

Commissioner Recommendation

**PLAN CHANGE 27
151 HOLBORN DRIVE, STOKES VALLEY
REZONING PART OF THE SITE AS GENERAL
RESIDENTIAL ACTIVITY**

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

1. INTRODUCTION

Context

- 1.1 I was appointed by the Council to hear submissions to, and to consider and make a recommendation on, Plan Change 27, which seeks to rezone part of the site referred to as 151 Holborn Drive, Stokes Valley, to General Residential Activity Area.
- 1.2 The Plan Change has a reasonably long background, which I will address in due course. The Plan Change has been the subject of a Council “section 32” report, consultation with land owners and occupiers, and of course the public notification and hearing, culminating in this report.
- 1.3 Before discussing the details of the proposed Plan Change and the submissions to it, there are some procedural issues that I need to address, beginning with my role as Commissioner.

Role of Commissioner and Report Outline

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

(a) Background/Plan Change Outline:

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

(b) Statutory Requirements:

This section sets out the statutory requirements under the RMA that govern the decision making process in regard to the Plan Change.

(c) Assessment of Submissions:

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

2. BACKGROUND

Procedural Sequence

- 2.1 The background to the Plan Change is set out in full in the Officer's Report and the proposed Plan Change documentation and is held on the Council file. Hence I will not repeat that in detail here, rather I will provide a brief summary.
- 2.2 From 2007 to 2009, the Council undertook a land review of its fee simple held reserves (including some gazetted reserves) for the purposes of assessing the appropriateness of the current use, wider open space contribution and development potential.
- 2.3 The site at 151 Holborn Drive was included as part of this review. Consultation was undertaken between March and May 2009 in regard to the disposal of land managed as reserve in accordance with the requirements of the Local Government Act 2002 (LGA). Eleven submissions specifically related to the disposal of the portion of the 151 Holborn Drive site, as well as other land in the surrounding area. I also record for the purposes of clarification, that as part of that LGA process there was a petition from 277 plus residents in opposition to the land disposal.
- 2.4 These concerns were considered by the Strategy and Policy Committee when they met in May 2009, prior to the determination to dispose of the application site. The Council further commissioned a geotechnical report, and following the outcome of that investigation, which also included an indicative subdivision layout, made its final decision in November 2009 to proceed with the Plan Change process to seek the rezoning of approximately 1.6ha being a portion of 151 Holborn Drive to facilitate residential development. I note that boundaries of the proposed Plan Change area were amended as part of that process to avoid an area of significant vegetation.
- 2.5 The Plan Change itself was publicly notified on 27 March 2012 with the submission period closing on 27 April 2012. The summary of submissions was notified on 22 May 2012, with further submissions closing on 6 June 2012. A total of six submissions and no further submissions were received.
- 2.6 Prior to the hearing on 6 December 2012, I issued a minute setting out the topic areas on which, having reviewed the Officer's Report, I would be seeking further information by way of questioning officers. This minute was circulated to all parties.

The Hearing

- 2.7 The hearing was convened on the 12th December 2012 in the James Coe Two Room at The Dowse Art Museum, 45 Laings Road, Lower Hutt. I heard from the following people during the course of the hearing:

Submitters

- Ms. Heather Niven, 156 Holborn Drive, Stokes Valley
- Mr. John Upfold, 156 Holborn Drive, Stokes Valley

Council

- Miss. Chloe Smith, Environmental Policy Analyst
- Mr. James Beban, Cuttriss Consultants Limited – consultant to the Council
- Ms. Corinna Tessoroff, Senior Environmental Policy Analyst
- Ms. Bronwyn Little, Divisional Manager, Environmental Policy
- Dr. Paul Blaschke, Independent Environmental Consultant - Ecology

- 2.8 I opened the hearing at 9.00am and after initial introductions, and advising that I had undertaken a site visit; I set out the hearing procedures.

- 2.9 The hearing then commenced with a presentation by the reporting officer Miss. Smith, followed by the presentation from the Dr. Blaschke. The submitters Ms. Niven and Mr. Upfold then spoke in support of their submissions. The officers then responded to issues that had arisen. I exercised my opportunity to question all persons present.

- 2.10 At that point, I adjourned the hearing indicating that I required additional information from officers and that that information should be provided to me by 17 December 2012. I issued a Minute (Minute #2) on the 17 December 2012 extending the date for the information to be sent to me to the 19th December 2012, to allow sufficient time for officers to collate that information. I duly received that information on 19 December 2012. That information was then sent to the parties to the plan change and provided the opportunity for them to respond with any comments.

- 2.11 On 11 January 2013, I issued a further Minute (Minute #3) seeking a written response from officers and again allowing time for submitters to respond to that information should they wish to do so. The officer's written response was duly received on the 25 January 2013 and sent out to the parties for comment. By the 1 February 2013, I received comments from those submitters who choose to respond. On reviewing all of that information, I issued a further Minute (Minute #4) to reconvene the hearing so I could hear from all the parties. In that Minute I recorded that this was not the opportunity for submitters to relegate matters that had already been addressed under the Local Government Act process and that I would further explain this at the reconvened hearing. I further noted in the minute that I did wish to hear from the submitters in regard to any actual or potential effects on the environment and particularly any adverse effects.

- 2.12 The hearing was duly reconvened on the 26th February 2013. The attendances at the reconvened hearing were:

Submitters

- Ms. Heather Niven, 156 Holborn Drive, Stokes Valley
- Mr. John Upfold, 156 Holborn Drive, Stokes Valley

Council

- Miss. Chloe Smith, Environmental Policy Analyst
- Mr. James Beban, Cuttriss Consultants Limited – consultant to the Council
- Mrs. Cheryl Robilliard, PAOS, Landscape Architect – consultant to the Council

- 2.13 At the hearing I took the time to explain to the submitters present, my role under the Resource Management Act and that I had no ability to address matters under the Local Government Act, such as the Land Review process. I heard from both officers and submitters and questioned all the parties present. I closed the hearing at 3.45pm on the same day, noting that I would issue my recommendation in due course.

Outline of Plan Change

- 2.14 As mentioned above, the purpose of the Plan Change is set out fully in the officer's report which is held on the Council file. In summary, proposed Plan Change 27 seeks to rezone a portion of the site at 151 Holborn Drive, Stokes Valley (currently zoned General Recreation Activity Area) to General Residential Activity Area. The plan included in Part 3 of the proposed District Plan Change 27 document shows the extent of the proposed rezoning. I note that the land to be rezoned:
- Covers three parcels of land Part Lot 3 DP 20917, Part Lot 8 DP 20501 and Part Section 199 Hutt District (SO 10500).
 - Is not gazetted as a reserve under the Reserves Act.
 - Is held in fee simple.
 - The subdivision plan shown in Appendix 3 of the Section 32 Evaluation is indicative only and does not form part of the proposed Plan Change.

3. STATUTORY PROVISIONS

The Resource Management Act 1991

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

Schedule 1

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

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

10 Decisions on provisions and matters raised in submissions

- (1) *A local authority must give a decision on the provisions and matters raised in submissions, whether or not a hearing is held on the proposed policy statement or plan concerned.*
- (2) *The decision—*
- (a) *must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to—*
- (i) *the provisions of the proposed statement or plan to which they relate; or*
- (ii) *the matters to which they relate; and*
- (b) *may include—*
- (i) *matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and*
- (ii) *any other matter relevant to the proposed statement or plan arising from the submissions.*
- (3) *To avoid doubt, the local authority is not required to give a decision that addresses each submission individually.*

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

74 Matters to be considered by territorial authority

- (1) *A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part 2, a direction given under section 25A(2), its duty under section 32, and any regulations.*
- (2) *In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to—*
- (a) *Any—*
- (i) *Proposed regional policy statement; or*
- (ii) *Proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4; and*
- (b) *Any—*
- (i) *Management plans and strategies prepared under other Acts; and*
- (iia) *Relevant entry in the Historic Places Register; and*
- (iii) *Regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing),—*
- to the extent that their content has a bearing on resource management issues of the district; and*
- (c) *The extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.*
- (2A) *A territorial authority, when preparing or changing a district plan, must—*
- (a) *take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on resource management issues of the district; and*
- (b) *recognise and provide for the management plan for a foreshore and seabed reserve adjoining its district, once the management plan has been lodged with the territorial authority, to the extent that its contents have a bearing on the resource management issues of the district.*

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

3.5 Finally, section 75 of the RMA states that:

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

Part 2 Matters

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

3.7 Section 6 contains a list of matters of national importance that all persons exercising functions and powers under shall recognise and provide for. Those matters of particular relevance to the Plan Change are:

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

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

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

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

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

Sections 31, 32, 72 & 76 of the RMA

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

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

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

(3) (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*

(b) *whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.*

3.13 An evaluation must also take into account:

(4) (a) *the benefits and costs of policies, rules or other methods; and*

(b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*

3.14 Section 32(5) requires that a report must be prepared, summarising the evaluation and giving reasons. The section 32 requirements of the RMA were addressed in the officer's report and Plan Change documentation provided at the hearing.

3.15 Section 72 states as follows:

The purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act.

3.16 The following provisions of section 76 are also relevant:

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

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

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

...

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

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

4. OVERVIEW OF SUBMISSIONS TO PLAN CHANGE 27

Numbers and Categories

- 4.1 There were six submissions and no further submissions received to Plan Change 27 within the statutory time period.
- 4.2 The following table sets out the late submissions accepted and a summary of the decision sought by those submitters;

Submission Number	Name of Submitters	Position on Plan Change
DPC27/1	Wayne Robinson 163 Holborn Drive	Oppose
DPC27/2	Lance Pooley 20 Tiroiti Grove	Does not oppose
DPC27/3	John Upfold 156 Holborn Drive	Oppose
DPC27/4	Heather Niven 156 Holborn Drive	Oppose
DPC27/5	Ross & Donna Burr 152 Holborn Drive	Oppose
DPC27/6	Greater Wellington Regional Council	Oppose

- 4.3 In her presentation on the first day of the hearing, Miss. Smith tabled documents from Greater Wellington Regional Council officers which state that the Regional Council was no longer opposed to the Plan Change and did not wish to be heard. These documents are held on the Council's file. The Regional Council officers also advised in those documents that they wished for the Regional Council's submission to be considered, effectively subject to agreements with HCC around:

- Gazetting the balance of each parcel into reserve; and
- The funding from the purchase of the land parcels to go into the Reserve Contribution Fund.

- 4.4 I note that Miss. Smith both in her presentation at the hearing and in the responses to the Minutes I issued, advised that HCC has already made decisions as part of the land review process on both of those matters¹. It is not within my power to recommend Council to follow through with these actions, but I wish record that I have taken account of this commitment in the preparation of my recommendation on the plan change.

- 4.5 **Ms. Niven**, in response to Minute #2 raised issues with the Regional Council withdrawing its opposition to the Plan Change and the Regional Council's desire to be heard. As I explained to **Ms. Niven** at the reconvened hearing, that decision was the Regional Council's to make and they have done so. In addition, that as they had not withdrawn their submission I would still be taking account of their submission in my role as Commissioner.

¹ Officers Response to Minute #2 and #3

- 4.6 The submissions to Plan Change 27 are readily categorised in the following manner:
- (a) Preliminary Issues
 - (b) Land Review Issues/Sale of Land
 - (c) Recreation Values
 - (d) Ecological Values
 - (e) Traffic Effects
 - (f) Water Supply
 - (g) Visual Amenity
 - (h) Section 32 Evaluation

4.7 I have used these eight categories as the basis for the assessment that follows.

Preliminary Issues

4.8 The preliminary issues relate to matters that are beyond the scope of plan change, and therefore beyond the scope of my jurisdiction to assess them. As part of the submissions from **Mr. Upfold (PC27/3)**, **Ms. Niven (PC27/04)**, and **Mr. and Mrs. Burr (PC27/5)** there is the request that a dog exercise area be established on 151 Holborn Drive. Similarly, the submission from **Mr. Pooley (PC27/2)** requests that Council, maintain the stormwater drain and remove blackberry from the right of way from Tiroiti Grove to the larger 151 Holborn Drive site and in addition to plant native trees in the neighbourhood. **Mr. Robinson (PC27/01)** requests the installation of speed humps (traffic calming measures) either side of the Holborn Drive Kindergarten. **Mr. Upfold, Ms. Niven** and **Mr. and Mrs. Burr** also referred to neighbours unsuccessfully trying to get have speed humps installed. I will later go on in the assessment of submissions to consider the aspects such as the effects of increased traffic effects, but it is as noted by Miss. Smith in the officer's report Pages 7-8, the submission must relate to an issue addressed in the Plan Change. The matters I have noted above are more operational matters for the Council and its functions under the Local Government Act. I explained this to **Mr. Upfold** and **Ms. Niven** at the hearing, and requested that officers, pass on these requests to the appropriate officers within Council for consideration. In addition, I set out these matters in this report for all of the submitters. I therefore find that the requests noted above, are not within the scope of the plan change.

- 4.9 In response to information provided to me from officers, **Ms. Niven** raised in her response² to that information a number of questions. These questions referred to matters of decision making by the Council in regard to the land review process undertaken by Council under the LGA. I explained to **Ms. Niven** at the reconvened hearing that I could not address those matters in my role as a commissioner under the RMA.

Land Review Issues/Sale of Land

- 4.10 The submissions from **Mr. Upfold (PC27/3)**, **Ms. Niven (PC27/4)**, and **Mr. and Mrs. Burr (PC27/5)** all note that NET financial return to Council and ratepayers is unclear and question the return to Council given the costs associated with the plan change and subsequent subdivision costs. As Miss. Smith notes in the hearings report, the sale of the land is outside of the scope of the RMA. It more squarely sits within the Land Review process under taken by Council through the LGA. I agree with the evidence of Miss. Smith in her report³ that Council have already considered those matters through the LGA process and therefore this matter is not within the scope of the decision making process under the RMA.

Recreational Issues

- 4.11 **Mr. Upfold (PC27/3)**, **Ms. Niven (PC27/04)**, and **Mr. and Mrs. Burr (PC27/5)** all raised recreation issues in their submissions and **Mr. Upfold** expanded on these matters in his presentation at the hearing.
- 4.12 While I noted above that these submissions requested a dog exercise yard, they also raised wider issues regarding the provision of recreation land in the local area. I have summarised the points regarding recreational issues as follows;
- The land is used and valued by local families;
 - Recreational land is a precious resource and should be retained for present and future generations.
- 4.13 Miss. Smith addressed recreational issues in her assessment of submissions in the hearing's report, which I summarise as follows;
- Assessed in the PAOS report of Sept 2011 which included:
 - Impact of loss of site would be low when using Council Reserves Policy and Guidelines
 - Site has poor drainage and is in poor condition
 - Site does not meet CEPTED principles
 - Several opportunities for formal and informal recreation already exist in the area
 - Part of the additional information that I received from Ms. Tessendorf on the 19th Dec 2012, included advice from Mr. B Hodgins, Council's Divisional Manager of Parks and Gardens that the provision of reserves in the Holborn area meet the general targets in the Annual Plan.

² Ms. Niven's Response to Minute #2 29 January 2013

³ Officer's Report Pages 23, 34-35 and 46

- 4.14 Having considered the material put before me, I find that on a neighbourhood basis, even with the loss of land at 151 Holborn Drive to a residential zoning, that there is sufficient provision and accessibility to reserves. I also note my earlier point in paragraph 4.4 above where I have taken account of the Council's decision to gazette the remainder land shown in Appendix 1 of the further information I requested and was supplied by officers on the 19th Dec 2012⁴. As such I recommend that the submission points of **Mr. Upfold, Ms. Niven and Mr. and Mrs. Burr** on this aspect be rejected.

Ecological/Biodiversity Issues

- 4.15 **Mr. Upfold (PC27/3), Ms. Niven (PC27/04), Mr. and Mrs. Burr (PC27/5) and Greater Wellington Regional Council (PC27/6) (GWRC)** raised ecological issues in their submissions. **Mr. Upfold (PC27/3), Ms. Niven (PC27/04), Mr. and Mrs. Burr (PC27/5)** noting the return of native birds and the regenerating bush.
- 4.16 GWRC in their submission raised a number of issues relating to ecology and biodiversity which I have summarised as follows;
- Loss of connectivity values for sites with significant ecological values
 - Intrusion of development into SNR Area 50
 - Loss of forest and aquatic habitats impact on biodiversity
 - Impacts of edge effects
 - HCC's ecological reports identify the site as having significant biodiversity; provide ecological connectivity and important habitat.
- 4.17 GRWC in their relief sought request that;
- Avoid adverse effects on significant indigenous biodiversity on the site and provide buffers to protect it
 - Reconsiders the rezoning to residential and the potential cumulative effects on remnant indigenous biodiversity
- 4.18 At the hearing, as an ecological expert for the Council Dr. Blaschke made a verbal presentation on the ecological and biodiversity issues and responded to my questions. I summarise the important aspects of his presentation and response to questions as follows:
- Plan change would result in a small vegetation loss
 - Area subject to plan change reduced to avoid beech trees
 - Ecological values of the existing vegetation is low
 - Gazetting of balance of 151 Holborn Drive is effective mitigation
 - The location of SNR 50 is in fact on western side of Holborn Drive and not a material consideration in regard to this Plan Change.
 - The Plan Change did not raise any section 6c RMA matters
- 4.19 In response to questions regarding the retention of any bush on the subject site I specifically asked if this would be retained through this process. Both Miss. Smith and Mr. Beban were of the view that the rules within the subdivision

⁴ Appendix 1 – Land known as 151 Holborn Drive highlighted in yellow (to be gazetted as Reserve)

Chapter of the District Plan would provided for this retention. I will return to this specific aspect of bush retention in “Visual Amenity” section of this report.

- 4.20 Overall in regard to the ecological and biodiversity values I am persuaded by the evidence of Dr Blaschke in regard to significance of those values and as such I recommend that the submission points of **Mr. Upfold (PC27/3)**, **Ms. Niven (PC27/04)**, **Mr. and Mrs. Burr (PC27/5)** and **Greater Wellington Regional Council (PC27/6)** on this aspect be rejected.
- 4.21 In making this determination I am aware that as I set out in paragraphs 4.3 and 4.4 above, that GWRC withdrew their opposition to plan change on the understanding that HCC is to gazette as reserve the balance of land known as 151 Holborn Drive. I record; that I cannot through this process, bind the Council to undertake the action of gazetting the land. However, I do record that I have taken account of that commitment in reaching my determination and that I have also relied on Dr. Blaschke’s recommendation that the appropriate reserve status would be scenic or its equivalent.
- 4.22 Furthermore, I also wish to record that in regard to the balance area of 151 Holborn to be gazetted, that there is a strip of land zoned General Residential to the north of the subject site fronting Holborn Drive and ending prior to 139 Holborn Drive. This strip of General Residential land is included within the area to be gazetted as reserve. As such, it is my expectation that the Council would, following the gazetting of the land, seek to have that land rezoned to General Recreation.

Traffic Effects

- 4.23 Potential traffic effects were raised in the submissions of **Mr. Robinson (PC27/01)**, **Mr. Upfold (PC27/3)**, **Ms. Niven (PC27/04)**, and **Mr. and Mrs. Burr (PC27/5)**. At the hearing **Mr. Upfold** drew my attention to traffic safety issues particularly in regard to the nearby Holborn Kindergarten and the resultant increase in the volume of traffic.
- 4.24 Miss. Smith, referred to traffic effects in the hearings report where she relied on the traffic assessment undertaken by Ms. Harriet Fraser, a Transportation Planner at Traffic Design Group. Ms. Fraser’s report concludes that the transport related effects of the plan change would be no more than minor and that the forecast levels of traffic can be accommodated in the surrounding roading network. In Ms. Fraser’s opinion the volume of additional vehicle movements resulting from residential development of the site following the Plan Change would have no more than minor impact on the road safety in the immediate vicinity.
- 4.25 In this case I am persuaded by the evidence of Ms. Fraser. I find that the increase in traffic resulting from the development of the land subject to the plan change will minor and well within the capacity of the roading network. I therefore recommend the rejection of traffic effects aspects of the submissions of **Mr. Robinson (PC27/01)**, **Mr. Upfold (PC27/3)**, **Ms. Niven (PC27/04)**, and **Mr. and Mrs. Burr (PC27/5)**.

Water Supply

- 4.26 Potential effects in regard to water supply infrastructure were raised in the submissions of **Mr. Robinson (PC27/01)**, **Mr. Upfold (PC27/3)**, **Ms. Niven (PC27/04)**, and **Mr. and Mrs. Burr (PC27/5)**. In particular the submitters note that the water pressure in the area is sub-standard and **Mr. Upfold** referred to this in his presentation at the hearing.
- 4.27 Miss. Smith's report refers to the engineering report undertaken by Cutriss Consultants in the preparation of the Plan Change and notes;
- The current water supply in the area is below standard for peak times during the summer months
 - The installation of a booster pump station would mitigate this issue
 - The booster pump would be required at the subdivision consent stage and require engineering approval.
- 4.28 I also questioned officers on procedure for any future subdivision and where the costs might fall in regard to a booster pump station. The response to the later question being that cost would lie with the applicant.
- 4.29 I find that the potential effects on water supply would be as a consequence of subdivision and accept the evidence that this issue is not an impediment to rezoning the land as mitigation options are available. I therefore recommend that the submissions of **Mr. Robinson (PC27/01)**, **Mr. Upfold (PC27/3)**, **Ms. Niven (PC27/04)**, and **Mr. and Mrs. Burr (PC27/5)** in regard to this matter be rejected.

Stability/Site Suitability

- 4.30 Submitters **Mr. Upfold (PC27/3)**, **Ms. Niven (PC27/04)**, and **Mr. and Mrs. Burr (PC27/5)** all raised the issue of site stability and hence suitability for development.
- 4.31 At the hearing, **Mr. Upfold** expanded on his concerns regarding site suitability noting Councilors comments on unsuitability of the high mobility of clay based sections and drawing attention to sections of the Tonkin and Taylor geotechnical report⁵ regarding vegetation removal and slope.
- 4.32 I questioned officers on the Tonkin and Taylor report and the stability of the site, particularly noting that s106 of the RMA could not be relied upon during the Plan Change process. In response the officers advised that the Tonkin and Taylor report noted that the land was suitable for rezoning and that similar reports had been commissioned for similar Council initiated plan changes. Miss. Smith and Mr. Beban were also of the view that the earthworks and vegetation removal rules in the District Plan provided for detailed assessment of any propose development of the site.

⁵ Tonkin and Taylor Report, Preliminary Geotechnical Suitability Assessment, Aug 2009 Rev A

- 4.33 The Tonkin and Taylor report has been prepared by specialist geotechnical experts and I accept their findings. As such I recommend the rejection of the submission points of **Mr. Upfold (PC27/3)**, **Ms. Niven (PC27/04)**, and **Mr. and Mrs. Burr (PC27/5)** in regard to site stability.

Visual Amenity

- 4.34 Loss of visual amenity is an issue raised in the submissions of **Mr. Upfold (PC27/3)**, **Ms. Niven (PC27/04)**, and **Mr. and Mrs. Burr (PC27/5)**. In particular the submitters noted that given the elevation of their properties above the subject site and the removal of the current vegetation that they would be significantly affected. In addition, the removal of the vegetation would open views across the valley to the east, to the Speldhurst subdivision which they describe as “stark and ugly”.
- 4.35 In speaking to his submission at the hearing, **Mr. Upfold** reinforced these points and also showed photographs taken by him to illustrate his points. In response to questions **Mr. Upfold** was of the view that any purchaser of a lot in the subject site would want to remove the existing vegetation and that any relating would take years to reestablish.
- 4.36 At the hearing on the 12 Dec 2013, officers provided verbal response to the matters raised by **Mr. Upfold**, essentially advising that in their view the rules in the district plan regarding earthworks and vegetation removal would be sufficient in terms of maintaining visual amenity. In response to questioning they were also of the view that the inclusion of a mechanism in the District Plan specifically tailored to the retention of a vegetative strip along the Holborn Drive frontage of the subject site was not required. They also advised that the Speldhurst subdivision was granted and developed prior to the introduction of earthworks and vegetation removal rules in the District Plan⁶ and would as consequence of those new rules not occur again.
- 4.37 At the reconvened hearing, Miss. Smith spoke to the information provided in response to Minute #3, and reiterated that in her view the District Plan gives appropriate protection to amenity values. Before questioning Miss Smith, I questioned Mrs. Robilliard, the landscape architect consulting to the Council and author of the report on the effects on Landscape and Visual Amenity prepared as part of the section 32 process.
- 4.38 Mrs. Robilliard, in response to questions, was of the view that the impact on visual amenity for the properties of 156 – 152 from the removal of the vegetation would be medium to high and therefore significant. Mrs. Robilliard went to opine that the vegetation in the northwestern corner of the plan change area, which includes the current access track down to flat area of the site, was the most important area to be retained. Furthermore, the matter was significant enough to be a section 7 matter in Part II of the RMA. While I note that in the PAOS report states that the impact upon 150-156 Holborn Drive would be low⁷, I have

⁶ Plan Change 11

⁷ PAOS Report , Third Bullet point, Page 33

assumed that this statement was made noting that replanting of the bank along Holborn Drive would reduce the effects⁸, although such replanting cannot be implemented directly by the plan change.

- 4.39 The significance of amenity value was also addressed by **Ms. Niven** at the reconvened hearing noting that it was not just the bush in the north-west corner of the plan change site but also the vegetative buffer along Holborn Drive.
- 4.40 Miss. Smith and Mr. Beban in response to questions advised in summary that;
- In regard to existing access pathway the subdivision provisions of the plan do not require secondary access, that said it would be desirable
 - Other parcels of land that were subject to plan changes, similar to this current case, had actually been subdivided off but no further development of the sites has occurred. Even though the earthworks provisions of the Plan had not been triggered, in some cases consent orders were in place for the protection of the bush on those sites.
- 4.41 In reaching a determination regarding visual effects I find that there is the need to recognise the significance of the effect of the bush removal at time of subdivision that would result from the change in zoning. There is also the need to have confidence that the rules in the current plan will allow for the avoidance of that effect. While I am persuaded by the evidence of the significance of the potential visual impact I am not convinced that the provisions of the District Plan, as they stand, will ensure the avoidance of that potential effect and hence find that additional provisions are required to be included in the Plan.
- 4.42 In response to Minute 3, Miss. Smith set out a number of options as to provisions that would achieve certainty in the avoidance of the visual impact effect⁹. In summary those provisions were;
- Specific rule that prevents vegetation removal
 - Altering the plan change to exclude relevant area
 - Covenant or consent order at the subdivision stage.
- 4.43 Miss Smith's response included assessments of 10m and 15m wide retention strips covering the vegetation fronting Holborn Drive and the impacts on the potential development of the subject site. Miss. Smith further expanded on these matters in her evidence at the reconvened hearing, noting safety concerns regarding large established trees and their replacements in any retention strip.
- 4.44 Included in Miss. Smith's evidence was a draft new Restricted Discretionary assessment criteria; which states;

“Draft Rule for Chapter 11 Subdivision – new Restricted Discretionary assessment criteria:

Add new assessment criteria to 11.2.3.1 Matters in which Council has restricted its discretion

⁸ PAOS Report, Para 4, Page 32 -33

⁹ Miss. Smith, Response to Minute 3, Pages 6 -8

(j)Vegetation protection and presence:

The extent to which protection is given and how the safe, continuous presence of vegetation is provided for in the area as shown in Appendix Subdivision 7 by using an appropriate legal mechanism.

Add Appendix Subdivision 7 showing the area that Council wishes to protect.

- 4.45 Miss. Smith noted that the “Appendix Subdivision 7” was not included in the draft as the area to be protected had not yet been determined.
- 4.46 As noted above I am not persuaded that the existing District Plan provisions will provide for the protection of the vegetation. In regard to the northwest corner of the plan change area, having accepted the evidence as to its significance for potential visual amenity impacts I find that excluding this area from the Plan Change is the best approach. This area is marked on the map in Appendix 1 attached to this report.
- 4.47 Similarly, I am not convinced that in regard to the vegetative strip extending south along Holborn Drive frontage of site subject to the Plan Change; that the existing District plan provisions would achieve the identified outcome. I find that the mechanism in Miss. Smith’s evidence at the reconvened hearing to be appropriate (my recommended wording is included in Appendix 2 to this report) and that this apply to a 15m wide strip as shown on Appendix 3 also attached to this report.
- 4.48 As such I recommend the acceptance in part of the submission points of **Mr. Upfold (PC27/3)**, **Ms. Niven (PC27/04)**, and **Mr. and Mrs. Burr (PC27/5)** in regard to visual amenity.

Section 32 Evaluation

- 4.49 Submitters **Mr. Upfold (PC27/3)**, **Ms. Niven (PC27/04)**, and **Mr. and Mrs. Burr (PC27/5)** all raised issues regarding the evaluation of options included in the Plan Change documents which forms part of the Section 32 evaluation.
- 4.50 **Ms. Niven** in her presentation on the 12th December 2012 questioned the s32 costs and benefits analysis. In response to questioning Miss. Smith was of the view that the section 32 evaluation met the requirements of the RMA. Having reviewed the section 32 evaluation I find that it does meet the purposes of the Act.
- 4.51 Therefore, I recommend that the submission points of **Mr. Upfold (PC27/3)**, **Ms. Niven (PC27/04)**, and **Mr. and Mrs. Burr (PC27/5)** in regard to the evaluation of the options be rejected.

5. RECOMMENDATION AND OVERALL REASONS

- 5.1 I recommend to the Council that, pursuant to the First Schedule to the Resource Management Act 1991, that Proposed Plan Change 27 to the Hutt City Council

District Plan be approved, subject to the amendments outlined, for all of the reasons set out in this report.

- 5.2 In terms of Part 2 of the Act the proposal, subject to the amendments outlined, does not contravene any of the matters of national importance (Section 6), 'other matters' (Section 7), nor the principles of the Treaty of Waitangi (Section 8).
- 5.3 The Plan Change is an appropriate way of achieving the purpose of the RMA.
- 5.4 For all of the reasons given above the Plan Change meets the statutory requirements of the RMA, that the Plan Change satisfies Part 2 of the Act and therefore will promote the sustainable management of natural and physical resources as required by the RMA.
- 5.5 I recommend that the submissions on proposed Plan Change 27 be accepted in part or rejected, as outlined.

6. RECOMMENDATIONS ON THE SUBMISSIONS

- 6.1 That the following submissions be rejected:

Mr. W Robinson 163 Holborn Drive	DPC27/1
Lance Pooley 20 Tiroiti Grove	DPC27/2
Greater Wellington Regional Council	DPC27/6

- 6.2 That following submissions be accepted in part:

John Upfold 156 Holborn Drive	DPC27/3
Heather Niven 156 Holborn Drive	DPC27/4
Ross & Donna Burr 152 Holborn Drive	DPC27/5

- 6.3 That following submissions be rejected in part:

John Upfold 156 Holborn Drive	DPC27/3
Heather Niven 156 Holborn Drive	DPC27/4
Ross & Donna Burr 152 Holborn Drive	DPC27/5




Mark St Clair
Independent Hearings Commissioner
18 April 2013

Appendix 1: Area recommended to be removed from Plan Change shown in red



Proposed Plan Change 27

151 Holborn Drive, Stokes Valley
(Pt Lot 3 DP 20917 and Pt Lot 8 DP 20501)

 Land to be zoned General Residential Activity Area

Planning Map G2

 **HUTT CITY** District Plan - City of Lower Hutt



Scale 1:3000

Appendix 2: Recommended Amendments to District Plan

Add new assessment criteria to 11.2.3.1 Matters in which Council has restricted its discretion

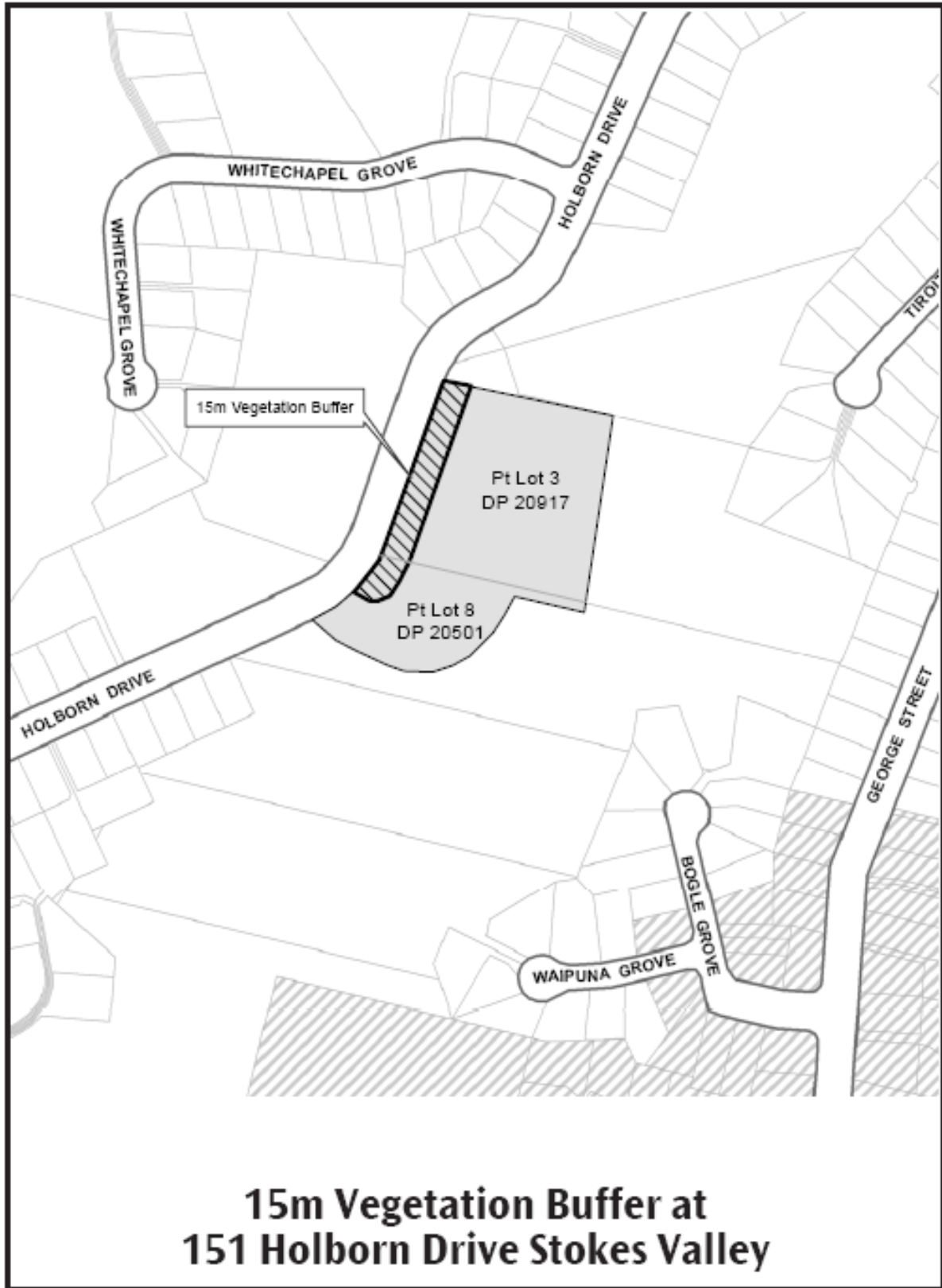
(j)Vegetation protection and presence:

The extent to which protection is given and how the safe, continuous presence of vegetation is provided for in the area as shown in Appendix Subdivision 7 by using an appropriate legal mechanism.

Add Appendix Subdivision 7 showing the area that Council wishes to protect.

Appendix3: Recommended Area subject to protection

Appendix Subdivision 7



**15m Vegetation Buffer at
151 Holborn Drive Stokes Valley**