

**CITY OF LOWER HUTT DISTRICT PLAN
PROPOSED PLAN CHANGE 31 – REZONING OF 33 ATIAWA CRESCENT FROM
GENERAL RECREATION ACTIVITY AREA TO GENERAL RESIDENTIAL
ACTIVITY AREA**

**REPORT BY INDEPENDENT HEARING COMMISSIONER
TO HUTT CITY COUNCIL**

Date: 29 March 2014

IN THE MATTER OF

**Sections 72 and 74 and the First Schedule of the
Resource Management Act 1991**

AND

IN THE MATTER OF

**a Council-initiated change to the operative City of
Lower Hutt District Plan to rezone an area of land
at 33 Atiawa Crescent, Waiwhetu, from General
Recreation Activity Area to General Residential
Activity Area**

HEARING COMMISSIONERS

Robert Schofield (Independent Hearing Commissioner)

PLACE OF HEARING

Council Chambers, Hutt City Council

DATE OF HEARING

Friday 28 February 2014

APPEARANCES

City Council –

- Chloe Smith, Environmental Policy Analyst, HCC
- Jamie Beban, Senior Planner, Consultant to Hutt City Council

Submitters –

- Te Rira (Terri) Puketapu, on behalf of Te Runanganui O Taranaki Whānui ki te Upoko o te Ika a Maui Inc.
- Robert Ashe

**PROPOSED PLAN CHANGE 31 – REZONING OF 33 ATIAWA CRESCENT FROM
GENERAL RECREATION TO GENERAL RESIDENTIAL:
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The Recommended Decision

After considering all of the information relating to the proposed Plan Change to rezone an area of land at 33 Atiawa Crescent from General Recreation Activity Area to General Residential Activity Area, it is recommended that Proposed Plan Change 31 to the operative City of Lower Hutt District Plan be **approved**, pursuant to Clause 10 of Part 1 of the First Schedule to the Resource Management Act 1991 (RMA).

The reasons for this recommended decision are that the provisions of Proposed Plan Change 31 create an appropriate framework to promote the sustainable management of the subject site in accordance with the purpose and principles of the RMA, in that:

1. The proposed General Residential Activity Area zoning is considered to be consistent with the character of the existing residential properties in the immediate vicinity and would allow for the future development of the site in a manner which is in keeping with the amenity values of the local environment.
2. The proposed rezoning of the site to General Residential Activity Area, and the rules associated with that zoning, are considered to enable an appropriate level of future development on the site while managing the adverse effects on the environment. No changes are proposed to the General Residential Activity Area provisions of the District Plan as part of the Proposed Plan Change.
3. The removal of the site from the City's pool of land zoned General Recreation would not have adverse effects on the recreational opportunities provided to the immediate and wider community given the limited use of the site, and that there is adequate existing provision of open space for formal and information recreation to meet the needs of and open space requirements of the immediate and wider Waiwhetu neighbourhood.
4. The removal of the site from the General Recreation zone would not have significant adverse effects on the amenity values of the neighbourhood, given the limited contribution the reserve makes to the qualities and characteristics of the area.
5. The rezoning would enable a process that would return the land to iwi and thereby provide for the recognition of the cultural and historical significance of the site to Tangata Whenua.
6. Overall, it is considered that the Proposed Plan Change is consistent with the objectives and policies of the relevant policies and planning documents.
7. The costs and benefits of the options for the site have been evaluated and the rezoning of the site is considered to be the most appropriate in terms of achieving the purpose of the Act.
8. Overall the Proposed Plan Change is considered to be consistent with the purpose and principles of the Act.

A detailed assessment of the proposed Plan Change is provided in the following report, which draws on the information submitted with the proposed plan change, the analysis and advice of the Council's Reporting Planner, submissions received, the evidence presented to the hearing on 28 February 2014, and other relevant information.

Proposed Plan Change 31 – Rezoning of 33 Atiawa Crescent, Waiwhetu, from General Recreational Activity Area to General Residential Activity Area

Report by Independent Commissioner to Hutt City Council

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Plan Change Analysis

1 INTRODUCTION

Context

- 1.1 I was appointed by the Council to review the background information, hear submissions and to consider and make a recommendation to the Council on Proposed Plan Change 31 (“PC31” or “the Plan Change”), which seeks to rezone land at 33 Atiawa Crescent, Waiwhetu, from General Recreation Activity Area to General Residential Activity Area.
- 1.2 The Plan Change was prepared by Council and was the subject of a Section 32 evaluation, public notification and a hearing which was held on 28 February 2014.

Role of Commissioner and Report Structure

- 1.3 I firstly note that my role is limited to that of providing a recommendation to the Council as to whether or not the Plan Change should be accepted (including any amendments I deem necessary) or rejected. The final decision-making power rests with the Council, and in the event that the Council adopts my recommendation, then this report will become the Council Decision.
- 1.4 In terms of the above, having visited the site and the locality, familiarised myself with the Plan Change and the background material, read all submissions, and heard from the submitters and the Council’s advisers, this report records my recommendation, and the reasons for the recommendation.
- 1.5 This report is divided into two parts as follows:
 - ▶ **Factual Background & Plan Change Outline**
- 1.6 The first part of this report, comprising Sections 2 to 5, sets out the factual background to PC31, including an overview of the locality and its environment, the sequence of events leading to the Plan Change, and the concerns of the submitters to the Plan Change.
 - ▶ **Evaluation of Key Issues and Recommendation**
- 1.7 Sections 6 to 11 comprise the second part of this report, which contains an assessment of the main issues raised in submissions to PC31 and, where relevant, amplification of the evidence/information presented at the hearing. This report ends with an overall conclusion and recommendation, having had regard to the necessary statutory considerations that have underpinned my assessment, as well as recommended decisions on each relief point sought by submitters.

Reliance on Assessments and Reports

- 1.8 Pursuant to section 113(3) of the RMA, this report relies on the assessments and reports undertaken for the Plan Change, to which cross-references are made in order to avoid unnecessarily repeating information.

Preliminary Comments

- 1.9 In advance of setting out the background and proposal outline, I would like to record my appreciation at the manner in which the hearing was conducted by all the parties taking part, the comprehensive nature of the report from the Council’s reporting planner, Ms Smith, and the constructive input provided by the submitters and Council advisers appearing before me.

2 THE SITE, ITS ENVIRONMENT AND HISTORY

The Site

- 2.1 The site that is the subject of Plan Change 31 is located at 33 Atiawa Crescent, Waiwhetu. The site is 1795m² in area, and is a flat grassed site that contains no paths, buildings or playground equipment (refer to Figure 1 below). The main access to the site is from Atiawa Crescent, although there is a gate to the site from St Paul’s Anglican Church to the north of the site.
- 2.2 The site is legally described as Lot 25 DP 15344, held in Computer Freehold Register WNB4/4. The site was formerly gazetted as a recreation reserve under the Reserves Act 1977, but the reserve status of the site has since been revoked. There are no restrictions or interests registered on the Computer Freehold Register of the site that would affect this Plan Change.
- 2.3 The current zoning of the site under the Operative City of Lower Hutt District Plan is that of General Recreation Activity Area, reflecting and continuing the zoning history of the site since 1964 for recreation purposes. There are no special notations or restrictions under the District Plan that would affect the Plan Change.



Figure 1: Streetview photograph of 33 Atiawa Crescent, Waiwhetu

Local Environment

- 2.4 The area in which the site is located is residential in character (refer to Figure 2 below). The neighbourhood contains dwellings of a mix of architectural styles, ages and designs, some of which are two storeyed, although most are single storeyed.
- 2.5 The properties in the neighbourhood are a variety of sizes with the majority of sites over 500m² in area. However, there are several properties that are smaller than 400m², including a multi-unit development situated to the immediate north west of Atiawa Crescent, at 72-74 Waiwhetu Road.
- 2.6 In terms of surrounding amenities, the site is within walking distance of various facilities, including the Woburn and Waterloo Railway Stations, and local primary schools.



Figure 2: Aerial view of site of Proposed Plan Change 31 and its environs, including Godley Street Reserve bottom centre

History

- 2.7 A significant proportion of the hearing addressed the history of the site and the environs, with a comprehensive submission provided by Te Rira (Terri) Puketapu, for Te Runanganui O Taranaki Whānui ki te Upoko o te Ika a Maui Inc, which I would like to acknowledge, and to which I refer for a fuller history of the land, and its relationship and importance to Te Atiawa.
- 2.8 In brief, Te Atiawa have strong cultural and historical links to the property and the surrounding land. Much of the land, including the site in question, was farmed by Te Atiawa, with housing around the area, with the cultural focus on the marae.

- 2.9 In 1943, the land was acquired for Defence purposes, and was occupied temporarily by US troops. Subsequently, the site was part of 106 acres of land taken by the Crown for housing purposes under the Public Works Act 1928, and the area was then subdivided and developed for housing.
- 2.10 In 1964, the land was vested as reserve, a status which continued until December 2012 at which time Council resolved to revoke the reserve status of the site in order to enable the introduction of a plan change to facilitate the residential development of the site by tāngata whenua, following an approach to the City Council in mid-2012 by representatives of Te Runanganui O Taranaki Whānui.

3 BACKGROUND TO THE PLAN CHANGE

Current Zoning and Other District Plan Provisions

- 3.1 The site is currently zoned for General Recreation purposes and there are no designations or other special features on the site itself or on immediately adjoining land that are material to the proposed rezoning.
- 3.2 The adjoining land is zoned General Residential, with that portion to the northwest zoned General Residential Medium Density.
- 3.3 The District Plan planning maps do not identify the site or those adjoining to be subject to any fault bands, floods, landslides or other natural disasters.

The Plan Change Process

- 3.4 Under section 73(1A) of the Resource Management Act ('the Act'), a district plan any may be changed by a territorial authority in the manner set out in Part 2 of the First Schedule to the Act.

Proposed Plan Change 36 Process

- 3.5 The Hutt City Council formally notified Proposed Plan Change 31 on 28 May 2013, in accordance with Clause 5 of the First Schedule of Part 1 of the RMA. Submissions closed on Friday 28 June 2013. A summary of submissions was notified on 16 June 2013 with further submissions closing on 30 July 2013. An amended summary of submissions was re-notified on 10 December 2013, as it was discovered that an original submission had been processed incorrectly. This further submission phase closed on 14 January 2014.
- 3.6 A total of three original submissions and no further submissions were received – these are discussed in section 5 of this report.

The Hearing and Deliberations

- 3.7 The hearing was convened at 1pm on Friday 28th February 2014 at the Council Chambers in the Hutt City Council Administration buildings on Laings Road. The hearing was closed at 2.37pm on the same day on the basis that no further information was required to make a decision.
- 3.8 Over the course of the Hearing, I heard from the following:

- (a) Submitters to the proposed plan change, talking to their submissions; and
 - (b) The Council’s internal advisers, responding to the matters arising during the hearing.
- 3.9 A full list of those who presented evidence or made a presentation is provided at the beginning of this report. I would emphasise, however, that I read all of the submissions received by the Council, including that of the submitter who did not attend the Hearing.
- 3.10 The information provided to the hearing has been fully considered in my deliberations, and is referred to as relevant in the assessment section of this report.

4 DESCRIPTION OF PROPOSED PLAN CHANGE 31

Purpose of and Reasons for the Proposed Plan Change

- 4.1 The Plan Change seeks to change the District Plan zoning of 33 Atiawa Crescent from General Recreation to General Residential, with all the operative District Plan General Residential Activity Area provisions to apply.
- 4.2 The reasons for the Plan Change are outlined in the Council Report on the rezoning of the site, with an explanation provided in Part 1, Section 2 as follows:
- In the middle of 2012, Council was approached by representatives of Te Runanganui O Taranaki Whānui to discuss the acquisition of 33 Atiawa Crescent, Waiwhetu. An assessment of the recreational and open space values of the site was undertaken by PAOS Ltd. The assessment found the site has low value as reserve. At a Policy Committee meeting on 2 October 2012 the Council resolved to consult with the community in accordance with the Reserves Act 1977 regarding the revocation of the reserve classification and associated disposal of the land.*
- 4.3 No submissions were received to the proposed revocation of the site’s reserve status, and the Policy Committee resolved at its meeting on 20 November 2012 to recommend to full Council to revoke the reserve status of the site and to prepare a plan change to facilitate residential development on the site. This was finally resolved at Council’s meeting on 11 December 2012.

Revoking of Reserve Status and Change in Land Ownership

- 4.4 The Council’s plan change process under the RMA cannot address or resolve land ownership issues or matters that have been subject to different statutory process, such as the revocation of the reserve classification or any change in land ownership.
- 4.5 The Council’s Reporting Officer advised at the hearing that, should the Plan Change become operative, Council will be looking to enter negotiations directly with the Runanga concerning the site’s ownership.

5 SUBMITTERS' ISSUES

- 5.1 The Council received three submissions on Plan Change 31, one in support, one in opposition, and the third not expressing a position but rather sought consultation on any loss of sunlight or daylight as a result of the development and no change in rateable value.
- 5.2 Submissions were received from:
- Te Rira (Terri) Puketapu, on behalf of Te Runanganui O Taranaki Whānui ki te Upoko o te Ika a Maui Inc – Support
 - Jacqui Smith – Did not state position
 - Robert Ashe – Oppose
- 5.3 No further submissions were received.
- 5.4 An analysis of the submissions is provided in the Hearing Officer's Report dated 28 February 2014.
- 5.5 The submission by Te Runanganui O Taranaki Whānui ki te Upoko o te Ika a Maui Inc expressed support for the plan change, in which a comprehensive outline of the history to the site and environs was provided.
- 5.6 Other concerns/issues raised by submitters included:
- (a) Requesting the future use of the site as a community garden;
 - (b) Amenity effects on adjoining properties from any subsequent development, specifically loss of sunlight as a result of any future non-complying buildings (in relation to the District Plan General Residential Zone bulk and location requirements) on the site; and
 - (c) The effects of the plan change on the integrity of the District Plan and other planning instruments.
- 5.7 The issues raised by submitters in support or opposition to the Plan Change are addressed later in this report.

6 REQUIREMENTS FOR CONSIDERING A PROPOSED PLAN CHANGE

6.1 Under the Act, there are a number of requirements for considering a Plan Change.

6.2 First, under s72:

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 s5 of the Act as:

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables*

people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while —

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

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

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

6.5 In making decisions on changes to its District Plan, s74 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]*

(ia) *Relevant entry in the Historic Places Register; and*

(iii) *Regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing),—*

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

(c) *The extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.*

(2A) *A territorial authority, when preparing or changing a district plan, must—*

(a) *take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on resource management issues of the district; and*

(b) *recognise and provide for the management plan for a foreshore and seabed reserve adjoining its district, once the management plan has been lodged with the territorial authority, to the extent that its contents have a bearing on the resource management issues of the district.*

(3) *In preparing or changing any district plan, a territorial authority must not have regard to trade competition*

6.6 Another important consideration to take into account is whether there are any matters under s6 of the Act that need to be recognised and provided for under the proposed plan change. In this instance, it is considered that section 6(e) is of relevance:

(e) *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*

6.7 Other matters listed under s7 of the Act may also be relevant considerations, those of potential relevance being:

(a) *Kaitiakitanga:*

(aa) *The ethic of stewardship:*

(b) *The efficient use and development of natural and physical resources: ...*

(c) *The maintenance and enhancement of amenity values: ...*

(f) *Maintenance and enhancement of the quality of the environment:*

(g) *Any finite characteristics of natural and physical resources: ...*

6.8 Section 8 of the Act requires the principles of the Treaty of Waitangi to be taken into account. The notification of this Plan Change included direct service on:

- The Port Nicholson Block Settlement Trust
 - The Palmerston North Maori Reserve Trust
 - Wellington Tenths Trust
 - Te Runanganui o Taranaki Whānui ki te Upoko o te Ika a Maui
- 6.9 A submission in support was received from Te Runanganui o Taranaki Whānui ki te Upoko o te Ika a Maui.
- 6.10 Among the matters to consider under s74(1) of the Act, the Council must consider alternatives, costs and benefits pursuant to section 32 of the Act (as it was worded before the 3 December 2013 RMA amendments came into effect as the Plan Change was notified in May 2013, prior to the RMA amendments). Under s32(3) this 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 Under s32(4) –
- For the purposes of the examinations referred to in subsections (3) and (3A), an evaluation must take into account—*
- (a) *the benefits and costs of policies, rules, or other methods; and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*
- 6.12 The purpose of this report is to assist the Council in considering Plan Change 31 in respect of its duties and functions under the Act.

7 EVALUATION OF PROPOSED PLAN CHANGE 31

- 7.1 The purpose of assessing the potential effects on the environment to arise from the implementation of the Plan Change is two-fold:
- (a) First, to identify potential adverse effects from the development and use of the land that should 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; and
 - (b) Secondly, to generally determine the appropriateness of the proposed end land use in terms of promoting sustainable management.
- 7.2 Having considered the concerns expressed by submitters, the key issue arising from the Plan Change relate to the appropriateness of a residential zoning for the site. In assessing the appropriateness, consideration is required of the following matters, which are addressed in turn:
- Effect of residential zoning;
 - The loss of a General Recreation zoned site; and
 - Other matters.

► **Effect of Residential Zoning**

- 7.3 As detailed in the Hearing Officers’ report, the site is surrounded by residential zoned land. Adjoining land uses are predominantly residential in nature, with a church located to the north of the site. While there are some two storeyed dwellings within the immediate area, most dwellings are single storeyed and on sites larger 500m² in area.
- 7.4 The Section 32 Evaluation prepared by Council’s reporting planner comprehensively assessed the environmental effects of the plan change and I concur with her assessment; I do not intend to repeat that assessment in this report. By way of summary, I note that the size of the site is such that it can readily be subdivided into three complying sites (which would likely require consent as a controlled activity) with complying dwellings (in relation to bulk and location requirements) able to be erected on each allotment. The existing General Residential Activity Area provisions would apply to the site, and there are no unique or distinguishing features or characteristics on either the site or immediate area which warrant site specific rules.
- 7.5 On this matter, I do note the concerns raised by Ms Smith and her request that adjoining property owners be consulted before any dwelling consent is granted if the new dwelling/s would affect the submitter’s access to sunlight. In response to these concerns, I would first highlight that it outside the scope of this Plan Change to require consultation with adjoining property owners as to any future dwellings on the site: that is a matter for the District Plan to address at a City-wide level, subject to the requirements of the RMA. However, I do note that any future use on the site that does not comply with the operative District Plan standards for the General Residential Activity Area would require resource consent and, depending on the degree of non-compliance, adjoining property owners may have the opportunity to submit formally on any non-complying proposal. Based on the evidence presented at the hearing, the site is of sufficient size to readily enable a subdivision and erection of dwellings that are able to meet the district plan bulk and location requirements relating to height, setbacks, recession planes, density and site coverage.
- 7.6 In response to the concerns raised by Ms Smith as to the rateable value of adjoining properties, such an assurance is beyond the scope of the Plan Change to address under the RMA.
- 7.7 The site(s) are able to be adequately serviced (both in terms of access and capacity) with respect to wastewater, stormwater and water supply, with power and phone services available. Additional traffic volumes generated from complying dwellings on the site would not be discernible against the existing traffic flows on the local roading network.
- 7.8 Based on the above findings, I consider that a General Residential Activity Area zoning for the site is appropriate, in that it would be compatible with adjoining land uses, and the site is of sufficient size, topography and shape to be subdivided into three lots as a controlled activity, each able to have a complying dwelling erected. Any greater level of intensity of subdivision and/or development may be subject to the notification of adjoining property-owners and occupiers, depending on the level of non-compliance with District Plan standards.

► **Loss of Recreation Zoned Land**

- 7.9 In considering the loss of a General Recreation zoned site, I have had the benefit of the comprehensive report prepared by PAOS Ltd¹ in 2012 which undertook an assessment of the reserve values of the site. Also of benefit was the background information provided to the Council in regard to its resolution of 11 December 2012 to revoke the reserve status of the site and to prepare a plan change to facilitate residential development on the site.
- 7.10 As identified in the PAOS Ltd report, the site has been assessed as having low reserve values. The reserve is limited to informal recreation use and access by adjoining properties with no on site amenities or equipment. The PAOS report identifies there to be adequate provision of open space for both formal and informal recreation to meet the needs of and open space requirements of the immediate and wider Waiwhetu neighbourhood. Such amenities include the Godley St Reserve (refer to Figure 2) some 250m away, which contains a children’s playground, as well as a larger multi-functional reserve only 450m away and another recreation reserve 850m away. These other reserves retain the Council’s open space benchmarks of 4 hectares of land per 1000 people, with neighbourhood parks to be within 10 minutes’ walk for any residence.
- 7.11 I was also advised that very little use of the site is undertaken by local residents.
- 7.12 I note that the Council has a policy to have all funds from the disposal of former reserves to be kept within the Council’s Reserves Fund, which must be used only for the enhancement of the Council’s recreational assets, including those in the immediate area of the subject site.
- 7.13 I also note that the community have been consulted as to the proposed rezoning of the site in accordance with the provisions of the Reserves Act 1977 in regard to the revocation of the reserve classification under the Reserve Act 1977 and the associated disposal of the site. No submissions were received on this matter.
- 7.14 In response to the submission by Mr Ashe seeking the use of the site as a community garden, while I can see the merit in such a use, given the history and cultural significance of the site, there is no ability under the RMA to require land to be used for a certain purpose. The Act is described as an enabling statute, in that it can only enable the use of land, subject to the sustainable management purpose and principles of the RMA. Given the proposed disposal of the land and its likely end use, I consider a residential zoning more appropriate as it would allow for residential use of the site.
- 7.15 I note that, at the hearing, Mr Ashe expressed support for the land to be returned to Te Atiawa and emphasised that he considered the priority is to see the land returned to iwi. However, he expressed hope that, following the return of the land to Te Atiawa, opportunities for the land to be used for community gardens could be explored, possibly with the adjoining church managing the community gardens on the site (Mr Ashe has discussed this opportunity with the Church).
- 7.16 While I acknowledge the potential benefits in having community gardens on the site, I would note that, under the Operative District Plan provisions, were the site to

¹ *Atiawa Crescent Reserve – Assessment of Reserve Values*, Prepared by PAOS Ltd, September 2012

be zoned Residential, such gardens would require resource consent as a non-complying activity if that were the sole use of the land. However, if such gardens were to occur in conjunction with the residential use of the land, it would be permitted under the General Residential Activity Area.

7.17 While community gardens would be permitted under the General Recreational zoning, I do not believe the community garden concept to be of such merit as to retain the General Recreation zoning and thereby deny Te Atiawa the potential to develop the land for residential uses under a General Residential zoning. I would note that, according to Mr Puketapu, Te Atiawa are considering fencing off half an acre near their cultural centre for common use gardens.

7.18 Based on the above I consider the removal of the site from the pool of land zoned General Recreation would not have any significant adverse effects on the recreational and cultural opportunities available to the immediate and wider community.

► **Other Matters**

7.19 While not directly within the scope of the proposed plan change request, a significant amount of the hearing was devoted to understanding the historical background to the site and its environs, with a comprehensive submission provided by Terri Puketapu on behalf of Te Runanganui o Taranaki whānui ki te Upoko o te Ika a Maui in relation to the cultural significance of the site. I found this information invaluable in terms of understanding how the site was lost to Te Atiawa, how it became gazetted as reserve, and how a residential zone would reflect historic uses on the site. In particular, the submission and evidence of Mr Puketapu on behalf of Te Runanganui o Taranaki whānui ki te Upoko o te Ika a Maui, was of benefit.

7.20 Mr Puketapu explained to those present at the hearing as to the strong cultural and historical links Te Atiawa have to the property, with Mr Puketapu providing a aerial photo of the area from 1939, showing extensive market gardening and a number of homes occupied by tāngata whenua, including those belonging to Mr Puketapu’s family. Mr Puketapu explained the historical use of the land and local streams, and the cultural significance attached to the area.

7.21 In response to the various statutes referred to by Mr Puketapu, I consider these have been given due consideration prior to the notification of this plan change in respect to Council’s resolution to revoke the reserve status of the site and to work towards to returning the land to iwi.

7.22 From a RMA point of view, the benefit of the information provided by Mr Puketapu was to show that the use of the site for residential purposes is consistent with Policies 1.10.1(a), (b) and (c) of the Operative City of Lower Hutt District Plan, all of which are discussed later in this recommendation.

Conclusion – Appropriateness of Residential Zoning

7.23 As outlined above, the Plan Change proposes changing the zoning of 33 Atiawa Crescent from General Recreation to General Residential, with the corresponding

operative District Plan provisions to apply to the future subdivision, development and use of the land.

- 7.24 Having considered all the evidence before me, I find that a residential zoning of the site for residential purposes is an appropriate resource management framework for the site, given the nature of surrounding land uses and the site’s historical and cultural values.
- 7.25 In reaching this finding, I have relied on the evidence presented at the hearing, the submissions prepared and presented by submitters and the Council officer reports presented at the hearing and background reports to Council.

8 STATUTORY ANALYSIS

Consistency with District Plan Objectives and Policies

- 8.1 As outlined above, the proposed rezoning would change the zoning of the site from General Recreation to General Residential, with the operative Hutt City District Plan objectives, policies, rules and standards to apply to the site.
- 8.2 The Council Hearing Officer’s report contained a comprehensive evaluation of the relevant objectives and policies of the District Plan, with which I largely concur; accordingly, I will only summarise the relevant provisions. However, in light of the matters discussed at the hearing I will elaborate on Policies 1.10.1 (a) to (c) relating to Tangata Whenua.

► Relevant Objectives and Policies

- 8.3 Relevant City-wide objectives and policies contained within Chapter 1 of the City of Lower Hutt District Plan are as follows:
- 1.10.2 Amenity Values
 - 1.10.3 Residential Activity
 - 1.10.6 Open Space and Recreation
- 8.4 I concur with the consideration of the above provisions as provided in the Officer’s Report prepared for the hearing and dated January 2014. A General Residential zoning would achieve an appropriate balance between maintaining the amenity values and character of the local environment, while allowing for the development potential of the site to be realised.
- 8.5 The site is able to be readily serviced in terms of infrastructure and access.
- 8.6 The existing regulatory framework enables development of the site that would be consistent with the amenity of the surrounding area.
- 8.7 I do not consider the loss of the site for recreational use to be contrary to the provisions within Section 1.10.6, given –
- (a) The poor utilisation of the site;
 - (b) Its low potential for meeting the recreational needs of the local community;
 - (c) The proximity of other well serviced recreational facilities within ten minutes’ walk of the site; and

(d) The ability to maintain the desirable level of recreational space of 4 hectares of land per 1000 people in the vicinity.

8.8 Relevant General Residential Objectives and Policies are as follows:

- 4A 1.1.1 Residential Character and Amenity Value; and
- 4A 1.2.1 Building Height, Scale, Intensity and Location.

8.9 I am in agreement with Councils' reporting officer that the provisions of the General Residential Activity Area are appropriate for the site in terms of achieving the purpose of the Act, in that the provisions of the General Residential Activity Area would provide for the sustainable management of the natural and physical resources of the site. The existing policy and regulatory framework are appropriate and sufficient to ensure that the amenity values and character of the site and the surrounding area are maintained and that any adverse effects on the environment are avoided, remedied or mitigated.

► **Relevant Tangata Whenua Objectives and Policies**

8.10 Relevant Tangata Whenua Objectives and Policies are provided in Section 1.10.1 and are as follows:

1.10.1 Resource Management and the Tangata Whenua of Lower Hutt

Objective

To respond to the principles of the Treaty of Waitangi and other matters of significance to the tangata whenua as specified in the Act.

Policies

- To have particular regard to tangata whenua's desire to carry out kaitiakitanga.*
- To protect waahi tapu and sites of cultural or historical significance to tangata whenua from desecration or disturbance.*
- To recognise and protect the tangata whenua desire to maintain and enhance their traditional relationship with the environment.*
- To consult with the tangata whenua when discharging functions and duties under the Act.*

8.11 There was some discussion at the hearing as to the cultural and historical significance of the site, and in this regard I found the information presented by Mr Puketapu of considerable assistance. Having assessed the above provisions in the context of the history and cultural significance of the site and its environs, I consider the change in zoning is in accordance with the objective and policies within 1.10.1.

8.12 As outlined by Mr Puketapu, the site was originally owned and occupied by tangata whenua until it was compulsorily acquired by the Crown firstly for defence purposes during World War II, and then subsequently in 1943 for housing purposes. Prior to the acquisition, the site was part of a greater area long occupied and used by tāngata whenua, and which the marae was located along with numerous houses. The fertile land was used for growing crops and running livestock, while the Waiwhetu Stream was relied on as a major food source for iwi, containing eels, mussels, fresh water crayfish and watercress.

- 8.13 Their relationship with the land is therefore very much a matter of significance for Te Atiawa, and accordingly the ability to exercise kaitiakitanga over the land is an important aspect of this relationship.
- 8.14 The revocation of the reserve status of the site was initiated as a result of the approach by Te Runanganui o Taranaki whānui ki te Upoko o te Ika a Maui to Council to acquire the site. As part of the process to revoke the reserve classification, the Council consulted with tāngata whenua, which continued as part of the plan change process.
- 8.15 In conclusion, having assessed the above provisions, and having obtained a greater understanding of the historic use of the site and its cultural and historical significance to tangata whenua, I consider the change in zoning is in accordance with the objective and policies within 1.10.1 of the District Plan.

9 CONSISTENCY WITH REGIONAL POLICIES

Wellington Regional Policy Statement (WRPS)

- 9.1 The Operative WRPS has a number of relevant provisions, as highlighted in the report by Council's reporting planner, notably:

Objective 21 – 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; ...

(k) efficiently use existing infrastructure (including transport network infrastructure); ...

- 9.2 In regard to this objective, the WRPS policies of relevance to District Plan changes are as follows:

Policy 32: Supporting a compact, well designed and sustainable regional form

Policy 54: Maintaining a compact, well designed and sustainable regional form

Policy 57: Co-ordinating land use with development and operation of infrastructure

- 9.3 The Greater Regional Council lodged no submission on the Plan Change.
- 9.4 I consider that the Plan Change is consistent with Objective 21 and the supporting policies, as the development of the site for residential purposes would be an efficient use of the land resource in that it is within an existing urban area that can utilise existing resources, including infrastructure and public transport, as well as recreational, social and cultural facilities.

Consistency with Regional Plans

- 9.5 I do not consider there to be any provisions within any of the Regional Plans relevant to this Plan Change.

Other Relevant Policy Documents

- 9.6 There was no evidence that the Proposed Plan Change would be inconsistent other relevant strategies and plans as listed in paragraph 55 of the Councils’ reporting officers’ report dated January 2014.

10 SECTION 32 EVALUATION OF ALTERNATIVES

- 10.1 As outlined earlier, under s32(1)(c) of the Act², the Council must undertake a s32 evaluation of alternatives, benefits and costs before the proposed plan change is notified.
- 10.2 The evaluation is required to examine:
- the extent to which each objective is the most appropriate way to achieve the purpose of the Act; and
 - whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.
- 10.3 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.
- 10.4 As outlined above, Council’s s32 evaluation was provided in Part 4 of the Councils’ reporting officers’ report dated January 2014.
- 10.5 Proposed Plan Change 31 neither intends to change any of the existing objectives and policies of the District Plan, nor introduce any new objectives and policies. Therefore, the focus of the evaluation must be on the efficiency and efficacy of the proposed rules or other methods for achieving the objectives of the District Plan.
- 10.6 As I concluded in section 7 of this report, having considered all the evidence before me, I conclude a residential zoning and use of the site for residential purposes is appropriate in context of the nature of surrounding land uses, the present use of the site and other recreation areas within the area, and the sites’ history and cultural values. The rules and other provisions that would apply to the site under the proposed General Residential zoning would effectively and efficiently provide for its future development and use in a manner that is compatible with the environmental qualities and values of the area.
- 10.7 A residential zoning is the most appropriate means by which to achieve the objectives relating to Tangata Whenua, Amenity Values, Residential Activity and Open Space and Recreation.

11 CONSISTENCY WITH PART 2, RMA

- 11.1 Under s74(1) of the Act, any changes to a District Plan must be in accordance with achieving the purpose and principles of the Act, under Part 2 RMA (sections 5 to 8).

² Pre September 2013 amendments

Section 5: Purpose of the Act

- 11.2 The purpose of the Act is described by section 5, which was set in section 6.3 of this report.
- 11.3 As I outlined above, the RMA is often described as ‘enabling’, in that the purpose of sustainable management under the Act is to enable people and communities to provide for their wellbeing. The principal thrust of the purpose behind the rezoning of the land is that a residential zoning would enable the future landowner to develop the land for residential purposes, thereby providing for the housing needs of future generations. Such a zoning would be consistent with the adjoining area, is able to avoid, remedy or mitigate any adverse effects of residential development on the environment. Furthermore, the rezoning would not compromise the recreational opportunities within the area for residents.

Section 6: Matters of National Importance

- 11.4 Section 6 of the Act sets out the matters of national importance which are required to be recognized and provided for when managing the use, development and protection of natural and physical resources. Other than section 6(e), none of the matters of national importance are of relevance to the site in question.
- 11.5 Section 6(e) of the Act requires all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, to recognise and provide for, inter alia –
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- 11.6 While the site is not identified within the District Plan as being within a Significant Cultural Resource, I accept that it does have cultural significance to tāngata whenua, and its future use for residential purposes would provide for Section 6(e) in terms of recognising and providing for the relationship of Te Atiawa and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

Section 7: Other Matters

- 11.7 In regard to the other matters under section 7 of the Act, to which all persons exercising functions and powers under the Act shall have particular regard, the proposed plan change is consistent with the following:
- (a) The plan change would actively promote the ability of tāngata whenua to exercise kaitiakitanga;
 - (b) The rezoning would enable the efficient use and development of the land; and
 - (c) The provisions of the General Residential Activity Area would maintain and enhance the amenity values of the area and its environmental qualities.

Section 8: Treaty of Waitangi

- 11.8 In considering Section 8 of the RMA, I consider the Proposed Plan Change is in accordance with the Principles of the Treaty of Waitangi in that the Council has

acted reasonably and in good faith in engaging with tāngata whenua, and has proactively sought to provide for their relationship with the land.

Conclusion

- 11.9 Accordingly, I find that Plan Change 31 would achieve the overall purpose and principles of the Act.

12 CONCLUSION AND RECOMMENDATION

Conclusion

- 12.1 Plan Change 31 seeks to rezone a 1795m² site located at 33 Atiawa Crescent, Waiwhetu, to General Residential Activity Area.
- 12.2 The site is a flat and grassed property that contains no paths, buildings or playground equipment. The current zoning of the site under the Operative City of Lower Hutt District Plan is that of General Recreation, reflecting the zoning history of the site since 1964 for recreation purposes. The reserve status of the site has since been revoked.
- 12.3 The character of the area in which the site is located is residential in nature with the surrounding residential properties containing dwellings of a mix of architectural styles, ages and designs, with residences being either one or two storeyed, located on sites on at least 500m² in area.
- 12.4 The Plan Change seeks to change the District Plan zoning of 33 Atiawa Crescent from General Recreation to General Residential, with all the operative District Plan General Residential Activity Area provisions to apply to the future subdivision, development and use of the land.
- 12.5 Based on my assessment of all pertinent matters, including the section 32 evaluation, the section 42A report, issues raised by submitters, and evidence presented at the hearing on 28 February 2014, I find that Plan Change 31 would create an appropriate framework to promote the sustainable management of the subject site in accordance with the purpose and principles of the RMA, in that:
- (a) A General Residential Activity Area zoning for the site would be compatible with adjoining land uses, with the site being of sufficient size, topography and shape to be subdivided into three lots as a controlled activity, and with each allotment able to contain a fully complying dwelling;
 - (b) The site has no constraints on its future use for residential properties, and is able to be adequately serviced through existing infrastructure;
 - (c) The operative General Residential Activity Area rules and standards are appropriate to the site and any future development in terms of maintaining the amenity values and environmental quality of the neighbourhood;
 - (d) The removal of the site from the pool of land zoned General Recreation would not have adverse effects on the recreation opportunities provided to the immediate and wider community in that there is adequate provision of open

space for formal and information recreation to meet the needs of and open space requirements of the immediate and wider Waiwhetu neighbourhood; and

- (e) The rezoning would recognise and provide for relationship of Te Atiawa with the land, and its cultural and historical significance.

12.6 Consequently, I find that Proposed Plan Change 31 would satisfactorily achieve the objectives and policies of the District Plan in relation to –

- (a) The promotion of a high quality residential environment which maintains and enhances the physical character of the residential areas, providing a choice of living styles and a high level of residential amenity;
- (b) The avoidance, remedying, or mitigation of the adverse effects on the amenity of surrounding neighbourhoods;
- (c) The promotion of the sustainable management of physical resources within the existing residential areas of the City, and
- (d) Recognising the cultural and historical significance of the site to tangata whenua.

Recommendations

12.7 For the reasons outlined in this report, I recommend that the Hutt City Council **approve** Proposed Plan Change 31 in accordance with clause 10 of the First Schedule of the Act.



Robert Schofield
INDEPENDENT HEARING COMMISSIONER
Date: 8 April 2014

**PROPOSED PLAN CHANGE 31 – REZONING OF 33 ATIAWA CRESCENT FROM GENERAL RECREATION TO GENERAL RESIDENTIAL:
REPORT BY INDEPENDENT COMMISSIONER TO HUTT CITY COUNCIL**

13 ANNEXURE 1 – RECOMMENDED DECISIONS ON SUBMISSIONS

Submission Number and Name	Support / Oppose	Decision Sought	Recommendation and Reasons
DPC31/001- Te Runanganui O Taranaki Whānui ki te Upoko o te Ika a Maui Inc - 1.1	Support	Offer back of land and transfer of same to descendants of owners involved in the Wai 105 Claim.	The submission clarified the significant historical and cultural significance of the land to Te Atiawa. While the future ownership, sale or transfer of the site is not a valid resource management issue under the RMA 1991, this submission is accepted insofar as the plan change would enable the land to be developed and used in accordance with the aspirations of iwi.
DPC31/002- Robert Ashe - 2.1	Oppose	That Council work with iwi and propose a community garden for the land.	Based on the evidence presented at the hearing, the residential zoning of the site would provide for the development of the land consistent with the amenity values of the area. While there may be support for a community garden, such a proposal would be at the discretion of the future landowner. While there is no formal agreement in place, Council has formally agreed to the change of ownership to return the land to Te Atiawa. The retention of the General Recreation zoning on the basis the site could be used as a community garden at some stage in the future would not represent the sustainable use and development of the land, as the garden may never eventuate, and it is beyond the scope of this Plan Change to require the land be used for such a purpose. Accordingly, the submission is rejected insofar as the plan change is accepted and the site be zoned General Residential Activity Area.
DPC31/003- Jacqui Smith - 3.1 and 3.2	Not stipulated	That they and neighbours be consulted with before any new dwelling is granted consent, if the proposed new dwelling/s will affect the submitter's access to sunlight. That the rateable values of adjoining properties (to the site) are not adversely affected by the plan change.	A General Residential Activity Area zoning for the site is appropriate in that it would be compatible with adjoining land uses, and the site is of sufficient size, topography and shape to be subdivided into three lots as a controlled activity, with each lot able to contain a fully complying dwelling. It is outside the scope of this plan change to require consultation with adjoining property owners as to any future dwellings on the site. However, any future development of the site that does not comply with the District Plan standards for the General Residential Activity Area would require resource consent and, depending on the degree of non-

Proposed Plan Change 31 – Rezoning of 33 Atiawa Crescent, Waiwhetu, from General Recreational Activity Area to General Residential Activity Area
Report by Independent Commissioner to Hutt City Council

Submission Number and Name	Support / Oppose	Decision Sought	Recommendation and Reasons
			<p>compliance, adjoining property owners may have the opportunity to submit formally on any proposal.</p> <p>In response to the issue of rateable values, such an assurance is beyond the scope of the Plan Change and scope of considerations under the RMA.</p> <p>Accordingly the submission is rejected in that the plan change is approved.</p>