

Under the Resource Management Act 1991

IN THE MATTER OF the
Wellington City District Plan and
Proposed Plan Change 37 – Chest
Hospital Heritage Area.

REPORT AND RECOMMENDATIONS TO THE WELLINGTON CITY COUNCIL BY THE HEARING COMMISSIONER APPOINTED PURSUANT TO SECTION 34 OF THE ACT.

1. RECOMMENDATIONS

I was appointed to hear submissions on Proposed Plan Change 37 because Council was in the process of negotiating a commercial lease for the land and thus had a commercial interest in the outcome of the plan change process. As Hearing Commissioner (sole) with delegated authority to hear submissions and recommend a decision on Proposed Plan Change 37, pursuant to clause 10 of Part 1 of Schedule 1 to the Resource Management Act 1991, I gave careful consideration to all the issues and points made by the submitters and Council officers, and I recommend that the Council:

1. *Approve Proposed District Plan Change 37 as set out in the Public Notice of Wednesday 27 April 2005, subject to the following amendments:*

a. *Revise the heritage area listing as outlined below:*

Former Chest Hospital on Lot 4 DP 316137 (as shown in the map in Appendix 5 to Chapter 21) except for the following buildings:

- *the central wing built in 1973,*
- *the caretaker's wing,*
- *the gas utilities building and attached shed, and*
- *the detached shed to the north of the Nurses' home.*

b. *Revise the heritage building listing as outlined below:*

Former Chest Hospital 1918-19 on Lot 4 DP 316137 (exterior and interior of the Hospital building including the verandah, former Nurses' Home, morgue and all elements that comprise the associated covered walkway. Excluded from the listing are any interior fixtures, fittings, linings and partitions post 1960, the central wing built in 1973, caretaker's wing, gas utilities building and attached shed, and the detached shed to the north of the Nurses' Home).

c. *Insert a new policy to Chapter 16 as outlined below:*

Policy 16.5.1.3.A

To recognise the unique status of the Chest Hospital Heritage Area as reserve land surrounded by the Inner Town Belt and to facilitate the use of the Area whilst managing the effects of activities that may result in the loss of heritage and open space values associated with the Area.

Explanation

The Chest Hospital Heritage Area is a unique area of open space land, compared with other Open Space C land, due to its history of use, listed heritage buildings and proximity to the Inner Town Belt. It is important that the buildings and surroundings are reused to preserve their heritage values and it is envisaged that some work to the site may be required to facilitate this. At the same time, it is important that any future development of the site does not significantly intensify the site resulting in a reduction of its heritage and open space values as this would be inconsistent with its reserve status.

- d. *Revise the standard for additional hard surfaces as outlined below:*

Additional hard surfaces must not exceed a total of 400m² for all of lot 4 DP 316137 except that; expressly for the purposes of an outdoor yard area associated with accommodation for the welfare of animals, an additional area of hard surfacing of no greater than 400m² may be developed. Examples of hard surfaces include asphalt, concrete and paving.

- e. *Revise the assessment criteria 17.2.5.10 as outlined below:*

17.2.5.10 The extent to which any reduction in the existing natural ground cover affects the open space values of the Area; and whether landscaping can be used to screen/mitigate the loss of any existing natural ground cover.

- f. *Revise Appendix 5 Chest Hospital Heritage Area as outlined below:*

For the specific policy and rules relating to the use of the Chest Hospital Heritage Area (Lot 4 DP 316137), refer to policy 16.5.1.3.A in the Open Space policy chapter of the Plan and rules 17.1.17 and 17.2.5 in the Open Space rules chapter of the Plan.

Explanation

The former chest Hospital site has been provided for as a Heritage Area to recognise its community and heritage values. Specifically, the Chest Hospital (built by the Wellington Hospital Board) has historic value for the insight it gives to the treatment of infectious diseases in the 1920's. Its architectural features such as sun porches and verandahs attached to wards are indicative of medical requirements that were current at the time. Other subsequent uses of the buildings have added to its historical interest. There is also technical value in the original fabric of the building; significant parts of which remain intact.

The Chest Hospital Heritage Area includes the former Hospital and associated buildings, as well as the area surrounding these buildings in Lot 4 DP 316137.

The Chest Hospital Heritage Area is zoned Open Space C, which reflects the open space nature of the site and its community use.

The rules for the Chest Hospital Heritage Area are part of a package of measures that control the effects from the use and development of this site. While the permitted activity rule allows for any use of the site to occur provided certain environmental conditions are met, there are other methods outside the Plan that also control the use of the site. These methods include landowner control (Council is landowner), lease agreements under the Local Government Act, and a Reserve Management Plan for the site. These controls will provide adequate control over the range of activities that occur on this site.

2. *Accept or reject all the submissions and further submissions to the extent that they accord with Recommendation 1 above.*

2. BACKGROUND

A comprehensive report was prepared by Ms Elizabeth Clark, Policy Advisor – District Plan and it has been convenient to incorporate much of the background into this report.

History of Proposed Plan Change 37

The former Chest Hospital site (Lots 3 and 4 DP 316137) is contained within a larger block of land that was, until recently, Crown land administered by Capital and Coast District Health Board (CCDHB).

The Chest Hospital site contains a complex of buildings that include the original “Fever Hospital”, built in 1918-20, as well as a nurses’ home, the central wing of the hospital (built in 1973) and several other ancillary buildings. The site also contains the levelled areas that form the gardens and lawns surrounding the complex, and the driveway providing vehicular access to Alexandra Road. This site is distinct from the much larger area of wooded hillside that surrounds the site, and extends down the hill to the hospital facilities at the northern end of Coromandel Street.

All of the Hospital land from the Chest Hospital site through to the northern end of Coromandel Street was zoned Open Space B in the Proposed District Plan (notified in 1994). CCDHB appealed against that zoning, contending that an Inner Residential zoning was more appropriate for its land, especially as it was not in Council ownership at that time.

The Environment Court upheld CCDHB’s appeal and sent both parties away to develop appropriate provisions to be put in the Plan. These provisions, confirmed in the final decision of the Environment Court (W4/2000), are detailed in Appendix 19, Chapter 5, of the Wellington City District Plan (Chapter 5 sets out the policies and rules for the City’s Residential Areas).

Since the Plan was made operative, CCDHB has decided that the Chest Hospital buildings and surrounding land are surplus to its needs. Consequently, the Crown gifted the buildings and land (over 3 hectares) to the Council. The land exchange between the Council and CCDHB was ratified on 19 December 2002 via an Order-in-Council.

The Council was gifted the land (being Lots 3 and 4) and associated buildings so that “members of the public will be able to enjoy the land” although due to a procedural technicality of the transfer process, Council does not yet, legally own the land. However Council is solely responsible for the ongoing use and management of this land. The terms of the land exchange acknowledged that Lot 4 should be treated separately to reflect the need to make day-to-day use of the heritage buildings contained within.

Under the transfer agreement, the Council has a number of obligations in respect of the future management and use of the land transferred to it from the Crown.

1. In regard to Lot 3, which comprises the largest proportion (72%) of the land transferred, Council’s obligations are that it:

- a. Must preserve the open space character of the land; and
 - b. It must promote a new classification or purpose of the land under the Reserves Act 1977 that is consistent with its obligation to preserve its open character and that, subject to any restrictions that may be imposed under that Act, gives the public access to the land.
2. Council's obligations in relation to Lot 4, the Chest Hospital site, which forms 28% of the total area transferred from the Crown, are that it:
- Must promote a new classification or purpose of the land under the Reserves Act 1977 that is consistent with any lawful restriction on the use of the land; and
 - In the event that the land becomes vacant land, the Council must—
 - carry out any work required to give the land the character of open space land; and then
 - preserve the open space character of the land.
 - promote a new classification or purpose of the land under the Reserves Act 1977 as soon as practicable.

The Council considered a change to the District Plan for the Chest Hospital land was necessary to give effect to the transfer agreement and also to introduce more appropriate planning controls for the land.

The Plan Change

The Plan Change was formally notified on 27 April 2005 for public submissions. The Plan Change provides for the on-going use of the heritage buildings, but also includes protections so that uses or activities will not adversely affect the heritage and open space values of the area.

Section 32 Report

In accordance with the requirements of section 32 of the RMA the Council prepared a record of the evaluation undertaken of the Plan Change. The Section 32 Report was prepared by Boffa Miskell Limited, on behalf of Council. That record was made available from the time the Plan Change was publicly notified as required by the RMA and it formed part of the background material that I considered.

The Hearing

The hearing was on the morning of Friday 12th August 2005. Four of the submitters had indicated that they wished to speak in support of their earlier written submissions.

The hearing was attended by the following-

Submitters:

- New Zealand Historic Places Trust – Mr David Watt
- Newtown Residents' Association - Mr Peter Frater
- The Friends of the Wellington Town Belt – Mr John Bishop
- Brian Boyer of Impact Legal – Mr Alistair Aburn, Ms Dianne Clayton and Mr Nick Brandon

Wellington City Council Staff

- Ms Elizabeth Clark (Planning Advisor),
- Ms Barbara Fill (Heritage Advisor),
- Mr Bruce Geden (Strategic Projects Manager) and
- Ms Linda Va'aua (Administrator)

It was clarified at the outset of the hearing that the submission of Impact Legal by Mr Boyer had been made on behalf of the Wellington SPCA Incorporated (the SPCA) who was represented at the hearing by Ms Clayton, Chair of the SPCA, Mr Aburn, Resource Management Specialist and Mr Brandon.

3. SUBMISSIONS AND DISCUSSION OF ISSUES

3.1 Introduction

Five submissions were received in response to the public notice, and one further submission was received by an original submitter as follows:

- New Zealand Historic Places Trust – Robert McClean
- Newtown Residents' Association (original submitter and further submitter)
- The Friends of the Wellington Town Belt
- Impact Legal (SPCA)
- Wellington Branch of the Royal Forest and Bird Protection Society

Two of the submissions supported the Plan Change in its entirety, seeking that it be adopted as proposed. Two submitters supported the intent of the Plan Change but requested some amendments. One submission supported the Plan Change but acknowledged that some decisions may be necessary in response to submissions to make it workable. There were no submissions in opposition to the Plan Change.

The Submission from The Friends of the Wellington town Belt expressed their appreciation for the consultation process carried out by Council. Mr Watt who attended the hearing on behalf of the Historic Places Trust commended the Council on the consultation process which had preceded the drafting of the Proposed Plan Change.

During the hearing there was some discussion as to the relative contributions of the three instruments which would contribute to the effective management of the site, - namely the district plan, a site specific management plan (part of the Town Belt Management Plan) and the lease. A submitter expressed concern at the lack of public input in the leasing process.

I noted that the Council's lease process and the development of the proposed management plan are entirely separate matters from the plan change process. Mr Geden confirmed that the process of developing a site specific management plan would involve public input in due course.

3.2 Submissions in General Support

The Wellington Branch of the Royal Forest and Bird Protection Society supported the plan change as it considered the land should be classified as part of the Town Belt. Consequently it sought that the land be rezoned from Inner Residential to Open Space C in accordance with the Proposed Plan Change. The Wellington Branch of the Royal Forest and Bird Protection Society was not represented at the hearing.

The Newtown Residents' Association submission supported any changes to the District Plan that were necessary to implement the change of ownership and provide for a change of use to facilitate the future use of the site. With regard to the Plan Change, the Association supported any decisions made to make the Plan Change enforceable and workable but sought no specific relief.

The further submission from The Newtown Residents' Association supported in principle all four of the other submissions and specifically noted that the Proposed Plan Change should effectively address issues of noise, and changes in the use of the site.

Mr Frater appeared on behalf of the Newtown Residents' Association and explained that Newtown Residents' Association had four concerns with respect to the proposed District Plan Change 37.

1. maintaining the integrity of the Town Belt;
2. the preservation of a heritage building that is within the Town Belt;
3. that future tenants of the heritage building are appropriate for the site and buildings and that they will be good neighbours of Newtown;
4. the necessary amendments to the District Plan and the Town Belt Management Plan are carried out in a workable and enforceable manner.

He then explained that it was beyond the expertise of the Association to comment on the technical details of the Proposed Plan Change but emphasised that it should provide for the foreseeable future needs of the tenant and gave the example of recognising the need to provide for adequate parking.

The New Zealand Historic Places Trust submission supported the overall objectives of the proposed Plan Change. Specifically the Trust supported:

- the definition of Lot 4 as a Heritage Area
- control of development of the proposed Chest Heritage Area as a Discretionary Activity (Rule 17.2.5)
- the inclusion of heritage, open space and recreation values in the assessment criteria in rule 17.2.5
- the amended heritage item listing of the Chest Hospital buildings to include both the interior and exterior.

3.3 Submissions Seeking Specific Amendments to the Plan Change

The submission from Impact Legal on behalf of the SPCA supported the overall intention of the Plan Change but raised concerns relating to the proposed heritage listing and the standards and terms proposed for rule 17.2.5 with respect to coverage, demolition of heritage buildings and additional hard surface areas.

Heritage Listing

Impact Legal had submitted on behalf of the SPCA that it was unreasonable to list all of the interior and all of the exterior of the “Hospital building”. The submission noted that a number of items were not identified as worthy of heritage protection in the assessment undertaken on behalf of Council by Ian Bowman architectural conservator. Impact legal submitted that these items should therefore be excluded. The planning advisor’s report had considered this aspect and on the advice of the Council’s heritage advisor Ms Barbara Fill, Ms Clark recommended an amendment to the Heritage Listing which would exclude non-heritage items.

At the hearing both Mr Aburn on behalf of the SPCA and Mr Watt on behalf of New Zealand Historic Places Trust supported the planning advisor’s proposed amendments to address this matter.

I also agree with the planning advisor’s recommendation on this issue and recommend that Council accept the planning advisor’s proposed wording.

Impact Legal had also submitted that the wording of the proposed heritage area listing and the proposed heritage building list should specify the buildings to be excluded. Ms Clark’s report acknowledged that there was some ambiguity arising from the wording and the appendix map as notified and recommended revised wording of the heritage listings to address this. Ms Clark’s report also proposed a new appendix map to Chapter 21 which annotates those buildings within the Chest Hospital Heritage Area which are not protected in the building and area listing.

Mr Aburn speaking on behalf of the SPCA and Mr Watt speaking on behalf of New Zealand Historic Places Trust stated that they were satisfied with the planning advisor’s proposed amended wording and new map to address these issues.

I accept Ms Clark’s advice concerning the amended wording for the building listing and the proposed new appendix as an appropriate means to address these issues. However on carefully reading the suggested wording for the area listing I consider there is still some ambiguity concerning the wording of the heritage area listing. I therefore recommend the following minor changes to make it clear that it is only the specified buildings (and not the land beneath them) that are excluded from the area listing.

Former Chest Hospital on Lot 4 316137(as shown in the map in Appendix 5 to Chapter 21) except for the following buildings:

- *the central wing built in 1973,*
- *the caretaker’s wing,*
- *the gas utilities building and attached shed, and*
- *the detached shed to the north of the Nurses’ Home.*

The revised wording above is consistent with the wording of the District Plan for addressing a similar situation with respect to a heritage area listing for the Clyde Quay Boat Harbour site (Wellington City District Plan page 21/16).

Site Coverage

Impact Legal had submitted on behalf of the SPCA that restricted discretionary activity Rule 17.2.5 standards were “unreasonable” and too restrictive for the effective use of the site and in particular the maximum site coverage of 35%. The submission sought a maximum of 42% site coverage as a discretionary (restricted) standard in Rule 17.2.5.

Ms Clark’s report noted that the site coverage issue raised on behalf of the SPCA had identified two matters which needed further consideration. The first was whether the proposed 35% maximum coverage was appropriate. The second was whether the Plan Change which provided for future development as a discretionary activity (restricted) would cause difficulties for any future user of the site.

Ms Clark’s report noted that the present site coverage was 31%. Given that an underlying purpose of the Plan Change was to avoid promoting any significant intensification of buildings on the site, the planning advisor considered that a maximum site coverage of 35% was appropriate and recommended that the maximum site coverage not be increased. Mr Aburn confirmed that the SPCA activity would not exceed 35%.

Mr Aburn submitted an indicative site development plan on behalf of the SPCA which showed a site coverage of 25.2% which appeared to contradict the statement in the planning advisor’s report that the current site coverage was 31%. Ms Clark observed that the indicative plan did not show the building footprints for those existing buildings which would be excluded from the heritage listing and suggested that this was the most likely explanation of the 25.2% figure for site coverage. Mr Brandon confirmed that it was the SPCA’s intention to demolish the caretaker’s building but he was uncertain about the future of the other non-heritage buildings.

On closer examination of the indicative site development plan tabled at the hearing, and subsequent confirmation of the Council’s method of calculating site coverage, I accept Ms Clark’s explanation. Namely, that the 31% figure in her report is the correct present site coverage (i.e. includes both heritage and non-heritage buildings).

The Section 32 Report prepared by Boffa Miskell Limited on behalf of Council assessed the existing site coverage as 31% and concluded that the proposed 35% site coverage would allow for a small amount of additional building to occur to supplement the use of the principal buildings. The section 32 report comments that this modest increase in coverage would be unlikely to adversely affect the heritage and open space values of the site.

In my opinion the maximum site coverage of 35% should not be changed and I recommend that the relief sought by Impact Legal with regard to a standard for site coverage not to exceed 42% is not granted.

However Ms Clark’s report acknowledged that the proposed Rule 17.2.5 standards could cause difficulties for future users as any aspect of non-compliance with the standards and terms for development would mean that an application for consent for the activity would “default” from restricted discretionary to non-complying.

An application for a non-complying activity would need to pass one of the gateway tests of section 104D for non-complying activities. Either the effects of the proposed activity would need to be assessed as minor, or the proposal must not be contrary to the objectives and policies of the relevant plan. I accept Ms Clark's assessment that the effects of non-compliance with rule 17.2.5 is unlikely to be assessed as minor. I also agree with Ms Clark's assessment that any development proposal assessed against the Open Space objectives and policies is likely to falter because the existing objectives and policies for the Open Space Zone are geared toward recreational and passive use of open space.

Ms Clark's report considered two options to address this issue.

Option 1 was to make the whole rule 17.2.5 a Discretionary Unrestricted Rule and to remove the standards and terms relating to site coverage and hard surfacing so there would be no ability to trigger the consent into non-complying status for these matters. This would mean the non-notification presumption would be removed and there would be unfettered discretion. However this alternative would provide little guidance as to what level of development would be inappropriate on the site.

Option 2 was to retain the rule as drafted and insert a specific policy relating to the Chest Hospital Heritage Area. Any activity which defaulted into non-complying status could then be assessed against a policy specific to the characteristics of the Chest Hospital Heritage Area. Ms Clark's report favoured Option 2 because it would:

- clarify the purpose of the heritage area,
- outline the important values,
- indicate how Council intends to manage the area,
- provide an opportunity to explain how this site differs from other Open Space C sites, and
- explain why dispensations from the rules may need to be made from time to time to facilitate the on-going use of the site.

At the hearing, Mr Watt on behalf of New Zealand Historic Places Trust and Mr Aburn on behalf of the SPCA also supported Option 2 as the most practical and workable option.

I accept the planning advisor's assessment and conclusion that Option 2 is the most appropriate solution. I consider that the proposed new policy is within the scope of the relief sought by the SPCA and recommend that the new policy as set out in the planning advisor's report be inserted in Chapter 16.

Hard Surface Areas

Impact Legal had submitted on behalf of the SPCA, with respect to Rule 17.2.5 that the standard of not more than 100m² for additional hard surfaces was too restrictive. The relief sought was that the rule be amended to provide additional hard stand areas to a maximum of 1500m².

The Section 32 Report provided a detailed and carefully reasoned analysis of this issue. The total existing hard surface area (access and car parks) was estimated at 1100m² of which 300m² was taken up with carparking and the associated

manoeuvring space. The 300m² was assessed as capable of accommodating 10-12 car parks.

The section 32 assessment acknowledged that due to the relative remoteness of the site, lack of public transport and relatively large floor area of the building; additional parking would likely be required to enable the efficient use of the premises. However the assessment also acknowledged that increased provisions for parking and access could affect the site's environmental qualities and heritage values.

The Section 32 Report concluded that thresholds for minor changes should be set and a notified resource consent would be required if these were exceeded. The proposed threshold of 100m² of further hard surfaces would allow for about 5 additional carparks and manoeuvring area. The assessment noted that this threshold was consistent with the ground area disturbance limit of 100m² for earthworks.

I consider that the ground area disturbance limit for earthworks has little relevance in determining an appropriate threshold for additional hard surfaces.

The threshold was set with the knowledge that the initial establishment of almost any new uses would be likely to require an increase in the provision for carparking. It was also assumed that other site development (for example earthworks, alterations to buildings) would trigger a resource consent process so that all the changes could be considered together in an integrated manner to ensure consistency with heritage and open space values.

The planning advisor's report summarised the Section 32 Report analysis and commented further that there were alternatives to hard surfaces for the creation of car parking areas and that these would enable additional carparking to be provided without triggering the threshold for additional hard surfaces. Ms Clark suggested as examples gobi blocks, grass pavers, turf blocks and so forth. For these reasons Ms Clark recommended that the threshold for additional hard surfacing remain at 100m².

Ms Dianne Clayton presented evidence at the hearing as the preferred tenant currently in negotiations with Council for a single long term tenancy of up to 60 years for the site and buildings. She acknowledged that carparking areas need not be hard surfaced but expressed the view that vehicle access ways, for robustness and cost effective maintenance, must be a hard surface.

Ms Clayton also explained with reference to the SPCA indicative site development plan, that the SPCA requires hard surfacing for a yard/run area which is necessary for the exercise and management of dogs and puppies. Ms Clayton explained that an Occupational Health and Safety requirement for the SPCA activity is that any ground areas which dogs and puppies would be in contact with must be capable of repeated scrubbing, sluicing and disinfecting to prevent the spread of infectious disease.

On this basis Ms Clayton indicated that the SPCA would require a minimum of 800m² of additional hard surfacing for their activity. This would comprise approximately 381m² for vehicle access to the service area and 425m² as yard space directly accessible from the animal accommodation block. Ms Clayton also explained that the

hard surface area must be capable of providing two independent yards– one for use as an exercise yard and one for use in the adoption familiarisation process.

With respect to the indicative site development plan, I note that in addition to the existing hard surface (1300m²) and proposed additional hard surfaces (800m²) the indicative site plan showed a further 1147m² of “environmental surfacing”. Mr Aburn explained that this term was used to indicate a semi-pervious surface such as gobi blocks, turf blocks and so forth and which could be used for car parking.

However on further discussion with Ms Clayton, Mr Brandon, and Mr Aburn, it appeared that the area shown on the indicative site development plan as “environmental surfacing” was not necessarily related to anticipated car parking requirements. For example the internal courtyard between the new wing and the east wing (approximately 340m²) was shown in “environmental surfacing” although Ms Clayton acknowledged that this area was not accessible to cars due to the location of heritage buildings and the site topography. Mr Aburn reminded those present that the site development plan was indicative only at this stage.

The terms “hard surfaces” and “environmental surfacing” are not defined in the District Plan and it is beyond the terms of the relief sought to develop such definitions.

The key issue is to limit the adverse effects of any reduction in the area of existing natural ground cover. It is helpful in resolving this issue to recognise that there are surfaces which in terms of their appearance, their function and their effects, would not be categorised as a natural surface or a hard surface in the common understanding of these words. I consider that the careful use of this type of surface could be consistent with the protection of open space values while enabling a modest increase in parking which would not trigger a notified resource consent process.

Recognition of this concept was signalled in the planning advisor’s report which suggested various products as examples of materials which would generally not be perceived as hard surfacing materials. However I consider that any man made surfacing material or product which is used to replace the existing natural ground cover could have adverse effects due to its location, extent, appearance and so forth. The onus should be on the applicant to demonstrate that a proposed reduction in natural ground cover will not adversely effect the heritage and open space values of the Area.

I therefore recommend the following revised wording for assessment criterion 17.2.5.10

17.2.5.10 The extent to which any reduction in the existing natural ground cover affects the open space values of the Area; and whether landscaping can be used to screen/mitigate the loss of any existing ground cover.

I accept that the SPCA has specific and unique needs with respect to hard surface area. However to grant the relief sought by the SPCA, namely a threshold of 800m² for additional hard surface, could mean an increase in the hard surface area over the present situation of 61% without triggering a resource consent process and the integrated consideration of the effects of this on heritage and open space values.

While it may be that a tenancy agreement is successfully concluded with the SPCA, my point is that the District Plan provisions must be appropriate to protect the heritage and open space values whatever the outcome of the current tenancing process.

Ms Clayton explained in detail how the specific characteristics of the Chest Hospital site, encompassing the buildings, location and heritage values were compatible with the needs and vision of the SPCA. I accept that it is important that the Plan Change provide appropriately for the foreseeable needs of tenants who are likely to respect the heritage values of the site. This is a practical means to facilitate the securing of a suitable tenancy.

In their submission, the Friends of the Town Belt sought that future uses of the Chest Hospital Heritage Area minimise additional hard surfacing. Mr Bishop spoke further on this aspect of their submission at the hearing. I consider Mr Bishop's concern is valid, namely that a substantive increase in hard surfaces on the site could adversely impact on the open space values. However it is necessary that a practical balance be found between the need for sufficient flexibility on this issue to facilitate the tenancing process in the interests of protecting the historic heritage values while also preserving and protecting the open space values.

The SPCA has explained the need for approximately 381m² of additional hard surface to provide vehicle access to a proposed service area. The SPCA has also explained their specific need for a further approximately 425m² of hard surface yard area which would generally be screened from view.

Considering the overall site area, the present area of hard surface and the large floor area of the heritage buildings on site, I consider that the threshold of 100m² for additional hard surfacing is too low and that a threshold of 400m² is appropriate. From the discussion it was apparent that such an area would most likely be necessary for parking and/or access in any foreseeable use of the site.

Given the area of the site, the topography and the configuration of heritage buildings, I am confident that up to 400m² of hard surface could be accommodated on site without compromising the heritage and open space values. Therefore in my opinion, the revised wording of the relevant assessment criteria as set out above and a threshold of 400m² for hard surfacing would provide the necessary guidance and flexibility to meet the foreseeable minimum access and parking requirements of potential tenants without triggering a notified resource consent process. This outcome would facilitate the tenancing process and in my view securing an appropriate and long term tenancy is an essential element in achieving the long term protection of the heritage values of the site.

I acknowledge there is at present a potential tenant who has indicated a strong interest in this site and its heritage values but also has quite particular needs in regard to hard surface area. I therefore consider that it is appropriate to provide specifically for these special needs in the Plan Change.

I therefore recommend the following revised wording for Rule 17.2.5 standard for site coverage:

Additional hard surfaces must not exceed a total of 400m² for all of lot 4 DP 316137 except that; expressly for the purposes of an outdoor yard area associated with accommodation for the welfare of animals, an additional area of hard surfacing of no greater than 400m² may be developed. Examples of hard surfaces include asphalt, concrete and paving.

Noise

The Friends of the Wellington Town Belt submitted that noise generated from the site should not detract from the quiet enjoyment for people in this area. The submission sought amended wording for assessment criterion 17.2.5.15 which deals with noise and specifically to include the word “nuisance”.

Ms Clark sought advice from the Council’s noise officers in her consideration of this submission and subsequently recommended in her report that the relief sought on this matter not be granted. The reasons were set out in detail in the report and in summary were as follows:

- The existing wording was taken from section 16 of the RMA and therefore case law provides valuable interpretation relevant to the criterion.
- New Zealand noise control laws do not control “nuisance” but rather the threshold is set at the higher level of being “unreasonable”.
- Consistent wording within the Plan is important for effective and consistent plan administration/interpretation.

At the hearing Mr Bishop acknowledged the comments in the planning advisor’s report and did not offer further reasons to amend the wording of the criterion. I agree with Ms Clark’s assessment that the wording of the existing criterion is the most appropriate.

I therefore recommend that Council does not grant the relief sought by this submitter (to revise the wording of criterion 17.2.5.15).

Mr Bishop commented at the hearing that potential adverse noise effects were still a concern and suggested that appropriate enhancement planting on the site should be considered to limit potential noise problems.

I am sympathetic to Mr Bishop’s concern with the importance of managing noise effects but it would be premature to assume that enhancement planting would be necessary or effective in managing unreasonable noise.

I recommend that Council does not accept this suggestion.

Other matters

Former Chest Hospital Site not Legally Part of the Town Belt

Mr Bishop raised a very particular aspect of site coverage in his presentation to the hearing in response to the planning advisor’s recommended new policy and explanation. Specifically Mr Bishop sought with respect to Policy 16.5.1.3.A that - “...in the explanation in line three the words “proximity to” be replaced with the words “location within”.

According to the terms of the Order-in-Council which gave effect to the land transfer, Wellington City Council has specific responsibilities to fulfil with regard to the on-going management and administration of this land under the Reserves Act 1977. As explained in the Order-in-Council:

“Although the land will not legally form part of the Wellington Town Belt, the intention is that members of the public will be able to enjoy the land together with the surrounding Town Belt.”

As the land is not legally part of the Town Belt, I consider that it would be incorrect to describe this as “location within”.

I therefore recommend that Council does not grant the request to amend the wording of the explanation to Policy 16.5.1.3.A.

No Demolition

Impact Legal submitted that the standard “no demolition of listed heritage buildings” was an appropriate requirement for rule 17.2.5 provided that the listings were amended as requested in their submission. The listings for the heritage site have been amended in response to this submission.

Mr Aburn’s submission to the hearing confirmed that there were no further concerns in this regard and therefore I consider the matter has been addressed.

Consequential Changes under RMA Schedule 1 clause 10(3)

Ms Clark identified an error in the Plan Change in the planning advisor’s report. A superfluous sentence, set out below, was retained from an earlier draft of the proposed Plan Change where the rules relating to the Chest Hospital Heritage Area were included in Appendix 5, Chapter 21.

“The rules in this Appendix are the first point of reference for all activities and development in the Chest Hospital Heritage Area.”

The planning advisor’s report stated that this sentence should have been removed when the rules were instead included in Chapter 17 of the Plan. As this consequential change was overlooked prior to notification, it is considered to be a defect in the Plan and on this basis should be removed from the final version of the Plan Change.

I have carefully read the guiding statement under Appendix 5 Chapter 21 which is:

“For specific rules relating to the use of the Chest Hospital Heritage Area (Lot 4 DP 316137), refer to rules 17.1.17 and 17.2.5 in the Open Space rules chapter of the Plan.”

My interpretation of this statement is that the heritage rules do not apply in this area. Therefore as a consequential change which was overlooked prior to notification, I recommend that in the Explanation to Appendix 5 Chapter 21, paragraph 4 as set out below is deleted.

“The effect of the zoning is that the Open Space Area rules (under Chapters 16 and 17) apply to the site in addition to the Heritage Area rules. Where any activity is allowed as a Permitted Activity under Open Space C rules, but requires a resource consent under the Heritage Area rules or where resource consent is required under both the Heritage Area rules and Open Space C rules, the objectives, policies and rules applying in the Heritage Area will prevail.”

For completeness I also recommend that the wording of the guiding statement at the beginning of Appendix 5 to Chapter 21 be revised to include reference to the new policy 16.5.1.3.A (to be inserted in Chapter 16) as follows:

For the specific policy and rules relating to the use of the Chest Hospital Heritage Area (Lot 4 DP 316137), refer to policy 16.5.1.3.A in the Open Space policy chapter of the Plan and rules 17.1.17 and 17.2.5 in the Open Space rules chapter of the Plan.

CONCLUSION

A change to the District Plan for the Chest Hospital land is necessary to give effect to the transfer agreement and also to introduce more appropriate planning controls for the land. The change will recognise the need for on-going use of the heritage buildings, but will ensure that such uses or activities will not adversely affect the heritage values associated with the site.

All of the submissions supported the overall intention of the proposed plan change although some submitters have sought amendments and in particular with regard to establishing the appropriate threshold for additional hard surfacing. There was a useful discussion of submitters' concerns at the hearing and particularly the appropriate threshold for hard surfaces. This discussion has greatly assisted in the clarification of issues and the formulation of my recommendations to provide appropriate relief.

I have also recommended a number of consequential amendments. The need for these arose primarily as a result of the development of this Plan Change which as notified dealt primarily with additions to the rules. Subsequently on the recommendation of the planning advisor in response to the relief sought in submissions, a new policy was proposed. From the discussion during the hearing process, it was apparent that those attending the hearing supported the introduction of the new policy and in my opinion the proposed new policy was within the scope of the relief sought by submitters.

I consider that the Plan Change subject to my recommendations should proceed.

Noreen Barton
Plan Change 37 Commissioner (sole)