

30 August 2024

File refs:
IRC-6800, IRC-6857-6859
IRC-6884, IRC-6886–6887

Wellington Ratepayer
fyi-request-27779-333007a7@requests.fyi.org.nz

Tēnā koe

Thank you for your emails of 22 July 2024, 4 August 2024 and 8 August 2024, to Te Kaunihera o Pōneke / Wellington City Council (the Council) about various aspects of planning rules and Council's electronic searching functions.

Each of your seven information requests received on those dates is attached in full in the Appendix of this letter, for your reference.

IRC-6800, IRC-6857, IRC-6858, IRC-6859, IRC-6884, IRC-6886

These requests do not conform to the requirements of an information request under the Local Government Official Information and Meetings Act 1987 (LGOIMA). The LGOIMA provides for release of official material that already exists in Council, and not that we generate new material (such as a confirmation or refutation) to provide to you. In addition, we consider that your requests lack due particularity, which is a requirement specified in section 10(2) of the LGOIMA. A copy of the LGOIMA is available on the following link: [Local Government Official Information and Meetings Act 1987 No 174 \(as at 23 December 2023\), Public Act Contents – New Zealand Legislation](#) and the Office of the Ombudsman's guide to requester can be found at the following link: [Making official information requests - A guide for requesters.pdf \(ombudsman.parliament.nz\)](#).

The current District Plan came into effect in the year 2000, and has recently been undergoing an extensive review. This included public consultation. You can find more about this process on the Council's website:

[2024 District Plan - Plans, policies and bylaws - Wellington City Council](#)
[District Plan Review timeline - Plans, policies and bylaws - Wellington City Council](#)

Please direct any further queries you have about the district plan, including its definitions, to planning.admin@wcc.govt.nz, in the first instance. Otherwise, I encourage you to seek independent legal or planning advice to address your questions and/or concerns.

IRC-6887

SharePoint is the primary system used by the Council for general record management.

If written notes taken during meetings or phone calls are filed in a central system, they may be retrievable if searched for. Calls made to our Contact Centre are recorded and can be made available. When conducting searches of material, we use key words or phrases that are related to the request. These will depend on the information being requested. Our searches typically are limited to MS365 products (Outlook, Teams, and SharePoint etc).

The balance of your points in this email do not conform to the requirements of an information request under the LGOIMA. The parameters used for searching documents are decided on a case-by-case basis, so your request for details of searching lacks due particularity, which is a requirement specified in section 10(2) of the LGOIMA.

You have the right, by way of complaint under section 28(1) of the LGOIMA, to request an investigation and review of the Council's response to your information requests above by the Ombudsman. Information about how to make a complaint is available at [Ombudsman New Zealand | Tari o te Kaitiaki Mana Tangata](#) or freephone 0800 802 602.

Nāku noa, nā

Susan Sales
Senior Advisor Official Information
Strategy and Finance

Appendix

IRC-6800

From: Wellington RatePayer <fyi-request-27779-333007a7@requests.fyi.org.nz>
Sent: Monday, July 22, 2024 10:48 PM
To: BUS: Official Information <iro@wcc.govt.nz>
Subject: Official Information request - Planning Department: Consideration of Neighbours on consent submittals

To whom it may concern,

I am seeking clarification on how Wellington City Council (WCC) determines the impact of new building proposals on neighbours' amenities, specifically concerning sunlight, views gained or lost.

My concern is whether there are existing regulations, guidance, or example outcomes that can be followed in a clear and consistent manner, without risk of bias.

To better understand the determinations one can expect from WCC and ensure they are developed in a transparent and fair manner, I have outlined several questions below.

In the context of a resource consent for a new building and related earthworks, assuming compliance with cut and fill height, height limits, area, materials, and sun envelope as defined in the district plan, I respectfully request answers to the following:

Regulations and Guidance:

Are there any national, regional, or local regulations that define the maximum distance to consider when assessing the impact on neighbours?

If no regulations exist, is there published WCC guidance on what distance constitutes a reasonable upper limit for considering potential effects?

If no guidance is available, is the determination solely at the discretion of the officer(s) reviewing the proposal?

If the determination is a personal decision, is this legal and supported by any specific statement in an act? If so, which one(s)?

If the determination is a personal decision, how is it distinguishable from being arbitrary?

If only reviewed by a peer, how is it distinguishable from departmental bias?

Is the distance consideration consistent or does it vary per context (e.g., Zone)? If there are variations, what are they (per zone type: Residential, Industrial, Mixed, Rural, etc.)?

Quantifiable Range/Distance:

For a building on a slope (e.g., Roseneath) *above a road*:

What is the maximum reasonable number of properties or distance in meters on the same side of the street to ask for endorsement/non-objection?

What is the maximum reasonable number of properties or maximum distance in meters left or right on the opposite side of the street (*below the road*) to ask for endorsement/non-objection?

For a building on one side of a vale with houses on the opposite side looking towards your street:

What is the maximum reasonable distance *across the vale* within which requests for endorsement/non-objection to the proposal should be made?

For a new building on top of a ridge:

What is the maximum number of houses over, or distance in meters, that a neighbour higher-up on the same ridge can object to having to look down on the proposed building?

Changes to the Local Environment:

Does the right to object change if you are the first or last person to build on your side of the vale (i.e., if there are no subdivisions/neighbours yet or there are already many who have built on the road)?

If so, does this not qualify as introducing bias based on being the first in the area?

Visibility Considerations:

Is visibility considered from anywhere on the neighbour's property (e.g., their mailbox) or only from their interior living space, or inner and outer living space (i.e., including their patio and/or front lawn)?

If building on one side of a ridge, can a neighbour on the other side, who cannot see any part of the volume defined by the proposed site's sun envelope, object to the proposal?

Would it change anything if the two properties were instead separated by a tall hedge whose foliage hid 80% of the building (considering gaps in branches)?

Zone Variations:

Are there any variations in the above considerations based on different zones? Please specify.

Inclusion/Exclusion of Objections:

Can objections beyond the maximum values provided above be reasonably discounted? If not, why not? If not defined in regulation, what would permit the inclusion of these objections without introducing potential bias?

Public:

If the proposal is within district plan guidelines (height, area, sun envelope, etc.), can members of the public submit an objection to the proposal?

If so under what conditions?

If so under what rights?

Common Sense Checks:

Are there any of the following scenarios that WCC would not discount off the bat, and if not, why not?

The neighbour can't see the proposed earthworks/building from their property (e.g., inclusive of their whole property, mailbox, drive, etc.)?

The neighbour can't see the proposed earthworks/building from their exterior living areas (e.g., inclusive of their exterior patio)?

The neighbour can't see the proposed earthworks/building from their interior living areas (i.e., inside the building)?

The neighbour can see the proposed earthworks/building, but it is within its own sun envelope and not casting shadow on any other?

The neighbour can see the proposed earthworks/building, but it is at a distance over 50m (approx. 3 property widths away)?

The neighbour can see the proposed earthworks/building, but it is at a distance over 75m (approx. 6 property widths away)?

The neighbour can see the proposed earthworks/building, but it is at a distance over 100m (approx. 6 property widths away)?

The neighbour can see the proposed earthworks/building, but it is at a distance over 150m (a whole street away)?

I appreciate your detailed response to ensure clarity and fairness in the resource consent process is available to all in a clear and consistent manner.

Thank you.

IRC-6857

From: Wellington RatePayer <fyi-request-27906-94183e3d@requests.fyi.org.nz>
Sent: Sunday, August 4, 2024 2:56 PM
To: BUS: Official Information <Official.Information@wcc.govt.nz>
Subject: Official Information request - Clarification of method of applying District Plan Rules and Standards

Dear Wellington City Council,

In the "General Approach" Section of the "How the Plan Works" within "Part 1 – Introduction and General Provisions" of the new 2024 District Plan, the following instruction is provided:

"The rules have the effect of regulations and set out the activity status for different activities that may be proposed. There may be a number of rules that apply. Each rule has a specific number; for example MRZ-R4.

Rules may refer to standards that need to be complied with. Again, there may be a number of standards that apply. Each standard has a specific number; for example MRZ-S4."

From the above statement we note that it is unclear if Rules have a relationship to one or more *specific* Standards, or all Standards must be complied with -- in which case there would be no reason to refer to any Standard from within a Rule.

For example, in the General Rural Zone:

ER-R3: Earthworks for the purposes of constructing and maintaining public walking or cycling tracks in Open Space and Recreation Zones

is defined as a Permitted activity where Compliance is achieved with EW-S9.

EW S9: Track width associated with the construction or maintenance of walking and cycling tracks in the Open Space and Recreation Zones

Noting that:

- no where within the the district plan's Instructions, nor the text of EW-R3 or EW-S9 refer to any other Rule or Standard.
- EW-R3's text clearly states that the Rule is permitted when Compliance with EW-S9 is met.

Please confirm that the district plan, as currently published, permits making bike tracks of 1.5m width or less, even if surpassing limits defined in other -- but unspecified -- Standards (EW-S2, EW-S1, etc.).

If not, please provide an evidenced rebuttal clarifying why the above interpretation is incorrect, and that the other unreferenced Standards are applicable as well.

Thank you.

Yours faithfully,

Wellington RatePayer

IRC-6858

From: Wellington RatePayer <fyi-request-27907-efe752cb@requests.fyi.org.nz>
Sent: Sunday, August 4, 2024 3:29 PM
To: BUS: Official Information <Official.Information@wcc.govt.nz>
Subject: Official Information request - District Plan - Rural Zone Rules and Standards

Dear Wellington City Council,

The Interpretations, Rules & Standards in the 2024 District Plan (DP2024) are surprising, requiring clarification.

EW-R2: Earthworks for the purposes of constructing and maintaining tracks associated with permitted activities in the General Rural Zone

Is defined as Permitted, where Compliance is achieved with EW-S8.

From the above statement it is unclear whether compliance with only the called out standard (EW-S8) is required, or whether other Standards unspecified in the Rule must be met (and if so, why the specific call out to EW-S8?).

Assuming for now that other Standards beyond the specified EW-S8 standard must be met, the following Standard,

EW-S1: Area : The total area of earthworks must not exceed 250m² per site in any 12-month period.

implies that Wellington Rural zone farmers are only permitted to Maintain (we're not even talking about creating here) a total of 41.66m per year (250m²/4m standard width track +2 m of adjoining cut and fill areas).

Was this the intended outcome?

If not, when will you be changing the District Plan's standards to make clear that farmers retain their right to create and maintain tracks for permitted activities?

If it was, was it communicated to inhabitants and farmers within Wellington's rural zones that traditional rights were being curtailed?

If it was, where is this specified and communicated?

If it was, what is WCC's expectations of process for farmers to follow when required for health and safety reasons to rapidly repair roads washed away or covered by slips, when the total area is larger than 250m²?

If it was, what is the process to follow to undo this new limit and/or lack of clarity?

Thank you for answering the above to better understand whether WCC's intent is to assist its rural residents or actively work against them.

Thank you.
Wellington Rate Payer

IRC-6859

From: Wellington RatePayer <fyi-request-27908-0b36ae11@requests.fyi.org.nz>
Sent: Sunday, August 4, 2024 4:35 PM
To: BUS: Official Information <Official.Information@wcc.govt.nz>
Subject: Official Information request - WCC District Plan: Clarification as to Permitted Cultivation

Dear Wellington City Council,

As per other LGOIMA requests made today, the applicability and intended interpretations of the latest district plan's rules and standards are unclear, requiring clarification.

In the Interpretations section of Part I of the current 2024 District Plan, the following terms are defined:

EARTHWORKS:

means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); but excludes gardening, cultivation, and disturbance of land for the installation of fence posts.

CULTIVATION:

means the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock) for the purpose of sowing, growing or harvesting of pasture or crops.

RURAL ACTIVITIES:

means the use of land and/or buildings for agricultural, pastoral, horticultural, and forestry activities (not covered by the NES-PF); and includes:

- a) the storage of products and initial processing as an ancillary activity of horticultural and agricultural products produced on the site; and
- b) the storage and disposal of solid and liquid animal waste.

Intensive indoor primary production, rural industry, quarrying and mining activities, top soil stripping and turf farming are excluded.

With the above definitions in mind, could WCC please confirm -- or provide an evidenced rebuttal to the contrary -- as to whether farmers and other residents of the Rural Zone retain their traditional rights to maintain and work their farms?

Our interpretation of the terms, rules and standards is as follows:

- a) "rural activities" permitted in the rural zone include "agriculture" and "pastoral activities"
- b) "agriculture" and pastoral activities include "cultivation"
- c) "cultivation" includes the disturbing of the land, turning it, and reforming the "soil, clay, sand and rock" subsoil as required for drainage or other common agricultural and pastoral preparation activities prior to resowing, growing or harvesting of pasture and crops grown on it. Note that we are making clear distinction between working a field which may temporarily expose subsoil "clay sand or rock" but is recovered by topsoil prior to resowing, and "top soil stripping and turf farming" as defined under Rural Activities.
- d) the definition of "earthworks" excludes "cultivation" and therefore cultivation is not subject to limits on "placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock)".
- e) "rural activities" and its sub activity, "cultivation", remains and will continue to remain Permitted activities under GRUZ-R1 of DP2024

And -- noting that it would be clearly impossible to farm if only permitted to cultivate only 250m² per year -- remain exempt from Standards defined to constrain earthworks.

Thank you for the clarification as to WCC's intent to continue to support rural activities, and cultivation in Wellington's rural zones.

And if WCC is no longer supporting farmers, what is the intended expectations on farmers in Wellington's Rural zone, and the processes WCC expects them to follow?

For example, are they required to file a Resource Consent before they turn more than 250sq.m² a year of soil?

If an existing farm, with existing practices, are they except from requiring consent? Is it by default exempted, or is it lost if they don't apply for an exception before a certain duration has expired (e.g.: 6 months from when the district plan coming into effect)? For how long is an exemption granted? Does it expire? When it expires, what consent will they be required to obtain to continue to farm, cultivate, prepare paddocks for horses and cattle, etc.?

Thank you for the clarification as to intent, interpretation, and any new processes expected of rural rate payers.

IRC-6884

From: Wellington RatePayer <fyi-request-27972-86e5d24b@requests.fyi.org.nz>
Sent: Thursday, August 8, 2024 9:15 AM
To: BUS: Official Information <Official.Information@wcc.govt.nz>
Subject: Official Information request - WCC District Plan: Definition of Tree

Dear Wellington City Council,

The definition for the term 'tree' which WCC has proposed in the new 2024 District Plan is:

"a woody plant 3 metres or greater in height includes a Tree Fern, but excludes a vine with a stem diameter less than 50 mm."

Please provide all meeting notes, correspondence, documents, records, regarding the reasoning for this definition, source material used, options choice and decision made as to the meaning of the term.

Please name the version (Draft, Proposed, etc) and date in which this definition was added. Specifically, whether it was added in a version that was still open for public feedback and contest.

The reason:

This definition WCC has proposed is novel, unfit for purpose, and with little basis in professional literature on the matter.

It appears to be opinionated and with ulterior motive in that

- a) reducing the height captures scrub in the definition, affecting coverage statistics drastically, supporting a distorted statistics of increased tree coverage for political gain and
- b) can be used to support the confiscation of use of a larger area of their private land.

As only one example of the reason the matter is significant:

"For example, the estimate of global forest area increased by 300 million ha (approximately 10 %) between 1990 and 2000 simply because the FRA changed its global definition of forest, reducing the minimum height from 7 to 5 m, reducing the minimum area from 1.0 to 0.5 hectares (ha) and reducing minimum crown cover from 20 to 10 % (FAO 2000)"

Performing the most cursory investigation of the both international and New Zealand specific literature and research that is publicly available on the web demonstrates that the use of 3m as a criteria is significantly in the minority, with the majority of definitions being more precise in terms of trunk count and circumference, and use heights of 5m, tending towards 6m and 8m.

The following were all found within just 20 minutes:

[Specht 1970] "a woody plant more than 5 m tall, usually with a single stem"

<https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Ffennerschool-associated.anu.edu.au%2Fmensuration%2FBrackandWood1998%2FHEIGHT.HTM&data=05%7C02%7Ciro%40wcc.govt.nz%7C3109c7a003084dcc69d408dcb725f0d1%7Cf187ad074f704d719a80dfb0191578ae%7C0%7C0%7C638586621635406128%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ikl1haWwWwLjXVCi6Mn0%3D>

<https://www.vdberk.co.uk/2019/03/27/multi-stem-trees/>

“a height of at least four metres and state that there must be a single trunk. A shrub or bush is a woody plant which is branched directly above or in the ground and therefore does not form a trunk.”

Src:

<https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.vdberk.co.uk%2Finspiration%2Fmulti-stem-trees%2F%2F&data=05%7C02%7Ciro%40wcc.govt.nz%7C3109c7a003084dcc69d408dcb725f0d1%7Cf187ad074f704d719a80dfb0191578ae%7C0%7C0%7C638586621635416710%7CUnknown%7CTWFpbGZsb3d8eyJWIjojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C60000%7C%7C%7C&sdata=nSb%2F2J%2Fux1ZFHiFVw04Xcrl1Dn4m9La03FM%2BTWdYygw%3D&reserved=0>

“Tree means a woody perennial plant, typically having a single stem or trunk growing to a *considerable* height and bearing lateral branches at some distance from the ground.

Src:

<https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fenvironment.govt.nz%2Fpublications%2Ftree-protection-in-urban-environments%2Fkey-terms-and-definitions%2F%23footnote-2&data=05%7C02%7Ciro%40wcc.govt.nz%7C3109c7a003084dcc69d408dcb725f0d1%7Cf187ad074f704d719a80dfb0191578ae%7C0%7C0%7C638586621635423414%7CUnknown%7CTWFpbGZsb3d8eyJWIjojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C60000%7C%7C%7C&sdata=rbjk3aY659CeirL8Qnom02m7GJJfTRtIPMzIs0PB7TY%3D&reserved=0>

Src: Key terms and definitions | Ministry for the Environment

Src: Defined by the Environment Court having regard to the Shorter Oxford English Dictionary, 6th Edition, OUP

“New Zealand has a large number of trees (215 species ≥ 6 m in height)... However, this richness is due to a greater abundance of *small* trees (≤ 15 m in height)”

Src:(PDF) Comparative biogeography of New Zealand trees: Species richness, height, leaf traits and range sizes (researchgate.net)

“A tree is a woody plant with an erect perennial trunk at least 7.5 cm in diameter at 1.3 m, a definitely formed crown of foliage, and a height of at least 4 m.” (Little 1980) or so precisely inclusive that many species that most would regard as shrubs are included: “...any woody species reaching 3 m or more in any part of its range” (Adams & Woodward 1989)...Here, we will refer to self-supporting, woody species ≥ 6 m high as ‘trees’ and woody plants less than 6 m high as ‘shrubs’. This makes structural sense because tall woody plants with obligate multiple stems (e.g. mallee eucalypts) usually have a maximum crown height of 5m or less (Givnish 1984). A further advantage of using this definition is that compilations of ‘trees’ usually include almost all woody species ≥ 6 m but may use a variety of criteria with regard the inclusion of shorter species. In New Zealand, the 6 m minimum excludes nearly all woody plants confined to near tree-line situations in the so-called ‘subalpine’ scrub zone, thus giving a grouping largely restricted to forest. Analyses of tree distributions have often used a ≥ 3 m definition (Adams & Woodward 1989; Huntley 1993) and for comparative purposes, we have also developed a broader compilation that includes such species. To

avoid confusion, here we refer to this broader grouping of all woody plants ≥ 3 m as 'arborescents'. We refer to trees ≤ 15 m as 'small trees' and those > 15 m as 'canopy trees'.

Src"(PDF) Comparative biogeography of New Zealand trees: Species richness, height, leaf traits and range sizes (researchgate.net)

"Forest is determined both by the presence of trees and the absence of other predominant land uses. The trees should be able to reach a minimum of 5 meters in situ."

(PDF) What is a forest? Definitions do make a difference: An example from Turkey (researchgate.net)

"The General Directorate of Forestry (GDF 2009) refers to 8m or above and the Forest and Agriculture Organisation of the United Nations (FAO) defines trees as 5m or above."

"In the same search, I found nearly 240 definitions of tree (Lund 2013). While a 'tree' is usually considered a single-stemmed Woody perennial, some national definitions include "Most definitions include a height of at least four metres and state that there must be a single trunk."9

"A 'tree' is a woody plant, growing to greater than 5 meters in height (16 feet), with a single dominant stem."

[Treepedia10]

One can go on. But it is clear from the above quick search that 3m is highly contestable, 4m is still contestable, 5m less so, and 6m and 8m difficult to contestable.

We also note that WCC has produced a public GIS map of trees at 6m or above. As such we recommend that WCC align its definition with its maps and use 6m to not mislead citizens.

Please state whether the term will be reviewed and corrected by WCC to be a definition that will not skew statistics to communicate an increase in tree coverage even though the gain demonstrated would only be a paper based one.

If not, please provide precise instruction on how it can be contested to be changed.

Yours faithfully,

Wellington RatePayer

IRC-6886

From: Wellington RatePayer <fyi-request-27975-e23df43e@requests.fyi.org.nz>
Sent: Thursday, August 8, 2024 1:45 PM
To: BUS: Official Information <Official.Information@wcc.govt.nz>
Subject: Official Information request - WCC Planning - Error correction process

Dear Wellington City Council,

If a WCC Planner incorrectly includes in a consent constraints above and beyond the rules in the operational district plan, what is the process to remediate the overreach?

Consider for example a context where a subdivision land use resource application was applied for and was consented for a dwelling location in a Zone where residential buildings are Unrestricted, and the published District Plan's Standards permit 8m high dwellings, but the approving planners includes a statement to the effect that "the proposed house may not be higher than 5m" - clearly with no basis in any statement in the operational district plan, what is its enforceability?

Furthermore, if having no legality, and therefore an unfounded constraint, what is the process to follow to have it removed? And how would the submitter retrieve costs for advice, meetings, request, and following this up to completion? What about the time for lost months waiting for this to be corrected?

Yours faithfully,

Wellington RatePayer

IRC-6887

From: Wellington RatePayer <fyi-request-27976-2466f3ce@requests.fyi.org.nz>
Sent: Thursday, August 8, 2024 3:09 PM
To: BUS: Official Information <Official.Information@wcc.govt.nz>
Subject: Official Information request - LGOIMA Record Search Capabilities

Dear Wellington City Council,

You have previously denied providing responses to LGOIMAs requests on the basis that it would be too difficult to find relevant documents.

To better understand what capabilities and constraints you must work within. could you please answer the following questions?

- what software system does WCC use to manage your documents - specifically planning consent submissions and consents? SharePoint? O365 online, Other?

- What fields can and do you search regularly use to search for relevant content?

For example:

Date created/uploaded?

Date last modified?

Author(s)?

Department/Group? (e.g.: Planning versus Abatements versus etc.)

Purpose?

District Plan Zone?

Voting District?

Property/Account id?

Document Id?

Document Title?

Document Content?

Can you please specify if it is possible to specify whether search criteria/tokens/words have to match:

- Some terms (OR), or
- All terms (AND)

Do the search terms have to match:

- Exact Case?
- Exact Word? ("Container" would not match "Containers")
- Exact Spelling (i.e., letter for letter, or phonetic matching)?

Your response will inform us how to formulate more precise requests.

Beyond your record management systems, what other systems can you search through? For example, can and do you search through your inter office chat system (e.g.: Teams, Slack, etc.) for fragments or full conversations that are related?

What about written notes taken during meetings or phone calls?
Are they scanned and recorded and categorised?

Are there any other system we should be considering to name when asking for content?

Thank you.
Wellington RatePayer