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DECISION ON DISTRICT PLAN CHANGE 19: REZONING OF 20A ORIENTAL TERRACE

1. Purpose of Report

To report to Council the recommendations of the District Plan Hearing Committee concerning District Plan Change 19 – Rezoning of 20^A Oriental Terrace, Oriental Bay.

2. Recommendation

- 1) *That Council approves the recommendations of the District Plan Hearing Committee in respect of District Plan Change 19 – Rezoning of 20^A Oriental Terrace, Oriental Bay as set out in Appendix One to this report.*

3. Background

Proposed District Plan Change 19 was publicly notified on 6 September 2003.

Proposed District Plan Change 19 is a Council initiated plan change to rezone the property at 20^A Oriental Terrace, from the Oriental Bay Height Area (OBHA) to Inner Residential Area. The plan change was undertaken in response to the current height restriction applying to the property under the Oriental Bay Height Area (19 metres above mean sea level (amsl)) and the degree to which this creates an anomaly and restricts the development potential of the property at 20^A Oriental Terrace.

The Hearing for District Plan Change 19 was held at Council Offices on 3 February 2004 following distribution of the Officer's Report to all submitters and further submitters.

4. Discussion

Thirty four main submissions and five further submissions were received on Proposed District Plan Change 19. Each of the thirty four main submissions and four of the further submission opposed the proposed plan change in whole or in part. One further submission, that of Edna & Raymond Beasley, supported the proposed plan change to rezone the property as Inner Residential Area.

Nine submitters (Chris Parkin, Peter MacDonald, Janice Lynch, Anne & Patrick Maloney, Peter Upton, Peter & Alison O'Brien, Faye Wyatt, Raymond Beasley, and Richard Tweedie) attended the hearing and spoke to their submissions.

The Committee gave careful consideration to all the issues raised by the submitters, including those issues elaborated on in presentations by the individuals who appeared before the Committee.

Having considering both the oral and written submissions put before it, the Hearing Committee was not persuaded that the rezoning proposed in District Plan Change 19 was a suitable means by which to resolve the anomalous situation at 20A Oriental Terrace. On balance the Hearing Committee considered that the impact of any future development of 20^A Oriental Terrace above the current permitted building height of 19 metres (amsl) was best assessed by way of a resource consent application for a specific development proposal.

Once approved by Council the decision will be publicly notified and served on the submitters. Submitters then have the option of appealing the matter to the Environment Court within 30 working days. If no references are made the plan change will become operative.

Report from: Sue Piper

Chair of the District Plan Hearing Committee on Plan Change 19 –Rezoning of 20^A Oriental Terrace, Oriental Bay

**APPENDIX ONE
REPORT OF THE HEARING COMMITTEE**

**WELLINGTON CITY COUNCIL
REPORT OF THE HEARING COMMITTEE**

SUBJECT: PROPOSED DISTRICT PLAN CHANGE 19:
REZONING OF 20^A ORIENTAL TERRACE

COMMITTEE MEMBERS: CRS PIPER
BEST
SIERS

DATE OF HEARING: 3 FEBRUARY 2004

1. RECOMMENDATIONS

- 1) *Accept submissions 1, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 20, 21, 22, 24, 26, 27, 28, 29, 31, and 33, insofar as they request that 20A Oriental Terrace remain within the Oriental Bay Height Area with a maximum building height of 19 metres above mean sea level.*
- 2) *Accept or reject all the submissions and further submissions to the extent that they accord with recommendation (1) above.*

2. INTRODUCTION

This decision relates to Proposed District Plan Change 19 – Rezoning of 20^A Oriental Terrace, Oriental Bay.

Proposed District Plan Change 19 is a Council initiated plan change to rezone the property at 20^A Oriental Terrace, from the Oriental Bay Height Area (OBHA) to Inner Residential Area.

All owners and occupiers of properties in the area directly surrounding 20^A Oriental Terrace were notified of the proposed plan change.

Thirty four main submissions and five further submissions were received on Proposed Plan Change 19. One further submission (Edna & Raymond Beasley) supported the Proposed District Plan Change. The remaining submissions and further submissions opposed the Proposed District Plan Change either in whole or in part.

Nine submitters attended the hearing and spoke to their submission:

- € Chris Parkin
- € Peter MacDonald
- € Janice Lynch
- € Anne & Patrick Maloney
- € Peter Upton
- € Peter & Alison O'Brien
- € Faye Wyatt

- € Raymond Beasley
- € Richard Tweedie

The Committee gave careful consideration to all the issues raised by the submitters, including those issues elaborated on in presentations by the individuals who appeared before the Committee. The following discussion sets out the key issues and the Committee's reasons for making its decision.

3. SUBMISSIONS AND DISCUSSION

3.1. Current situation

The plan change was undertaken in response to the current height restriction applying to the property at 20^A Oriental Terrace under the Oriental Bay Height Area (19 metres above mean sea level (amsl)) and the degree to which this restricts the development potential of the property. The property has ground levels of between 13 and 18 metres amsl providing a possible building envelope (measured in height above ground level) of 6-7 metres at the road frontage, tapering to 1-2 metres at the rear of the site. As a result the property is subject to building height restrictions substantially lower than those applying in the other residential areas of the city.

District Plan Change 19 recommended that the site at 20^A Oriental Terrace be incorporated into the adjoining Inner Residential Area zone and be subject to the building height and bulk provisions of that zone. An Inner Residential zoning would permit development of the site up to 10 metres above ground level (generally sufficient for three storeys), subject to 50% site coverage, car parking, residential density and sunlight access controls.

The Committee gave due consideration to the planning history of the area. They noted that when Council lowered the building heights for the properties at 20A-28 Oriental Terrace to 19 metres (amsl) in 1982 (as part of the 1979 District Scheme Review) this was done to preserve the sun-light, amenity and views of properties to the rear, and to protect the special character of Oriental Parade and Oriental Bay area.

The Committee was also mindful of the recent history of Environment Court decisions involving building heights in the OBHA. They noted that in the Grass St/Hay St decision (W73/98) and the decision on 62-108 Oriental Parade (W74/98) the Court maintained that heights of OBHA properties should be set at heights that recognised and respected the amenity values of properties to the rear. The Committee also noted that Environment Court decisions have generally been in favour of protecting the amenity of existing residential developments, as opposed to anticipating the potential amenity that could be provided by future development.

The Committee was also very aware that several properties to the south and west (particularly No. 14 and No. 22 Oriental Terrace) have been recently and intensively developed and that their amenity relies, at least in part, on the property at 20^A observing the existing 19 metre (amsl) height limit.

At the hearing the officer's report presented the Committee with a second option for 20^A Oriental Terrace which involved retaining the property in the OBHA with an increased maximum building height of 22 metre (amsl). During the hearing this option received little support from submitters. Only Chris Parkin spoke strongly in favour of the 22 metre option as a suitable outcome for the site. The owners of 20^A Oriental Terrace (represented at the hearing by Raymond Beasley) advised the Committee that they did not consider that the 22 metre (amsl) option was reasonable or fair. In the absence of any widespread support for the 22 metre (amsl) option the Hearing Committee were not

of a mind to consider it as a replacement for the provisions put forward in the original proposed District Plan Change.

3.2. Effect on the amenity of neighbouring properties

The Committee accepted that the building height provisions currently applying to 20^A Oriental Terrace were more restrictive than those that apply in other residential areas in the City. However they considered that increases in permitted building height could only be justified if the benefits (in terms of promoting the efficient use and development of the residential resource) were sufficient to outweigh the impact on the amenity of adjoining properties (maintenance and enhancement of amenity values).

The Committee noted that 20A was a difficult site to assess in terms of its relationship to neighbours. The building height simulations and sunlight/shading scenarios presented in the officer's report (showing a 'worst case scenario' development of the site under the Inner Residential Area height, yard, and sunlight access provisions) indicated that the adverse effect on neighbouring properties in terms of sunlight access, views, over-bearing and privacy could potentially be significant. The Committee recognised that the key element in terms of the potential mitigation of these adverse effects was how future development of the site responded to the 50% site coverage provision that applies in the Inner Residential Area. It was not possible for the Hearing Committee to predict how this might happen. In the absence of specific plans for the site at 20^A the Committee did not feel that it was able to accurately assess the degree to which a development that was undertaken according to the Inner Residential Area provisions would adversely affect the amenity of neighbouring properties. In this regard the Committee considered that any increase in building height at 20A Oriental Terrace would be more appropriately considered by way of a resource consent for a specific development proposal. The resource consent process requires that the applicant submit plans of their proposal, which would allow a more focussed and comprehensive assessment of potential effects than is possible with the proposed District Plan Change.

3.3. Impact on Oriental Terrace streetscape and character of Oriental Bay

Twenty-five submitters argued that removing 20^A Oriental Terrace from the Oriental Bay Height Area was inappropriate and contrary to the objectives of the District Plan, because the property related to and formed part of the Oriental Parade streetscape, and contributed to the overall character of the area. They were concerned that future development of the site under the proposed Inner Residential Area zoning would detrimentally affect the character of the area due to the increased scale and density of development.

The Committee considered that while 20^A Oriental Terrace did not necessarily form part of the immediate Oriental Parade environment, in terms of townscape and character it did relate more closely to the properties further down Oriental Terrace (No's 22-28) than to the Inner Residential Area properties further up the hill. On this basis they considered that the OBHA provisions in the District Plan remain valid for the site. The Committee was aware that proposed District Plan Change 18 (which is running concurrently with District Plan Change 19) includes provision to install a design guide to cover properties in the OBHA. No submissions were received to proposed District Plan Change 18 requesting that the design guide be withdrawn so it was likely to be adopted in some form. In light of its relationship to Oriental Parade and the lower Oriental Terrace properties the Committee considered it appropriate that any future development of 20A Oriental Terrace be considered against the provisions of the Oriental Parade Design Guide, and this would not be possible if the site were rezoned from the OBHA to the Inner Residential Area.

In terms of the impact on streetscape the Committee disagreed with those submitters that argued that retention of the 19 metre height limit would result in an aesthetically pleasing uniformity of building height (roof lines) up Oriental Terrace. The Committee considered that the general trend throughout the City was for buildings to step up the hill as the ground level increases, and ideally this trend would be recognised and provided for at 20^A Oriental Terrace. However, given the Hearing Committee's conclusion that increased building height above 19 metres (amsl) is best considered by way of a resource consent application, they noted that the issue of impact on the streetscape could be considered as part of that application.

3.4. Parking and traffic

A total of twenty submitters raised concerns regarding the potential effect of the proposed Plan Change on traffic volumes and parking in the area. In particular the potential for increased development at 20^A Oriental Terrace to exacerbate existing parking problems and create a traffic hazard in the area.

The Committee did not consider that the redevelopment of 20A Oriental Terrace would be likely to have a significant impact on the traffic management, parking and pedestrian safety in the vicinity. The scale of any future development on the site, which under either the OBHA or Inner Residential Area provisions would be likely to be between 2-4 residential units, was not considered to be potentially significant given the number of residential units that already take their access from Oriental Terrace.

3.5. Construction effects

A number of submitters argued that the proposed District Plan Change would adversely impact on their residential amenity due to noise and nuisance caused during construction of a new building at 20^A Oriental Terrace.

The Committee did not consider that this was a valid consideration in terms of the proposed District Plan Change as any construction effects would be much the same irrespective of whether the property was developed under the current or proposed zoning. In either regard the committee noted that the District Plan (rule 5.1.1.1) and the RMA (section 16) contain provisions that allow Council to manage any unreasonable noise generated during construction.

3.6. RMA and District Plan objectives

The Committee noted that the proposed District Plan Change should only be endorsed if they were satisfied that the proposed rezoning of 20A Oriental Terrace would better met the requirements of the RMA and the objectives of the District Plan.

The purpose of the Resource Management Act, 1991 (RMA) is to promote the sustainable management of natural and physical resource (section 5). The Council has additional obligations under section 7 of the Act. In relation to 20^A Oriental Terrace section 7 requires that Council, in achieving the purpose of the RMA, have particular regard to:

(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:

Committee noted that all of the above are section 7 matters and therefore carried equal weight under Part II of the Act. No single requirement was primary, and due weight must be given to each element.

Six submitters considered that the proposed District Plan Change was contrary to the objectives and policies of the District Plan, and in particular the objective to maintain and enhance the amenity values of Residential Areas.

The residential objectives in the District Plan are closely aligned to the section 7 matters listed above. With regards proposed District Plan Change 19 the following objectives and policies are particularly relevant:

Objective 4.2.1 ***To promote the efficient use and development of natural and physical resources in Residential Areas***

Policy 4.2.1.1 *Encourage new urban development to locate within the established urban area.*

Objective 4.2.2 ***To maintain and enhance the amenity values of Residential Areas.***

Policy 4.2.2.1 *Control the potential adverse effects of residential activities.*

Objective 4.2.3 ***To maintain and enhance the physical character of Residential Areas and identified areas of special streetscape or townscape character.***

Policy 4.2.3.1 *Control the siting, scale and intensity of new residential buildings to reflect the differences between older and more recent suburban Residential Areas.*

The proposed District Plan change required the Hearing Committee to balance the benefits of the efficient use and development of the site at 20^A Oriental Terrace, against the potential adverse impacts of the proposed re-zoning on the amenity values of neighbouring properties. As discussed in section 3.3 above, the Committee was not able to state with certainty that the gains made in terms of the efficient use and development of the residential resource (if the proposed re-zoning were adopted) were sufficient to outweigh the potential adverse impact on the amenity of neighbouring properties and the quality of the surrounding environment. It was therefore unable to reach the conclusion that the proposed rezoning was consistent with Part II of the RMA, or the residential objectives of the District Plan.

3.7. Future development of 20^A Oriental Terrace

Thirteen submitters questioned the need for any additional building height at 20^A Oriental Terrace. They considered that the current OBHA provisions were appropriate and allow for a reasonable level of development and that the site could be adequately developed through a combination of excavation and use of the 100% site coverage provision in the OBHA. Several submitters were concerned at the level of uncertainty created by the proposed re-zoning, and argued that the resource consent process was a better tool for considering proposals for increased development.

Further Submitter 2 (Edna and Raymond Beasley) supported the proposed rezoning of 20^A Oriental Terrace on the grounds that the current 19 metre (amsl) height limit was onerous and unfair. They considered that developing the site through excavation would be impractical given the existing ground levels across the site.

The Committee considered at length the potential residential capacity of the site under the existing and proposed zonings. It agreed that the current development scenario at 20^A was unusual, and acknowledged that the maximum height of 19 metres (amsl) was

in effect less than the building height permitted in the Inner and Outer Residential Areas of the city.

The Committee noted the evidence provided on behalf of Submitter 1 (Faye Wyatt) regarding the potential of developing the site utilising excavation and accepted that current building technologies were such that significant excavation of the site was possible without compromising the stability of adjoining sites. On this basis the Committee was satisfied that the current provisions of the OBHA were not so strict as to completely preclude reasonable development of the site at 20^A Oriental Terrace.

The Committee was mindful however that the residential amenity to be derived from a development that relied so heavily on excavation could be reasonably limited. In this regard they perceived some scope for the owners of 20A Oriental Terrace to pursue additional building height by way of the resource consent process. In particular they could explore options presented by the line of the existing roof which extends above 19 metres (amsl) up to a maximum height of approximately 22 metres (amsl).

With regards potential future applications for resource consent the Hearing Committee wished to draw submitters attention to the fact that the issue of Discretionary Height increases in the OBHA is being considered as part of proposed District Plan Change 18 (which is currently being considered by the Council). Submitters would need to consider the results of that plan change in order to gauge the full implications of this decision.

On balance the Hearing Committee considered that the impact of any future development of 20^A Oriental Terrace above 19 metres (amsl) was best assessed by way of a resource consent application for a specific development proposal. The Committee wish to make clear however that the recommendation not to proceed with the proposed re-zoning was not made on the basis that the 19 metre (amsl) height was necessarily appropriate for the site, but because the effects of any future development above this height are more appropriately assessed by way of an application for resource consent.

4.0 CONCLUSION

The key issues raised in written and verbal submissions on Plan Change 19 have been considered in this report.

Having considered all those matters raised through submissions, further submissions and during the hearing, the Committee did not consider that they could quantify the scale of the potential adverse effects of the proposed rezoning of 20^A Oriental Terrace on neighbouring properties, to the point where it was possible to state definitively that the proposed District Plan Change was consistent with Part II of the RMA and the objectives and policies of the District Plan. It was not possible to say with certainty that the benefits in terms of more efficiently developing the site, would outweigh the requirement to maintain current residential amenity for surrounding properties. This was due primarily to the Committee's inability to anticipate what form an Inner Residential Area development of the site would take.

While the Committee had sympathy for the owners of 20A and could perceive some scope for future increases in building height above the current 19 metre (amsl), it was also mindful of its obligation to recognise and maintain the amenity of neighbouring properties, and protect the special character and qualities of the Oriental Bay setting.

On balance the Hearing Committee considered that the impact of any future development of 20^A Oriental Terrace above 19 metres (amsl) was best assessed by way

of a resource consent application for a specific development proposal. The Committee noted that the recommendation not to proceed with the proposed re-zoning was not made on the basis that the 19 metre (amsl) height was necessarily appropriate for the site, but because the effects of any future development above this height are more appropriately assessed by way of an application for resource consent.

Sue Piper

Chair, Hearing Committee

District Plan Change 19, Rezoning of 20A Oriental Terrace, Oriental Bay