

Commissioner Recommendation

**PLAN CHANGE 30
8 HAROLD GROVE, STOKES VALLEY
REZONING A PART OF THE SITE AS GENERAL
RESIDENTIAL ACTIVITY AND REZONING A PART OF
THE SITE AS GENERAL RECREATION ACTIVITY AREA**

**Report and Recommendation of Mark St.Clair
Acting as a Commissioner appointed by the
Hutt City Council pursuant to Section 34 of the
Resource Management Act 1991**

1. INTRODUCTION

Context

- 1.1 I was appointed by the Council to hear submissions to, and to consider and make a recommendation on, Plan Change 30, which seeks to rezone part of the site referred to as 8 Harold Grove, Stokes Valley, to General Residential Activity Area and to rezone another part of the site General Recreation Activity Area.
- 1.2 The Plan Change has a reasonably long background, which I will address in due course. The Plan Change has been the subject of a Council “section 32” report, consultation with land owners and occupiers, and of course the recent public notification and hearing, culminating in this report.
- 1.3 Before discussing the details of the proposed Plan Change and the submissions to it, there are some procedural issues that I need to address, beginning with my role as Commissioner.

Role of Commissioner and Report Outline

- 1.4 My appointment was made because of Council policy for District Plan matters or resource consent applications where there is potential for conflict – either real or perceived. In this case, the Council is the owner of the land subject to the proposed Plan Change. Council policy is to engage independent commissioners with delegated powers to hear and recommend upon such matters when they have ownership interests. I note that under the Resource Management Act 1991, the Council cannot delegate the final decision on District Plan matters, and hence this report is a recommendation only.
- 1.5 In terms of the above, having familiarised myself with the proposed change and the background material, read all submissions, conducted the hearing and heard from the Council officers and submitters, as well as having visited the locality on two separate occasions, I hereby record my recommendations. In this respect, this report is divided into the following parts:

(a) Background/Plan Change Outline:

This section includes an outline of the background to the proposed change, including the sequence of events leading to this report. It also outlines the main components of the plan change including an overview of the locality. This background section provides a relevant context to considering each of the submissions to the plan change.

(b) Statutory Requirements:

This section sets out the statutory requirements under the Resource Management Act 1991 that govern the decision making process in regard to the Plan Change.

(c) Assessment of Submissions:

In this section, I record the various submissions received to the plan change, outline the concerns of the submitters to the plan change, and, where relevant, amplify on the evidence/statements presented at the hearing. I then undertake an assessment of the aspects of each of the submissions and conclude with a recommendation.

2. BACKGROUND

Procedural Sequence

- 2.1 The background to the Plan Change is set out in full in the Officer's Report and the proposed Plan Change documentation and is held on the Council file. Hence I will not repeat that in detail here, rather I will provide a brief summary.
- 2.2 From 2007 to 2009, the Council undertook a land review of its fee simple held reserves (including some gazetted reserves) for the purposes of assessing the appropriateness of the current use, wider open space contribution and development potential.
- 2.3 The site at 8 Harold Grove was included as part of this review. Consultation was undertaken between March and May 2009 in regard to the disposal of land managed as reserve in accordance with the requirements of the Local Government Act 2002 (LGA). Six submissions specifically related to the disposal of the Harold Grove site and in addition there was a petition signed by nineteen residents of Harold Grove. The six submissions opposed the disposal of the site for the following reasons:
- Traffic effects;
 - Ecological effects, including a loss of vegetation and bird life;
 - Site stability concerns; and
 - Loss of recreational opportunities.
- 2.4 These concerns were considered by the Strategy and Policy Committee when they met in May 2009, prior to the determination to dispose of the application site. In July 2009 the Council, decided to commission a geotechnical report, and following the outcome of that investigation, made its final decision in November 2009 to proceed with the Plan Change process to seek the rezoning this portion of 8 Harold Grove to a zone which would facilitate residential development.
- 2.5 The Plan Change itself was publicly notified on 26 June 2012 with the submission period closing on 27 July 2012. Two late submissions were received in August 2012. The summary of those submissions was notified on 28 August 2012, with further submissions closing on 11 September 2012. So in summary, a total of two late submissions and no further submissions were received.
- 2.6 Prior to the hearing on 6 December 2012, I issued a minute setting out the topic areas on which, having reviewed the Officer's Report, I would be seeking further

information by way of questioning officers. This minute was circulated to all parties.

The Hearing

- 2.7 The hearing was convened on the 13th December 2012 in the James Coe Two Room at The Dowse Art Museum, 45 Laings Road, Lower Hutt. I heard from the following people during the course of the hearing:

Submitters

- Ms. Justine Clark, 9 Harold Grove, Stokes Valley

Council

- Miss. Allison Tindale, Intermediate Environmental Policy Analyst
- Mr. James Beban, Cuttriss Consultants Limited – consultant to the Council
- Mrs. Corinna Tessoroff, Senior Environmental Policy Analyst
- Ms. Bronwyn Little, Divisional Manager, Environmental Policy

- 2.8 I opened the hearing at 9.00am and, after initial introductions and advising that I had undertaken a site visit, I addressed the procedural issue of late submissions. Council officers' recommended that the late submissions be accepted and there were no points made to me to the contrary. I therefore granted the acceptance of the late submissions.

- 2.9 The hearing then commenced with a presentation by the reporting officer Miss. Tindale, followed by the presentation from the submitter, Ms. Clark. The officers then responded to issues that had arisen. I exercised my opportunity to question all persons present.

- 2.10 At that point, I adjourned the hearing indicating that I required additional information from officers and that that information should be provided to me by 20 December 2012. I duly received that information and on 20 December 2012, issued a minute to that effect and closed the hearing, noting that I would issue my recommendation in due course.

Outline of Plan Change

- 2.11 As mentioned above, the purpose of the Plan Change is set out fully in the officer's report which is held on the Council file. In summary, proposed Plan Change 30 seeks to rezone a portion of the site at 8 Harold Grove, Stokes Valley (currently zoned General Recreation Activity Area) to General Residential Activity Area and to rezone another portion of the site (currently zoned General Residential Activity Area) to the General Recreation Activity Area. The plan included as Appendix 1 to the Officer's Report shows the extent of the proposed rezoning. I note that the land to be rezoned is:

- held in three titles
- subject to a stormwater easement
- not included in Council's proposed Neighbourhood Reserves Management Plan 2010
- not gazetted as a reserve under the Reserves Act.

- 2.12 Finally I record that the land proposed to be zoned General Recreation Activity Area along the eastern boundary of Number 9 Harold Grove is to be 6m in width.

3. STATUTORY PROVISIONS

The Resource Management Act 1991

- 3.1 In this section of the report I set the statutory provisions I am required to take account of in reaching my recommendation.

Schedule 1

- 3.2 Part 1 of Schedule 1 to the RMA sets out the procedure for council initiated plan changes.

- 3.3 Directions on decisions are set out in clause 10 of Schedule 1 of the RMA, which states:

10 Decisions on provisions and matters raised in submissions

(1) *A local authority must give a decision on the provisions and matters raised in submissions, whether or not a hearing is held on the proposed policy statement or plan concerned.*

(2) *The decision—*

(a) must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to—

(i) the provisions of the proposed statement or plan to which they relate; or

(ii) the matters to which they relate; and

(b) may include—

(i) matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and

(ii) any other matter relevant to the proposed statement or plan arising from the submissions.

(3) *To avoid doubt, the local authority is not required to give a decision that addresses each submission individually.*

- 3.4 Matters to be considered in any plan change are set out in section 74 of the RMA as follows:

74 Matters to be considered by territorial authority

(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

- (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 or the effects of trade competition.*

3.5 Finally, section 75 of the RMA states that:

- (3) *A district plan must give effect to—*
 - (a) *any national policy statement; and*
 - (b) *any New Zealand coastal policy statement; and*
 - (c) *any regional policy statement.*
- (4) *A district plan must not be inconsistent with—*
 - (a) *a water conservation order; or*
 - (b) *a regional plan for any matter specified in section 30(1).*

Part 2 Matters

3.6 The purpose of the RMA is to promote the sustainable management of natural and physical resources (Section 5). This means managing the use of natural and physical resources in a way that enables people and communities to provide for their social, cultural and economic well-being while sustaining those resources for future generations, protecting the life-supporting capacity of ecosystems and avoiding, remedying or mitigating adverse effects on the environment.

3.7 Section 6 contains a list of matters of national importance that all persons exercising functions and powers under shall recognise and provide for.

3.8 Section 7 addresses ‘other matters’ which, in achieving the purpose of the RMA, persons exercising functions and powers under the RMA shall have particular regard to. Those matters of particular relevance to the Plan Change are:

- (b) *The efficient use and development of natural and physical resources*
- (c) *The maintenance and enhancement of amenity values*
- (f) *Maintenance and enhancement of the quality of the environment*
- (g) *Any finite characteristics of natural and physical resources*

3.9 Section 8 provides that in achieving the purpose of the RMA, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti O Waitangi).

3.10 I note that iwi were included on the list of affected parties who received direct notification of this Plan Change and that no submissions were received from iwi.

Sections 31, 32, 72 & 76 of the RMA

3.11 Section 31 sets out the Council's functions for the purpose of giving effect to the RMA. The Council's functions are stated in section 31 of the RMA and include:

31(1)(b) the control of any actual or potential effects of the use, development or protection of land.

3.12 Section 32 of the RMA 1991 requires a Section 32 report which summarises the process of evaluation undertaken in the preparation of the Plan Change. A Section 32 evaluation must examine the following:

(3) (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.*

3.13 An evaluation must also take into account:

(4) (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.*

3.14 Section 32(5) requires that a report must be prepared, summarising the evaluation and giving reasons. The section 32 requirements of the RMA were addressed in the officer's report and Plan Change documentation provided at the hearing. In response to questioning, Miss. Tindale was of the view that the section 32 evaluation met the requirements of the RMA. There was no evidence presented to the contrary. I accept Miss. Tindale's response.

3.15 Section 72 states as follows:

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.

3.16 The following provisions of section 76 are also relevant:

(1) *A territorial authority may, for the purpose of –*

(a) *Carrying out its functions under this Act; and*

(b) *Achieving the objectives and policies of the plan, - include rules in a district plan.*

...

- (3) *In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect...*

3.17 In relation to the statutory requirements, and the evidence and reports presented, my findings and recommendations are set out below.

4. OVERVIEW OF SUBMISSIONS TO PLAN CHANGE 30

Numbers and Categories

4.1 There were no submissions or further submissions received to Plan Change 30 within the statutory time period. As I have noted in paragraph 2.8 above, two late submissions were received. No late further submissions were received. I record again at this point that the two late submissions have been accepted.

4.2 The following table sets out the late submissions accepted and a summary of the decision sought by those submitters:

Submitter	Submission No.	Decision Sought
Mr. T Grove, 10 Harold Grove, Stokes Valley	DPC30/1	Decline the Plan Change
Ms. J Clark, 9 Harold Grove, Stokes Valley	DPC30/2	Decline the Plan Change

4.3 On reviewing the submissions themselves, rather than summary of submissions undertaken by officers, and in my questioning of **Ms. Clark** at the hearing, I have determined that the two submissions are opposed to the rezoning and that they seek that the Plan Change be declined. Council officer's appear to have taken a literal interpretation of the submissions in the summary of submissions. In that document, the relief sought has been classified as for example, "*Do not proceed with the subdivision*". In addition, the hearings report in the analysis of the submissions goes on to state that "... *submitter's request of Council to not proceed with the subdivision of the site is outside the scope of this plan change...*". The wording used by the submitters reflects their understanding of the process and not necessarily the idiosyncrasies of RMA nomenclature. So as a matter of fairness I have not taken a literal reading of the relief sought.

4.4 The submissions to Plan Change 30 are readily categorised in the following manner:

- (a) Preliminary Issues
- (b) Land Review Issues/Sale of Land

(c) Recreation Values

(d) Ecological Values

4.5 I have used these four categories as the basis for the assessment that follows.

Preliminary Issues

4.6 The preliminary issues relate to matters that are beyond the scope of the plan change, and therefore beyond the scope of my jurisdiction to assess them. I am aware of my comments in paragraph 4.3 above, however, I address the specifics of the relief sought for the sake of completeness. As part of the submission from **Mr. Grove (DPC30/1)**, he has suggested that the Council install some swings, seats or other equipment rather than remove the reserve. I will later go on in the assessment of submissions to consider the removal of the reserve, but it is as noted by Miss. Tindale in the officer's report Pages 7-8, the submission must relate to an issue addressed in the Plan Change. I therefore find that the suggestion of the installation of swings, seats or other equipment, is not within the scope of the plan change.

Land Review Issues/Sale of Land

4.7 The submission from **Mr. Grove (DPC30/1)** requests that I take account of six submissions made in March/April 2009. I also record that there was a petition signed by nineteen people that was received by Council as part of the same process. I note that those submissions were made to the Hutt City Council Land Review process under the Local Government Act 2002. Plan Change 30 has been prepared under the Resource Management Act 1991 which is a separate process. I agree with the evidence of Miss. Tindale in her report (Page 8-9) that Council have already consider those matters through the LGA process and therefore this matter is not within the scope of the decision making process under the RMA.

4.8 **Ms. Clark**, in her submission and reinforced in her presentation at the hearing raised the issue of the return to Council from the sale of the land. Similar to the above issue, and as noted in Miss. Tindale's report, this is not something with the scope of the Plan Change that I can take account of.

4.9 That said, those other aspects of **Mr. Grove's and Ms. Clark's** submissions regarding recreational and ecological issues are within the scope of the decision matters under the RMA and I turn to those shortly.

4.10 While not within the scope of the Plan Change, I note that in her presentation to me Miss. Tindale advised that Council had recently classified and gazetted as reserve numbers 73 and 79 Holborn Drive. These sites are to rear of numbers 9 and 10 Harold Grove, the residents' of **Ms. Clark** and **Mr. Grove** respectively. I note that 73 and 79 Holborn Drive are currently zoned General Residential. Having gazetted these sites, it would be my expectation that Council would as matter of good planning practice also seek to change the zoning of those sites. I

am aware that this is not within the ambit of my recommendation but I draw the matter to the Council's attention.

- 4.11 Similarly, I note that the Council owned land to the rear of the site subject to the Plan Change, while zoned General Recreation, is not gazetted as reserve. It is in fact held in fee simple. I have referred to this site as 89 Holborn Drive and it is marked as "A" on the diagram titled "Land currently or proposed to be gazetted as Reserve" included in Miss. Tindale's presentation. Miss. Tindale advised that Council has already decided, as part of the land review process, to gazette as reserve 89 Holborn Drive. Again it is not within my power to recommend Council to follow through with this action, but I wish record that I have taken account of this commitment in undertaking my analysis of the plan change.

Recreational Issues

- 4.12 **Mr. Grove** and **Ms. Clark** both raised recreation issues in their submissions and **Ms. Clark** expanded on these in her presentation at the hearing.
- 4.13 I have summarised **Mr. Grove's** submission in regard to recreational issues under the following points;
- The land is used and valued by local families;
 - The rezoning is contrary to the Council objectives and policies for the provision of reserves.
- 4.14 As noted above, **Ms. Clark** attended the hearing and presented a statement in support of her submission. The main tenements of her argument in regard to recreation issues were around access and location of formal and informal reserves, including limited access to flat land, pedestrian access and traffic safety. **Ms. Clark** emphasised these matters in her presentation.
- 4.15 Miss. Tindale addressed recreational issues in her presentation at the hearing and in the assessment of submissions in the hearing's report, which I summarise as follows:
- Site has little recreational value to the wider neighbourhood
 - Loss of the site would not result in significant effect on recreational resources
 - 6m access strip provides adequate access
 - Flat land and playground are available at 100 Holborn Drive and additional playgrounds within 1000m
 - Loss of the site would not result in significant effect on safety
- 4.16 Part of the additional information that I received from Miss. Tindale on the 20th Dec 2012, included advice from Mr. B Hodgins, Council's Divisional Manager of Parks and Gardens that the provision of reserves in the Holborn area meet the general targets in the Long Term Plan.
- 4.17 Having considered the material put before me, I find that on a neighbourhood basis, even with the loss of land at 8 Harold Grove to a residential zoning, that there is sufficient provision and accessibility to reserves. I also note my earlier point in paragraph 4.11 above where I have taken account of the Council's

decision to gazette the remainder land of the marked as “A” on the diagram titled “Land currently or proposed to be gazetted as Reserve”. As such I recommend that the submission points of **Mr. Grove** and **Ms. Clark** on this aspect be rejected.

Ecological Issues

- 4.18 Both **Mr. Grove** and **Ms. Clark** raised ecological issues in their submissions. **Mr. Grove** noted the presence of native birds and plants and that proposed change in zoning is contrary to Council’s own objectives and policies relating to wildlife and ecosystems.
- 4.19 Similarly, **Ms. Clark’s** submission refers to native birds and vegetation noting the loss of natural resources to future generations.
- 4.20 Miss. Tindale addressed ecological issues in her presentation at the hearing and in the assessment of submissions in the hearing’s report, which I summarise as follows:
- Site has not been identified as being of significant ecological value
 - Topography of the site will result in any development being undertaken on the flat land minimising vegetation clearance
 - Ecological values of wider area enhanced by Council’s Bush Reserves Management Plan
 - Existing rules in District Plan will address concerns about vegetation clearance at development stage
- 4.21 In response to questions Miss. Tindale responded that in her view the proposed Plan Change met the requirements of the first schedule of the RMA and that ecological values were not of sufficient significance under Part II of the Act.
- 4.22 In regard to ecological values I agree with the evidence of Miss. Tindale and am not convinced that the loss of this relatively small block of land would detrimentally affect those values. Particularly given the retention of the bush to the rear of the site subject to the Plan Change and that that bush is to be gazetted for reserve purposes. As such I recommend that the submission points of **Mr. Grove** and **Ms. Clark** on this aspect be rejected.

5. RECOMMENDATION AND OVERALL REASONS

- 5.1 I recommend to the Council that, pursuant to the First Schedule to the Resource Management Act 1991, that Proposed Plan Change 30 to the Hutt City Council District Plan be approved for all of the reasons set out in this report.
- 5.2 In terms of Part 2 of the Act the proposal does not contravene any of the matters of national importance (Section 6), ‘other matters’ (Section 7), nor the principles of the Treaty of Waitangi (Section 8).
- 5.3 The Plan Change is an appropriate way of achieving the purpose of the Resource Management Act 1991.
- 5.4 For all of the reasons given above the Plan Change meets the statutory requirements of the RMA, that the Plan Change satisfies Part 2 of the Act and

therefore will promote the sustainable management of natural and physical resources as required by the RMA.

- 5.5 I recommend that the submissions on proposed Plan Change 3 be rejected, as outlined.

6. RECOMMENDATIONS ON THE SUBMISSIONS

- 6.1 That the following submissions be rejected:

Mr. T Grove, 10 Harold Grove, Stokes Valley	DPC30/1
Ms. J Clark, 9 Harold Grove, Stokes Valley	DPC30/2



Mark St Clair
Independent Hearings Commissioner

6 March 2013