

Proposed Private Plan Change 40

(From: Steve Taylor Consultant Planner

(Through: Director of Planning and Regulatory Services)



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Closing Statement: Planners Reply

Proposed (Private) Plan Change 40: Wallaceville

1.0 Introduction

- 1.1. My name is Steven Taylor and I am a sole trading consultant planner. Until September 2014 I was the Planning Policy Manager for Upper Hutt City Council and Council's planning policy representative on Proposed (Private) Plan Change 40: Wallaceville (PC40). Since September 2014 I have continued my involvement in PC40 as a consultant to assist Council, and more recently Ms Boyd. I have a Bachelor of Resource and Environmental Planning from Massey University with First Class Honours and am a full member of the New Zealand Planning Institute. I have 20 years experience in planning matters. I have participated in conferencing with Wallaceville Developments Ltd (WDL) since 6 July, and adopted Ms Boyd's responsibilities as reporting planner since 13 July for the period of her annual leave.
- 1.2. I am in agreement with the positions expressed by Ms Boyd in both her opening statement and verbal closing comments.
- 1.3. The panel has set out a number of information requests to be addressed in closing submissions. In the main, these are contained within the joint statement. Where disagreement remains, I have elaborated further in my statement. For completeness these are summarised below
 - a) *Whether any measures need to be included in the policies, rules, and/or matters of discretion assessment (particularly in respect to subdivision) about foundation design.* The inclusion of geotechnical considerations at the time of subdivision is addressed in amendment 27 contained in the joint statement.
 - b) *Whether additional controls on earthworks are required for triggering a land use consent.* These matters are contained in the joint statement. It is considered that existing contaminated land provisions under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (NES), Chapter 34 of the Plan and section 37 of the Building Act are adequate. Additional earthworks provisions to ensure stability have been included in amendment 17B of the joint statement for earthworks to the south of Alexander Road. These will complement District Plan provisions in Chapter 23, the Building Code, and enable consideration of consent applications to be informed by the Upper Hutt Engineering Code of Practice 1998.
 - c) *Consideration of the need for a pre-condition rule relating to the granting of access from properties directly onto Alexander Road until specific roading improvements are implemented and/or the speed limit is reduced.* This is

addressed below and contained in amendments 10, 17C and 27 and to Roading Typologies contained in the joint statement.

- d) *Whether the notified/revised rule framework enables appropriate involvement in the planning process for potentially affected parties.* This matter is considered below. In summary, it is considered that the notified/revised rule framework has enabled appropriate involvement in the planning process for potentially affected parties.
- e) *Whether, from a RMA s32 perspective, the rules and methods for Area B are the most appropriate to implement the proposed Policies.* This matter is considered in more detail below. It is considered that the matters contained within the joint statement, and elaborated on below are the most appropriate to implement the policies.

1.4. The following issues have been addressed in legal submissions obtained by Council that were provided to the panel on 17 July:

- a) The vires of the notified provisions and of any proposed amendments arising over the course of the hearing.
- b) Whether the suggested revisions to Area B provisions are lawful and within the scope of the Plan change as notified.

2.0 Matters of agreement

2.1. The 27 July joint statement (the 'joint statement') identifies those areas where agreement is reached between Council officers and Wallaceville Development Ltd. In addressing these points, minute 3 of the hearing panel, requested specific reference to:

- I. The need (or otherwise) for the proposed explanation to policy 4.4.3, and the potential relocation of that into the area-specific policies for Wallaceville (ie 4.4.16);
- II. Whether the area specific policies require amendment for improved clarity and guidance, including consideration of the possible combination of policies (ie 4.4.14 to 4.4.16);
- III. Related to this point, whether the rules (particularly the structure plan and associated rule triggers, and assessment matters) best implement the policies – by way of example, is the 'encouragement' rule approach to higher density and effective way (as opposed to direct control) to ensure the Structure Plan's stated outcome that mixture of housing types will be achieved?

2.2. The first point is considered within amendment 4 (explanation to policy 4.4.3), and amendment 10. I note there is still disagreement associated with the need for amendment 4.

2.3. In considering the second point, improved clarity has been provided to area specific policies through agreed amendments 8, 10, 14 and the Wallaceville Structure Plan documents - specifically the Roading Typologies and Precinct Intentions and Outcomes.

2.4. On the third point, an analysis of specific provisions is contained within column 'reasons for the provisions and amendments to provisions notified' of the joint statement.

- 2.5. As a consequence of amendments to the Area B approach, a number of policies have been deleted, and others renumbered. This includes above referenced policy 4.4.16, which now becomes policy 4.4.15. For the sake of consistency with the joint statement, I adopt the replacement provision numbering adopted in the joint statement.

3.0 Matters unresolved or subject to disagreement

Non-residential activities in the Urban Precinct

- 3.1. Ms Boyd outlined a number of concerns with the proposed explanation to policy 4.4.3 (amendment 4) recognising the potential for commercial development within the farm management and dairy buildings of the Urban Precinct. These are summarised in the view expressed in her opening statement that such provisions:
- a) are inconsistent with the District Plan framework; and
 - b) would inappropriately signal an intention for these types of activities to establish in this area and may lead to 'creep' of the activities within the Gateway Precinct resulting in impacts on the vitality of the city centre.
- 3.2. I agree with the position adopted in Ms Boyd's s42a report, her opening statement, and concerns expressed verbally that commercial development in this area will undermine the future potential for housing to be established. I consider that a determination of suitability for commercial activities being reliant on '*significant* adverse environmental effects' on the Gateway Precinct and Upper Hutt CBD is inappropriate.
- 3.3. I accept that as a Greenfield site, development should be allowed to proceed with some flexibility bearing in mind traditional activities on the site. An important consideration in assessing whether development is appropriate is whether the underlying residential concept of the structure plan will be compromised. To this end, some temporary commercial activities may be appropriate, provided these are limited in duration, complement residential amenity and do not prevent subsequent transition to residential development at the appropriate time.
- 3.4. The determination of appropriateness and duration for commercial activities is best managed through a consent process at which time information will be available on staging and the potential effects of the activity. Amendments to policy 4.4.15 are included within the joint statement that are adequate on their own. These include consideration of the consequences of subdivision and development to residential amenity, subsequent stages, vitality of the CBD, and to ensure that underlying infrastructure 'bottom lines' are not compromised. I do not consider that amendments to the explanation of policy 4.4.3 as originally notified are necessary. Instead the proposed amendments introduce a disconnect with the direction contained in policy 4.4.15 and should be deleted.

4.0 Matters for the Council

Whether the notified/revised rule framework enables appropriate involvement in the planning process for potentially affected parties

- 4.1. Ms Boyd outlines in her opening submission the notification process for PC40. The notified approach to the Wallaceville Structure Plan Area subjected Area B to future structure planning and determined that activities that did not follow a structure plan

process would be deemed non-complying. The revised approach to Area B removes specific rules that determine activity status based on the presence of a structure plan, in addition to Area B specific policies. A similar approach is instead applied to that adopted for Area A. Unlike Area A, Area B does not contain a detailed map showing reserve areas, and road layouts and typologies. Under the revised approach, subdivision and development in Area B that was previously 'non-complying' in the absence of a structure plan, instead adopts similar status for activities undertaken in Area A.

- 4.2. The underlying residential nature of Area B, has not changed since notification. Two submitters specifically addressed the handling of Area B, both founded on the perceived lack of detail associated with Area B when compared to Area A. One submitter requested that details of the proposed structure plan be provided now (Mary Beth Taylor), and one submitter requested retaining the special activity zoning in this area given the uncertainty associated with a future structure planning process (Ian Stewart). Neither submitter wished to be heard on the matter. Subsequent amendments to Area B and in particular amendments to policy 4.4.15; the stormwater management principles; and, precinct descriptions and outcomes provide increased clarity on 'bottom lines' for the consideration of subdivision and development, and in so doing provide greater clarity on the infrastructure management approach within Area B.
- 4.3. No additional parties are considered potentially affected by the revised approach to Area B and there has been adequate opportunity for those potentially affected both by the notified and revised rule framework. The potential effect of development within Area B will manifest at the time of subdivision, and the Plan Change continues to enable management of potential effects against relevant criteria and policies. All submitters have been provided with the opportunity to comment on the consequences of the revised approach in accordance with Minute 3 of the Hearing Committee (point 9). I note that Joint Statement 2, dated 6 July 2015 in addressing the approval of the detailed concept plan for Area B in Rule 3, stated that 'notice of applications need not be serviced on affected persons and applications under rule 3 above need not be notified. This provision has carried through into the joint statement as amendment 27, rule 18.28B. If the panel are concerned with the opportunity for involvement in the development of Area B issues, then notification provisions for Area B subdivision (amendment 27, rule 18.28B) are the appropriate manner in which to address this issue.

Other Plan Changes that have been proposed for Greenfield Development since the Plan became operative

- 4.4. There has been one greenfield plan change, Plan Change 20 (Eastern Hutt Road) which introduced a new industrial zone. No greenfield changes have been made to the district plan's residential zone provisions since it became operative. Most residential rezoning proposals are "spot-zoning" where a change of zoning is requested for a small number of individual sites.

Comprehensive development that has occurred outside the residential centres overlay

- 4.5. Prior to the introduction of Plan Change 18 (Comprehensive residential developments: Variation 1 – 'PC18') in August 2013, the Plan provided for comprehensive residential development ('CRD') in residential zones as a discretionary activity. As a consequence of PC18 the operative plan now identifies three specific areas (Central,

Trentham and Wallaceville) that are considered to be appropriate for higher density development, as a Restricted Discretionary Activity, subject to meeting appropriate standards. If the proposal does not comply with those standards it defaults to a Discretionary Activity.

- 4.6. Comprehensive residential development is defined as 'a residential development of at least three dwellings, on a site within a Residential (Centres Overlay) Area'. More than three dwellings on a site that does not comply with minimum net site area requirements, and which is outside of the overlay areas would be processed as a discretionary activity under the catch all rule of 18.2
- 4.7. Upper Hutt City Council has received one application for discretionary subdivision consent, that involves more than three dwellings and which breaches minimum net site area requirements outside the centres overlay, in the residential zone since PC18. This application is on the former Twiglands site on Fergusson Drive, and was approved. This low uptake in applications is partly a consequence of advice provided to potential developers from Council clarifying that the purpose of PC 18 was to direct the appropriate location for CRD's, and CRD's outside of these are not encouraged through the Plan framework.

Typical District Plan response in terms of activity status

- 4.8. This question arose as a consequence from statements made by Ms Boyd regarding proposed restricted discretionary rule 20.30A for new buildings and significant exterior alterations to non-listed buildings. I note that a new rule 20.1 (amendment 31A) has now been agreed in joint statement to address this point.
- 4.9. The district plan contains both city-wide rules and zone rules. The rule in question is a zone rule under the Business Zone Rules, therefore I have constrained my analysis to the zone rules in the plan.
- 4.10. A summary of provisions is included in the table below.

Zone	Subdivision		Land use	
	# RD rules	Comment	# RD rules	Comment
Residential	5	D catch-all (18.1) and specific 18.28A RD, breach of performance standards becomes D	9	D catch-all (18.2)
Rural	3	No catch-all or specific	6	NC catch-all (19.2)
Business	3	D catch-all (20.1)	2	D catch-all only for activities otherwise P or C (20.2)
Open Space	2	No catch-all or specific	6	NC catch-all (21.2)
Special Activity	3	D catch-all (22.1)	4	NC catch-all (22.2)

- 4.11. Subdivision contains a discretionary 'catch-all' rule in 3 of the 5 zones. It is unstated in 2 of the 5 zones.
- 4.12. Land use contains a non-complying catch-all rule in 3 of the 5 zones. It contains a Discretionary catch-all in 1 of the 5 zones. It contains a Discretionary catch-all for otherwise Permitted and Controlled activities (that do not comply with performance standards) but is silent on Restricted Discretionary in 1 of the 5 zones.

- 4.13. Section 87B(1)(b): an application must be treated as an application for Discretionary activity if "a plan requires resource consent to be obtained for the activity but does not classify the activity as Controlled, Restricted Discretionary, Discretionary or Non-Complying."

5.0 Whether, from a RMA s32 perspective, the rules and methods for Area B are the most appropriate to implement the proposed Policies.

- 5.1. The joint statement includes an outline of the reasons for provisions and amendments to provisions as notified. For the reasons outlined, and specifically elaborated elsewhere in my statement, I consider that the rules and methods are the most appropriate to implement the proposed policies.
- 5.2. When considering the possible risks of low density residential housing within the Urban Precinct, Ms Boyd expressed the view, in paragraph 4.2 of her opening statement, that the proposed rule framework achieves an appropriate balance of private property rights and efficient land use planning. I agree with her position. There is a need to provide sufficient flexibility to respond to market requirements and any outcome that results in an inability to construct residential development on the site (such as through inappropriately directive provisions) would result in an inefficient use of the land.

6.0 Other Issues

Vehicle Access onto Alexander Road

- 6.1. Council's Director Asset Management and Operations has raised concern with the potential safety effects associated with private vehicle access onto Alexander Road in the event that it is an 80km/h speed environment. He also advises that the speed environment is influenced not just by the posted speed limit, but by historical use of the road and the presence of any traffic calming measures. Given the propensity for vehicles travelling in excess of the present 80km/h limit, he considers that private vehicle access should not occur onto Alexander Road until a 60km/h speed environment is in place. Such a speed environment is reliant on appropriate traffic calming measures, including the presence of roundabouts/kerb and channel, and a 60km/h posted speed limit.
- 6.2. Road Controlling Authorities do not have the ability to arbitrarily set speed limits but may propose to set a speed limit that differs from the calculated speed limit and following consultation may set the proposed speed limit only if that speed limit is safe and appropriate for the road with regard to the function, nature, and use of the road, its environment, land use patterns and whether the road is in an urban traffic area or rural area.
- 6.3. The procedures and requirements for changing speed limits are set out in the Land Transport Rule – Setting of Speed Limits 2003. This requires each Road Controlling Authority to pass a Speed Limit Bylaw. In Upper Hutt City speed limits are set pursuant to the Upper Hutt City Council Speed Limits Bylaw 2005 which came into force on 1 June 2005. Under that Bylaw, Alexander Road has a speed limit of 80km/h from the intersection of Messines Avenue to a point 80 metres southwest of Ward Street.
- 6.4. The Council as a Road Controlling Authority can set speed limits greater or less than 50 km/h in Urban Traffic Areas and less than 100 km/h in rural areas in accordance with the Land Transport Rule – Setting of Speed Limits 2003.

- 6.5. The Land Transport Rule sets out a procedure for calculating the appropriate speed limit based on the geometry of the road and the amount of development along the road and in particular access points and driveways. The existing design and geometry and absence of direct private vehicle access onto Alexander road facilitates a 80km/h speed environment.
- 6.6. To change a speed limit under the Bylaw, the Council is required to follow the procedures set out in the Land Transport Rule relating to calculating the speed limit and consultation. This involves undertaking a survey of the road and calculating the speed limit using the procedure set out in Speed Limits New Zealand (Schedule 1 to the Land Transport Rule). As part of the process it is also advised that actual speeds be measured as enforcement of speed limits is very difficult if the speed limit is inappropriate for the road environment. If the Council sets a speed limit that does not comply with the rules the Minister of Transport has the power to direct Council to remove it.
- 6.7. There have been two speed surveys undertaken in recent years. In April 2013 a survey was taken West of Ward Street, identifying the 85%ile of 71kph, Median of 65kph. That survey identified a number of vehicles travelling over 80kph and a few over 100kph. In October 2013, a survey was undertaken 50 metres West of Ward Street (close to 50kph sign), identifying the 85%ile of 59kph, Median of 53kph. The survey identified a small number of vehicles travelling over 70kph and virtually none over 100kph.
- 6.8. The Land Transport Rule stipulates that the Road Controlling Authority must consult with the New Zealand Police, Automobile Association, NZ Transport Agency, and the Road Transport Forum. It also requires the road controlling authority to consult with local community or groups that may be affected by the proposed changes.
- 6.9. The Land Transport Rule requires that the NZ Transport Agency and New Zealand Police are advised of new speed limits 14 days before the speed limit comes into force. No other formal publicity is required as drivers are required to comply with road signs.
- 6.10. In Table SLNZ1 of Speed Limits New Zealand it states that a 60 km/h speed limit in a partly built up area, should have a minimum length of 1000 metres. This is to avoid frequent changes of speed limit along a route.
- 6.11. The notified plan framework will allow private vehicle access associated with a single dwelling as a permitted land use activity. Two or more dwellings complying with the net site area standards of rule 18.10 are controlled. Matters of control for multiple dwellings include 'standard, construction and layout of vehicular access' (rule 18.8). As consent applications for controlled activities must be approved, this framework will not provide the necessary certainty to ensure that private vehicle access onto Alexander Road does not occur until a reduced speed environment is in place.
- 6.12. To address this point, a new standard has been included within the joint statement under rule 18.9 (access standards for subdivision and land use activities) limiting vehicle access onto Alexander Road from Areas A and B. Contravention of this standard would default to discretionary activities under the catch-all rule in 18.1(subdivision) or 18.2 (land use). Consideration of discretionary consent would then take into account whether the speed environment had been reduced. It would also be informed by the Wallaceville Road Typologies that form part of the structure plan.
- 6.13. Amendments to the Wallaceville Road Typologies have been agreed within the joint statement to inform the consideration of subdivision and land use consent

applications, as directed by amendments to policy 4.4.14 (contained in the attached joint statement) and assessments against rule 18.28B. This includes clarification of the expectation that traffic calming would be imposed prior to subdivision approval.

- 6.14. Amendments to policy 4.4.15 (contained in the attached joint statement), including consideration of the 'safety of road users', have also been included within the joint statement.

Zoning of Grants Bush

- 6.15. The panel questioned the suitability of zoning Grants Bush 'residential', in light of its intended purpose as a reserve. Although it is clear from the Plan Change that the 'Public Open Space' area shown on the structure plan map would not be used for residential housing, I accept that a more appropriate zoning would be to adopt the existing 'Open Space' zone. The Open Space zone provides a greater level of protection to Grants Bush, and ensures overall consistency with the types of recreational and stormwater management activities contemplated within the 'Public Open Space' area.
- 6.16. The Open Space zone includes the following objectives and policies that are considered the most appropriate to achieve the purpose of the Act.

Objective 7.3.1

The promotion of a range of open spaces, maintained and enhanced to meet the present and future recreation, conservation, visual amenity and hazard management needs of the City.

Objective 7.3.2

The protection of the life supporting capacity of the environment and amenity values by avoiding, remedying or mitigating the adverse effects of activities in the City's open spaces.

Policy 7.4.2

To recognise and protect the amenity values of open space areas

Policy 7.4.3

To enable a range of activities to be undertaken in open spaces that will not adversely affect the character and function of the open space.

- 6.17. I suggest that zone boundaries are the same as the 'Public Open Space (conservation)' annotation on the Structure Plan. I understand that WDL are not opposed to this approach, and that a replacement zoning map can be provided if the panel deems it appropriate.
- 6.18. The legal opinion provided by DLA piper confirms that there are no scope issues with zoning Grant's Bush as 'Open Space', and no other parties deemed potentially affected by this approach.

7.0 Responses to submitters

Mr van Berkel

- 7.1. Mr van Berkel contended in his submission that the plan change proposal is inconsistent with the Upper Hutt Urban Growth Strategy (UGS). When changing a district plan, under section 74(2)(b)(ii) Council is required to have regard to any management plans and strategies prepared under other Acts. In line with this

requirement, Ms Boyd paid particular regard to the UGS in her s42a assessment. I agree with her conclusion that the proposal is consistent with UGS' overall vision for the site and for the wider district.

- 7.2. Mr van Berkel noted that Ms Boyd considered parts of Forest and Bird's submission to be out of scope. My understanding of the submission is that Forest and Bird are seeking a higher level of protection over the Southern Hills portion of the site than is currently afforded or is proposed through the plan change request. Such a proposal would reasonably be required to be subject to an evaluation under section 32, and on that basis I consider it is out of scope.

Mr Pattison

- 7.3. I note a misunderstanding of Mr Pattison's submission and apologise on behalf of Ms Boyd. Regarding Mr Pattinson's request for baseline levels to be made publicly available and included in the Stormwater Management Principles, I do not consider that the district plan is the appropriate location for this information. This position is reflected in the joint statement. I consider instead, that condition of resource consent would be the more appropriate method for delivering what Mr Pattinson seeks.

MPI

- 7.4. Amendments have been made to rules 18.16A and 18.16B (amendments 23A and 23B) in response to the recommendations of Mr Hunt, following the concerns of the Ministry of Primary Industries (MPI) and Kiwirail.
- 7.5. Potential reverse sensitivity effects arising from noise emitted from the MPI site is addressed in ventilation rule 18.16A (which applies within 50m of the MPI site), and fencing rules 18.16C and 20.16 (imposing a 2m high close boarded fence along the boundary with the MPI site). There are no requirements for acoustic insulation adjacent to the MPI site. Mr Hunt has clarified in paragraph 50 of his evidence that the absence of acoustic insulation, and the proposed ventilation requirements and fence are based on achieving 'reasonable and attainable' noise levels in accordance with the adoption of the best practicable option on the MPI site under s16 of the RMA.
- 7.6. The MPI designation does not contain any noise restrictions that relate to ongoing use of the site and which apply at the boundary with the Structure Plan area. The following amendment to the explanation of policy 4.4.6 (amendment 6) has been included in the joint statement to clarify this point:

In the Wallaceville Structure Plan Area, noise insulation and ventilation standards seek to mitigate the reasonable adverse effects of noise arising from adjoining activities. The standards ensure a reasonable level of acoustic amenity within buildings that have their windows closed. Ventilation standards have been developed to avoid the need to open windows.

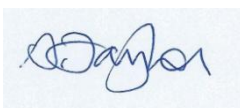
- 7.7. This is consistent with expectations that MPI will adopt the best practicable option to ensure that the emission of noise from its land does not exceed a reasonable level.
- 7.8. The controlled activity standards appended to the submission of Ms Thomas on behalf of MPI identify two additional acoustic measures for inclusion in the Plan to those agreed to by Mr Hunt. Those provisions (adopting the numbering in her statement) are:

3. Windows in buildings within 25m of a site designated as MAF1 which face towards a site designated as MAF1 shall be non-opening.

4. Buildings in the Urban Precinct and Grants Bush precinct within 25m of a site designated as MAF1 shall not exceed a single storey (? Metres).

- 7.9. I understand that the purpose of the height restrictions is to minimise adverse noise effects on new dwellings that would not benefit from acoustic screening provided by the fence in rules 18.16C and 20.16, and to address potential complaints resulting from dwellings overlooking the MPI site. In both cases, the concern is potential reverse sensitivity arising from MPI activities.
- 7.10. I reiterate the observation of Ms Boyd that there is a practical difficulty of administering the requirement to maintain non-opening windows within Plan rules. The alternative of relying on existing ventilation standards, combined with the clarifications to amendment 6 above, would provide adequate protection by the Plan.
- 7.11. There is insufficient justification to impose the height limit sought by Ms Thomas in 4 above. If the panel is of the view to control noise effects in this location, I consider that a new permitted activity standard imposing acoustic insulation standards (based on rule 18.16B) for those parts of buildings above 5 metres and within 25m of the MPI boundary would more appropriately mitigate the potential noise effect raised than the option presented by Ms Thomas. Given the applicability of bulk and location requirements within the proposed Plan Change area (for example rules 18.12, 18.15 and 18.16), I do not consider any residual amenity effects sufficient to warrant any further restrictions on height adjacent to the MPI site.
- 7.12. In order to confirm the outcome sought in the management of any future potential interface issues, amendments to the Grants Bush and Urban Precinct (Wallaceville Structure Plan Precinct Descriptions, Intentions and Outcomes) have been included within the joint statement, as below.

Development that adopts on-site measures to minimise the potential for reverse sensitivity effects arising from adjacent sites designated MAF1 and TZR1.



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