

IN THE MATTER of the Resource Management Act 1991 ('the Act')
AND
IN THE MATTER of an appeal against a decision of Wellington City Council in
respect of proposed Plan Change 77 to Wellington District Plan
under Clause 14(1) of First Schedule to the Act
BETWEEN **CRESWICK VALLEY RESIDENTS ASSOCIATION INC**
Appellant
AND **WELLINGTON CITY COUNCIL**
Respondent

NOTICE OF APPEAL

ON DECISION ON PROPOSED DISTRICT PLAN CHANGE 77

Date: 26/02/2014

Form 7
Notice of appeal to Environment Court against decision on proposed plan change
Clause 14(1) of Schedule 1, Resource Management Act 1991

TO: The Registrar
Environment Court
PO Box 5027
Wellington

Name of Appellant and details of decision

- 1 Creswick Valley Resident's Association Incorporated.
- 2 This appeal is against a decision of Wellington City Council on proposed Plan Change 77 to the Wellington District Plan (Plan Change 77).
- 3 The purpose of Plan Change 77 is to rezone land at 55-85 Curtis Street, Karori, (the subject land), comprising 1.09 ha located in a valley between Karori and Northland, from part Open Space B zone and part Outer Residential Area zone to Curtis Street Business Area zone, and to amend various District Plan provisions relating to the subject land.
- 4 The Appellant made a submission on that plan change.

Trade Competition

- 5 The Appellant is not a trade competitor for the purposes of section 308D of the Resource management Act.

Date of receipt of decision

- 6 The Appellant received notice of the decision on or about 14 January 2014.

Name of decision maker

- 7 The decision was made by Wellington City Council (the Council) following recommendations received from Commissioners appointed by the Council.

Decision being appealed

- 8 The Appellant appeals against all parts of the Council decision on Plan Change 77 including but not limited to:
 - 8.1 Changes made to the Wellington City District Plan Chapter 3.10 in definitions for the purpose of the Curtis Street Business Area.
 - 8.2 Changes made to Map 11 to show a Curtis Street Business Area.

- 8.3 Proposed new Chapter 35 providing for a Curtis Street Business Area.
- 8.4 Proposed new Chapter 36 providing the Curtis Street Business Area rules and standards including Appendix 1 – Building and Frontage Controls, Curtis Street Business Area.

Reasons for the appeal

9 The reasons for the appeal include, but are not limited to, the following:

9.1 The decision:

- (a) Will affect significantly the ability of people and communities to provide for their social, economic and cultural well-being;
- (b) Does not promote the efficient use and development of natural and physical resources; and
- (c) Does not promote the reasonably foreseeable needs of future generations.

9.2 The Commissioners and Council have erred:

- (a) In concluding the landowner had a legitimate expectation of more than reasonable use of the subject land, requiring a change of zoning to permit a use not available under the prevailing zoning;
- (b) In determining the subject land should be changed to a Business Area zoning before the present zoning was shown to be inappropriate to the physical attributes of the land;
- (c) In having undue regard for the ownership of the subject land and the owner's preferred use of the land;
- (d) In concluding that the land is not attractive for residential development and asserting that the Outer Residential zoning is inappropriate –
 - (i) Given that subsequent to the hearing and contrary to the submission of the landowner a resource consent application for residential development of the subject land was lodged;
- (e) In having insufficient regard to Environment Court caselaw in asserting that there is a legal impediment to private land being zoned for public purposes and that Open Space zoning is inappropriate as the subject land is privately owned;

- (f) In finding that the subject land is not of such high natural character for Open Space B zoning to be appropriate -
 - (i) Where the District Plan defines the Open Space B zone's characteristics as "minimal structures, largely undeveloped areas and open expanses of land" and 'natural' is defined as "an un-built or natural state"; and
 - (ii) Where these definitions accurately describe the physical attributes of that part of the subject land zoned Open Space B;
- (g) In applying a test of natural heritage or ecological significance that is more appropriate to Conservation Sites, rather than to Open Space B zoning, in coming to the erroneous opinion that the land zoned Open Space B is not of such high 'natural environment' quality to justify retention of this zoning;
- (h) In having insufficient regard to the achievement of integrated management and protection of natural resources -
 - (i) In proposing zone changes that do not recognise the physical boundaries of the western escarpment and provide protection for the ecological values present there, but instead sever the toe of the escarpment while leaving the remainder still largely unprotected;
 - (ii) Where the subject land was found to lie within and include part of a corridor containing regionally significant ecological values concentrated along the western escarpment; and
 - (iii) Where the western escarpment was found to rise from within the subject land, but to lie largely in adjacent road reserve for a road closed to traffic in or about 1988;
- (i) In concluding that it was outside the jurisdiction of the Commissioners to recommend that the appropriate zoning should be either Conservation Site or Open Space B to provide protection to the western escarpment (including that part within the subject land);
- (j) In concluding that a case for commercial zoning of the subject land had been established, due to the following errors -
 - (i) In accepting that there is a lack of land appropriately zoned for commercial and retail activities in Karori and the western suburbs generally;

- (ii) In having insufficient regard for the outcome of the review of the Suburban Centres chapters of the District Plan and resultant Plan Change 73, then subject to appeal, which rezoned land in the western suburbs to provide for greater commercial activity;
- (iii) In accepting that retail "leakage" from Karori into other centres within the City required containment and that such containment met the purpose of the Act;
- (iv) In having insufficient regard for Council's Centres Policy 2008 in accepting the creation of a new suburban centre as a means of containing supposed retail "leakage" from Karori;
- (v) In failing to provide more clarity on the nature and scale of the intended use of the subject land -
 - (A) Given that the Outer Residential zoning permits non-residential activities that are appropriate in scale, intensity and design to maintain character and not detract from amenity values; and
 - (B) Having heard submissions that the intended use of the subject land was for "a large commercial/retail building";
- (vi) In having insufficient regard for the scale of neighbourhood centres in Karori, Northland, Kelburn and Aro Valley relative to the area of the subject land in concluding that the scale of the potential retail activity on this land is unlikely to have adverse effects on existing suburban centres;
- (k) In concluding that the Council's Outer Green Belt Management Plan 2004 does not refer to or show any future initiative on the subject land -
 - (i) Where maps showing the current (2004) form and future initiatives for the sector include the subject land; and
 - (ii) Where the 'current form' map correctly shows the subject land as not being Council controlled open space; and
 - (iii) Where the map of 'future initiatives' shows the subject land being included in Council controlled open space;
- (l) In having insufficient regard for Council's Biodiversity Action Plan 2007 and expert opinion in finding it unlikely that development of the land in question would result in significant adverse effects, including cumulative effects, on

the water quality of Kaiwharawhara Stream, when the Commissioners received expert opinion that:

- (i) "Should the Curtis Street site be developed, with large areas of impermeable surfaces discharging to the WCC stormwater system, this will adversely affect downstream reaches of the Kaiwharawhara Stream. Although such effects are small, on an individual basis, the cumulative effects ... are significant." ;
- (m) In presenting a map as the Operative District Plan Map which differs from the published map of the Operative District Plan, in showing Whitehead Road as gazetted legal road, whereas Map 11 of the Operative District Plan shows the land carrying Whitehead Road to be zoned as Open Space B, not gazetted legal road; and
- (n) In accepting that the development of the subject land as enabled by the rezoning proposed by Plan Change 77 will not result in a significant diminution of residential character and reduction of amenity and ecological values.

9.3 In summary, the decision to adopt Plan Change 77:

- (a) Is not the most effective way of achieving the objectives and policies of the District Plan;
- (b) Is not the most appropriate outcome under s32 of the Act, taking into account relative costs, benefits and risks of the available options;
- (c) Will not achieve integrated management of natural and physical resources of the subject land and the locality; and
- (d) Fails to achieve the sustainable management purpose of the Act.

Relief sought

10 The Appellant seeks the following relief:

- (a) That Plan Change 77 is rejected in its entirety and the former zoning of the subject land be re-instated.

10.2 In the alternative and without prejudice to the relief requested at clause 10(a), the appellant seeks:

- (a) That Council respond to the Commissioners' observations and provide for appropriate zoning and protection of the regionally significant ecological

values contained within the western escarpment including the part that is within the subject land –

- (i) By changing the zoning of 58 Chaytor Street from Outer Residential zone to Open Space B zone, as indicated as a future initiative within the Outer Green Belt Management Plan May 2004;
- (ii) By changing the zoning of 60 Chaytor Street from Outer Residential zone to Open Space B zone, as indicated as a future initiative within the Outer Green Belt Management Plan May 2004;
- (iii) By stopping Old Karori Road as legal road by gazette notice –
 - (A) From the point at its northern end where Old Karori Road, Whitehead Road and the subject land meet and extending the line of the northern boundary of the subject land from that point to the fence marking the eastern edge of Paisley Terrace; and
 - (B) Following the eastern edge of Paisley Terrace to the boundary of 31 Paisley Terrace; and
 - (C) Following the boundary of 31 Paisley Terrace on Old Karori Road to the boundary of 64 Chaytor Street; and
 - (D) Following the boundary of 64 Chaytor Street on Old Karori Road to the boundary of 62 Chaytor Street; and
 - (E) Following the boundary of 62 Chaytor Street on Old Karori Road to the boundary of 60 Chaytor Street; and
 - (F) Following the boundary of 60 Chaytor Street on Old Karori Road to the boundary of 43 Old Karori Road; and
 - (G) From the point where 60 Chaytor Street and 43 Old Karori Road meet across Old Karori Road to the point where Part Lot 1 DP1746 and Part Lot 2 DP1746 meet on Old Karori Road; and
 - (H) Following the boundary of the subject land to the point where the subject land, Old Karori Road and Whitehead Road meet;
- (iv) By zoning the area so stopped as a Conservation Site;

- (v) By zoning the vegetated lower slope of the western escarpment within the subject land from the boundary of Old Karori Road to the toe of the escarpment as Open Space B zone; and
 - (vi) By zoning as Open Space B the vegetated slope and open grass area forming the northern part of the subject land;
- (b) That Plan Change 77 be approved subject to the relief sought at 10.2(a) and to the following changes –
- (i) 36.3 being amended by deletion of 36.3(b), 36.3(c), 36.3(d), 36.3(e) and 36.3(f);
 - (ii) 36.5 being amended by insertion of new:
 - 36.5(b) Retail activities exceeding 500m² gross floor area
 - 36.5(c) Commercial activities exceeding 2500m² gross floor area
 - 36.5(d) Integrated retail activities
 - 36.5(e) Supermarkets
 - 36.5(f) Subdivision not in accordance with a concept plan approved under Rule 36.2(b)
 - 36.5(g) Vegetation removal: the removal of trees from the Vegetated Bank on the Curtis Street frontage.
 - (iii) 36.5 being further amended by the present 36.5(b) and 36.5(c) consequently becoming 36.5(g) and 36.5(h) and by deletion of the present 36.5(d) and 36.5(e);
 - (iv) 36.6(b)ii being amended as follows:

The maximum footprint of any ~~new~~ building, ~~alteration~~, ~~addition~~ or structure in the Curtis Street Business Area is 500m² gross floor area.
 - (v) 36.6(c)iii being amended as follows, so that signs attached to buildings:

Must not be more than 5m² in area ~~for buildings with a footprint not exceeding 500m² and 10m² for buildings with a footprint exceeding 500m².~~
 - (vi) 36.6(f)iii being deleted;

- (vii) 36.6(m)xlii being amended by adding:

No vehicle access shall be from Curtis Street or Whitehead Road.

- (viii) 36.7(b) being amended by deletion of:

~~(with the exception of the north-east corner of the site)~~ [third bullet point], and

~~within the 5m building setback depicted on the western boundary on the 'Building and Frontage Controls Plan (refer Appendix 1) that effectively buffers the escarpment vegetation on Old Karori Road~~ [twelfth bullet point];

- (ix) 36.7(d) being deleted;

- (x) 36.7(f) being amended as follows:

~~Enable a vegetated buffer to be grown within the 5m building setback on the western boundary with Old Karori Road~~ [seventh bullet point], and

Do not compromise any native trees on the western escarpment including existing trees within the 5m building setback. [eighth bullet point]; and

- (xi) Appendix 1 being deleted;

10.3 Such other consequential, additional and other amendments to Plan Change 77 as are considered appropriate or necessary by the Court to give effect to this appeal and satisfactorily address the concerns of the Appellant.

10.4 Costs of and incidental to this appeal.

Mediation

11 Pursuant to section 268 of the Act the Appellant considers that the topics of this appeal are amenable to mediation and seeks the assistance of an Environment Court appointed Commissioner in that regard.

Attached documents

12 The following documents are attached to this notice of appeal:

12.1 A copy of the submission made by the Appellant.

12.2 The Commissioners' Report and Recommendations.

- 12.3 A copy of the relevant decision.
- 12.4 A list of names and addresses of persons to be served with a copy of this notice.
- 13 Recipients of this notice may obtain a copy of the above documents, on request, from the Appellant.

DATED at Wellington this 25th day of February 2014

PS Barker

Paul Barker
Secretary
Creswick Valley Resident's Association

ADDRESS FOR SERVICE OF THE APPELLANT:

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ADVICE TO RECIPIENTS OF THIS NOTICE

You may be a party to the appeal if you made a submission or further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (using form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing (using Form 38).

The copy of this notice served on you does not attach a copy of the appellant's submission, the decision and the Commissioners' Report and Recommendations, as these have previously been published and available to all submitters. These documents may be obtained, however, on request from the Appellant.

If you have any questions about this notice, contact the Environment Court Unit of the Department of Courts in Wellington.

Documents may be lodged with the Environment Court by lodging them with:

The Registrar
The Environment Court
PO Box 5027 or DX: SX11154
Wellington