

PALMERSTON NORTH CITY COUNCIL
PRIVATE PLAN CHANGE REQUEST FOR WHISKEY CREEK RESIDENTIAL AREA AT
611 RANGITIKEI LINE, PALMERSTON NORTH
MINUTE 5 OF INDEPENDENT HEARING PANEL

Introduction

1. This Minute is being sent to you because you are either the Requestor, a Submitter or a Council Reporting Officer with respect to the above Private Plan Change proposal.
2. We refer to the memorandum filed by counsel for the Requestor (Mr Slyfield) dated 26 July which enclosed sets of proposed amended provisions in Chapters 7A and 10 of the District Plan as they concern the Whiskey Creek Residential Area, following the completion of conferencing between the planners (Messrs. Asgar and Thomas). The amended provisions were provided in response to our directions as set out in **Minute 4**, dated 11 July 2022. Both the Minute and the supplied documentation have been uploaded to the relevant Council [webpage](#) by the Council's Hearing Administrator.
3. The Requestor's memorandum provided a high level outline on some of the key changes that the planning witnesses have agreed in the set of amended provisions. Its purpose was to assist the Panel in its deliberations pending receipt of the s32AA evaluation and the Requestor's formal reply (which are now due late this week). We acknowledge this and thank the Requestor for that endeavour.
4. The Hearing Panel have undertaken some preliminary deliberations today based on the content of the above memorandum and the amended provisions. This has resulted in some queries. Accordingly, the purpose of this Minute is to request additional clarification from the planning witnesses for the Requestor and the Council, regarding the following two aspects of the amended provisions:
 - a. The wording of provisions that enable multi-unit development in the specific area identified on the structure plan relating to the Proposed Plan Change.

- b. The absence of any bespoke controls on fencing along the boundary between Meadowbrook Drive properties and the southern lots that form part of the proposed development.
5. Before outlining the precise nature of the clarification we are seeking, we provide the following background.

Background

6. As parties will be aware, the Panel adjourned the hearing at 6pm on Monday, 11 July, on the basis of a verbal direction to the planning witnesses for both the Requestor (Mr Paul Thomas) and the Council (Mr Marz Asgar and Mr Michael Duindam) to continue conferencing with a view to:
 - a. resolving any outstanding issues with respect to the potential wording of the Plan Change provisions; and
 - b. incorporating that wording into an up-to-date amended version of the Plan Change provisions.
7. In directing further conferencing, we encouraged Mr Thomas and Mr Asgar (and Mr Duindam where appropriate) to make every endeavour to come to an agreement, where they could, on the wording of the provisions, while acknowledging that this might not be possible in every instance. To put our request on a formal footing, our verbal instructions in this respect were set out in **Minute 4**, dated 11 July 2022.
8. In response, Messrs. Asgar' and Thomas' supplied agreed, amended versions of Chapters 7A and 10 of the District Plan on 25 July (via email). In part, the amendments reflect the agreement reached between the planning witnesses over the wording of provisions that enable multi-unit development in the specific area identified on the structure plan relating to the Proposed Plan Change.
9. In advance of their provision of a jointly prepared s32AA evaluation in support of these additional amendments, which we anticipate receiving no later than Friday 29 July, we have reviewed the relevant amended provisions and have two sets of questions that we

would appreciate a joint response on.

Question 1: Multi-Unit Housing

10. The planning witnesses propose that new Policy 9.7 in Chapter 10 Residential Zone be amended as follows:

To ensure that multi-unit housing development is provided for within the Whiskey Creek Residential Area in general accordance with the relevant Structure Plan (Map 7A.3). ~~To enable and encourage multi-unit housing development within the Whiskey Creek Residential Area in accordance with the Structure Plan (Map 7A.3).~~

11. The wording of the revised policy could be interpreted as being more directive of multi-unit housing than the notified version of the Policy, (given the use of words *ensure* as opposed to *enable and encourage*); although this is potentially a different imperative to the objective guiding the policy; namely the first bullet point of the plan change purpose which describes the objectives of the proposal as achieving:

A feasible development with a mix of housing density, housing type and price point.

12. We note that this objective does not specify the type/mix of housing density to be achieved (i.e. what the specific density mix to be achieved might be). Certainly, it does not specify a medium or high density outcome that might be delivered by multi-unit housing.

13. The questions we have are:

- a. What is the purpose of Policy 9.7 as it is proposed to be reworded? Is it intended to ensure that an area is identified within the Whiskey Creek Residential Area within which multi-unit development is enabled to occur, without any compulsion that such development then occurs? Or is it intended to require multi-unit development to occur (i.e. a mandatory outcome)?
- b. Depending on the answer above, and in terms of s32 RMA, which of the two versions of Policy 9.7 - the version as notified, or the version as amended - is the most appropriate method to give effect to the direction in the objective?

- c. The planning witnesses propose that R7A.5.2.2 Performance Standards for Restricted Discretionary Activity, and specifically (d) relating to 'Lot Size', be amended to read (in part):

(iv) Any subdivision in the Whiskey Creek Residential Area must have an average lot size of 400m² – 500 m² and a minimum of 350 m², other than multi-unit residential development in the identified multi-unit housing area on Map 7A.3 where the developed density shall be lots of no less than 150m² and no more than 400m², with the average lot size being 250m² – 350m². (our **emphasis**)

- d. We have two questions here:

- i. Firstly, why is the average lot size expressed as a range? Further, at the upper end, we observe that an average 350m² does not support multi-unit typologies. If the average were dropped to a single figure of 250m² would that be a more effective way of achieving the policy objective of the Plan Change?
- ii. Secondly, and depending on the answers to questions a., b. and d.i. above, is the lot size rule the most appropriate method to achieve the preferred wording of Policy 9.7 and the point at which that policy sits on an enabling / directive spectrum? This question raises an issue over consistency between objective, policy and rule and we further seek some assurance regarding the alignment between all three elements.

14. It is entirely possible that the s32AA evaluation and the Requestor's formal reply (which are now due later this week) are proposed to address the questions outlined in para 13 above; however, in the event that this would not have been the case, we have 'front footed' these queries so that the eventual reply can assist the Panel further in its deliberations.

Question 2: Boundary Fencing

15. In considering the agreed provisions relating to boundary treatment, the Panel notes that although matters such as building height, setback and boundary alignments are all dealt with, the recommended provisions are silent on the controls pertaining to fencing along the boundary between Meadowbrook Drive properties and the southern lots that form part of the proposed development. It is acknowledged that the Fencing Act 1978 will determine fencing arrangements between neighbours, but the Panel wishes to understand whether the District Plan should contain rules controlling the height and permeability of fences along this boundary and whether the planning and urban design experts had given that any further consideration.
16. For contextual purposes, we note that many submitters expressed concern as to how fencing along their boundaries may impact on views and privacy. For example, Mr Edward Anderson at 23B Meadowbrook Drive, whilst being essentially opposed to the development and seeking a buffer / reserve area along this boundary, signalled that he would not want a high, solid fence constructed on the boundary, due to the loss of sunlight, lack of air flow and potential for such a fence to make the path behind it slippery and dangerous, which reflected his careful consideration of the balance between maintaining privacy and views.
17. On the above basis, the Panel wishes to receive a response, either collectively or separately, from the Council and Requestor, as to whether rules to address fencing along the boundary are warranted and, if so, how would the said rules should be drafted. In requesting this we note that there are rules governing fence height in the multi-unit housing area, albeit possibly for different reasons than the ones outlined above, but we mention as context for deciding on the merits of intervention.
18. Further, in the absence of such rules being proposed along the Meadowbrook Drive property boundaries, what fencing structures could be constructed as of right ?
19. In answering the above question, we require the attendant s32 (1) and (2) assessment – particularly under s32(2)(c) regarding an evaluation of the risk of acting or not acting.

Next Steps

20. We would further ask the planning witnesses to provide a joint response to the questions posed by **5pm, Friday, 29 July** at the latest, and as part of their s32AA evaluation relating to the proposed amendments. If, in considering and responding to our requests, the planning witnesses are agreed that further amendments to the Plan Change are required, we would appreciate the provision of an up-to-date version of the amended provisions.
21. As a consequence of the above, the timeframe for the Requestor's written Right of Reply is extended to **5pm Wednesday 3 August 2022**. This will enable all the information to be considered at the next deliberations meeting of the Panel scheduled for the second week of August.
22. As per previous practice, all enquires/responses are to go to the Hearing Administrator, Rosa de Souza, who can be reached at rosa.desouza@pncc.govt.nz

DATED this 26th day of July 2022



DJ McMahon

Chair - Independent Hearings Panel

For and on behalf of:

Commissioner: DJ McMahon

Commissioner: A Rutherford (Deputy Mayor Palmerston North City Council)

Commissioner: B Barrett (Palmerston North City Council Environmental Sustainability Committee Chairperson)