

BEFORE THE ENVIRONMENT COURT

IN THE MATTER

Decision [2010] NZEnvC 390

ENV-2009-WLG-000166

of an appeal under cl 14(1) of Schedule 1
to the Resource Management Act 1991

BETWEEN

WELLINGTON HARBOUR
LANDSCAPE PROTECTION GROUP
INC

Appellant

AND

THE WELLINGTON CITY COUNCIL
Respondent

Court: Principal Environment Judge C J Thompson

Environment Commissioner D Bunting

Deputy Environment Commissioner D Kernohan

Hearing: at Wellington 13 - 14 September 2010; site visit 14 September 2010

Counsel/Representatives:

L Delany and G W Thomson for Wellington Harbour Landscape Protection
Group Inc

A S Roberts and A J L Beatson for Jarden Properties Ltd

K M Anderson and A M White for the Wellington City Council

DECISION OF THE COURT

Decision issued: 12 NOV 2010

A: The appeal is declined and the Council's decision confirmed

B: Costs are reserved



Introduction and Background

[1] In mid 2007 the Wellington City Council received a request from Jarden Properties Limited (Jarden), for a private plan change which became Plan Change 62 (PC 62). PC 62 was publicly notified on 3 November 2007.

[2] As notified, the plan change request sought the following changes:

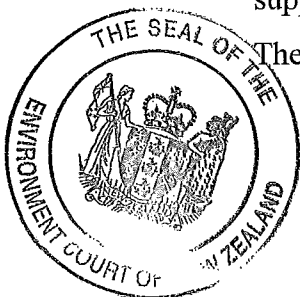
- the replacement of the existing *Rural Area* zoning over approximately 4.87ha of land between Domett Street and Glanmire Road with an *Outer Residential Area* zoning. This rezoning to residential was sought to facilitate the development of Stage 8 of the Bellevue Residential Estate;
- the *Conservation Site* zoning over two small areas of the land at the end of Tamworth Crescent and Bendigo Grove (an area of 0.79ha) to be replaced with an *Outer Residential Area* zoning. These areas are part of the already completed Stage 9 of the Bellevue Residential Estate;
- strips of land, currently zoned either *Outer Residential Area* (5.77ha) or *Rural Area* (0.52ha), on fringe areas of various stages of the Bellevue Residential Estate to be replaced with a *Conservation Site* zoning. These areas are directly adjacent to an existing *Conservation Site* called Gilbert Bush.

[3] In addition, the plan change request sought the modification of District Plan Policy 4.2.9.2, which signals that new extensions to the existing road network will be provided for in some circumstances.

[4] PC 62 was approved by the Council on 27 May 2009. The key changes from PC 62, as notified, are:

- the large balance area adjacent to Glanmire Road is to be retained as *Rural* area, so that the total area to be rezoned to *Outer Residential* area reduces from 4.87ha to 3.73ha;
- a new Appendix area, (referred to as Appendix 26 in the Council's decision) and associated plan, is added to the Plan. The Appendix area provides additional site specific controls to guide a future subdivision of the site, by supplementing the existing controls that apply in the *Outer Residential* area.

The Appendix area shows indicative road and pedestrian links, buildings



areas, areas required to be planted or vegetation retained, and an area where the height of the buildings is restricted to single storey (6 metres).

- Proposals in the PC 62 application, to restrict the number of dwellings to one per lot, and to covenant an area of bush, have also been carried through into the Appendix provisions.

[5] Ms Roberts, counsel for Jarden, notes that if PC 62 is approved, and in the event that Stage 8 subdivision proceeds, Jarden has offered to vest the area of Gilbert Bush (zoned *Conservation Site*) that it owns in the Council, plus the areas to be rezoned *Conservation Site* as part of PC 62 (a total area of approximately 38ha). Mr Andrew Taylor, representing a part owner of Jarden, stated that the Council has agreed in principle to accept the *Conservation Site* land ... *in lieu of development contributions should the Stage 8 subdivision proceed.*

[6] Ms Roberts also advised that: ... *It is intended that the development and subdivision of the site would eventually yield approximately 48 residential lots ranging from 410m² to 970m², with associated roading, a reserve area providing connectivity with a large area of conservation land to vest, and installation of infrastructure.* Mr Taylor acknowledged that the final decision as to what density would be appropriate would be made at the resource consent stage for the subdivision.

[7] However, the proposal before the Court is a Plan Change. Although PC 62 introduces an Appendix with a structure plan and so on, development, including subdivision, of the site would still require resource consent. Jarden produced indicative layouts for subdivision showing potential cut and fill areas, and discussion of the effects of the rezoning to *Outer Residential* of the 3.73ha in contention was given some flavour by those proposed layouts.

[8] Jarden is to be commended for its openness about its intentions for the site. If it had sought rezoning without revealing its ultimate plans it would likely have faced later criticism from opponents for not being honest about its intentions. The downside of the provision of layouts is that it led to an unfortunate focus in some evidence (and not just from WHLPG's witnesses) on issues of detail in those layouts, rather than the wider



issues of whether the existing *Rural* or proposed *Outer Residential* (with extra controls introduced by the decision on PC 62) were the more appropriate for the site.

[9] The issue to be determined by the Court is whether the proposed zoning is more appropriate than the existing zoning, rather than assessing all the specific details of subdivision and earthworks design/ layout. We have interpreted all evidence in that light.

Areas to be Rezoned

[10] The areas to be rezoned sit at the top of a steep harbour escarpment between the suburb of Newlands and the Hutt Road (State Highway 2). Immediately to the north east, the site is adjacent to the western end of Stage 7 of the Bellevue Residential Estate – which is now developed for residential use. To the north (around Kenmore Street) and to the northwest lie established residential areas of Newlands built around the 1970s. To the west (on the opposite side of Glanmire Road) three new three-storey buildings have been constructed on land zoned *Outer Residential*.

[11] Below the site to the south-west the land is zoned *Rural Area* and developed as low density rural residential properties. To the south and south-east a large *Conservation Site* (Gilberd Bush) covers a large area of the Hutt Road escarpment, wrapping around the edge of other completed stages of the Bellevue Estate. The applicant owns about 33ha of the *Conservation Site*, with the balance owned by the Council.

[12] The site includes a hilltop plateau with a steep V shaped gully on the western side that runs parallel with Glanmire Road. An ephemeral stream in the upper part of the gully becomes a permanent water body in the lower gully. Vegetation around the hilltop area and in the gully is mostly pasture and gorse and this land is currently grazed by horses. On the southern hilltop escarpment slope adjoining Gilberd Bush and on the area proposed to be covenanted, the vegetation is predominantly regenerating bush.

[13] A portion of the site near Glanmire Road encroaches into the *Ridgelines and Hilltops* overlay as identified on the planning maps in the Wellington City District Plan.

A portion of the site also encroaches into the Wellington Regional Council's Hazard Line (Moderate Slope Failure Risk).



[14] Domett Street is a short two-lane road which runs from Dress Circle to the north-east boundary of the subject site. Glanmire Street is a generally steep, one-way, windy rural road which runs downhill from Kenmore Street on the south-western side of the site. Kenmore Street is identified as a Collector Road in the Wellington City Council roading hierarchy.

[15] Mr Taylor told the Court that the land subject to Stage 8 is not being used for any productive rural activities, and has no value as a production unit.

Parties' positions

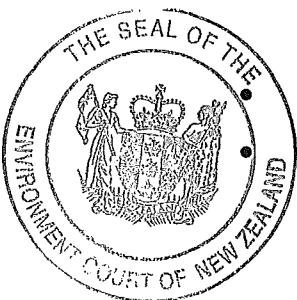
[16] The Wellington Harbour Landscape Group Incorporated (WHLPG) appealed the Council's decision to approve Plan Change 62 (PC 62) on 3 July 2009. The Notice of Appeal records that the parts of the decision appealed are:

- (a) the area of land subject to Stage 8 which is proposed to be rezoned from *Rural* to *Outer Residential* and;
- (b) the amendment to Policy 4.2.9.2 which enables the connector road from Domett Street to Glanmire Road

[17] In her opening submission, Ms Delany stated on behalf of WHLPG that they were *... not appealing all parts of the Council decision... but confirmed they were appealing ... the zoning change set out in 3.1.1 of the Council report, that is the decision to replace the existing rural zoning between Domett St and Glanmire Rd with outer residential zoning, along with associated roading changes.*

[18] WHLPG considers (in summary) that PC 62:

- fails to take into account and uphold aspects of the District Plan that provide for expansion of the urban form only where adverse effects can be avoided
 - will result in adverse landscape, amenity, traffic, landform modification and ecological effects
 - does not give effect to the Wellington Regional Policy Statement
 - does not accord with the requirements of s32 of the resource management Act, and the Council's s32 analysis was insufficient; and
- is contrary to Part 2 (particularly s6(b), ss7(c) (f) and (g) of the RMA
- Fails to consider other solutions



[19] WHLPG submits that the present character of the site and the Glanmire valley is rural in ambience, and therefore it is zoned appropriately as *Rural*. It also argues that the offer of the Jarden-owned *Conservation Site* land is not a relevant consideration and that inappropriate weight has been given to it both by Council and Jarden. It is WHLPG's contention that it should be given no weight.

[20] Although the appeal also sought the reinstatement of the Ridgelines and Hilltops overlay for the Stage 8 area, Ms Delany did not appear to pursue reinstatement, but submitted that the topographical and landscape rationales for the original decision to apply the overlay remain valid now and increasingly into the future. She says that the decision to apply the overlay, even though it was subsequently removed, was testament by the Council itself that the area deserves special protection.

[21] The Council submits that its evidence shows that any actual and potential adverse effects on the environment can be adequately mitigated through the site specific controls proposed in PC 62, and the ability of both the Council and the Wellington Regional Council to assess further detail and attached conditions to the future resource consents that will need to be obtained. The rezoning is consistent with the relevant planning instruments, and the rezoning is appropriate.

[22] Jarden submits that PC 62 represents a logical and planned extension to the Bellevue Residential Area. Ms Roberts acknowledges that the greatest potential effect from PC 62 and subsequent development of the area would relate to visual amenity and loss of rural outlook. However, Ms Roberts also notes that the main Stage 8 development site is not mapped within an identified ridgeline and hilltop area and sits below the main ridge that is already occupied by residential dwellings. Jarden accepts the proposed new Appendix 26 and considers the provisions ensure that WHLPG's concerns are provided for.

The legal framework for considering Plan Changes

[23] The process of analysis for district plan changes was reviewed in the decision of *Eldamos Investments Ltd v Gisborne DC* (W047/2005) and further commented on in *Long Bay – Okura Great Park Soc Inc v North Shore CC* (A078/2008).



[24] Within this framework we consider whether the terms of the Plan Change:

- Accord with and assist the council in carrying out its functions so as to meet Part 2;
- Take account of effects on the environment;
- Are consistent with, or give effect to (as appropriate) applicable national, regional and local planning documents; and
- Meet the requirements of s32 RMA, including whether the policies and rules are the most appropriate for achieving the objectives of the plan

[25] It is helpful to set out the relevant portions of s32 RMA, bearing in mind that because of the timing of the notification of the Plan Change, the law to be applied is the RMA as it existed before the 2009 Amendment Act came into force on 1 October 2009:

32 Consideration of alternatives, benefits, and costs

(1) In achieving the purpose of this Act, before a proposed plan,... change, or variation is publicly notified ,... an evaluation must be carried out by - ...

(d) the person who made the request, for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part 2 of the Schedule 1.

(2) A further evaluation must also be made by –

(a) a local authority before making a decision under clause 10 or clause 29(4) of the Schedule 1:...

(3) An evaluation must examine –

(a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and

(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

(4) For the purposes of the examinations referred to in subsections (3)..., an evaluation must take into account –

(a) the benefits and costs of policies, rules, or other methods; and

(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

(5) The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.



[26] There is no presumption that the terms of the Plan Change are appropriate (or not). The Court is simply to seek an optimum planning solution based on the information and options put before it.

Wellington Regional Policy Statement and Proposed Regional Policy Statement

[27] Mr Peter Coop, a consultant planner, was called by Jarden. He adopted the planning evidence prepared by Mr Rodney Halliday (also a consultant planner) as Mr Halliday was unable to attend the hearing.

[28] That evidence reviewed the objectives and policies in Chapter 5 Freshwater; Chapter 9 Ecosystems; and Chapter 14 Built Environment and Transportation of the operative Regional Policy Statement (RPS) and having analysed the issues concludes that the proposed plan change will give effect to the policies of the RPS.

[29] The Proposed Wellington Regional Policy Statement (PRPS) was notified on 21 March 2009, and decisions were released in May 2010. Mr Coop was of the view that, given the early stage of its development, little weight should be placed on it. However, overall, he did not consider PC 62 to be inconsistent with the PRPS.

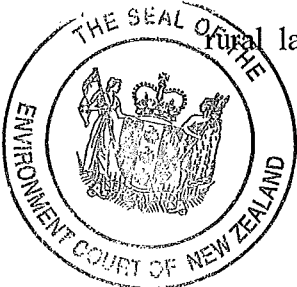
[30] Ms Louise Miles, Council's planning witness, also considered little weight could be given to the PRPS provisions, but reviewed both the operative and proposed RPS in terms of some of the effects discussed below.

Regional Plans

[31] Ms Miles considered the Regional Plans, and advised there are no additional matters that are not already addressed in the RPS and PRPS that are relevant to the appropriateness of the rezoning.

Wellington City District Plan - Rural

[32] The Coop/Halliday evidence stated that in general the Plan seeks to encourage farming activities in the rural zones. Subdivision is strictly controlled and the Plan contains objectives, policies and rules to generally discourage the fragmentation of most rural land. The Plan notes in the introduction to the rural chapter that ... *rural land*



proposed to be developed for residential purposes will be considered by way of a change to the District Plan.

[33] Policy 14.2.4.1 seeks to: ... *control greenfield subdivision initiated in the Rural Area to ensure that adverse effects are avoided, remedied or mitigated and that if land is developed, it is developed in a way that will lead to neighbourhoods which have a high amenity standard and which are adequately integrated with existing infrastructure.*

[34] Objective 14.2.5 of the Rural Area is aimed at maintaining and enhancing .. *natural features (including landscapes and ecosystems) that contribute to Wellington's natural environment.*

[35] Under the *Rural* rules a subdivision is a *Discretionary* Activity (unrestricted) under Rule 15.4.5 where the parent allotment is 30ha or greater *and* a maximum of two new allotments are created. Failure to meet these rules results in a subdivision becoming *non-complying*, which would be the case if the *indicative plans* provided by Jarden were implemented. In Mr Coop's opinion, the indicative subdivision would not find policy support in the District Plan.

[36] The construction of residential buildings is a *Discretionary* Activity (restricted) under Rule 15.3.3a (one dwelling per lot) with consideration to be given to matters such as design and external appearance, landscaping, servicing and hazards. An assessment is also required under the Rural Area Design Guide. Earthworks are *Discretionary* Activities (Restricted) under Rule 15.3.5 where the ground is altered by more than 2.5 metres vertically. The earthworks on the indicative plan would require an unrestricted *discretionary* activity consent within the area of *Ridgelines and Hilltops* overlay. In Mr Coop's opinion, PC 70 (which is an effectively operative earthworks plan change) is likely to result in a requirement for increased erosion and sediment control measures and required mitigation as conditions of resource consent.

Wellington City District Plan – Outer Residential

[37] Mr Coop states that the thrust of the objectives and policies for the residential areas is to provide for a range of residential activities in a way that ensures any potential



adverse effects are avoided, remedied, or mitigated and residential character and amenity values are maintained.

[38] Objective 4.2.4 and associated Policy 4.2.4.2 recognise and provide for greenfield subdivision, and explain that in most circumstances greenfield subdivision will be considered as part of a district plan to extend the urban area. Objective 4.2.5 is similar to Objective 14.2.5 of the *Rural* zone, and seeks to ... *maintain and enhance natural features (including landscapes and ecosystems) that contribute to Wellington's natural environment*. Ms Miles notes that the objectives and policies relating to urban containment and the expansion and development of Greenfield areas in the operative district plan are the same in both the *Rural* and *Outer Residential* areas, and mirror the focus on compact urban form in the PRPS.

[39] Objective 4.2.2 seeks to maintain and enhance the amenity values of Residential areas and that is achieved within the plan principally through subdivision and development rules including the residential design guide and subdivision design guide.

[40] Subdivisions that create 5 or more allotments or create more than 10m of legal road in the *Outer Residential* area require consent as *discretionary* (unrestricted) activities. One of the matters for assessment would be extent of compliance with the Subdivision Design Guide. Residential buildings and structures are *permitted* activities subject to conditions. No assessment against a Design Guide is required for a single household unit.

[41] Ms Miles advised that earthworks have the same activity status in *Outer Residential* and in the *Rural* area. Ms Miles advised that, like the *Rural* area, there is no general restriction on the removal of vegetation on sites in the *Outer Residential* area.

[42] Mr Coop considered that the *Outer Residential* provisions are more appropriate for considering future residential use of the Stage 8 area.

Relationship with Plan Change 33- Ridgelines and Hilltops

[43] WHLPG's witnesses and submissions appeared to place great reliance on PC 33 and cited the history of the plan change at length. But the inescapable point is that the



current location of the overlay (which is long since beyond challenge by way of appeal) excludes the majority of the area proposed to be rezoned. Ms Delaney appeared to acknowledge in her submissions that it was beyond the scope of WHLPG's appeal to ask for the overlay to be reintroduced, and that the relevance of the overlay history is that the comments made in the past suggesting that the Stage 8 area was worthy of the protection offered by the overlay are as relevant today as they were when they were made. We will return to the issue of the character of the landscape and visual amenity of the site and potential effects arising from PC 62 later.

[44] Ms Miles advises that, while the District Plan does not preclude development in the overlay areas, it identifies sites where detailed scrutiny of proposed activities and buildings is required through the associated policies, rules and assessment criteria. The extent of encroachment into the overlay that would result from the implementation of the proposed earthworks plan was reduced, prior to the Council hearing, down to approximately 365m² (based on the indicative subdivision layout produced by Jarden). The effect of the overlay on earthworks activity status has been outlined above.

PC 72

[45] PC 72 was notified on 29 September 2009. It has been through the public hearing and submission phase, and a decision is pending. PC 72 was notified following a full review of the residential chapters of the plan. Mr Coop considers PC 72 which seeks to encourage ... *consolidation of the established urban area...* adding that ...*containment and intensification of the existing urban area has always been a key objective of the District Plan.*

[46] Ms Delany noted that Mr Coop considered that under proposed PC 72, Policy 4.2.1.1, any proposal to expand the existing urban form will be expected to demonstrate that the expansion incorporates low impact design, low impact subdivision, and facilitates energy efficient building design. She adds that ... *this relates to the general objective of the WCC of containment and intensification of the existing urban area.*

[47] We have been advised that the District Plan has an emphasis on urban containment but also allows greenfields subdivision in some cases. We do not think the general



provisions either emphasising urban containment or allowing greenfields subdivision assist much either way.

[48] Ms Miles considers that PC 72 does not specifically affect the provisions for the *Outer Residential* area zone that apply to the development of single household units.

Northern Reserves Management Plan

[49] Called by WHLPG, Mr George Thomson, who stated that the objective of his evidence was to find relevant and essential documentation on public statements about the landscape and other values of the area affected by PC 62, did not hold himself out as an expert witness. He referred to the Council's Northern Reserves Management Plan (NRMP), apparently as support for WHLPG's submissions about the landscape value of the site. Ms Amber Bill, WCC Manager, Community Engagement and Reserves, and the Council's ecology witness, referred to the NRMP in connection with the proposed vesting of 38 ha of *Conservation Site* in the Council. She considers the vesting is consistent with the NRMP.

[50] It is our understanding that this document guides the Council's management of Council-owned reserves and open space in the northern area of the City. It has no relevance to this narrow appeal concerning rezoning of 3.73 ha to *Outer Residential*. In any case, the generic comments Mr Thomson referred to do not support any submission on the landscape values of the land affected by PC 62.

PC 36 and the Northern Growth Management Framework

[51] Mr Coop noted that the particular issue in the north of the City relating to the extent to which rural land should be used for new urban development has been addressed in the Northern Growth Management Framework (NGMF). This document presents a framework for the growth and development of the northern area of the City over the next 20 years and identifies rural zoned land considered appropriate for urban expansion.

[52] Mr Coop explained that PC 36 seeks to incorporate policy support for the NGMF. PC 36 is under appeal and not yet fully operative. However, the appeal relates to a specific site in the Horokiwi area, and so Mr Coop considered PC 36 should be given considerable weight in respect of other sites.



[53] Mr Coop noted that the Stage 8 area is not specifically identified as an indicative future residential area in the NGMF document: ... *however it does sit within the NGMF area boundary where greenfield proposals are clearly anticipated where the adverse effects can be avoided, mitigated, or remedied and a high amenity standard can be achieved*

[54] Mr Coop considers that PC 62 is consistent with the policies introduced through PC 36 and the NGMF.

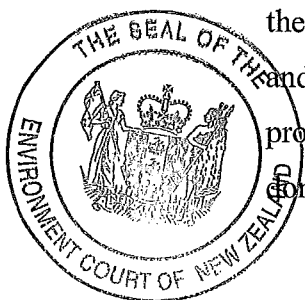
[55] Ms Miles also considered that while the Stage 8 site is not identified as an indicative future residential area, the NGMF is relevant. Overall, she considers that PC 62, with the addition of the proposed Appendix, is broadly consistent with the principles in the NGMF.

[56] Ms Miles also considered the planning documents under heads such as urban form, landscape and traffic, and we refer to her comments and conclusions in the sections considering effects.

Ecology

[57] Ms Bill had prepared an initial ecological assessment of the proposed covenant area in 2006, which formed part of the Officer's report considered at the Council hearing of PC 62. Ms Bill also said she carried out a rapid ecological assessment of the vegetation in the area of Glanmire Road, which included the covenant area and no build/no vegetation removal area provided for in the PC Appendix provisions.

[58] Ms Bill described an intact forest area buffered by a mosaic of gorse/mahoe shrubland and rank grassland. She also noted the presence of a stream, beginning at the head of the gully, where two spring sources run at last intermittently. There was evidence of macroinvertebrates. Ms Bill considers that PC 62 meets her recommendation to retain the vegetation by requiring the covenant area. While there is some regenerated mahoe and gorse outside the covenant area, the more mature forest is protected. Further, the proposed no build/no vegetation removal areas ensure the protection of additional mahoe dominated forest.



[59] Ms Miles considered the regional and district planning documents, and is satisfied that the Stage 8 proposal (as modified in the Council's decision) is consistent with the policy framework for freshwater and ecosystems.

[60] WHLPG did not make any specific submissions about the ecology of the area of Stage 8 and consequently we accept Ms Bill's expert opinion.

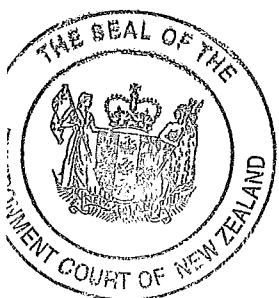
[61] It appears, on the basis of Ms Miles' and Ms Bill's evidence, that the outcome for vegetation on the appeal site will be better under PC 62 provisions (including the Appendix) than under either *Rural* or *Outer Residential* provisions alone, given Ms Miles' evidence that neither the *Rural* nor the *Outer Residential* provisions have a general restriction on vegetation removal.

Landscape and visual effects

[62] Ms Justine Cannon, a local resident, presented evidence for WHLPG which summarised the views of ten residents or visitors to the area. She did not give evidence as an expert witness. The comments Ms Cannon summarised emphasise the importance to those persons questioned of the rural, open outlook provided by the undeveloped site. While each expressed a reasoned and reasonable view, this essentially anecdotal evidence is to be weighed against the expert evidence called by Jarden and the Council.

[63] WHLPG also presented excerpts from their 2007 submission to the Council. There, they argue that subdivision will completely change the visual appearance of the area. WHLPG submitted there will be a particular effect of altering sightlines to the sea from existing houses, from Glanmire Street and from Brandon's Rock; and an alteration of the sightlines from the harbour to the relevant area of the ridge. The submission notes that Brandon's Rock has significance as the 1840 site of one of the two trigs for the first survey line in New Zealand.

[64] Mr John Hudson, the landscape architect called by Jarden, noted that the proposed plan change area lies on the edge of the existing residentially developed area of Newlands, but also on the edge of the escarpment land zoned as *Rural* and *Conservation*. When considering the site in terms of landscape character, he considered that it is



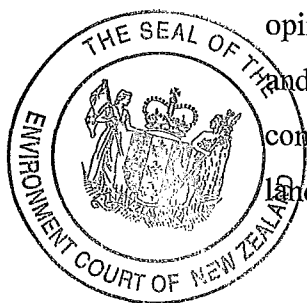
appropriate to think of this on two scales; the small scale of the local neighbourhood, and the larger scale of the wider Wellington escarpment.

[65] Mr Hudson considered that the overall character of the local neighbourhood is one of a bush-clad expansive outward-looking hillside, with native vegetation being the dominant land cover and small areas of pasture being visible near the hilltop in the application site valley. While this open character prevails, Mr Hudson considered that the relatively new housing on Glanmire Road, downhill and west of the proposed site, cannot fail to be noticed when descending the hill down the escarpment road. These houses have the effect of extending the built character down the hill and of reducing the rural character in the immediate area.

[66] In terms of the wider setting, the site is a tiny section of development that abuts existing residential development that forms a long thread of hilltop housing along the Wellington escarpment. Mr Hudson considers the effect of additional housing within the site will be minimal when viewed from distant viewpoints.

[67] Ms Angela McArthur, the landscape architect called by the Council, said the Stage 8 area is dominated by two features – the escarpment hilltop with plateau within the northern edge, and the gully running parallel to Glanmire Road. The hilltop is a prominent feature, however the northern side *plateaus* and is considerably modified by past stockpiling of fill from earlier stages of the Bellevue estate. The topography within the southern and western sides is relatively unmodified. The character at the top of the gully is moderately sloping pastureland. Regenerating native vegetation is establishing well within lower sections of the gully. Ms McArthur noted that a rocky outcrop is visible close to the top within the south west face of the hilltop. This exposed rocky area has given a distinct shape to the hilltop along this section of harbour escarpment. A nearby more prominent rocky landmark is Brandon's Rock, located to the west.

[68] Mr Hudson indicated that some adverse local effects are not unexpected but, in his opinion, the adverse effects are limited to local visual impacts for neighbouring properties and to effects on amenity values. Mr Hudson lists what he views as the main issues and concludes that the proposed plan change is appropriate in terms of its effects on the landscape and visual amenity. He considered that PC 62, and in particular the provisions



within the new Appendix 26, will allow an appropriate activity in a location that is well suited to residential development in terms of landscape and visual effects, irrespective of the benefits to be gained from the potential vesting of the 38ha Jarden land.

[69] Ms McArthur gave evidence that in terms of visibility and visual effects:

- The Stage 8 site is difficult to distinguish from across the harbour due to the elevation and surrounding context of residential development. From these viewpoints, visual effects will be minimal.
- From mid range, there will be some visual effects but these can be mitigated by the mitigation proposed in the PC 62 provisions, and will be no more than minor.
- At close range, there will be some visual effects for those in the close neighbourhoods surrounding the Stage 8 area. The most affected areas will be the seaward side of Edgecombe Street and Kenmore Street, and a number of homes within Glanmire Street at the top of the hill overlooking the site. However, a number of already existing mitigating factors, such as existing vegetation surrounding homes above the area, the elevation above the site and orientation towards more distant views will reduce the impact of future residential development. With the mitigation measures include in PC 62, the effects are acceptable and residential housing is a suitable use.
- For other close range viewpoints, she considered the effects acceptable.

[70] Ms McArthur also concluded that:

- The provisions proposed in the PC 62 Appendix can protect the visual amenity and landscape values of the local community and will protect the rural character of the area below Stage 8
- Dominant views of the *Rural* and *Conservation* land below the site will be maintained.
- Views from Brandon's Rock are from some distance away, and take in a 360 degree panorama. Adding residential development in the Stage 8 area would have a minor effect on this view.
- There will be adverse landscape and visual effects resulting from any development of the lower gully within the proposed Stage 8 area, but the provisions in PC 62 have provided for the protection of that area.

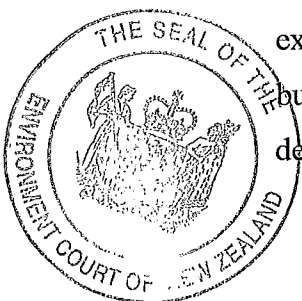


[71] Ms McArthur specifically addressed the concerns of some residents, conveyed by Ms Cannon, that their harbour or rural outlook and views would change. She was of the opinion that open views to the harbour and rural area will be maintained.

[72] Ms Delany and Mr Thomson cited a number of documents including a WCC Hearing Committee decision declining a zone change request on the same area in 1995, a Boffa Miskell Report of 2001 and the Boffa Miskell report: *Bellevue Estate Stage 8 Landscape Analysis*. WHLPG did not call expert landscape evidence. Ms McArthur and Mr Hudson referred to the Boffa Miskell Stage 8 Landscape Analysis, but also undertook their own expert analysis of the landscape and visual effects. We do not consider it helpful or necessary to review and compare comments made in each of these documents. Some, like the 1995 WCC Hearing Committee decision, are too old to be helpful. Most were written in different contexts and for different purposes. To the extent that WHLPG appeared to be asserting that they demonstrate an inconsistent attitude by Council or others towards the zoning treatment or landscape assessment of this site, we emphasise that the Court is hearing this appeal anew.

[73] Comment was made by Mr Hudson and Ms McArthur that the site is *abutted* on three sides by existing residential development. Ms Delany disagreed with this characterisation. Ms Delany also took issue with the assertion in the Boffa Miskell 2006 landscape report on Stage 8, that the proposed Stage 8 development area is a natural extension of existing development. She referred to similar comments by Mr Hudson and Ms McArthur and expressed the view that these views do not accord with the visual reality. In the WHLPG's view the proposed Stage 8 development area is relatively discrete and distinct, and ... *there is no logic to any argument that just because development has already occurred it should be able to continue to occur.*

[74] This difference of opinion was largely based on the differing interpretations of *abutting* and *adjacent*. We do not accept Ms Delany's submission that the site is ... *relatively discrete and distinct*. In our view the essential point to be made about the existing residential development is that it is not very distant. There is no significant buffer of land with a rural or open space character between the existing residential development and the 3.73ha of land we are considering. As Mr Hudson described it, if



the 3.73ha is developed with residential housing, that housing will be the new *edge* development. He therefore did not consider it would be *sporadic* development.

PC 67

[75] Mr Thomson presented extensive extracts from the decision on Plan Change 67 (PC 67) which related to another area in Newlands. The PC 67 property is largely covered by the *Ridgelines and Hilltops* overlay, and PC 67 concerned a proposal to rezone from *Rural* to *Outer Residential*. Ms Delany argues that the decision on PC 67 provides an *alternate solution* for the Stage 8 area. PC 67 was declined. What WHLPG appears to seek, therefore, is not an *alternative* but that the current PC 62 be denied on the same basis as the Council's decision on PC 67. WHLPG in particular submits that the Council placed great weight on the validity of the original process for establishing the overlay, whilst noting that the overlay was retained on the PC 67 land.

[76] We do not consider the decision on PC 67 creates any precedent. The extent of the *Ridgelines and Hilltops* Overlay is very different on the PC 67 land and the PC 62 land. There are likely other significant differences. In any case, this hearing on PC 62 is *de novo* and will be decided on its own merits.

Amenity and Recreation

[77] In her submission, Ms Delany stated that the land's recreational values are based on the fact that:

- The sea-facing part of Glanmire Road is the only one, or one of the very few, public access points for pedestrians and cyclists of Newlands (and to some extent Johnsonville) that has a rural and harbour view ambience
- This ambience stems from the relative lack of houses and other structures, the extent of green, and the lack of distraction from the harbour view.

[78] In considering *Amenity effects* WHLPG noted that they consider the visual impacts cannot be considered *minor* due to the radical proposed change from open green space to dense housing.

[79] Ms Delany argued that the spur is one of the few ridgetops along this part of the Wellington escarpment which can be seen as relatively untouched and rural. She quoted



the Boffa Miskell 2001 report that stated that: ... *provision for adequate and connected public recreation on these hilltops needs to be considered now, while subdivisions are still being planned*. Ms Delaney added that sustaining the existing character of the harbour escarpment and securing its protection is important for the whole city.

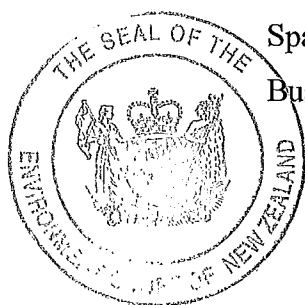
[80] In her evidence, Ms Cannon cited comments by Mr Rob Lapsley and Mr Mike Caldwell (among others) about the peace and tranquillity of the area and the ability to walk their dogs or walk with friends and family ... *who can enjoy this beautiful area*.

[81] In rebuttal, Mr Hudson accepted that the proposed development will alter the rural amenity values of the top two paddocks that comprise the site. However, Mr Hudson is of the view that there will be a significant extent of Glanmire Road unchanged by the development and that people will still be able to walk their dogs, enjoy the rural amenity of Glanmire Road (once past the development) and the panoramic views of the harbour.

[82] Ms Miles concluded that any adverse effects on recreation and amenity will be minimal. We are also persuaded that while there will be adverse effects their effects will be no more than minor.

[83] Similarly, issues of privacy have in our view been addressed in the Plan Change and will also be subject to further scrutiny as part of the subdivision resource consent process

[84] Ms Bill outlined the significance of Gilbert's Bush as a Conservation Site, and addressed Jarden's offer (contingent on PC 62 being approved and subdivision consent being approved) to vest the area of Gilbert's Bush that Jarden owns, in the Council. Ms Bill notes that a draft Reserves Agreement has been prepared and that the Council has accepted it in principle. The reserve would be accepted in lieu of development contributions. She believes its acquisition would achieve a high level of public benefit for conservation purposes as well as for recreation, as a significant portion of the proposed Harbour Escarpment Walkway sits within the Conservation Site. The Harbour Escarpment Walkway is a priority initiative listed in the Wellington City Council Open Space Access Plan (2004) and a proposed route has been scoped that traverses Gilbert's Bush.



Landform modification

[85] Mr Ian Prentice, a land development consultant called by Jarden, noted that the ridge has been significantly modified by previous earthworks as part of earlier Bellevue development stages. Mr Prentice said that broken topography consisting of ridges and gullies can only be viably developed into residential allotments by implementation of earthworks to recontour the land. He stated that it is preferable to provide earthworks for roading and for allotments that are suitable for building on without the need for localised subsequent earthworks and the associated adverse effects of such activities. He said that the earthworks required for Stage 8 equated to about 1700m³ per lot, a quantity that he described as *moderate* in comparison to similar Wellington hillside developments. He added that further lowering of the ridge (8-9 metres maximum, 5 metres average) and filling of the upper catchment of the gully will not be discernable in time. Given Wellington's hillside topography, Mr Prentice considers that earthworks are a necessary reality.

[86] WHLPG argued that mitigation of the major effects is extremely unlikely. These effects will result from the alteration to the rural character of the landscape, the large changes to the point that would be lowered and the irreversible and permanent changes to the peace, wildness and beauty of this corner of Wellington.

[87] Mr Prentice noted the new requirements required by Appendix 26 about further assessment criteria and preparation of an earthworks management plan. He noted the need to be consistent with relevant regional guidelines in relation to proposed cut and fill in relation to the stream and native vegetation on the site.

[88] Mr Prentice also outlined Jarden's intentions with respect to sanitary services; stormwater; water supply and utility services.

[89] Ms Delany expressed concern about the extent of earthmoving that the developers propose but apart from a general comment about the *terrain differences* is not specific about these concerns.

[90] We noted that a small portion of the southern end of the Stage 8 site proposed for residential development encroaches into an area identified by the Wellington Regional



Council as being of moderate slope failure risk. Ms Miles made reference to a report by Abuild Consulting Engineers that stated that the site was suitable for the development proposed and that their risk assessment of instability on the hillslope was assessed as low risk. Along with this report Ms Miles made reference to the proposed *no building construction or vegetation removal* designation on the plan included in the proposed Appendix 26 provisions covering a portion of the hazard zone. She suggested this reduces the risk of instability occurring in that area.

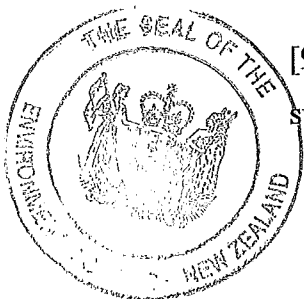
[91] Ms Miles concluded that on the basis of the information provided she was satisfied that the issue of stability can be adequately addressed through the future subdivision and earthworks resource consents once the detailed design is finalised.

[92] Ms Bill acknowledges that the earthworks from the subdivision will have a negative impact on the stream, with the proposed piping of the headwaters and habitat loss, and notes that there may also be potential effects as a consequence of enhanced water flow from impermeable surfaces. However, she notes that the impact of the earthworks on the stream will be assessed as part of future subdivision consent and earthworks consents that will be required from the Council for the Stage 8 development and that the proposed Appendix 26 provisions include several requirements to ensure a thorough assessment of effects on the ecology of the stream.

[93] Ms Miles considered the freshwater provisions in the RPS, PRPS and District Plan, and stated that she is satisfied, through the resource consents required and the adoption of the Appendix 26 provisions, that any adverse effects are able to be adequately mitigated.

[94] Ms McArthur considered the visual and landscape effects of earthworks and recommended that all earthworks be designed to reflect natural landforms and to be restricted to filling the upper gully and reducing the level with the hilltop area of Stage 8. She believes that any concerns relating to visual amenity, replanting and changes to flow in the stream can be dealt with as part of the resource consent process. She recommends the adoption of the recommendations in the Council's decision.

[95] Mr Prentice's evidence included earthworks calculations for Jarden's alternative subdivision layouts, one providing for 41 residential allotments, and one providing for 58



residential allotments, as well as the *middle road* approach Jarden presented to the Court. The key point to come out of Mr Prentice's evidence, in our view, was that earthworks requirements varied considerably depending on number of allotments and the roading proposals. We are not yet considering a resource consent application for the Stage 8 subdivision. The Stage 8 proposal that Jarden has in mind could be proposed under either *Rural* or *Outer Residential* Zonings.

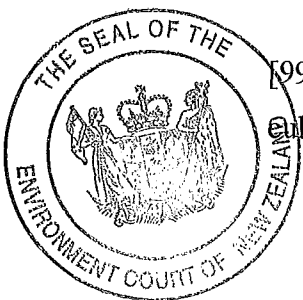
Traffic

[96] Mr Neville Williams, a local resident giving evidence for the appellant, expressed his concern regarding the safety of drivers, cyclists and pedestrians at the intersection of Glanmire Road and Edgecombe Street as a result of the proposal to provide a connector road through the Stage 8 site. Mr Williams was clear that he was not presenting evidence as an expert witness. In cross-examination, it became clear that Mr Williams' concerns could generally be dealt with by the provision of the proposed roundabout at the Glanmire/Kenmore intersection which had ... *been news to him..* and the specific inclusion in our decision of a condition requiring the provision of a *Give Way* sign on Edgecombe Street.

[97] Mr Brendan Stone, a resource management planner now specialising in transport matters was called by the Council and outlined in his evidence that the impact on the existing road network was considered at the time of the plan change application. It was the Council's view at the time that the additional traffic generated by the new residential development (Mr Stone advises that the Council's Chief Transportation Engineer estimated an additional 500 vehicle trips per day) would be able to be readily accommodated in the existing road network, and his view has not altered.

[98] Mr Timothy Kelly, Jarden's traffic witness, also considered that the current traffic road network is uncongested, and the additional traffic can be easily accommodated. He considered any effects on the safety of vehicle and pedestrian movements would be less than minor. He based that on the indicative 48 residential lots, and 430 additional vehicle trips per day.

[99] Mr Stone and Mr Kelly also addressed the relative merits of a through road versus a cul-de-sac. We consider it is too early to consider matters of detail such as this. As for



safety, as Mr Stone noted, any detailed road safety work can be addressed at the resource consent stage.

[100] Ms Miles advised that the transportation objectives are the same in both the *Rural* and *Outer Residential* Areas, and seek to enable efficient, convenient and safe access for people and goods.

[101] There is no reason why an appropriately designed residential development of the site cannot be achieved in accordance with the objectives and policies of the *Outer Residential* area. The introduction of further traffic, which is a likely effect of the rezoning, did not impress us as an effect which ought to prevent rezoning.

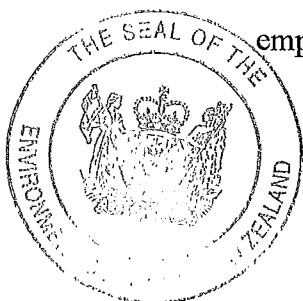
[102] We concluded that the traffic effects of a change in zoning from *Rural* to *Outer Residential* can be accommodated and will not be out of character in this area.

Offer of 38ha of land to be vested

[103] Ms Delany has argued that the offer of 38ha of *Conservation* Site land to be vested in the Council is not a relevant consideration and that inappropriate weight has been given to it both by the Council and applicant. She argues that it should be given no weight.

[104] Ms Miles makes the point that vesting would have the benefits of removing the possibility of a future private plan change to change the zoning of the land, and it will also potentially make it easier for the Council to develop the future Harbour Escarpment Walkway. We have already considered Ms Bill's evidence concerning the value of that land for conservation and recreation purposes.

[105] There is nothing in place, as yet, to bind Jarden to provide that. As we have noted above, the offer is contingent on PC 62 approval and consent for the Stage 8 proposal being granted. As Ms Anderson noted, the vesting is not part of PC 62. We cannot bind Jarden to provide it within the context of this appeal. The proposed vesting is, we emphasise, a make-weight, but does not form a fundamental part of our decision.



Section 32 evaluation

[106] Ms Delany submitted that the s32 analyses are insufficient. She particularly suggests that the s32 analysis was deficient in considering alternative ways to protect public access to the 38ha (ie through the offer to vest it in the Council). Ms Delany also submits that the benefits of leaving the zoning as *Rural* are not explored in any real sense – for example the increasing need for green space.

[107] Ms Miles noted that the s32 evaluation for the Stage 8 area focussed on four alternative means to achieving a residential use of the land and added that, in her opinion, options that explored the application of other zones to the Stage 8 site would not be practical or appropriate in relation to the location and the characteristics of the site and locality. Ms Miles notes that she did not support rezoning of the subject site as *Conservation Site* (as an example) because there were no ecological values identified in the ecological assessment, and therefore such a zoning would be an unjustified restriction on the land that is privately owned.

[108] Ms Miles advised she considered the rezoning of the Stage 8 area will provide the most efficient and effective method of achieving the objectives of the District Plan. While the focus of the District Plan is directed to urban containment, provision is also made for greenfield development to occur on land zoned *Rural* by way of a plan change process.

[109] We note that there is no obligation under either zoning to leave the land as open green space. Ms Miles advised neither zone has rules generally preventing vegetation removal. This rurally zoned land could presumably have been used for rural purposes, although Jarden advised it was not economic to do so. The land is not zoned *Open Space* or similar, is not vested reserve, and is privately owned.

[110] We conclude that there has been an adequate s32 analysis of the alternatives, benefits and costs.

Part 2 RMA

[111] WHLPG referred to one Part 2 matter in its appeal, s6(b) concerning the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and



development. Mr Hudson commented on the issue of *Outstanding Landscapes*. He advises that the site does not qualify for consideration under s6(b) of the RMA. We agree.

[112] Section 7 requires the Court to *have particular regard* to a number of matters in making decisions under the Act. We consider the following s7 matters are relevant to this appeal:

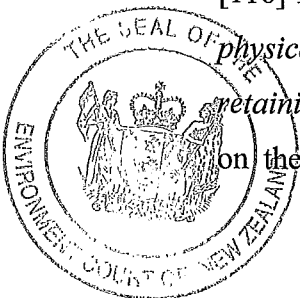
- b) the efficient use and development of natural and physical resources
- c) the maintenance and enhancement of amenity values
- f) maintenance and enhancement of the quality of the environment
- g) any finite characteristics of natural and physical resources

[113] We have heard from Mr Coop that the level of development possible under a *Rural* zoning is markedly different and indeed uneconomic from a developer standpoint. Others have argued the plan change will allow completion of the Bellevue Estate development and that this Plan Change is confirming what has always been assumed – that the land would be used eventually for *Outer Residential* purposes. The counter argument is that this is a last pocket of rural amenity in this part of Wellington and should be retained as such. We have been advised that the land has no productive potential.

[114] We are reminded by Ms Delany that existing earthwork changes to the landscape, and existing housing in the near vicinity are not of themselves reason to allow further development. We agree with and respect this point of view, in principle. However, in this instance, we are also aware of what has happened in terms of the Bellevue developments and their impact already on the hill side and topography.

[115] The appeal we are considering revolves around a rezoning issue. Therefore, the central question is not so much the *fit* of plan change provisions with superior planning documents, and with the rest of the District Plan – it is the *fit* of the *Rural* or *Outer Residential* zoning (with the addition of the PC 62 specific controls) with the site. Those are the two alternatives with which we were presented.

[116] The real question for us is: – *Is the efficient use and development of natural and physical resources served by a plan change to enable residential development, or retaining the Rural zoning?* It is our view that while there will be some adverse effects on the ecology, landscape, and amenity they will be no more than minor – and this



remains the case even when these adverse effects are considered cumulatively. We consider PC 62 provides the mechanism to adequately avoid, remedy or mitigate such effects. While this rural character land is a finite resource, usable land within the reach of current infrastructure and residential development is also a finite resource.

[117] We have therefore concluded that the RMA's purpose of sustainable management is better met by confirming PC 62. The level of development proposed by Jarden is not presently consented. That process will occur separately. We are satisfied that such issues as arise will be adequately considered within the context of the PC 62 rezoning and additional controls.

[118] We are also reminded of the arrangement for the vesting of the Conservation Site as part of the overall package related to the proposed Plan Change. The vesting of the *Conservation Site* (albeit as in lieu of development contributions) is an additional benefit, albeit not one that is integral to, or a presently enforceable condition of, the Plan Change. While we recognise that that benefit cannot be required, we consider it in the nature of an *Augier* undertaking. It appears that Jarden is sincere in its offer, and the fact that the Council has already drawn up a reserves agreement suggests it considers the offer favourably.

Section 290A – the Council's decision

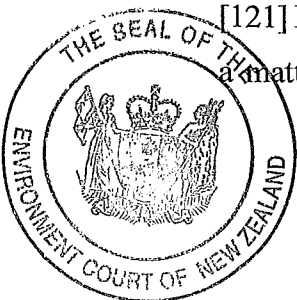
[119] Section 290A requires the Court to *have regard* to the Council's decision. That does not create a presumption that is correct but it does, implicitly at least, call for an explanation should we come to disagree with it. We have considered the Council's decision and come to the same overall conclusions.

Result

[120] For the reasons we have set out, the appeal is declined. We uphold Plan Change 62, including Appendix 26, as modified at the Council Hearing.

Costs

[121] It is the usual practice of the Court not to award costs on plan change appeals, but as a matter of formality, costs are reserved. If there is to be an application it should be



lodged within 15 working days of the issuing of this decision, and any response lodged within a further 10 working days.

Dated at Wellington the 12th day of November 2010

For the Court



C J Thompson
Principal Environment Judge

