

**City of Lower Hutt District Plan
PROPOSED PLAN CHANGE 22: 6 -1 5 KELSO GROVE, KELSON REZONING
OF PART OF THE SITE AS GENERAL RESIDENTIAL ACTIVITY AREA**

Report of Independent Commissioner to the Hutt City Council

Date: 15 November 2011

IN THE MATTER OF **The Resource Management Act 1991**

AND

IN THE MATTER OF **Proposed Plan Change 22 to the Operative City of Lower
Hutt District Plan to re-zone an area of Council-owned
land at 6 - 15 Kelso Grove, Kelson to General Residential
Activity Area**

HEARING COMMISSIONER Robert Schofield

PLACE OF HEARING Council Chambers, Hutt City Council

DATE OF HEARING Thursday, 29 September 2011

APPEARANCES *City Council* -
Bronwyn Little, Divisional Manager, Environmental
Policy
Rachel Helme, Intermediate Policy Analyst,
Environmental Policy
Harriet Fraser, Traffic Design Group Limited
Bruce Hodgins, Divisional Manager Parks and Gardens
Dr Paul Blaschke, Ecology Consultant

Submitters -
Wayne Wootton
Wendy Saunders

IN ATTENDANCE Three employees of Cuttriss Consultants Limited
attended as observers

Committee Adviser -
Chris Craig, Hutt City Council Minute Taker

Proposed Plan Change 22: 6-15 Kelso Grove, Kelson, Rezoning of part of the Site to General Residential Activity Area

REPORT BY INDEPENDENT COMMISSIONER TO HUTT CITY COUNCIL

Summary and Recommended Decision

Proposed Plan Change 22 proposes to rezone part of the Kelso Grove Recreation Reserve, a Council-owned reserve, at 6 - 15 Kelso Grove, Kelson, from General Recreation Activity Area to General Residential Activity Area. The purpose of Plan Change 22 is to facilitate residential development on the northern and western slopes of the recreation reserve, and part of the flat open area of the reserve. The total area of the Kelso Grove Recreation Reserve is approximately 4.2 hectares; the area of that part of the site proposed to be rezoned is approximately 1.64 hectares. The balance area of the Recreation Reserve is not subject to the Plan Change and is to remain as General Recreation Activity Area.

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 6 - 15 Kelso Grove, Kelson 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 22 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 22, subject to the exclusion of indicative Lot 15 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 the land is the most appropriate management framework for land that is likely to be privately owned in the near future, to enable future landowner(s) with the appropriate opportunities to develop and use the land.
2. The proposed plan change would provide for the residential development of the site in a manner that is consistent and compatible with the adjoining residential environment, and that would avoid, remedy or mitigate the potential adverse effects on the environmental values of the area.
3. 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 consolidating the existing urban area.
4. 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.

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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 reflected in section 5 of the Resource Management Act. Based on the expert evidence before me, I am satisfied that these values are not of sufficient significance to outweigh or prevail over the need to provide an appropriate long-term land use and development management framework provided by the rules of the General Residential Activity Area and associated District Plan provisions.

In this regard, I recommend an amendment to exclude Lot 15¹ from the proposed area of the site to be rezoned to General Residential Activity Area, as shown in Annexure 1. I do not propose any changes to the Proposed Plan Change in terms of introducing special restrictions or requirements on the future subdivision, development and use of the land. I anticipate that the subdivision resource consent process would satisfactorily address most aspects of any future residential subdivision and development, including the size and design of lots and the relationship of building heights and setback with the adjoining reserve.

A detailed assessment of the proposed plan change is provided in the following report, which draws on the information to support the proposed plan change, the analysis and advice of the Council's Reporting Policy Analyst, Rachel Helme, the submissions received, the evidence presented to the hearing on 29 September 2011, and other relevant information.

This report is structured as follows:

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1 Indicative subdivision plan, Rev0, Tonkin & Taylor, drawing number 84009.004-08, dated April 2009

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 22 and to make recommendations to the Council on the provisions of the proposed plan change and matters raised in submissions.
- 1.2 Pursuant to that authority, I conducted a hearing in the Council Chambers on Thursday 29 September 2011, which commenced at 9.30am, and adjourned at 11.30am 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 area subject to the proposed rezoning, the "site", comprises part of the Kelso Grove Recreation Reserve ('Reserve'), also referred to as the Kelson Sports Ground. The Reserve is legally described as Lot 527 DP 42342 (Certificate of Title 517734), is approximately 4.2 hectares in area and is a Recreation Reserve subject to the Reserves Act 1977. The portion of the site that is subject to the Proposed Plan Change comprises 1.64 hectares (i.e., less than 40% of the total property); the remainder of the Reserve is not affected by the proposed plan change.
- 2.2 The Reserve has a street address of 6-15 Kelso Grove, located off the end of this residential cul-de-sac in the suburb of Kelson. A four metre wide access road services the site, descending from the head of the cul-de-sac, following the base of a steep bank, down to the flat open grassed recreation ground in the centre of the Reserve. This recreation ground forms about half of the total Reserve area, and is located on a manmade terrace on the side of the escarpment that rises up from the Hutt Valley floor to the ridgeline on which the suburb of Kelson is located. The recreation ground is bounded on all sides by regenerating vegetation that covers the surrounding slopes. These slopes rise up towards the north and west, and drop down towards the south and east.
- 2.3 The site itself comprises the vegetated northern and western slopes of the Reserve, the access road into the area, and part of the flat, grassed open space. The slopes are moderate to steep and the vegetation cover comprises a mix of regenerating native vegetation and exotic plant species that have grown since the formation of the reserve.
- 2.4 A plan showing the part of the reserve that is subject to the proposed plan change is included on the following page (Figure 1).

Proposed Plan Change 22: 6-15 Kelso Grove, Kelson, Rezoning of part of the Site to General Residential Activity Area
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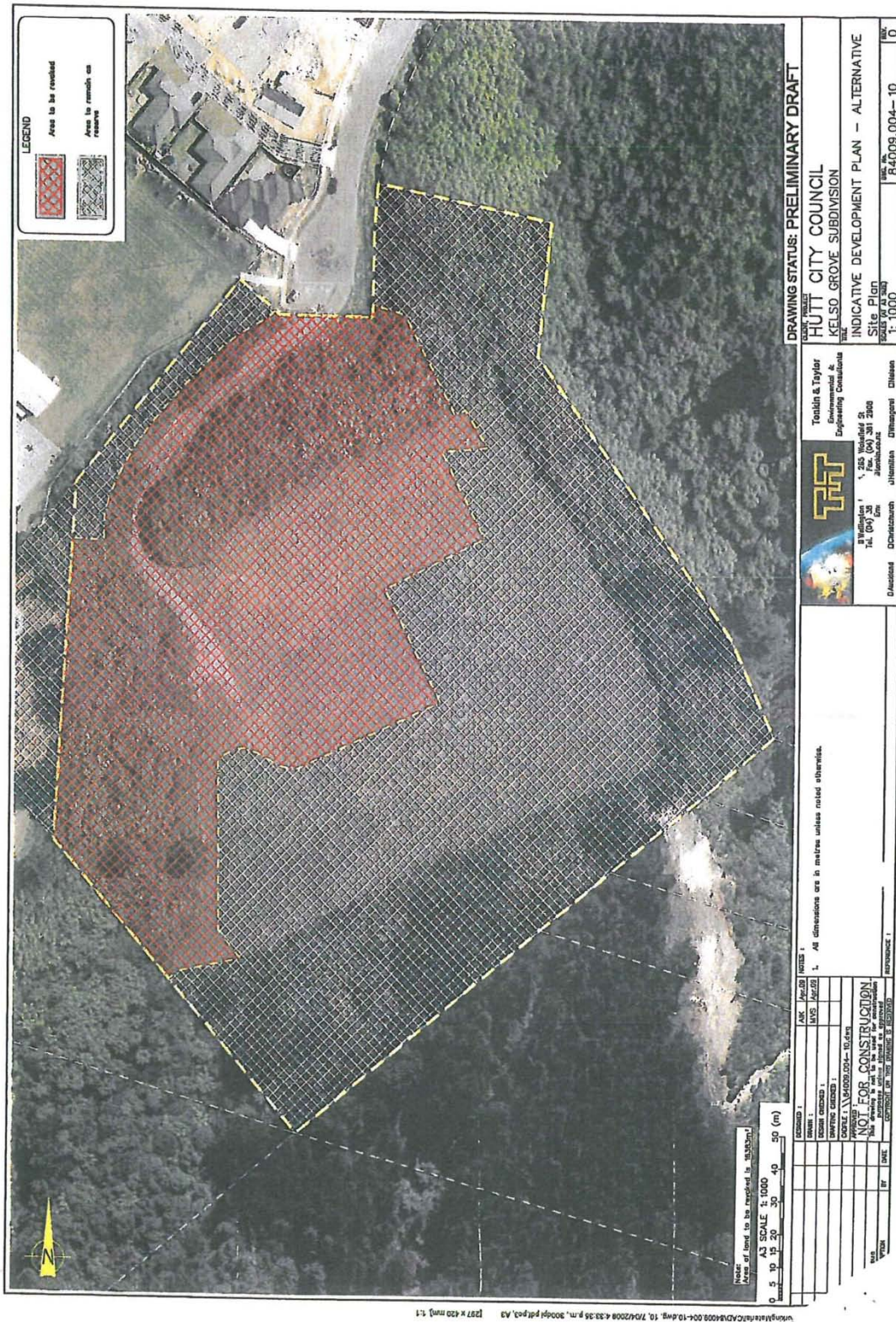


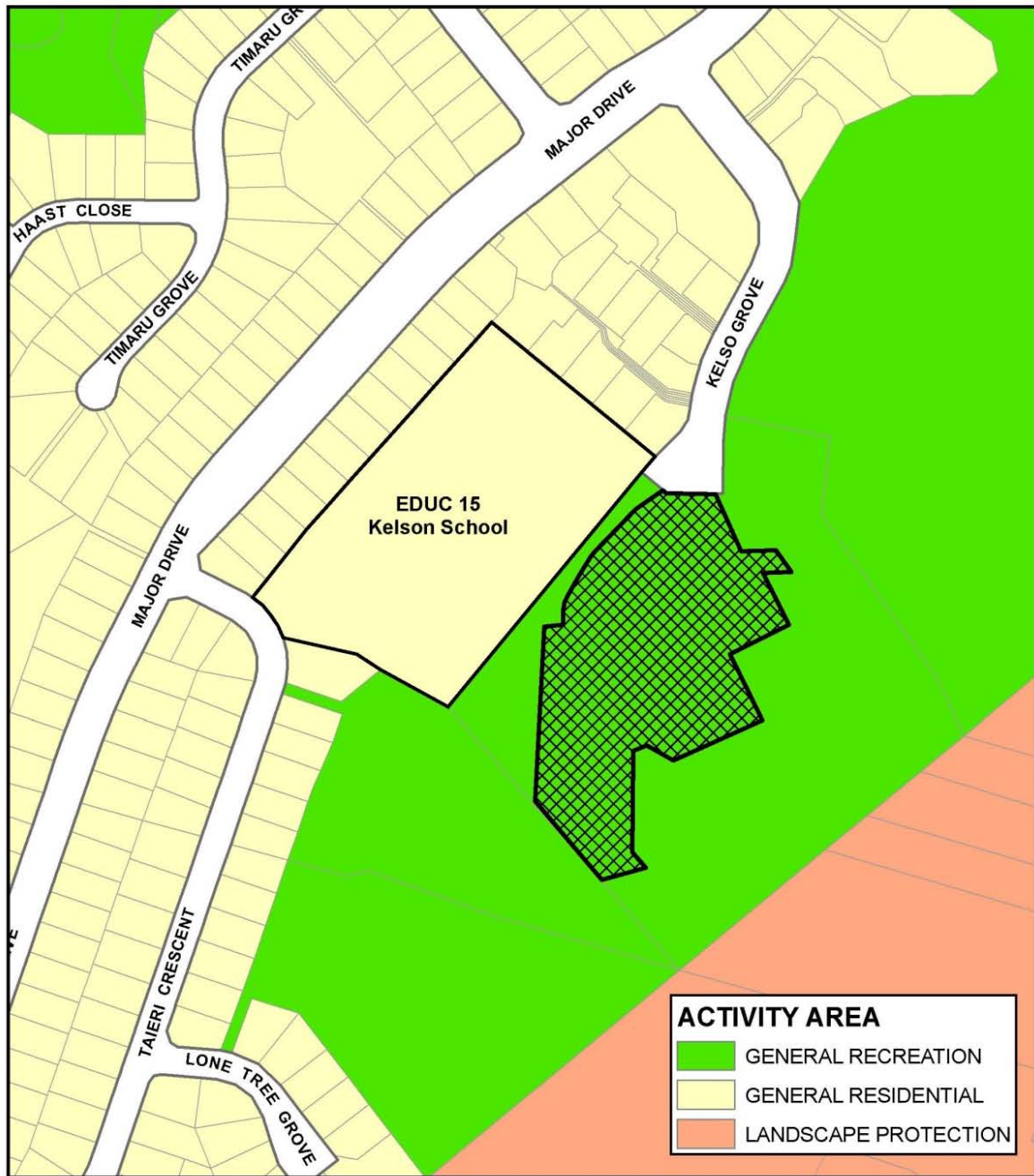
Figure 1: Plan showing Area to be Rezoned (in red) and Area to Remain as Reserve

Immediate Vicinity

- 2.5 Kelso Primary School adjoins the site to the northwest, sited on a flat area on top of the ridge on which the suburb of Kelson is located. The vegetation on the banks below the school, descending to the Reserve, obscures views to or from it. While the main entrance to the School is from Taieri Crescent, parents also use the turnaround area at the head of Kelso Grove to drop off and pick up their children.
- 2.6 On the spur of land above the northwestern side of the Reserve is a small children's playground; again, the vegetation on the banks descending down to the Reserve obscures views to and from the playground. Part of the playground is actually located within the Reserve, but is not affected by the proposed rezoning.
- 2.7 To the west and southwest, the site adjoins another Council reserve which contains the regenerating forested slopes below residential properties on Taieri Crescent.
- 2.8 To the east and northeast of the site is a deep, well vegetated gully that descends from the north down towards the Hutt River. This gully is also contained within a Council reserve that adjoins the site. At the head of the gully, and along the ridge to the northwest of the gully, are residential properties accessed from Kelso Grove; many of these properties have only recently been built. On the ridgeline above the gully to the northeast are residential properties on Mossburn Grove; some of these properties have partial views of the site.
- 2.9 To the southwest of and downhill from the Reserve are a number of private residential properties, scattered along the well vegetated slopes that descend down the Hutt Valley floor. These properties generally obtain their access from State Highway 2 via Hebden Crescent.

Zoning and History

- 2.10 During the 1970s and early 1980s, the suburb of Kelson was formed as a result of a large multi-staged subdivision. The Kelso Grove Recreation Reserve, along with the adjacent reserve land, was formed as part of the reserves contribution for the development. The playing fields within the Reserve were formed through some significant cut and fill.
- 2.11 The Kelso Grove Recreation Reserve is part of a series of reserves within this part of the suburb, which contiguously form the largest area of reserves in Kelson.
- 2.12 A search of previous district plans and schemes reveals that the Kelso Grove Recreation Reserve has been zoned General Recreation since the Western Hills District Scheme, which became operative in 1988. At that time the area was part of the Hutt County. The recreational zoning was continued through into the current City of Lower Hutt District Plan: Planning Map E2 identifies the Recreation Reserve and reserves to the south and east as General Recreation Activity Area.
- 2.13 The only change which has occurred since the reserve's initial zoning has been the addition of the Significant Natural Resource overlay to its lower slopes, outside the area affected by the proposed plan change. The eastern and southern parts of the Recreation Reserve are situated within Significant Natural Resource 23, as identified within the District Plan Map 1A.



Proposed Plan Change 22

6-15 Kelso Grove, Kelson (Pt Lot 527 DP 42342)

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

Planning Map E2



Figure 2: Area Proposed to be Rezoned (as Notified) and Zoning of Immediate Vicinity

3 BACKGROUND TO PROPOSED PLAN CHANGE 22

- 3.1 The Council's Reporting Planning Officer provided information on the background leading to Plan Change 22; I have drawn from that information to provide the following summary.
- 3.2 As part of the Council's city-wide review of Council-owned reserves, the Kelso Grove Recreation Reserve was assessed for its contribution to the ecological, open space, landscape and recreational values of the City. The Kelso Grove Recreation Reserve was included in the review as it was no longer required for the purpose for which it was acquired- a recreation reserve used as a local sportsground.
- 3.3 The initial assessment deemed the site to have low open space/recreation use or potential and a further assessment of its development potential concluded that part of the land could be developed for residential purposes. Accordingly, the Council decided to remove the recreation reserve status from part of the site, and consultation with the local community was undertaken in accordance with the Reserves Act 1977.
- 3.4 A total of 28 submissions on the proposal were received, with submitters generally opposed to the removal of the recreation reserve status. After hearing the submitters, the Council's Strategy and Policy Committee recommended that the Council retain the southern and eastern portions of the site as recreation reserve, as well as the small area of children's playground adjoining the school. The Committee also recommended that the northern and western portions of the site be declared surplus and, subject to a geotechnical assessment of the suitability of the land for residential development, that the recreation reserve status of this part of the reserve should be revoked and the land sold for residential development. It was also resolved that proceeds from the sale of the land be used to fund improvements to the drainage of the remaining recreation ground within the Recreation Reserve.
- 3.5 The Council accepted the recommendations of the Strategy and Policy Committee at the full Council meeting, 12 August 2008: the Council resolution is contained within Annexure 3.
- 3.6 After considering indicative subdivision plans and the findings of a geotechnical assessment, the Land Review Working Group agreed that the northern and western portions of the Recreation Reserve had good development potential and accepted a 24 lot development plan as the preferred option. The boundaries of this development plan represent the site area of Plan Change 22. The Group resolved that the balance area of the Recreation Reserve was to have its recreation reserve status retained, with the remaining area of flat recreation ground developed as a "village green" for the recreational use of the community².
- 3.7 On 5 May 2009, the Council proposed to the Minister of Conservation that the reserve status of the Site be revoked. On 28 August 2009 the Minister of Conservation consented to the removal of the recreational reserve status from that portion of the site subject to the Plan Change.

2 This area is shown as 'Village Green' on the Tonkin and Taylor Indicative Development Plan, dated April 2009, drawing number 84009.004, Rev 0

- 3.8 To facilitate the development potential of the site, a Council-initiated plan change to the Operative District Plan was agreed as necessary.
- 3.9 In preparation of Plan Change 22, the Council obtained advice from the following experts:
- (a) PAOS Ltd, landscape and open space experts prepared an 'Assessment of Recreational Effects'.
 - (b) Tonkin & Taylor Ltd, geotechnical engineers, who prepared a 'Preliminary Geotechnical Suitability Assessment';
 - (c) Cuttriss Consultants Ltd, land development engineers and surveyors, who prepared an 'Assessment of Availability of Services';
 - (d) Traffic Design Group, transportation experts, who prepared a 'Transportation Assessment'; and
 - (e) Dr Paul Blaschke, of Blaschke and Rutherford Environmental Consultants, an expert ecologist who prepared an 'Ecological Assessment' of the site and environs.

4 DESCRIPTION OF PROPOSED PLAN CHANGE 22

Purpose of and Reasons for the Proposed Plan Change

- 4.1 Proposed Plan Change 22 involves the rezoning of part of a Council-owned Recreational Reserve at 6 - 15 Kelso Grove, Kelson from General Recreation Activity Area to General Residential Activity Area. The area of the proposed rezoning is 1.64 hectares, out of the total site area of 4.22 hectares.
- 4.2 The larger recreational reserve is known as the Kelso Recreational Reserve and is approximately 4.2 hectares in size. The reserve is designated as a neighbourhood reserve under Council's Neighbourhood Reserves Management Plan, and was registered on the title as vested in Council on 28th May 1975, pursuant to the Municipal Corporations Act 1954 as Recreation Reserve subject to the Reserves and Domains Act 1953 [now the Reserves Act 1977], and vested on DP 42342.
- 4.3 The land affected has been deemed to be surplus by the Council, after a review process concluded it had low open space/recreational value. In order to better provide for the proposed land development and use once it has been sold, the proposed plan change seeks to amend the District Plan by rezoning the site to General Residential Activity Area, the zoning that applies to other residential properties in the immediate vicinity of the Reserve under the District Plan. No other changes to the provisions of the District Plan are proposed.

5 SUBMITTERS' ISSUES

- 5.1 Proposed Plan Change 22 was notified on 24 May 2011, with submissions closing on 24 June 2011. The summary of submissions was notified on 12 July 2011, with further submissions closing on 26 July 2011.

- 5.2 A total of five original submissions were received: three submissions in opposition, one submission in support (in part), and one submission neutral in position. No further submissions were received.
- 5.3 One submitter withdrew his submission when it was clarified that the trees he was concerned about protecting were outside the area proposed to be rezoned.
- 5.4 A summary of the issues raised and the decisions sought by submitters on Proposed Plan Change 22 are as follows:

| Submitter | Position | Issues Raised | Decision Requested |
|--------------------------------|----------|--|--|
| Wayne Wootton | Oppose | <ul style="list-style-type: none"> • Inappropriate site for residential development, considering site aspect and subsoil ground condition • Effects on neighbouring privacy from residential development • Appropriate to retain the site as reserve as the costs of maintaining it are relatively low | To retain the whole reserve within the General Recreation Activity Area |
| Wendy Saunders and Gerry Dance | Oppose | <ul style="list-style-type: none"> • Effects on recreational values • Significant effects on the environment • Need to improve visibility of the park • Change in amenity and character of the reserve • Inappropriate site for residential development, taking into consideration the necessity of earthworks, level of sun/shading and other urban design considerations • Interface between residential and recreation reserve in terms of park design, access, potential reverse sensitivity effects on recreational activities (e.g. dog park users) • Retention of existing vegetation and ecological values • Support a weed control and planting programme for the | <ul style="list-style-type: none"> • Council not assume on behalf of the Kelson community that the reserve is not required for informal recreational activities, or that the plan change is generally acceptable to Kelson community • Council listen to the Kelson community and not support proposed plan change, and retain the existing reserve to provide adequate provision of open space in Kelson • Do not rezone reserve, but retain it as an informal recreation area • That the vegetation at the top of Kelso Grove is cleared to improve visibility to the reserve • Do not assume safety [of reserve] will improve with increased surveillance or that the health and safety of users [of reserve] is provided for • Further investigation of pedestrian access and needs should be undertaken, and that pedestrian needs [to access reserve] are adequately incorporated into the |

| Submitter | Position | Issues Raised | Decision Requested |
|-----------|----------|--|--|
| | | <p>reserve</p> <ul style="list-style-type: none"> • Servicing concerns • Site stability risks • Traffic effects on existing roading network • Social and environmental wellbeing | <p>design</p> <ul style="list-style-type: none"> • Traffic assessment be reviewed to incorporate approved subdivisions in Kelson and the impact on SH2/Major Drive intersection • Vegetation not cleared for housing and Council not support any vegetation removal • Council implements PAOS recommendation to have a development plan for the reserve • Ensure that \$200k is sufficient funding to provide adequate drainage for the reserve • Any track around the reserve should be constructed as an all-weather one • Lack of weed control does not prejudice any decision on the quality of the reserve, and that Council support a weed control and replanting programme • A review is conducted of the sewerage options and implications on the Vista Grove temporary pipeline • Do not accept precedent of existing development for developing the steep slopes [within the area of the plan change] • Further investigations on geology of slopes and mitigation options, including avoidance • Recognition of the importance of the reserve as the only dog exercise area in Kelson; ensure it is retained for future Kelson residents, and that [Kelson] school field is not supported as alternative dog exercise area • As a signatory of the Urban Design Protocol, Council should not allow plan change to proceed unless measures are put in place to assure good urban design will prevail above costs • That the social and environmental |

| Submitter | Position | Issues Raised | Decision Requested |
|-------------------------------------|----------|--|---|
| | | | <p>well-being of Kelson community is considered</p> <ul style="list-style-type: none"> • Consider Option 1 [status quo, no rezoning] as the favoured option and not support Option 2 [rezone part of the Kelso Grove Recreation Reserve to General Residential Activity Area] • That Council scope the viability of Option 3 [rezoned as Hill Residential Activity Area] as an alternative • That Council not support Option 4 [rezone part of the Kelso Grove Recreation Reserve to Medium Density Residential Activity Area] |
| Russell and Evelyn Stewart | Oppose | <ul style="list-style-type: none"> • Effects on recreational values • Effects on car parking at the end of Kelso Grove | <p>Withdraw Plan Change or, if it proceeds, make it subject to –</p> <ul style="list-style-type: none"> • Clarification that the funds raised from the sale of land are to be used to improve entire area of remaining reserve • Retain the remaining reserve as a recognised dog walking area • Provision for public parking at head of Kelso Grove and within the Reserve |
| Greater Wellington Regional Council | Neutral | Potential adverse environmental effects on the nationally threatened indigenous biodiversity on the site | <ul style="list-style-type: none"> • 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 • That part 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 Recreation Activity Area • That the area containing significant vegetation (shown on Map ref 27618V) should be incorporated into the Scenic Reserve or General Recreation Activity Area as opposed to being left to be covenanted/protected at the subdivision stage • The parts of lots with ecological values should be protected by |

| Submitter | Position | Issues Raised | Decision Requested |
|-----------|----------|---------------|--|
| | | | extending the Significant Natural Resource boundaries to include these areas so that there is appropriate protection of them should the land be subdivided |

5.5 Further information was presented to the hearing on 29 September 2011 by Mr Wootton and Ms Saunders in support of their submissions. Mr Wootton outlined the reasons for his opposition to the proposed plan change, expanding on the points made in his written submission. Ms Saunders, while prefacing her spoken submission with their total opposition to the whole plan change, then outlined, "in the spirit of compromise", a number of amendments and points of clarification, which are summarised as follows:

- (a) Sunlight and Slope: Doubts were expressed as to whether good quality housing would be built, given the limited sunshine experienced on the bush-clad steep slopes and the associate earthworks and engineering requirements, and requested that Lots 9 to 15 be removed from the plan change;
- (b) Security: In the 5½ years of living in the vicinity, they have never felt insecure using the reserve, and they are not convinced that housing in the area would raise its safety - interested to know why trimming the vegetation at the top of the embankment down into the reserve is 'inappropriate'; and
- (c) PAOS Recommended Development Plan: Queried why this plan should not form part of the proposed plan change.

5.6 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, except in regard to the option of rezoning all or some of the site as Hill Residential Activity Area as requested in the submission from W Saunders and G Dance, which I have considered at the end of Section 9.

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, under section 72:

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 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 section 31:

- (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 Relevant matters of national significance, listed in section 6 of the Act, require consideration. In particular, whether the proposed plan change has adequately recognised and provided for any relevant matters. In regard to Proposed Plan Change 22, the following matter may be potentially relevant:

- (c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*

6.7 Further, in relation to managing the use, development, and protection of natural and physical resources, I am required to have particular regard to any relevant matters listed under section 7 (Other Matters) of the Act. In regard to Proposed Plan Change 22, the following other matters may be potentially relevant:

- (b) *The efficient use and development of natural and physical resources:*
 - (ba) *The efficiency of the end use of energy:*
 - (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:*

6.8 Section 8 of the Act requires the principles of the Treaty of Waitangi to be taken into account. Consultation has been carried out with the local iwi authorities as part of the statutory consultation during the formation of the Plan Change. Further, the notification of this proposed plan change included its direct service to:

- The 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 Among the matters to consider under section 74(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 section 32 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.*

6.10 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.*

6.11 I note that no objectives are proposed to be included or amended under Proposed Plan Change 22, and therefore only section 32(3)(b) applies to the evaluation of this plan change.

6.12 Under section 32(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.*

- 6.13 The purpose of this report is to assist the Council in considering Proposed Plan Change 22 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 22

Purpose and Scope of Evaluation

- 7.1 In giving effect to section 32(3)(b), I have evaluated Proposed Plan Change 22 for the purpose of determining whether the plan change is the most appropriate means to achieve 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 policies are proposed; the proposed zoning would simply apply the rules of the General Residential Activity Area to the site and retain the 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. It is not within the scope of my authority to revisit this decision.
- 7.4 Accordingly, the purpose of my evaluation of Proposed Plan Change 22 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 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 purposes
 - The retention and value of existing vegetation and the contribution to ecological values of the area
 - The risks from site stability
 - Servicing
 - Traffic and roading effects

- The effects from residential development on landscape, neighbourhood character and amenity values, and
 - Shading and dampness
- 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 I could make, it is clear I could consider 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) That part or all of some of the indicative lots (as shown on the indicative subdivision plan shown in Figure 3) should be excluded from the General Residential Activity Area rezoning, and protected as Scenic Reserve, or remain zoned General Recreation Activity Area;
 - (b) That the area containing significant vegetation (shown in Map Ref 27618V [in the Ecological Assessment by Blaschke and Rutherford Environmental Consultants, included as Figure 3 on the following page]) should be incorporated into the Scenic Reserve or General Recreation Activity Area as opposed to being left to be covenanted/protected at the subdivision stage; and
 - (c) To extend the Significant Natural Resource overlay to include the parts of the site with ecological values which should be protected at the time of future subdivision.
- 7.8 I sought legal advice on whether these amendments were within the scope of the Plan Change to make. The response from DLA Phillips Fox (dated 27 September 2011, appended as Annexure 4) confirms that submission points must be made 'on' the Plan Change in that the decision sought must be within the scope and purpose of the Plan Change. The opinion advised that, as the proposed plan change is narrow in scope – i.e., rezoning of a portion of the property at 6-15 Kelso Grove – any decisions sought by submitters also needed to be narrowly focused.
- 7.9 In brief, the advice was that any decision which sought to remove areas from the proposed rezoning and to retain them in the General Recreation Activity Area is within the scope of the proposed plan change, but that any request to have another 'zoning' applied is outside the scope of the proposed plan change. Thus, any request to extend the Significant Natural Resource overlay to include any areas of ecological value within the plan change site is outside the scope of the plan change, as this would widen the focus of the plan change and its purpose. Similarly, the request to protect some areas of the site as a Scenic Reserve was also not within scope, as the relief sought is a type of method that is beyond what the Plan Change can give effect to.

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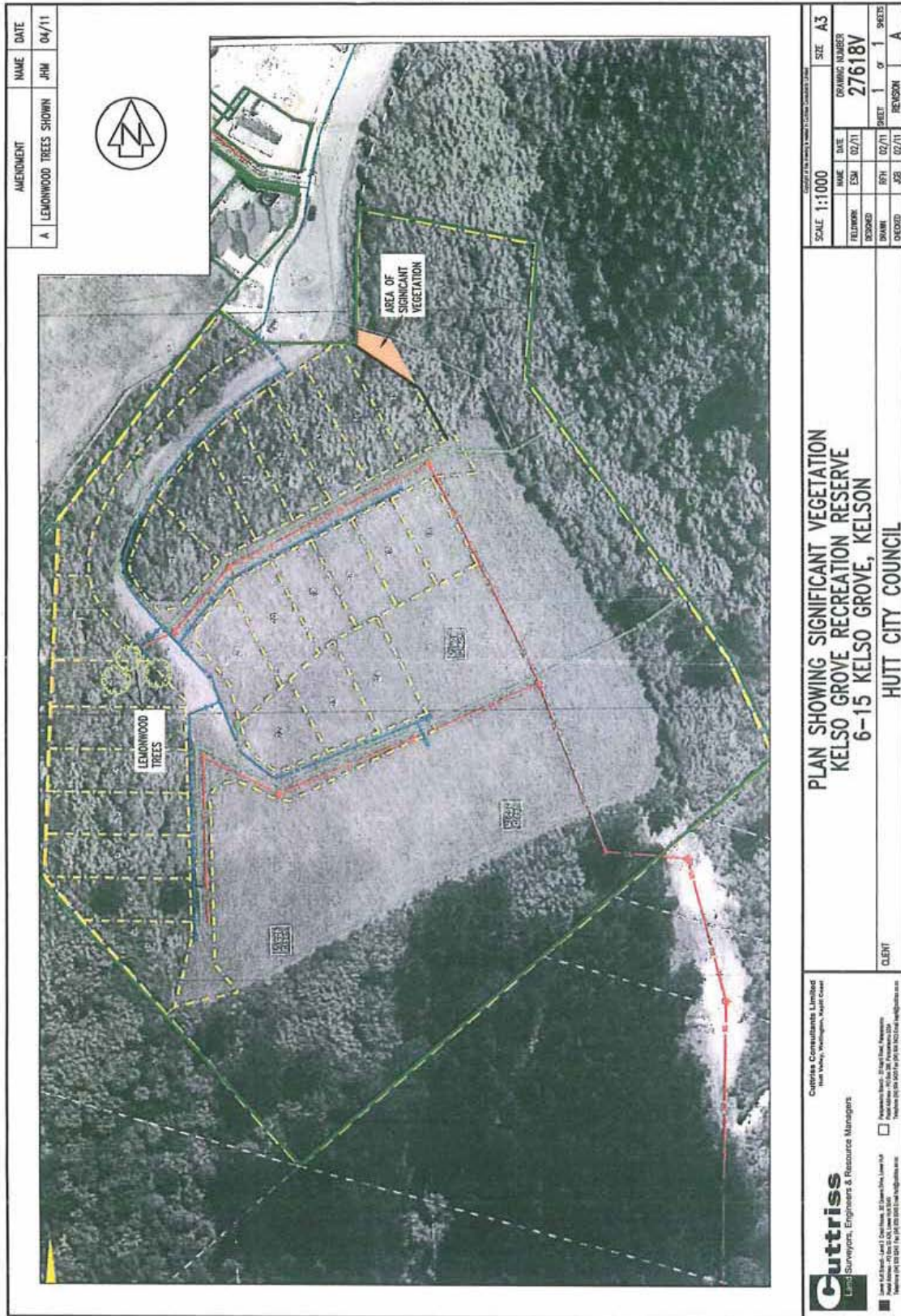


Figure 3: Map 27618V from Ecological Assessment Report

- 7.10 There were several other actions sought by submitters which were clearly outside the scope of this Plan Change to address, including:
- (a) To retain recognition of the remaining area of reserve as a dog walking area;
 - (b) To trim or clear vegetation which obscures views toward the recreation ground within the reserve;
 - (c) To develop a comprehensive plan for developing the remainder of the recreation ground as a 'village green'; and
 - (d) To undertake weed and pest control management.
- 7.11 These are not actions that come within the Council's authority under the Resource Management Act to undertake, but instead relate to its other statutorily imposed functions, particularly the Local Government Act 2002 and Reserves Act 1977.
- 7.12 Finally, in terms of scope, I could 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 by the Council.

The Value of the Site for Recreational Purposes

- 7.13 Several submitters have expressed how they value the Reserve and its proximity: for example, being able to walk to the Reserve and not need to drive. They also expressed how they value both the size of the Reserve, and that it is designated for use as a dog walking area. They acknowledged that not all of the Kelso Grove Recreation Reserve is proposed for rezoning, but still had concerns that even a reduction in the size available for recreation would undermine its current recreational values. Submitters consider that the full area of the reserve space is necessary; that to reduce the size and extent of the Reserve is inappropriate, particularly when the entire area was set aside as part of the original subdivision.
- 7.14 The value of the Reserve was outlined in person at the Hearing by one of the submitters, Wendy Saunders, who uses the reserve for dog-walking purposes, and to enjoy the amenity it provides.
- 7.15 In response, the Council's Divisional Manager Parks & Gardens, Mr Bruce Hodgins, acknowledged at the Hearing that the reserve is valued for its informal recreation use, particularly its use for dog walking; he noted that this use was recognised in the evaluation of the open space values undertaken by PAOS. In its assessment, however, PAOS evaluated the overall significance of the Kelso Grove Recreation Reserve landscape and recreational values, and its contribution to the reserve network of Hutt City, as low-medium. In summary, the reasons for this conclusion were that:
- (a) The site does not meet any Reserve Key Directions;
 - (b) The flat area of the site is undeveloped, has poor drainage and an uneven surface;
 - (c) Views onto the site are limited;
 - (d) Open space for informal recreation is provided at the neighbouring playground (which is a recreation reserve), at the school after school hours, and at a number of other sites in Kelson;

- (e) The site is relatively isolated, is not viewed from neighbouring streets or houses and is perceived by some as unsafe; and
- (f) The site is not used extensively for informal recreation³.
- 7.16 As the PAOS assessment identified, the site is relatively isolated, being at the bottom of a driveway, out of view from nearby roads and houses. The recreation ground has poor drainage, and to date the site has never been developed and/or used for formal recreation.
- 7.17 PAOS did, however, conclude that retention of the remaining flat area for informal recreation and dog exercise would be beneficial, and that it could be developed as a 'village green' associated with any development of the land to be rezoned. PAOS considered that the reserve would be improved by drainage works to ensure the space could be used all year for informal recreation and, potentially, for some junior sports activities⁴.
- 7.18 The PAOS report recommended that a comprehensive development plan be produced in order to design the 'village green' so that all informal activities are provided for. The submission from W Saunders and G Dance sought to ensure the Council implements this recommendation, to enable better direction on how any allocated money is spent on the remaining reserve⁵. Mr Hodgins explained at the Hearing that the Council has \$200,000 allocated in its 2012-13 budget to prepare a development plan for the remainder of the grass reserve (the 'village green') and the bush area.
- 7.19 The future use and potential upgrading of the remaining part of the Reserve is not a matter that is appropriately addressed through the District Plan and accordingly is outside the scope of the proposed plan change. In particular, I do not consider that the inclusion of a development plan for the 'village green' into the proposed plan change would be appropriate, as this is a matter for the Council's Parks and Garden Division to address through its reserves management function, and would only occur after the plan change is given effect. I would observe, however, that the rezoning of the 1.64ha to the north and west of the recreation ground would not frustrate the later preparation of development plan for the 'village green' area.
- 7.20 In conclusion, while I fully acknowledge that the current reserve is of value to the immediate community as a place for informal recreation and dog walking, I am satisfied that the remaining area of the ground will be able to accommodate such use, and that its proposed upgrading would enhance its function and capability as a community recreational resource.
- 7.21 Turning to the issue of the site's isolation, the PAOS report stated that future residential development in the locality would provide natural surveillance over and along the balance area of the Recreation Reserve, including the remaining area of recreation ground, which would therefore improve the public safety of the space. However, in their submission, W Saunders and G Dance did not consider that the visibility of the site from future dwellings overlooking the 'village green' would be a benefit of the Plan Change, stating "that there is no guarantee for users of the reserve

3 PAOS, January 2011, Assessment of Potential Effects of Proposed Plan Change, paragraph 2.3, page 12

4 PAOS, January 2011, Assessment of Potential Effects of Proposed Plan Change, Section 1.3 Recommendations, page 9

5 W Saunders and G Dance, submission point 2.16

- to feel more secure, and the opposite may actually occur”⁶. They suggested that visibility could be improved if the vegetation was trimmed or cleared from the top of the site, at the head of Kelso Grove.
- 7.22 However, in response, Mr Hodgins advised the Hearing that the Council would not trim back vegetation in the reserve for visual reasons, but rather pest and weed control would be their priority. Dr Blaschke advised that, from an ecological perspective, he would also not support the trimming of vegetation along the shoulder of Kelso Grove.
- 7.23 From my observation on site, I would consider that the benefit of any increased visibility from vegetation trimming in terms of surveillance would be limited, given the distance between the recreation ground and the nearest residences.
- 7.24 Therefore, on this aspect, I am satisfied that the residential development of the site would significantly increase the degree of passive surveillance of the reserve.
- 7.25 In regard to the presence of housing adjacent to the remainder of the Reserve, it is acknowledged that the proximity of residences will significantly alter the sense of isolation and solitude that is now obtained by users of the reserve. While, to some degree, this change would be countered by the greater sense of security obtained by the proximity of other people in the vicinity, the amenity currently provided by the reserve’s relative seclusion would be largely eliminated. However, as indicated by the common reference to the Reserve as the Kelson Sportsground, its purpose was as an active recreation area, rather than as a scenic reserve or gardens. Further, there are other reserves and parks in the area that provide a sense of solitude if required.
- 7.26 Nevertheless, the relationship of any future residential development with the amenity of the recreation ground will be an important matter to address through the subdivision and development consenting process. For example, it will be important that the ‘village green’ is not bound by high fencing. As a restricted discretionary activity, the matters of discretion for subdivision under Rule 11.2.3.1 include “the effects on the amenity values of neighbouring properties, including dust and noise”. The relationship of any residential development on the recreation reserve would need to be taken into account, and, if necessary, conditions imposed.
- 7.27 In overall terms, I am satisfied that there is no evidence to conclude that either:
- (a) The recreational values of the site are such that a residential zoning would be inappropriate; or
 - (b) The Plan Change needs to be amended to ensure the recreation ground is of a sufficient size to provide for the local recreational needs.
- 7.28 Consequently, I find that the actual and potential adverse effects on local recreation values from the proposed rezoning are not significant. Indeed, I conclude that the proposed is likely to yield several benefits in that:
- (a) The balance area of the recreation ground would be upgraded to improve its value as a recreational resource to the local community; and
 - (b) The presence of residential properties next to the recreation ground would reduce its isolation and provide a greater level of natural surveillance.

6 W Saunders, Hearing Evidence

The Ecological Values of the Site

- 7.29 The site (being the land subject of the proposed rezoning) is adjacent to an area identified in the District Plan as *Significant Natural Resource Area, Kelson Bush* (SNR23). 'Significant Natural, Cultural and Archaeological Resources' is a method used in the City of Lower Hutt District Plan to identify areas that have significant natural, cultural or archaeological values; however, I understand that the rules to specifically manage vegetation clearance in these areas have long lapsed, and thus the control of any effects of activities on SNRs is now largely achieved through other resource consent processes (for example, for subdivision and development).
- 7.30 It is difficult at the scale of the map showing the SNRs in the City (Map Appendix 1A) to determine the exact location of SNR23 in relation to the land affected by the proposed plan change. However, although the eastern and southern edges of the Reserve may be within the SNR, there was agreement that the site of the proposed rezoning is not within SNR23.
- 7.31 At a broader scale, the site and wider area is contained within the *Kelson Bush/Woodroyd Bush Key Native Ecosystem* (KNE). KNEs are part of a Greater Wellington Regional Council programme to identify areas that are regarded as regionally exceptional in terms of their ecological value and/or biodiversity. Dr Blaschke explains in his evidence that KNEs do not have specific statutory protection in the City of Lower Hutt District Plan, unless they overlap with areas identified as SNRs.
- 7.32 The ecological values of the site, as identified by the Council ecological adviser, Dr Blaschke, can be summarised as follows (lot numbers refer to those shown on the indicative development plan for the site prepared by Tonkin & Taylor, shown in Figure 3 on page 18):
- (a) All the forest on the site has regenerated from its former forest cover. It has been heavily modified and degraded by weeds and other disturbances;
 - (b) The vegetation types are relatively common to the Western Hutt Hills;
 - (c) The tall mamaku and advanced mahoe-mamaku regeneration that is occurring in parts of the site, particularly near the northeast corner of the site, are distinctive and have moderate ecological significance;
 - (d) Adding to the significance of the mahoe-mamaku regeneration is the single hinau tree on Lot 15, and of lesser significance the tall tarata trees at the base of Lots 1 and 2.
 - (e) Weeds are abundant in the vegetation of the bush areas, including flowering cherry, wattle, broom, banana passionfruit, and blackberry, particularly in the first 10m of the bush area.
 - (f) The site has diversity of habitat available, due to the site conditions comprising open space, damp areas and bush edges as well as being close to mature forest. A range of native and introduced bird species are likely to use (feed, roost in, or fly over) the site and the Western Hutt hills in general. Kereru may use the site, but their breeding habitat is unlikely to be within the site.

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(g) The value of the vegetation within the site is noted for its value in buffering and 'arguably' enhancing the integrity of the SNR23 and KNE areas, although the site is not part of the core.

7.33 The submission from W Saunders and G Dance considered that the regenerating forest on the site is significant and provides an ecological corridor for a variety of species, including Kereru. The submitters sought to have the vegetation protected from clearance or to exclude Lots 9-15 from the rezoning.

7.34 The submission from the Greater Wellington Regional Council (GWRC) sought to exclude all of Lots 1, 2, 3, 14 and 15, and part of Lots 4, 5 and 6 from the rezoning (and consequential future development) areas of regenerating indigenous vegetation. These areas were shown in a plan that was included in GWRC's submission (and presented in Figure 4 below), for which GWRC sought to retain the current General Recreation Activity Area zoning of the sites or to include them in the adjoining scenic reserve and/or SNR.

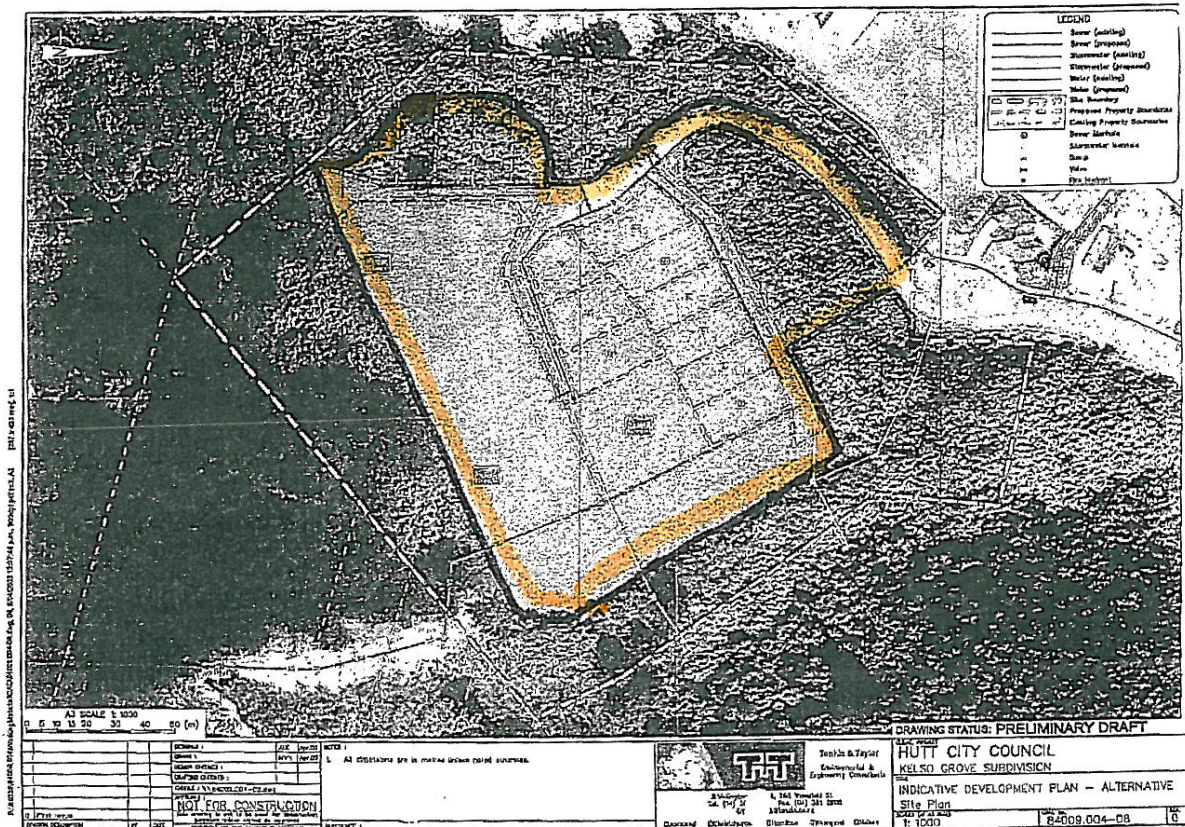


Figure 4: Plan from Greater Wellington Regional Council Submission

7.35 No one from the GWRC spoke to the Council's submission at the hearing. However, the submission from the GWRC reiterated the values of the KNE programme and the specific ecological value of the land subject to the proposed rezoning. The submission also provided information on the regional policy framework with respect to biodiversity and ecological values. In particular, GWRC considers the vegetation on the site is significant because of the applicability of the 'representativeness' criterion of Policy 22 of the Proposed Regional Policy Statement:

Policy 22: Identifying indigenous ecosystems and habitats with significant indigenous biodiversity values – district and regional plans

District and regional plans shall identify indigenous ecosystems and habitats with significant indigenous biodiversity values that meet one or more of the following criteria:

(a) *Representativeness: high representativeness values are given to particular ecosystems and habitats that were once typical and commonplace in a district or in the region, and:*

(i) *are no longer commonplace (less than about 30% remaining); or*

(ii) *are poorly represented in existing protected areas (less than about 20% legally protected).*

- 7.36 In response, Dr Blaschke was of the opinion that only one part of the vegetation within the site has significant values that are comparable to those for the identified KNE: the northeastern part of the site (i.e., Lot 15), even though this area does not contain the vegetation species noted in the values statement for the KNE (kohekohe, tawa, karaka stands, with large rimu and northern rata). He also commented that the only real value of the other indigenous vegetation on the site is as a buffer, but notes it is in poor condition. In his opinion, the removal of this vegetation would not have a significant effect on the integrity of the KNE.
- 7.37 In sum, Dr Blaschke confirmed his earlier view that he did not consider that the values of the regenerating vegetation were such that warranted their exclusion from the proposed rezoning, with the exception of Lot 15. However, Dr Blaschke accepted that the vegetation on Lot 15 was more mature and consequently of greater value and significance, particularly given its contiguity with the more mature regenerating indigenous vegetation to the east. He therefore recommended that Lot 15 be excluded from the proposed rezoning and be retained in the *General Recreational Activity Area*. This was supported in the recommendation of the Council's Reporting Policy Analyst.
- 7.38 In considering this matter, I would first note, as discussed above, that aspects of the decision sought by the Greater Wellington Regional Council fall outside the scope of the proposed plan change, and therefore cannot be considered – namely, the option of incorporating these areas into the adjoining scenic reserve or extending the Significant Natural Resource boundaries to incorporate them. However, the option of retaining their current General Recreation Activity Area zoning is within the scope of the proposed plan change.
- 7.39 I would also confirm the opinion of Dr Blaschke and the Council's Reporting Policy Analyst that pest control and weed management are not matters that can be pursued through a Plan Change.
- 7.40 On the basis of the evidence on ecological values, I agree with the Council's Reporting Policy Analyst's recommendation to remove Lot 15 from the area of land proposed to be rezoned General Residential Activity Area. In this way, the vegetation within this lot would remain in the General Recreation Activity Area and continue to form part of the Reserve.
- 7.41 Turning to the remainder of the site, while I accept that the regenerating indigenous vegetation contributes to the habitat of the area, I am not convinced that the vegetation is of sufficient value to warrant these parts of the site being excluded from the rezoning. As Dr Blaschke noted, the vegetation does not contain the species described

in the KNE, and contains an abundant amount of weeds. He was satisfied that the subdivision and development consent process would address the effects on the other area of regenerating indigenous vegetation, as was the Council's Reporting Policy Analyst.

7.42 In this respect, I note that, in the *General Residential Activity Area*, the matters of control for a proposed subdivision as a controlled activity include:

(f) *protection of significant sites, including natural, cultural and archaeological*

7.43 If earthworks are proposed as part of a subdivision and development that exceed 50m³ in volume and/or 1.2m in height of cut, consent as a restricted discretionary activity would be required under Rule 11.2.3. Matters to which the Council has restricted its discretion include amenity, natural features and topography, natural hazards, construction effects and others. In addition, land use rule 4A 2.3 requires restricted discretionary consent for the removal of vegetation in excess of 500m² or 35% of the site, whichever the lesser.

7.44 There will, therefore, be an opportunity to assess the extent of earthworks and vegetation removal and the effect on amenity and ecological values as part of the subdivision and development consenting process. That assessment would take into account the information relating to the Plan Change, and a variety of measures that could potentially be applied to avoid or mitigate the effects on the regenerating indigenous vegetation if it is determined necessary.

7.45 Accordingly, I am satisfied that, while some of the vegetation on the site will likely need to be removed to provide for the future development of the site, the effects of such loss will be minor, and the subdivision and development consenting process will be able to address the effects of such development on ecological values.

Site Stability Risks

7.46 The neighbour to the southeast of the Reserve, Mr Wootton, raised concern about the soil condition of the entire site, stating that it was a former dumping site for spoil from the original Kelson subdivision. Mr Wootton contended that the proposed rezoning of the site to facilitate residential development is inappropriate, and therefore it should remain as General Recreational Activity Area.

7.47 W Saunders and G Dance also raised a concern about the geotechnical assessment of the northern and western slopes, and sought that further investigation be undertaken to provide greater certainty about stability issues for future development.

7.48 The geotechnical assessment undertaken by Tonkin & Taylor as part of the preparation of the proposed Plan Change identified four types of ground condition relating to the site, and that different levels of remediation would be required before the land could be used for residential development. The predominant influence on ground conditions is the depth of unconsolidated fill and the amount of unevenly decomposed organic material. The report also describes the type and indicative costs of ground condition remediation that would be necessary for residential development: these costs range from \$4500 to \$47,000 per lot. The poorest ground conditions for development (and thus would incur the greatest cost of remediation) are generally on the outer edges of the fill that forms the recreation ground and are not within the area proposed for rezoning.

- 7.49 Council officers advised that the geotechnical investigation undertaken for the plan change is sufficient for the purposes of the proposed change, but that a more detailed investigation would be required as part of the subdivision and development consent process. In this regard, I note that the General Residential Activity Area subdivision provisions include assessment matter 11.2.2.3 (viii) relating to earthworks and site stability.
- 7.50 Section 106 of the Act also requires decision makers to be aware of any stability risks, for any subdivision applications, and whether the subsequent use of the land could exacerbate the risks. Section 106 requires the Council to consider these factors in granting, subject to conditions, or declining an application.
- 7.51 It is quite likely the future site development of sites on the northern and western slopes will require land use consents for retaining walls and earthworks. The Tonkin & Taylor geotechnical report states that future lots on the northern and western slopes would require 3m high and 15m long retaining walls on the upslope side of each building platform. A more detailed, lot specific, geotechnical report as part of a future subdivision may find alternative ways in which to avoid or mitigate potential site stability risks. Nonetheless, a balance will need to be struck between the anticipated/expected residential amenity and character and meeting the necessary engineering requirements for constructing the building platforms.
- 7.52 Again this is a matter that can be addressed through the subdivision and development consenting process, and I am satisfied that there is no evidence to indicate that the geotechnical conditions of the site are such as to warrant either the withdrawal of the proposed plan change or the imposition of any special conditions or requirements through the proposed plan change.

Servicing

- 7.53 The proposed plan change includes advice from Cuttriss Consultants on the availability of service capacity associated with the potential residential development of the site. I am advised that wastewater, stormwater, water supply, power and telecommunication services can be provided to service the additional demand that would be generated by the residential development of the site.
- 7.54 I note that the submission from W Saunders and G Dance sought a review of sewerage capacity, as they have concerns about the impact of additional demand on the "temporary" sewer pipeline across the Vista Grove landslide. However, Council officers advised that the existing pipeline across the Vista Grove landslip is capable of meeting the estimated demand that would be generated by the residential development of the site.
- 7.55 I accept the evidence and information from Council and Cuttriss Consultants and consider the servicing infrastructure would be sufficient, subject to any necessary upgrades and other works that may be necessary to provide for future residential development at the density set by the General Residential Activity Area zone.

Traffic and Roading Effects

- 7.56 The Council engaged Traffic Design Group (TDG) Limited to undertake an assessment of the traffic effects that would arise from any consequential residential development of the site in accordance with the proposed rezoning. The assessment was based on the indicative development design for the site prepared by Tonkin & Taylor, which suggested that a maximum of 24 lots could be yielded from the site under the 400m² minimum lot area requirements for subdivision within the General Residential Activity Area.
- 7.57 TDG concluded that:
- ...the transportation related effects of the anticipated level of residential development will be no more than minor with the forecast levels of traffic being readily accommodated by the surrounding road network⁷.*
- 7.58 The report acknowledged that the current access road would need to be upgraded to road standards.
- 7.59 The submission from W Saunders and G Dance queried the transportation assessment, and sought a review of the analysis to ensure that other recently approved subdivisions in Kelson (particularly the Waipounamu Drive subdivision) and the traffic generated from these is factored into the traffic assessment. They also sought a review of the pedestrian access needs relating to the Reserve. Russell and Evelyn Stewart sought to have the provision of parking in Kelso Grove and within the reserve investigated, in the event the plan change proceeds.
- 7.60 Expert evidence on transportation issues was provided by Harriet Fraser, an experienced Transportation Planner with TDG. Ms Fraser provided an updated assessment, taking into account recent developments and submitters' concerns. Her key conclusions were as follows:
- (a) There would be spare capacity at the Major Drive/Kelso Grove intersection, and the anticipated traffic generated as a result of the rezoning could be readily accommodated;
 - (b) One 1.5m wide footpath would be required alongside the upgraded access road to the site to meet the anticipated pedestrian needs of the residential development and the use of the reserve;
 - (c) Major Drive would have sufficient spare capacity to readily accommodate the potential additional traffic associated with this plan change and the forecast future traffic flows on Major Drive, including recently approved subdivisions in Kelson (including the planned subdivision at 64 Waipounamu Drive);
 - (d) In regard to the intersection of Major Drive with State Highway 2, the additional level of traffic associated with the plan change was not expected to have any noticeable effect whatsoever on the performance of the intersection; and
 - (e) The residential development associated with the plan change was not expected to alter the convenience and safety of Kelso Grove as a drop-off and pick-up location for parents of children at Kelson School.

7 Traffic Design Group Limited, 10 February 2011, Transportation Assessment, Conclusions, page 5

7.61 Ms Fraser concluded that, with appropriate design –

...this site at the end of Kelso Grove represents a good location for residential zoning. My assessment has found that the transportation related effects of the anticipated level of residential development will be no more than minor with the forecast levels of traffic being readily accommodated by the surrounding road network. The provisions of the District Plan provide that any more intensive land uses will be separately assessed if and when a consent application is made for them. It can therefore be concluded that the effects relating to transportation are appropriately addressed by the proposed plan change and can therefore be supported.

7.62 Based on the expert advice, I conclude that the rezoning will not be detrimental to the safety and efficiency of the local transport network traffic, and that all matters concerning access and traffic safety can be satisfactorily addressed through the subdivision and development consenting process.

Landscape, Neighbourhood Character and Amenity Values

7.63 Several submitters expressed concern regarding the potential adverse effects of the residential development of the site on neighbourhood character and the amenity values of the area. Ms Saunders expressed concern about the quality of the housing design that might eventuate, in that she considers it would be difficult to apply urban design principles to development on the site, given the amount of shading and the degree of earthworks required. Mr Wootton expressed concerns that “the nature of the site being shady, poorly located, will result in low section prices” which will result “in low spec homes”.

7.64 The Council’s Reporting Policy Analyst, Ms Helme, considered that the effects of the proposed rezoning on the character, amenity and landscape values can be appropriately addressed by the General Residential Activity Area provisions, in terms of managing effects through the subdivision and development consenting process and through compliance with the permitted activity standards of the General Residential Activity Area. Ms Helme acknowledged that the rezoning of the site would affect the amenity values and existing character of the site and the surrounding area. However, she contended that the subdivision and earthwork provisions of the General Residential Activity Area would enable any effects on visual amenity, natural landform and features to be appropriately considered.

7.65 As described above, the indicative subdivision plan for the site is based on the General Residential Activity Area minimum lot size of 400m². As Ms Helme explained, 15 of the 24 lots shown on the indicative subdivision plan are located within areas of regenerating bush, and, consequentially, the creation of residential lots in these areas of the site is likely to involve vegetation removal, earthworks and the construction of retaining walls in order to construct houses. I agree with her supposition, and consider that such changes are quite likely as a result of the proposed plan change.

7.66 Ms Helme observed that the existing density of housing on Kelso Grove is generally between 500m² and 600m² and that lots typically accommodate one detached dwelling. She concludes that the provisions of the General Residential Activity Area would enable a density of development that is consistent with the existing residential density in the immediate area and the wider area of Kelson.

- 7.67 From my own observations, I found the existing residential area of Kelso Grove to contain medium-sized residential dwellings, many on relatively small lots, and agree the extension of the General Residential Activity Area density will not be out of character with the wider locality.
- 7.68 I accept that the amenity values and the character of the vicinity would alter as a result of the residential development of the site, consequential on the plan change coming into effect. However, it has to be emphasised that the zoning of the land will need to enable the use and development of the land in private ownership in a manner that is appropriate to its context, and I concur with the Council's Reporting Policy Analyst that the General Residential Activity Area would provide for a form of residential development that is generally consistent with the existing pattern of housing in the suburb, particularly the more recent form of development. However, I would emphasise that, even if a different form of housing were developed on the land, the site is sufficiently discrete from the rest of the neighbourhood to have limited effect on its character.

Shading and Dampness

- 7.69 Another concern of some submitters (Saunders/Dance, Wootton) was that the site was too shady to provide a good quality of amenity for future residences, particularly those that may be built into the south-facing embankments along the northern edge of the recreation ground. There was further concern expressed that the shading the site experiences, especially in winter, would result in a poorer quality of housing development, which would, in turn, affect the character and amenity values of the neighbourhood.
- 7.70 One submitter (Wootton) also expressed concern that the site was too damp to be suitable for residential development. Another (Saunders) sought the application of good urban design principles to ensure a high quality of living environment for future residents.
- 7.71 In response, the Council's Reporting Policy Analyst acknowledged that it is important that houses receive enough sunshine to reduce the need for energy consumption and lighting, reducing dampness and generally making dwellings healthier and more pleasant to live in. However, Ms Helme was satisfied that the site would receive sufficient sunlight, and that the amount of shading experienced by the sloping sections would not be unreasonable. She stated that the site is similar to many that have been developed for housing in Kelson, both in terms of orientation and topography, and considered that it is likely that future housing would be positioned to take best advantage of sunlight access.
- 7.72 In considering this matter, it is clear that the site receives a greater level of shading than many properties in the immediate vicinity, but I am not convinced that this would necessarily result in a poorer design or quality of housing, or that the future housing would not receive an adequate amount of sunlight. I am aware, for instance, that there are many houses in Kelson located on the southeast facing slopes of the escarpment that descends down to the valley floor. The issue of shading may influence the final design and layout of any future subdivision and development, noting that the indicative scheme was simply based on the maximum possible number of lots and that quite a different configuration and density of housing is possible.

7.73 In sum, I am satisfied that the shading of the site is not a sufficient enough shortcoming as to consider a residential zoning of the site to be inappropriate, and that any drainage problems could be satisfactorily addressed through the subdivision and development consenting process and ground remediation.

Conclusions in Regard to Environmental Effects

7.74 In sum, I have concluded that:

- (a) The site is located on the edge of an existing residential area, and its rezoning as General Residential Activity Area would therefore be compatible and consistent with its context;
- (b) The contribution that the site in general makes to the area's landscape, open space, recreational and ecological values is only minor, 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 area of regenerating indigenous vegetation within indicative Lot 15 is of some significance in terms of its ecological values and should be excluded from the rezoning so that it is retained within the reserve;
- (d) The recreational values of the site for the immediate neighbourhood will be maintained through the retention and upgrading of the remaining area of open space;
- (e) The residential development of the site could be serviced by the existing utilities and roading infrastructure, with the form of servicing addressed at the time of its subdivision and development; and
- (f) 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 22 is consistent with the purpose of the 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 the Proposed Plan Change would promote the more efficient use of a relatively finite resource, being a serviceable area of underutilised urban land, located within the existing urban environment, which could utilise 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 found elsewhere in the suburb, and the quality of the residential environment within which the site is located.

8.6 With respect to section 8, 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 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 the existing infrastructure, including sewerage, water supply and roads.

Consistency with Adjacent 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 relatively small pocket of 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, therefore, 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 has been criticised by a number of submitters, the expert evidence presented to the hearing

confirmed previous assessments that the land has low to moderate values in terms of the criteria used to assess the potential of Council's landholdings as reserves. This included the expert assessment of Dr Blaschke, who considered the ecological values of the regenerating indigenous vegetation on the site was of low to moderate value, with the exception of the area of more mature indigenous vegetation within indicative Lot 15, which he recommended excluding from the rezoning.

- 8.15 In conclusion, provided indicative Lot 15 is excluded from the rezoning, I am satisfied that the Proposed Plan Change is consistent with the relevant Council strategies.

9 FURTHER SECTION 32 EVALUATION

- 9.1 As outlined in paragraphs 6.9-6.12 of this report, the Council must undertake a further section 32 evaluation before it can approve a plan change, over and beyond the section 32 evaluation that was undertaken prior to the notification of the proposed plan change. This further evaluation needs to 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 29 September 2011.
- 9.2 Accordingly, before the Council approves Proposed Plan Change 22, 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 22, 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 section 32 evaluation that was undertaken in preparing the Proposed Plan, as well as the additional expert assessments provided to the hearing from Dr Blaschke, Ms Fraser and Mr Hodgins, 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 Kelson area generally comes within the General Residential Activity Area, including the corresponding character and amenity values that apply to this area. In determining the appropriateness of the Proposed Plan Change, 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, other than the regenerating indigenous vegetation contained within the northeastern corner (indicative Lot 15), the land generally 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.
- 9.7 In regard to the third factor, it should 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 will be able to be taken into account in assessing the effects of any proposed development and imposing appropriate conditions of consent to avoid, remedy or mitigate any adverse effects on the environment.
- 9.8 Taking these factors into account, I find the Proposed Plan Change to be the most appropriate option for achieving these objectives, for the following reasons:
- (a) The zoning would be consistent with that of the adjacent residential 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 neighbourhood;
 - (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 adjacent residential land;
 - (c) The 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; and

- (d) While all the land could be retained as General Recreation, it has not been demonstrated as being needed in its entirety for such purposes, given the proposed retention and upgrading of the remaining area of open space as well as the proximity of several existing open space and recreation facilities nearby.

Other Matters: Alternative Zoning

- 9.9 The submission from W Saunders and G Dance requested that the Council scope the option of rezoning part of the site to Hill Residential Activity Area. One of the key differences between this zoning and the General Residential Activity Area is that the Hill Residential Activity Area has a minimum lot/site area of 1000m² (as opposed to 400m²), to recognise the steeper topography and often bush-clad City's hill suburbs:

There are several residential areas on the hillsides of the City, characterised by steep slopes, difficult access, low density residential development, extensive areas of vegetation and native bush. The effects of activities in such areas must be managed to ensure the character and amenity values are maintained and enhanced. [4D 1.1.1, Issue]

The minimum net site area has been determined to encourage low density residential development on the hillside areas of the City. This in turn will maintain and enhance the amenity values, recognise the difficulties in site development and servicing, and protect large areas of established and regenerating native vegetation [4D 1.2.2, Building Height, Scale, Intensity and Location]

- 9.10 It is noted that the nearest area of Hill Residential Activity Area zoning in the vicinity is in the Gurney Road neighbourhood.
- 9.11 The option of applying the Hill Residential Activity Area to the site was evaluated by the Council's Reporting Policy Analyst, Ms Helme, first in undertaking the section 32 evaluation during the preparation of this Plan Change, and then in response to the submitters' request as part of the section 42A report. She also addressed this matter specifically during the hearing. Ms Helme acknowledged that this option had some benefits, in that it would yield a lower density of development, placing less pressure on existing infrastructure and with a larger proportion of the site remaining in vegetation. However, she concluded that the benefits of this option were low, relative to the costs, as the infrastructure has capacity to accommodate a greater level of development, and the ecological effects could be addressed at the time of subdivision. She also considered the option would be less efficient in that fewer residential lots could be developed, reducing the revenue to the Council and resulting in less funding being available for improvements to the remainder of the reserve.
- 9.12 I have carefully considered the option of rezoning all or some of the site as Hill Residential Activity Area as parts of the site could be deemed as meeting the characteristics of the Hill Residential Activity Area in terms of containing steep hillsides covered in regenerating indigenous vegetation. In weighing up the relative costs and benefits of the two zoning options, I would concur with the evaluation and conclusions of the Council's Reporting Policy Analyst.
- 9.13 Furthermore, I would emphasise that the Hill Residential Activity Area is intended to cover broader areas of the City where the prevailing character and associated amenity values are as 'bushy' hillside neighbourhoods; the Hill Residential Activity Area zoning is therefore seeking to protect the character and amenity values of such neighbourhoods. In my opinion, given that the area involved is relatively small

(1.64ha), that approximately half of the site is flat grassy land, and that the adjacent residential neighbourhood is within the General Residential Activity Area, it would be inappropriate to 'spot zone' this site as Hill Residential Activity Area.

9.14 Accordingly, I find that the General Residential Activity Area is the most appropriate zoning for the site, in respect of giving effect to the objectives of the District Plan.

Overall Evaluation of the Appropriateness of Proposed Plan Change

9.15 I find that the General Residential Activity Area provides the most appropriate management framework for the site as shown in the Proposed Plan Change, 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 suitable thresholds and conditions for development that would achieve appropriate environmental outcomes for the site and its vicinity.
- (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:
 - Ecological effects
 - The maintenance of local amenity values
 - Existing natural features and topography, and
 - Site stability.

10 CONCLUSION AND RECOMMENDATIONS

Conclusion

10.1 Proposed Plan Change 22 seeks to zone an approximately 1.64ha area of Council-owned land, at 5-16 Kelso Grove, Kelson, 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.

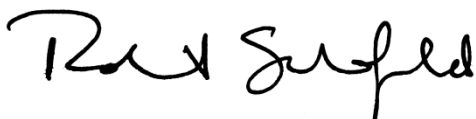
10.2 Based on my assessment of all pertinent matters, including issues raised by submitters and the evidence presented at the hearing on 29 September 2011, it is my conclusion that the provisions of Proposed Plan Change 22 would create an appropriate framework to promote the sustainable management of the subject site in accordance with the purpose and principles of the Resource Management Act, in that:

- (a) It would provide for the more efficient development and use of underutilised serviceable urban land, thereby contributing to consolidation of the City's urban form;
- (b) It would promote the social and economic wellbeing of the community by providing for future residential development in the area, the residents of which will contribute to the local economy and the social fabric of the area;
- (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 and upgrading of the remaining area of recreation ground; and
- (e) The Proposed Plan Change 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 22 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, subject to the exclusion of indicative Lot 15 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

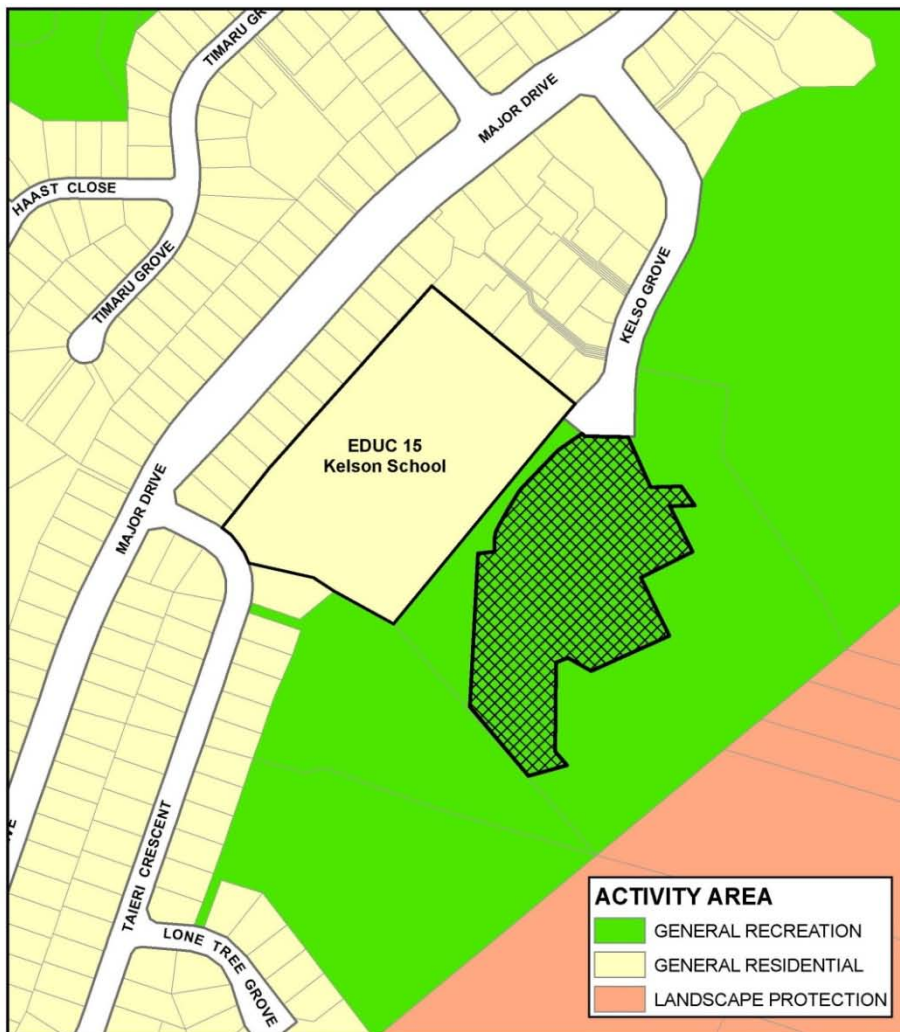
INDEPENDENT HEARING COMMISSIONER

Date: 15 November 2011

11 ANNEXURE 1 - PROPOSED PLAN CHANGE 22 AS RECOMMENDED FOR APPROVAL

For the reasons outlined in this report, it is recommended that Proposed Plan Change 22 as outlined below be approved for incorporation into the operative City of Lower Hutt District Plan:

Planning Map E2 within the District Plan shall be amended by changing the zoning of the subject site to General Residential Activity Area as shown below:



Proposed Plan Change 22
 6-15 Kelso Grove, Kelson (Pt Lot 527 DP 42342)

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

Planning Map E2



12 ANNEXURE 2 - RECOMMENDED DECISIONS ON SUBMISSIONS

| Submitter | Position | Decision Requested | Recommended Decision | Reasons |
|--------------------------------|----------|--|----------------------|--|
| Wayne Wootton | Oppose | To retain the whole reserve within the General Recreation Activity Area | Reject | <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, provided the northeastern corner of the site is excluded from the rezoning, and any effects would be largely mitigated by the presence of other existing reserves in the vicinity and the retention and upgrading of the remaining area reserve, in conjunction with other reserves and recreational areas in the neighbourhood • The site can be adequately serviced by the existing infrastructure and roading network with no adverse effects on safety or capacity • The site receives a reasonable enough level of |
| Wendy Saunders and Gerry Dance | Oppose | <ul style="list-style-type: none"> • Council not assume on behalf of the Kelson community that the reserve is not required for informal recreational activities, or that the plan change is generally acceptable to Kelson community • Council listen to the Kelson community and not support proposed plan change, and retain the existing reserve to provide adequate provision of open space in Kelson • Do not rezone reserve, but retain it as an informal recreation area • That the vegetation at the top of Kelso Grove is cleared to improve visibility to the reserve • Do not assume safety [of reserve] will improve with increased surveillance or that the health and safety of users [of reserve] is provided for • Further investigation of pedestrian access and needs should be undertaken, and that pedestrian needs [to access reserve] are adequately incorporated into the design • Traffic assessment be reviewed to incorporate approved subdivisions in Kelson and the | Reject | |

| Submitter | Position | Decision Requested | Recommended Decision | Reasons |
|-----------|----------|---|----------------------|---|
| | | <p>impact on SH2/Major Drive intersection</p> <ul style="list-style-type: none"> • Vegetation not cleared for housing and Council not support any vegetation removal • Council implements PAOS recommendation to have a development plan for the reserve • Ensure that \$200k is sufficient funding to provide adequate drainage for the reserve • Any track around the reserve should be constructed as an all-weather one • Lack of weed control does not prejudice any decision on the quality of the reserve, and that Council support a weed control and replanting programme • A review is conducted of the sewerage options and implications on the Vista Grove temporary pipeline • Do not accept precedent of existing development for developing the steep slopes [within the area of the plan change] • Further investigations on geology of slopes and mitigation options, including avoidance • Recognition of the importance of the reserve as the only dog exercise area in Kelson; ensure it is retained for future Kelson residents, and that [Kelson] school field is not supported as alternative dog exercise area • As a signatory of the Urban Design Protocol, Council should not allow plan change to proceed unless measures are put in place to | | <p>sunlight to provide for an acceptable quality of residential environment for future residents</p> <ul style="list-style-type: none"> • Many of the matters sought by submitters are not appropriate to incorporate or address through this Plan Change, but are matters which the Council can address under its other statutory functions, particularly the Reserves Act 1977 and the Local Government Act 2002 • 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 • 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. |

Proposed Plan Change 22: 6-15 Kelso Grove, Kelson, Rezoning of part of the Site to General Residential Activity Area
 REPORT BY INDEPENDENT COMMISSIONER TO HUTT CITY COUNCIL

| Submitter | Position | Decision Requested | Recommended Decision | Reasons |
|-----------------------------------|---------------|---|---|---------|
| | | <p>assure good urban design will prevail above costs</p> <ul style="list-style-type: none"> • That the social and environmental well-being of Kelson community is considered • Consider Option 1 [status quo, no rezoning] as the favoured option and not support Option 2 [rezone part of the Kelso Grove Recreation Reserve to General Residential Activity Area] • That Council scope the viability of Option 3 [rezoned as Hill Residential Activity Area] as an alternative • That Council not support Option 4 [rezone part of the Kelso Grove Recreation Reserve to Medium Density Residential Activity Area] <p>At the hearing, the submitters reiterated their request the plan change not proceed, but sought that, if it did, [indicative] Lots 9 to 15 be excluded from the rezoning.</p> | | |
| <p>Russell and Evelyn Stewart</p> | <p>Oppose</p> | <p>Withdraw plan change or approve subject to –</p> <ul style="list-style-type: none"> • Clarification that the funds raised from the sale of land are to be used to improve entire area of remaining reserve • Retain the remaining reserve as a recognised dog walking area • Provision for public parking at head of Kelso Grove and within the Reserve | <p>Accept in part (in regard to confirmation revenue to be used to upgrade remaining area of reserve)</p> | |

| | | | | |
|--|----------------|---|---|---|
| <p>Greater Wellington Regional Council</p> | <p>Neutral</p> | <ul style="list-style-type: none"> • 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 • That part 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 Recreation Activity Area • That the area containing significant vegetation (shown on Map ref 27618V) should be incorporated into the Scenic Reserve or General Recreation Activity Area as opposed to being left to be covenanted/ protected at the subdivision stage • 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 | <p>Accept in part (in regard to removal of indicative Lot 15 from rezoning)</p> | <ul style="list-style-type: none"> • |
|--|----------------|---|---|---|

13 ANNEXURE 3 - RESOLUTION OF HUTT CITY COUNCIL ON ITS LAND AT 6-15 KELSO GROVE

At its meeting on 12 August 2008, Council resolved the following (Minute No. C 080325 (3)):

That Council:

- (i) *requests officers to produce a comprehensive development plan for Kelson Sports Ground, taking account of the submissions, and noting that an area of open space could form part of a village green area to improve community safety incorporating urban design protocols and sustainability concepts;*
- (ii) *notes that this work should include a geotechnical assessment, to be referred back to the Land Review Working Group, along with the development plan;*
- (iii) *applies any proceeds from the sale of the residential site to the drainage of the village green area;*
- (iv) *in terms of s24 of the Reserves Act 1977 accepts in part the objections from the following persons to the proposal to revoke the reserve status of the Kelson Sports Ground being Lot 527 DP 42342 (but excluding 0.26 ha more or less being the playground adjacent to the Kelson School):*

*Gerry Dance
 Nigel and Ann Nation
 Wayne Wootton (so far as it
 applies to the Kelson Sports
 Ground)
 Gloria and Hedley Gibson
 Trevor and Jennifer Adams
 Russell and Evelyn Stewart
 Graham and Peggy Cassells
 Allan Sainsbury
 Wendy Saunders
 Jon Povey
 Ann O'Rorke
 Damian Twomey
 Liz and Hamish Fenwick*

*Stephen and Tracey Clifton
 Avril Boswell
 Sarah Harris
 Michael Johnson
 Judy Waenga
 Francis Chandrasahen
 Julia Becker
 Aaron Humphreys
 Tristan
 Paul and Robyn Clouston
 Philip Benson
 Scott and Simone Little
 Bryan Field
 Anthony Christie
 Mark and Allison Rosamond; and*

- (v) *having considered the objections and the oral submissions in relation to those objections and the officers report, and if the geotechnical assessment and development plan process prove the feasibility of a housing development within part of the reserve area, the Council resolves to recommend to the Minister that the reserve status of that part of the reserve to be developed for housing (as approved by the Land Review Working Group, having due regard to the geotechnical assessment and the development plan) be revoked, with the balance of the reserve to remain as Recreation Reserve.*

Proposed Plan Change 22: 6-15 Kelso Grove, Kelson, Rezoning of part of the Site to General Residential Activity Area

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 22: 6-15 Kelso Grove, Kelson, Rezoning of part of the Site to General Residential Activity Area

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.

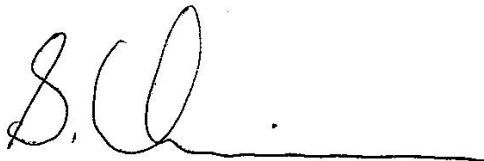
25 We do not consider that the third and fourth matters listed in submission are within scope of Plan Change 22. As stated above, Plan Change 22 only proposed rezoning a specific area from General Recreation Activity Area to General Residential Activity Area. It does not propose rezoning any of the land 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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