

## SUBMISSION ON RESOURCE CONSENT APPLICATION

Planning & Urban Design

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Submission No. \_\_\_\_\_

### Submission details:

Applicant: Prime Properties Group Limited  
Site address: 55-85 Curtis Street, Karori  
Proposal: Vegetation clearance on Open Space B area and earthworks on contaminated land.  
Service request #: 282346

Submission: **Opposes the application**

### Submitter details:

Name: Creswick Valley Residents' Association Inc.  
Address: c/- 14 Creswick Terrace, Northland  
Phone (day): 973 8676  
Email: [creswickvalleyra@gmail.com](mailto:creswickvalleyra@gmail.com) (preferred contact)

### Submission statement:

Creswick Valley Residents' Association opposes the application, because the application:

- a) Provides insufficient information that is sufficiently clear for a reasonable consent authority to arrive at a reasonably informed decision; and
- b) is inconsistent with the objectives and policies of the District Plan; and
- c) is inconsistent with the RMA.

### The reasons for our submission are:

#### Application provides insufficient information

1. The application and the technical reports and assessments attached to it are inconsistent and contradictory on matters that would allow a proper opinion to be formed on the effects of the proposed activities. These inconsistencies and contradictions relate to:
  - a. The area of vegetation clearance being proposed;
  - b. The significance of vegetation on the site;
  - c. The volume of fill being added;
  - d. The number of truckloads of fill involved;
  - e. The presence and exposure of cut batters; and
  - f. The presence and exposure of contaminated soil.
2. The inconsistencies and contradictions arise between the application and:

- the plans of the proposed earthworks, vegetation removal and mitigation measures;
- the geotechnical report by ABuild Consulting Engineers Ltd;
- the ecological assessment by Wildland Consultants Ltd; and
- the landscape assessment by Drakeford Williams Ltd.

***Area of vegetation to be cleared***

3. The application states, “The proposal is as shown on the annotated plans numbered S12-0592-05 to 08.”<sup>1</sup> It states further, “In total approximately 2,065m<sup>2</sup> of mixed exotic and native vegetation will be removed from the site. The attached plan S12-0592-09/A shows our calculations of the various areas.”<sup>2</sup>
4. The plans attached to the application include Spencer Holmes Ltd drawing number S12-0592-09 revision B. This plan shows 2,470m<sup>2</sup> of mixed vegetation within the Outer Residential area and 2,065m<sup>2</sup> within the Open Space B area to be within the site to be filled, and therefore to be removed. Approximately 350m<sup>2</sup> within the area of the proposed cuts shown in drawing S12-0592-07 along the eastern boundary of the site is not shown. In total, therefore, approximately 4,885m<sup>2</sup> of vegetation will be removed. This includes 360m<sup>2</sup> described as “Buffer Area” on drawing S12-0592-09.

***Significance of vegetation to be cleared***

5. The application identifies five native plant species as present on the site within the Open Space B area, but asserts the ecological value is poor. The application notes, “The attached report by Wildlands gives a more detailed description of the character of that vegetation.”<sup>3</sup>
6. The ecological assessment by Wildland Consultants Ltd reports that the ecological context of this site, although classed as Acutely Threatened, contained well-established, healthy terrestrial ecosystems operating with regionally significant vegetation, a regionally significant stream and regionally significant seepage wetlands all immediately adjacent to the site.
7. In particular, the report notes, “Being so narrow at this point, connectivity is particularly vulnerable to further vegetation clearance including any removal of buffering vegetation.”<sup>4</sup> It goes on to note that clearance of buffer

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<sup>1</sup> Application for Land Use Consent, Spencer Holmes Ltd, 23 April 2013, section 1.3.1, page 9

<sup>2</sup> *ibid.* section 1.3.2, page 10

<sup>3</sup> *ibid.* section 1.2, page 9

<sup>4</sup> Ecological Assessment of 55-85 Curtis St, Wellington, Stage Two, Wildland Consultants Ltd, page 12

vegetation could severely affect the function of the wetlands and that trees on the site make a significant contribution to the buffering effect.

8. The conclusion of the expert ecological assessment was not that the ecological value is poor, as stated in the application, but rather that it is ecologically significant and worthy of protection:

“The forest ecosystem (and associated bird community), the stream ecosystem (and associated insect community) and the seepage wetlands (and associated insect community) adjacent to 55-85 Curtis Street have been evaluated as regionally significant. As a result indigenous vegetation, fauna and ecosystems on the land and in the stream are considered to meet the criteria for significance under Section 6(c) of the RMA. Buffer vegetation on Old Karori Road and on the subject property is ecologically significant and worthy of protection, because it protects other significant features.”<sup>5</sup>

9. The report also draws attention to the Proposed National Policy Statement on Indigenous Biodiversity, Policy 6, which says:

To promote the maintenance of biodiversity outside of identified areas of significant indigenous vegetation and significant habitats of indigenous fauna, and to support the resilience and viability of populations and species assemblages within identified areas and habitats, decision-makers should:

- c. encourage the retention of existing vegetation, whether indigenous or not (but not including recognised pest plants), that provides:

- iv. a buffer to indigenous vegetation for areas and habitats identified in accordance with Policy 4.

10. The expert ecological assessment of the effects of the proposal provided with the application is inconsistent with the statements made within the application regarding the environmental effects of the proposal.

### ***Volume of fill***

11. The application made in April 2013 stated, “The maximum amount [sic] of material to be deposited on the site will be in the order of 44,185m<sup>3</sup>.”<sup>6</sup> This has subsequently been amended to 40,000m<sup>3</sup> by the applicant (letter dated 5 February 2014).

12. The report by ABuild Consulting Engineers Ltd attached to the application notes that the “proposed filling varies in depth from 0 to 8.0 metres between chainage 170 and 180 metres (reference drawing S12-0592-06A).

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<sup>5</sup> ibid. section 8, page 14

<sup>6</sup> Application for Land Use Consent, section 1.3.3, page 11

The total volume of fill to be placed is 47,000m<sup>3</sup> which will be made up from on-site cut soils and imported soils.”<sup>7</sup>

13. It is unclear from this whether the volume of fill will be sufficient to achieve the levels shown in the plans or whether 7,000m<sup>3</sup> of fill will be made up from on-site cut soils. The notified plans show no cuts to source this fill; in fact, drawing S12-0592-05 says “Approx. Total Cut: 1m<sup>3</sup>”.
14. Although ABuild refers to 8.0m of fill and 8.0m of fill is marked on the plans, the application refers to placing fill up to 7 metres, with no indication of which figure might be relied upon.

#### ***Number of truck-loads and movements***

15. The volume of fill to be transported to the site has been calculated as about 4,000 truckloads, based on an assumption of a 10m<sup>3</sup> truck. There is no indication that the trucks to be used will have a 10m<sup>3</sup> capacity. The standard calculation uses a truck capacity of 7.5m<sup>3</sup>, while the maximum capacity for trucks using public roads is generally given as 8.49m<sup>3</sup>.
16. The difference in the capacity of the trucks to be used is equivalent to between 706 and 1,333 additional truckloads of fill being transported to the site, or a deviance from the stated 4,000 truckloads of between 17.65 and 33.3 percent. Truck movements to and from the site might, therefore, total up to about 10,666 movements.
17. The traffic effects of the proposal are assessed on the basis of a 10m<sup>3</sup> truck and on hours of work between 8.30am and 5pm. The hours of work are elsewhere described as Monday to Saturday 7.30am to 6pm. The implications of trucks making the right-turn at the Chaytor Street-Curtis Street intersection during the morning traffic peak appear not to have been assessed, whether on the basis of a 10m<sup>3</sup> truck or one of lesser capacity.

#### ***Presence and exposure of cut batters***

18. While the application states, “The proposal will not involve the exposure of any cut batters”<sup>8</sup>, the Spencer Holmes Ltd drawing S12-0592-07 shows cuts extending through chainage 40m and 100m requiring retaining walls of 5.2m at chainage 60m and 5.4m at chainage 80m. This implies that cuts of over 60m length and over 5m height will be exposed.
19. Figure 10 in the application does not indicate the clearance of vegetation and the cuts proposed along the eastern boundary of the site and described

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<sup>7</sup> Geotechnical Assessment, ABuild Consulting Engineers Ltd, April 2013, section 4.2, page 6

<sup>8</sup> Application for Land Use Consent, section 3.1.3, page 21

in drawing S12-0592-07. Nor does it show a flat area created on the existing valley floor, as suggested in the application. It shows a marked slope. Drawing S12-0592-06 shows the valley floor is effectively level now from chainage 85m to 200m and requires only 4.m of fill to be level with the entrance to the site from Old Karori Road.

***Presence and exposure of contaminated soil***

20. The application states, “The land has been investigated and visually inspected to determine that it does not contain landfill material....”<sup>9</sup> The method of inspection is further explained, “A consent is being sought under the District Plan as the site is *potentially* contaminated. It has been demonstrated through visual observation (i.e. test pits) that there is no evidence that it actually has been.”<sup>10</sup>
21. The ABuild Consulting Engineers Ltd report refers to the investigations undertaken by Aurecon, “The [Aurecon] report makes a distinction between cleanfill and landfill. Landfill was encountered in TP3 and TP8 put down in the northern half of the site and is described as comprising “silts and gravel mixture with significant amounts of waste material such as ceramics, timber, brick and plastic.””<sup>11</sup>
22. The Aurecon Geotechnical Investigation Report, 17 November 2010, is an attachment to the separate application for a residential development on the same site, SR298735, which does not form part of the application for earthworks. This report records wood, roots, plastic, bricks, wire, concrete, pipes, asphalt and roading material in TP3 and timber, plastic, rubber, cans, pipe and bricks in TP8, and describes both results as landfill material.
23. In the further information provided for the earthworks application, a letter from Pattle Delamore Partners Ltd, dated 31 January 2014, notes that approximately 1,430m<sup>2</sup> of the site is definite HAIL land and on the SLUR as old landfill, while an additional 1,880m<sup>2</sup> was inferred to be old landfill based on the Aurecon testing. A copy of drawing S12-0592-02 is marked to indicate approximately 3,310m<sup>2</sup> of HAIL land.
24. Pattle Delamore Partners suggest that the NES will not be triggered from filling the site, assuming minimal disturbance of the soil within the HAIL land. ABuild Consulting Engineers Ltd has clearly stated, however, that landfill material not suitable as filling must be sub-excavated and replaced prior to filling. The specifications for earthworks provided with the

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<sup>9</sup> *ibid.* section 2.3.4, page 18

<sup>10</sup> *loc. cit.*

<sup>11</sup> ABuild, *op. cit.* section 2, page 5

application refer to removal of topsoil, sub-excavation and replacement of ground unsuitable for filling.

25. The technical reports, therefore, are inconsistent with the application on both the presence of landfill material and on whether contaminated soils will be exposed, and give insufficient detail on the area of contaminated land requiring sub-excavation and the likely volumes of contaminated soil to be removed and replaced.

***Information is insufficient or irrelevant***

26. The information provided in the application is insufficient to allow an informed assessment of the application, while being in many cases irrelevant to the proposal. The Property Economics report fails to identify any benefit from large-scale earthworks on the site; until a use for the platform being created is known, the potential benefits from its use cannot be assessed. The assessments of effects at 3.1.1 and 3.1.2 are irrelevant.
27. At the same time, information that could be critical to a proper assessment of the proposal is deficient. Information on the source and quality of the fill is not provided in sufficient detail. This is a relevant consideration, because one of the sites in Petone identified by Hutt City Council staff as a potential source of fill on this scale has also been confirmed to contain asbestos contamination.<sup>12</sup>

**Application is inconsistent with objectives and policies of District Plan**

28. The application states, “The earthworks are intended to fill the site and create a level site for a yet to be determined future use.”<sup>13</sup> It further states, “On the basis that the proposal does not specify an actual use of the site and could be used for any purpose,..., the proposal could not be considered to be inconsistent with any of the objectives and policies of the Operative or proposed District Plan.”<sup>14</sup>
29. The District Plan notes, “The appropriateness of earthworks needs to be considered in conjunction with and at the same time as the appropriateness of the proposed future use of the land, enabling a co-ordinated and integrated approach to earthworks and the proposed future subdivision and development of land.”<sup>15</sup> Earthworks for no specific purpose are inconsistent with Policy 29.2.1.1:

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<sup>12</sup> Decision of Hearing Committee, Ryman Healthcare Ltd, 25 Graham St et al., 19 December 2013, page 21

<sup>13</sup> Application, section 1.3.1, page 9

<sup>14</sup> *ibid.* section 4, page 27

<sup>15</sup> Wellington City District Plan, page 29/2

**Ensure that the design and assessment of earthworks and associated structures is coordinated with future land development and subdivision.**

30. Earthworks with no specific use where they involve contaminated soil are also inconsistent with Rule 32.2.1, because the level, nature and extent of contamination must be assessed in relation to the proposed use, development or subdivision of the contaminated land.

31. For these reasons it would be prudent to defer any decision on the proposed earthworks until a clearer understanding can be had of the final use to which the land will be put.

32. Filling the site as proposed is also inconsistent with Policy 29.2.1.7:

**Ensure that earthworks and associated structures are designed and landscaped (where appropriate) to reflect natural landforms and to reduce and soften their visual impact having regard to the character and visual amenity of the local area.**

33. The District Plan notes, "Large scale earthworks should be engineered to reflect natural landforms."<sup>16</sup> Assessment criteria for applications that do not comply with permitted activity conditions include: "The extent that the earthworks are designed and engineered to reflect natural landforms and natural features such as cliffs, escarpments, streams and wetlands and avoid unnatural scar faces that detract from the amenity of the area."<sup>17</sup> The anticipated outcome is described as, "The environmental result will be earthworks and associated structures that reflect the visual character of the local area."<sup>18</sup>

34. The proposed earthworks are also inconsistent with Policy 29.2.1.9, which says:

**Control earthworks in the Urban Coastal Edge, areas within the Ridgelines and Hilltops Overlay, Open Space B Areas Conservation Sites, Heritage Areas and on sites containing listed Heritage Items to protect the character, visual amenity or heritage value these areas provide to their immediate surrounds and the City.**

35. The District Plan specifically notes, "Open Space B Areas can often be enjoyed and experienced from a distance creating a visual distinction between built and unbuilt areas..... Earthworks have the potential to impact on the visual and ecological values these areas provide to the city"<sup>19</sup>. Matters to be considered for earthworks proposed within Open Space B areas include:

- Whether the proposed earthworks will have a negative visual impact on the appearance or character of the area
- Whether the earthworks will detract from the relatively

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<sup>16</sup> *ibid.* page 29/7

<sup>17</sup> *loc. cit.*

<sup>18</sup> *loc. cit.*

<sup>19</sup> *ibid.* page 29/9

unmodified character of the landscape

- The extent to which any earthworks can be restored to resemble natural landforms
- Whether the visibility of earthworks can be mitigated by appropriate planting and/ or screening.

36. The proposed earthworks do not seek to reflect the natural landform and visual character of the local area. They will significantly alter the appearance and character of the area. By burying the toe of the escarpment and remnants of the former valley floor the earthworks would diminish the escarpment and sever any connection with the historic landform. The associated vegetation clearance proposed would preclude effective screening by established trees already in the landscape.

37. The Landscape Overview attached to the application describes earthworks that would be significantly more consistent with the District Plan. It concludes that optimal development of the site would retain the integrity of valley form by controlling earthworks and minimising fill, protect vegetation on the escarpment, retain vegetation along Curtis Street, keep building mass below street level, and retain ground levels at no more than 103m above sea level (about 2.5m above the lowest point on the site at present).<sup>20</sup>

#### **Application is inconsistent with the RMA**

38. The application states, “granting consent will be consistent with Part II of the RMA. It is a sustainable use of resources. It allows for the economic wellbeing of the owner while appropriately mitigating the adverse effects on the environment.”<sup>21</sup>

39. The application does not explain how the permanent loss of approximately 4,885m<sup>2</sup> of mixed indigenous and exotic vegetation and potential damage to significant indigenous vegetation and significant habitats of indigenous fauna, or the permanent loss of a natural landform, might be said to be sustainable, or mitigated by being planted in a monoculture of exotic grass.

40. The application explains, “The proposal as it stands, simply continues the character of open space present on the north side of Whitehead Road. That is, fill along the bottom of an existing valley.”<sup>22</sup> This correctly describes a historic pattern of development and an approach to the use of natural and physical resources that applied under an earlier planning framework. It is wholly inconsistent with the approach of the RMA.

41. The application states that mitigation measures necessary to reduce effects have been included in the application. No mitigation measure is suggested for the effects of dust from tipping and spreading fill, which was identified as a major nuisance during works on the construction of Whitehead Road in

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<sup>20</sup> Landscape Overview, Drakeford Williams Ltd, page 4 (page 5 for recommended ground levels)

<sup>21</sup> Application, section 8, page 29

<sup>22</sup> *ibid.* section 3.1.3, page 22



1987-8 and during delivery of cleanfill onto this site under the 2002 consent.

42. Given the presence of a childcare centre as the nearest property (not a garden centre as described in the application) and its location immediately south of the site, prudent controls would require no tipping or spreading in winds above 10kph – ‘Light Breeze’ – to achieve the District Plan criterion of no visible evidence of settled dust on adjacent properties.
43. Such controls would be critical if there is any possibility of asbestos fibres being airborne in dust from tipping and spreading fill on initial delivery to the site, before any useful containment might be provided by the water cart.
44. Despite the recommendations within ABuild Consulting Engineers’ report that works should be confined to fine weather, the application appears to contemplate wet-weather work. Given the concerns raised by ABuild, prudent controls would require no spreading or compacting in rain above 2.5 mm per hour – ‘Light Rain’.
45. The statement within the application that “discharge of sediment laden stormwater to a reticulated stormwater system is permitted ...” and the later dismissal of the potential effect of discharges of such sediment-laden stormwater into Kaiwharawhara Stream are inconsistent with the expert opinion contained in the Wildland Consultants Ltd report that the stream is at risk from such a discharge,<sup>23</sup> and are inconsistent with the approach of Part II of the RMA that proposals should first avoid, second remedy and third mitigate the adverse effects of activities.
46. The suggestion that the RMA requires only the economic well-being of the property owner in isolation from managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety, or that mitigation is the only response to adverse effects from a proposal, significantly misinterprets the Act.
47. The application states, “There are no practical alternatives which achieve a similar result which will have a lesser environmental effect.”<sup>24</sup> As the result being proposed is a filled site for which there is no specific use, whether there are practical alternatives is beside the point. There are, however, practical alternatives to filling the valley and erasing all traces of the natural landform if the purpose is to provide a platform for either commercial or residential activities, because this applicant has already submitted examples that demonstrate lesser adverse environmental effects for both uses for this site.<sup>25</sup>

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<sup>23</sup> op. cit. section 7.2, page 12

<sup>24</sup> Application, section 6.0, page 28

<sup>25</sup> SR230584 and SR298735

48. The application notes that a single development platform of the type being proposed would be unnecessary for a residential development. This calls into question the statements that the proposed platform has no specific use planned and suggests that hearing the application should be deferred until the application for the intended use of the proposed platform has been received.

***Effect of Plan Change 77***

49. The application states, “DPC 77 is a specific plan change affecting the Curtis Street [site]. This plan change does not have any effect until such time as the hearing has been held and the Council decision released.”<sup>26</sup> This view is repeated in the notification report, which noted that the application was lodged prior to a decision being notified by the Council on DPC 77 and therefore the rules of DPC 77 are not relevant to this application.

50. This interpretation is incorrect; under section 104(1)(b)(vi) the Act states that:

When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—

(a) any actual and potential effects on the environment of allowing the activity; and

(b) any relevant provisions of—

(i) a national environmental standard:

(ii) other regulations:

(iii) a national policy statement:

(iv) a New Zealand coastal policy statement:

(v) a regional policy statement or proposed regional policy statement:

(vi) a plan or proposed plan; and

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

51. Section 43AAC(1)(a) provides the meaning of ‘proposed plan’:

**proposed plan—**

(a) means a proposed plan, a variation to a proposed plan or change, or a change to a plan proposed by a local authority that has been notified under clause 5 of Schedule 1 but has not become operative in terms of clause 20 of Schedule 1.

52. Therefore, despite the application being lodged prior to a decision on DPC 77 being released, it does not preclude the consent authority from considering the provisions of DPC 77 when making a decision on this resource consent application.

53. Under s. 37A(4), a consent authority may extend the time period for hearing an application only if—

(a) the time period as extended does not exceed twice the maximum time period specified in this act; and

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<sup>26</sup> Application, section 2.2, page 16

- (b) either –
  - (i) special circumstances apply (including special circumstances existing by reason of the scale or complexity of the matter); or
  - (ii) the applicant agrees to the extension; and
- (c) the authority takes into account the matters specified in subsection (1), as discussed below.

54. Section 37A(1) requires that the local authority take into account the following considerations:

- the interest of any person who, in its opinion, may be directly affected by the extension or waiver; and
- the interest of the community in achieving adequate assessment of the effects of the proposal, policy statement, or plan; and
- its duty under section 21 to avoid unreasonable delay.

55. The Council has already identified in its decision to notify the application that special circumstances apply. Given that the related Environment Court appeals are currently being considered, if consent is granted to the applicant it would make parts of the relief sought in those appeals redundant, and therefore in essence predetermine part of the appeals.

56. The vegetation removal rules introduced in DPC 77 are relevant. The Hearing Commissioners considered the vegetation on the site to be of value and important enough to be managed through specific rules. In these circumstances, granting consent to bulk earthworks that would allow removal of this vegetation before DPC 77 is determined by the Court is not best practice because (a) once removed, the vegetation cannot be reinstated; and (b) determining the consent application would effectively predetermine the outcome of both the appeals and the Plan Change, given the relative importance of vegetation retention in both.

57. Given that such special circumstances apply to this site, it would seem prudent and sensible to defer hearing this application (and also the application for resource consent for the residential development of this same site lodged under SR298735 and not yet notified) for fifty working days to allow time for the outcome of DPC 77 to be determined, if the application is not refused or deferred until the application for the proposed specific use for the result of the proposed earthworks is received.

<b>The decision we seek is:</b>
1. Wellington City Council refuses this application pursuant to section 104C(2).
2. Alternatively, and without limiting the decision sought at (1), Wellington City Council defers consideration of this application pursuant to section 91(1).
3. Alternatively, and without limiting the decision sought at (1), Wellington City Council defers consideration of this application pursuant to section 37A(4).

**Oral submission at hearing**

We wish to speak in support of the submission.

If others make a similar submission, we will consider presenting a joint case at the hearing.

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Paul Barker  
Secretary,  
Creswick Valley Residents' Association Inc.

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