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## **APPROVAL OF DISTRICT PLAN CHANGE 27 – KHOURI AVENUE / MAKARA ROAD, REZONING OF RESIDENTIAL AND OPEN SPACE LAND**

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### **1. Purpose of Report**

To report the recommendations of the District Plan Hearing Committee concerning District Plan Change 27 to Council for approval.

### **2. Recommendation**

It is recommended that Council:

- 1. Receive the information.*
- 2. Agree to confirm the recommendations of the District Plan Hearing Committee in respect of District Plan Change 27 – Khouri Avenue / Makara Road, rezoning of Residential and Open Space land, as set out in the Appendix to this report.*

### **3. Background**

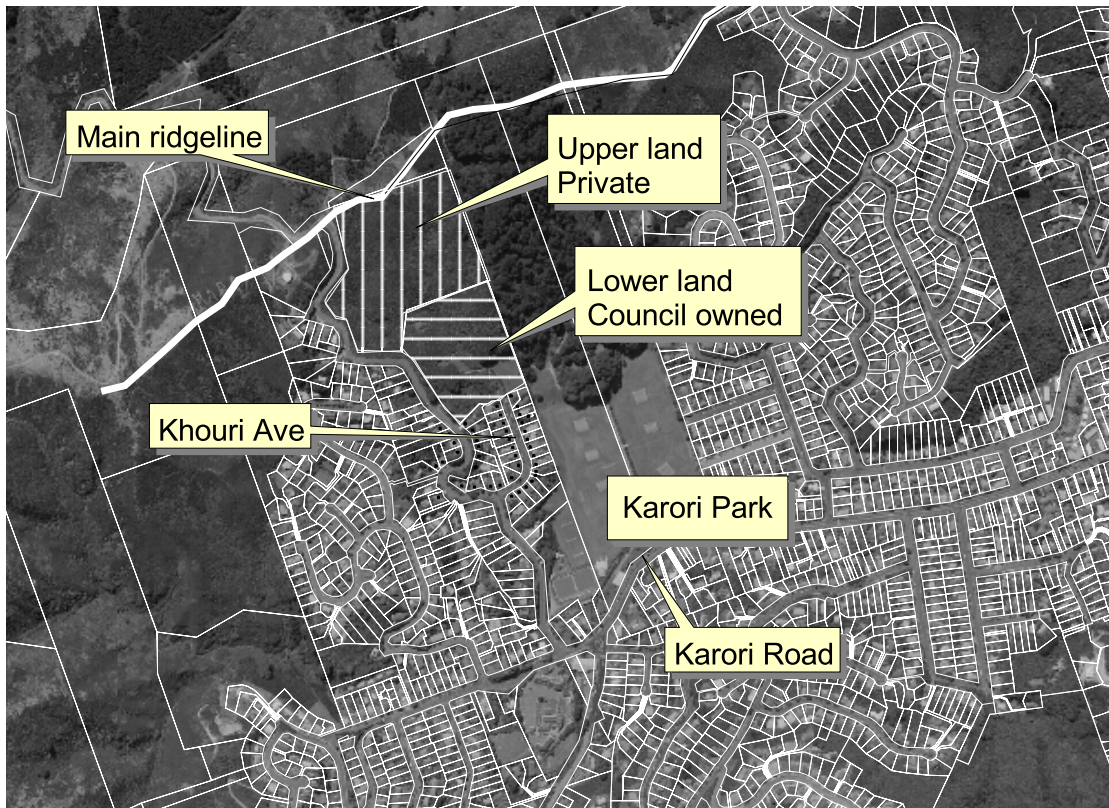
The plan change is a rezoning of land within and adjoining the Outer Green Belt. The rezoning anticipates a land exchange between the Council and a private land owner.

The proposal to exchange land at the end of Khouri Avenue first arose during the development of the District Plan when the ‘upper land’ was identified as having significant open space values. The upper land is privately owned and the ‘lower land’ is owned by the Council as recreation reserve. (Figure One).

The Council initiated dual processes in 2003 to exchange and reclassify the land under the Reserves Act 1977 and to change the District Plan to reflect the exchange. Under the initial proposal the lower (Council-owned) land, which is currently zoned Open Space would have been rezoned Outer Residential and the upper land Open Space B.

The district plan change and Reserve Act applications were separately publicly notified and one hearing was held for both. The Hearings Committee visited the site and deliberated on the evidence presented at the hearing. It requested further information from Council officers (and indirectly the private developer who would subdivide some of the land) on whether the boundaries in the proposed plan change could be altered in order to lessen the impact on the stream and other natural values of the lower land.

As a result the proposed land exchange and subdivision design (the basis of the plan change) were amended. This resulted in a larger area of the Council land than originally anticipated being retained as reserve (Figure Two).



**Figure One: The location of the two properties of the proposed land exchange**

The amended land exchange and district plan change proposal was mailed to all the submitters on 20 May 2005. Submitters were invited to provide written comments on the revised proposal, and were provided with the opportunity to state any views to the Hearing Commissioners when the hearing was reconvened on 28 July 2005.

#### Reserve Act process

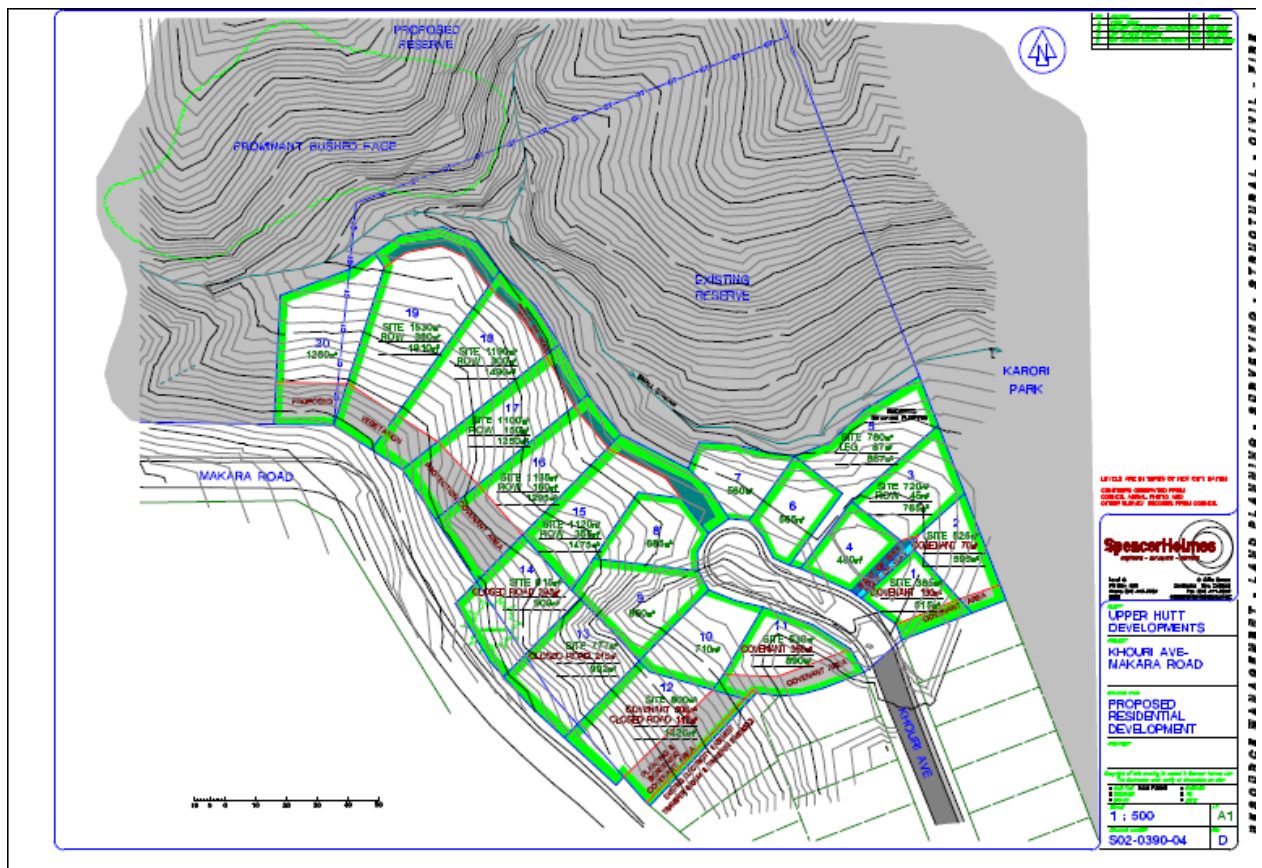
The Reserves Act application has followed a separate legal process. The hearing has been held (in combination with the district plan change) and the Hearing Committee's decision and recommendation was approved under delegation by the Strategy and Policy Committee on 3 November 2005. The final stage in the process is for Council officers to seek the approval of the Minister of Conservation.

## **4. Discussion**

Eight main submissions and seven further submissions were received on Proposed Plan Change 27. All but three submitters opposed the plan change. One of these was on behalf of the development company that has an option to develop the privately owned

upper land. It supported the original land exchange and plan change proposal and it also support the amended proposal that was developed after the request for further information.

The Hearing Committee gave careful consideration to all the issues raised by the submitters, including those issues elaborated on in presentations by the individuals who appeared before the Committee.



**Figure Two: The land exchange proposal (also showing the private developer’s proposed subdivision layout)**

The Committee was satisfied, taking into account both the oral and written submissions, that the amended District Plan Change 27 should be approved by the Council with some changes to the text of the proposed Appendix to the Residential Area rules. The Committee considered the plan change represented a good use of the land and a positive environmental outcome. It also considered that the adverse environmental effects arising from the development that could happen under the revised plan change will be limited and are far out-weighted by the benefits to the city environment of: enhanced urban form; protection of the ridgeline and the upper slopes for recreation; the conservation of a larger area of regenerating native bush than originally proposed; and protection of the full length of the main stream.

Resource Management Act process

Once approved by the Council the decision will be publicly notified and served on the submitters. Submitters then have the option of appealing the matter to the Environment Court within 30 working days. If no appeals are made the plan change will become operative.

**Contact Officer:** *Jonathan Anderson, Planning Policy*

## Supporting Information

### **1) Fit with Strategic Objectives/Strategic Outcomes**

This matter is directly related to the Council's land use strategy, expressed through the District Plan. This sits within the Built Environment Key Achievement Area. The Council must also have reference to its statutory obligations under the Resource Management Act 1991.

The key outcomes are:

#### **1.1 Liveable city**

Wellington is a great place to live and offers a variety of places to live, work and play within a high quality public environment.

#### **1.4 Compact City**

Wellington is a compact city with mixed land-use, structured around a vibrant city and suburban centres and connected by major transport corridors.

### **2) LTCCP/Annual Plan reference and long term financial impact**

Relates to updating of the District Plan. No long term financial impact

### **3) Treaty of Waitangi considerations**

There are no specific Treaty of Waitangi implications.

### **4) Decision-Making**

This is not a significant decision. It is part of the on-going updating of the City's District Plan.

### **5) Consultation**

#### **a) General Consultation**

#### **b) Consultation with Maori**

Council has consulted with the community on both the land exchange proposal under the Reserves Act 1977 and the proposal to draft a district plan change under the Resource Management Act 1991 (the RMA). It has also undertaken statutory consultation with Tangata Whenua and other parties under the First Schedule of the RMA.

As part of both the Reserves Act and the district plan change processes public participation was ensured through public notification, submissions and a public hearing.

### **6) Legal Implications**

Assessed in accord with the Reserves Act 1977 and the Resource Management Act 1991

### **7) Consistency with existing policy**

Decisions on the conservation of bush and streams, open space linkages, and stormwater management are consistent with the Bush and Streams Restoration Plan and the Outer Green Belt Management Plan.

## WELLINGTON CITY COUNCIL

### DISTRICT PLAN

### DECISION OF HEARING COMMISSIONERS

**SUBJECT: DISTRICT PLAN CHANGE No. 27  
Khouri Avenue / Makara Road, Rezoning of  
Residential and Open Space Land**

**HEARING COMMISSIONERS:** Ian Hutchings (chair)  
Ngaire Best  
Cr Leonie Gill  
Judy Siers

**DATES OF HEARINGS:** 2 April 2004 and 28 July 2005

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#### **1. RECOMMENDATIONS**

1. *That District Plan Change 27 be approved as publicly notified and subsequently amended following the Hearings Commissioner's request for further information from officers (detailed as 'Rezoning Map, Version 2, District Plan Change 27 – Khouri Avenue and Makara Road, Karori', dated May 2005) with additional subdivision assessment criteria in the Appendix 23 to the Residential Area rules, attached as Appendix One of this Decision Report.*
2. *That all submissions and further submissions be accepted or rejected to the extent that they accord with the above recommendation to approve the amended district plan change.*

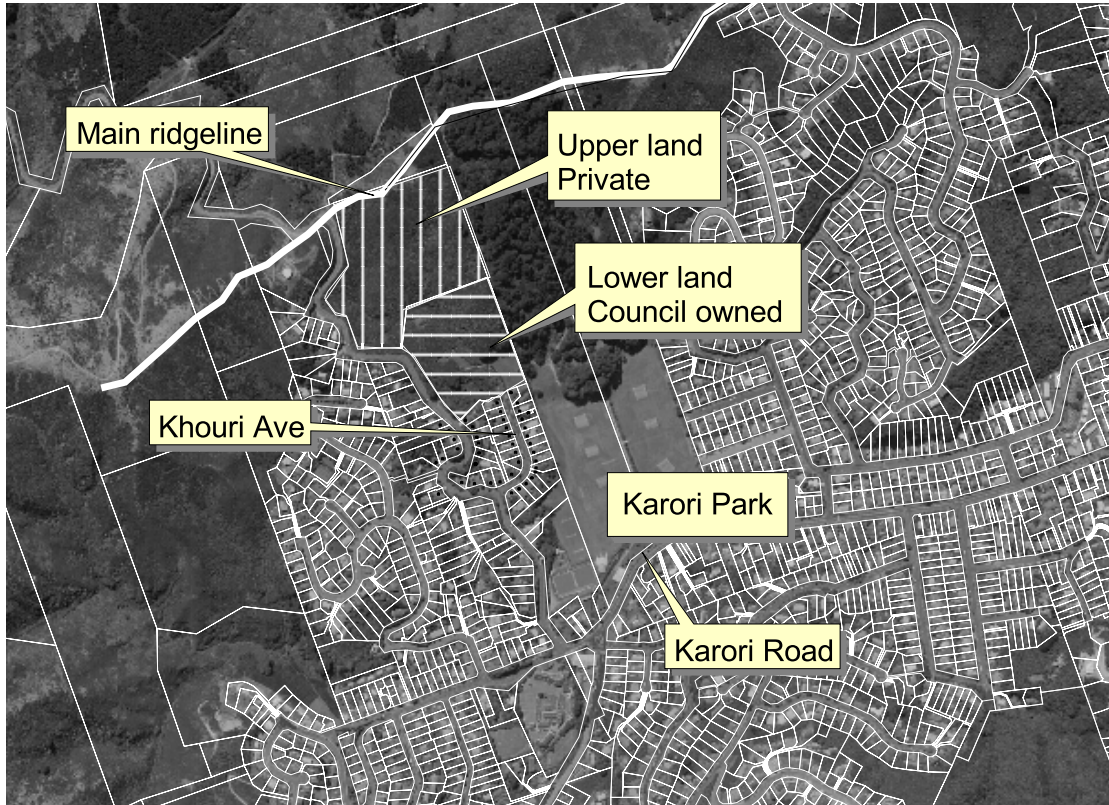
#### **2. BACKGROUND**

##### Introduction

This decision concerns the rezoning of land at and near Khouri Avenue, Karori as shown on the attached plan (Figure One). An associated decision relates to the exchange of land under the Reserves Act. Together they are a part of an overall proposal to rezone and exchange land holdings between the Council and a private landowner. The expectation was that some of the "lower land" which is presently

Reserve (and owned by Council) would be used for residential purposes and some of the “upper land” which is privately owned and zoned Outer Residential would become Council land and be suitably protected from development as a Reserve.

**Figure One: Proposed Khouri Avenue land exchange**



The hearings and considerations for the zoning changes and change of reserve status were held as one overall process, while the commercial considerations were dealt with by Council in a separate process without any involvement of the Hearing Commissioners.

### The initial proposal

The initial proposal (Figure Two) was to swap the majority of a piece of public Reserve land (the lower land) at the end of Khouri Avenue with the majority of a larger piece of privately owned land zoned Outer Residential (the upper land) running up to the skyline ridge currently owned by Vinrik Contractors Limited but who have contracted the development rights to Upper Hutt Developments Limited. The upper land was to become part of Council’s Outer Green Belt, and the lower land would be developed into residential allotments.

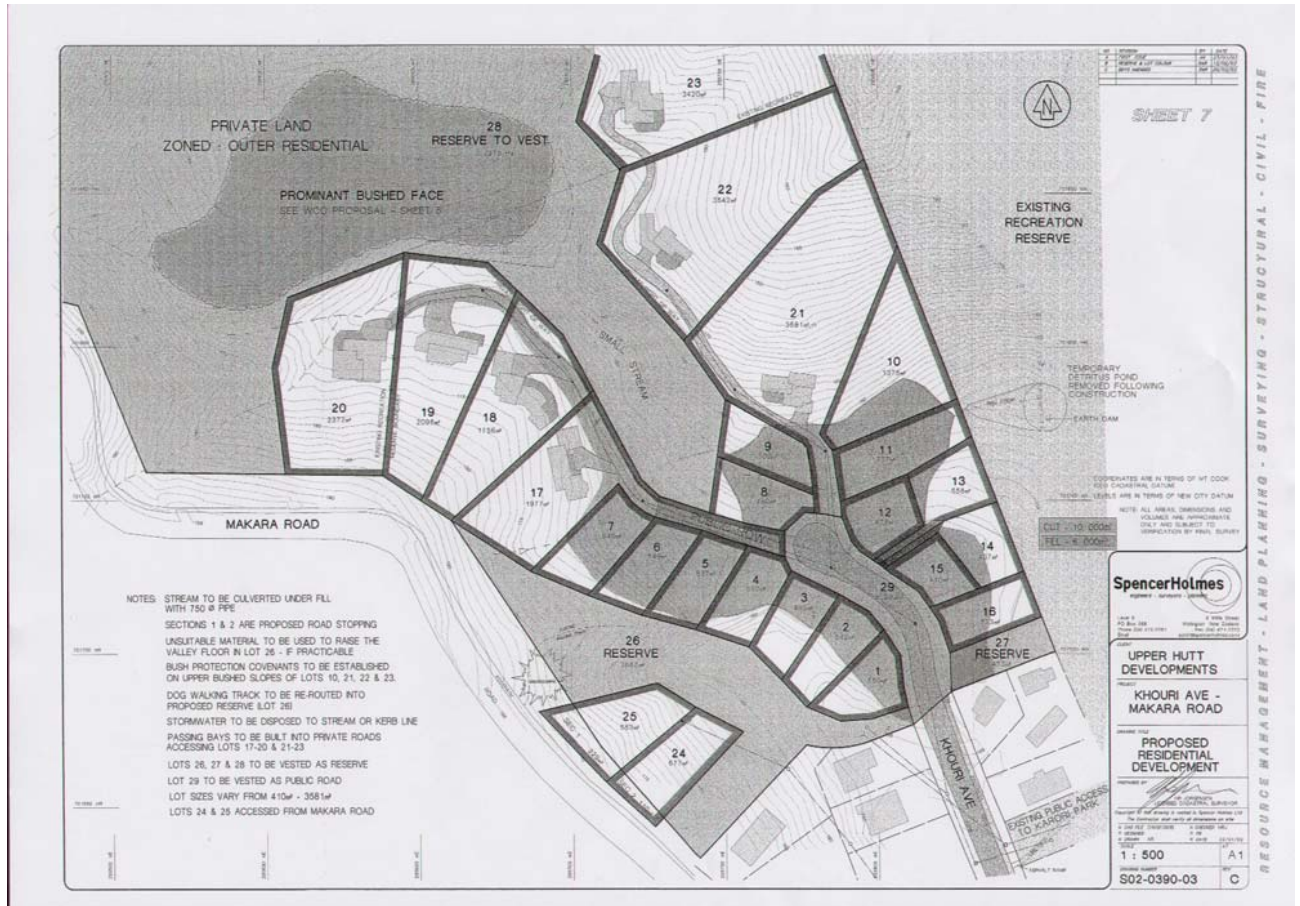
The Council proposal was intended to enhance open space values (green belt, landscape) and give good urban form to the city, whilst recognising a number of other issues including:

- privacy for existing residents;

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- traffic management (safety, efficiency); and
- recreation opportunities.

**Figure Two: Initial land exchange proposal**



Council undertook a public consultation process in the area. Local residents generally did not support the proposal due to several issues including the loss of local amenity and traffic concerns. The Council however resolved to proceed with seeking the approvals necessary with the land exchange and the associated district plan change.

The proposal involved both changes to underlying zoning of the lands and uplifting of Reserve status of some land. Whilst the actual subdivision of any land would be subject to a separate Resource Consent, the re-zoning was based on a potential subdivision plan which formed the basis for the separate commercial agreement on land exchanges between Council and the private land owner.

The proposal was publicly notified, under the Resource Management Act and Reserves Act, on 5 November 2003.

A total of 15 submissions and further submissions were received on the District Plan change. Three were in general support of the proposal while the rest opposed the plan

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change. Five submissions were received in response to the Reserves Act notification. That matter is dealt with in a separate report.

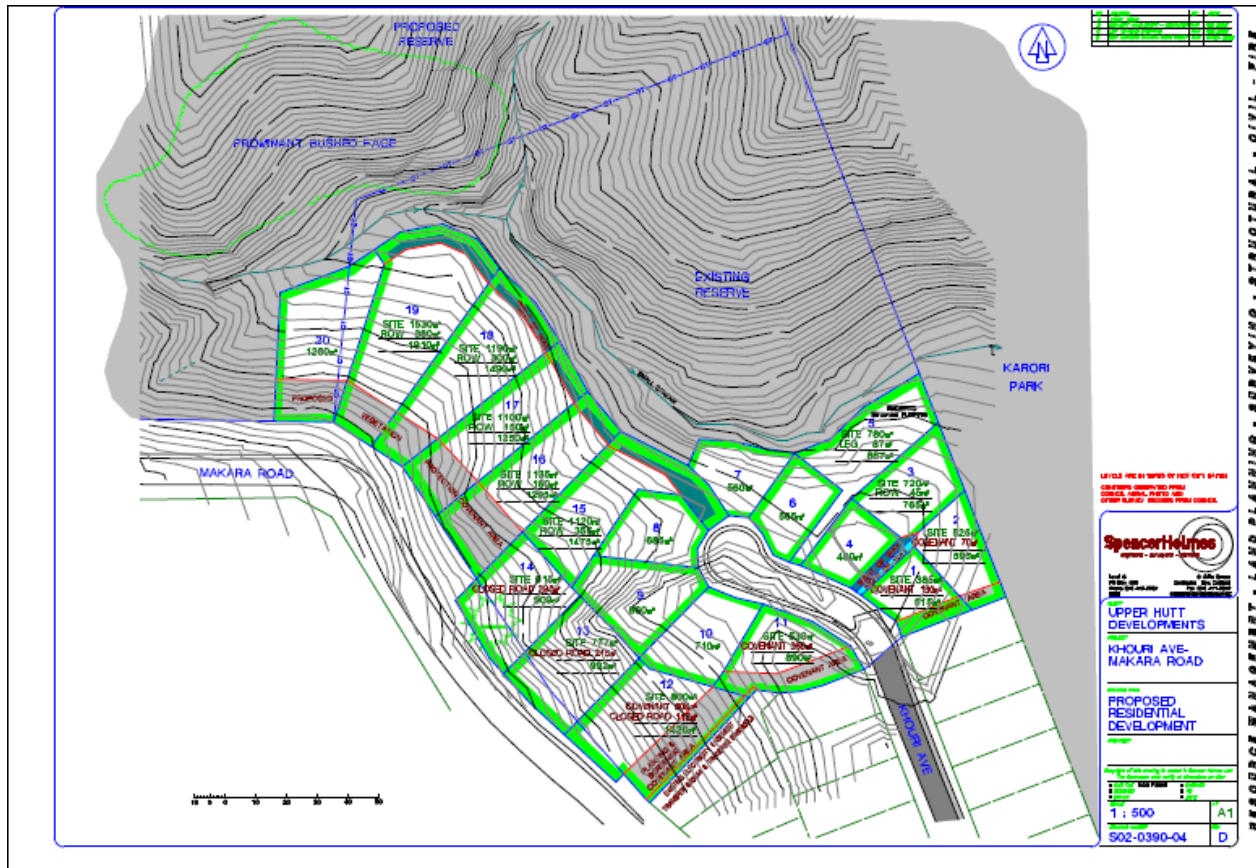
The Commissioners heard submissions on 2 April 2004 and conducted a visit to the site a few days later. After the visit and initial deliberations they were not convinced of the desirability of the extensive piping of the stream and the extent of loss of relatively mature native regeneration on the ridge on the north-eastern side of the stream. Whilst some use of the land across the stream might have been considered acceptable, the Commissioners considered it inappropriate to attempt to replan the overall proposal and therefore essentially predetermine the nature of any commercial agreement between the Council and other landowner. The Commissioners therefore identified their concerns to all parties and adjourned the hearing so as to allow a revised proposal to be developed. Any such revised proposal would be considered in the light of the concerns expressed by the Commissioners but would not be anticipated to create any further impacts greater than those in the initial proposal.

### The revised proposal

A revised proposal (Figure Three) was developed through negotiation between Council officers and the private developer and their consultants. There was a period of several months in working out a new subdivision design and land exchange proposal. It was also necessary for officers to report back to the appropriate committee of Council for it to give its approval to a new financial formula for the land exchange. This contributed to the delay in considering the revised plan change proposal.

### **Figure Three: Revised land exchange proposal**

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The report required under s.32 of the Resource Management Act was provided at the initial hearing and outlined the necessary matters. The revised proposal was considered to have a lesser effect and therefore fell within the scope of the original report. The s.32 report has subsequently been updated to recognise the revised proposal, but the updated report was not relied upon in forming a view on the revised proposal.

The revised land exchange and district plan change proposal was mailed to all the submitters for their comments on 20 May 2005 (the lifting of the Reserves Act from parts of the “lower land” requires a separate decision, which is documented in a separate report).

Submitters were invited to provide any written comments on the revised proposal, and were provided with an opportunity to state any views to the Commissioners when the hearing was reconvened on 28 July 2005.

### 3. CONSIDERATIONS

#### Submissions

A list of submitters is provided in Appendix Two to this report. In both the initial hearing and the reconvened hearing, submitters raised concerns as follows:

- Financial considerations;

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- The process adopted by Council and potentials for conflicts to arise;
- The loss of amenity of existing properties, particularly those adjoining the proposed development;
- Effects of additional traffic in Khouri Avenue and the intersection with Makara Rd;
- Stormwater and flooding;
- The loss of the present Reserve, and impact on uses of the Reserve;
- The practicality or otherwise of residential development on the upper land;
- The relationship with Plan Change 33.

Some of the above concerns relate to the process and related matters, and these are therefore covered before other matters of judgement.

### Financial considerations

There was a strong suggestion in submissions that the Commissioners could not make an informed decision without knowing the valuation figures used to negotiate the land exchange or the sum of money available to Council officers to finalise the commercial arrangements. The argument was that Council would be making a poor decision to proceed with the land exchange, and it should instead be negotiating to purchase the whole area of the upper land. Therefore the Commissioners should not consider or recommend in favour of the proposals.

The Commissioners understand the frustration of submitters in not having the full picture concerning Council's reasons to continue with the land exchange rather than full purchase (the most recent financial decision concerning the land exchange negotiations was made in a public excluded meeting of the Strategy and Policy Committee of Council). The Commissioners were not informed of (or aware of) the nature of these commercial considerations. However the Commissioners want to make it clear that it is not the Commissioners' role, in this particular instance, to examine Council's earlier decision about how Council will achieve its objectives. Council has a variety of mechanisms it can use in pursuing its overall objectives and it is not the role of a hearing to attempt to force Council to revisit which mechanism(s) it should use. The Commissioners' function is instead to make a decision on the Reserves Act and plan change proposals before it, based on the statutory and policy framework, the submissions before it, and the environmental and recreational merits of the proposal.

### The process adopted by Council

The Commissioners accepted that the initial consultation process may have set expectations in people's minds about the extent that residents could radically modify or even stop the land exchange proposal through the consultation process. These expectations do not seem to have matched Council's own expectations as a landowner that the proposed land exchange, resulting in residential development off Khouri Avenue, was a reasonable outcome.

Several of the submissions questioned the fairness of a process where Council negotiated with another land owner and private developer, made policy decisions to

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proceed with a land exchange and a District Plan change, consulted with local residents and the wider community and then acted in a judicial role to hear submissions and make recommendations or decisions on a new reserve and zonings / rules in the District Plan. The Commissioners acknowledge the perceived partiality but observe that Council has an obligation to fulfil its statutory functions and duties in all its roles. The different roles have been kept separate and the Commissioners are satisfied that the different processes have not been compromised or tainted. They appreciate that it is difficult for people to recognise the different roles that the Council, its officers and its elected members are required to undertake.

The Commissioners noted that several submitters expressed specific concern about the multiplicity of roles they perceived one submitter, an elected Councillor, had adopted in the overall process. This led to some confusion, and a degree of suspicion, about the various roles adopted by that person. The Commissioners noted that while an elected member of the consent authority has the right to make submissions as a member of the public, it would have led to far less confusion and suspicion if the Councillor had decided to confine participation to either that of an elected member or that of a submitter, but not both.

The Commissioners noted that there was no evidence of adverse influence and are confident that this matter has not inappropriately affected the result of the hearing and decision making process. In addition, the Commissioners are satisfied that the elected member has no financial or business interests in the proposed residential development, as suggested as a possibility by one submitter.

Another issue raised was the fact that the consultation with the community was carried out on the basis that land was being exchanged with no payment of money by either party. The submission seemed to argue that, as Council has changed its position (as the result of the Commissioner request for further information) that the land exchange and district plan change could not legitimately proceed. The Commissioners did not accept this argument as they considered it was reasonable that Council, in its role as a landowner and land manager, could choose to change its commercial position in response to changes in circumstances.

Another argument heard was that the prevailing Council attitude was weighted toward the residential use (termed “destruction”) of the lower land. This is the same issue as the question of which mechanisms Council chooses to employ. The Commissioners recognised that the Council is entitled to take a policy decision to attempt to improve urban form and its network of reserves. The notification, submission and hearings processes under the Resource Management Act, including the possibility of referral to the Environment Court, provide the proper legal mechanism to test Council’s position and proposal.

Another submission raised the question of compensation for loss of amenity from the plan change. The Commissioners noted that the Resource Management Act does not provide for the payment of compensation by Councils’ exercising their roles and functions in changing district plans, following due process.

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The submission from Murray Burns on behalf of the Khouri Avenue residents' group argued that Plan Change 27 could not (and should not) be decided until Upper Hutt Development's Environment Court appeal on Plan Change 33 has been resolved.

The Commissioners considered that Plan Change 27 is a plan change that was initiated well before Plan Change 33 and that the parties, including the submitters, are entitled to a decision on the plan change issues now rather than following, what is likely to be, a lengthy Environment Court process.

While the two issues, of the Khouri Avenue plan change and the appeal on Plan Change 33, are obviously related the Commissioners do not consider it is necessary for the Court to first determine whether the ridgelines and hilltops overlay in Plan Change 33 should be retained on part of the upper land. The two matters can be decided separately as any decision to approve the Khouri Avenue plan change does not restrict the Court's ability to decide to keep or remove the ridgelines and hilltops overlay. The two protection mechanisms, zoning and ridgeline overlay development restriction, can operate alongside of each other in the District Plan, whether the land is owned by Council or otherwise.

The Commissioners accepted that Council wanted to protect the upper land by ownership and Reserve status as a more certain way of protecting the visual and ecological qualities of the land, than might be achieved through any protection of these qualities simply under the ridgeline and hilltops rules. Given that a decision on Plan Change 27 can be made, it is open to the Commissioners to determine what that decision should be.

### Reserves and use of the lands in question

The Commissioners do not consider reserves are sacrosanct or inviolable for all time. They observe that Parliament has provided the legal process to revoke reserves or otherwise change them around, if the outcome is considered to best serve the purposes of conservation and recreation. The Reserves Act, and in this instance the Resource Management Act as well, provide checks and balances to the proposal to exchange the land. Ultimately the Minister of Conservation is also required to give consent.

The lower land was, prior to 1990, owned by the Crown (Education) and was intended for a school site. It was acquired by Council as part of a package of several land parcels and has essentially remained as it was since that time. Some mowing of the flat area has occurred. The lower land is delineated by boundaries with Makara Rd in the west, residential land at Khouri Avenue to the south, residential zoned land (the upper land) to the north and Karori Park (Reserve) to the east.

The lower land comprises a mix of mown areas, informal tracks, blackberry and unwanted vegetation, and steeper areas with some areas of regenerating bush. It includes a stream which effectively segregates the larger steeper area from the flatter, more accessible areas.

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The Commissioners heard that with modern development methods it was likely that the majority of the lower land could be used for residential purposes. Lot sizes would likely vary with a lower density on the steeper areas beyond the stream. The Commissioners were also presented with evidence that a credible development could occur on the privately owned upper land, although there were mixed views heard on the profitability that would be achieved.

The lower land is directly adjacent to existing housing and infrastructure services and most parties accepted that these services could be extended to serve the area. The Commissioners noted that Khouri Avenue appears to have been intended to be extended some distance beyond the present end of the formed road. Conversely if the upper land were developed, drainage services would be required to be provided through the lower land and/or discharging into the stream tributaries.

The Commissioners considered that development of the lower land was demonstrably better from a land use and overall planning perspective than development of the upper land. As such, development of the lower land would represent the best use of resources. None the less some parts of the lower land, particularly the stream and steeper areas, were less suitable for development and whilst the initial proposal gave some recognition of this, the revised proposal was seen to be a significant improvement.

The Commissioners considered submitters concerns about the loss of the mown grass areas on the existing reserve. These included loss of private amenity to adjacent properties, and loss of public amenity. The Commissioners heard that, apart from some walking access, this was the main area accessed and used by the community. They were however satisfied that the adjacent Karori Park more than met any local and wider community need for passive open space for dog walking, personal exercise on level ground or gentle slopes, contact with nature, and so on. They noted that the imminent enhancement of Karori Park and the completed cleanup of pines after the 2004 storms would increase the area available for passive recreation. The Commissioners considered that retention of Reserve status on the existing Khouri Avenue Reserve for purely private amenity purposes was not appropriate but noted that private amenity could be addressed through controls on use of the land if the Reserve status was to be uplifted.

### Terrestrial ecology

The revised land exchange conserves a larger area of regenerating native vegetation, encompassing almost all the upper land and a good part of the lower land, particularly the areas of taller and more developed regeneration. The revised plan is consistent with the vegetation assessment commissioned by Council from B J Mitcalfe and J C Horne in 2003. The report stressed the value of the native tree fuchsia, kotukutuku, (*fuchsia excorticata*) present on both areas of land. The revised proposal, which retains vegetation along the full length of the principal stream, would permit the retention of most of the fuchsia trees.

The Commissioners noted the additional covenant areas proposed to protect regenerating vegetation on what would be private land, on the larger residential sections

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below Makara Road. These covenants were considered desirable by the Commissioners as these steeper areas were unlikely to be the subject of high density development.

The verbal submission from Rudi Schnitzler to the first hearing questioned the level of ecological assessment undertaken in that Council had only surveyed plants and marginally birds but had not surveyed invertebrates and reptiles or undertaken a comprehensive survey of birds. It was stated that this work would be the norm with a development of this nature in Europe. However, the Commissioners recognised that an exercise of this type is more difficult in New Zealand due to a lack of knowledge in some areas, a lack of other local data to compare the site against and a lack of widely qualified consultants. No expert evidence, either for or against the proposition was provided at the hearings.

The Commissioners noted that the protection of a greater area, particularly areas further away from urban land use, was more likely to result in the greatest protection of such species. On the information available, and from the perspective of Commissioners as non-specialists, the Commissioners considered that the revised plan change delivers the best outcome for the ecology of the overall lands in question.

The upper land, presently privately owned, was considered to be more suitable as reserve land, both immediately and in the longer term, as it has had less development impact, is contiguous with existing Council owned land on two sides, and a public road on the third side, and contains larger areas of regenerating vegetation than the lower land.

#### **4. OTHER MATTERS**

The Commissioners also considered a number of matters raised that might normally be dealt with at a detailed design level of subdivision consent. It was not clear whether any subdivision consent would be notified or non-notified. Therefore the Commissioners wanted to ensure that, whatever process was adopted, any specific or significant concerns raised in these hearings were required to be assessed in any subdivision consent. Assessment criteria were therefore considered for several issues.

##### The stream, storm-water management and flooding

Protecting the natural character of the main stream (accepting that some small tributaries will be lost during earthworks) was a major concern of the Commissioners. It was the principle reason that they requested further information on the potential for a revised proposal. The revised proposal retains the main stream in its existing state over its length.

The Commissioners accepted the evidence of Kate Taylor, an engineer from Spencer Holmes, on the potential for new and alternative ways to manage stormwater from the developed area to reduce its impact on the stream. This evidence recognised the need for the water to flow freely in the stream channel and that the vegetation on the stream banks will need to be added through planting and otherwise supplemented by “green engineering” techniques.

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The Commissioners acknowledged that the potential for flooding in the lower lying parts of Khouri Avenue sections was a significant issue for some residents. The Commissioners however considered that the problem was one of management of existing infrastructure and they did not think that the development of new housing at the end of Khouri Avenue would necessarily exacerbate the problem. The Commissioners had confidence that, through a combination of the assessment criteria for stormwater in the plan change and the application of the Code of Practice for Land Development, any potential for further flooding would be addressed in any subsequent resource consent for subdivision. They were confident that the consent process could provide for any necessary upgrading if justified through new information.

The Commissioners were advised during the hearings that the reconstruction of the stream channel in Karori Park had been designed to reduce the risk of flooding and the design had anticipated increased runoff from residential development on either the upper or lower land near Khouri Avenue. The Commissioners were therefore satisfied that the development of the residential area would not cause adverse flooding of the park.

### Walking access

The Commissioners considered it desirable to clarify some of the access areas shown in the original land exchange proposal. Given that informal access tracks are presently used, and that much of the Reserve area is to remain, access to and through the area was considered important. The three types of access considered were:

- Access between the proposed turning head in an extended Khouri Avenue and the remaining Reserve, across or along the proposed residential right-of-way
- Access between Khouri Avenue and Makara Road, where an informal track provides access to residents
- Access between Khouri Avenue and Karori Park

The Commissioners have amended the assessment criteria that will guide any subsequent subdivision to require the inclusion of legal access between Khouri Avenue and the remaining Reserve and consideration of access between Khouri Avenue and Makara Road. The Commissioners did not see the need for access to Karori Park as there was already a good accessway to the park only a short distance from the end of the existing street.

The Commissioners also considered that walking paths at comfortable grades should be formed as an integral part of the development, to give access to the edge of the bush in the reserve, and between Khouri Avenue and Makara Road. The Commissioners considered that provision of the accessways and the construction of the paths would both retain and improve accessibility to the area. This issues was therefore included in the assessment criteria.

### Planted buffer areas

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The original land exchange proposal featured Council owned Reserve areas between the existing houses in Khouri Avenue and the future residential subdivision (this land would have been retained from the existing Reserve). The Commissioners heard that this was largely to retain some amenity value for the existing properties.

The Commissioners noted that the buffer area adjacent to the existing houses in the revised land exchange is now narrower than the one proposed in the original land exchange. They were advised that this was due to the greater difference in land area between the Reserve and residential areas in the revised proposal, which has left less land in which to lay out sections in the future subdivision development.

The revised land exchange also proposed that the buffer areas not be Council owned but have their function assured by restrictive covenants on the titles of the individual private properties. Covenants are a legal instrument which prevents a landowner from doing certain things, such as building a house on a defined area of land. They may also require the landowner to do other things such as controlling the height of vegetation.

The Commissioners understood why Council as a land owner and land manager did not want the buffer area to be an isolated strip of Reserve land, when its sole purpose was to separate two areas of housing.

The Commissioners considered that there are both advantages and disadvantages to the buffer area being either Council owned Reserve or covenanted area on private land.

Given that the function of the land was to maintain or create private amenity, rather than public amenity, the Commissioners considered that a private covenanted solution was preferable. They observed that the right mix of controls on a covenant area is likely to ensure an improved position, given the present seemingly limited ability of Council to maintain the edge of the present Reserve, which is largely an area of unmanaged weeds. On the other hand, there would be advantages to having the land as Council owned Reserve if it served additional functions, such as providing the access route between Khouri Avenue and Makara Road. In this regard, the Commissioners noted that there was an electricity easement of about 2 meters wide, in the proposed buffer area below Makara Road.

The Commissioners therefore decided that the Reserve status of these buffer areas should be lifted as in the revised proposal, with private covenants to be considered at the subdivision stage. This does not prevent Council's Property Unit and the developer negotiating to come up with the best mechanism to serve the needs of all the parties. If a decision is made to make one or both of the buffer areas Council owned areas, the land could be added to the reserve network as a new area if deemed necessary or held as undesignated land, but both being a separate process to the proposed land exchange. This approach is also considered desirable to avoid any difficulties about the extent of land being exchanged when Council makes its recommendation to the Minister of Conservation.

On this basis additional assessment criteria have been included to ensure that this matter is adequately considered in any subdivision.

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## Restrictions on number of dwellings

There appeared to be expectations in some residents' minds, after the Council consultation, that there would be a restriction allowing only one house per allotment in the subdivision of the lower land. The Commissioners do not know whether any specific commitment was made or implied but have noted that the original plan change had a single dwelling restriction on only 7 of the 25 lots.

In regard to potential adverse effects from traffic, the Commissioners recognised that the Residential Area rules permit two household units per lot as the norm. Allowing two houses for each of the lots without a single dwelling restriction, the original plan change proposal could potentially have 43 houses  $[(18 \times 2) + 7]$ , while the revised proposal would potentially have 35 houses  $[(15 \times 2) + 5]$ . Having said this, the Commissioners agreed with the opinion of Ian Leary of Spencer Holmes that most of the lots will probably have only a single house built on them.

The Commissioners were satisfied, after considering the advice of Council's traffic engineer on the original proposal, that additional traffic would not have a significant affect on the efficiency or safety of Khouri Avenue or the intersection with Makara Road. The Commissioners noted that if the decision makers for the subsequent resource consent for subdivision are persuaded that the development would generate too much traffic they could place a condition on the resource consent, further restricting the number of houses or requiring financial contributions to traffic infrastructure upgrading.

Traffic issues are well covered in Council's plans and policies and no special assessment criteria were considered necessary.

## Construction effects

As is often case with proposals for residential development, submitters expressed concern about construction effects. These are generally controlled through Council's Code of Practice for Land Development and can also be controlled through Council bylaws and the enforcement provisions of the Resource Management Act.

The Khouri Avenue development, in the revised form, does present a particular construction effect, the need to remove about 3000 cubic metres of material from the earthworked area. This was calculated at the hearing to equate to roughly 428 truck loads. This effect will need to be carefully considered at the time of subdivision and appropriate conditions may need to be imposed on any subdivision consent that is granted, to avoid or manage the impact on local residents.

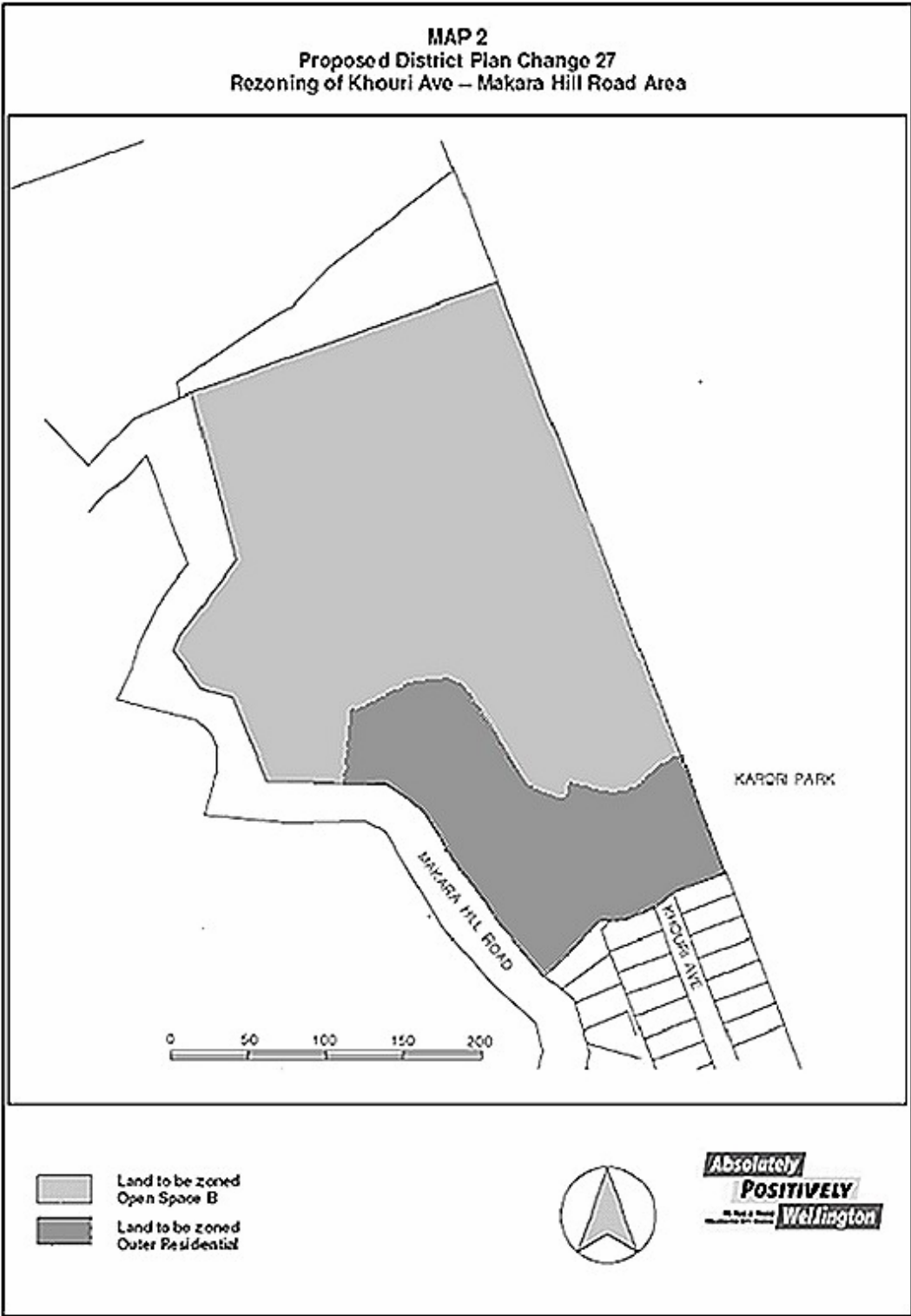
Finally, the Commissioners wished any subdivision of the residential area to be a comprehensive development. They considered that all the earthworks, roading, construction of paths, stormwater and other infrastructure, as well as landscape planting should be undertaken in a single stage to minimise any adverse effects of prolonged construction activity on existing residents, and to ensure a quality finished development. A further assessment criterion has been added to the appendix to facilitate these ends.

## 5. CONCLUSION

The Commissioners concluded that the revised plan change proposal, with some changes to the text of the proposed Appendix to the Residential Area rules, represented a good use of the land and a positive environmental outcome. The Commissioners considered that the environmental effects of the revised plan change were limited and were far out-weighted by the benefits to the city environment of: enhanced urban form, protection of the ridgeline and the upper slopes for recreation, the conservation of a larger area of regenerating native bush than originally proposed, and protection of the full length of the main stream.

The Commissioners also noted another submission that indicated a belief that the revised land exchange and plan change proposal was amended purely in response to the Greater Wellington (Regional Council) submission. They want to stress that this was not case, rather the Commissioners requested further information (leading to the revised proposal) because they were concerned about some of the same issues and they believed that there was a real potential for an improved design that achieved better urban form and better environmental outcomes. The Commissioners consider that the revised proposal, as amended by this decision, confirms that both these potentials have been realised.

**Ian Hutchings**  
**Chairperson, Hearings Commissioners**



**Rezoning Map, Version 2, District Plan Change 27 –  
Khouri Avenue and Makara Road, Karori**

## Appendix One:

### Appendix 23

### Subdivision of Outer Residential, Sec 1 SO 32138 and Part Lot 2 DP 53184, Khouri Ave and Makara Road, Karori.

*The following provisions are a result of Plan Change 27 to rezone Sec 1 SO 32138 and Part Lot 2 DP 53184, to Outer Residential and Open Space B.*

**The following rules will apply:**

#### **Subdivision**

**Rules 5.4.5** of the Residential Area rules applies to any subdivision of the area zoned Outer Residential on the map. All subdivision is a Discretionary Activity (Unrestricted) and includes the following additional standards and terms:

#### ***Additional Standards and Terms***

- The maximum number of residential lots on Sec 1 SO 32138 and Lot 2 DP 53184 shall be 20.
- A minimum of five of the residential lots are restricted to one household unit. These lots shall include the five north-western lots on the hill face below Makara Road.

#### **Additional Assessment Criteria**

The following additional assessment criteria shall apply in addition to Rule 5.4.5:

- The extent to which the subdivision proposal reflects both the layout and the intended use of the different areas, as shown on the plan (Spencer Holmes Drawing Number SO2-0390-04 version D) that was prepared at the request of the commissioners hearing District Plan Change 27.
- The extent that the subdivision proposal keeps earthworks to the minimum necessary for residential development and it will protect the existing vegetation and the future regeneration of native forest. It is intended that the use of the upper parts of the (five) north-western lots will be restricted, to ensure that the existing landforms and vegetation are retained.
- The extent to which the proposed earthworks and subdivision design avoid adverse effects on existing landforms and gullies that sustain first order streams and natural stormwater flow.
- The extent to which houses, roads, paved surfaces and residential activities will affect the flow and water quality of the local stream and the wider Karori Stream system. It is expected that design solutions will

## APPENDIX 1

include on-site devices that are aimed at minimising peak stormwater runoff to levels similar to the non-developed state for a two-year design storm of 2-hour duration. The solution will also incorporate some form of pre-treatment that assists in the reduction of potential pollutants in the urban runoff from the development.

- The extent that the subdivision proposal provides reasonable public access from Khouri Avenue to Makara Road and from the turning head of Khouri Avenue across, or along, the proposed right-of-way to the reserve area.
- The extent that the subdivision proposal will provide a planted buffer area to provide privacy between the existing properties in Khouri Avenue and Makara Road, and the area of new residential housing; and the extent that ground levels of the buffer area after earthworks are designed to maintain the privacy of the existing properties.

The buffer area must be protected by an appropriate means, such as Wellington City Council ownership or a restrictive covenant on private properties, to ensure a long term function as a buffer. It is expected that it be planted in appropriate native shrubs and trees and supported by a management plan that addresses the issues of long term maintenance of the vegetation, to ensure that it remains attractive and does not shade or otherwise affect the existing neighbouring properties. Council will impose appropriate conditions on any subdivision consent to ensure the registration of any legal covenants against the title of the associated allotments (if this mechanism is used) and the on-going administration of the management plan.

- The extent that the subdivision proposal is a comprehensive development that will be constructed at the one time, including all earthworks, roads and rights-of-ways, infrastructure, landscape planting and the construction of the public access paths to Makara Road and into the edge of the bush reserve adjoining the main right-of-way.

**Appendix Two:**

**Submissions on Proposed District Plan Change 27**

Submissions were received from:

1	James David Houston	18 Beach Road, Hastings
2	Norman Robert Fraser	42 Makara Road
3	Franz-Rudolf Schnitzler	2/72 Makara Road
4	Jutta Humpfer	2/72 Makara Road
5	David James Houston and Mary Louise Houston	32 Motueka Street, Ngaio
6	Spencer Holmes (on behalf of Upper Hutt Developments Ltd)	
7	Murray Keith Burns - Khouri Ave Neighbourhood Coordinator (on behalf of 57 signatories)	16 Khouri Avenue
8	Greater Wellington Regional Council	

Further submissions were received from:

FS1	Franz Rudolf Schnitzler	
FS2	Jutta Humpfer	
FS3	David James Houston and Mary Louise Houston	
FS4	Geoffrey Jones and Laurina Jones	30 Khouri Avenue
FS5	Peter Herbert Duncan	21 Khouri Avenue
FS6	Andy Foster	27 Versailles Street
FS7	Murray Burns – Khouri Ave Neighbourhood Street Coordinator	