

Proposed District Plan Change 37

HUGH SINCLAIR PARK, WAINUIOMATA
REZONING OF PART OF THE SITE AS GENERAL RESIDENTIAL
ACTIVITY AREA WITH PROVISION FOR A RETIREMENT VILLAGE

Decision

**In the Matter of: The Resource Management Act 1991 and
The Operative City of Lower Hutt District Plan
And
Proposed Plan Change 37 to that Plan
Promulgated Under the First Schedule to the
Act**

**REPORT OF INDEPENDENT COMMISSIONER
TO THE HUTT CITY COUNCIL
27 November 2015**

1. Purpose of this Report

This report sets out the findings and recommendations of independent commissioner Christine Foster on the submissions received by the Hutt City Council in respect of proposed Plan Change 37 (**PPC37**).

2. Proposed Plan Change 37 – Process to Date

In response to an approach from the Wainuiomata Community Board in 2012, the Council in 2013 resolved to revoke the reserve status of approximately 3.9 hectares of Hugh Sinclair Park (Wainuiomata). The Council intends to make the land available for development by a third party of a retirement village. The Council and Department of Conservation have approved in principle the revocation of the reserve status of the 3.9-hectare area of land. Formal revocation is to be finalised once a decision is made by the Council on PPC37.

PPC37 was publicly notified on 19th May 2015. Submissions closed on 19th June 2015. A summary of submissions was publicly notified on 21st July 2015. The required further submissions period closed on 4th August 2015. Six first-round submissions were received. No further submissions were received. Only two of the submitters asked to be heard in support of their submissions and both have confirmed in writing that they no longer wish to be heard. I understand that the other four submitters have also confirmed that they do not wish to be heard in support of their submission.

Where submissions are received, it is usual to hold a hearing under the Resource Management Act 1991 (**the Act**). However, where submissions are received but no person wishes to be heard or where the submitters' request to be heard is withdrawn, there is no requirement to hold a hearing¹.

Clause 3 of Schedule 1 of the Act requires the Council, during the preparation of any plan change, to consult with the Minister for the Environment, other potentially affected Ministers

¹ Clause 8C of Schedule 1 of the Resource Management Act 1991

of the Crown, affected local authorities. Clause 3 also states that the Council may consult anyone else (and where this is done, it must be in accordance with section 82 of the Local Government Act 2002).

Mr Osborne prepared a report on the plan change and submissions received. Mr Osborne reports that the Council has consulted with the Ministry for the environment and with the Department of Conservation and with the owners and occupiers of adjoining properties and that these persons were supplied with a copy of a plan showing the area of the proposed plan change. Greater Wellington Regional Council and the three adjoining territorial authorities were advised of the intention to prepare the proposed plan change (Porirua and Upper Hutt City Councils and South Wairarapa District Council). Mr Osborne reports that no interest or issues were raised by those councils.

Clause 3B of Schedule 1 also requires the Council to consult with the relevant iwi authorities. Mr Osborne advises that the Port Nicholson Trust, Tenth Trust and Ngāti Toa Rangatira were advised of the intention to proceed with PPC37 and that no response was received from them.

Mr Osborne also advised that the four local councils, Ministry for the Environment and the three iwi authorities were also served with copies of the PPC37 public notice. A submission was received from Greater Wellington Regional Council (which no longer wishes to be heard in support of its submission).

There appear to be no outstanding matters in terms of the Schedule 1 pre-notification consultation requirements.

3. Independent Commissioner's Delegated Authority

I was appointed as independent commissioner, by letter dated 18th September 2015, and delegated² the authority to make recommendations to the Council on the provisions of PPC37 and on the matters raised in submissions.

In formulating the recommendations summarised in Part 15 of this report, I have considered the following information supplied to me:

- (a) The provisions of PPC37 as publicly notified including Appendices 1 to 9;
- (b) The section 32 report that accompanied the publicly notified PPC37;
- (c) The provisions of Chapter 4A of the District Plan (*General Residential Activity Area*);
- (d) The provisions of Chapter 7A of the District Plan (*General Recreation Activity Area*);
- (e) The provisions of Chapter 14 of the District Plan (*General Rules*);
- (f) The six submissions received by the Council;
- (g) The report of Brett Osborne, consultant Senior Planner (Jacobs), dated 16th September 2015.

I confirm that I have visited Hugh Sinclair Park and the surrounding vicinity including the various road approaches via Rata Street and Hinau Grove, the Strand and Fitzherbert Road.

4. The Changes Proposed by PPC37

PPC37 makes the following changes to the operative District Plan:

² Pursuant to section 34A (1) of the Act

- (a) Re-zones from *General Recreation* to *General Residential* the 3.9-hectare area of former reserve land;
- (b) Inserts into the Chapter 4A Appendices a new Appendix 99 that identifies the 3.9-hectare area of land as a 'Housing for the Elderly Area';
- (c) Inserts into the Chapter 4A2.3 rules for the *General Residential Activity Area* a new Restricted Discretionary Activity Rule which provides for 'Housing for the Elderly within the area identified in Appendix 99';
- (d) Inserts into Rule 4A2.3.1 a new set of 7 restricted discretions for restricted discretionary activity applications for 'Housing for the Elderly within the area identified in Appendix 99':
 - Temporary construction effects
 - Alignment with Council's design guide for medium density housing
 - Traffic generation effects
 - Parking effects
 - Natural hazards
 - Geotechnical matters
 - Effects on the amenity values of neighbouring residential properties
- (e) Inserts into Rule 4A2.3.2 ('Other Matters') an explicit requirement that all applications for housing for the elderly on the 3.9-hectare area of land must comply with Permitted Activity Conditions (b) to (n) (as other restricted discretionary activity applications must) but also that, in Conditions (b) to (g), any reference to 'net site area' shall be replaced with the expression 'site'. Permitted Activity Condition (a), which requires a 'net site area', does not apply to any restricted discretionary activity applications (including housing for the elderly on the 3.9-hectare area). The 'net site area' requirement largely determines the density of development. Removal of the 'net site area' requirement would remove any technical non-compliance brought about by a future housing for the elderly proposal involving higher density than provided for as a permitted activity. Such non-compliance would, otherwise, trigger a full discretionary activity application. The intention is that any application for housing for the elderly on the 3.9-hectare site is to be treated as a restricted, and not full, discretionary activity.

5. The Submissions

The following submissions³ state the submitter's support for PPC37 without reservation:

- DPC37/1 Dave Williamson
- DPC37/2 Bernard Kenny
- DPC37/3 Angela Pahl
- DPC37/6 Margaret Bengé

The submissions lodged by Kenneth Malley and Greater Wellington Regional Council raise the following substantive matters:

³ I note that Mr Osborne has numbered the submissions DPC35/1 to DPC35/6. I have used the numbering that appears on the top right-hand corner of the copies of the original submissions supplied to me – that is DPC37/1 to DPC37/6.

Submission DPC37/4 by Kenneth Malley states:

- Opposition to the loss of public reserve land;
- Concern at the conversion from reserve land to residential development site of the land closest to the existing children's play area and the loss of the potential of that land for expansion of the children's play area;
- Concern about the loss of trees that currently provide amenity values for the children's play area and shelter the undeveloped area of land from southerly winds;
- An alternative suggestion involving retention of the area to the immediate north of the children's play area, retention of the trees in that area and a 'swap' with land on the northern side of Black Creek;
- Opposition to development of any vehicle access from the PPC37 land onto The Strand that could destroy the existing children's play area or result in the removal of trees sheltering that play area;
- Opposition to the intended sale of the reserve land to a private interest which may profit from development of that land.

Submission DPC37/5 by Greater Wellington Regional Council states:

- Support in principle for well-designed higher density housing which could reduce the potential incursion of development into surrounding rural or open space land;
- Support for the location of the proposed site for development of housing for the elderly in terms of proximity of public bus services;
- A request for development of safe and easy pedestrian links to public bus routes in the detailed design for the future retirement village;
- The importance of ensuring that additional traffic to the site does not cause congestion on public bus corridors which could cause travel time issues for buses;
- Endorsement of the community benefits that could be delivered from development contributions yielded by development of the site (for example, generating funds for enhancement of recreation facilities in the remaining reserve);
- A recommendation that all residential development be required to be raised above the 1:100-year flood level and that any future health care facility on the site be raised above the 1:500-year flood level;
- A recommendation to put in place plans to manage flood events greater than the 1:100-year event (including, for example, evacuation plans, flood-proofing of buildings, provision for emergency power generation and emergency water supply);
- A request for clarification that the flood modelling for the site incorporates climate change;
- Criticism of the absence of an assessment of ecological values and concern about the loss of any indigenous vegetation (whether planted or naturally-occurring) from this site that is located within an 'acutely threatened' environment and in light of historical losses of indigenous vegetation from lowland environments generally and the importance of remnant vegetation to wildlife corridors linking the surrounding parks and reserves including the East Harbour Regional Park, Parkway Bush and Wainuiomata Scenic Reserve;
- A suggestion that the considerations of Regional Policy Statement Policy 47 be integrated into the design of any future development of the site and mitigation of tree loss by incorporating planted native trees;

- A reminder that Regional Policy Statement Policy 40 requires consideration measures to manage potential impacts on aquatic ecosystems (including limiting the extent of impervious surfaces in new development, requiring rooftop rainwater collection for gardens and use of roadside swales, filter strips and ‘rain gardens’); and
- A suggestion that appropriate mitigation for the loss of public space in Hugh Sinclair Park could be to undertake riparian planting in the adjacent Black Creek and the nearby park to improve its amenity and biodiversity values.

Clause 6 of Schedule 1 of the Act requires that submissions must be ‘on’ a proposed plan change⁴. Some of the matters raised by submitters DCP37/4 and DCP37/5 are not, strictly, ‘on’ PPC37. It is my view that the following issues raised by those submitters do not genuinely pertain to matters that are relevant to PPC37 in terms of the Act. Those are:

- (a) Opposition to the loss of public open space. It is my view that the appropriateness or otherwise of the proposed loss of public open space is a matter for determination under the Reserves Act. The relevant RMA question is that, once that land is freehold and not reserve, what is an appropriate zoning for it. Notwithstanding that view, I note Mr Osborne’s advice that the Council has explicitly examined whether there is sufficient suitable recreation land retained within the wider Wainuiomata area, excluding the 3.9 hectares proposed to be re-zoned⁵.
- (b) The suggestion that an alternative area of land should be made available for development for housing for the elderly. That is because, PPC37 proposes the re-zoning of a defined area. The submission does not pertain to that area and does not propose any relief in terms of District Plan zoning for the alternative area suggested (other than implicitly). My view is that this suggestion is beyond the scope of PPC37.
- (c) Matters relating to the effects that might be caused by creating future development of vehicle access from the PPC37 land onto The Strand (specifically, the impact of constructing the access on the playground within the reserve). However, PPC37 does not itself propose the formation of access across that land. In answer to a question from me, the Council’s Divisional Manager Parks and Gardens advises that there is an agreement in place (subject to confirmation of PPC37) for development of a retirement village on the PPC37 land. His advice is that a separate subdivision proposal is currently being advanced which includes an easement to form a right of way over the reserve land to achieve access to The Strand. I comment further on this aspect of PPC37 in Part 14 of this report.
- (d) Opposition to the intended sale of the reserve land to a private interest which may profit from development of that land. It is my view that the question of who derives financial benefit from the proposed plan change is not a relevant matter under the Act. It may be a relevant matter in terms of the revocation of reserve status but is not a matter for my RMA jurisdiction.
- (e) The suggestion by GWRC that appropriate mitigation for the loss of public space in Hugh Sinclair Park could be to undertake riparian planting in the adjacent Black Creek and the nearby park to improve its amenity and biodiversity values. It is my view that determination of the merits of the loss of public open space is more

⁴ Paragraphs 37 and 38 of Brett Osborne’s report

⁵ Paragraph 55 of Brett Osborne’s report

appropriately made under the Reserves Act in considering the revocation of reserve status. That matter lies outside my RMA jurisdiction.

6. The Matters to be Determined

The following matters raised in submissions warrant attention:

- (a) The loss of trees that currently provide amenity values and shelter;
- (b) The request for development of safe and easy pedestrian links to public bus routes in the detailed design for the future retirement village;
- (c) The importance of ensuring that additional traffic to the site does not cause congestion on public bus corridors which could cause travel time issues for buses;
- (d) The recommendation that all residential development be required to be raised above the 1:100-year flood level;
- (e) The recommendation that any future health care facility on the site be raised above the 1:500-year flood level;
- (f) The recommendation to put in place plans to manage flood events greater than the 1:100-year event;
- (g) The requested clarification that flood modelling accommodates climate change;
- (h) Mitigation for potential adverse effects on ecological values and loss of indigenous vegetation;
- (i) Mitigation of potential impacts on aquatic ecosystems;
- (j) The alleged community benefits that could be delivered from development contributions yielded by development of the site.

I discuss each of these matters in the following sections. I also comment later on the implications for vehicle access from The Strand.

7. Potential Loss of Trees

The matter at issue is a proposed plan change. It is not a specific application for development of the site. The relevant question, for a plan change, is whether removal of existing trees would be treated differently under the current District Plan zoning (*General Recreation*) compared with the proposed zone provisions (*General Residential*). Significant individual or groups of trees are identified in the Appendices to Chapter 14E of the District Plan and rules control changes to those sites and trees, regardless of zoning. No part of Hugh Sinclair Park is listed in Chapter 14E as being significant. There are no particular restrictions on trimming or removal of trees on Hugh Sinclair Park by virtue of the current *General Recreation* zoning or by the *General Residential* zoning that is proposed for the site. PPC37 is neutral in terms of the District Plan provisions restricting the removal of trees from the site.

The Design Guide for Medium Density Housing (in Appendix 19 of Chapter 4A of the District Plan) is one of the matters for discretion for the development of housing for the elderly on the PPC37 site:

(ii) Design Guide

Consideration shall be given to the degree to which the proposal adheres to the Design Guide for Medium Density Housing (Appendix 19).'

The Design Guide addresses the retention of trees on sites that are surrounded by lower density housing and recommends⁶:

'Retaining existing trees and vegetation on the site to assist the integration of the new development within the site and the neighbourhood.'

The Design Guide also addresses 'landscaping and vegetation'⁷ and recommends that:

- *'The design of the overall development should incorporate the retention of existing plantings and trees.'*
- *'New landscaping should be designed to be an integral part of the site layout and of a high quality.'*
- *'This would be best done by provision of a landscape plan suitable for the location and the development.'*

PPC37 proposes the following restricted discretionary matter for development of housing for the elderly on the site:

(vii) Amenity Values

The extent to which the proposal would adversely affect the amenity values of the surrounding residential area, including:

- *The effect of buildings and structures on neighbouring and surrounding residential sites and, in particular the location, design and appearance of the buildings; and*
- *Whether the proposal would cause significant loss of sunlight, daylight or privacy on adjoining residential properties.'*

Neither the Design Guide nor discretionary matter (vii) above explicitly addresses the potential adverse effects that removal of trees from the site could have on the amenity values of adjoining *recreational* land. The provisions do not clearly address how the adverse effects of tree removal might be mitigated or how landscape planting and trees could be used to mitigate the effects of a proposal on the amenity values of the surrounding neighbourhood generally.

Finding: Potential Loss of Trees

There are mature trees within the PPC37 site which do lend amenity value to the site and to the adjoining Hugh Sinclair Park. Removal of those may inevitably be required in order to make optimal use of the site. The concept included with PPC37 indicates generous planting of trees within the developed site but also indicates that some existing large trees would be removed. My conclusion is that PPC37 should include, in the discretionary matters for development of housing for the elderly on this site, consideration of the impact of tree removal on the amenity values of adjoining residential and recreational land and discretion over the measures required to mitigate adverse effects on amenity values (including the adverse effects of tree removal).

⁶ From page 4A/50 of the Guideline

⁷ On page 4A/53

I recommend that the Council accept in part submission DPC37/4, in relation to the removal of trees from the PPC37 site, by inserting into item (vii) of the proposed restricted discretionary matters the following underlined additional matters:

(vii) Amenity Values

The extent to which the proposal would adversely affect the amenity values of the surrounding residential area, including:

- *The effect of buildings and structures on neighbouring and surrounding residential sites and, in particular the location, design and appearance of the buildings; ~~and~~*
- *Whether the proposal would cause significant loss of sunlight, daylight or privacy on adjoining residential properties;*
- *The effect on the amenity values of adjoining residential and recreational land caused by the removal of trees from the site; and*
- *The mitigation measures necessary, including landscape planting, to mitigate the adverse effects of loss of trees from the site and to assist the integration of the proposed development within the site and neighbourhood.*

The additional words I propose are, in my view, appropriate to address foreseeable actual and potential effects of future site development and are consistent with the scope of matters addressed in the Design Guide.

8. Safe and Easy Pedestrian Links to Public Bus Routes

District Plan Chapter 14A sets out the objectives and policies for the City's transportation network. The objectives and policies do not particularly address the provision of safe pedestrian connections. Chapter 11 sets out the usual standards for land subdivision. Rules 11.2.2.1 (b) (i) and (ii) prescribe the requirements for access and pedestrian accessways for controlled activity subdivisions in the *General Residential Activity Area* and Rule 11.2.2.3 sets out the assessment matters for controlled activity subdivisions, including by reference to NZS4404 (2004). Rules 11.2.3 and 11.2.4 provide the framework for restricted discretionary and discretionary activity subdivisions. However, there do not appear to be any explicit requirements to provide safe and easily-accessible pedestrian connections to available public bus routes.

The PPC37 site has frontage and access only to Hinau Grove. The site itself has no frontage or access to The Strand. Mr Osborne's advice is that PPC37 does not include access from The Strand. He describes access from the Strand as 'only an option' that would be considered separately through a future resource consent if PPC37 is confirmed. The concept plan included with PPC37 indicates vehicle access via The Strand (with the road being shared with pedestrians) and a pedestrian connection to Hinau Grove.

I note that there is currently a formed and all-weather surface pedestrian footpath connecting the southern part of the site with the Strand and also a pedestrian footpath adjoining the north-eastern boundary of the PPC37 site.

Finding: Pedestrian Links to Public Bus Routes

Whilst there is no specific provision for access to the site or direct frontage to The Strand, there would appear to be no obstacle to pedestrians walking between the site and The Strand across the public reserve land to get to the nearest convenient bus stop. There is also frontage and access to Hinau Grove although this may be more distant from some parts of the site to the bus services described in the GWRC submission (routes 160 and 170). As earlier noted, the Council is, separately, advancing a subdivision of the PPC37 site incorporating a right of way easement over the adjoining reserve land to achieve access to The Strand. It would be appropriate, in my view, to include within the restricted discretionary matters explicit consideration of safe and easily-accessible pedestrian access between the site and available public bus routes. That acknowledges and addresses the possibility that at least some of the residents of a retirement village will be elderly and may not drive their own vehicles.

I recommend that the Council accept in part submission DPC37/5, in relation to provision for public transport connections, by including in the PPC37 restricted discretionary matters for housing for the elderly developments the following additional matters:

(viii) Pedestrian Connection

Provision for paved pedestrian pathways that are safe, separate from vehicle lanes wherever practicable, incorporate night lighting, are suitable for use by elderly persons and which provide connection between the site and available public bus routes.'

9. Traffic Generation

I have considered the reports prepared by Harriet Fraser and am satisfied that the volumes of traffic likely to be generated by development of the PPC37 site for housing for the elderly can be accommodated within the local street network without compromising the safety or efficiency of that network. The particular concern expressed in the GWRC submission is that traffic congestion might create delays for public bus services. Ms Fraser concludes that the level of traffic generated by development of the PPC37 site would not compromise the efficiency of operation of the local bus routes. I accept that evidence.

Finding: Traffic Generation

I recommend that the Council reject in part submission DPC37/5, relating to concerns about traffic generation and traffic congestion, for the reasons stated in 9 above.

10. Minimum Floor Levels to Avoid Flood Hazard

GWRC's recommendation is that all residential dwellings on the PPC37 site have floor levels raised above the 1:100-year design flood event. Mr Osborne agrees that is consistent with current regional policy. Mr Osborne also recommends that discretionary matter (v) not prescribe a specific floor level as originally proposed. Updated flood modelling indicates that

the level originally specified has already been superseded (it is lower than appropriate in terms of current modelling). Further modelling between now and the time of future development of the site could again alter the minimum level. I agree that it is sufficient and practicable to simply specify the 1:100-year flood level and I accept his recommendation in that respect.

GWRC's submission also recommends that healthcare facilities should have a higher standard of flood protection due to the vulnerability of patients. GWRC's recommendation is that the minimum floor level for future healthcare facilities be above the 1:500-year flood event. Mr Osborne sought advice from Wellington Water about the relevance of the 1:500-year flood protection level. He advises that the 1:500-year protection level is identified for the Hutt River floodplain but that this is unique within the region. His advice is that all modelling elsewhere in the region assumes a 1:100-year flood event consistent with the Regional Stormwater Hydraulic Modelling Specification. He does not identify any reasons why the flood risk presented by the Parkway Drain should be addressed any differently. I accept that evidence.

GWRC's submission also recommends that future development of the PPC37 site be required to address emergency plans to respond to flood risk. Mr Osborne's advice is that the Council's own civil defence and emergency management responsibilities are undertaken under separate legislation and will be supported through the Regional Hazards Strategy currently being drafted by GWRC. It is my expectation that any healthcare facility developed on the site will be required, by other health and safety legislation, to make appropriate provision for the care and safety of all patients and staff. I doubt that such a facility would be able to secure and retain the necessary licence to operate in the absence of appropriate emergency management arrangements. I am not satisfied that there is a need to replicate those emergency management requirements in the provisions of PPC37.

Mr Osborne clarifies in his report that he has received confirmation that the flood modelling is for the period until 2090, including freeboard and accommodates climate change.

Finding: Flood Hazard Management

I recommend that the Council accept in part submission DPC37/5, in relation to flood hazard management, by specifying in the listed discretionary matters that all habitable spaces must be constructed above the 1:100-year flood level and by deleting from discretionary matter (v) the words in brackets '(86.92 above MSL)' as follows and for the reasons stated in 10 above:

(v) *Natural Hazards*

The extent to which the proposal addresses the flood risk to the site, including ensuring that the floor level of any habitable space is constructed above the 1:100 year flood level ~~(86.92 above MSL)~~ for Parkway Drain.'

11. Ecological and Biodiversity Values

GWRC recommends that a scoping assessment of ecological impact is undertaken before the plan change is confirmed. Mr Osborne's advice is that such assessment is not necessary because the land is predominantly grassland with scattered trees. It is his view that the site has low indigenous biodiversity value and this is acknowledged in the GWRC submission. My site visit confirmed that the land has been substantially modified historically and confirmed Mr Osborne's assessment of low biodiversity values. The site is not identified

in the District Plan or in any regional plan, to the best of my knowledge, as having any notable or material ecological or biodiversity values. Many of the scattered trees are exotic trees. My view is that, apart from addressing the potential adverse effects of tree removal on amenity values, inclusion of a requirement in the PPC37 provisions to undertake a specialist ecological assessment is not warranted.

The GWRC submission recommends that considerations (a), (d), (f), (g) and (h) of Regional Policy Statement Policy 47 should be integrated into the design of any future development of the PPC37 site. The submission does not specify how that integration ought to be achieved. GWRC's submission also suggests that, where possible, existing woody vegetation on the site is retained. Where tree removal is unavoidable, GWRC suggests that the adverse effects of tree removal could be partly mitigated by including locally-appropriate species in the landscape planting plan for the site's development. Mr Osborne notes that the site is not identified as a site of ecological significance and notes that the removal of vegetation is a permitted activity under the current *General Recreation* rules. Mr Osborne also suggests that efforts to protect and consolidate biodiversity would more appropriately be directed at hilly reserve areas and forest vegetation.

Finding: Ecological and Biodiversity Values

Having visited the site, I am not satisfied that this predominantly grassed part of Hugh Sinclair Park, surrounded by low density residential housing with an overall paucity of mature exotic or indigenous trees, genuinely provides an opportunity for consolidating biodiversity values in the manner suggested by the submitter. I accept Mr Osborne's recommendations in this respect. I recommend that the Council reject submission DPC37/5 in respect of the relief requested addressing ecological and biodiversity values for the reasons discussed in 11 above.

12. Aquatic Values and Stormwater Management

The GWRC submission recommends that future development of the site address the management of stormwater, including by limiting the extent of impervious surfaces and absorbing rainfall within the site. The submission suggests that these and other design elements could be used as opportunities for retaining or enhancing the habitat value of the site and of the riparian habitat of the Parkway Drain (also referred to somewhat inauspiciously as the 'Black Creek') that flows along the site's north-eastern boundary. The submission acknowledges that the drain has low ecological value.

Amendment 3 of PPC37 includes a number of permitted activity conditions, by reference to Rule 4A.2.1.1 (b) to (n). Item (g) addresses permeable surfaces and requires a minimum of 30% of the net site area to be a permeable surface. This includes decks provided the surface material of the deck allows water to drain through to a permeable surface. In addition, Chapter 11 of the District Plan prescribes the usual standards for stormwater management for land subdivision and development. In answer to a question from me, the Council's Senior Environmental Policy Analyst advised that the usual requirements of Chapter 11 will apply to the separate application for subdivision.

Finding: Aquatic Values and Stormwater Management

I am satisfied that the potential adverse effects of stormwater can be appropriately addressed in, both, the proposal for subdivision of the land for future development and in considering any future application for development elderly housing (in the usual manner

required by this District Plan). There is no evidence that this site should be managed any differently in terms of the usual city-wide requirements of the District Plan. I recommend that the Council reject submission DPC37/5 in respect of the relief requested addressing aquatic values and stormwater management for the reasons discussed in 12 above.

13. Development Contributions

The GWRC submission states (at paragraph 3.4) that the future development of the PPC37 site could deliver significant community benefits through development contributions. Mr Osborne's report is silent on the basis for calculating development contributions payable by future development of the site. The GWRC submission does not request any particular decision in this regard and I recommend none. I record that the prospect that future development of the site may generate development contributions is not a matter that I have considered as a benefit of PPC37 or in forming my recommendations in respect of submitters' requested relief.

14. Vehicle Access

As earlier noted, the Council is separately pursuing an application for subdivision incorporating a right of way to achieve access from The Strand. However, the PPC37 plan presented to me provides only for frontage and access from the site to Hinau Grove. Ms Fraser's traffic assessments did not address the prospect of vehicle access to the site from Hinau Grove. The assumption underlying PPC37 is that vehicle access will be from The Strand but that is not explicit anywhere. However, proposed Amendment 3 of PPC37 requires compliance with the general permitted activity standards of Chapter 14A, by reference through Rule 4A.2.1.1 (n) (including the provision of access to sites). Therefore, even in the absence of certainty currently about access from The Strand, the intended framework of PPC37 will ensure that vehicle access must be provided to the site in compliance with usual Plan standards.

15. Recommendations

I recommend that the Council amend the publicly notified text of PPC37 in the following manner and confirm the version of PPC37 contained in Attachment 1 to this report, incorporating the following amendments:

Further Amendment A:

Rule 4A 2.3.1 (x) Housing for the Elderly within the area identified in Appendix 99:

Amend item (v) of the proposed restricted discretionary matters by deleting the words '(86.92 above MSL)' as follows:

'(v) *Natural Hazards*

The extent to which the proposal addresses the flood risk to the site, including ensuring that the floor level of any habitable space is constructed above the 1:100 year flood level (~~86.92 above MSL~~) for Parkway Drain.'

Further Amendment B:

Rule 4A 2.3.1 (x) Housing for the Elderly within the area identified in Appendix 99:

Amend item (vii) of the proposed restricted discretionary matters by inserting the following underlined text:

(vii) Amenity Values

The extent to which the proposal would adversely affect the amenity values of the surrounding residential area, including:

- *The effect of buildings and structures on neighbouring and surrounding residential sites and, in particular the location, design and appearance of the buildings; ~~and~~*
- *Whether the proposal would cause significant loss of sunlight, daylight or privacy on adjoining residential properties;*
- *The effect on the amenity values of adjoining residential and recreational land caused by the removal of trees from the site; and*
- *The mitigation measures necessary, including landscape planting, to mitigate the adverse effects of loss of trees from the site and to assist the integration of the proposed development within the site and neighbourhood.*

Further Amendment C:

Rule 4A 2.3.1 (x) Housing for the Elderly within the area identified in Appendix 99:

Insert the following additional restricted discretionary matter (viii):

(viii) Pedestrian Connection

Provision for paved pedestrian pathways that are safe, separate from vehicle lanes wherever practicable, incorporate night lighting, are suitable for use by elderly persons and which provide connection between the site and available public bus routes.

Decisions on Submissions

I recommend that the submissions be accepted, accepted in part and rejected in part for the reasons explained in the foregoing sections of this decision report. For convenience, I include in Attachment 2 a summary of my recommended decisions on the relief requested in submissions and the reasons for those decisions.

16. Section 32AA Evaluation

The recommended amendments I set out in Part 15 above do not affect or alter the assumptions or conclusions of the original section 32 report. The recommendations supplement those assumptions and conclusions. Section 32AA of the Act requires that, where changes are made to a proposed plan change after public notification, a further section 32 (1) evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes. The amendments I propose are minor, do not alter the primary purpose or scope of activities that are provided for by the proposed plan change

and are necessary in my view to address reasonably foreseeable future effects on the environment. My conclusion is that the proposed amendments are enhancements that, for the purposes of section 32 (1) (b), more appropriately achieve the Plan objectives and will be more effective than the published PPC37 provisions. For the purposes of section 32 (1) (b) (iii), the reasons for making the amendments set out above are detailed in Parts 7, 8 and 10 of this report.



Christine Foster

27th November 2015

ATTACHMENT 1

**AMENDED TEXT OF PROPOSED PLAN CHANGE 37 TO THE CITY
OF LOWER HUTT DISTRICT PLAN INCORPORATING DECISIONS
ON SUBMISSIONS**

Amendments to Chapter 4A – General Residential Activity Area

AMENDMENT 1 [Chapter 4A General Residential (4A 2.3 Restricted Discretionary Activities)]

Add new restricted discretionary activity (x)

4A 2.3 Restricted Discretionary Activities

- (a)** Residential development of 3 or more dwelling houses on any site, excluding sites located within Petone, Alicetown, Eastern Bays and Moera General Residential Activity Areas and Medium Density Residential Areas as shown in Appendix 17.
- (b)** The removal of vegetation in excess of 500m² or 35% of the site, whichever the lesser, provided that this shall not preclude the removal of any pest plant.
- (c)** Health care service with a maximum of 4 practitioners.
- (d)** Accessory buildings on legal road.
- (e)** Cnr of Eastern Hutt Road and Reynolds Bach Drive, Part Section 742 Hutt District, forestry.
- (f)** All buildings and structures that are sited wholly or in part on the riverside of the building setback line in Belmont.
- (g)** All buildings and structures within the 1 in 100-year flood extent that do not comply with the Permitted Activity Conditions for floor levels or total gross floor area.
- (h)** All new buildings and structures or additions in the Primary or Secondary River Corridor with a gross floor area greater than 20m² or with a setback less than 20m from a flood protection structure.
- (i)** Childcare facilities for more than 5 children and up to a maximum of 30 children.
- (j)** Principal tertiary education activities within the Tertiary Education Precinct, including associated buildings and structures, which:
 - do not comply with any of the following Permitted Activity conditions: 4A 2.1.1 (b) Minimum Yard Requirements; 4A 2.1.1 (c) Recession Planes; 4A 2.1.1 (d) Maximum Height of Buildings and Structures; 4A 2.1.1 (e) Maximum Site Coverage; and 4A 2.1.1 (z) Tertiary Education Precinct (excluding The Maximum Height of Buildings and Structures 4A 2.1.1 (z) (iii)); and
 - do not exceed 12m in height.
- (i)** Non-notification

In respect of Rule 4A 2.3 (j), public notification of applications for resource consent is precluded and limited notification of applications for resource consent need not be required.

NOTE: Rule 4A 2.3 (j) (i) prevails over Rule 17.2.2.

(k) Ancillary tertiary education activities within the Tertiary Education Precinct, including associated buildings and structures.

(i) Non-notification

In respect of Rule 4A 2.3 (k), public notification of applications for resource consent is precluded and limited notification of applications for resource consent need not be required.

NOTE: Rule 4A 2.3 (k) (i) prevails over Rule 17.2.2.

(x) Housing for the Elderly within the area identified in Appendix 99.

AMENDMENT 2 [Chapter 4A General Residential (4A 2.3.1 Matters in which Council has Restricted its Discretion and Standards and Terms)]

Add new restricted discretionary matter (x)

4A 2.3.1 Matters in which Council has Restricted its Discretion and Standards and Terms

(a) Residential development of 3 or more dwelling houses.

(i) Design Guide:

Consideration shall be given to how the proposal addresses the Design Guide for Medium Density Housing (Appendix 19).

(ii) Amenity Values:

Consideration shall be given to adverse effects upon the amenity values both within the site concerned and upon surrounding residential area, including

- The separation distance between buildings, structures and outdoor living areas on site.
- The provision made for outdoor service and living areas for residents, and aural and visual privacy for dwelling units both on the site concerned and on adjacent sites.
- The effect of buildings and structures on the neighbouring and surrounding residential sites and, in particular, the impact of building density (net site area, coverage), location (yards), recession planes, height and length.

(iii) Traffic Effects:

The safe and efficient movement of all traffic needs to be ensured. It should be demonstrated that traffic generation and vehicles entering and leaving the site will not affect adversely normal traffic flows on the road, or cause a traffic hazard. Provision should also be made for pedestrians.

The proposal should comply with the parking and access controls contained in Chapter 14A.

(iv) Landscaping:

The extent to which landscaping is incorporated within the overall proposal, and existing vegetation is retained to mitigate any adverse effects which may arise.

A landscape plan will be required to ensure that any adverse effects of the proposal are kept within the site concerned. This may include landscaping of any on site parking areas. Landscaping may also be used to soften the impact of any building upon the surrounding area, adjacent sites and buildings, or to screen private living and service courts.

A landscape plan is to show the extent of the vegetation to be retained and the extent of planting to be undertaken.

(b) Residential development of 3 or more dwelling houses on sites located outside the Medium Density Residential area.

(i) In addition to the above, on any site located outside the Medium Density Residential area consideration shall be given to:

(a) Whether public transport facilities and non-residential services such as education facilities, places of assembly, medical and emergency facilities and retail activities which provide for residents daily needs, are accessible within reasonable walking distances.

(b) Whether there is a recorded flood risk associated with the site.

(c) The capacity of the City's infrastructure to service additional development on the site.

(c) The removal of vegetation in excess of 500m² or 35% of the site, whichever the lesser, provided that this shall not preclude the removal of any pest plant.

(i) Amenity Values:

The extent to which the proposal will affect adversely the visual amenity values of the site and surrounding area. The visual prominence of the vegetation and any replacement planting to be undertaken will be taken into consideration.

(ii) Site Stability:

The adverse effects upon the stability of the site caused by the removal of trees or vegetation.

(iii) The Intrinsic Values of Ecosystems:

The extent to which the proposal will adversely affect the intrinsic value of ecosystems on the site and surrounding area.

(d) Health care service with a maximum of 4 practitioners.

(i) Amenity Values:

The extent to which the proposal will affect adversely the amenity values of the surrounding residential area.

(ii) Traffic Effects:

The extent to which the proposal will affect adversely the safe and efficient movement of all traffic. It should be demonstrated that traffic generation and vehicles leaving and entering the site will not affect adversely the normal traffic flows on the road, or cause a traffic hazard. Provision should be made for pedestrians.

(iii) Landscaping:

The extent to which landscaping is incorporated within the overall proposal to mitigate adverse effects, which may arise.

A landscape plan will be required to ensure that any adverse effects of the proposal are mitigated. This should include landscaping of any on site parking areas.

(e) Accessory buildings on legal road.

(i) Amenity Values:

The extent to which the proposal affects adversely the amenity values of the surrounding residential properties, including the amount of earthworks required, loss of vegetation, design and appearance of buildings. All such buildings must be painted.

(ii) Traffic Effects:

The extent to which the accessory building will affect adversely the safe and efficient movement of traffic on the road. It should be demonstrated that the accessory building and vehicles using the accessory building shall not create a traffic hazard.

(f) Cnr of Eastern Hutt Road and Reynolds Bach Drive, Part Section 742 Hutt District, forestry.

(i) Amenity Values:

Consideration shall be given to the amenity values of the site and in particular any adverse effects on the amenity values of residents in Stokes Valley and the impact on amenity values when the forestry is harvested. Details of any remedial work may form part of any conditions of consent

(ii) Traffic Effects:

The safe and efficient movement of all traffic needs to be ensured. All harvested logs shall be taken out through to Reynolds Bach Drive. No logs shall be taken out through Stokes Valley or directly on to Eastern Hutt Road.

- (g) All buildings and structures that are sited wholly or in part on the riverside of the building setback line in Belmont.**
- (i) In assessing proposals, Council will be guided by the degree to which buildings and structures further increase:
- The risk to people of exposure to the erosion hazard; and
 - Any mitigation measures that are proposed.
- (h) All buildings and structures within the 1 in 100-year flood extent that do not comply with the Permitted Activity Conditions for floor levels or total gross floor area.**
- (i) In assessing proposals, Council will be guided by the degree to which buildings and structures further increase:
- The risk to people of exposure to the flood hazard; and
 - The flood hazard effects for land, buildings and structures off-site.
- (i) All new buildings and structures or additions in the Primary or Secondary River Corridor with a gross floor area greater than 20m² or with a setback less than 20m from a flood protection structure.**
- Proximity of buildings and structures to flood protection structures;
 - Adverse effects of the flood hazard on buildings and structures and on flood protection structures; and
 - The risk to people of exposure to the flooding and erosion hazard.
- (j) Child care facilities for more than 5 children and up to a maximum of 30 children.**

The presumption of non-notification in Rule 17.2.2 does not apply to this rule.

(i) Site Layout and Landscaping

Consideration shall be given to whether the site layout and any proposed landscaping ensure adverse effects will be retained within the site, thus avoiding or minimising impacts on the adjacent roadway or adjacent residential sites.

(ii) Traffic Effects

The safe and efficient movement of all vehicle and pedestrian traffic needs to be ensured. It should be demonstrated that traffic generation and vehicles entering and leaving the site will not adversely affect normal traffic flows on the road, or cause a vehicle or pedestrian traffic hazard.

The proposal should comply with the access and manoeuvring controls contained in Chapter 14A.

(iii) Parking Effects

The extent to which the proposal appropriately provides for the carparking needs of the activity, without adversely affecting the carparking requirements of the surrounding area.

The proposal should comply with the parking and loading controls contained in Chapter 14A.

(iv) Noise

The proposal should comply with the maximum noise levels specified in Chapter 14C Noise.

With respect to non-compliances, consideration shall be given to any method or measure proposed to mitigate adverse noise effects of the proposal.

(k) Principal tertiary education activities within the Tertiary Education Precinct, including associated buildings and structures, which:

- do not comply with any of the following Permitted Activity conditions: 4A 2.1.1 (b) Minimum Yard Requirements; 4A 2.1.1 (c) Recession Planes; 4A 2.1.1 (d) Maximum Height of Buildings and Structures; 4A 2.1.1 (e) Maximum Site Coverage; and 4A 2.1.1 (z) Tertiary Education Precinct (excluding The Maximum Height of Buildings and Structures 4A 2.1.1 (z) (iii)); and
- do not exceed 12m in height

(i) Amenity Values

The extent to which the proposal would affect adversely the amenity values of the surrounding residential area, including:

- (1) The effect of buildings and structures on the neighbouring and surrounding residential sites and, in particular the location, design and appearance of the buildings.
- (2) Whether the proposal would cause significant loss of sunlight, daylight or privacy of adjoining residential properties.

(ii) Design, External Appearance and Siting

- (1) The extent to which building bulk, scale and siting of the proposal is compatible with the scale of buildings in the neighbourhood.
- (2) The extent to which building, bulk, scale and siting of the proposal does not dominate the adjacent Petone Recreation Ground.

(iii) Streetscape Effects

The extent to which the proposal would adversely impact on the streetscape of the area.

(iv) Landscaping and Screening

- (1) The location, nature and degree of proposed landscaping.

- (2) The location, nature and screening of outdoor storage, servicing and parking areas, including their visibility and relationship to adjoining residential sites and visibility from any public space.

(I) All ancillary tertiary education activities within the Tertiary Education Precinct, including associated buildings and structures.

(i) Amenity Values

The extent to which the proposal would affect adversely the amenity values of the surrounding residential area, including:

- (1) The effect of buildings and structures on the neighbouring and surrounding residential sites and, in particular the location, design and appearance of the buildings.
- (2) Whether the proposal would cause significant loss of sunlight, daylight or privacy of adjoining residential properties.

(ii) Design External Appearance and Siting

- (1) The extent to which building bulk, scale and siting of the proposal is compatible with the scale of buildings in the neighbourhood.
- (2) The extent to which building, bulk, scale and siting of the proposal does not dominate the adjacent Petone Recreation Ground.

(iii) Streetscape Effects

The extent to which the proposal would adversely impact on the streetscape of the area.

(iv) Landscaping and Screening

- (1) The location, nature and degree of proposed landscaping.
- (2) The location, nature and screening of outdoor storage, servicing and parking areas, including their visibility and relationship to adjoining residential sites and visibility from any public space.

(v) Traffic Effects

The safe and efficient movement of all vehicle and pedestrian traffic needs to be ensured. It should be demonstrated that traffic generation and vehicles entering and leaving the site will not adversely affect normal traffic flows on the road, or cause a vehicle or pedestrian hazard.

The proposal should comply with the access and manoeuvring controls contained in Chapter 14A.

(vi) Parking Effects

The extent to which the proposal appropriately provides for the carparking needs of the activity, without adversely affecting the carparking requirements of the surrounding area.

The proposal should comply with the parking and loading controls contained in Chapter 14A.

(vii) Noise

The proposal should comply with the maximum noise levels specified in Chapter 14C Noise.

(x) Housing for the Elderly within the area identified in Appendix 99:

(i) Temporary Construction Effects

Consideration shall be given to the potential construction effects arising from the establishment of a retirement village on the site. This includes the potential construction noise, traffic, dust, sediment runoff and vibration effects.

(ii) Design Guide

Consideration shall be given to the degree to which the proposal adheres to the Design Guide for Medium Density Housing (Appendix 19).

(iii) Traffic Generation Effects

The safe and efficient movement of all vehicle and pedestrian traffic needs to be ensured. It should be demonstrated that traffic generation and vehicles entering and leaving the site will not adversely affect normal traffic flows on the road, or cause a vehicle or pedestrian hazard.

(iv) Parking Effects

The extent to which the proposal appropriately provides for the vehicle parking needs of the activity, without adversely affecting the vehicle parking requirements of the surrounding area.

(v) Natural Hazards

The extent to which the proposal addresses the flood risk to the site, including ensuring that the floor level of any habitable space is constructed above the 1:100 year flood level for Parkway Drain.

(vi) Geotechnical Matters

The extent to which the proposal addresses any geotechnical limitations on the site.

(vii) Amenity Values

The extent to which the proposal would adversely affect the amenity values of the surrounding residential area, including:

- The effect of buildings and structures on neighbouring and surrounding residential sites and, in particular the location, design and appearance of the buildings;

- Whether the proposal would cause significant loss of sunlight, daylight or privacy on adjoining residential properties;
- The effect on the amenity values of adjoining residential and recreational land caused by the removal of trees from the site; and
- The mitigation measures necessary, including landscape planting, to mitigate the adverse effects of loss of trees from the site and to assist the integration of the proposed development within the site and neighbourhood.

(viii) Pedestrian Connection

Provision for paved pedestrian pathways that are safe, separate from vehicle lanes wherever practicable, incorporate night lighting, are suitable for use by elderly persons and which provide connection between the site and available public bus routes.

AMENDMENT 3 [Chapter 4A General Residential (4A 2.3.2 Other Matters)]

Add new other matter

4A 2.3.2 Other Matters

For Restricted Discretionary Activity (a): All Restricted Discretionary Activities must comply with Permitted Activity Conditions (b) - (n).

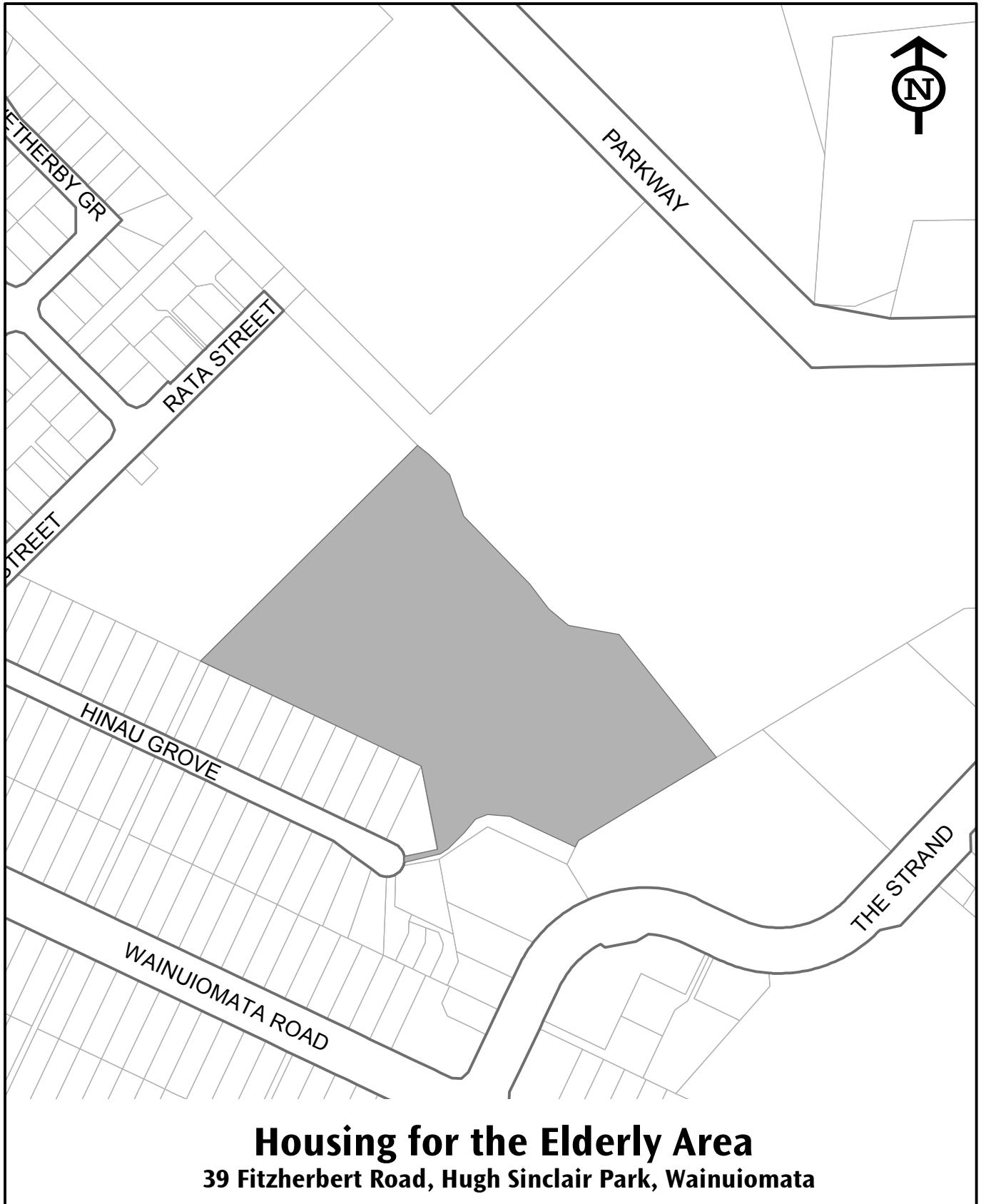
For Restricted Discretionary Activities (b) - (e) and (i) – (k): All Restricted Discretionary Activities must comply with other relevant Permitted Activity Conditions.

For Restricted Discretionary Activity (x): All Restricted Discretionary Activities must comply with Permitted Activity Conditions (b) – (n). For Permitted Activity Conditions (b) – (g) any reference to the term “net site area” shall be replaced with the term “site”.

AMENDMENT 4 [Chapter 4A General Residential (Appendices)]

Add new Appendix General Residential 99

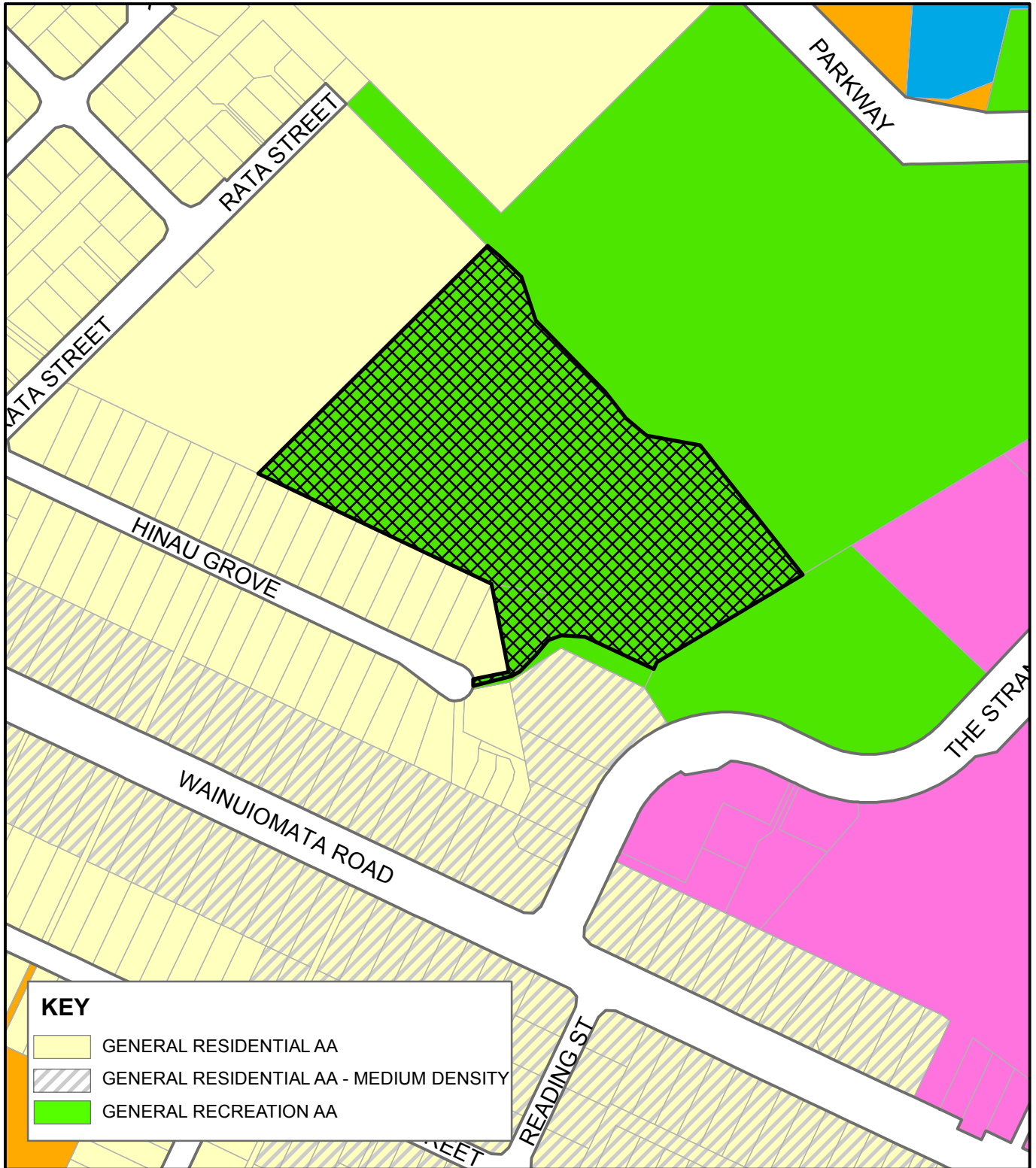
Appendix General Residential 99



Amendments to District Plan Maps

AMENDMENT 5 [District Plan Maps E6 and E7]

Change zoning of the plan change site from General Recreation Activity Area to General Residential Activity Area – Medium Density



Proposed Plan Change 37

39 Fitzherbert Road, Hugh Sinclair Park, Wainuiomata

 Land to be zoned General Residential Activity Area - Medium Density

Planning Maps E6 and E7



District Plan - City of Lower Hutt



Scale 1:3500

ATTACHMENT 2
SUMMARY OF DECISIONS ON SUBMISSIONS AND REASONS

The following submissions are accepted in full:

DPC37/1 (Dave Williamson)

DPC37/2 (Bernard Kenny)

DPC37/3 (Angela Pahl)

DPC37/6 (Margaret Benge) are accepted in full.

Submission DPC37/4 (Ken Malley) is accepted in part, in relation to the removal of trees from the PPC37 site, by inserting into item (vii) of the proposed restricted discretionary matters the following underlined additional matters for the reasons explained in Part 7 of the decision report:

(vii) Amenity Values

The extent to which the proposal would adversely affect the amenity values of the surrounding residential area, including:

- *The effect of buildings and structures on neighbouring and surrounding residential sites and, in particular the location, design and appearance of the buildings; ~~and~~*
- *Whether the proposal would cause significant loss of sunlight, daylight or privacy on adjoining residential properties;*
- *The effect on the amenity values of adjoining residential and recreational land caused by the removal of trees from the site; and*
- *The mitigation measures necessary, including landscape planting, to mitigate the adverse effects of loss of trees from the site and to assist the integration of the proposed development within the site and neighbourhood..'*

Submission DPC37/5 (Greater Wellington Regional Council):

Submission DPC37/5 (Greater Wellington Regional Council) is accepted in part, in relation to provision for public transport connections, by including in the PPC37 restricted discretionary matters for housing for the elderly developments the following additional matters for the reasons explained in Part 8 of the decision report:

(viii) Pedestrian Connection

Provision for paved pedestrian pathways that are safe, separate from vehicle lanes wherever practicable, incorporate night lighting, are suitable for use by elderly persons and which provide connection between the site and available public bus routes.'

Submission DPC37/5 (Greater Wellington Regional Council) is rejected in part, relating to concerns about traffic generation and traffic congestion, for the reasons stated in Part 9 of the decision report.

Submission DPC37/5 (Greater Wellington Regional Council) is accepted in part, in relation to flood hazard management, by specifying in the listed discretionary matters that all habitable spaces must be constructed above the 1:100-year flood level and by deleting from discretionary matter (v) the words in brackets '(86.92 above MSL)' as follows for the reasons stated in Part 10 of the decision report:

(v) *Natural Hazards*

The extent to which the proposal addresses the flood risk to the site, including ensuring that the floor level of any habitable space is constructed above the 1:100 year flood level ~~(86.92 above MSL)~~ for Parkway Drain.'

Submission DPC37/5 (Greater Wellington Regional Council) is rejected in part, in respect of the relief requested addressing ecological and biodiversity values, for the reasons discussed in Part 11 of the decision report.

Submission DPC37/5 (Greater Wellington Regional Council) is rejected in part, in respect of the relief requested addressing aquatic values and stormwater management, for the reasons discussed in Part 12 of the decision report.