

**City of Lower Hutt District Plan
PROPOSED PLAN CHANGE 21 - 54 OAKLEIGH STREET REZONING OF
PART OF THE SITE AS GENERAL RESIDENTIAL ACTIVITY AREA**

Report of Independent Commissioner to the Hutt City Council

Date: 11 November 2011

IN THE MATTER OF The Resource Management Act 1991

AND

**IN THE MATTER OF Proposed Plan Change 21 to the Operative City of Lower
Hutt District Plan to re-zone an area of Council-owned
land at 54 Oakleigh Street, Maungaraki to General
Residential Activity Area**

HEARING COMMISSIONER Robert Schofield

PLACE OF HEARING Council Chambers, Hutt City Council

DATE OF HEARING Wednesday, 28 September 2011

APPEARANCES *City Council* -
Bronwyn Little, Divisional Manager, Environmental Policy
Corinna Tessendorf, Senior Environmental Policy Analyst,
Environmental Policy
Bill Barclay, Traffic Planning Consultant
Cheryl Robilliard, Landscape Architecture Consultant

Submitters -
Sharyn Mitchell, Otonga Heights Resident
David Austin, Oakleigh Street Resident
Peter Matcham, for Friends of Belmont Regional Park
Prathiba Gupta, Otonga Heights Resident
Ruth Kerr, Wattle Grove Resident

OtherS -
Brian Newman, Otonga Heights Resident who addressed
the Hearing on an informal basis

IN ATTENDANCE *Submitters* -
Souradeep Gupta, Otonga Heights Resident
Ekta Jhala, Otonga Heights Resident

Others -
Rachel Helme, Policy Analyst, Environmental Policy HCC

Committee Adviser -
Heather Clegg

Proposed Plan Change 21 - Rezoning of Part of 54 Oakleigh Street, Maungaraki, to General Residential

REPORT BY INDEPENDENT COMMISSIONER TO HUTT CITY COUNCIL

Summary and Recommended Decision

The purpose of Proposed Plan Change 21 is to rezone part of a Council-owned parcel of land at 54 Oakleigh Street from *General Recreation Activity Area* to *General Residential Activity Area*. The parcel consists of the former Otonga School playing field and accessway, and is located on the northern side of Oakleigh Street in Maungaraki. The whole parcel is about 1.4652 ha in size and is currently classified as a neighbourhood reserve under Council's Neighbourhood Reserves Management Plan but is not gazetted as a reserve under the Reserves Act. The proposed plan change only refers to the northern part of the site which is approximately 8500m² in size.

Pursuant to my delegated authority under section 34A(1) of the Resource Management Act 1991, after considering all of the information relating to the proposal to rezone an area of land at 54 Oakleigh Street, Maungaraki, to General Residential Activity Area, I recommend –

- (a) That, pursuant to section 32(2)(a) of the Resource Management Act, the Hutt City Council adopt the further evaluation of Proposed Plan Change 21 contained within this report and its conclusion that the proposed plan change is the most appropriate means of giving effect to the objectives of the City of Lower Hutt District Plan;
- (b) That, pursuant to clause 10 of the First Schedule of the Act, the Hutt City Council approves Proposed Plan Change 21 as outlined in Annexure 1; and
- (c) That the decisions requested by submissions are recommended to be accepted or rejected, in full or in part, for the reasons outlined in this report, and as outlined in Annexure 2.

The principal reasons for this recommended decision are as follows:

1. The residential rezoning of part of the land would be the most appropriate management framework for land that is held in fee simple and that is likely to be privately held in the near future, with future landowner(s) expectations that it would be able to be developed and used.
2. The proposed plan change would provide for the residential development of the site in a manner that would be consistent and compatible with the residential environment in which it is located, and with any potential significant adverse effects on the environmental values of the area able to be satisfactorily addressed through the subdivision and development consent process.
3. The remaining area of reserve land is sufficient to maintain a satisfactory level of recreational amenity for the passive recreational needs of the neighbourhood.
4. The proposed plan change would be consistent with the objectives and policies of the operative City of Lower Hutt District Plan, particularly those relating to the management of the City's residential environment and to the consolidation of existing urban area.
5. The proposed plan change would promote the sustainable management of the future development and use of the land, in accordance with the purpose and principles of the Resource Management Act 1991.

In making this recommendation, I was fully cognisant of the degree of support for retaining the land as reserve as sought by most of the submissions received from some neighbouring properties. However, in assessing the proposed plan change to determine whether it is the most appropriate method of promoting the sustainable management of the land in question, I have had to have regard to the likelihood that the land is to be privately held in the near future. It is not within my scope of authority to reassess the overall value of the land as a recreational area, or the Council’s decision to dispose of part of the land. While my assessment took into account the land’s recreational, open space, ecological, and landscape values, these had to be weighed against the land’s development potential as privately owned property, and the enabling philosophy of the Resource Management Act under section 5. Based on the expert evidence before me, I was satisfied that those values were not of such significance as to outweigh or prevail over the need to provide an appropriate long-term land use and development management framework as would be provided by the rules of the General Residential Activity Area.

I do not propose any changes to the Proposed Plan Change in terms of either amending the rezoning boundaries or introducing special restrictions or requirements on the future subdivision, development and use of the land. I anticipate that the subdivision and development consent process would satisfactorily address most aspects of any future residential subdivision and development, including access and traffic safety matters and the size and design of lots and the relationship of building heights and setback with the adjoining reserve. In addition, the topography of the site relative to the adjoining residential properties would assist in mitigating the effects of development on these properties.

A detailed assessment of the proposed plan change is provided in the following report, which draws on the information produced in the development of the proposed plan change, the analysis and advice of the Council’s Reporting Policy Analyst, Ms Tessendorf, the submissions received, the evidence presented to the hearing on 28 September 2011, and other relevant information, as well as two site visits.

My report is structured as follows:

1	Delegation and Hearing.....	3
2	The Site and its Environment.....	3
3	Background to Proposed Plan Change 21.....	6
4	Description of Proposed Plan Change 21.....	7
5	Submitters’ Issues.....	8
6	Requirements for Considering a Proposed Plan Change.....	10
7	Evaluation of Proposed Plan Change 21.....	13
8	Policy Analysis.....	24
9	Further Section 32 Evaluation.....	27
10	Conclusion and Recommendations.....	29
11	Annexure 1 – Proposed Plan Change 21 as recommended for approval.....	31
12	Annexure 2 – Recommended Decisions on Submissions.....	33
13	Annexure 3 – Resolution of Hutt City Council on Its Land at 54 Oakleigh Street, Maungaraki.....	37
14	Annexure 4 – Legal Opinion on the Scope of Amendments to Proposed Plan Changes 21 and 22.....	39

Plan Change Analysis

1 DELEGATION AND HEARING

- 1.1 The Hutt City Council (the Council) resolved under section 34A(1) of the Resource Management Act 1991 that I, Robert Schofield, shall have the delegated authority to hear submissions in relation to Proposed Plan Change 21 and to make recommendations to the Council on the proposed plan change and matters raised in submissions.
- 1.2 Pursuant to that authority, I conducted a hearing in the Council Chambers on Wednesday 28 September 2011, which commenced at 9.30am, and adjourned at 2.10pm to enable a further site visit. I declared the Hearing officially closed at 9.30am Friday 30 September 2011 after my second site visit.

2 THE SITE AND ITS ENVIRONMENT

The Site

- 2.1 The site is a rear site situated on the northern side of Oakleigh Street, Maungaraki, with a street address of 54 Oakleigh Street. The property is legally described as Lot 2 DP 33083 (Certificate of Title WN27A/676) and is held by Council in fee simple, with its 'purpose' described on the Title as 'housing'. The site is 1.4652 hectares in area, and, while it is identified as a neighbourhood reserve under the Hutt City Council's Neighbourhood Reserves Management Plan, it is not gazetted as a reserve under the Reserves Act.
- 2.2 Vehicle access to the site is via an accessway between No.s 52 and 56 Oakleigh Street. The site also has legal road frontage onto Maungaraki Road on its western boundary, although this section of the road is unformed as a public road, but instead is used as an important entrance point into the Belmont Regional Park, with facilities for parking and picnicking for Park visitors.
- 2.3 The site contains a large grassed level playing field, with a strip of vegetation around its western and southern boundaries. Formed by earthworks at the time this part of Maungaraki suburb was developed, the site has steep embankments on most sides, rising up towards the north, and dropping down on its western, southern and (in part) eastern edges. The site sits above and behind residential properties between No.s 56 and 70 on the northern side of Oakleigh Street, elevated by between 1 and 6 metres. The site is also elevated above the Belmont Regional Park entrance area to the west by about 5 metres¹. The site is overlooked by residential properties to the north and east, which are elevated above the site.
- 2.4 The site has poor drainage, which I observed on my site visits. I was informed that the open space receives limited use as a playing field, and that its main current use is for informal/passive recreation, servicing the local neighbourhood. A high wire fence is located on the south and eastern edge of the former school playing field.

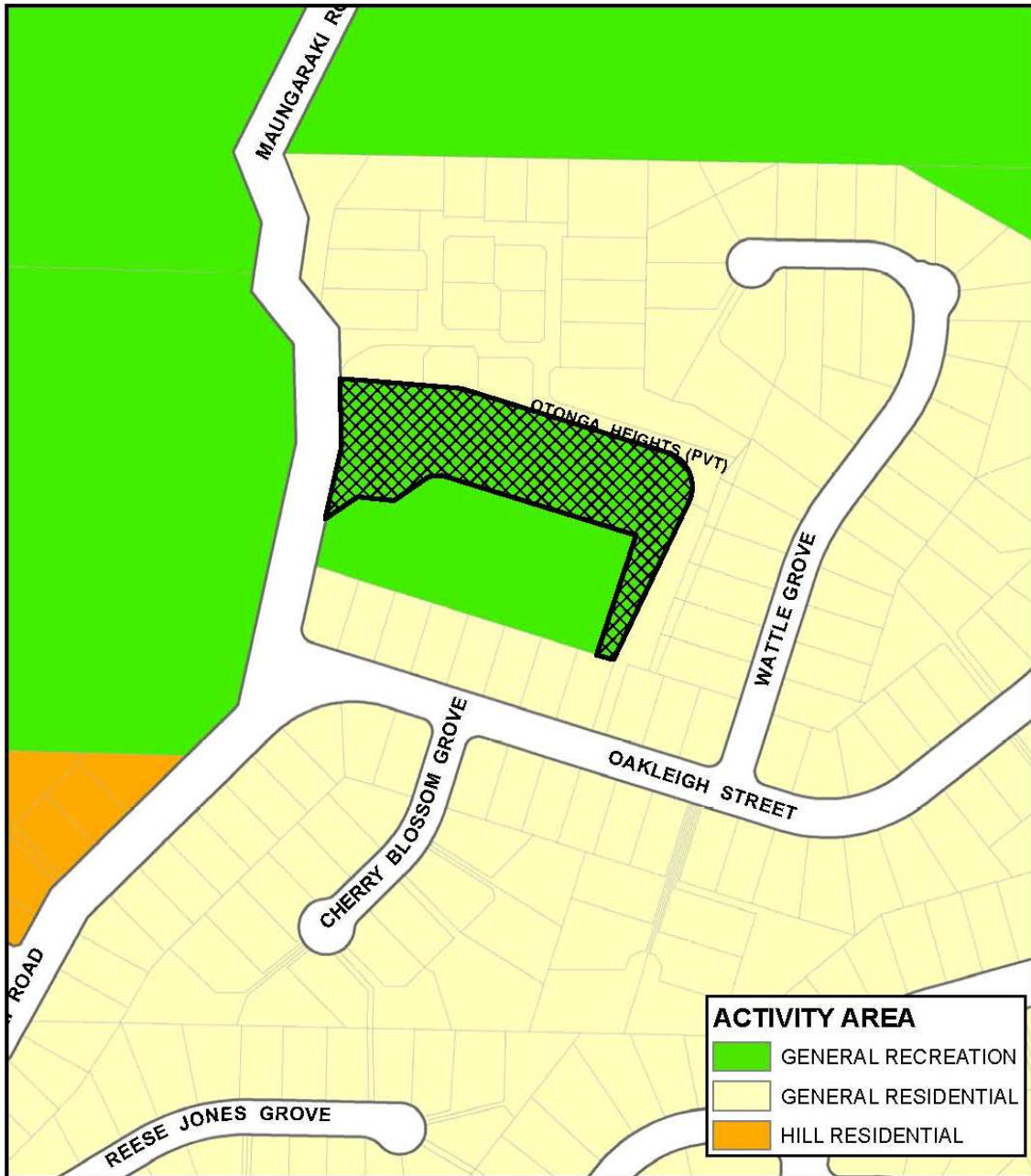
1 As determined from the contour plan produced by the Hutt City Council and included in the PAOS Response to submissions dated July 2011

The Immediate Vicinity


- 2.5 To the immediate north of the site is the location of the former Otonga Primary School, which used the open space as a playing field for school activities. The school site was recently subdivided into 19 residential lots, which have been developed; this residential development is referred to as Otonga Heights. The lots on the northern edge of the site in question now have houses that overlook the site, with three immediately adjoining the area. Otonga Heights is accessed via a one-way access road, with vehicles entering from Oakleigh Street using the access road to the open space (via a right-of-way easement), and exiting via a new one way access road that connects with Maungaraki Road via the Belmont Regional Park entrance.
- 2.6 Maungaraki Road adjoins the western boundary of the site, and is a legal road and classified as an access road under the District Plan. However, as described above, this part of Maungaraki Road is not formed as a public road, but forms part of the entrance area to the Belmont Regional Park. The entrance comprises a one-way road that forms a loop, connecting several car parking areas. The entrance area also contains grassed areas, sheltered by mature trees, with picnic facilities.
- 2.7 The site is located in the northern and highest part of Maungaraki suburb, at an elevation of about 200 metres above sea level. The suburb is largely a residential area, although a small commercial shopping centre is located in the centre of Maungaraki, downhill from and to the south of the site.

Zoning and History of Ownership

- 2.8 The majority of the site is presently zoned as *General Recreation Activity Area* in the operative City of Lower Hutt District Plan, except for the accessway that runs along the entire eastern side of the site, which is presently zoned as *General Residential Activity Area*. The zoning of the site and its environs are shown on the map that accompanied the Plan Change – this is shown in Figure 1 on the following page.
- 2.9 The zoning of the site has been as recreation since the first planning scheme in 1964.
- 2.10 In terms of ownership, the site was part of a larger block of land (Title WN27A/676) purchased by Council for housing purposes in 1959. In 1969, the Council entered into an agreement with the Crown to provide for construction of a school on part of the land acquired for housing purposes, so as to provide education facilities needed as a result of the development of this part of Maungaraki suburb. Otonga School was then built on part of the land and this site was developed and used as a sportsground in conjunction with the school.
- 2.11 In the 1990s, Otonga School was closed and in 1999 the former school site was declared surplus by the Crown. It was subsequently sold, and was recently developed as a 19-lot residential enclave called Otonga Heights.



Proposed Plan Change 21
Oakleigh Street, Maungaraki (Pt Lot 2 DP 33083)

 Area to be rezoned from General Recreation Activity Area to General Residential Activity Area.

New Planning Map A3 and Planning Maps A4 and B3



District Plan - City of Lower Hutt



Figure 1: Area of Proposed Rezoning and Zoning of Site and its Environs

3 BACKGROUND TO PROPOSED PLAN CHANGE 21

- 3.1 In her report to the Hearing, Council's Reporting Policy Analyst, Corinna Tessendorf, provided an outline of the background leading to the proposed plan change, from which I have prepared the following summary.
- 3.2 Since 2007, Council has been undertaking a review of its land holdings throughout the City that are managed as reserve. The objective of the review is to ensure that Council-owned land is being used for its best purpose. The review commenced with an assessment of the visual, recreational, ecological and open space contribution that each site is making to the community and wider City, along with an assessment of the development potential of each site. A Council sub-committee then reviewed these reports and made a recommendation on the future of each site, which is either to retain the land and to gazette it as reserve under the Reserves Act or to consider releasing it for sale. Each recommendation was then publicly notified, as required under the Local Government Act, and submissions called for from the public. After consideration of these submissions, the Council makes a resolution on the future of each site.
- 3.3 The site at 54 Oakleigh Street was included in the review as it was no longer required for its initial purpose as a school playing field for the adjacent but long closed Otonga School. An assessment of the future potential of the site concluded that it had a low level of significance under the criteria used for Landscape, Visual, Open Space and Natural Site Features and that its overall value was considered to be low. It was therefore concluded that the site was suitable to be developed for residential purposes. However, the assessment noted that there was a need to establish the degree of informal recreational use of the land.
- 3.4 The public had the opportunity to submit and speak to Council's Strategy and Policy Committee meeting on 22 April 2008, which formally considered the proposal and recommended to Council the course of action that resulted in this Plan Change process.
- 3.5 In accordance with the provisions in the Local Government Act for considering the disposal of land, the Council then undertook public consultation on its proposal to consider releasing all of its land at 54 Oakleigh Street for residential development. The consultation, which occurred between 6 May and 18 June 2008, included informing immediate neighbours by letter; public notices in the Hutt News; as well as providing information to over a dozen local and neighbourhood groups. In addition, specific consultation was undertaken with the Wellington Tenths Trust, the Port Nicholson Block Settlement Trust, Te Runanga at Waiwhetu, the Department of Conservation, and the Royal Forest & Bird Protection Society of New Zealand. Information about the proposal was also posted on Council's website and articles were published in the *Hutt News*.
- 3.6 A total of 17 submissions were received on the proposal to dispose of the former Otonga School sportsfield site. The majority of submitters (14) were opposed to the proposal to sell and wished to see the land retained for reserve purposes. Two submitters were concerned that the future of the site may have an impact on the neighbouring entrance to the Belmont Regional Park. One submission was in support of the proposal.

- 3.7 In response to these submissions, Council decided to retain the southern part of the site as General Recreation Activity Area, and classify it as reserve, and to use part of the proceeds from the potential sale of the area to be rezoned General Residential Activity Area to improve the drainage of the reserve area, and therefore make its use as a recreational area more attractive (Council resolution 12 August 2008, contained in Annexure 3 to this report).
- 3.8 In the preparation of this plan change, Council sought advice from the following experts:
- Landscape and open space (*Assessment of Open Space and Visual Amenity* by Parks and Open Space [PAOS] Ltd);
 - Geotechnical suitability (*Preliminary Geotechnical Suitability Assessment* by Tonkin & Taylor Ltd);
 - Infrastructural requirements (*Assessment of Capacity of Existing Services* by GHD Ltd);
 - Traffic effects (*Traffic Assessment* by Barclay Traffic Planning); and
 - Ecology (*Ecological Assessment* by Dr Paul Blaschke).
- 3.9 Proposed Plan Change 21 was notified on 12 April 2011, with submissions closing on 13 May 2011. The summary of submissions was notified on 07 June 2011, with further submissions closing on 21 June 2011.
- 3.10 A total of 15 original submissions and 1 further submission were received with regard to the plan change. A summary of the decisions sought by submitters is provided in section 5 of this report.

4 DESCRIPTION OF PROPOSED PLAN CHANGE 21

Purpose of Proposed Plan Change

- 4.1 The intention of Proposed Plan Change 21 is to rezone part of a Council-owned parcel of land at 54 Oakleigh Street from General Recreational Activity Area to General Residential Activity Area. The parcel consists of the former Otonga School playing field and accessway, and is situated on the northern side of Oakleigh Street. While it is identified as a neighbourhood reserve under Council's Neighbourhood Reserves Management Plan, the site is not classified as a reserve under the Reserves Act. The proposed plan change only affects the northern part of the parcel which is approximately 8500m² in size. The southern part of the site (approximately 6200m² in area²) would remain zoned as General Recreation Activity Area, which the Council has resolved to retain as open space and to upgrade the ground to improve its ability to be used for recreational purposes.
- 4.2 In recognition that the land in question will be released for sale by the Council and thus most likely become privately owned, the purpose of the proposed plan change is to provide a more appropriate long-term land use and development framework. The proposed rezoning to General Residential reflects the site's location in a residential neighbourhood and the type of recent development in the area.

2 Determined by subtracting 8500m² from the total parcel area of 1.4652ha

4.3 In order to better provide for the likely development and use of the site under private ownership than its current zoning, the proposed plan change seeks to amend the planning maps to zone the site to *General Residential Activity Area*, the zoning which applies to other residential properties in Maungaraki under the District Plan. No other changes to the provisions of the District Plan are proposed.

5 SUBMITTERS' ISSUES

5.1 The decisions requested by the submitters on Proposed Plan Change 21 are summarised below:

Submitter	Position	Decision Requested
Anna and Jeremy Norman	Support in part	Increase minimum lot size
Prathiba Gupta	Oppose	Maintain Status Quo
Souradeep Gupta	Oppose	Maintain Status Quo
Ekta Jhala	Oppose	Maintain General Recreation Activity Area. No proceeding with residential development
Parakramsingh Rana	Oppose	Maintain General Recreation Activity Area. No proceeding with residential development
Chris Rae	Oppose	Better access before rezoning commences Assessment of visual impact for Otonga Heights' residents
Rosemarie and Stephen Thomas	Oppose	Maintain Status Quo
Sharyn Mitchell	Oppose	Not proceed with proposed plan change
Ruth Kerr	Support in part	Proceed with Option 3 with some amendments (easy access and use, Council ownership of access road, clear and encouraging signage)
Angela Todd	Oppose	Maintain status quo, leave the site as currently zoned
Greater Wellington Regional Council	Neutral	-
Margaret Wilson	Oppose	Uphold 2008 decision to use the site for recreational purpose only and do landscaping as promised
Christopher Fahey	Oppose in part	Acknowledgement that the right of way between 52 and 56 Oakleigh Street is at its maximum allowable traffic capacity and will not be an option for access to the proposed new subdivision
David Austin	Oppose	Not proceed with recommended option but vest the total current site as Recreational Reserve as intended by original subdivision (amended option 1)

Friends of Belmont Regional Park	Oppose in part	Proceed with following amendments: <ul style="list-style-type: none"> • Exclude the bush clad slope from the playing field to the park entrance level from the plan change; • Move area to be rezoned to the south to allow a vegetative visual barrier to be developed between the new development and the existing development on Otonga School site; • Investigate alternative access/egress option to negate the necessity of a second road being constructed into the Park entrance.
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Further Submission Number	Name of Further Submitter	Further Submission Ref
DPP12-5-21-FS001	Greater Wellington Regional Council	FS1.1, FS1.2, FS1.3

5.2 Concerns raised by the submitters included:

- The proposed minimum lot size is too small
- The potential adverse effects on visual amenity for existing residents particularly ocean views and views of Belmont Regional Park
- The lack of other passive recreational grounds in area particularly flat grounds
- The adverse effects of increased traffic movements using existing narrow roads, and the capacity and safety of the use of the one way roading system
- The potential increase in noise levels
- The impact additional houses will have on water pressure
- The impact of construction works on health of residents (noise, dust, general disturbance)
- The loss of a valuable, flat recreational area
- The loss of vegetation for bird habitat and environmental and ecological impacts on Belmont Regional Park, and on the amenity of the Park entrance
- The loss of a green area, in contradiction to Council's and Percy Dowse's vision of green spaces in the suburbs when Maungaraki was developed
- A breach of Council's agreement in 2008 to retain the playing field area for recreational purposes with landscaping provided by HCC
- The lack of maintenance of the existing open space, including mowing and the restoration of damaged areas
- The use of the area is actually more than the Council report suggests
- Inclusion of the western slope is unnecessary
- The proposed shape of the Recreational Activity Area is not conducive to many recreational activities, and would result in difficult access to the site
- The money from the sale of the residential portion of the land will not be used for the reserve portion of the land

- The loss of vegetation on the western slope which was planted voluntarily by the community
- 5.3 Further information on most of these concerns was presented to the hearing on 28 September 2011 by a number of the submitters who attended and spoke in support of their submissions – namely:
- Sharyn Mitchell, Otonga Heights Resident
 - David Austin, Oakleigh Street Resident
 - Peter Matcham, for Friends of Belmont Regional Park
 - Prathiba Gupta, Otonga Heights Resident
 - Ruth Kerr, Wattle Grove Resident
- 5.4 Another Otonga resident who did not lodge a submission was allowed to speak to the Hearing. Mr Brian Newman, who only very recently bought a residence adjoining the site in Otonga Heights, addressed the Hearing on an informal basis. Unfortunately, it appears that, although he undertook diligence before purchasing the property, Mr Newman was not told of the plan change affecting the adjoining land. Given this situation, Mr Newman was allowed to speak to the Hearing, although he was informed he had no rights as a submitter. Mr Newman’s concerns reflected those of the other neighbouring residents who made submissions.
- 5.5 I have taken into account the submitters concerns as relevant in my evaluation of the proposed plan change, which is presented in Section 7 of my report.

6 REQUIREMENTS FOR CONSIDERING A PROPOSED PLAN CHANGE

- 6.1 Under the Act, there are a number of requirements for considering a proposed plan change.
- 6.2 First, regard to the function of the District Plan under section 72 should be given:
- The purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act.*
- 6.3 The purpose of the Act is described under section 5 of the Act as:
- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
 - (2) *In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—*
 - (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

6.4 In promoting the purpose of the Act, the Council must consider how the proposed plan change would assist it in undertaking its functions under s31 of the Act:

- (1) *Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*
- (a) *The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*
 - (b) *The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—*
 - (i) *the avoidance or mitigation of natural hazards; and*
 - (ii) *the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and*
 - (iia) *the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:*
 - (iii) *the maintenance of indigenous biological diversity:*
 - (c) *[Repealed]*
 - (d) *The control of the emission of noise and the mitigation of the effects of noise:*
 - (e) *The control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:*
 - (f) *Any other functions specified in this Act.*
- (2) *The methods used to carry out any functions under subsection (1) may include the control of subdivision.*

6.5 In making decisions on changes to its District Plan, section 74 sets out the matters to be considered by a territorial authority as follows:

- (1) *A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part 2, a direction given under section 25A(2), its duty under section 32, and any regulations.*
- (2) *In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to—*
- (a) *Any—*
 - (i) *Proposed regional policy statement; or*
 - (ii) *Proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4; and*
 - (b) *Any—*
 - (i) *Management plans and strategies prepared under other Acts; and*
 - (ii) *[Repealed]*
 - (iia) *Relevant entry in the Historic Places Register; and*
 - (iii) *Regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing),—*

to the extent that their content has a bearing on resource management issues of the district; and

- (c) *The extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.*
- (2A) *A territorial authority, when preparing or changing a district plan, must—*
- (a) *take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on resource management issues of the district; and*
 - (b) *recognise and provide for the management plan for a foreshore and seabed reserve adjoining its district, once the management plan has been lodged with the territorial authority, to the extent that its contents have a bearing on the resource management issues of the district.*
- (3) *In preparing or changing any district plan, a territorial authority must not have regard to trade competition*
- 6.6 Another important consideration to take into account is whether there are any matters under section 6 of the Act that need to be recognised and provided for under the proposed plan change. In regard to Proposed Plan Change 21, given the issues raised by submitters, the following s6 matters may be potentially relevant:
- (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
 - (c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- 6.7 Other matters listed under section 7 of the Act may also be pertinent, given the issues raised by submitters, the most potentially relevant matters being:
- (b) *The efficient use and development of natural and physical resources:*
 - (c) *The maintenance and enhancement of amenity values:*
 - (d) *Intrinsic values of ecosystems: ...*
 - (f) *Maintenance and enhancement of the quality of the environment:*
 - (g) *Any finite characteristics of natural and physical resources: ...*
 - (i) *The effects of climate change:*
- 6.8 Section 8 of the Act requires the principles of the Treaty of Waitangi to be taken into account. The notification of this proposed plan change included its direct service to:
- Wellington Tenth's Trust
 - Te Runanganui o Taranaki Whanui ki te Upoko o te Ika a Maui
 - The Port Nicholson Block Settlement Trust
 - The Palmerston North Maori Reserve Trust
- 6.9 No submissions were received from any of these entities.
- 6.10 Among the matters to consider under s74(1) of the Act, the Council must consider alternatives, costs and benefits pursuant to section 32 before it can approve a plan change. While a s32 evaluation has already been undertaken, under section 32(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 Schedule 1*

- 6.11 Under s32(3), such 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.*
- 6.12 I note that no objectives are proposed to be included or amended under this Proposed Plan Change 21, and therefore only s32(3)(b) applies to the evaluation of this plan change.
- 6.13 Under s32(4) –
- For the purposes of the examinations referred to in subsections (3) and (3A), 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.*
- 6.14 The purpose of this report is to provide independent advice to assist the Council in considering Proposed Plan Change 21 in respect of its duties and functions under the Act, so that, under Clause 29(4) of the First Schedule to the Act –
- After considering a plan or change, the local authority may decline, approve, or approve with modifications, the plan or change, and shall give reasons for its decision.*

7 EVALUATION OF PROPOSED PLAN CHANGE 21

Purpose and Scope of the Evaluation

- 7.1 In accordance with section 32(3)(b) of the Act, I have evaluated Proposed Plan Change 21 for the purpose of determining whether the policies, rules and methods that would apply to the subject site are the most appropriate for achieving the objectives of the City of Lower Hutt District Plan, having regard to the efficiency and effectiveness of the plan change compared with other methods.
- 7.2 I would emphasise that no new objectives and policies are proposed; the proposed zoning would simply apply the existing objectives, policies and rules of the General Residential Activity Area to the site and retain the objectives, policies and rules of the General Recreation Activity Area to the remainder. Therefore, I must focus my evaluation on whether those rules are the most appropriate method of sustainably managing the land in accordance with the purpose and principles of the Act under Part 2, guided by the relevant objectives of the operative City of Lower Hutt District Plan.
- 7.3 My evaluation must be based on the Council's decision to release the land for sale, with the presumption that it will be privately held in the near future and that it will most likely be acquired for some form of residential development by the future owner. As stated above, it is not within the scope of my authority to revisit the Council's decision.

- 7.4 The purpose of my evaluation of Proposed Plan Change 21 was two-fold:
- a) First, to generally determine the appropriateness of the proposed plan change in terms of promoting sustainable management by reference to the objectives of the District Plan; and
 - b) Second, to identify whether there are any potential adverse effects from the anticipated development and use of the land that cannot otherwise be avoided, remedied or mitigated through the application of existing District Plan methods, including the use of development and performance standards and/or the resource consent process.
- 7.5 Having considered the concerns expressed by submitters, the key issues to arise from the proposed plan change relate to:
- The value of the site for recreational and community purposes
 - The ecological values of the site
 - The geotechnical issues relating to the site
 - The effects on landscape, neighbourhood character and amenity values
 - Traffic and roading effects
 - Other matters: potential changes to zoning boundaries
- 7.6 In undertaking this evaluation, a key consideration, having regard to the impending sale of the land, is whether the environmental values of the land outweigh its potential for residential purposes and thereby necessitate either the application of an alternative zoning or the imposition of additional restrictions and requirements to protect such values.
- 7.7 Regarding the scope of any amendments to the proposed plan change that I should consider, I could readily consider the use of site specific methods if other existing methods were not regarded as sufficiently adequate to address the potential adverse effects arising from the future development of the site. However, some submissions sought broader changes, namely:
- a) To rezone the eastern half of the site (rather than the northern half) to General Residential Activity Area and retain the General Recreation Activity Area zoning on the western half (rather than the southern half)³; and
 - b) To retain the General Recreation Activity Area zoning of the western edge of the site where there is an area of planting on the embankment dropping down to the Belmont Regional Park entrance area⁴.
- 7.8 I sought legal advice on whether these amendments were within the scope of the Plan Change to make. The advice from DLA Phillips Fox (dated 27 September, appended as Annexure 4) is that both forms of amendments are within the scope of the Plan Change, as they are both relatively narrow in scope, affecting only the Council-owned land in question, and were both able to be submitted on by any member of the public through the further submission process.

3 Submission by Sharyn Mitchell

4 Submission by the Friends of the Belmont Regional Park

- 7.9 In terms of scope, I could also recommend withdrawal of the proposed plan change if I considered that it did not provide an appropriate long-term management framework for the site, once it is released for sale.

The Value of the Site for Recreational and Community Purposes

- 7.10 As described above, while the site is presently managed as a neighbourhood reserve under the Neighbourhood Reserves Management Plan, it is not classified as a reserve under the Reserves Act.
- 7.11 In preparing the proposed plan change, an Assessment of Open Space and Visual Amenity of the Site was undertaken by PAOS Limited. In it, it is stated that the general impact of zoning part of the site General Residential on the provision of informal recreation is likely to be low. The principal reason for this conclusion was that a reserve of an area of 6,500m² will still be available for recreation after the proposed plan change⁵. In response to a question at the Hearing, it was clarified that this was a gross figure, which included the vegetated embankments and access road; the actual area available as a playing field was estimated by Ms Robilliard to be approximately 5,500m².
- 7.12 This area would remain as flat, grassed open space, which the Council has determined would be gazetted as reserve under the Reserves Act, thereby statutorily formalising its reserve status. The Council has resolved that funds from the disposal of the land would go into upgrading existing reserves (see Annexure 3). The PAOS report recognised that the current playing field had poor drainage, the remediation of which would assist in making the ground more useable, particularly over winter months.
- 7.13 The vegetated western and southern boundaries of this area would remain as part of the smaller reserve, and continue to provide a buffer between the reserve and the Belmont Regional Park entrance as well as to residential properties on Oakleigh Street.
- 7.14 Several submitters were concerned at the lack of other reserve areas in the neighbourhood that could be used for informal activities, particularly sizeable areas of flat open ground within which a wide range of activities could be undertaken. The expert evidence of Ms Robilliard, the Council's Consultant Landscape Architect, who has been fully involved in the Council review and assessment of the City's reserves, is that there are eight existing open space and recreation reserve areas within 20 minutes walk of the site. She also cited that one children's playground and two reserves are within 10 minutes walk from the site.
- 7.15 As I outlined above, the Oakleigh Street entrance to Belmont Regional Park is immediately to the west of the site. As outlined in the PAOS assessment, the Park is used for walking, running and mountain biking along its trails, but it also has some open grassed areas, which the assessment considered are suitable for some of the neighbourhood activities mentioned by submitters, albeit these grassed areas are not as flat as the site in question.
- 7.16 Further away from the site but still in the Maungaraki area, the PAOS report noted that the Percy Scenic Reserve off Dowse Drive has space for informal recreation for all ages and abilities, such as walking and picnicking and two flat grassed areas.

⁵ PAOS Ltd, Assessment of Open Space and Visual Amenity, page 5

- 7.17 While several submitters considered that the subject site would have a wider range of potential recreational uses if it were more adequately maintained by the Council and the drainage issues addressed, in Ms Robilliard's opinion:

The reserve would be managed as a neighbourhood reserve under Hutt City's Neighbourhood Reserves Management Plan. Current reserve values and development of activities as outlined by many submitters for informal recreation activities fits the description of neighbourhood reserves in the management plan: neighbourhood reserves characteristically have open space, low levels of development, children's playgrounds and informal or unstructured activities. They provide for recreation such as walking, playing and informal ball games. They contribute to the visual amenity of the surrounding neighbourhood by providing open space and limited vegetation.

- 7.18 Ms Robilliard stated that there will be sufficient space on the reserve for future development of a neighbourhood playground with play equipment, as well as space for informal cricket pitches, informal rugby or football and many of the other activities mentioned by submitters – running drills, picnics, martial arts training and dog exercise. In my opinion, I would agree that the proposed plan change would not preclude such activities continuing, and that the remaining area of approximately 5200m² of flat useable open space would provide for a wide range of informal recreational use⁶.
- 7.19 Several submitters referred to an agreement by the Hutt City Council in 2008 regarding the future use of this parcel of land. These submitters asserted that this agreement established an expectation within the community that the Oakleigh Street site in its entirety would be developed for recreation reserve purposes. However, as I stated earlier in this report, it is not within my scope to revisit the Council's decision that underpins the necessity for this Plan Change.
- 7.20 Having weighed the evidence before me, I was satisfied that the current ground is of value to the local residents for many informal recreational purposes. I accept that the land is subject to drainage issues, and that this restricts more active use for recreational activities. In this regard, I note the Council has resolved to use the proceeds from the potential sale of the rezoned land to address this problem on the remaining reserve portion of the land (Council resolution 12 August 2008 – Annexure 3).
- 7.21 It is my view that the remaining area of reserve will be sufficient to provide for a wide range of informal recreational use by the neighbourhood. In this regard, I have taken a slightly more conservative estimate of how much of this area would remain available for use by the local community than Ms Robilliard, who estimated that there would be approximately 6500m² of reserve remaining, of which approximately 5500m² would be useable playing field (i.e., 6500m² minus approximately 1000m² of vegetated embankments and access road). However, if the estimated area of rezoning of 8500m² is subtracted from the total site area of 1.4652 hectares, the area of reserve remaining would be approximately 6152m², rounded to 6200m²; subtracting the approximate area of embankments and access road of 1000m², the total remaining area of playing fields would be 5200m², which equates to the area if scaled off the aerial photograph of the site provided to the Hearing.

6 This figure is based on subtracting the area of the embankments and other land outside the flat playing field (which Ms Robilliard estimated at the Hearing was approximately 1000m²) from the approximately 6200m² of reserve that would remain as General Recreational Activity Area

7.22 While the area to be retained and upgraded as a reserve may not be large enough to accommodate all forms of potential recreational activities, such as kite-flying, nevertheless the area of 5200m² would be large enough to accommodate a range of informal and some formal active and passive recreational activities. I do consider that it would be a prudent use of the land in question to retain sufficient reserve to accommodate all forms of potential but very occasional recreational use.

Ecological Values of the Site

7.23 An ecological assessment of the site was prepared by Paul Blaschke (Blaschke and Rutherford Environmental and Ecology Consultants) as part of the preparation of the Plan Change. The assessment provided detail concerning the vegetation on site and its relationship to the Belmont Regional Park, and concluded that the vegetation on the site is in a poor condition and provides only very limited habitat for birds and a range of invertebrate species.

7.24 Dr Blaschke also concluded that the site has very low vegetation values, with the partial exception of the vegetation on its western edge. Further, he concluded that its value in providing ecological connectivity to the Park and elsewhere is very low. While this latter opinion was not a view held by the Friends of Belmont Regional Park, nevertheless, I accept the evidence of Dr Blaschke, noting –

- the very small area of vegetation involved, relative to that within the Belmont Regional Park and elsewhere;
- the relative youth of the vegetation and its composition, and
- the amount of existing vegetation on the edge of the open space that would be unaffected by the plan change.

7.25 Notwithstanding the exposed location of the site and its relatively small size, I accept that the site does have some ecological values; however, I was not satisfied that these values are significant enough to warrant protection or to exclude it from the rezoning. Based on the evidence before me, I find that the potential loss of this small area of vegetation would be of minor ecological significance and would have no significant effect on the integrity of the Belmont Regional Park as a whole. While I agreed with Dr Blaschke's assessment that it would be desirable to retain as much of the existing vegetation on the western and southern boundaries of the site, the amount of planting that would likely be removed to provide access to the site would be small, and a large proportion of the existing vegetation would remain.

7.26 The Council's Reporting Policy Analyst noted the effects of any future subdivision and development on the ecological values of the land would be addressed in any resource consent application for the subdivision and development of the land.

Geotechnical Considerations

7.27 Tonkin & Taylor undertook a preliminary geotechnical suitability assessment of the entire playing field, and found that the site generally comprises a variable depth of uncontrolled fill over greywacke rock, and that there is potential for moderate ongoing differential settlement over the entire site.

- 7.28 The on-site geotechnical investigations that were undertaken (to a maximum depth of 5m) did not locate natural ground under the southern portion of the site; in other words, the depth of unconsolidated fill in this part of the site was considerable. Tonkin & Taylor concluded that this area would likely need significant geotechnical works to create building platforms, which is likely to make any residential development of this area uneconomic. This area of deep unconsolidated fill largely corresponds to the portion of the site that is proposed to remain as General Recreation Activity Area, and to become gazetted as a reserve (noting that a small portion of it will be rezoned as General Residential Activity Area in order to accommodate roading to the proposed rezoned areas).
- 7.29 According to the Geotechnical Assessment, the northern part of the site, while containing fill, is thought to be suitable for residential development, subject to appropriate foundation preparations. Therefore, I find that, from a geotechnical perspective, the land that is proposed to be rezoned as a General Residential Activity Area is suitable for residential development.

Drainage

- 7.30 As described above, that portion of the site proposed to remain General Recreation Activity Area has poor drainage and therefore has limited use as a playing field. Its main use is currently for informal active and passive recreation. The partial rezoning proposed will still leave a playing field of approximately 5,200m² in size, as well as a buffer area of approximately 1000m². The Council has resolved that part of the proceeds from any sale of the area to be rezoned General Residential Activity Area would be used to make significant drainage improvements to the area to become a gazetted reserve. This would have a positive effect in that it would make the area to remain General Recreation Activity Area more attractive and usable as a playing field.
- 7.31 Drainage on the area to be rezoned to General Residential Activity Area is not as poor. Any improvements desirable for this area would be undertaken by the developer of that area.

Infrastructure

- 7.32 An assessment of the impact of the proposed plan change on the capacity of the existing storm water, wastewater and water supply services was undertaken by GHD Limited (GHD). The assessment concluded that the existing water and wastewater infrastructure in the locality is likely to have sufficient capacity to absorb the development of the area of the proposed plan change for housing.
- 7.33 I note several submissions were concerned with lower water pressure should more dwellings be constructed in this area. However, in the absence of contradictory engineering evidence to that provided by the Council, I have to accept that water pressure levels in this suburb are above minimum levels, and are adequate enough to service further residential development. If there are any deficiencies, then they would need to be remedied at the time of the land's development.
- 7.34 With respect to stormwater, the GHD engineers advised that the existing stormwater pipe that services the site (running between 57 and 59 Oakleigh Street, down to Acacia Avenue and then into a gully in the Holdaway Scenic Reserve) may have capacity

constraints. They suggested that an alternative may be to join the stormwater discharge from the subdivision on the old Otonga School site, by discharging into a gully that feeds into the Belmont Regional Park. Again, this requirement can be dealt with at subdivision consent stage by way of condition of consent on the developer. In conclusion, the evidence indicates that there is no significant impediment to the residential development and use of the land in question.

Traffic

- 7.35 As described above, the accessway and private way servicing the new Otonga Heights 19 lot development is designed as a one-way system, with a narrow entry point between 52 and 56 Oakleigh Street, and the exit point being into the entrance to Belmont Regional Park, and from there onto Maungaraki Road. The accessway off Oakleigh Street also provides vehicular access to the open space, although there is no provision for parking and any vehicles would need to exit at 54 Oakleigh Street to avoid using the private right-of-way through Otonga Heights.
- 7.36 There was concern raised by submitters that the existing accessway was at or over its capacity now, and that it would not cope with more traffic load from any residential development of the site without adverse effects on safety.
- 7.37 The only expert evidence provided on this matter was from the Council's traffic planning consultant, Mr Barclay, who provided an assessment of the traffic implications of the proposed plan change. At the hearing, Mr Barclay reiterated his conclusion that the site could be satisfactorily accessed, and that there were no safety or movement issues involved with the potential development of the site for residential purposes.
- 7.38 Mr Barclay's assessment found that, while the form of access is a matter to be determined by the developer at the time of subdivision, there are two possible means of access to the site:
- a) The first option would be a new public road, a cul-de-sac formed from Maungaraki Road at the entrance to Belmont Regional Park giving access to the new residential development as well as to the remaining recreational area. A new intersection would be formed at the park entrance, leading to a new roadway with a turning head at the end. The existing right-of-way into the former Otonga School site would remain in place but would not be used for access to the new development.
 - b) The second option would be a one-way through route based on the present one-way circulation system, but with a new exit coming off the site onto Maungaraki Road. The new roading could be either vested as road or else maintained as a private right-of-way. One-way circulation systems are not specifically provided for in the District Plan and I was advised a number of non-compliances would need to be addressed for this option. If there were more than ten dwellings in the new residential development, then a private road would need to be provided.
- 7.39 Mr Barclay concluded that it will be possible to develop satisfactory access roading to service any residential development. He also concluded that it should be possible for all lots of a subdivision to comply with District Plan parking requirements and that the additional traffic flows will be small in relation to present traffic levels and therefore

the effects on the roading network are expected to be minor. Overall, Mr Barclay concluded that the development provided for in the Plan Change can be implemented with only minor effects on traffic safety and efficiency.

- 7.40 One matter that was raised during the hearing was whether there was any legal limitation over the potential use of the Council-owned accessway off 54 Oakleigh Street, over which the 19 properties at Otonga Heights had a right-of-way easement. It was subsequently clarified that there was no legal impediment that would prevent the Council from granting a further easement for vehicle access to the site.
- 7.41 Another matter raised at the Hearing was whether the Hutt City Council was responsible for maintaining that part of the entrance into the Belmont Regional Park contained with the paper road (i.e., that part of Maungaraki Road that has not been formed as a public road). It was clarified to me that, while Council owns the paper road, the Greater Wellington Regional Council maintains and administers it as part of its Park entrance facilities. However, the land remains a legal road, under the jurisdiction of the Hutt City Council as the road controlling authority. Thus, it provides legal frontage on to the site and therefore another means to provide access onto and/or egress from the site.
- 7.42 In the absence of contradictory Traffic Engineering evidence, I must accept the evidence provided by the Council's traffic consultant. While I acknowledge the submitters' concerns regarding traffic flows and usage on the current narrow accessways, I am satisfied that the resource consent process for the development of the site would adequately address access issues, including any issues associated with the use of the accessway off Oakleigh Street. This might include provision for better signage and provision for the use of the accessway by vehicles, as sought by a neighbouring submitter⁷.

Landscape, Neighbourhood Character and Amenity Values

- 7.43 The findings from the assessment of open space and visual amenity of the site undertaken by PAOS Limited were addressed at the Hearing by the author of the report, Ms Cheryl Robilliard, an expert landscape architect. The assessment stated that the site does not meet any key directions for the Council's Reserves, and concluded that the proposed rezoning is appropriate as long as:
- The area to remain as General Recreation Activity Area is developed as a neighbourhood park; and
 - Measures are carried out to protect vegetation on the western bank of the Area to be rezoned as General Residential Activity Area (being the area between the flat grassed area and the Belmont Regional Park car park).
- 7.44 The first of these conditions is intended to be implemented as an outcome of this Plan Change.
- 7.45 Ms Robilliard was satisfied that the second condition can be satisfactorily addressed through the resource consent process for any subdivision and development of the site. She observed that, given the steep slope on which the vegetation is located, it may not be suitable for development and therefore could be part of a large lot(s) on the western

⁷ Ruth Kerr

- edge of the site, much in the same way as the steeper vegetated land at Otonga Heights form part of the larger residential lots.
- 7.46 I also note that the lower half of the vegetation is located within the paper road and would therefore not be subject to the change in zoning. Thus, apart from a potentially small section required to provide access to the site, much of the vegetation along the eastern edge of the Belmont Regional Park entrance area would be outside the rezoning, and therefore be likely to be retained.
- 7.47 In considering the evidence, I find that the effect of the loss of the vegetation from an amenity and visual perspective would be minor, given the relatively small amount of vegetation that would potentially be removed.
- 7.48 In terms of the visual effects that would arise from the consequential residential development of the site if it is partially rezoned, as Ms Robilliard stated, the development parameters for the site will be the same as for those in the surrounding General Residential Activity Area (including the Otonga Heights development), which has, among other standards, a minimum lot size of 400m² per site. The indicative subdivision used to determine the potential traffic, visual and infrastructure effects of the development of the site was based on subdividing the site to the minimum lot size, which would be comparable to that which has occurred in the Otonga Heights development.
- 7.49 However, the site could be developed in a variety of ways, and the final size of the allotments could vary significantly from those shown in the indicative subdivision that was used as part of the infrastructural and traffic assessment of the site's development potential. For example, it could be subdivided into larger but a smaller number of lots, comparable to the existing development to the south and east. While Ms Robilliard's assessment of the visual effects was based on the development of one-storeyed housing (similar to that which has occurred at Otonga Heights), on questioning, she accepted that the maximum building height for the General Residential Activity Area would permit two-storeyed dwellings up to 8m high.
- 7.50 The PAOS assessment found that the site does not have any outstanding landscape features, and is not visible from most parts of the suburb. The site sits above the residential properties on Oakleigh Street, but is screened by the embankment that rises up to the playing field, and the vegetation along the southern edge. This difference in elevation, combined with the strip of vegetation, provides a buffer between the site and the properties below on Oakleigh Street.
- 7.51 Views of the site are largely confined to a few houses on Wattle Grove (to the east and northeast) and at Otonga Heights; Ms Robilliard observed that those houses on Wattle Grove would also continue to see that part of the playing field that is proposed to be retained, as well as the wider vistas that they presently enjoy. Therefore, I find that the potential visual effects on these properties from the rezoning would be minor.
- 7.52 I accept that the four houses on the southern edge of the Otonga Heights development would have their current views significantly modified with any development of the site, particularly the dwelling at Lot 13, which is almost at the same level as the playing fields. In this regard, Ms Robilliard stated that, while any residential development of the land would alter its present visual amenity for those properties with a view towards the site, such development would not be significantly out of character with

the general visual amenity of the suburb and the pattern of housing in the neighbourhood. At a neighbourhood scale, I would concur with Ms Robilliard that the residential development of the land would be consistent with the general residential amenity values of the area, and would not be out of character with the neighbourhood.

7.53 However, for a few properties (those immediately adjoining the site on Otonga Heights), I accept that a residential development based on the minimum height, bulk and location standards of the General Residential Activity Area would result in a significant change in outlook, and thus a degradation in their amenity values, although two of the properties are elevated above the level of the site, which would reduce the impact.

7.54 I considered several methods to address this matter:

- a) To introduce special restrictions on minimum lot sizes that apply to the site through the Proposed Plan Change – a method referred to as ‘scheduling’ because the titles would be scheduled in the District Plan as having specific restrictions imposed on the land in question; or
- b) As owner of the titles, prior to their disposal, the Council could impose restrictions on the titles to limit any future subdivision to lots having a larger lot area; or
- c) To rely on the resource consent process to address the visual effects of development on the land through the resource consent process, guided by the objectives and policies of the District Plan, the relevant assessment criteria for subdivision and development, and informed by the history of and information relating to Proposed Plan Change 21 (this information will be on Council records pertaining to the two sites).

7.55 In terms of method (a), I do not recommend the scheduling of the sites in the District Plan as this method is not good practice for Plan implementation as the restrictions would become redundant once the land has been subdivided and developed.

7.56 In terms of method (b), I was not convinced that there was a need for the Council to consider the imposition of a restriction on the titles on future subdivision before they are sold. First, there was no available evidence as to the most appropriate form of restriction or limitation that should be imposed on the size of future lots. Second, there could be a variety of methods other than lot size to manage the visual effects of development, including the scale, setbacks and siting of future buildings, the amount of impermeable surfaces, the use of planting, the design and shape of allotments, and other aspects that would influence the final form and density of development.

7.57 These techniques could all be considered using method (c), as the matters of discretion under Rule 11.2.3⁸ are relatively wide and allow considerable flexibility in the use of alternative methods to manage the intensity and scale of development. As a restricted discretionary activity, ultimately consent could be declined if the Council, as consenting authority, were not satisfied that the adverse visual effects of development could not be avoided or mitigated.

7.58 I would note the site in question is not gazetted as reserve, and thus full reliance could not be on its current status as a playing field/open space. I would also observe that the

8 Subdivision consent as a restricted discretionary activity under Rule 11.2.3 is likely because any development of the land is likely to exceed the earthworks thresholds

potential rezoning of this site has been in progress since early 2008, prior to the subdivision of the Otonga Heights development. Thus the potential for the site to be developed for residential purposes has been known during the time Otonga Heights has been developed and sold.

- 7.59 In terms of imposing a larger minimum lot size such as 500m² on the future development of the site as sought by several submitters⁹, I was not convinced that there was a sufficient reason for imposing such a variation, given the relatively limited views of the site from other parts of the neighbourhood, and the need to provide future landowners flexibility in the design and layout of any future subdivision.
- 7.60 Accordingly, I am satisfied that the visual effects of the future subdivision and development of the subject land can be satisfactorily addressed through the resource consent process, informed by the community's response and neighbours' concerns expressed through the proposed plan change process.

Other Matters: Changes to Rezoning Boundaries

- 7.61 Two submitters sought to have the boundaries of the proposed rezoning altered to address their concerns:
- a) The Friends of the Belmont Regional Park sought to have the northern boundary (adjoining the Otonga Heights development) moved south to allow a vegetative barrier to be developed between the Otonga Heights development and the development that occurs on the rezoned site; and
 - b) Sharyn Mitchell sought that the plan change be withdrawn, but that, if the Council wanted to proceed to fund the upgrade of the drainage of the playing fields, she proposed the alternative option of rezoning the eastern half of the open space to General Residential Activity Area, with the western part (i.e., that part adjoining the Belmont Regional Park entrance area) remaining a General Recreational Activity Area, which she considers would be more compatible with the Regional Park.
- 7.62 Both submitters spoke to their submissions at the hearing.
- 7.63 In terms of the zoning boundary change sought by the Friends of the Belmont Regional Park, I concur with the Council's Reporting Policy Analyst that it would not be appropriate to have a narrow strip of vegetation between the existing and likely future residential developments, which would raise safety and maintenance issues. The management of the interface between these developments can be addressed by way of the subdivision and development consent process. I concur with her conclusions.
- 7.64 In terms of the amendment sought by Ms Mitchell, the Council's Reporting Policy Analyst accepted that such a reconfiguration of the rezoning would reduce the visual impact on the adjoining Otonga Heights properties. However, she noted that the key reason for the current configuration is because the geotechnical investigations show that the northern half of the open space is more suitable for residential development because the southern half would require substantial remedial work to create suitable building platforms for housing. She also noted that the shading analysis provided by

9 The submission from Anna and Jeremy Norman sought to raise the minimum lot size to 500m²

Tonkin and Taylor showed that the eastern part of the area was subject to greater shading, particularly during winter.

7.65 Based on the evidence before me, I accept the reasoning behind the Council's Reporting Policy Analyst reasons for rejecting this alternative option.

Conclusions on Environmental Effects

7.66 In sum, I have concluded that:

- a) The site is located within an existing residential area, and its partial rezoning as General Residential Activity Area would therefore be compatible and consistent with the context of the surrounding land uses and urban environment;
- b) The site provides only minor contribution towards the area's landscape, recreational and ecological values, and its values are not of such significance to outweigh the appropriateness of its proposed residential zoning and the necessity to provide for the reasonable development and use of the land once it is in private ownership;
- c) The recreational values the site provides for the immediate neighbourhood will be maintained through the retention and upgrading of the remaining area of open space;
- d) The residential development of the site could be serviced by the existing utilities and roading infrastructure, and any deficiencies in servicing that might arise from its use could be addressed at the time of its subdivision and development; and
- e) In general, any potential adverse environmental effects that could occur from the development and use of the site could be satisfactorily addressed through compliance with the development and performance conditions of the General Residential Activity Area, and through the subdivision and development consent process.

8 POLICY ANALYSIS

Purpose and Principles of the Resource Management Act 1991

- 8.1 In brief, I concur with the conclusions of the Council's Reporting Policy Analyst that Proposed Plan Change 21 is consistent with the purpose of the Resource Management Act, in terms of promoting the sustainable management of the City's natural and physical resources. In particular, the rezoning would enable future owners of the land to develop and use the land in a manner that is consistent and compatible with the surrounding residential environment, and adverse effects could be appropriately avoided, remedied or mitigated.
- 8.2 There are no section 6 matters of national importance applicable to the Proposed Plan Change. In particular, the expert evidence is that the land is neither an outstanding natural feature/landscape, nor does it contain an area of significant indigenous vegetation or a significant habitat of indigenous fauna. Furthermore, the site does not contain any significant historic heritage values.

- 8.3 In terms of the other matters under Part 2, the most relevant matters to which Council must have particular regard to in achieving the purpose of the Act include:
- 7(b) The efficient use and development of natural and physical resources*
 - 7(c) The maintenance and enhancement of amenity values*
 - 7(f) Maintenance and enhancement of the quality of the environment*
 - 7(g) Any finite characteristics of natural and physical resources*
- 8.4 I find that Proposed Plan Change 21 would promote the more efficient use of a relatively finite resource, being a serviceable area of urban land, located within the existing urban environment, which could utilise the existing infrastructure.
- 8.5 The application of the *General Residential Activity Area* rules to the land will maintain the amenity values of the surrounding properties in a manner that is compatible and consistent with those elsewhere in the suburb, and the quality of the residential environment within which the site is located.
- 8.6 With respect to s8, I am satisfied that the principles of the Treaty of Waitangi were appropriately taken into account, both in terms of the consultation with local iwi early in the land review process and through the notification of the proposed plan change.

Operative Regional Policy Statement for the Wellington Region

- 8.7 The Council's Reporting Policy Analyst assessed the proposed rezoning against the policies of the Wellington Regional Policy Statement (RPS), which sets the regional perspective for, among other matters, managing urban growth and its effects. I concur with her assessment that the Built Environment and Transportation chapter of the RPS is the most relevant to the proposed plan change. The most relevant objectives and policies from that chapter are:

Objective 1 Urban areas, the built environment and transportation systems are developed so that they, and their associated activities, use resources efficiently and demand for the use of finite resources is moderated.

Objective 2 The adverse environmental effects that result from the use of urban areas, transportation systems and infrastructure are avoided, remedied or mitigated and, in particular, any effects that result from the concentration and scale of activities in urban areas are recognised and provided for.

Objective 3 The environmental quality of urban areas is maintained and enhanced.

Policy 2 To use natural and physical resources efficiently in the development of urban areas and in use of the built environment by:

- (1) Encouraging forms of urban development that reflect efficient use of resources; and*
- (2) Avoiding, where practicable, the use of new resources, particularly non-renewable resources.*

Policy 6 To promote the provision and efficient use of infrastructure in the Region, and the reduction of adverse environmental effects from its use.

- 8.8 I consider the proposal would give effect to the RPS. Located within the existing urban boundaries of Lower Hutt, the rezoning of the site for general residential purposes

would be an efficient use of the land and of the infrastructure that already services the area.

Proposed Wellington Regional Policy Statement

- 8.9 The Greater Wellington Regional Council has undertaken a review of the Regional Policy Statement, which was notified in 2009. Decisions on the Proposed RPS were issued in May 2010 and the document is presently within the appeal phase.
- 8.10 As outlined by the Council's Reporting Policy Analyst, the chapter of most relevance to this proposed plan change is Chapter 3.9 *Regional Form, Design and Function*. The objective of this chapter (Objective 21) seeks –
- A compact, well designed and sustainable regional form that has an integrated, safe and responsive transport network and: ...*
- (e) urban development in existing urban areas, or when beyond urban areas, development that reinforces the region's existing urban form; ...*
 - (g) a range of housing (including affordable housing);*
 - (h) integrated public open spaces;*
 - (i) integrated land use and transportation ...and*
 - (k) efficiently use existing infrastructure (including transport network infrastructure).*
- 8.11 I concur with the Council's Reporting Policy Analyst that the proposed plan change would give effect to the Proposed RPS, in that it would assist in maintaining a compact urban form and would be an efficient use of existing infrastructure, including existing utilities, roads, and public transport (Oakleigh Street is serviced by public bus service).

Consistency with surrounding District Plans

- 8.12 Section 74(2)(c) of the Act requires Council to consider the extent to which this proposed plan change needs to be consistent with the plans or proposed plans of adjacent territorial authorities. The proposed plan change covers a very small pocket on land well within the boundaries of the City of Lower Hutt. It will have no affect on the plans or proposed plans of adjacent territorial authorities and will not be inconsistent with them.

Relationship with Council Strategies

- 8.13 The Hutt City Council has a number of strategies and plans that detail the priorities for the City, the most relevant being:
- Reserves Key Directions Strategy
 - Reserve Land Acquisition and Disposal: Policy and Guidelines
 - Urban Forest Plan 2010
- 8.14 The process of reviewing the Council's land assets in terms of fulfilling the Council's Reserve Strategy was outlined in the report by PAOS Limited. While the process was criticised by a number of submitters, the expert evidence presented to the hearing confirms previous assessments that the land has low values in terms of the criteria used to assess the potential of Council's landholdings as reserves.

- 8.15 As outlined above, the expert evidence of Dr Blaschke is that the land has very little ecological value, both in terms of its existing vegetation and habitat, but also as a component of the wider ecological functioning of the Western Hutt Hills. Dr Blaschke considered that the accumulative value that the site adds to the habitat of the area is very low because of its small size and few large trees. He also considered that the site's potential future ecological value was low, given the small size of the site, the presence of weed species. Therefore the ability of the land to contribute to the enhancing ecological connectivity between existing natural areas is minor, particularly given the presence of the adjoining Belmont Regional Park.
- 8.16 In conclusion, I am satisfied that proposed plan change is consistent with the relevant Council strategies.

9 FURTHER SECTION 32 EVALUATION

- 9.1 As outlined in paragraphs 6.10-6.12 of this report, the Council must undertake a further s32 evaluation before it can approve a plan change, over and beyond the s32 evaluation that was undertaken prior to the notification of the proposed plan change. This further evaluation should take into account the matters raised in submissions received, as well as any relevant changed circumstances or new information, including that presented to the hearing on 28 September 2011.
- 9.2 Accordingly, before the Council approves Proposed Plan Change 21, it must examine "whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives." Specifically, in regard to Proposed Plan Change 21, the evaluation must consider whether the proposed zoning of the land is the most appropriate way of achieving the relevant objectives of the District Plan. This evaluation must take into account:
- the benefits and costs of policies, rules, or other methods; and
 - 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.
- 9.3 To assist the Council, I have undertaken a further evaluation of the proposed plan change as outlined below. My evaluation takes into account the s32 evaluation that was undertaken in preparing the Proposed Plan, as well as the additional expert assessments provided to the hearing from Mr Barclay and Ms Robilliard and the information provided by submitters at the hearing.

Appropriateness of Plan Change for Achieving District Plan Objectives

- 9.4 In reviewing the proposed plan change against the objectives of the operative City of Lower Hutt District Plan, the objectives that are the relevant ones to consider are those that provide guidance on the overarching management of the City's natural and physical resources: that is, those objectives that describe the overall outcomes sought by the City.
- 9.5 I concur with the Council's Reporting Policy Analyst that the most relevant of the Area Wide Objectives to consider are as follows:

Objective 1.10.2 - Amenity Values

To identify, maintain and enhance the character and amenity values of the different activity areas.

Objective 1.10.3 – Residential Activity

To accommodate residential growth and development through consolidation of the existing urban area but to allow some peripheral development.

Objective 1.10.6 - Recreation and Open Space

To provide and maintain a diverse range of open space and recreation facilities for the enjoyment of residents and visitors which meet the needs of different sectors of the community.

- 9.6 In respect of Objective 1.10.2, the Maungaraki area generally comes within the General Residential Activity Area and thus has been identified as a residential environment, with the corresponding character and amenity values.
- 9.7 In determining the appropriateness of Proposed Plan Change 21, several factors must be taken into account, drawing on my findings outlined in section 7:
- a) That it is intended the land be sold in the near future, and thus will be privately held – any zoning therefore must enable future landowners to have opportunities to develop and use that land in a manner that is appropriate to the site’s environmental context;
 - b) That the land does not contain any significant ecological, recreational or landscape values that should take priority over or restrict future landowners’ ability to use the land; and
 - c) Under the rules of the General Residential Activity Area, the land would be able to be developed in a manner that is consistent with the surrounding residential environment.
- 9.8 In regard to the third factor, it must be noted that any subdivision and/or development of the land for residential purposes is likely to require resource consent as, at the least, a restricted discretionary activity, and thus any particular attributes of the land and its context can be taken into account with regard to assessing the effects of any proposed development and imposing appropriate conditions of consent to avoid, remedy or mitigate any adverse effects on the environment.
- 9.9 Taking these factors into account, I find that Proposed Plan Change 21 is considered to be the most appropriate option for achieving these objectives, for the following reasons:
- a) The zoning would be consistent with that of the surrounding area, and any subdivision, development and use of the land would be managed in accordance with the District Plan’s objective of maintaining and enhancing the character and amenity values of the surrounding area;
 - b) The proposed zoning over the land would impose already established and tested rules over the future development and use of the site in a manner that is consistent with the rules that manage the subdivision, development and use of the surrounding residential land.

- c) The proposed plan change would accommodate further residential growth within an established and well serviced residential neighbourhood, and thus promote the consolidation of the existing urban area.
- d) While all the land could be retained as General Recreation, it is not demonstrated as being needed for such purposes (given the proximity of several existing open space and recreation facilities nearby, including Belmont Regional Park, as well as the retention and proposed upgrading of the remaining area of open space).

Overall Evaluation of the Appropriateness of Proposed Plan Change

9.10 I find that the General Residential Activity Area provides the most appropriate management framework for the site as shown in Proposed Plan Change 21, given:

- a) The likely nature of the type of development and use that would be made of the site once it is sold;
- b) The consistency with the General Residential zoning of the surrounding neighbourhood;
- c) The objectives and policies of the Zone would provide appropriate and relevant guidance for decision-making in terms of the environmental outcomes that are most appropriate for the site and its context;
- d) The rules provide appropriate thresholds and conditions for development that would achieve appropriate environmental outcomes for the site and its vicinity; and
- e) Any subdivision and development of the land would require resource consent and the effects of any proposal would be required to address, amongst other matters:
 - The maintenance of local amenity values
 - Existing natural features and topography
 - Natural hazards, and
 - Ecological effects

10 CONCLUSION AND RECOMMENDATIONS

Conclusion


- 10.1 Proposed Plan Change 21 seeks to zone an approximately 8500m² area of Council-owned land, at 54 Oakleigh Street, Maungaraki to General Residential Activity Area to enable the future subdivision and development of the site for residential purposes by future landowners in a manner that is consistent with the character and amenity values of the surrounding residential environment.
- 10.2 Based on my assessment of all pertinent matters, including issues raised by submitters and the evidence presented at the hearing on 28 September 2011, it is my conclusion that the provisions of Proposed Plan Change 21 would create an appropriate framework to promote the sustainable management of the subject site in accordance with the purpose and principles of the RMA, in that:

- a) It would provide for the more efficient development and use of unutilised serviceable urban land, thereby contributing to the consolidation of the City's urban form;
- b) It would promote the social and economic wellbeing of the community through the provision for further residential households to be developed in the area, and thereby contribute to the wider community;
- c) Any potential significant adverse effects on the environment created through the subdivision and development of the land can generally be satisfactorily avoided, remedied or mitigated through either compliance with development and performance standards and/or through the resource consent process;
- d) The quality of the environment, including the amenity values of the area, will be appropriately maintained through the residential development of the land in accordance with the provisions of the General Residential Activity Area, and with the retention of 6200m² of existing open space, including about 5200m² of flat land for informal recreational use; and
- e) Proposed Plan Change 21 is consistent with the operative District Plan, and would enable the Council to effectively fulfil its functions under the Act.

Recommendations

10.3 For the reasons outlined in my report, I recommend:

- a) That, pursuant to section 32(2)(a) of the Resource Management Act, the Hutt City Council adopt the further evaluation of Proposed Plan Change 21 contained within this report and its conclusion that the proposed plan change is the most appropriate means of giving effect to the objectives of the City of Lower Hutt District Plan;
- b) That, pursuant to clause 10 of the First Schedule of the Act, the Hutt City Council approves Proposed Plan Change 21 as outlined in Annexure 1; and
- c) That the decisions requested by submissions are recommended to be accepted or rejected, in full or in part, for the reasons outlined in this report, and as outlined in Annexure 2.



Robert Schofield

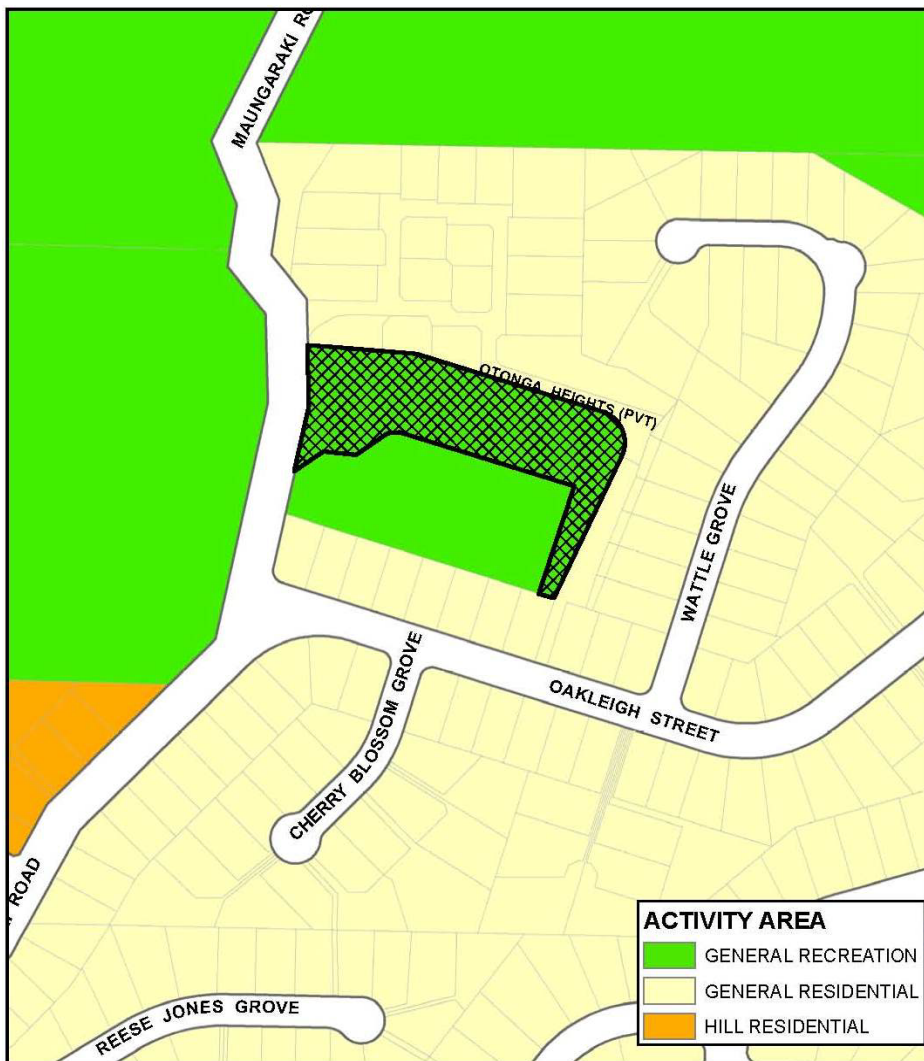
INDEPENDENT HEARING COMMISSIONER

Date: 11 November 2011


11 ANNEXURE 1 - PROPOSED PLAN CHANGE 21 AS RECOMMENDED FOR APPROVAL

For the reasons outlined in this report, it is recommended that Proposed Plan Change 21 as outlined below be approved for incorporation into the operative City of Lower Hutt District Plan:

The existing Planning Maps A4 and B3 within the District Plan shall be amended by changing the zoning of the subject site to General Residential Activity Area and a new Planning Map A3 shall be created as shown below:



Proposed Plan Change 21
 Oakleigh Street, Maungaraki (Pt Lot 2 DP 33083)

 Area to be rezoned from General Recreation Activity Area to General Residential Activity Area.

New Planning Map A3 and Planning Maps A4 and B3



District Plan - City of Lower Hutt

Scale 1:2500

Proposed Plan Change 21 – Rezoning of Part of 54 Oakleigh Street, Maungaraki, to General Residential

REPORT BY INDEPENDENT COMMISSIONER TO HUTT CITY COUNCIL

12 ANNEXURE 2 - RECOMMENDED DECISIONS ON SUBMISSIONS

Submitter	Position	Decision Requested	Further Submission	Recommended Decision	Reasons
Anna and Jeremy Norman	Support in part	Increase minimum lot size to 500m ²	-	Accept in part	<p>For the following primary reasons, as well as those others outlined in this report:</p> <ul style="list-style-type: none"> • The land that is subject to the proposed plan change does not have any significant ecological, heritage, open space, landscape or recreational values that would necessitate particular limitations on its future use and development, either through an alternative zoning or through the imposition of site specific restrictions and requirements. • The loss of open space, ecological and amenity values from the anticipated residential development would be minor, and mitigated by the presence of the existing Belmont Regional Park, and the retention of a 6200m² area of upgraded reserve, as well as other reserves and recreational areas in the neighbourhood • The site can be adequately service by the existing infrastructure and roading network • The subdivision and development consenting process would address many of the specific potential adverse effects that might arise from the residential development of the site
Prahiba Gupta	Oppose	Maintain Status Quo	-	Reject	
Sourdeep Gupta	Oppose	Maintain Status Quo	-	Reject	
Ekta Jhala	Oppose	<ul style="list-style-type: none"> • Maintain General Recreation Activity Area • Do not proceed with residential development 	-	Reject	
Parakramsingh Rana	Oppose	<ul style="list-style-type: none"> • Maintain General Recreation Activity Area • Do not proceed with residential development 	-	Reject	
Chris Rae	Oppose	<ul style="list-style-type: none"> • Better access before rezoning commences • Assessment of visual impact for Otonga Heights residents 	-	Reject	

Proposed Plan Change 21 – Rezoning of Part of 54 Oakleigh Street, Maungaraki, to General Residential

REPORT BY INDEPENDENT COMMISSIONER TO HUTT CITY COUNCIL

Submitter	Position	Decision Requested	Further Submission	Recommended Decision	Reasons
Rosemarie and Stephen Thomas	Oppose	Maintain Status Quo	-	Reject	<ul style="list-style-type: none"> • The residential zoning of the land would be the most appropriate management framework for land that is likely to be privately owned in the near future, with future landowner(s) expectations that it would be able to be developed and used. • The proposed plan change would be consistent with the objectives and policies of the operative City of Lower Hutt District Plan, particularly those relating to the management of the City's residential environment. • The proposed plan change would promote the sustainable management of the future development and use of the land, in accordance with the purpose and principles of the Resource Management Act 1991.
Sharyn Mitchell	Oppose	Do not proceed with proposed plan change	Supported by Greater Wellington Regional Council in regard to her concerns over additional traffic entering/existing the area	Reject	
Ruth Kerr	Unstated	Proceed with Option 3 with some amendments (easy access and use, Council ownership of access road, clear and encouraging signage)	-	Accept in part	
Angela Todd	Oppose	Maintain Status Quo, leave the site as currently zoned	Supported by Greater Wellington Regional Council in regard to her concerns over possible environmental and ecological impacts on Belmont	Reject	

Proposed Plan Change 21 – Rezoning of Part of 54 Oakleigh Street, Maungaraki, to General Residential

REPORT BY INDEPENDENT COMMISSIONER TO HUTT CITY COUNCIL

Submitter	Position	Decision Requested	Further Submission	Recommended Decision	Reasons
			Regional Park and further loss of green areas		
Greater Wellington Regional Council	Neutral	-	-	Accept	
Margaret Wilson	Oppose	Uphold 2008 decision to use the site for recreational purpose only and do landscaping as promised	-	Reject	
Christopher Fahey	Oppose in parts	Acknowledgement that the right of way between 52 and 56 Oakleigh Street is at its maximum allowable traffic capacity and will not be an option for access to the proposed new subdivision	-	Accept in part	
David Austin	Oppose	Not proceed with recommended option but vest the total current site as Recreational Reserve as intended by original subdivision (amended Option 1)	-	Reject	

Proposed Plan Change 21 – Rezoning of Part of 54 Oakleigh Street, Maungaraki, to General Residential

REPORT BY INDEPENDENT COMMISSIONER TO HUTT CITY COUNCIL

Submitter	Position	Decision Requested	Further Submission	Recommended Decision	Reasons
Friends of Belmont Regional Park	Oppose in part	Proceed with amendments: <ul style="list-style-type: none"> • Exclude the bush clad slope from the playing field to the park entrance level from the plan change; • Move area to be rezoned to the South to allow a vegetative visual barrier to be developed between the new development and the existing development on the Otonga School site; • Investigate alternative access/egress options to negate the necessity of a second road being constructed into the Park entrance. 	Supported by Greater Wellington Regional Council in regard to their concerns over potential effects on entrance to Belmont Regional Park, impact of second exit road, additional traffic, and visual impacts	Reject	

13 ANNEXURE 3 - RESOLUTION OF HUTT CITY COUNCIL ON ITS LAND AT 54 OAKLEIGH STREET, MAUNGARAKI**HUTT CITY COUNCIL**
RESOLUTIONS
Tuesday 12 August 2008**Strategy & Policy Committee**

10 July 2008 – circulated Pink pages S&P R/1 to R/8.

Item 3a Western Ward Land Review Report on Submissions - Oakleigh Street (Former Otonga School Sports Field) (PL13) (circulated pages S&P R/5 to R/6)

RESOLVED: Minute No.C 080317(3)

“That Council retains part of the site, including the vegetation covered face between the rear of the Oakleigh Street properties and the southern fence line, to classify as recreation reserve, while investigating freeing up some land for housing purposes. The results of this work to be referred back to the Land Review Working Group to determine the feasibility of the development of this land prior to making a final decision as to its future. In this way, Council could use some of the proceeds of the sale to undertake improvements, in particular drainage, to increase the reserve’s usability and ensure compatibility with the Belmont Regional Park entrance.”

Crs Baird and Styles declared an interest and took no part in discussion or voting on the matters.

Proposed Plan Change 21 – Rezoning of Part of 54 Oakleigh Street, Maungaraki, to General Residential

REPORT BY INDEPENDENT COMMISSIONER TO HUTT CITY COUNCIL

14 ANNEXURE 4 - LEGAL OPINION ON THE SCOPE OF AMENDMENTS TO PROPOSED PLAN CHANGES 21 AND 22

Proposed Plan Change 21 – Rezoning of Part of 54 Oakleigh Street, Maungaraki, to General Residential

REPORT BY INDEPENDENT COMMISSIONER TO HUTT CITY COUNCIL

Our ref: 1413453:AMW05

27 September 2011

Corinna Tessendorf
Hutt City Council
LOWER HUTT
By email: corinna.tessendorf@huttcity.govt.nz

Dear Corinna

Plan Changes 21 and 22

Introduction

- 1 You have sought our advice in relation to submissions on Plan Change 21 and Plan Change 22, specifically whether these submissions are within scope of the plan changes:
 - 1.1 The purpose of Plan Change 21 is to rezone part of a Hutt City Council owned parcel of land at 54 Oakleigh Street, Maungaraki from General Recreation Activity Area to General Residential Activity Area. In particular, your question arises from two submissions received on Plan Change 21:
 - 1.1.1 The first submission seeks that the eastern side of the site be rezoned General Residential, while retaining the western side of the site as General Recreation.
 - 1.1.2 The second submission seeks that the western slope of the site be removed from the plan change area in order to protect the existing vegetation and avoid any additional traffic in the Belmont Regional Park entrance area.
 - 1.2 The purpose of Plan Change 22 is rezone a portion of the Hutt City Council owned property at 6 - 15 Kelso Grove, Kelson, from General Recreation Activity Area to General Residential Activity Area. In particular a submission was made on the Plan Change that seeks the following:

- 1.2.1 That lots 1, 2, 3, 14 and 15 are excluded from the proposed plan change and protected as Scenic Reserve or kept in the General Recreational Activity Area zone.
 - 1.2.2 That parts of lots 4, 5, 6 and 8 are also excluded from the proposed plan change and protected as Scenic Reserve or kept in the General Recreational Activity Area zone.
 - 1.2.3 That the area containing significant vegetation (as shown on the map attached to the submission) should be incorporated into the Scenic Reserve or General Recreation Activity Area as opposed to being left to be covenanted/protected at subdivision stage.
 - 1.2.4 The parts of lots with ecological values should be protected by extending the Significant Natural Resource boundaries to include these areas so that there is appropriate protection of them should the land be subdivided.
- 2 You have asked for advice on whether these submissions made on Plan Change 21 and Plan Change 22 are within scope of the plan changes.

Overview

- 3 In summary, our views are:
- 3.1 The two submissions on Plan Change 21 are within scope of the plan change, and accordingly the Commissioners have the jurisdiction to make a decision on the submissions.
 - 3.2 The submission on Plan Change 22:
 - 3.2.1 The aspect of the submission that seeks that the areas be removed from the plan change area and remain General Recreational Activity Area is 'on' Plan Change 22 and accordingly within scope of the plan change.
 - 3.2.2 The aspect of the submission that suggests the protection of the listed areas as Scenic Reserve is not within scope of Plan Change 22. Plan Change 22 only proposed rezoning a specific area from General Recreation Activity Area to General Residential Activity Area. It does not propose rezoning any of the land as Scenic Reserve.
 - 3.2.3 The third and fourth matters listed in submission are not within scope of Plan Change 22. Plan Change does not propose rezoning any of the land Scenic Reserve, or extending the Significant Natural Resources boundaries. The relief sought extends further than the narrow focus of Plan Change 22, and the proposed rezoning in the submission was not contemplated by the plan change.
- 4 The reasons for these views are set out below.

Plan Change 21

The first submission

- 5 The first submission on Plan Change 21 seeks that the eastern side of the site be rezoned General Residential, while retaining the western side of the site as General Recreation.
- 6 Clause 6 of Schedule 1 of the Resource Management Act 1991 (**the RMA**) provides for a member of the public to make a submission on a proposed plan change. Clause 10 of the Schedule requires Council to issue a decision on the matters raised in the submissions. However, Council only has the jurisdiction to make a decision on the submissions if the submissions are 'on' the plan change, ie within scope of the plan change.
- 7 The test for whether a submission is 'on' a plan change is set out by the Court in *Clearwater Resorts Limited v Christchurch City Council* HC Christchurch AP 34/02, Young J, 14 March 2003, and was recently applied in *Bezar v Marlborough District Council* Decision C031/2009. The High Court in *Clearwater* was looking at whether a submission given in relation to Variation 52 to the Christchurch City Council's proposed plan was 'on' the Variation. The Court held that whether a submission is fairly and reasonably 'on' a variation may be tested or considered against the following criteria:
- 1 A submission can only fairly be regarded as 'on' a variation if it is addressed to the extent to which the variation changes the pre-existing status quo.
 - 2 But if the effects of regarding a submission as 'on' a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those affected, this is a powerful consideration against any argument that the submission is truly 'on' the variation.
- 8 We note that although the High Court was dealing with submissions on a variation, this test has also been applied to submissions on plan changes. For example, *IHG Queenstown Limited v Queenstown Lakes District Council* Decision C078/2008 looked at whether submissions in relation to Plan Change 10 of the Queenstown Lakes District Plan were 'on' the Plan Change.
- 9 The first limb of the test looks at the extent to which a variation or plan change changes the status quo. As held by the Court in *IHG Queenstown Limited*, the wider the extent to which the plan change proposes to alter the pre-existing status quo, the wider the scope will be for a submission to be made 'on' the change or variation.
- 10 The scope of Plan Change 21 is very narrow. As set out above, the sole purpose of the Plan Change is to rezone one small section of land from General Recreation to General Residential. Accordingly, the scope of the submissions made on the plan change must also be very narrowly focussed.
- 11 Our view is that the first submission made on Plan Change 21 has a very narrow focus as it is solely limited to adjusting the boundaries of the land that is proposed to be rezoned General Residential by Plan Change 21. The submission does not seek to rezone any land outside of the Council owned property at 54 Oakleigh Street, nor

does it seek to amend any of the objectives, policies or rules in the Operative District Plan.

12 The second limb of the test looks at whether upholding a submission which is potentially 'on' a change or variation would permit a plan to be 'appreciably amended without real opportunity for participation for those potentially affected'. If this is the case, then that is a consideration against the conclusion that the submission is on the plan change.

13 The Court in *Naturally Best New Zealand Ltd* looked at the issue of whether potential submitters have been deprived of an opportunity to make a submission. The Court acknowledged the appellant's contention that if people were not given notice of the Jardine submission seeking an extension to the Jacks Point Zone, they would not know to lodge a submission in reply, and their right to submit would have been restricted to being in support of or in opposition to the primary submission. However, the Court did not agree that this was the case and held that:

A local authority should consider whether persons who were not concerned with the variation or plan change might be concerned with the changes or extensions requested in a primary submission. However, that concern is lessened by the fact that the First Schedule procedure requires the existence of a summary of submissions to be notified, and where that and the submissions can be inspected. Further, there is an opportunity to make further submissions, although at this point the submissions are limited to being in support of, or opposing the primary submissions, they cannot seek further relief. However, the notification of the summary and the opportunity to make further submissions are clearly Parliament's intended answer to concerns about whether other persons may be disadvantaged by primary submissions extending the scope of a variation or plan change.

14 Our view is that potential submitters on Plan Change 21 were not deprived of an opportunity to make a submission on the suggested realignment of the proposed General Residential Area boundaries within the plan change site. As set out in the judgment of *Naturally Best New Zealand*, the submission was summarised and notified on 7 June 2011, and the location of where the submissions were held was also notified. Any affected party would have had an opportunity to make a further submission on the suggested alteration of the General Residential Area boundary. Also, as the submission only sought to realign a boundary of an area that was already proposed to be re-zoned, affected or interested members of the public would have been aware that the site was subject to a plan change. It was therefore their responsibility to ensure that they checked the summary of submissions to see whether their land had been affected.

15 As the scope of the submission was very narrowly focused, and only sought to realign the proposed General Residential Area boundaries within the plan change site, our view is that this submission is 'on' Plan Change 21 and therefore with scope of the plan change. Further, we do not consider that any potential submitters were deprived of making a submission on the suggested realignment of the zone boundaries. Accordingly, this submission is within scope of Plan Change 21.

The second submission

- 16 The second submission seeks that the western slope of the site be removed from the plan change area in order to protect the existing vegetation and avoid any additional traffic in the Belmont Regional Park entrance area.
- 17 As with the first submission, this submission is very narrow, and is solely limited to adjusting the boundaries of the area within the site that is proposed to be rezoned General Residential by Plan Change 21. The submission does not seek to rezone any land outside of the Council owned property at 54 Oakleigh Street, nor does it seek to amend any of the objectives, policies or rules in the Operative District Plan.
- 18 Further, this submission was also summarised and publicly notified on 7 June 2011. Any affected party would have had an opportunity to make a further submission on the suggested alteration of the General Residential Area boundary. Also, as the submission only sought to realign the boundaries of an area that was already proposed to be rezoned, affected or interested members of the public would have been aware that the site was subject to a plan change. It was therefore their responsibility to ensure that they checked the summary of submissions to see whether their land had been affected.
- 19 Our view is that this submission is also 'on' Plan Change 21, and therefore within scope of the plan change.

Plan Change 22

- 20 The submission on Plan Change 22 seeks the following:
- 20.1 That lots 1, 2, 3, 14 and 15 are excluded from the proposed plan change and protected as Scenic Reserve or kept in the General Recreational Activity Area zone.
- 20.2 That parts of lots 4, 5, 6 and 8 are also excluded from the proposed plan change and protected as Scenic Reserve or kept in the General Recreational Activity Area zone.
- 20.3 That the area containing significant vegetation (as shown on the map attached to the submission) should be incorporated into the Scenic Reserve or General Recreation Activity Area as opposed to being left to be covenanted/protected at subdivision stage.
- 20.4 The parts of lots with ecological values should be protected by extending the Significant Natural Resource boundaries to include these areas so that there is appropriate protection of them should the land be subdivided.
- 21 The scope of Plan Change 22 is very narrow. As set out above, it is solely limited to rezoning a portion of the property at 6 - 15 Kelso Grove, Kelson, from General Recreation Activity Area to General Residential Activity Area. Accordingly, the scope of the submissions made on the plan change must also be very narrowly focussed.

22 Applying the case law above, our view is that the first two matters listed in the relief sought in the submission are only partially 'on' Plan Change 22. These matters seek that the certain areas of the plan change site are removed and either:

22.1 remain General Recreational Activity Area, or

22.2 are protected as Scenic Reserve.

23 We consider that the aspect of the submission that seeks that the areas be removed from the plan change area and remain General Recreational Activity Area is 'on' Plan Change 22 and accordingly within scope of the plan change. This aspect of the submission is narrow in focus and is limited to adjusting the boundaries of the land that is proposed to be rezoned General Residential by Plan Change 22.

24 However, our view is that the aspect of the submission that suggests the protection of the listed areas as Scenic Reserve is not within scope of Plan Change 22. Plan Change 22 only proposed rezoning a specific area from General Recreation Activity Area to General Residential Activity Area. It does not propose rezoning any of the land Scenic Reserve. Accordingly, the submission is proposing a zoning that was not contemplated by the plan change and is not within scope of the plan change. Any consideration of a different zoning of this nature would require a new plan change.

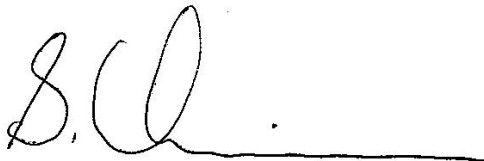
25 We do not consider that the third and fourth matters listed in submission are within scope of Plan Change 22. As stated above, Plan Change 22 only proposed rezoning a specific area from General Recreation Activity Area to General Residential Activity Area. It does not propose rezoning any of the land Scenic Reserve, or extending the Significant Natural Resources boundaries. The relief sought extends further than the narrow focus of Plan Change 22, and the proposed rezoning in the submission was not contemplated by the plan change. Accordingly, these aspects of the submission are not within scope of Plan Change 22.

Conclusion

26 Our summary of conclusions is set out above.

27 Please give us a call if you have any questions.

Yours sincerely



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