, Mr. Foster noted that these were no more restrictive than the existing Rural Area provisions that the land was subject to, aside from the stipulation under the plan change as to where the one permitted building could be located. The specified location was at the eastern extent of the property, away from the largest concentration of significant bush, and closest to the existing Residential Area. Mr. Foster believed that the notified Plan Change was the best methodology to balance protection and development in the area - and that the amended plan from the Officer's Report would cater more to the pro-development viewpoint than to one which favours protection of the bush.

Submitters 54, J Jewell & C Wood of 21 Thatcher Crescent were generally supportive of the Plan Change, but indicated a preference for the development scenario proposed as Option 2a in the Boffa Miskell report appended to the Section 32 report. The submitters appeared at the hearing to affirm their position.

Mr. Jewell & Ms. Wood indicated that they purchased their land at 23 Thatcher Crescent in 1981 with the notion that only one house was permitted to be built there. They stated they were very impressed with the amount of work the Council exhibited with the project and were reasonably happy, as affected landowners, with the resulting notified Plan Change. They did voice some concern over the potential for an over-clearance of significant bush in the neighbourhood due to development, particularly on 11A Huntleigh Park Way, but were happy for the Plan Change to be approved in accordance with the recommendations of their original submission.

Submitters 97 and Further Submitters 2, Gary & Peggy Taylor, of Heke Street, and David Chester & Suzanne Kubala, Submitters 96 and Further Submitters 3 owners of 11A Huntleigh Park Way, were represented by legal counsel, Mr Andrew Hazleton. Mr Hazleton presented comprehensive legal submissions that challenged the Plan Change in terms of the Council's ability to restrict a private landowner's use of land. His submission in this respect relied on the decision of the Environment Court - **Capital Coast Health v Wellington City W004/00**, which he referred to as the leading authority.

Mr Hazleton also submitted that in terms of section 85 of the Act the Plan Change would create a "de facto" conservation zone over his clients' land which effectively rendered the land incapable of being used in an economically viable manner. He cited relevant case law in support of this argument. He also submitted that the Council's section 32 assessment of the Plan Change had failed to assess all reasonable options and therefore it was impossible to determine whether the plan change met the criteria of "an optimal planning solution" as set out in what he submitted was the relevant authority, **Eldamos Investments Limited v Gisborne District Council W047/2005**.

Mr Hazleton submitted that the modified form of the Plan Change recommended in the Officer's Report adding a further indicative building site the Chester property and introducing one for the Taylor property did not go far enough. He submitted that the proposed subdivision prepared by Spencer Holmes on behalf of the landowners illustrates how the land may be developed to promote sustainable management and strike an appropriate balance between the natural values of the land and its potential for economic development.

In respect of Part 2 of the Act, Mr Hazelton submitted that the natural values of the land are not of such significance to justify limiting or precluding private use and development of the land; that the land is entirely capable of being developed in a manner that is “low impact” and involves minimal disruption of the areas of significant vegetation identified by the Council; that the adverse effects are minimal and can be offset by the landowner offer to covenant or gift the balance of the land after the subdivision is complete.

Mr Hazelton led evidence from Mr Chester, Mr Taylor, Mr Jorgensen, a Registered Professional Surveyor, and Mr Ian Leary a Surveyor and Planner.

Mr Chester’s evidence is well summarised by his conclusions as follows:

“As landowners of rurally zoned land, we have rights, or interest in our land, and the RMA ensures that Council cannot extinguish these, without our agreement.

We were open to negotiation, and engaged in good faith with Council. This we thought was bringing us to a mutually agreeable conclusion, one in which as late as June last year Council Officers offered 3 building sites, each multi-dwelling.

This negotiation did not complete, as with no explanation or notice Council notified this Plan Change. That negotiation was very likely to have reached a mutually agreed position, and if it had, we would be supporters of a quite different Plan Change 61 proposal.

The Council proposal before you is quite different from that which was under negotiation, and is not a proposal we support.

Our development proposal is not high intensity development, it is modest, and will achieve medium to low density housing. This will not blot the landscape, it will be well developed and well controlled. We have agreed with our neighbours, the Taylors, to allow access through our property to their development site to aid the sympathetic and reasonable development of the land.

We believe the environmental assessments used to support this Plan Change are fatally flawed, in that these were given direction that ensured they delivered the result Council wanted. Council officers have ‘interpreted’ Council instructions, again to ensure they delivered the results they desired.

The land ownership rights have been glossed over, as though provision of one building site provides equity, which it does not. Council seeks to obtain benefit from our land, by preventing our use and enjoyment of the land that we own. The proposal they put forward is not economically viable, and if that is the case and no development eventuates then, of course, the land simply becomes a conservation zone by default — at our expense.

To reiterate, there are no 300 year old trees on our land, no 100 year old trees, no kiwis, wekas, endangered ferns or snails. Just 30 to 50 year old trees, growing on previous pasture land that happens to be next door to Huntleigh Park Forest. Wishing it was part of the forest does not make it so. Privately owned land is privately owned land, and Council cannot be allowed to trample over our interest in our land.

Please acknowledge this and endorse our modest and well planned development. If that is

not possible please amend this plan change to exclude 11A Huntleigh Park Way, and enable us to re-engage with Council regarding or development.”

The Taylors have lived at 83 Heke Street for nine years and state that in this time they have acted responsibly to maintain the surrounding bush even though under rural zone rules they could have cleared it. They advised that for the last three years they had engaged with Council officers over options for further development. They produced a letter from Council’s Director of Urban Development and Transport that set out the proposals for consultation that indicated that their property would be restricted to one additional large dwelling or two smaller dwellings. They pointed out that on the contrary the Plan Change provides for no additional building sites on their property, but proposed a vehicle access to a proposed building site on the adjoining 79 Heke Street.

The Taylors believe that their rights have been seriously disregarded and that the resultant Plan Change is inequitable and unjust. Consequently they have engaged professional advisors to help protect their interests and established that their property can be developed with two development sites that would not significantly encroach on the forested area.

The Taylors pointed out that the proposed area for the property development is less than 25% of the existing section site, and does not border on any existing residential properties, would be well away from neighbouring properties and would result in minimal visual impact for neighbours located in Heke Street and Huntleigh Park Way when looked at in context of the suburb as a whole. In addition, they believed that the proposal makes good use of the existing access way and the access way provided through the development at 11A Huntleigh Park Way. The Taylors intend to covenant over half of their property to be part of the main forest area. This will provide a significant protection buffer from the residential development.

What the Taylors seek is:

“.....for the Council to recognise and provide for our rights as owners of 83 Heke through allowing the additional development opportunities as set out in our submission and to acknowledge the balanced steps that we have also taken in relation to our private property to protect the forest area.”

Ian Leary produced an extensive statement of evidence. This included a description of the properties at 83 Heke Street and 11A Huntleigh Park Way and the effects of the Plan Change in respect of those properties, an assessment of effects on the environment, and comments on the Officer’s Report.

Mr Leary produced photographs of the site and surrounding area taken in 1945 and 1962. He assumed that the site would have been primarily covered in gorse in 1945 with re-growth of native vegetation well under way. He asserted that the forest is not remnant but clearly re-growth.

In terms of objectives, policies and rules, Mr Leary’s view was that if the Plan Change was adopted as notified the owners’ ability to develop their land would be restricted, and the Plan Change offers no certainty or encouragement leading to a greater development right than currently available under the Rural zone.

In respect of adverse effects, Mr Leary acknowledges that there will be some adverse visual effect from the sort of development proposed by the landowners, but these would be greater as a result of what is proposed under the Plan Change. He believes that the overall effect on the forest from

the plan change altered as requested by the landowners would be positive, and that there are no other adverse effects such as effects of traffic, effects on rural or residential amenity.

Mr Leary believes that the net effect of the Plan Change is that it will obligate land owners if they wish to develop their land to do so through a process that will dictate house positions and access in impractical locations with a consequential increase in costs. He believes that the plan change is clearly contrary to the rights of private land owners to develop their properties to provide for their economic well being. In this respect he is critical of the Officers' Report in not commenting on the parts of the proposal put forward by the landowners that offer exchange of land in return for subdivision.

His conclusions were:

“I am of the view that this plan change if approved by Council at the hearing, as notified, would be a significant reduction in the property rights of the landowner.

The modifications proposed by the submitters (owners of 83 Heke Street and 11A Huntleigh Park Road (sic) will have adverse effects which in my opinion are minor.

On the other hand, it will enable Council to gain control of significant portions of forest land currently in private hands. This will require the owners of this property to exercise their development rights as shown on the Spencer Holmes plans numbered S070520-11/A and S07-1185-10/A

The amendment of DPC 61 to reflect the submitters views will ultimately promote the sustainable use of resources, while allowing for the owners of the land to provide for their social, cultural and economic wellbeing.

I therefore encourage the commissioner to make the appropriate amendments to DPC 61 as outlined above.”

Mr Jorgensen's evidence analysed the options set out in the Boffa Miskell Report and the Appendix 25 Plan (which was part of the Plan Change) that showed indicative building sites, and mainly focused on these options as they related to the properties at 83 Heke Street and 11A Huntleigh Park Way.

Mr Jorgensen was critical of the roading pattern shown in Boffa Miskell Option 1 and Appendix 25 in that for 11A Huntleigh Park Way the proposed access would result in steep grades, cuts of up to 3.5 metres, two sharp bends and potential blind spots unless the access drive is widened. He stated that the resulting house site(s) would be at the maximum elevation and therefore be obtrusively visible. For 83 Heke Street, the extension of the existing driveway as shown in Option 1 is not practical because the land drops away at a grade of approximately 1 in 2. As a result, in his opinion, the proposed house site would need to be higher up the slope for access from the existing drive.

In respect of Option 2, Mr Jorgensen's view was that the western most house site on 11A is unrealistic because of the split roading pattern and access to the two sites shown for 83 Heke Street requiring extensive earthworks to achieve the two culs-de-sac shown.

As an alternative to the Council developed options, Mr Jorgensen is suggesting that the two properties can be developed using “low impact” subdivision techniques where site access and

house sites are designed and built to suit the natural landform and not to disturb it in any significant way. He produced reasonably detailed subdivision/development plans for each property showing 11A Huntleigh Park Way divided into 5 sites with a total of 6 units, and 83 Heke Street divided into 3 sites (one with access from 11A) with two units in addition to the existing house. These plans are included as Attachment 4 to this report.

Mr Jorgensen's evidence was that the two sites together contained a total of 10,520m² of vegetation, of which 29% (3080m²) would be removed, and 5530m² of the balance 7440m² would be protected by private covenants (1030m² within 11A and 4500m² within 83 Heke Street). Mr Jorgensen also produced estimates of the likely development cost per dwelling of \$58,300 for his 6 unit proposal within 11A compared with his estimate of \$105,000 per dwelling for the two units within 11A as proposed by the Officers' Report.

Mr Jorgensen's conclusions were as follows:

"The only development option of those mooted in the Council Officer's report for the Chester and Taylor properties that is close to practicable is that shown in Figure 4. [Boffa Miskell Report]

The proposed subdivision for the Chester Property as shown on my plan 807-05204 1/A will enable two further house sites, as shown on my plan 807-1185-10/A to be accessed within the Taylor property, but without any additional roading site works being required.

The development techniques proposed are low impact.

Roading access is limited to a farm track type cut that leaves the ground on each side of the road route in its natural undisturbed state.

House sites shown are all sited on existing natural landform leading to a need for architectural design and therefore style and interest.

Minimal bush clearance is involved and then only to the existing upper fringe of the total bushed area.

Because the area to be developed lies adjacent to existing built urban landform, the effect of the change to the developed/undeveloped boundary will be minimised.

The area of bush for which on-going protection is offered is 5,530 m².

The maximum area of bush that could be lost including house-sites is 2.3% of the total associated bushed area.

The proposed development does not provide access to the Stahlberg property leaving little likelihood of that property ever being further developed."

Submitter 89 Keith Rogers of 15 Huntleigh Park Way was present for much of the hearing but relied on his original submission rather than present additional material. Mr Rogers has lived at 15 Huntleigh Park Way for 5 years and bought his property because of the bush setting.

Submitter 21 Ngaio Progressive Association. David Hedgley appeared on behalf of the Association. He reiterated the Association's view of support for the main thrust of the Plan Change in that it is designed to provide protection to ecologically significant areas whilst allowing land owners some ability to develop their private property. He advised that the Association specifically supported the implementation of Rule 5.1.13.4 as a means of limiting the removal and destruction of significant bush in the area, but requested that the Council be "rigid" in its application of the Rule.

Mr. Hedgley indicated that the Association's preference was for the Council to buy the land, and protect it from any further development. He acknowledged the potential difficulty in Council being able to accomplish this, and reaffirmed his position of support for the Plan Change as a manner in which to achieve protection for the area.

Mr Hedgley also expressed concern for the proposed development plans contained within the Officer's Report in Appendices 5 & 6. He submitted that the Rural Zone currently in place permits far less than that proposed in the plans.

Submitter 100, Mr Bruce Kelly of 13 Huntleigh Park Way, originally sought full protection of the bush in the Plan Change area, and requested that the Plan Change be abandoned and/or that the Council purchase the land and add it to the Huntleigh Park Conservation Site. In his evidence, however, Mr Kelly acknowledged that abandoning of the Plan Change (and consequential reversion to the Rural Area Rules) would result in less protection for the bush. He clarified that it was not his intent to seek such a result, but rather that the protection of the bush was paramount to him.

Mr Kelly submitted that despite the fact that a variety of topics were discussed in submissions, the protection of the bush was "*the overriding advocacy expressed, which needs to be considered carefully, given the heightening community interest regarding protecting and enhancing natural heritage.*" He further submitted that permanent protection for these ecologically significant areas should be achieved, and all options to achieve such an outcome be explored.

Mr Kelly noted in his evidence that the land affected by the plan change previously was zoned 'Residential G' under the Wellington District Scheme and that under this zoning, one residence was permitted on each site. He submitted that at present, each site in the area exhibits this characteristic (aside from 11A which contains no residence currently). He noted that the present Rural zoning also permits only one residence, illustrating that the expectation for the past several decades for landowners and neighbours has been one-residence-per-site.

Mr. Kelly submitted that the proposed development in submissions 96 & 97 would be detrimental to the area and compromising to his amenity values as he is an adjoining neighbour. He expressed concerns about traffic effects both in the street and along the proposed access to the development within 11A and beyond, and access to daylight and effects on privacy and views should the submissions be accepted. He therefore sought that submissions 96 & 97 be rejected.

Submitter 101, Mrs Kathleen Kelly of 13 Huntleigh Park Way, was unable to appear at the hearing, but prepared an audio tape that was played at the proceedings and provided a written transcript. The content of Mrs. Kelly's submission was focussed on the property at 11A Huntleigh Park Way. She outlined a number of hypothetical development scenarios for the site and commented as follows:

- **Zero building sites** – The ideal way to achieve protection for the highly ecologically significant site. Council purchase would be necessary, and while this may be difficult, room for negotiation may still exist and should be pursued.
- **One building site** – Has been the long-term understanding of neighbourhood residents that one building was permitted on the rurally-zoned land. Council approved the Plan Change in September 2007 following a consultation period with landowners – this proposal permitted one building site on the subject property. Mrs. Kelly urged that this decision be upheld, asking that preservation of the environment and quality of life for the existing neighbourhood be valued over individual speculative gain.
- **Two building sites** – if this scenario is utilised, the need for size restriction is paramount. Further, single residences per IRBS would best serve the neighbourhood environment for both neighbours and the bush. The potential for two units per IRBS would allow for an excessive level of development.
- **More than two sites** – the development proposals from submissions 96 & 97 are opposed - particularly the intolerable destruction of significant forest proposed at 11A Huntleigh Park Way.

Mrs. Kelly went on to discuss how future development at 11A would affect her and her property, citing the potential for 40-100 traffic movements a day 5 feet from her bedroom. Overflow traffic spilling onto Huntleigh Park Way would further cramp the already-crowded street. Construction vehicles would bring excessive dust and noise, with future users of the driveway perpetuating the noise nuisance. She also mentioned the inequitable potential loss of her own property value at the expense of her neighbour's benefit, and categorised this as Council sponsored speculative gain.

4 STATUTORY REQUIREMENTS

In making a decision on the 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, and is within the functions of the Council as set out in Section 31;
- 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 Plans;
- 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.

Section 31 sets out the functions of the Council under the Act. Those 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—
 - (i) the avoidance or mitigation of natural hazards; and
 - (ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
 - (iii) the maintenance of indigenous biological diversity:

In addition, section 31(2) provides that the methods used to carry out any functions under subsection (1) may include the control of subdivision.

The Plan Change must also be in accordance with the purpose and principles of the Act under Part 2, including section 5, which is the promotion of the sustainable management of the natural and physical resources of the City. In addition, the Council must recognise and provide for any relevant matters of “National Importance” under section 6, have particular regard to the “Other Matters” in section 7, and take into account the principles of the Treaty of Waitangi (section 8).

In regard to section 32, the Council prepared a Section 32 report prior to the notification of the Plan Change in accordance with the requirements of this section. Under section 32(2) the Council is required to make a further evaluation before making a decision on the Plan Change. I have prepared a supplementary report of my evaluation of the relevant issues having heard the submissions for and against the plan change.

5 ISSUES AND DELIBERATIONS

I have addressed the issues raised by submitters in the same groupings provided by the reporting Council Officer in his report. As far as possible the issues and submissions are listed in order to match the format of the plan change document (i.e. Objectives and Policies, Rules, Appendices etc.)

Where this report contains selected text from the Plan Change documents, either when changes have been requested by a submitter or where a change was recommended by Council Officers the following protocols have been followed:

- Text introduced by way of the plan change is shown as underlined: i.e. abcdefghijkl
- Text requested to be deleted by submission is underlined and struck-out: i.e. ~~abcdefghijkl~~
- Text requested to be inserted by submitter is bold underlined: i.e. **abcdefghijkl**
- Text recommended by the Council officer is highlighted: i.e. abcdefghijkl

The full text of Plan Change as amended by the recommendations in this report is contained in Appendix X. Text to be deleted is underlined and struck-out: i.e. ~~abcdefghijkl~~. Text to be inserted is shown in bold underlined: i.e. **abcdefghijkl**.

5.1 PRINCIPAL ISSUES IN CONTENTION

Before dealing with the groups of submissions I have addressed below what I consider to be the principal issues in contention in the evaluation of the Plan Change and the submissions received.

5.1.1 Purpose of Plan Change 61

The present zoning of the properties that are the subject of the Plan Change is an anomaly resulting from a decision not to include in the District Plan when it was prepared in the early 1990s a zone equivalent to the Residential G zone of the Transitional District Plan. As seen in the Background section above, Residential G was a ‘rural residential’ zone that provided for large residential lots and for one dwelling, and a small one bedroom residential unit not exceeding 50m², per lot. The objectives for the zone included the following:

“The utilisation of this land is to be in a form that will preserve those natural features and landscape qualities which particularly contribute to the amenity and environmental value of the area, and which will ensure that the open space character of the land is retained.”

[9M.1(4)]

Under the Residential G zone, all proposed activities were assessed against the specific natural features and landscape characteristics of the land in the zone and were required to demonstrate how these were to be preserved. The rules set low earthworks thresholds.

The present Rural Area zoning, which applies to the land subject to the Plan Change, generally provides for rural and residential activities as Permitted Activities, including one dwelling per lot. However, there are no indigenous vegetation clearance controls, and earthworks that change the ground up to 2.5 metres vertical are a Permitted Activity as long as they are not on slopes of more than 45 degrees or within 5 metres of a water body.

The section 32 assessment for the Plan Change includes the following:

“This plan change process is an acknowledgement that the present Rural Area zoning is inappropriate given that the land in question is not used for rural purposes and is within the urban environs of the city.”

The District Plan identifies a specific resource management issue as follows:

“S7 Maintaining and Enhancing the Quality of the Natural Environment

The maintenance of the life-supporting capacity of the environment is essential and requires safeguards for land, air and water from pollution and contamination. Also important is the protection and conservation of remaining natural habitats and ecosystems as part of the city’s natural heritage.”

[1.6 - Significant Resource Management Issues for Wellington]

Under section 72 of the Act the purpose of a district plan is to assist territorial authorities to carry out their functions, which are specified in section 31, in order to achieve the purpose of the Act.

An important function of the Council under section 31 is to achieve the integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. Others are the control of any actual or potential effects of the use, development, or protection of land and the maintenance of indigenous biological diversity. The control of subdivision is one method that can be used to carry out the Council's functions. Other methods include District Plan Rules.

Reports prepared by Dr Paul Blaschke (ecologist) and Clive Anstey (landscape architect) and more recently Boyden Evans (landscape architect), all acknowledge the ecological and aesthetic importance of the land which is the subject of the Plan Change and the importance of protecting the majority of it from inappropriate use and development.

In my view, having considered the submissions and evidence, the purpose of the Plan Change is entirely consistent with the functions of the Council as set out in section 31 of the Act, and will assist the Council to carry out those functions with greater effect than the present Rural zone provisions.

5.1.2 Significance of the Vegetation

Central to the purpose of the plan change, and its provisions to control subdivision and development, is the indigenous vegetation and associated habitat that covers a large part of the plan change land.

The Council commissioned Dr Paul Blaschke to carry out a specific study of the Plan Change land. His report, *Ecological Assessment of Private Land adjoining Huntleigh Park – June 2006*, was part of the Plan Change documentation. Key findings of his report included that:

- Huntleigh Park Forest, is one of the largest and most significant forest remnants in Wellington City;
- the Huntleigh Park vegetation has been strongly influenced by a century of grazing and fire, as well as its environment and topography. Although it has been largely free from grazing and fire for the last few decades, most individual trees are not older than about 80 -100 years. However a number of individual trees are well over 100 years old. The mixed broadleaved, kohekohe-dominated and podocarp-broadleaved forest appear to be stable and evenly regenerating, and relatively free from significant weed or animal pest invasion. The other vegetation units and edges of the forest are subject to continued disturbance from the neighbouring residential activities.
- the vegetation in the Plan Change area, which is located on the eastern edge of Huntleigh Park Forest, is similar to the rest of the forested area in Huntleigh Park, and also to neighbouring forest remnants such as Khandallah Park and the reserves above and below Heke Street;
- the Plan Change vegetation can be divided into that which is *highly ecologically significant* (Mixed broadleaved forest, Podocarp-broadleaved forest, and Kohekohe-dominant broadleaved forest) and *less ecologically significant* (Treefern land and low forest Mahoe-dominant broadleaved forest).

In addition to making recommendations regarding edge and gap planting, pest and weed control and stream management, Dr Blaschke recommended that:

“Because of the ecological significance of much of the native vegetation in the study area, it would be very desirable to manage this vegetation in order to maintain and enhance its ecological values, as well as its amenity value for its owners.”

From further material in his report, it can be seen that Dr Blaschke recommends that ecological management of the area should be aimed at allowing the regeneration of the vegetation in the Plan Change area to continue unhindered where possible with a view to enhancing the high quality of the vegetation within the adjoining Conservation Site. He also recommends the provision of information, advocacy and suitable native plant material to private owners.

The Wellington Botanical Society drew my attention to the listing of the Plan Change area in the publication *“Biological Resources of the Wellington Region”* a joint report by the Wellington Regional Council, Queen Elizabeth II National Trust and NZ Biological Resources Centre, November 1984. A copy of this report was produced by Mr Chris Horne when presenting on behalf of the Society. The relevant land is listed in *“Schedule C - Sites Requiring Protection”*, and is identified as site 12f Crofton Downs Bush.

The report and evidence of Boyden Evans for the Council agrees with and adopts Dr Blaschke’s assessment of the ecological significance of the plan change area, particularly in providing edge protection to the Huntleigh Park Forest.

Submissions from land owners both within and outside the Plan Change land also referred to the significant ecological and amenity values of the vegetation and habitat, and that it should be protected from development.

In the case **Mighty River Power Ltd v Waikato RC A146/01, 7 NZED 117**, the Environment Court referred to an earlier case **Minister of Conservation v Western Bay of Plenty DC A071/01, 6 NZED 732**, and said at paragraph 80 and 81:

[80] *“In that case the Court held (paragraph 18) that the indigenous vegetation or habitat of indigenous fauna did not have to be nationally important to be significant for the purpose of section 6(c). Neither did it have to be regional in character. Rather, it was held:*

“It is a question of identifying and assessing (with the aid of qualified advice and assistance) those areas or habitats that are significant within the district as to require protection.”

[81] *“In paragraph 19 of its decision the Court said:*

“Significant” in its context necessarily imports the notion of informed judgment as to those natural resources of the district that need to be protected. In the case of Western Bays, a factor in coming to that judgment is the extent to which the bio-diversity resource of the district has already been diminished”.

From the evidence and submissions heard, I believe the areas of indigenous vegetation within the plan change area to be significant in the Wellington context and its significance is enhanced when its positive effect on the wider forest area that exists at Huntleigh Park is considered.

5.1.3 Council Purchase of the Land

Many submitters have requested that the Council purchase the land that contains the significant indigenous vegetation as a means of ensuring permanent protection of its ecological and amenity values.

Allied to the submissions requesting that the Council purchase the land were submissions that suggested that without purchase the protection of the ecological biodiversity of the land would not be aligned with the Biodiversity Action Plan, September 2007. However, the recorded comments in Mr McSweeney's report from Amber Bill (Council's Parks Planning Unit) make it clear that it is not the intention of that plan that land has to be purchased to protect its ecological values. In answer to my questions about the status of the Biodiversity Action Plan, Ms Bill drew my attention to the fact that Objective 2.3 provides for protection through District and Regional Plans in respect of privately owned land, and Objective 2.4 provides for encouragement of landowners to protect biodiversity on their own land.

The section 32 report that accompanied the plan change recorded that the Council considered the possibility of purchasing the land and managing it as part of the adjoining Huntleigh Park Conservation Site. This option was however considered impractical as the land is difficult to access as it is largely landlocked, which in turn presents practical difficulties in managing the land as part of Council's open space network.

It is my view that a recommendation to Council that all or part of the plan change land should be purchased is outside the scope of the statutory plan change process and my jurisdiction in this matter. Given the Council's general powers beyond the Act, purchase of land for such protection is an option that is open for consideration at any time, but not as part of a District Plan Change, unless the land has been or is about to be designated, which is not the case in this instance.

5.1.4 Private Property Rights

Submissions by Mr Chester and Ms Kubala, owners of 11A Huntleigh Park Way and Mr and Mrs Taylor owners of 83 Heke Street challenge the Plan Change on the basis that it proposes a restrictive zoning and establishes a "de facto" conservation zone on private land and in doing so ignores the owners' rights, renders the land incapable of reasonable use, and places an unfair burden on the submitters.

The New Zealand Business Roundtable made a similar submission in more general terms unrelated to specific properties.

The legal submissions of Mr Hazelton, Counsel for the owners of 11A Huntleigh Park Way and 83 Heke Street, developed the opposition to the Plan Change in terms of the relevant provisions of the Act, including sections 32 and 85, and Part 2, and by reference to case law including **Capital Coast Health v Wellington City Council (W004/00)**, **Hastings v Auckland City Council (A068/01)**, **Eldamos Investments Limited v Gisborne District Council (W047/2005)** and **Steven v Christchurch City Council (C038/98)**.

As to restrictive zonings, Mr Hazelton relied on the finding in *Capital Coast Health* that:

"As a general principle private land should not be zoned for reserve purposes (however described and either expressly or effectively) unless:

- *It is already reserved for such purposes; or*
- *The landowner agrees; or*
- *It is incapable of being used for other purposes*

If the Council wishes to protect land for reserve purposes, then that purpose should be achieved by designation or acquisition.

However, this general principle is always subject to the provisions in Part II of the Act. Where particular land has such significance in terms of any of the factors listed in s 6 and s 7 of the Resource Management Act 1991 and its use or development ought to be substantially limited or precluded, then land use controls which may have that effect may be appropriate regardless of the ownership of that land (but subject to s. 32 and s 85)”
(at paragraph 7)

I have given careful consideration to these matters and find that the Plan Change in the form now recommended does not rezone land as reserve or for purposes akin to a reserve as alleged. Rather the land is to be zoned Outer Residential, the same zone as the vast bulk of the city’s suburbs. Private uses of the land are provided for, albeit in a more restricted manner than the majority of Outer Residential land.

Existing uses of the land and residential activities are maintained as Permitted Activities. The erection, use and maintenance of an additional dwelling on each of 83 Heke Street and 21 Thatcher Crescent, and two dwellings on 11A Huntleigh Park Way are provided for by way of a Discretionary Activity.

Under Part 2 of the Act, in making a decision on the Plan Change, the Council must “*recognise and provide for:*

“The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.” [section 6(c)].

As seen above, I consider the indigenous vegetation of the Plan Change area to be significant in the Wellington context and therefore requires protection. The evidence has established that the most highly ecologically significant vegetation is in the western portion of the land, nearest to the existing Conservation Site and that while the erection of further dwellings would have an adverse effect on the vegetation if the dwellings were confined to the less ecologically significant area, these effects could be absorbed. Consequently, appropriate protection of the indigenous vegetation and associated habitat will be achieved notwithstanding that some additional residential development occurs.

Under Part 2 regard should also be had to the following sections when coming to a decision about the limitations to be placed on land development within the Plan Change land:

- Section 7(c) The maintenance and enhancement of amenity values:
- Section 7(d) Intrinsic values of ecosystems:
- Section 7(f) Maintenance and enhancement of the quality of the environment:
- Section 7(g) Any finite characteristics of natural and physical resources:.

Evidence heard confirmed that the protection of the indigenous vegetation would contribute to the amenity values and quality of the environment of the Plan Change land and environs and that the values and characteristics of the ecosystem and natural resources of the area all contribute to the overall diversity and enrichment of the area.

I note also that in *Hastings*, the Court, after referring to *Capital Coast Health*, went on to say:

“We do not accept that it is necessarily unreasonable for a territorial authority to persist with such [restrictive] zoning of private land in the face of the owner’s objection, particularly where the territorial authority asserts that other land use of the land would have significant effects on the environment.” (at paragraph 96)

In my view, that sums up the situation that arises in this Plan Change. The “other land uses”, being either the level of development sought for 11A Huntleigh Park Way and 83 Heke Street or a reversion to a Rural zoning by abandoning the Plan Change, would have significant adverse effects on the environment. It is therefore not unreasonable that the Plan Change in the form now recommended should proceed.

In summary on this issue, it is my opinion that the limitations proposed for the development of the land with further dwellings are necessary and appropriate to ensure that the adverse effects of the use, and development of the land and its associated ecological, landscape and amenity values are appropriately managed in accordance with the purposes of Part 2 of the Act.

Regarding section 85, I do not consider that the Plan Change in the form now recommended will render the land of the opposition submitters incapable of reasonable use, because of the provision that is made for further dwellings to be erected and used.

In regard to section 85, Mr Hazelton drew attention to the conclusion of the Court in *Hastings* that:

“Sustainable management of natural and physical resources is a single concept. Where conflict arises between elements of the concept, it is often possible to moderate them so that the essence of each element is preserved. However in the end a decision has to be made about what provision best meets the purpose of the Act.”

[last sentence added for completeness]

In *Fore World Developments v Napier City Council W029/06*, the appellant’s residential subdivision intentions for the land were restricted by a proposed coastal hazard zone overlay. Dealing with section 85 issues the Court held that:

“The choice of an appropriate zoning is driven by a matrix of factors in which such things as location, servicing ability and the nature of the surrounding area may be as influential as the quality of the land itself. a landowner’s wish to use the land in a way that maximises its value make that use alone reasonable, and others unreasonable.” (at paragraph 122)

“Reasonable use is not synonymous with optimum financial return...” (at paragraph 125)

In my opinion the Plan Change in the form now recommended does achieve a balance between the need to protect significant indigenous vegetation and enabling landowners to make reasonable provision for their social and economic wellbeing.

5.1.5 Section 32

Regarding section 32, Mr Hazelton submits that the Council has not discharged its duties under section 32 because it has not considered all reasonable options making it impossible to assess whether the Plan Change meets the criteria set out in the *Eldamos* case and represents an optimal planning solution. Other submitters have also criticised the section 32 analysis for lack of objectivity and completeness.

Mr Hazelton's submissions (at paragraph 4.1) refer to the decision in *Capital Coast Health* where the Court held (at para 7):

*“The duties under s 32 relate generally to generic plan provisions – ie those mentioned in subsection(1). The obligation of the council is to carry out this duty in relation to the district as a whole, and in relation to the constituent or distinct parts of the district identified in the plan. It is not a duty which generally extends to every separate property in the district. Generally, the consideration and assessment required by s.32 need only be carried out in respect of an individual property where the appropriateness of controls relating to that particular property are raised on a submission under the First Schedule. There may however be instances where the controls are specific to particular land (eg 'spot zoning') or where they effectively involve the reservation of particular land for private purposes (eg open space, reserve, conservation or protection zoning). **In some of these instances (eg where the control represents a significant change from the status quo), the council will be required, prior to adopting the method, to carry out a more site specific assessment of the costs and benefits etc of the proposed controls and to consider whether the method is necessary in achieving the purposes of the Act, and is the most appropriate means of exercising its functions.**”*

(Emphasis added)

The Capital Coast Health case was decided prior to the 2003 Amendment Act which amended section 32 (3) and 32(4). The focus has shifted from being satisfied as to “necessity” to an examination of the most appropriate way in which each objective achieves the purpose of the Act and, having regard to their efficiency and effectiveness, whether policies and rules are the most appropriate for achieving the objectives.

Notwithstanding that, the *Eldamos* framework has made it clear that the rules and other methods (which include zoning) need to be evaluated as to whether they are the most appropriate way to achieve the objectives of the plan, assist the territorial authority to carry out its functions and are in accordance with Part 2.

Section 32 does not have an explicit requirement to consider alternatives. However, in practice, in order to evaluate what is 'the most appropriate', a comparative assessment needs to be undertaken which requires an evaluation of at least two options. This is what the Council's section 32 analysis has done, and on that basis I believe that it is not deficient or defective.

However, because the Plan Change in the form now recommended contains new and altered provisions it has been necessary to make a further evaluation under section 32. This takes into account the submissions made and broadens the options to include the form of development

for 11A Huntleigh Park Way and 83 Heke Street requested by the owners of those properties (Submitters 96 and 97).

This supplementary report is set out in Attachment 3 to this report.

5.1.6 Indicative Residential Building Sites

The Plan Change proposes to replace the inappropriate Rural Area provisions for the identified land in Huntleigh Park Way, Heke Street and Thatcher Crescent with those of the Outer Residential Area. However the special characteristics of the land, namely the presence of a large amount of ecologically significant indigenous vegetation and ecological and landscape values, require intervention through District Plan Rules to ensure that the objectives of the District Plan in respect of natural values and resources are achieved.

Background investigations leading to the Plan Change have examined the type, quality and location of the vegetation, and assessed the residential capacity of the land commensurate with the protection of the natural values as required of the District Plan as an instrument by which the Council achieves the purpose of the Act. Details of the reports commissioned and received in these respects are given above. The landowners' views and those of the community were also sought by the Council prior to the Plan Change being finalised.

As a result, the Plan Change proposes that significant physical development of the land be limited by specifying the approximate locations of a number of indicative residential building sites and the access thereto. In this way the general density and location pattern of allowable additional residential activity is established as a framework within which resource users may make applications for a Discretionary Activity (Unrestricted) to achieve subdivisions and/or residential development.

The residential capacity assessment and identification of future dwelling sites and driveways provides a very clear indication of whether development is considered acceptable in principle. When the Plan Change is approved, this capacity is then established at a District Plan level. The resource consent process allows detailed consideration of each application, provides for third party rights and site specific information, assessments of adverse effects and mitigation measures to be taken into account through the resource consent process before making final decisions.

However, a number of questions have been raised by submissions and remain to be addressed:

- (1) How many indicative residential buildings should be included in the Plan Change?
- (2) Of those selected, where should they be?
- (3) Should each indicative site provide for one or two household units?
- (4) Is there a need for a size limitation for the indicative residential building sites and if there is what size is appropriate, and should it be expressed as a standard or an assessment criterion?

How Many Sites and Where?

The Plan Change as notified provided for three sites in total, one each at 11A Huntleigh Park Way, 79 Heke Street and 21 Thatcher Crescent. Each site could have two household units. No “footprint” limit was set, and it is assumed that the use of the word “indicative” means that the circles that represent the nominated sites are not to be taken as indicating any particular size or shape.

The Officer Report put forward the following arrangement of four sites for consideration:

83 Heke Street

Provide one ‘indicative residential building site’. Access to the land would be from the existing driveway (The Plan Change as notified does not have an ‘identified residential building site’).

11A Huntleigh Park Way

Provide two ‘indicative residential building sites’, instead of one as set out in the originally notified plan change.

79 Heke Street

No indicative building site and no indicative driveway from 83 Heke Street.

21 Thatcher Crescent

Provide one “indicative residential building site” as per notified Plan Change.

19 Thatcher Crescent

Provide no “indicative residential building site” as per the notified Plan Change.

The property at 79 Heke Street is landlocked with the position of the existing dwelling at or near the road frontage making it impossible to gain vehicle access to the rear of the property. The adjoining owners at 83 Heke Street are not agreeable to providing access over their land to the rear of 79 as shown on the notified Plan Change.

Mr Gordon Purdie at 19 Thatcher Crescent is opposed to any further residential development within the Plan Change land, including his own. His views have therefore been interpreted that there should not be an indicative site on his property whatever the arrangement is decided for the balance.

Through submissions and confirmation at the hearing, the owners of 21 Thatcher Crescent (Jeff Jewel and Cathy Wood) are satisfied with the position of the indicative residential building site and access on their property.

Mr Chester and Ms Kubala are not satisfied with one or two indicative residential building sites on 11A Huntleigh Park Way. The Taylors did not approve of zero indicative residential building site being shown in the notified Plan Change, and are not satisfied with having only one site as recommended by the Reporting Officer.

As detailed above Mr Chester and the Taylors have presented complementary submissions that seek a total of 7 indicative residential building sites over their combined properties, one of which would have two household units.

Taking all the evidence and submissions into account, including the Officer's Report and Recommendation, I believe that the four site configuration described above more closely aligns with the recommendations in the report of Boyden Evans (Option 1) and shown in Appendix 1 to the Officer's Report prepared by Mr McSweeney. In respect of this level of residential development Mr Evans said in the summary and recommendations of his report:

“5.1 - Removal and further encroachment into the forest with development of additional residential dwellings on each of the properties concerned will have adverse ecological effects. However, the level of damage would be relatively confined if additional residential development is restricted to the outer edge of the forest rather than intruding into it as some of the proposals suggested by the property owners would.”

At the hearing Mr Evans confirmed that his recommended Option 1 sought to strike a balance between a limited amount of tightly controlled development on some of the sites and securing long term protection for as much of the area as possible. He generally agreed with the recommendations in the Officer's Report that showed the four site arrangement described above.

Again based on the evidence and submissions heard, I believe that any greater provision of indicative residential building sites, for example as requested by submitters 96 and 97 will jeopardize the long term protection of the vegetation and seriously affect the ecological and landscape values of the land. I do not support a greater provision of sites than recommended by Mr McSweeney. (see Appendix 26 map attached as part of the Recommended Plan Change in Attachment 2.)

The arrangement now recommended provides each owner (where sites are provided) with the potential to have two household units on their site, which is equivalent to the Permitted Activity status for the Outer Residential Area, the difference being in the case of the Plan Change land, that consent must be obtained by way of a Discretionary Activity (Unrestricted). I believe that the additional safeguards embodied in this process are fully justified in view of the natural features and resources that need to be sustainably managed. For the same reason I support the proposal that subdivision of the Plan Change land is also a Discretionary Activity (Unrestricted).

It should be noted that in the light of criticism of the practicality of the locations of the indicative residential buildings sites shown on the Plan Change Appendix map and that recommended by Mr McSweeney, the location of indicative residential building sites for 11A Huntleigh Park Way and 83 Heke Street now recommended as part of this report and recommendation coincide with sites shown on Mr Jorgensen's plan of proposed development.

One or two Household Units?

A number of submitters were concerned that allowing two household units per indicative residential building site would increase the density of development to an unsustainable level. In addition, Mr McSweeney confirmed at the end of the hearing after considering this point in response to an earlier question of mine, that his view was that each indicative residential building site should be limited to one household unit per site. I agree with the submissions and Mr McSweeney in this respect.

Size Limitation

A number of submitters were concerned that without a maximum “footprint” included in the proposed rules there was a potential for the indicative sites to grow and result in more vegetation being cleared than is desirable or necessary. At the end of the hearing, after considering this point, Mr McSweeney recommended that a maximum of 250m² per site should be prescribed exclusive of access. I agree with this recommendation but believe that the figure should be expressed as an assessment criterion rather than a standard, and should relate to the maximum area of vegetation that is to be cleared to accommodate the proposed buildings.

My reasons for specifying a maximum area in this respect is to provide certainty to resource users in planning developments and to the community as to the amount of vegetation that can be removed in respect of any particular development. I believe that a standard would be too restrictive and may lead to applications defaulting to the non-complying category. Application of assessment criteria is a common consenting tool used extensively throughout the District Plan for Discretionary Activities.

5.2 GENERAL SUPPORT FOR THE PLAN CHANGE

Issues raised in submissions

- the Plan Change helps give effect to a change in community attitudes to protecting native bush in the city
- development should be confined to the ‘indicative residential building sites,’ and the restrictions on bush clearance should be retained.
- any dwellings on 11A Huntleigh Park Way should not be visible from 9 Huntleigh Park Way
- the current Rural Area zoning of the land is inappropriate.

Discussion

There was general support for the Plan Change from some 7 submitters and one further submitter. Of these only Mr Jackson from Friends of Tawa Bush Reserves, Mr Hedgley from Ngaio Progressive Association and Mr A Foster were in attendance. Mr Jackson’s support was of a general nature and not as an affected party. Mr Hedgley was guarded in his support for the more expansive scope of the indicative residential building sites recommended by Mr McSweeney. Mr Foster supported the Plan Change as notified as striking the best balance between conservation and development.

Other submitters that supported the Plan Change as notified did not attend the hearing so I am not able to report of their acceptance or otherwise with Mr McSweeney’s recommendations.

A number of other submitters (not in attendance) requested more detailed and/or additional development controls to protect the vegetation such as fencing, preventing pest/pet access, prevention of vandalism and the like. I do not believe that this level of detail is necessary for the Plan Change, which is more in the nature of a consenting “framework”. I agree with Mr McSweeney’s comments that the resource consent process is the appropriate mechanism to deal with these matters of detail.

Recommendation

Accept submissions 21, 41, 70, 80, 91, 104, and 105 and further submission 8 insofar as they support DPC 61, subject to those amendments made in response to other submissions.

5.3 OPPOSITION TO THE ENTIRE PLAN CHANGE

Issues raised in submissions

- no further dwellings should be permitted on the land.
- retain the existing Rural Area zoning as this only allows one dwelling per site.
- the land should be zoned Conservation site as it is of high ecological value.
- the Plan Change does not provide the necessary safeguards to protect the native vegetation.
- any excavation of the land will require massive shelves and will result in erosion.

Discussion

Some 38 Submitters and 13 Further submitters opposed the entire Plan Change. Of those that appeared at the hearing, Diane Stanley and Gordon Purdie (19 Thatcher Crescent) submitted that there should be no further residential development on the subject land or any other portion of the Huntleigh Park forest. They believe that additional building sites on 21 Thatcher Crescent, 79 or 83 Heke Street would represent an infringement of their rights, and adversely affect their privacy and property value, as well as their social, economic, and cultural wellbeing.

Jane Harding, a previous resident of the area also submitted that there should be no further residential development.

Mr Bruce Kelly 15 Huntleigh Park Way, originally opposed the entire Plan Change but at the hearing Mr Kelly acknowledged that an abandoning of the plan change (and consequential reversion to the Rural Area Rules) would result in less protection for the bush. He clarified that it was not his intent to seek such a result, and rather that the protection of the bush was paramount to him.

In my opinion the amendments that I have recommended after considering the advice of the Reporting Office and a the evidence and/or submissions from a number of submitters, including the Greater Wellington Regional Council, achieve an appropriate balance between allowing some targeted and tightly controlled residential development to occur and ensuring the ecological integrity of the land is maintained.

I say this because the Plan Change zoning and provisions have been based on landscape and ecological assessments of the land, and a detailed assessment of the residential development potential of the land by well qualified experts. The investigations undertaken by Mr Evans in the preparation of the Plan change demonstrate to my satisfaction that it is possible to accommodate further limited residential development on some of these properties.

I have carefully considered submissions that expressed concern that a valuable area of indigenous vegetation might be lost or destroyed through more intensive residential development on this land. However, I am satisfied that with the addition of the policy suggested by the Greater

Wellington Regional Council and the full discretionary control reserved to Council under the consenting process these concerns have been met.

In addition, I have recommended clear assessment criteria that need to be met regarding the maximum amount of vegetation that may be removed and I have recommended a reduction in intensity of allowable development by restricting each indicative residential building site to one household unit.

I am satisfied that the Plan Change now recommended is far superior to the provisions of the Rural Area to which the District Plan would revert if this Plan Change is not approved.

Recommendation

Reject submissions 5, 6, 8, 11, 13, 14, 17, 18, 20, 22, 24, 25, 27, 29- 32, 34, 36, 39, 43, 58, 60, 62, 64, 85, 90, 92, 94, 100, 101, 106, 109 - 114, and further submissions 1 - 7, 9, 10a and 10b, 11a, 11b, and 11c, 12a, 12b and 12c, 13a and 13b, insofar as they are opposed to DPC 61, subject to any amendments resulting from submissions.

5.4 COUNCIL TO BUY AREA FOR PROTECTION / MAKE LAND RESERVE

Issues raised in submissions

- Council should purchase the land so that the remnant bush can be made a reserve and protected in perpetuity.
- the land is not difficult to access and this access could be enhanced if it was in Council ownership.
- there should be no further residential development of the land as it will destroy the landscape and ecological values of the land.
- not allowing one residential dwelling on 11A Huntleigh Park Way would impose a high cost on the owners of that property. In this case Council should purchase this land.
- the Plan Change is an attempt to impose a conservation zone in everything but name upon 11A Huntleigh Park Way and 83 Heke Street. If the site is ecologically significant it should be purchased at market value by the Council.
- The Plan Change does not align with the WCC Biodiversity Plan and the Councils Outer Green Belt Management Plan.
- The Plan Change is contrary to the provisions in the Regional Policy Statement and the Draft Regional Policy Statement on indigenous ecosystems.

Discussion

A large number of submitters (approximately 45) were of the view that the Council should purchase the land and create a reserve to be held and managed in conjunction with the Huntleigh Park Forest, or to the like effect. Their reasons for the submissions were that any other status for the land would compromise its natural values. Diane Stanley and Gordon Purdie (19 Thatcher Crescent) submitted that Council could achieve an outcome that the community is seeking by purchasing the land, particularly the vacant 11A Huntleigh Park Way. Others that appeared at the

hearing and advocated land purchase included Dr Hingston of 85 Heke Street, Jane Harding a former resident, and the Wellington Botanical Society.

The owners of 11A Huntleigh Park Way and 83 Heke Street also submitted that the Council should buy the land, but this was from their point of view that the Plan Change is an attempt to impose a conservation zone in everything but name upon the land and if it is ecologically significant it should be purchased at market value by the Council.

The Officer Report contained comments from Amber Bill, Parks Planning Unit of the Council, in response to submissions requesting the land be purchased by Council, including the protection options available to the Council for privately owned land with open space values. It was her opinion that:

“..... the landowners’ expectations of what the land is worth and what the Council is able to pay means that purchasing the land is unlikely to be a feasible option. Parks Planning are therefore supportive of the approach adopted in DPC 61 as it will help protect the ecological values of the land. Parks Planning is also prepared to work in partnership with the landowners to use other non-regulatory measures to help protect the native vegetation.”

The issues relating to the Council purchasing the Plan Change land are discussed in section 5.1 above, the conclusion being that it is beyond my brief to recommend such an action from consideration of this Plan Change.

Recommendation

Reject submissions 1, 7, 9, 12, 13, 14, 16, 17, 20, 24, 34, 38, 40, 43, 55, 56, 59, 66, 73, 75 – 79, 81 - 89, 94 - 103, 106, 107, 109 - 112, 114- 116, 119 and further submissions 1 - 5, 7, 9, 10b, 11c, 12c insofar as they relate to Council purchasing the land, making the land a reserve, or zoning the land Conservation Site.

5.5 CONSULTATION

Issues raised in submissions

- insufficient consultation has taken place with the community
- the Plan Change does not adequately address the issues raised by submissions during the pre-notification stage.

Discussion

Section 5.5 of the Officer’s Report set out the consultation process undertaken in preparing the Plan Change. The Reporting Officer went on to comment:

“Residents in the vicinity of the land have had an opportunity to make submissions prior to the plan change being notified and the affected landowners have been consulted on a number of occasions through one on one meetings and site visits. Many of the residents have also taken the opportunity to formally lodge submissions when the plan change was notified in September 2007, resulting in 119 submissions and 13 further submissions. I consider that consultation has been adequate and meets the general obligation to consult provided for in the Resource Management Act 1991.”

A number of submitters that appeared at the hearing expressed some dissatisfaction with the consultation process, particularly that their concerns and/or opinions did not appear to be listened to or taken into account in the final form of the Plan Change. Having heard all the evidence and submissions in this regard, and considered the background and the information in the Officer's Report, I agree that the consultation carried out by the Council, while obviously not meeting everybody's expectations, did meet the general obligation to consult provided for in the Act.

Once the Plan Change was notified, a new and separate phase in the District Plan change process was commenced. Participation in this process reflects the genuine concerns of land owners, resource users and the wider community in seeking a sustainable solution to the issues that are raised by the Plan Change. In my opinion there is no cause to abandon or significantly alter the Plan Change because of a perception of inadequate consultation.

Recommendation

Reject submission 109 insofar as it relates to a concern about inadequate consultation as part of the plan change process.

5.6 PART II OF THE RMA AND SECTION 32 REPORT

Issues raised in submissions

- residential development would be contrary to Part II of the Resource Management Act 1991
- the Plan Change would not maintain and enhance amenity values and the quality of the environment, or adequately protect areas of significant indigenous vegetation
- the section 32 report does not adequately address the benefits and costs of the Plan Change

Discussion

Mr. Purdie (Submission 85) and Ms. Stanley (Submission 74) submitted jointly that “the plan change does not meet the Resource Management Act requirement to maintain and enhance amenity values and the quality of the environment...” – nor does the plan change “...protect areas of significant indigenous vegetation and significant habitats of indigenous fauna.” A number of others submitters made similar points.

Mr Purdie and Ms Stanley consider that the Plan Change does not comply with section 32 of the Act. They submitted that the Plan Change does not reasonably identify benefits and costs, and that analysis is subjective in some instances. These submitters cited that one such example of cost/benefit analysis that was omitted was the impact of property values. They believed that, if approved, the proposal would allow increased property gains for the three landowners who are granted further development potential, while decreasing those values for many more neighbours.

Submitters Mr Chester and Ms Kubala (Submission 96) and Mr and Mrs Taylors (97) in respect of 11A Huntleigh Park Way and 83 Heke respectively also submit that the section 32 analysis is inadequate and that the Plan Change is inconsistent with Part 2 of the Act.

Part 2

To a large degree, I have dealt with these issues in sections 5.1.1, 5.1.2, 5.1.4, and 5.1.5 above.

In my opinion, the Plan Change as now recommended is in accordance with Part 2 of the Act. The Plan Change as a whole, and the recommended rules in particular, promote sustainable management of the natural resource of ecologically significant vegetation and the landscape in which it is set by managing the development of the land.

Additional residential development of the Plan Change land to the degree provided for by the rules meets the enabling provisions of section 5, while protecting the indigenous vegetation and habitat for future generations, safeguarding the life-supporting capacity of the ecosystem, and avoiding and/or mitigating potential adverse effects on the environment.

The protection of significant indigenous vegetation and habitat is recognized and provided for in accordance with section 6(c) and particular regard has been had to the matters set out in section 7(b), (c), (d), (f), and (g).

Section 32

The Officer Report describes the site specific investigations and consultation undertaken during the preparation of the Plan Change and considers that all reasonable options for enabling some tightly controlled residential development whilst protecting as much of the indigenous vegetation on the land have been considered and set out in the section 32 report that was available at the time of notification. I have concluded that on that basis the Council's section 32 analysis is not deficient or defective.

However, in view of the matters raised by submitters at the hearing in regard to this section 32 report I have prepared a supplementary section 32 report that the Council may adopt in satisfaction of its duty under section 32(2)(a). This is Attachment 3 to this report and recommendation.

Recommendation

Reject submissions 74, 96, 97, and 107, insofar as they consider the plan change is contrary to Part II of the Resource Management Act 1991.

Reject submissions 78, 85, 96, 97, and 102, insofar as they state that the section 32 report is not consistent with the Resource Management Act 1991 and does not involve a proper assessment of the benefits and costs of DPC61 and other possible development options for the land.

Accept further submission 8 insofar as it considers the section 32 analysis is adequate.

5.7 PRIVATE PROPERTY RIGHTS

Issues raised in submissions

- the plan change is imposing a de facto conservation covenant on the land, consequently reducing the landowners property rights.

- the Council should engage with the land owners and purchase the land if they consider there is a strong public interest or pay due compensation
- the Plan Change should enable more intensive development to occur at 11A Huntleigh Park Way and 83 Heke Street.

Discussion

These issues are fully discussed in section 5.1.4 above.

Recommendation

Reject submissions 96 and further submission 3 and submission 97 and further submission 2 relating to the residential development plan contained in Attachment 4 for 11A Huntleigh Park Way and 83 Heke Street, Ngaio.

Accept further submissions 1, 4, 5, 7, 9, 10a, 11b, 12a, 13b insofar as they oppose the residential development plan proposed in submissions 96 and 97.

5.8 OBJECTIVES AND POLICIES

Issues raised in submissions

- the Plan Change does not align with the District Plan objective - “to protect and enhance natural green areas of the City”, objective 18.2.1 and policies 14.2.1.1 and 14.2.5.4 of the Wellington City District Plan,
- a new district plan objective and policies are required to recognise the ecological significance of this land
- the Plan Change does not align with the Regional Policy Statement and is contrary to the objectives and policies in the Draft Regional Policy Statement

Discussion

Contrary to District Plan objectives and policies

A number of submissions consider that the Plan Change is contrary to the following objectives and policies contained in the District Plan:

- Objective 18.2.1 applies to maintaining and enhancing indigenous sites and ecosystems and applies to Conservation Sites and land uses adjacent to Conservation sites.
- Policy 14.2.1.1 relates to encouraging new urban development to locate within established urban areas, and
- Policy 14.2.5.4 encourages retention of existing vegetation, established trees and existing native vegetation.

The Officer Report deals with these issues as follows:

“Land contained within the plan change is adjacent to Conservation Site 5D Huntleigh Park. As previously stated in this report, the plan change provisions will enhance the long term sustainable management of the land by placing strict controls on future residential development and vegetation removal. This will help to protect and enhance the ecological and habitat values of the adjacent Conservation Site. Accordingly it is not necessary to have an additional policy inserted into this plan change (as requested by the Wellington Regional Council as set out below) to protect the Huntleigh Park Conservation Site.

“Section 5.2 of this report sets out why it is not appropriate that the existing Rural Area zoning be retained over the land. Policy 14.2.1.1 is therefore not considered relevant to assessing the merits of this plan change. The plan change will also help to retain existing vegetation on the site and is therefore considered consistent with policy 14.2.5.4.”

I agree with the above statements and that the Plan Change as now recommended is not contrary to objectives and policies of the District Plan.

New objective and policies

GWRC and Gordon Purdie (further submitter 6) consider that the plan change needs to be brought further into line with the objectives and policies in Chapter 9 ‘Ecosystems’ in the Regional Policy Statement. GWRC have requested that a new objective and three policies be included in the district plan as follows:

Objective

4.2.5A

To protect indigenous vegetation, habitat and ecosystems from modification and loss.

Note:

This objective and the related policies and methods apply to the land shown in Appendix 25.

Policies:

To achieve this objective, Council will:

4.2.5A.1

Control the effects of uses and activities that could modify or disrupt the values of the ecosystem including the indigenous vegetation and the urban stream.

4.2.5A.2

Recognise the ecological values of the site and its link to the adjoining Conservation 5D site.

4.2.5A.3

Ensure that new residential buildings are developed and designed in a way that will respect and integrate with the ecological values of the site.

Methods

- *Rules*
- *Provision of information (Wellington City Council, Greater Wellington Regional Council)*
- *Other mechanisms*
 - *Greater Wellington Regional Council’s Managing your bush block- A guide to looking after indigenous forest remnant in the Wellington region.*
 - *Greater Wellington’s Restoring our Natural Heritage – A guide to Greater Wellington’s biodiversity assistance for private landowners.*
 - *Mind the stream – A guide to looking after urban and rural streams in the Wellington Region.*

The Plan Change as notified contains no objectives or policies to accompany the proposed rules. However, as noted earlier in this report and recommendation existing District Plan objectives and policies already address ecological issues raised in this plan change generally. For example:

“Objective 4.2.5

To maintain and enhance natural features (including landscapes and ecosystems) that contribute to Wellington's natural environment.’

Policy 4.2.5.4

‘Encourage retention of existing vegetation, especially established trees and existing native vegetation.’”

Having considered the evidence and submissions made at the hearing and the Officer’s Report, I believe there is merit in giving greater policy recognition to the importance of protecting the ecological values of the properties in the Plan Change land and managing the subsequent development of the land in the manner provided through the ‘indicative residential building sites’. I therefore agree with Mr McSweeney’s recommendation that a modified policy 4.2.5A.3 (above) be inserted after policy 4.2.5.4 in Section 4.2 Residential Objectives and Policies of the District Plan as follows:

4.2.5.5

Ensure that any subdivision or development, including vegetation clearance, earthworks, and construction, alteration and addition to buildings and structures on land identified in Appendix 26 to Chapter 5, is developed and designed in a way that will respect and integrate with the ecological values of the land.

Methods

- **Rules**
- **Conservation Strategy**
- **Capital Spaces – Open Space Strategy for Wellington City**
- **Biodiversity Action Plan**
- **Provision of information (Wellington City Council, Greater Wellington Regional Council)**

Other mechanisms

- **Greater Wellington Regional Council’s ‘Managing your bush block- A guide to looking after indigenous forest remnant in the Wellington region.’**
- **Greater Wellington’s ‘Restoring our Natural Heritage – A guide to Greater Wellington’s biodiversity assistance for private landowners.’**
- **‘Mind the stream – A guide to looking after urban and rural streams in the Wellington Region.’**”

The majority of the land identified in Appendix 26 to Chapter 5 is of high landscape and ecological value. Some further limited residential development of the land is permitted provided it maintains the ecological significance and integrity of the land. This will be achieved through limiting residential development to the ‘indicative residential development sites’ identified in Appendix 26. Discretionary activity (unrestricted) Rule 5.4.10. requires that applicants undertake a comprehensive assessment of environmental effects.

Vegetation clearance outside the ‘indicative residential development sites’ is not permitted. Some minor vegetation clearance and earthworks is permitted for maintenance purposes associated with existing houses or future houses associated with an ‘indicative residential building site’ (Rule 5.1.13).

The environmental result will be the greater protection of existing native vegetation on land identified in Appendix 26 with some tightly controlled residential development provided for on three of the five properties.

Draft Regional Policy Statement

The Draft Regional Policy Statement has no legal status until it is notified. Therefore I do not consider it necessary for the Plan Change to take it into account.

Recommendation

Accept in part submission 117 and further submission 6 insofar as they relate to aligning more closely DPC61 with Chapter 9 ‘Ecosystems’ of the Regional Policy Statement through the insertion of a new policy into the Residential Areas section of the District Plan in order to protect the ecological values of the five properties contained within Appendix 26 as proposed by DPC61.

Reject submissions 15, 33, 74, 96, 97, and 107, insofar as they consider the Plan Change is contrary to Part II of the Resource Management Act 1991, the objectives and policies in the District Plan, or the indigenous vegetation objective and policies in the Regional Policy Statement and the draft Regional Policy Statement.

5.9 RULES

Issues raised in submissions

- amend rule 5.1.13 to protect all of the land from bush clearance.
- Rule 5.1.13 is supported in principle.
- residential structure and residential building needs to be defined.
- there are no limits on how often vegetation can be removed.
- only 50m² of vegetation removal should be able to be removed as a controlled activity where it is not associated with developing the ‘indicative residential building site and accessways. In excess of this limit, all vegetation removal should be a prohibited activity.
- the rules are draconian and infringe private property rights.

Discussion

Vegetation clearance

Most submitters consider that there needs to be more control over vegetation clearance, some going as far as submitting that vegetation removal should be prohibited outside the indicative residential building sites and the identified accessways. As seen throughout this report and recommendation, the retention of as much indigenous vegetation as possible will best serve the

sustainable management functions of the Council under the Act and achieve the objectives of the District Plan.

Vegetation clearance will occur within the Plan Change land in two ways. The Plan Change proposes that a small amount of vegetation clearance is allowed as a Permitted Activity in association with existing residential buildings in order to facilitate minor alterations and/or additions to buildings and/or curtilages. The amount of this clearance has been set at a maximum of 100m². After originally submitting that the figure should be 50m², GWRC agreed at the hearing that on the basis of consistency with other District Plan rules 100m² was acceptable. It should be noted that this Permitted Activity provision would apply in the future to lawfully established dwellings as well as those that exist today.

Clarity of the Rules

In the Officer Report Mr McSweeney dealt with a number of matters raised by submitters in respect of the clarity of the intent of the Plan Change rules. He advised that:

- (a) The operative District Plan contains definitions for residential building and residential structure and these would apply to the plan change provisions. These definitions are as follows:

RESIDENTIAL BUILDING: means a building, containing part of a household unit (for example, a sleep-out), one household unit or more than one household unit; used or intended to be used for a residential activity.

RESIDENTIAL STRUCTURE: means a structure used or intended to be used in association with a residential activity.

- (b) For clarity, Rule 5.1.13.3 should read:

“5.1.13.3 Compliance with Rule 5.1.9 (earthworks), except that:

*- no earthworks shall extend beyond the area **already** developed and used for residential purposes as of 8 September 2007. This area shall include land occupied by the existing dwellings, driveways, paths, lawns and outdoor areas associated with the dwelling.”*

Note: Any minor building works such as the enclosing of an outdoor area associated with a dwelling is a permitted activity provided it complies with the bulk and location requirements under 5.1.3.

- (c) Condition 5.1.13.4 is intended to limit the amount of vegetation clearance to a maximum of 100m² from the date the plan change was notified (8 September 2007), and in order to improve clarity the rule should read:

*“5.1.13.4 The activity does not involve modification, damage, removal or destruction of indigenous vegetation totalling **a maximum of** ~~more than 100m²~~ **as of from** 8 September 2007. This shall not apply to:*

.....”

- (d) New rule 5.4.10 has been incorrectly described as 15.4.10 on page 1 (Guide to Rules table) and page 2 – the explanation for the permitted activity rule, and the reference should be corrected.

I recommend that all the above amendments be incorporated into the Plan Change Rules.

Recommendation

Accept submissions 15, 19, 78, 85, 106, 118 insofar as they support the retention of Rule 5.1.13 and associated conditions

Reject submissions 4, 8, 23, 26, 58, 73, 74, 77, 93, 97, 102, 117, insofar as they do not support all or parts of Rule 5.1.13

Reject submissions 4, 8, 10, 19, 21, 23, 26, 28, 40, 58, 61, 67, 77, 78, 83, 89, 93, 96, 97, 102, 105, 106, 107, 118 insofar as they do not support all or parts of Rule 5.4.10 and associated standards and terms, and assessment criteria (5.4.10.1 – 5.4.10.9).

Accept submission 10 insofar as it seeks further clarification on the intent and effect of condition 5.1.13.4.

Accept submission 117 insofar as it corrects minor errors, or provides further clarification on the intent and effect of 5.1.13, and 5.1.13.3, as set out above.

5.10 INDICATIVE RESIDENTIAL BUILDING SITES (IRBS)

Issues raised in submissions

- there should be more indicative residential building sites
- there should be no indicative residential building sites
- limits imposed on future residential development by the Plan Change are supported
- a size limit should be imposed on the ‘indicative residential building sites’.
- only one dwelling should be permitted per indicative residential building site
- future houses should have a height limit of 8m

I have discussed the issues surrounding the position, number, size and effect of the indicative residential building sites that are the subject of proposed Rule 5.1.13 in section 5.1.6 of this report and recommendation.

My conclusions and recommendations regarding these matters have been incorporated into the Plan Change as shown in Attachment 2.

Recommendation

Accept in part submissions 2, 3, 54, 65, 104, insofar as they support the placement of the ‘indicative residential building sites’, subject to any amendments resulting from submissions.

Reject submissions 3, 63, 73, 74, 75, 78, 85, 96, 97, 102, insofar as they do not support the number and positioning of the indicative residential dwellings sites and accessways.

5.11 EARTHWORKS AND EFFECTS ON URBAN STREAM

Issues raised in submissions

- protection of urban stream adjacent to DPC61 land
- requirement for an earthworks management plan

Discussion

Submission 117 (GWRC) originally requested the inclusion of a new standard & term under Discretionary Rule 5.4.10 to require applicants to prepare an earthworks management plan. This is due to the risk of silt run-off into these nearby streams and the impact this could have on the local flora and fauna. The proposed clause is as follows:

“ 5.4.10.3 For areas denoted ‘indicative residential building sites’ in Appendix 25, an Earthworks Management Plan shall be provided in respect of any proposed subdivision, use or building development. The plan shall detail sediment control, erosion protection and construction management. The information must be consistent with the principles and guidelines in the Greater Wellington Regional Council’s Small Earthworks, Erosion and Sediment Control for Small Sites (June 2006) and/or Greater Wellington’s Erosion Control and Sediment Control guidelines (reprinted 2003).”

In the Officer’s Report, Mr McSweeney recommended that the new standard & term be added, and GWRC supported this recommendation at the hearing. I concur with this recommendation.

Further, GWRC indicated that the permitted activity rule 5.1.13 is adequate in addressing their concerns about any future construction adjacent to the stream as it requires compliance with earthworks rule 5.1.9. GWRC is comfortable with effects of future subdivision, use or development being addressed at the resource consent stage – and therefore believes it unnecessary to include the urban stream network as part of the Plan Change.

Recommendation

Accept submission 117 insofar as it relates to the insertion of a new standard and term (5.4.10.3) as set out above.

5.12 CONCLUSIONS

1. The Plan Change is a response to the fact that the present Rural Area zoning is inappropriate given that the land in question is not used for rural purposes, is within the urban environs of the city, and has ecological and landscape values that contribute to the amenities of the Huntleigh Park area.
2. The Plan Change is entirely consistent with the functions of the Council as set out in section 31 of the Act, and will assist the Council to carry out those functions with greater effect than the present Rural zone provisions.

3. The area of indigenous vegetation within the Plan Change area are significant in the Wellington context and its significance is enhanced when its positive effect on the wider forest area that exists at Huntleigh Park is considered.
4. The Plan Change in the form now recommended most appropriate way of meeting the objectives of the District Plan because it achieves a balance between the need to protect indigenous vegetation with high ecological and landscape values that the community while enabling landowners to make reasonable provision for their social and economic wellbeing.
5. The Plan Change in the form now recommended meets the statutory requirements of the Resource Management Act 1991, and in particular, the additional residential development of the Plan Change land to the degree provided for by the rules meets the enabling provisions of section 5 while protecting the indigenous vegetation and habitat for future generations, safeguarding the life-supporting capacity of the ecosystem and avoiding and/or mitigating potential adverse effects on the environment.
6. The Plan Change in the form now recommended should be approved and incorporated into the District Plan.



Stuart Kinnear

Resource Management Commissioner

17 October 2008

ATTACHMENT 1 – List of submitters and further submitters

Submission No.	Submitter	Support/oppose
1	Alexander Starr	oppose
2	Jeanette Sertsou	support in part
3	Thomas Stahlberg	oppose
4	Paul Guiniven	oppose
5	Yao Liu	oppose
6	Andrew Bray	oppose
7	Amanda Caradus	oppose
8	Diana Fulton	oppose
9	John Fulton	oppose
10	Yvonne Legarth	oppose
11	Paul Jackman	oppose
12	W. J. Orsman	oppose
13	Susannah Sturzaker	oppose
14	Mrs K. J. Bergner	oppose
15	Stuart Cudby	Support in part
16	Rachel Palmer	oppose
17	Anthony & Mary Lines	oppose
18	Graeme Doherty	oppose
19	Janice Ellen Lowe	oppose
20	Jonathan Cobb & Emma Samson	oppose
21	Ngaio Progressive Association	support in part
22	Alan & Sheila Wills	oppose
23	John Moore	oppose
24	Gillian Gray	oppose
25	George Spencer	oppose
26	B W Clark	oppose
27	Lorraine Phillips	oppose
28	Sumitra & Tapas Sarkar	oppose
29	Frederick Easter	oppose
30	Dorothy Easter	oppose
31	Mr Simon Del Favero	oppose
32	Ron V. & M. J. Chapman	oppose
33	Colin Walker	oppose
34	Hilary Harper	oppose
35	New Zealand Business Roundtable	oppose
36	Ken & Rose Rigarlsford	oppose
37	Mark Tammett	oppose
38	Edith & Clive Robinson	oppose
39	Murray Harrison	oppose
40	Gregory & Jocelyn Knight	Support
41	Deborah Lynch	support
42	Paul Van Dinther	oppose
43	Daniel Aguilar	
44	Elijah Lineberry	oppose
45	Mark A Walsh	oppose
46	Fred Stevens	oppose
47	Lance Davey	oppose
48	Peter Kermode	oppose

49	G. K. Clark	oppose
50	Peter Smale	oppose
51	Peter Osborne	oppose
52	Paul Marketing Sevices	oppose
53	Lindsay Mitchell	oppose
54	Cathy Wood & Jeff Jewell	support in part
55	Patrick Ward	oppose
56	Mrs Mary Ward	oppose
57	Brian & Linda Dawkins	Support in part
58	Helen Fisher	oppose
59	John McGregor	oppose
60	Dr John Mosley	oppose
61	Bruce Shelly	oppose
62	Annie Brown	oppose
63	Jean Galloway	oppose
64	Julia Dudfield	oppose
65	Paula Carryer	support in part
66	Robert & Janet Thompson	oppose
67	Ricci Harris	oppose
68	Bernard Darnton	oppose
69	Craig Milmine	oppose
70	Friends of Tawa Bush Reserves	support
71	Brian Scantlebury	oppose
72	Peter Cresswell	oppose
73	Kirsten Jensen & Graeme Clark	oppose
74	Dianne Stanley	oppose
75	D. & L. Hingston, W. Stockwell	oppose
76	Faye Rodgers	oppose
77	Roberta Loretto	oppose
78	Forest and Bird	oppose
79	John & Pauline Swann	oppose
80	Terrence & Aileen Martin	support
81	Kathleen Mitchell & Beverley Evans	oppose
82	C.R. Wylie & S.J. Lungley	oppose
83	Trelissick Park Group	oppose
84	Roger & Julia Sparks	oppose
85	Gordon Purdie	oppose
86	Otari-Wilton's Bush Trust	oppose
87	Jane Hay	oppose
88	Anna Adams	oppose
89	Keith Rodgers	oppose
90	George & Jane Bellhouse	oppose
91	N. Campbell & M. Creamer	support in part
92	Diana Dallas	oppose
93	John While	oppose
94	Blair Morgan	oppose
95	Action for Environment Incorporated	oppose
96	D. Chester & S. Kubala	oppose
97	Gary & Peggy Taylor	oppose
98	Southern Environmental Association (Inc)	oppose
99	Kevin Kilkelly	oppose
100	Bruce Kelly	oppose
101	Mrs Kathleen Kelly	oppose

102	Christopher & Lorna McCallum	oppose
103	V.R., J.A.& B.A. Lewis	oppose
104	J. Douglas, J. Stanton & K. Curry	support
105	Donald Haw & Carolyn Hume	support in part
106	Katherine Ward	oppose
107	Jane Harding	oppose
108	Kim Oelofse & Jason Bull	oppose
109	Jerry Ball	oppose
110	Ann Ball	oppose
111	Kay & Raymond Hukins	oppose
112	David & Margaret Allison	
113	Denis Frizzell	oppose
114	John & Robyne Sowerby	oppose
115	Denise Brown	oppose
116	Allan Levett	oppose
117	Greater Wellington Regional Council	support in part
118	Rob Ogilvie & Michelle Lawrence	oppose
119	Wellington Botanical Society	oppose

Further Submission No.	Further Submitter	Support/oppose
1	Kirsten Jensen and Graeme Clarke	Oppose submissions 3, 96 & 97
2	Gary and Peggy Taylor	Support submission 96 in it's entirety, and support in part submissions 1, 24, 55, 56, 76, 77, 82, 84, 86, 95, 96, 99, 100, 103, 107, 111
3	David Chester and Suzanne Kabala	Support submission 97 in it's entirety, and support in part submissions 1, 24, 40, 55, 56, 75-79, 82-86, 89, 95, 97, 99, 100, 101, 103, 107, 109, 111.
4	Keith Rodgers	Oppose submissions 96 and 97 Support submissions 77, 85, 92, 105, 107, 117
5	Robert Loretto	Support submission 74, 85, 89, 92, 105, 107, 117
6	Gordon Purdie	Supported his own submission (#85)
7	David Hingston, Lydia Hingston and Wendy Stockwell	Support submissions 1, 4- 9, 11 - 14, 16, 17, 20, 22, 24, 31 - 34, 36, 38, 39, 40, 55, 56, 58, 59, 60, 62, 66, 75, 76, 77, 79, 81, 82, 87, 89, 92, 95, 98, 100, 101 - 103, 106, 107, 109, 110, 115, 119. Oppose submissions 35, 75, 96, 97, 104, 118,
8	Andrew J W Foster	Support all submissions which support the plan change and those submissions which seek to define the allowable footprint for new or existing submissions

		Oppose submissions that seek rejection of the plan change. Oppose those submissions that opposes\ the section32 analysis.
9	Ngaio Progressive Assoc	Oppose submissions 96, 97 Support in part submissions 2, 54, 77, 89, 105, 107.
10a, 10b	Christopher McCallum	Oppose submissions 96, 97. Support submissions 75, 79, 100, 101, 103, 107, 117
11a, 11b, 11c	Kathleen Kelly	Oppose submissions 96, 97. Support submissions 77, 85, 89, 107,
12a, 12b, 12c	Bruce Kelly	Oppose submissions 96, 97. Support submissions 85, 86, 89, 105, 107, 116, 117
13a, 13b	Catherine Wylie and Stephen Lungley	Oppose submissions 96, 97.

Plan Change Document

WELLINGTON CITY DISTRICT PLAN

PROPOSED DISTRICT PLAN CHANGE 61 – REZONING OF LAND OFF HUNTLEIGH PARK WAY, HEKE STREET & THATCHER CRESCENT (NGAIO) FROM RURAL AREA TO RESIDENTIAL (OUTER)

ALTERATIONS TO THE WELLINGTON CITY DISTRICT PLAN

Detailed below are the alterations to the Wellington City District Plan. Amendments have been made to the notified Plan Change arising from the consideration of submissions – those amendments are shown as **highlighted**. Text to be added is underlined and text to be deleted is ~~struck through~~.

A. ALTERATIONS TO VOLUME ONE, RESIDENTIAL AREA

Chapter 4, 'RESIDENTIAL AREAS'. Delete and insert new provisions by making the following amendments:

Policy 4.2.5.5

1. Insert a new policy 4.2.5.5 after existing policy 4.2.5.4 as follows:

4.2.5.5 Ensure that any subdivision or development, including vegetation clearance, earthworks, and construction, alteration and addition to buildings and structures on land identified in Appendix 26, is developed and designed in a way that will respect and integrate with the ecological and landscape values of the land.

METHODS

- Rules
- Conservation Strategy
- Capital Spaces – Open Space Strategy for Wellington City
- Biodiversity Action Plan
- Provision of information (Wellington City Council, Greater Wellington Regional Council)
- Other mechanisms
 - Greater Wellington Regional Council's Managing your bush block- A guide to looking after indigenous forest remnant in the Wellington region.
 - Greater Wellington's Restoring our Natural Heritage – A guide to Greater Wellington's biodiversity assistance for private landowners.
 - Mind the stream – A guide to looking after urban and rural streams in the Wellington Region."

The majority of the land identified in Appendix 26 is of high landscape and ecological value. Some further limited residential development of the land is permitted provided it maintains the ecological significance and integrity of the land. This will be achieved through limiting residential development to the 'indicative residential building sites' identified in Appendix 26. Discretionary activity (unrestricted) Rule 5.4.10 requires that applicants undertake a comprehensive assessment of environmental effects.

Vegetation clearance exceeding 250m² for each 'indicative residential building site' is not permitted. Some minor vegetation clearance and earthworks is permitted for maintenance purposes associated with existing houses or future houses associated with an 'indicative residential building site' (Rule 5.1.13).

The environmental result will be the greater protection of existing native vegetation on land identified in Appendix 26 with some tightly controlled residential development provided for on three of the five properties.

B. ALTERATIONS TO VOLUME ONE, RESIDENTIAL RULES

Chapter 5, 'RESIDENTIAL AREAS'. Delete and insert new provisions by making the following amendments:

Guide to Rules

- 2. **Insert** the following into the table after the last reference ('Buildings, structures and other utility activities'):

Huntleigh Park	Rule	P	C	DR	DU
Minor activities relating to existing residential uses subject to conditions	5.1.13	•			
New dwellings and indigenous vegetation clearance	5.4.10				•

Schedule of Appendices

- 3. **Insert** reference to new Appendix 26 into the Schedule of Appendices:

Number	Appendix
26	Huntleigh Park, Ngaio

5.1 – Permitted Activities

4. Insert a new permitted activity rule after Rule 5.1.12 as follows:

<p>5.1.13 Within the land shown in Appendix 25 (11A Huntleigh Park Way, 79 and 83 Heke Street, 19 and 21 Thatcher Crescent, Ngaio):</p> <p>Any existing use or activity, and any future residential use or activity approved pursuant to Rule 5.4.10 and Appendix 26, including the alteration of, and addition to existing buildings or structures, is a permitted activity, provided it complies with the following conditions:</p>	<p><i>Refer to Rule 5.4.10 for activities that require a resource consent on these properties</i></p>
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5.1.13.1 Compliance with Outer Residential Area rules 5.1.1, 5.1.2, 5.1.6, 5.1.8, and 5.1.10

5.1.13.2 Compliance with Outer Residential Area permitted activity conditions 5.1.3.2, 5.1.3.3, 5.1.3.4, 5.1.3.5, and 5.1.3.6.

5.1.13.3 Compliance with Rule 5.1.9 (Earthworks), except that no earthworks shall extend beyond the area **already** developed for residential purposes at the date of 8 September 2007. This 'area' shall include land occupied by the existing dwellings, driveways, paths, lawns, and outdoor areas associated with the dwelling.

Note:

Any minor building works such as the enclosing of an outdoor area associated with a dwelling is a permitted activity provided it complies with the bulk and location requirements under 5.1.3.

5.1.13.4 The activity does not involve modification, damage, removal or destruction of indigenous vegetation totalling **a maximum of more than** 100m² **as of from** 8 September 2007. This shall not apply to:

- wind thrown trees, standing dead trees that have died as a result of natural causes, or vegetation that has become dangerous to human life or property as a result of natural causes.
- The pruning around existing residential buildings or residential structures.

This rule provides for residential additions and earthworks, associated with the existing houses. Some minor vegetation trimming and clearance is permitted to enable normal residential maintenance activities to be undertaken without then need for a resource consent. More intensive development and subdivision on this land are controlled by Rule 5.4.10.

5.4 - Discretionary Activities (Unrestricted)

5. Insert a new rule after Rule 5.4.9 as follows:

5.4.10 Within the land shown in Appendix 26 (11A Huntleigh Park Way, 79 and 83 Heke Street, 19 and 21 Thatcher Crescent, Ngaio):

Any subdivision, use or activity, including the construction, alteration of, and addition to buildings or structures, that is not a permitted activity, is a Discretionary Activity (Unrestricted).

Appendix 26 shows where some limited residential development can occur on this land

Standards and Terms

5.4.10.1 The **erection location** of new residential buildings and residential structures and the construction of new driveways shall be **restricted to in accordance with** the 'indicative residential building sites' and 'indicative driveways' identified in Appendix 26. **Each building site (excluding driveways) shall not exceed 250m² in area.**

5.4.10.2 No more than **two one household units** shall be permitted on each of the 'indicative residential building sites' as identified in Appendix 26.

5.4.10.3 For areas denoted 'indicative residential building sites' in Appendix 26, an Earthworks Management Plan shall be provided in respect of any proposed subdivision, use or building development. The plan shall detail sediment control, erosion protection and construction management. The information must be consistent with the principles and guidelines in the Greater Wellington Regional Council's Small Earthworks, Erosion and Sediment Control for Small Sites (June 2006) and/or Greater Wellington's Erosion Control and Sediment Control guidelines (reprinted 2003).

Note: For the avoidance of doubt, residential dwellings, residential structures and indigenous vegetation clearance on land not associated with the 'indicative residential building sites' and non-residential activities are not provided for by this rule (and will be assessed as a non-complying activity).

Assessment Criteria

In determining whether to grant consent and what conditions, if any, to impose, Council will have regard to the following criteria:

5.4.10.4 The extent to which the development minimises the amount of vegetation removal and earthworks beyond the 'indicative residential building sites'. This should involve consideration of alternative access, earthwork and vegetation clearance options where relevant.

5.4.10.5 The environmental effects caused during the construction phase

5.4.10.6 The proposed remediation measures employed during and after completion of the works and the timeframe for giving effect to these.

5.4.10.7 Whether traffic, parking and site access issues are adequately addressed through the design of the proposal.

5.4.10.8 Whether proposed allotments and subsequent development within those allotments are capable of accommodating permitted activities in general compliance with the relevant District Plan rules.

5.4.10.9 The extent of compliance with the relevant parts of the Code of Practice for Land Development.

5.4.10.10 The requirements of section 106 of the Act.

Explanation

These site-specific provisions reflect a number of important resource management issues associated with the land.

The land is contiguous with the Huntleigh Park Conservation Site (5D) Site. Assessments undertaken as part of this plan change confirm that the majority of the land is ecologically significant and that as much of the indigenous vegetation on the land should be protected as possible from inappropriate use and development.

There are some opportunities for further residential development provided it is undertaken in a manner which maintains the ecological integrity of the land. These areas have been identified on a map contained in Appendix 26.

Rule 5.4.10 allows no more than one household unit per 'indicative residential building site'. Careful consideration will be given to the impact of earthworks and vegetation clearance from residential development and associated driveways.

Vegetation clearance and development outside of the 'indicative residential building sites' and 'indicative driveways' is discouraged and will be assessed as a non-complying activity.

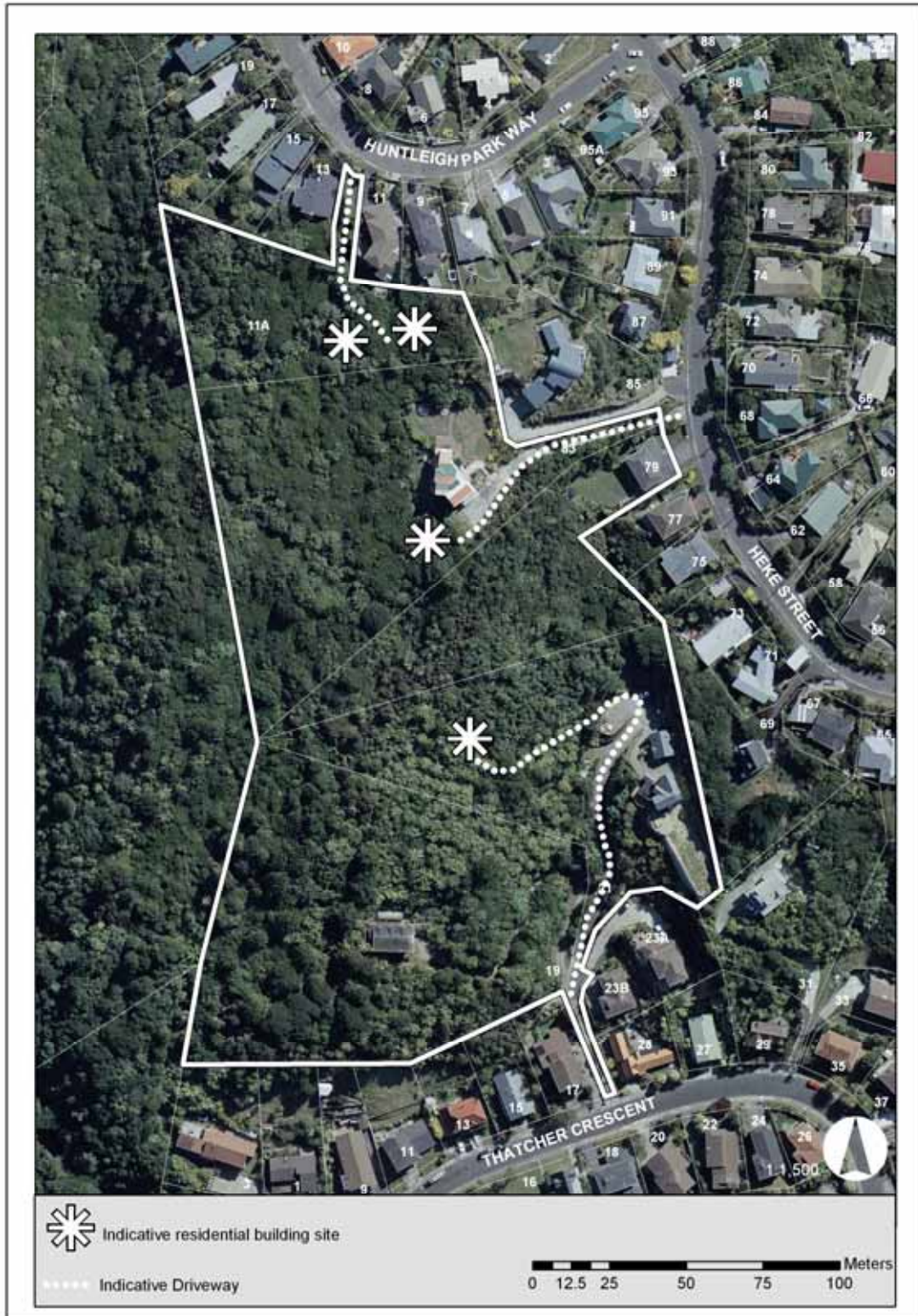
(note the Appendix 26 map attached is to be included at the end of Chapter 5)

Chapter 5 Appendix

6. **Insert** the following map after the existing Appendix 25 map to Chapter 5

(see next page)

Appendix 26. Land off Huntleigh Park Way, Heke Street, and Thatcher Crescent, Ngaio (subject to rules 5.1.13 and 5.4.10).



C. ALTERATIONS TO VOLUME THREE, MAPS

DISTRICT PLAN ZONING MAPS 20 & 21

7. Amend planning maps 20 & 21 in accordance with the map below:



Wellington City District Plan - Plan Change 61

Supplementary Section 32 Report

Evaluation following Hearing of Submissions.

1. Statutory Context

Under Section 32(3) an evaluation must examine:

- (a) The extent to which each objective is the most appropriate way to achieve the purpose of the Resource Management Act 1991 (the Act) (i.e. promotion of sustainable management); and
- (b) Whether the policies, rules and other methods are the most appropriate for achieving the objective(s).

In doing so, the evaluation is required to “have regard to” efficiency and effectiveness and under Section 32 (4) “must take into account” the benefits and costs of policies, rules or other methods and the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the policies, rules or other methods.

Changes to section 32 in 2003¹ has shifted the focus of the evaluation required from one of being satisfied as to “necessity” to an examination of the most appropriate way in which each objective achieves the purpose of the Act and, having regard to their efficiency and effectiveness, whether policies and rules are the most appropriate for achieving the objectives.

One of the first cases to address these changes was *Eldamos Investments Limited v Gisborne District Council* (W047-05). To reflect the changes in section 32, but also the practical reality that the objectives of a District Plan can not be assumed to meet the requirements the Act, the approach (or framework) now taken by the Court (as set out in *Eldamos*) is as follows:

An objective in a district plan is to be evaluated by the extent to which:

- (1) it is the most appropriate way to achieve the purpose of the Act (section 32(3)(a)); and
- (2) it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (section 72); and
- (3) it is in accordance with the provisions of Part 2 (section 74(1)).

¹ Resource Management Amendment Act 2003

A policy, rule, or other method in a district plan is to be evaluated by whether:

- (1) It is the most appropriate way to achieve the objectives of the plan (section 32(3)(b)); and
- (2) It assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (section 72); and
- (3) It is in accordance with the provisions of Part 2 (section 74(1)); and
- (4) (If a rule) it achieves the objectives and policies of the plan (section 76(1)(b)).

2. Objectives

In the case of Plan Change 61, no new objectives are proposed, therefore the need for the evaluation in (a) above does not arise.

The District Plan has an identical objective for both the rural and residential areas as follows;

“To maintain and enhance natural features (including landscapes and ecosystems) that contribute to Wellington’s natural environment.”
(Rural Objective 14.2.5 and Residential Objective 4.2.5)

The Plan Change therefore has no effect on this Objective, which clearly assists the Council with its functions in order to achieve the purpose of the Act, and is in accordance with the provisions of Part 2.

3. Recommended Policy 4.2.5.5.

An existing Residential Area policy relevant to the above objective is as follows:

*“Policy 4.2.5.4
Encourage retention of existing vegetation, especially established trees and existing native vegetation.”*

A new policy relevant to the above objective is recommended to be included for the land that is subject to the Plan Change as follows:

*“Policy 4.2.5.5
Ensure that any subdivision or development, including vegetation clearance, earthworks, and construction, alteration and addition to buildings and structures on land identified in Appendix 26 to Chapter 5, is developed and designed in a way that will respect and integrate with the ecological and landscape values of the land.”*

Evaluation

The options to be evaluated are whether to have the recommended additional policy or to have no additional policy.

In general terms, a site specific policy as recommended has more direction than the existing Policy 4.2.5.4. By containing a greater degree of specificity than the existing policy the proposed additional policy will be more effective and efficient in the manner in which it achieves Objective 4.2.5 and other related objectives of the District Plan than having no such additional policy.

The recommended policy will be more effective in achieving Objective 4.2.5 than having no specific policy because it covers the broad range of activities that can occur on the land and links those activities to the protection of the ecological and landscape values of the land.

The recommended policy will be more efficient in achieving Objective 4.2.5 than having no specific policy because it gives more certainty to resource users and the community as to the manner in which the Objective is to be achieved.

There will be environmental benefits in having the recommended policy rather than no policy because of the increased specificity given to the relationship between the physical development of the Plan Change land and its ecological and landscape values.

There will be environmental costs associated with the loss of significant vegetation and habitat if the recommended policy is not adopted and reliance is placed on a more general and less effective policy such as Policy 4.2.5.4.

There will be economic costs on resource users associated with the recommended policy as a result of its specificity and potentially increased intervention in any development of the Plan Change land.

The social costs and or benefits of adopting the recommended policy as opposed to reliance on a more general and less effective policy will relate to the community perception of the balance between the provision of additional housing stock and the protection of ecological and landscape values. In this respect, submissions from land owners both within and outside the Plan Change land also referred to the significant ecological and amenity values of the vegetation and habitat, and that it should be protected from development. On balance, housing stock can be developed on land that does not have the same ecological and landscape values as the Plan Change land, whereas these values will be reduced if development is not managed.

The risk of not acting on the basis of uncertainty as to the quality and/or significance of the values that are sought to be protected by the recommended

policy are moderate given that reliance on existing Residential Area Objectives and Policies alone may not provide the guidance required when resource consent applications for development are considered.

Conclusions as to Recommended Policy

1. Having regard to the above, the recommended policy is the most appropriate way to achieve the objectives of the plan.
2. By requiring that physical development of the land “*will respect and integrate with the ecological values of the land*”, the policy is directly related to the Council’s functions under section 31 of the Act.
3. The proposed policy is also in accordance with the provisions of Part 2 of the Act, specifically section 6(c) and sections 7(c), 7(d), 7(f) and 7(g).

4. Recommended Rules

In summary the recommended rules provide for:

As a Permitted Activity - a small amount of vegetation clearance around existing dwellings to cater for ongoing management of residential activities associated with those dwellings, including additions and alterations.

As a Discretionary Activity (Unrestricted) - any subdivision, use or activity, including the construction, alteration of, and addition to buildings or structures, that is not a permitted activity, subject to the following standards and assessment criteria:

Standards

- The location of new residential buildings and residential structures and the construction of new driveways shall be in accordance with the ‘indicative residential building sites’ and ‘indicative driveways’ identified in Appendix 26. Each building site (excluding driveways) shall not exceed 250m².
- No more than one household unit shall be permitted on each of the ‘indicative residential building sites’ as identified.
- An Earthworks Management Plan shall be provided in respect of any proposed subdivision, use or building development.

Assessment Criteria

- The extent to which the development minimises the amount of vegetation removal and earthworks beyond the indicative residential building sites. This should involve consideration of alternative access, earthwork and vegetation clearance options where relevant.
- The environmental effects caused during the construction phase
- The proposed remediation measures employed during and after completion of the works and the timeframe for giving effect to these.
- Whether traffic, parking and site access issues are adequately addressed through the design of the proposal.
- Whether proposed allotments and subsequent development within those allotments are capable of accommodating permitted activities in general compliance with the relevant District Plan rules.
- The extent of compliance with the relevant parts of the Code of Practice for Land Development.
- The requirements of section 106 of the Act.

5. Rule Evaluation

Appropriateness

The appropriateness of the Recommended Rules is evaluated against:

- the existing Rural zone provisions where only one dwelling per property is permitted; and
- the more intensive development sought to be incorporated into the Plan Change by submitters 96 and 97.

By way of comparative analysis, as set out in Table 1 attached, the recommended Rules are the most appropriate way of meeting the objectives of the District Plan because they strike an appropriate balance between the residential capacity of the Plan Change land and the need to protect indigenous vegetation and habitat with high ecological and landscape values that the community regards as significant.

This is more appropriate than retaining the existing Rural Area rules that have no indigenous vegetation removal controls and allow a range of rural activities without resource consent that could irreversibly damage and/or destroy the ecological and landscape values of the land. The existing Rural area rules therefore do not achieve the Rural Area Objective 14.2.5 - *“To maintain and enhance natural features (including landscapes and ecosystems) that contribute to Wellington's natural environment.”*

The Recommended Rules are also more appropriate than the Rules for the Plan Change proposed by submissions 96 and 97 which request a more intensive level of allowable residential development within 11A Huntleigh Park Way and 83 Heke Street which will result in the loss of a greater amount of indigenous vegetation, particularly vegetation that has been identified as “highly ecologically significant”. The resultant loss of vegetation and ecological and landscape values is less likely to achieve Objective 4.2.5 - *“To maintain and enhance natural features (including landscapes and ecosystems) that contribute to Wellington's natural environment”*- than the recommended Rules.

Council's Functions

The Recommended Rules will assist the Council to achieve the integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district pursuant to its functions under section 31. In addition they will control the adverse effects of residential use and development of the land and assist with the maintenance of indigenous biological diversity.

The control of subdivision is one method that can be used to carry out the Council's functions. Other methods include District Plan Rules.

Part 2 of the Resource Management Act 1991

The Recommended Rules are in accordance with Part 2 of the Act. The Plan Change as a whole, and the Recommended Rules in particular, promote sustainable management of the natural resource of ecologically significant vegetation and the landscape in which it is set by managing the development of the land.

Additional residential development of the Plan Change land to the degree provided for by the rules meets the enabling provisions of section 5 while protecting the indigenous vegetation and habitat for future generations, safeguarding the life-supporting capacity of the ecosystem and avoiding and/or mitigating potential adverse effects on the environment.

The protection of significant indigenous vegetation and habitat is recognised and provided for in accordance with section 6(c) and particular regard has been had to the matters set out in section 7(b), (c), (d), (f), and (g).

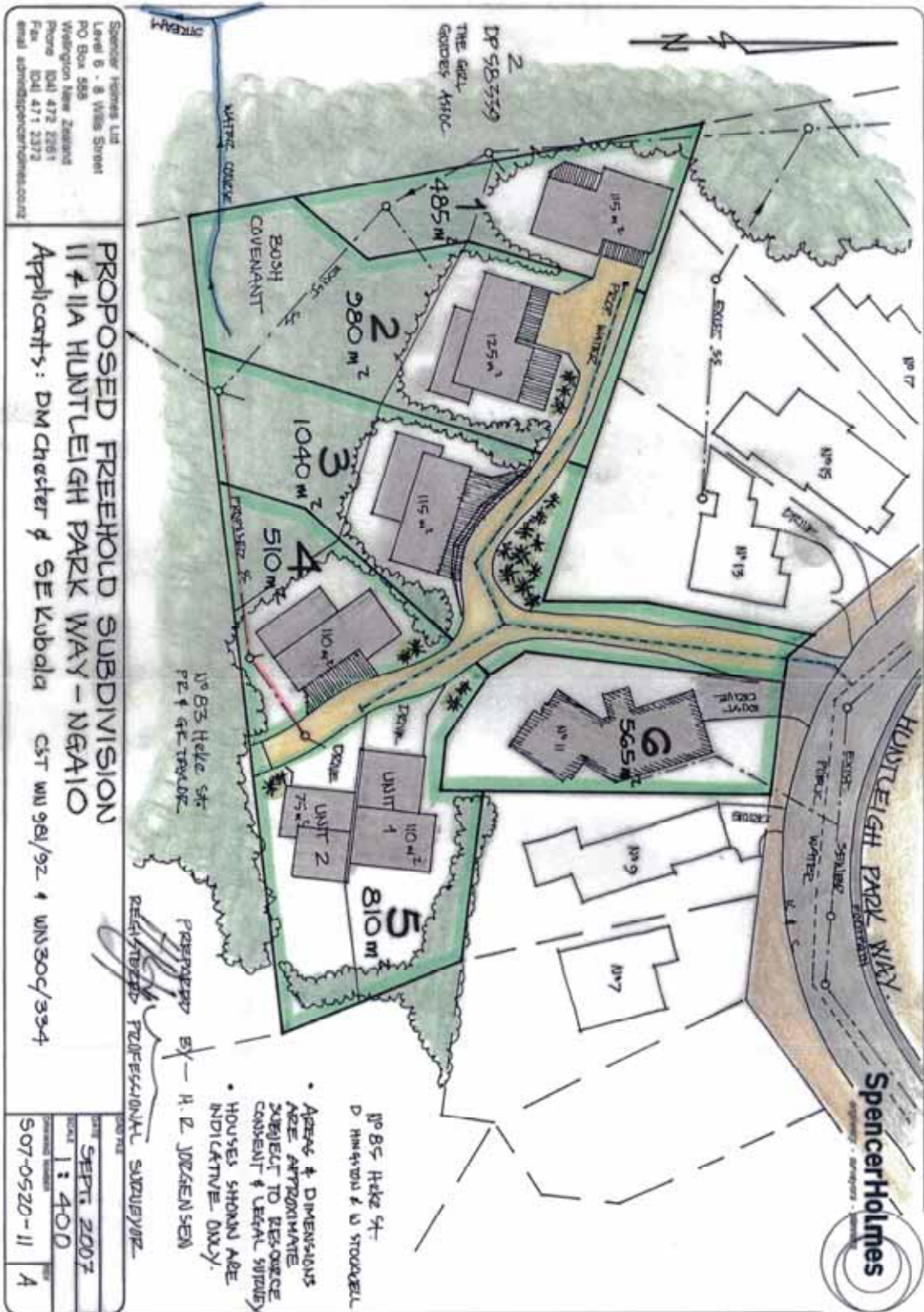
Plan Change 61 – Supplementary Section 32 Report - Table 1

	<i>Existing Rural Zone</i>	<i>Recommended Rules</i>	<i>Submissions 96 and 97</i>
Environmental costs	Has the potential to result in high environmental costs through loss of significant vegetation and habitat and through significant adverse effects of permitted rural activities on the ecological and landscape values of the land	Environmental costs are low to moderate as a result of the limitations on residential capacity, the identification of building sites in the less ecologically significant vegetation and the limitations on vegetation clearance. Some environmental effects beyond individual sites.	Environmental costs are moderate to high as a result of higher residential capacity and the identification of building sites in highly ecologically significant vegetation and habitat and the potential for more vegetation to be cleared. Potential adverse effects on Huntleigh Park Forest. Greater environment effects beyond individual sites due to development densities.
Environmental benefits	Provides clarity that no further residential development is permitted on all but one lot in the Plan Change area	Highly ecologically significant indigenous vegetation areas are protected from development; limitations are placed on amount of indigenous vegetation that can be removed; environment will benefit from silt and erosion control through earthworks management plan.	Certainty regarding vesting in Council or covenanting of areas of indigenous vegetation and habitat.
Economic costs	Compliance costs for land owners of making applications for resource consent due to inappropriate zoning	Opportunity costs for land owners through limitations on residential development. Compliance costs in obtaining and processing information and applying for resource consents for discretionary activities. Development costs per dwelling likely to be high. Costs for third parties in participating in resource consent process.	Opportunity costs for some land owners through limitations on residential development. Compliance costs in obtaining and processing information and applying for resource consents for discretionary activities. Costs for third parties in participating in resource consent process.
Economic benefits	Allows owner of vacant lot to develop one dwelling and carry out a range of rural activities	Allows owners of most lots to develop and capitalize on an additional residential site. Allows owner of vacant site to develop and capitalize on two residential sites. Allows all owners to carry out minor building additions and vegetation clearance without the need to obtain a resource consent.	Allows owners of most lots to develop and capitalize on an additional residential site. Allows owner of vacant site to develop and capitalize on multi-unit residential development. Allows owner of 83 Heke Street to develop and capitalize on two additional residential sites. Allows most owners to carry out minor building additions and vegetation clearance without the need to obtain a resource consent.

Social costs	<p>Potential destruction of areas of indigenous vegetation and habitat with ecological and landscape qualities valued by the community.</p> <p>Adverse effects of inappropriate land use zoning on nearby residential neighbourhood.</p>	<p>Some loss of less ecologically significant vegetation and habitat, and landscape qualities valued by community. Housing density increased contrary to wishes of majority of community. No permanent protection of all indigenous vegetation.</p>	<p>Loss of highly ecologically significant vegetation and habitat and loss of less ecologically significant vegetation and habitat, and landscape qualities valued by community. Housing density significantly increased contrary to wishes of majority of community. No permanent protection of all indigenous vegetation.</p>
Social benefits	None	<p>Elimination of inappropriate rural land use zone from residential area. Additional housing within a mature community.</p>	<p>Elimination of inappropriate rural land use zone from residential area. Additional housing within a mature community. Some permanent protection of indigenous vegetation.</p>
Efficiency	<p>The rules are clear that only one dwelling per lot is permitted, but not efficient in regulating the position of dwellings and buildings relevant to significant ecological and landscape features.</p>	<p>The residential capacity assessment and identification of future building sites and driveways provides a clear indication of whether any proposed development is considered acceptable in principle. Resource consent process allows detailed consideration of each development application.</p>	<p>The residential capacity assessment and identification of future building sites and driveways and detailed development plans for some properties provide a clear indication of whether any proposed development is considered acceptable in principle. Resource consent process allows detailed consideration of each development application.</p>
Effectiveness	<p>The rules are effective in limiting further residential development but ineffective in achieving the objectives of the District Plan in respect of ecological and landscape values because there are no constraints on the removal of indigenous vegetation. Buildings and other physical development can occur without regard to the objective to maintain and enhance natural features (including landscapes and ecosystems) that contribute to Wellington's natural environment.</p>	<p>The rules are effective in limiting further residential development and preventing large scale clearance of indigenous vegetation and establishing a resource consent discretionary process to evaluate, control, or refuse development applications based on their merits and whether or not they achieve the objectives and policies of the District Plan. Rules are therefore effective in ensuring that development that does not enhance the natural features (including landscapes and ecosystems) that contribute to Wellington's natural environment does not occur..</p>	<p>The rules are not effective in limiting the amount of further residential development and preventing large scale clearance of indigenous vegetation. Rules are therefore ineffective in ensuring that the only development that may occur is development that enhances the natural features (including landscapes and ecosystems) that contribute to Wellington's natural environment.</p>
Risk of acting or not acting	<p>There is ample information provided by a number of experts about the subject matter of the proposed policies and rules, which relates to the protection of the indigenous vegetation and habitat of the Plan Change land. There is a greater risk of not implementing the Plan Change in a manner that provides reasonable protection to these ecological and landscape values than there is in implementing it in a manner that endangers a large portion of the vegetation. Once the vegetation has been cleared it will take generations to grow again to the same quality and value.</p>		

ATTACHMENT 4 – Proposed development plans: Submissions 96 & 97

Residential development proposal for 11A Huntleigh Park Way, Ngāio



Residential development proposal for 83 Heke Street, Ngāio

