

**BEFORE THE ENVIRONMENT COURT**

Decision No: [2013] NZEnvC 159  
ENV-2010-WLG-000127

**IN THE MATTER** of an appeal under Cl 14 of  
Schedule 1 to the Resource  
Management Act 1991

**BETWEEN** JOHNSONVILLE COMMUNITY  
ASSOCIATION  
INCORPORATED  
Appellant

**AND** WELLINGTON CITY COUNCIL  
Respondent

Court: Environment Judge C J Thompson  
Environment Commissioner W R Howie  
Environment Commissioner E H von Dadelszen  
Hearing: at Wellington: 24, 25 June 2013. Site visit 26 June 2013  
Counsel: T H Bennion for the Johnsonville Community Association Inc  
K M Anderson and A M White for the Wellington City Council

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**DECISION ON APPEAL**

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Decision issued: 16 JUL 2013  
The appeal is allowed in part – see para [65]  
Costs are reserved



*Introduction*

[1] After hearings before Commissioners between April and June 2010, the Wellington City Council adopted proposed District Plan Change 72 (PC 72). PC 72 grew out of a number of factors, eg a review of the Johnsonville Town Centre Plan, the Council's monitoring of infill development in Wellington suburbs, and the view that population growth and consequent housing demand in the City should best be focused into the *spine* running from Johnsonville to Kilbirnie.

[2] Part of the process behind PC 72 was a consideration of what were then known as *Areas of Change* where the Council would encourage residential intensification in nominated areas. In the course of considering the proposed plan, the *Areas of Change* came to be called *Medium Density Residential Areas* (MDRA) and that is the term that has been used since.

[3] This appeal concerns only the proposed MDRA for Johnsonville. This was the most controversial element of the Plan Change, both as to its areal extent and to the height and coverage of buildings which might be allowed by it. As a result of the submissions and hearings, the following changes to the proposed Johnsonville MDRA were recommended and approved by the Council:

- (1) The maximum permitted building height was reduced from 10m to 8m. An additional 30 percent (up to 10.4m) more height could be approved as part of a *discretionary (restricted)* activity resource consent application.
- (2) A new standard requiring front units or dwellings to be oriented to face the street with main entrances being located on the street elevations.
- (3) A minimum physical separation of 7m between the front unit on a site and any units constructed to the rear.
- (4) Additional design guidance was set out in the Residential Design Guide to address streetscape and character, integration of medium density housing, topography and lot orientation, solar access and privacy and treatment of mass earthworks.

[4] The Johnsonville MDRA has been divided into two sub-areas – MDRA 1 and MDRA 2. For ease of reference, we annex as Appendix 1 a copy of Plan Map 23



which shows the areas of MDRA coloured orange and marked MDR 1 and MDR 2. (The Town Centre is coloured pale pink and is, as one might assume, at the centre of the Map). Some verbal description of the areas needs to be given also. The boundaries of both sub-areas have been based on residents having good access to the Town Centre: - taken as being within 10 minutes walking time, a topic to which we shall return. Most of MDRA 1 is a block of largely residential lots to the northwest of the Town Centre. Its northern boundary is Ironside Road and its southern is on Frankmoore Avenue. There has been a significant degree of infill housing there already, some of which is of the quality mentioned in para [19] and which gives some weight to the appellant's concerns about residential amenity. There is also a much smaller piece of MDRA 1 on the southern side of Broderick Road, with its western boundary against the Johnsonville commuter railway line.

[5] MDRA 2 is much larger in extent, and is in five pieces. One is to the west of the Town Centre with its southern boundary on Broderick Road and its northern on Woodlands Road. It is largely well-established residential, with churches and the like well established also. The second extends quite a long way south between the eastern side of Moorefield Road and the railway line. It too is well-established residential, (mostly 1940s -1950s State housing) with one or two professional practices in former houses. There has been some infill housing of varying quality there also. The third piece is the largest, covering the higher ground between the railway line in the west with Pollen Street and Johnsonville Road/SH1 along the south and east. This too is established residential, mostly State housing of the 1940s and 1950s, and again with some infill of varying types and quality.

[6] The remaining two pieces of MDRA 2 have quite distinct features, and we discuss them separately at paras [54] to [59].

[7] The differences between MDRA 1 and MDRA 2 are summarised in the explanation to Policy 4.2.3.2:

... [The areas of MDRA 1] contain a significant number of smaller infill and multi-units creating a relatively intensive urban character. The provisions that apply to these areas seek to facilitate the continuation of these existing patterns. No minimum lot dimensions are required in recognition of the character of existing development and



the fragmented subdivision patters which would inhibit site amalgamation. Similarly there is no request for ground level open space in recognition that these areas are already intensely developed. ... the emphasis will be on providing quality multi-use areas that can double as both vehicle manoeuvring spaces and usable outdoor space.

For MDRA 2 the explanation is:

... a slightly less intense, more suburban style of development. This areas includes land that is slightly further removed from the town centre, with more existing open space. Requiring minimum lot dimensions will provide additional flexibility as to how buildings are massed on site and provides scope for different building forms and layouts. It will also help ensure that buildings can be oriented to face the street and will reduce the number of driveways required. ...

*The parties' positions*

[8] The Johnsonville Community Association Inc (JCA) is a successor to the Johnsonville Progressive Association, which was the original appellant. The JCA was opposed to the Johnsonville MDRA in its entirety, and its original grounds set out in its Notice of Appeal (which was completed without the benefit of legal advice) included complaints about the adequacy of Council consultation in the preparation of PC 72, and about other matters of process. In an *ab initio* hearing such as an appeal to this Court, those matters would have been of very limited relevance, but fortunately the Association consulted Mr Bennion after the Council's evidence was exchanged, and with his advice the issues put forward by the Association have been refined to:

- Whether the effects on existing amenity through MDRAs creating a “new, more intensively urban character” ... can be dealt with simply by policies and explanations in the District Plan proper and the Residential Design Guide as amended, or whether some other specific guidance is needed to maintain and enhance amenity, in particular, by way of a Johnsonville specific MDRA design guide;
- Whether community infrastructure supports all of the areas proposed for MDRA;
- Whether MDRAs are suitable across all of the areas proposed;
- Demand for MDRAs in the Johnsonville area.

Mr Bennion went on to summarise his client's position in these paragraphs:



- (a) The plan change fails because it cannot in any meaningful sense be said to have had regard to the maintenance and enhancement of amenity values where it provides for significant change;
- (b) The community infrastructure cannot support all of the areas of change proposed and so Part 2 is breached, in particular health and safety for residents if housing developments are without proper infrastructure.

[9] As mentioned, its original position was that the MDRA should be entirely abandoned, but it adapted that view to accord with the evidence of its planner witness, Mr David Armour, and its traffic engineer, Ms Harriet Fraser. At least in terms of amenity, the Association's end position is that the Plan Change should not be pursued unless and until there is a better understanding and guidance on what the *new amenity* should be – and that could perhaps be achieved through a design Guide specific to MDRAs. If though, the Court comes to the view that amenity can be maintained through existing mechanisms, the Association contends that its extent should be limited to the areas outlined by Mr Armour.

[10] We shall discuss these issues further – mainly in the course of working through the Part 2 issues.

[11] Mr Karlis Abolins was a s274 party to the appeal. Sadly, he passed away before the appeal was heard, but his position was assumed by members of his family and one of his daughters, Ms Amanda Abolins-Reid, gave evidence as their representative, but the family did not participate in the balance of the hearing. They own one of the five residential properties at 2 – 10 Middleton Road which comprise a small and somewhat isolated piece of the proposed MDRA 2, at the corner of Middleton Road and Helston Road. They oppose the imposition of an MDRA on those properties.

[12] What has particularly brought PC 72 into focus for the Abolins family is that in respect of the two properties immediately to the north of their property, an application has been made (and we understand is presently suspended, pending the



outcome of this appeal) for a resource consent to enable a 21 unit housing development. The Abolins family believe that this will have a serious adverse effect on the amenity of their property and the surrounding area. In particular, they are concerned about:

- a loss of privacy and potentially a significant increase in noise of residential activity and people in vehicles moving in and out of the neighbouring property;
- the density and character of such a development would be out of context with the existing character of the neighbourhood;
- the scale of the proposed building would be ... *overwhelming and consuming to the urban environment*;
- the belief that there will be inadequate onsite parking provided, leading to parking issues on the surrounding streets, and that such a large number of dwellings will increase traffic volumes onto Middleton Road, which it will struggle to manage;
- an increase in the issues about pedestrian safety moving around the Middleton Road/Helston Road etc, roundabout intersections;
- issues about adverse effects from earthworks and construction matters.

[13] We note here that the current proposal for 8-10 Middleton Road is to be assessed as a *Discretionary (Restricted)* activity under both the operative Plan and the Plan as it would be if PC 72 becomes operative so, strictly, the same outcome could come to pass under either scenario, although guidelines and policies may influence a different outcome. But a *real life* application does help in considering what might happen, or happen more frequently, if PC 72, with its emphasis on housing intensification, is approved.

[14] The Council is content with the boundaries of the MDRA as they now stand, and the contents of the proposed Objectives, Policies and Rules relating to it. In short, it supports the original 2010 decision. It points out that the process of change to a more intensive form and pattern under PC 72 will be gradual – there will not be an overnight transition – and good guidelines are likely to produce a much better long term outcome than has been achieved under the present, rather ad hoc, position.



*The legal framework for considering Plan Changes*

[15] The legal framework begins with sections 72 – 76 and incorporates, by reference, sections 31 and 32. The process of analysis, once the matter is before the Court, has been reviewed in a number of decisions of the Court. We agree with Ms Anderson’s submission that, as was the case in, eg *Purdie v Wellington CC* [2010] NZEnvC 83, in the circumstances of this Council-initiated Plan Change, and the issues raised in the appellant’s evidence the otherwise lengthy list of factors can be compressed. 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.

[16] It would be helpful to set out the relevant portions of s32, bearing in mind that because of the date of notification of PC 72 (29 September 2009), the version to be applied is 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— ...

(c) the local authority, for a policy statement or a plan (except for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part 2 of 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.

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

*The population issue*

[18] We have already mentioned the Council's view that the bulk of population growth in Wellington City should be accommodated along the so-called *spine* of the City between Johnsonville and Kilbirnie. The Council's expectation (and it was not challenged) is that the City's population will grow by some 30,000 by 2031, and that it will require a further c15,000 housing units by that date – ie c800 housing units pa. The housing units will, as one might expect, be a mix of lower density stand-alone houses, medium density townhouse/terrace housing, and high density apartments. The expectation is that Johnsonville will have, by 2031, some 25% of the medium density, and 4% of high density development. In actual numbers, that translates to a total of 1112 additional dwelling units in the MDRA and the Johnsonville Town Centre by 2031, or some 59 dwelling units pa.

*Infill housing experience*

[19] As is outlined in the Council's non-statutory discussion document *Promoting Quality of Space – a targeted approach to infill housing in Wellington City* (May 2007), the experience with infill housing in and around the City has not been an entirely happy one. The document has this introductory note:





... There is evidence in some areas that poorly designed infill housing is impacting on valued suburban character and amenity. There is also concern that infill development and intensification is being encouraged (or at least allowed) in areas that have poor access to public transport or are not well-serviced by infrastructure.

Johnsonville has not escaped those effects, and the Boffa Miskell character assessment done for the Council in 2008 confirms that the *existing environment* has been adversely affected accordingly. We are inclined to accept the Council's view that continuing or replicating the miscellany of styles, sizes and layouts of some of the existing housing stock, particularly in the MDRA 1 area, will certainly not be the best planning solution available. PC 72, through setting a new standard or character, is one of a number of steps, so we were told, that the Council has and is taking to address such issues.

#### *Walking times and distances*

[20] One of the criteria used by the Council to locate areas around the Johnsonville town centre that might be suitable for medium density residential development was the walking time or walking distance from the MDRA to the Town Centre. If the walking distance to the town centre was less than 800m, or the walking time was less than 10mins, then the area was, in the original proposal, considered by the Council as potentially suitable as an MDRA.<sup>1</sup>

[21] Because the walkability of routes into the Town Centre is affected by the delays incurred by having to cross busy roads and by the terrain (steps and steep slopes) the 10 minute walking time, rather than the 800m radius which took no account of terrain etc, was adopted by the Council to identify suitable MDRAs.<sup>2</sup>

[22] Ms Lucie Desrosiers, the Council's consultant urban designer, said she considered that:

... Council has used sophisticated computer modelling analysis to define the extent of the area accessible within 10 minutes walk including consideration of slope, presence or absence of footpaths and delays at road crossings. In my professional opinion, the work undertaken by Council to determine walking times to the town centre is

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<sup>1</sup> Desrosiers EIR para 5.

<sup>2</sup> Desrosiers EIR para 13.



sophisticated and sound and provided a good starting point in defining the boundaries of the MDRA<sup>3</sup>

Ms Desrosiers attached the Council's working paper *Walkability and access to public transport and town centres May 2007*, on which she relied, as Appendix 2 to her rebuttal evidence.

[23] That paper provided a table of the assumed times taken to cross various roads and formulae to calculate the walking time taken to traverse the route, taking into account whether the route was uphill or downhill and how steep it was, including the presence of steps. The formulae were not expressed in a clear way and the final formula that calculated the walking time taken in seconds contained inconsistent units. The speed of walking in m/s was divided by the adjusted distance in metres. That gave a unit of  $\text{sec}^{-1}$  to which was added the road crossing delay, in seconds. The result does not make sense.

[24] Ms Desrosiers was not able to explain the apparent difficulty posed by the formulae used to estimate the walking time over the various routes and on which the Council relied in setting the extent of the MDRAs.

[25] Ms Anderson called Mr Shean Audain, a GIS expert with the Council, to assist the Court with this problem. He explained that the Council had used the methodology widely throughout the city particularly to identify suitable areas for medium density residential development. He expressed confidence that the results gave good indications of the actual walking times. However, he was unable to explain the problem with the formula and, in his own words, *cringed* about its expression.

[26] As the results produced from this methodology for several areas of the city have proven to be realistic, according to Mr Audain, we might assume that the formula should have been expressed as the walking time in seconds is the distance divided by the speed plus the road crossing time delay and that in fact the analysis has proceeded in this way. But we were not given evidence confirming this.

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<sup>3</sup> Desrosiers EIR para 21.3.

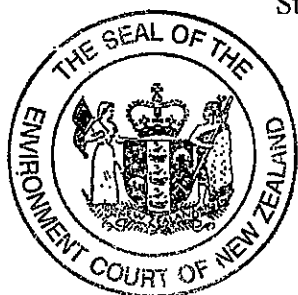


[27] Mr Audain assured us that notwithstanding the erroneous formula he was confident that the walking time estimates were reliable. To a point, we are prepared to accept Mr Audain's evidence that the results of the walking times may be relied upon, but we note that *sophisticated computer modelling* always needs a stern reality test *on the ground* and, when found wanting, corrections need to be made. Other factors modify the areas suitable for medium density residential development including the nature of the walking routes and the nature of the areas themselves. We discuss those matters elsewhere. We pick up this point in discussing two parts of the MDRA 2 which give us concern – see paras [54] to [59]. For those parts of the MDRA the formulae, in our view, produce quite unrealistic results.

#### *Planning and non-statutory documents*

[28] During the course of the Hearing we were referred to a number of planning documents, regional and district, statutory and non-statutory. Specifically, in support of PC 72 we were directed specifically to Policies 30 and 31 of the operative Regional Policy Statement (2013). Policy 30 identifies Johnsonville as a *suburban centre* and requires the Wellington District Plan to include policies, rules and /or methods to enable and manage a range of land use activities that maintain and enhance the viability and vibrancy of Johnsonville. Policy 31 requires the Wellington District Plan to identify key centres and other locations with good access to the strategic public transport network suitable for higher density/ mixed use development and to include policies, rules and/or methods to encourage such density and use around these centres and locations. We consider that the provisions of PC 72 do, in terms of s75 RMA, *give effect to* the regional document.

[29] The non-statutory *Wellington Urban Development Strategy* (2006) clarified that the areas best able to serve the needs of future population growth were around the key centres and transport nodes. The concept of the *growth spine* encouraging the growth of housing and employment in key centres linked by a public transport spine between Johnsonville and the Wellington Airport was developed from this Strategy.



[30] Among the many other non-statutory documents considered were : the *Johnsonville Town Centre Plan* (2008), the *Wellington City Transport Strategy*, the *Wellington Regional Land Transport Strategy 2010-40*, the *Wellington Regional Public Transport Plan 2011-2021*, the *Centres Policy* (2008), the *New Zealand Urban Design Protocol* (2006), and the *Draft Johnsonville Design Guide* (April 2012). These documents clarified that such zones should be relatively close to commercial centres and transport hubs, accessible for pedestrians, and subject to planning controls to protect the amenity of existing and new residents.

[31] These non-statutory documents provide many laudable aspirational visions and statements designed to provide for the future needs of the community. However since these documents do not have the status of rules, and given that it is accepted that some of the poor standard in-fill development has produced significant privacy, access, and general residential issues, it is understandable that the appellant, and others concerned about PC 72, are concerned about how effective these documents will be in preventing further unattractive in-fill development in their suburb. We return to the issue of the Design Guide(s) under a discrete head.

[32] Another issue of basic importance, but one which is not linked to the statutory planning requirements, is the walking distance/time criterion which we were told was a major factor assisting the Council in delineating the land to be designated as the MDRAs. It is our opinion that some of the potential pedestrian routes linking the proposed MDRA to the Town Centre and/or traffic routes, while theoretically falling within the 10 minute walking criterion, are not practicable and we discuss the two most affected areas in detail in paras [54] to [59]. We understand improvements to the footpath infrastructure and to the roundabouts (at the northern end of the Town Centre) are planned to serve the people who are expected to live in the proposed MDRAs, but we also understand that funding for some of these improvements will be contestable by other areas of the City.

[33] While the appropriateness of the MDRA in Johnsonville was accepted by the appellant's witnesses, there remained disagreement about their appropriate extent, the topographical and practical difficulties faced by pedestrians negotiating the



potential routes within the times suggested, the lack of cultural, entertainment and employment opportunities in the Johnsonville Town Centre and concerns about the planning controls over development, including the lack of a Residential Design Guide specific to Johnsonville.

*Other issues*

[34] Some issue was made, by Mr Armour in particular, of the absence of entertainment or cultural facilities in and around Johnsonville Town Centre. There are, it was said, only two pubs, no cinema or theatre, limited restaurants and only one, or perhaps two, chartered clubs and they are struggling with dwindling membership. The argument being made was that this lack of social infrastructure meant that the suburb was unsuitable for intensification of its housing stock.

[35] We confess to struggling with the logic of that. All entertainment facilities are highly responsive to customer demand. Pre-television, suburban cinemas were common. Some, by re-inventing themselves as multi-screen complexes, usually with a cafe/restaurant on site, have revived. Suburban pubs will prosper or fail according to demand, particularly when they are within walking distance of residential streets and the legally and socially unacceptable issue of drink-driving can be side-stepped. Chartered Clubs have the same issues. For success, it is rather self-evident that restaurants require both a good reputation for product and service, and a location where there is a critical mass of patronage.

[36] If such facilities are regarded as desirable, their absence, we would have thought, tells in favour of encouraging, in a guided way, the intensification of housing within walking distance of the very places where one might expect a new cinema or pub to be established, not the other way around.

*Demand*

[37] The Association suggested that, apart from all else, there was no, or insufficient demand for medium density housing in the area, and that the MDRA(s) were therefore a pointless exercise. We need to point out, first, that planning is permissive. PC 72 would not require every piece of land in the MDRA areas to be



developed in that way. If someone wished to build a conventional single-unit dwelling there, that can be done. What PC 72 does is to provide the opportunity for more intense development, in an area thought likely to be attractive for it, and for it to be done in a way that will provide reasonable assurance of an outcome that is acceptable from an amenity point of view. Whether that opportunity will actually be taken up remains to be seen.

*Part 2*

[38] There are no issues of particular importance to Māori, in terms of s8 or s6(e). Nor are there other matters declared to be of *national importance* in terms of s6.

[39] There are issues arising under s7, to which the Court is required to ... *have particular regard*. They are: ...

- (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: ...

[40] As the comment already made about experience with some infill housing in the past might indicate, there can be tension between these issues. It may, in one sense, be *efficient* to utilise the finite resource of housing land in close proximity to town centres by filling it to capacity with housing units. But it is unlikely that such a single-minded course will maintain, let alone enhance, amenity values (ie ... *those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes* - see s2) - or the quality of the environment.

[41] In his submissions, Mr Bennion described the issues around s7(c) and (f) as being ... *at the heart of the appeal*. And he pointed to the evidence of Mr Armour as providing expert support for the proposition that amenity would suffer if the Plan Change goes ahead in its present form.

[42] Mr Armour's concerns relating to amenity were that the PC 72 provisions as stated in the Residential Design Guide were a complete change from the Policy in the



Operative Plan which reflected attempts to protect existing amenity by requiring developments to be compatible with the surrounding area. The Residential Design Guide included the statement that

... complementing existing character is not a factor in designated Medium Density Residential Areas. New buildings will help to establish a new more intensively urban character while representing a change from the existing condition.

He also believed the increased site coverage would allow more bulky and *out of scale* residential development which would be out of character and that some minimum open space would be needed for MDRA 1.

[43] It is clear that in the past there has been poor piecemeal infill development in Johnsonville and that medium density is part of existing character of the proposed MDRAs. Bu the reason for not requiring Johnsonville MDRAs to complement existing character is that some of the previous development is so poor that no one wants to replicate it.

[44] Mr Armour accepted that the proposed bulk and location provisions, including recession planes, yards, ground-level open space (except for MDRA 1), lot configuration, streetscape etc, are apt planning controls to apply to protect the amenity of neighbours and will also include new guidelines on access and traffic and, by implication, that those new standards will in general be higher than currently in force.

[45] Subject to the comments to be made about the possible benefit of a Design Guide specific the Johnsonville MDRA issues, our overall view is that as proposals for multi-unit development will have to go through the consent application process, plus provide a Design Statement and be assessed against the *Residential Design Guide*, there is reasonable assurance that poor quality development would not result. Taken together, the objectives, policies, rules, permitted activity standards and the *Residential Design Guide* are aimed at encouraging and permitting high quality medium density residential development over a number of years, while allowing multi -unit developments to be assessed through the resource consent process. These provisions should help maintain and improve amenity in the suburb.



*General and specific design guide*

[46] This may be a convenient point to discuss the issues about design guides. As we have mentioned, the District Plan has a generic Design Guide. In considering PC 72 the Hearing Committee suggested that a complementary Design Guide, specific to MDRAs, would be useful. That was not greeted with enthusiasm and the Council did not adopt the idea. Reflection has lead us to the view that it is a proposal with use and merit.

[47] The *Residential Design Guide* forms part of the District Plan and it has a clear purpose: to provide ... *design assessment criteria for developments subject to resource consent*. Under the four headings: *Character, Site Planning, Building Design* and *Open Space*, the guide is clearly focussed on helping Council staff assist applicants at the pre- application phase to understand the urban design issues of concern to the Council, and to assist them in providing the Design Statement required to accompany every application for Multi Unit development, and to be used to assess any proposal for a second or subsequent unit on a site.

[48] This *Residential Design Guide* is meant to be relevant for all the residential areas of the City. However, it became clear that part of Chapter 1, *Character*, was not relevant to Johnsonville. As a result of the Council's decision, the introduction to that chapter stated that *Complementing existing character is not a factor in designated Medium Density Residential Areas*, and went on to clarify that *...all development in those areas should follow the principles of good urban design as described in other parts of this guide and establish positive precedent for the other development that will follow*. Ms Desrosiers agreed that Guideline 1.1 (page 5) relating to *Assessing and complementing neighbourhood character* was not relevant in assessing resource consents in the MDRAs, but that the other 13 Guidelines under that heading remained relevant.

[49] The *Johnsonville Medium Density Residential Areas Draft Design Guide* was drafted as a result of the Plan Change Hearing Committee's recommendation. This document appears to be aimed at a different audience: the citizens of Johnsonville who were concerned about the outcomes (i.e. what the suburb might look like) if the





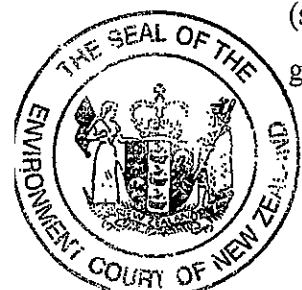
MDRAs and the generic *Residential Design Guide* were to be put in place. As we have noted, their concern is understandable, given some poor standard in-fill development in recent years.

[50] This Draft Design Guide has a clear statement of purpose: The design guidance is intended to provide tailored, street specific guidelines which recognise the different characteristics of the streets within the Johnsonville MDRA, and encourage new multi-unit development to be designed in response to those characteristics. This Guide includes matters not contained in the other document: - more definitions; character descriptions of the four specific parts of Johnsonville designated for MDRAs, and an analysis of the roading hierarchy. These Guidelines focus on a development's contribution to and enhancement of the street and public spaces.

[51] Ms Desrosiers stated that she did not believe the separate *Johnsonville Design Guide* was needed since the *Residential Design Guide* addressed the issues of amenity, sunlight access and privacy raised by the appellant. She also said that the provisions in the District Plan had been tailored to the Johnsonville context, the two sub areas (MDRA 1 and MDRA 2) reflected the site conditions, and the Council Hearings Committee made changes to the building height provisions. Because the *Johnsonville Design Guide* could not override the rules and standards in the District Plan, she believed that there was a risk of repeating material already in the District Plan and *Residential Design Guide*, rather than providing any additional protection sought by the appellant.

[52] But the *Johnsonville Design Guide* does serve a different purpose from the District Plan and *Residential Design Guide* in providing information and guidelines not available anywhere else. In particular it clarifies for the appellant, and others sharing its concerns, the character of the areas in which intensification will be encouraged, and the likely appearance of the suburb as a result.

[53] We cannot help but think that if it were completed and amended appropriately (some areas deleted and some drawings amended to reflect the actual rules and guidelines) and perhaps attached as an Appendix to the *Residential Design Guide* (as



originally requested by the Council's Hearing Committee), it would be a useful and informative document, supporting the District Plan.

*The portion of MDRA 2 east of the motorway*

[54] Part of the proposal in PC 72 is the quite large piece of MDRA 2 on the hillside to the east of the Town Centre, and separated from it by the Motorway. Largely, it consists of the west side of the quite recently developed residential street of Sheridan Terrace, and both sides of the even more recently developed Creswell Place -- indeed house construction is taking place on the southern portions of Creswell Place at present.

[55] There are two principal issues which concern us about this part of the proposal. The first is the pedestrian access to and from the Town Centre. We have previously discussed the basis on which walking times were assessed. Obviously enough, the Motorway is an impassable barrier to surface-level walking. There are two pedestrian subways beneath it -- one from the foot of Burgess Road to the northern Town Centre and the other from a long and steep walkway down from Sheridan Terrace and exiting into Disraeli Street, towards the southern end of the Town Centre. The Burgess Street walkway is reasonable enough, in terms of gradient and accessibility, as a means of foot access to the shops and services of the Town Centre, but realistically could service only the northern part of Sheridan Terrace.

[56] The Disraeli Street subway is a very different beast. The pathway descending down to its eastern portal from the residential street above is both lengthy and steep, interspersed with several flights of dauntingly steep, shallow and poorly formed steps. Even the reasonably fit would find carrying shopping up to the road above a stern challenge, and anyone with mobility issues, or pushing a baby buggy, or accompanied by small children, would find it all but impassable for practical purposes. For most people and for most purposes, day-to-day access to and from this part of Johnsonville and the Town Centre by this route is not a really practical proposition.



[57] The other issue is that of land availability for medium density development. It needs to be understood that Sheridan Terrace and Cresswell Place are recent, and current, housing developments. The lot sizes certainly appear to be no greater than the modern standard, single dwelling, lots – far from the fabled suburban *quarter acre* of 50 or 60 years ago. Moreover, the buildings on them are modern single unit houses with reasonably substantial floor plates, occupying a substantial part of the usable lot. The prospect of them being redeveloped as multiple-dwelling lots at any time in the foreseeable future is negligible.

*The portion of MDRA 2 at the corner of Middleton and Helston Roads*

[58] This piece of the MDRA 2 comprises five existing lots containing houses of varying sizes and quality. The Abolins property (see para [11]) is one of them. The properties front onto Middleton Road, opposite the knoll on which stands the prominent Anglican Church. The rear of the properties back onto the on-ramp to the Motorway at the northern end of the Town Centre. To the south of the properties is the western end of the bridge carrying Helston Road across the motorway and its on-ramp. Helston Road, Moorefield Road, Ironside Road, Bassett Road and Middleton Road intersect at, or very close to, a large roundabout in front of the southernmost of the MDRA properties. Anyone leaving any of these MDRA properties on foot and wishing to get to the Town Centre is faced with either crossing Helston Road on or near the roundabout, then Moorefield Road (where there is presently a zebra crossing) then re-crossing Moorefield Rd (where there is another zebra crossing near the medical centre). Alternatively, there is a yet longer and more fraught route crossing Middleton Road, Bassett Road and Ironside Road (none of which have crossings) and then across the Moorefield Road crossing near the medical centre. In non-peak traffic periods, these routes might well be *doable* within 10 minutes, but at peaks it is not hard to imagine them taking at least that, if not longer. At either time, those with mobility issues, or managing a baby buggy or small children would also find this route difficult and even harrowing.

[59] We understand that this block of properties was not originally considered for MDRA status, but became so at the suggestion of the then owner of the property at 8-



10 Middleton Road, over which a resource consent for a multi-unit development is now pending.

*The balance of the MDRA*

[60] While one might debate the accessibility of some parts of the proposed areas, particularly perhaps those around the higher ground of the Fraser Avenue area, on the whole we think that the 10 minute walk criterion can be made out for them, and that the lot sizes and housing styles are likely, over time, to lend themselves to in-fill housing, and to the extensions and renovations of existing properties. If they can be done under a reasonably consistent design guide in terms (at the least) of orientation to the street, spacing between units, site coverage and the like, the outcome, without being regimented, is at least going to be more acceptable in amenity effects than some of what has occurred so far.

[61] Having considered again what the Association has expressed as its concerns, we see no substantial reason to differ from the view come to by the Council for the balance of the Johnsonville MDRA.

*Section 290A – the Council’s decision*

[62] Section 290A requires the Court to *have regard to* the Council’s decision. That does not create a presumption that it is correct but it does, implicitly at least, call for an explanation if we should come to disagree with it. We have considered the Council’s decision and come to similar overall conclusions for the majority of the area of the proposed MDRA, but have come to disagree, for the reasons we have attempted to set out, with the decisions about the area to the east of the Motorway and the small area at the Helston Road/Middleton Road intersection.

*Summary of conclusions*

[63] We set out the broad framework of matters to be considered at para [15]. Drawing together the threads of what we have discussed, we consider that the majority of the proposed Johnsonville MDRA regime will meet the purpose of the Act, the sustainable management of natural and physical resources, will take account of effects on the environment, are consistent with higher level planning documents,



meet the requirements of s32 and are the optimum planning solution of those presented to us. We do however consider that a useful purpose would be served in continuing with the hearing Committee's suggestion of a Johnsonville MDRA specific design guide, and we invite the Council to reconsider the existing document and present a revised (if necessary) version to us by 30 August 2013, for inclusion as an Appendix to the generic document.

[64] For the reasons we have set out, we do not consider that the two proposed MDRA areas, east of the Motorway and at the corner of Helston and Middleton Roads, meet the tests we set out at para [15], and they should not form part of the Plan Change.

#### *Result*

[65] The appeal is allowed to the extent just outlined in paras [53], [63] and [64]. For the balance, the decision of the Council is confirmed. Insofar as the issue of the design Guide is concerned, this decision should be considered as Interim.

#### *Costs*

[66] It is the general practice of the Court not to award costs on appeals against Plan provisions, and we do not encourage any application here. But as a matter of formality we shall reserve costs. Any application should be lodged within 15 working days of the issuing of this decision, and any response lodged within a further 10 working days.

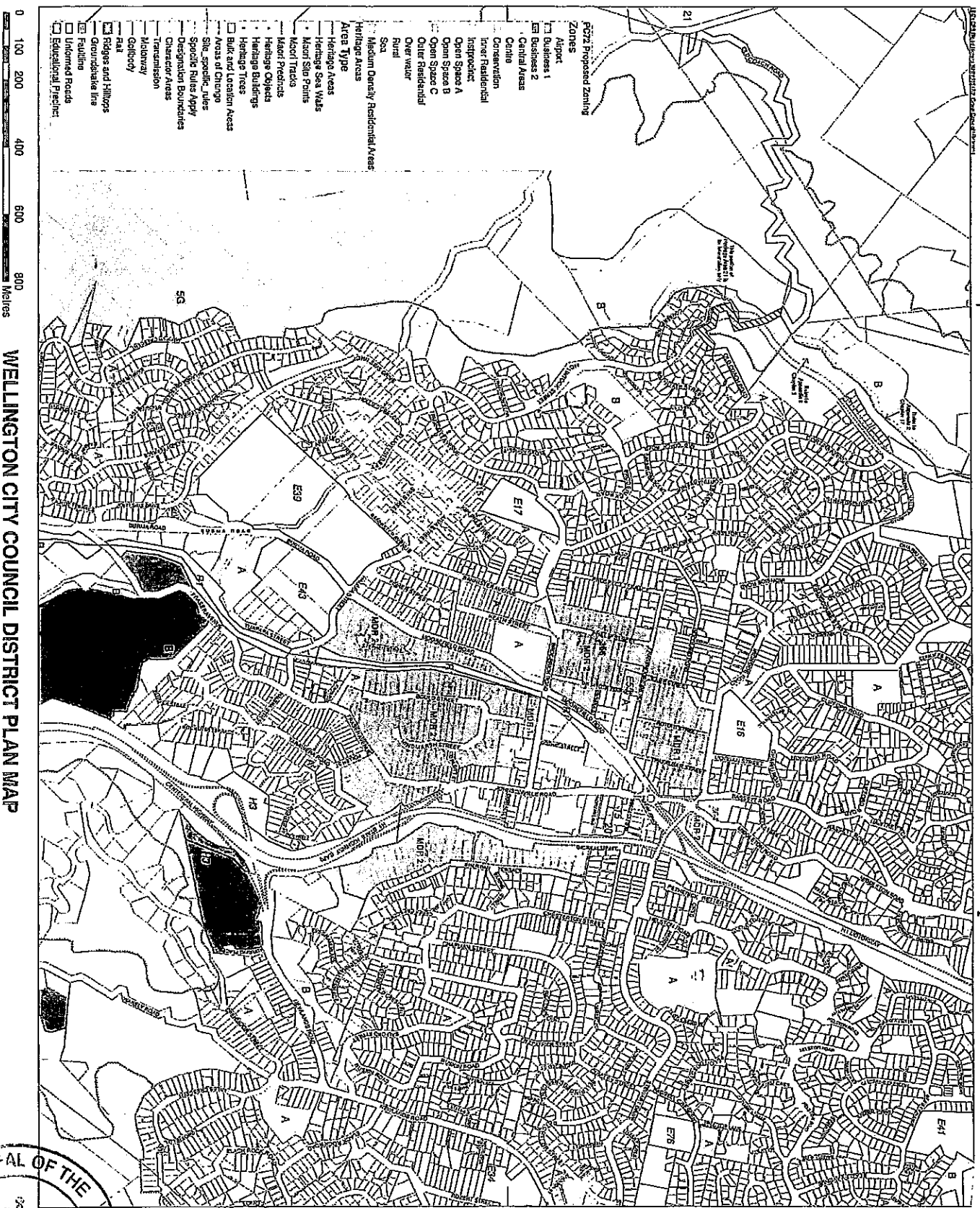
Dated at Wellington this 16<sup>th</sup> day of July 2013

For the Court

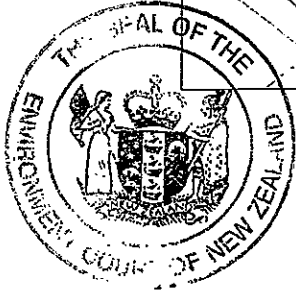
  
C J Thompson  
Environment Judge



APPENDIX 1



WELLINGTON CITY COUNCIL DISTRICT PLAN MAP



1:3,500