



Hastings District Council

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OPEN

A G E N D A

HEARINGS COMMITTEE

Meeting Date: **Thursday 18 February 2010**

Time: **9.30am**

Venue: **Council Chamber,
Ground Floor,
Civic Administration Building,
Lyndon Road East, Hastings.**

(GLW Group Limited)

Hearings Committee	Chair: Councillor <u>Lester</u> Councillors <u>Brownrigg</u> (Deputy Chair), <u>Heaps</u> , Speers, Watkins and Wilson-Hunt
Officer Responsible	Roger Wiffin – Senior Environmental Planner (Senior)
Committee Secretary	Christine Hilton - Ext 5633

HASTINGS DISTRICT COUNCIL

A MEETING OF THE HEARINGS COMMITTEE WILL BE HELD IN THE COUNCIL CHAMBER, GROUND FLOOR, CENTRAL OFFICES, LYNDON ROAD EAST, HASTINGS ON THURSDAY, 18 FEBRUARY 2010 AT 9.30AM.

1. APOLOGIES
2. A LIMITED NOTIFIED APPLICATION BY GLW GROUP LIMITED SEEKING A NON-COMPLYING RESOURCE CONSENT TO SUBDIVIDE A 24.9704 HECTARE SITE TO CREATE THREE LIFESTYLE SITES AND A BALANCE SITE AT 374 KAHURANAKI ROAD, BEING LOT 4 DP 7801 AND LOT 8 DP 20489 CT 77321 (RMA20090349)

(Planning report and background information circulated as listed below)

Document 1 Containing the Planning report and any relevant Attachments.

- **Attachment 1** – Submission Pg 35
- **Attachment 2** – Fish & Game (Affected Persons' Consent) Pg 43
- **Attachment 3** – Wild Life Act 1953, Section 14 Pg 45

****Please Note: This copy of the agenda contains the documentation for this hearing as listed above. It does not contain the Application or Further Information. This information has already been provided by/provided to the parties involved. The information can also be viewed by those involved with this hearing and the public on the Council website. A reference hardcopy is held at the Council Buildings (First Floor).**

The associated web site links are:

www.hastingsdc.govt.nz/meetings and www.hastingsdc.govt.nz/resourceconsents

REPORT TO: HEARINGS COMMITTEE

MEETING DATE: 18 February 2010

FROM: ROGER WIFFIN – SENIOR ENVIRONMENTAL PLANNER
(CONSENTS)

SUBJECT: A LIMITED NOTIFIED APPLICATION BY GLW GROUP LTD SEEKING A NON-COMPLYING RESOURCE CONSENT TO SUBDIVIDE A 24.9704 HECTARE SITE TO CREATE THREE LIFESTYLE SITES AND A BALANCE SITE AT 374 KAHURANAKI ROAD, BEING LOT 4 DP 7801 AND LOT 8 DP 20489 CT 77321.

1.0 INTRODUCTION

1.1 GLW Group Ltd ("the applicant") seek resource consent for subdivision an existing site of some 24.9704ha along the Tukituki River to create three lifestyle sites and one balance site, as follows:

Site 1: Comprising, proposed Lot 1 (balance area 20.60ha), Lot 7 (7200m²) and Lot 5 (1300m²) - to be amalgamated:

- Lot 7 is an exclusive use area intended to contain a principal dwelling and accessory buildings only, within an identified building platform.
- Lot 5 will accommodate a single story 'fishing hut' (visitor accommodation) of some 37m².
- Lot 1 will contain a caretaker's implement shed, and a communal wastewater treatment area and disposal field.

Lot 1 is the balance site will be managed by the owners of all four sites and each site will have an unfettered 'right to roam' entitlement over the allotment. Lot 1 will also be subject to right of way easements in favour of all proposed allotments.

Site 2: Proposed Lot 2 (2.12ha) and Lot 6 (1370m²) - to be amalgamated:

- Lot 2 comprises an exclusive use area occupied by the existing residential dwelling on the site.
- Lot 6 will contain a single story 'fishing hut' (visitor accommodation) of some 37m².

Site 3: Lot 3 (7110m²).

- Lot 3 comprises an exclusive use area intended to contain a principle dwelling and accessory buildings only, upon an identified building platform.

Other: Approximately 4.64 ha of regenerating bush and riverbank area will be covenanted and set aside for protection (Covenant Z).

All building development and landscaping upon the sites will be guided by the specific design guidelines that are specified in the application.

The applicant also proposes to create an access strip to enable public (fishing) access to the Tukituki River from Kahuranaki Road.

Proposed Landuse Limitations:

The applicant proposes to limit development across all the sites created such that overall landuse activities will not exceed:

- Four principal dwellings (i.e. three additional dwellings);
- Two bedrooms of visitor accommodation (two one bedroom units of approximately 37m² GFA);
- One accessory farm building (caretakers shed);

The applicant has provided draft plans and elevations demonstrating the scale and location of the visitor's accommodation buildings and the implement shed.

The applicant has not directly stated the mechanism for implementing or enforcing the landuse development constraints. The applicant proposes for this to be achieved by way of s.221 consent notices to be registered against the respective titles.

Subdivision Concept Options I and II:

- 1.2 The applicant has submitted concept plans for two development options, the changes relate to an alternative alignment for the internal vehicle access, and the location of building platforms within Lot 5 and Lot 7 (refer Appendix I of the Application).
- 1.3 Landuse consent is also sought for waiver of all yard setbacks, in relation to site boundaries.

2.0 THE SITE



- 2.0.1 The site is located on the western side of Kahuranaki Road and occupies an area of land between a bend in the Tukituki River (locally known as Horseshoe Bend) and Kahuranaki Road. The site is clearly described in the Application AEE and the Landscape and Geotechnical Assessment reports submitted with the application.
- 2.0.2 The subject site is roughly triangular in configuration. The eastern boundary is defined by frontage to Kahuranaki Road. The western and northern boundaries extend to include the bed and banks (including the river channel and in places the opposite river bank) of the Tukituki River.
- 2.0.3 Topographically the site contains a variety of features, these include;
- shingle river bed and the river channel floodplain;
 - land adjacent to the riverbed – comprising a moderate to steep slope leading up to a river terrace;
 - a hill located centrally within the site. The hill is significantly elevated above the river terraces and also rises above Kahuranaki Road.
 - the southernmost portion of the site including the steepest river banks contain regenerating native bush;
 - mature exotic tree plantings across the site.
- 2.0.4 The river flats and the hill are predominantly used for stock grazing. The hill area and the northernmost river margins are also occupied by mature exotic and native trees and stock access to the riverbed is not restricted.
- 2.0.5 Existing development comprises a residential dwelling and ancillary buildings which are sited on an elevated building platform adjacent to Kahuranaki Road amongst established vegetation and accessed off Kahuranaki Road. The dwelling has a northerly aspect with views down the Tukituki River Valley and across the river terraces against a backdrop of open farmland and Te Mata Peak. The dwelling comprises a significant two level structure with associated accessory buildings.
- 2.0.6 The extent of the Tukituki Riverbed is clearly defined by the edge of the shingle along the base of the terrace slope.

2.1 Wildlife Refuge:

The site is wholly identified as part of the Tukituki Wildlife Refuge pursuant to s14 of the Wildlife Refuge Act 1953. The refuge extends farther along the Tukituki River upstream and downstream of the site. The refuge was created to allow a safe haven for waterfowl during the shooting season and is intended to be managed to protect the wildlife and wildlife habitat in conjunction with the landowner. Shooting is prohibited within the Refuge unless for the purposes of pest management. Section 14 of the Wildlife Refuge Act 1953 contains no restrictions upon other uses of the land i.e. for farming, stock grazing or residential purposes.

2.2 Recommended Area for Protection (RAP)

The Department of Conservation (DoC) has confirmed that the site forms part of RAP 42 – Tukituki/Waipawa Riverbed. The significance of the RAP relates to the valuable riverbed habitat supporting high numbers of waders and wetland birds. In the river Trout, long and shortfinned eel, inanga, torrentfish and common Cran's, and bluegilled and redfinned bullies are common. From the Tukituki/Waipawa confluence stock grazing is common on the riverbanks, often accessing the riverbed. Dominant riparian vegetation is willow, poplars and other exotics. While lupin is more evident in the upper reaches, this gives way to areas of open shingle lower down.

2.1 Restrictive Land Covenant:

The title is subject to a restrictive land covenant affecting Lot 8 DP 20489 only. The covenant was created by a historic land transfer such that:

...neither the then owners or successors in title shall not erect or permit to be erected on the lands transferred any building to the intent that this covenant shall be forever hereafter appurtenant.

The land covenant is not binding upon Council. Notwithstanding this however it is noted that the sites within development Concept I are able to accommodate building platforms outside of the covenant area i.e. outside of the land within Lot 8 DP 20489.

2.2 Surrounding Sites

2.2.1 The abutting properties to the west and north have legal boundaries also taking in the Tukituki river bed and channel to varying extents in a manner similar to the subject site. The abutting sites along the western side of the Tukituki River are accessed from Matangi Road. Generally the abutting and adjacent sites are similar in character and landform to the subject site, that is, they incorporate riverbed, river terraces and increased elevation away from the river. The nearest dwelling is located on the opposite riverbank on the 'Chambers' property, this comprises a secondary dwelling 'cottage' and is sited low adjacent to the river bank with a river outlook. Due to the mature tree riverbank vegetation and trees along Kahuranaki Road the site is not readily visible from Matangi Road.

2.2.2 The land along the eastern (opposite) side of Kahuranaki Road comprises larger steeper hills forming the wider Tukituki Valley parts of which have been subdivided for Lifestyle Purposes in the form of a Rural Farm Park to create multiple building platforms and a sealed access road. The balance farm is grazed and is subject will become extensively landscape planted in accord with the farm park subdivision consent. The land south of the farm park area comprises a number of 'historic' 6ha lifestyle sites.

3.0 NOTIFICATION

3.1 Pursuant to Section 95D it was determined public notification of the application was not required under Section 95A.

4.0 LIMITED NOTIFICATION

4.1 Section 95B requires that if an application is not notified a consent authority must identify if there are any affected persons, and if there are the application must be given limited notification to those persons.

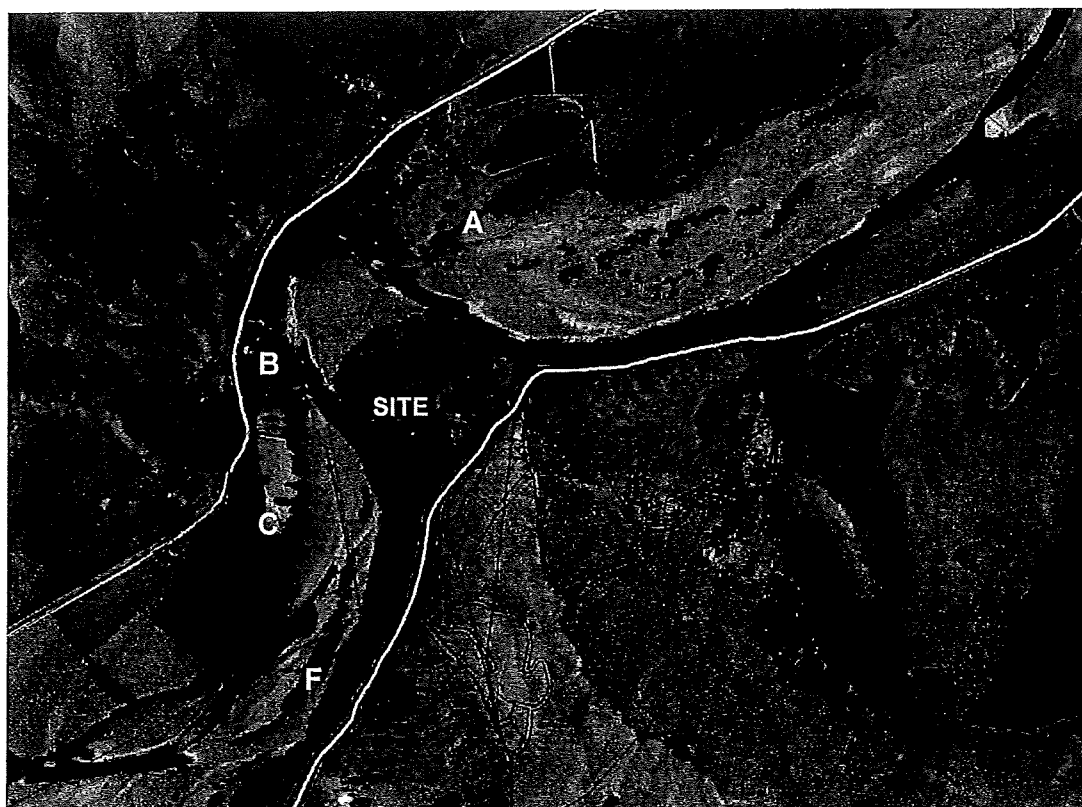
Under section 95E a person is affected if the adverse effects on the person are minor or more than minor (but not less than minor). In making its decision a consent authority:

A person is not affected if they have given written approval to the activity and has not withdrawn the approval.

The applicant has submitted written consent from landowners along the eastern side of Kahuranaki Road, generally opposite the site and also from Fish and Game New Zealand (Hawke's Bay Region).

The application was duly Limited Notified to the following affected parties:

A	80003	Kaiwaka Trust	291	Matangi Road	HAVELOCK NORTH
B	59998	Kaiwaka Trust & Brian John Mason Chambers & 2 others...	342	Matangi Road	HAVELOCK NORTH
C	59220	Mason Robert Chambers & Horseshoe Trust	458	Matangi Road	HAVELOCK NORTH
F	99186	Phillip Bernard Kitchin	497	Kahuranaki Road	HAVELOCK NORTH



Submission

4.2 One submission was received opposing the application, from:

- Kaiwaka Trust (Brian John Mason Chambers, Alistair Mark Holder, Timothy Edward Mason Gilbertson).

A copy of the submission is provided as Attachment 1.

4.3 The Kaiwaka Trust submission requests that the application be declined, and wish to be heard in support of their submission. Matters raised in the submission include:

- The submitters' family has had longstanding presence in the Tukituki Valley, and place value on the rural characteristics and amenity of the Tukituki Valley, which they wish to see substantially maintained, particularly with regard to:
 - Pastoral landscape;
 - Historic heritage (adjacent Pa Site);
 - High public use values of Horseshoe bend, swimming kayaking, scenic;

- The activity will have adverse effects on the environment in terms of:
 - Rural character and coherence of rural zone;
 - Fragmentation of the rural landscape,
 - Amenity and character values of submitters and public using the Tukituki River;
 - Natural character, amenity and visual effects;
 - Effects on the values of the Wildlife Refuge.
 - Reverse sensitivity (proximity of submitters' sheep yards);
 - Proposed walkway does not allow sufficient access as mitigation;
- Consent notices provide little security that new landuse activities will not establish as these can be varied or cancelled.
- The activity is contrary to the objectives and policies of the relevant planning framework (i.e Rural Zone);
- Contrary to objective RMO3 – relating to importance of the protection of the natural character of riparian margins of rivers, and to protect them from inappropriate subdivision use and development;
- Contrary to the policy goals of Plan Change 49 – to slow the rate of subdivision in the rural environment;
- Would result in ad-hoc and inappropriate development ;
- Would give rise to precedent effects and compromise of plan integrity and consistent administration.
- Proposal is contrary to Part II and the purpose and principles of the Resource Management Act 1991;
 - Does not amount to the efficient use and development of natural and physical resources;
 - Fails to maintain and enhance amenity values;
 - Fails to have regard to intrinsic values of ecosystems;
 - Fails to maintain quality of the environment;
 - Fails to have regard to the finite characteristics of the rural land resource;
 - Fails to sustain the potential of the rural land resource to meet the reasonably foreseeable needs of future generations;
 - Fails to safeguard the life supporting capacity of productive rural soils, and;
 - Fails to avoid, remedy or mitigate the adverse effects of the activity.
- Contrary to good resource management practice.

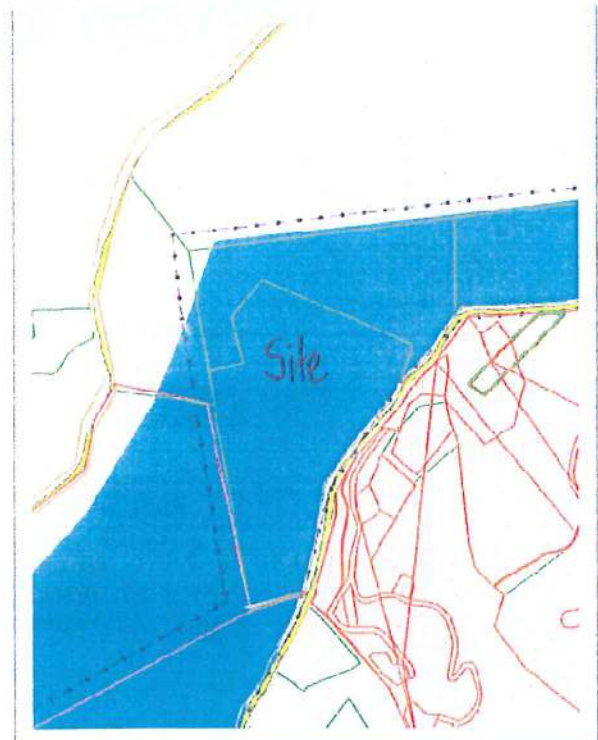
5.0 HASTINGS DISTRICT PLAN

5.1 Zoning

The land is identified on Planning Map 18 (see diagram opposite) as "River" with exception of the westernmost tip that is zoned Rural. The site is also identified as "Riparian Area" on Map 18b (Tukituki River: Appendix 13.9-1).

Kahuranaki Road has a 'District Collector' status in the District Roading Hierarchy.

As such the site is effectively "un-zoned" as the rural zoning applies to only a small part of the land.



5.2 District Plan – Rules

Notwithstanding the zoning (or lack of zoning), with the exception of the riverbed, the land is surrounded for some distance by rural zoned land, the land outside of the river bed also displays all the characteristics of riparian rural zoned land in terms of topography and actual land use activities.

The District Plan Rules are zone specific¹ and as such they do not apply to this site for the purposes of determining Landuse or Subdivision activity status. The status of activities is instead determined by the Resource Management Act directly, as discussed in Section 6.0 below.

For the purposes of assessing this application it is appropriate that the site be treated as Rural Zoned and that assessment be guided by the District Plan provisions for landuse and subdivision in that zone.

6.0 LANDUSE AND SUBDIVISION ACTIVITY STATUS ON 'UNZONED' LAND

6.1 Landuse Activities:

Part 3, Section 9 of the Act is relevant, it states:

- (3) *No person may use land in a manner that contravenes a district rule unless the use—*
 - (a) *is expressly allowed by a resource consent; or*
 - (b) *is allowed by section 10; or*
 - (c) *is an activity allowed by section 10A.*

Section 9 is the prime source of regulatory control of land use under the Resource Management Act 1991 and despite its restrictive phrasing, it has been interpreted as being essentially permissive, i.e. it specifically allows land uses that are not prohibited or in some way regulated in a plan or proposed plan.

Because the District Plan is zone based it is silent about activities on un-zoned land, such landuse activities are not restricted as they are not a use of "land in a manner that contravenes a district rule."

6.2 Subdivision:

Part 3, Section 11 states:

- (1) *No person may subdivide land, within the meaning of section 218, unless the subdivision is—*
 - (a) *Expressly allowed by a rule in a district plan or a resource consent*

¹ With exception of Rules in Section 13.2 Mineral, Aggregate and Hydrocarbon Extraction District Wide Activity, which are not zone specific but which are not relevant to this application.

The subdivision rules of the District Plan are also zone based. In determining activity status the following two scenarios are available:

Scenario One:

If it is accepted that the site is unzoned (with exception of a small tip which is zoned rural), there is effectively no rule that allows for the subdivision of this land. A resource consent is therefore required (under Part 3, section 11) to undertake subdivision, and in the absence of a rule specifying status section 87B applies:

- (1) *An application for a resource consent for an activity must, with the necessary modifications, be treated as an application for a resource consent for a discretionary activity if—*
 - (a) *Part 3 requires a resource consent to be obtained for an activity and there is no plan or proposed plan, or no relevant rule in a plan or proposed plan*

The proposed subdivision would therefore be assigned a **discretionary activity** status. The reduced yard setback on the sites created would not be restricted..

Scenario Two:

As a consequence of a small tip of the site being zoned rural and this area forms part of the subdivision the rural zone subdivision provisions should be invoked. This would result in the subdivision being a **non-complying** activity in terms of Rule 15.1.7.4.

The yard setback infringement would be assigned a **restricted discretionary activity** status.

6.3 Recommended Approach:

Given that the Resource Management Act promotes a precautionary approach, the application to be assessed as having a **non-complying** activity status.

7.0 STATUTORY CRITERIA

7.1 Subject to Part II of the Resource Management Act, when considering an application for a resource consent and any submissions received Section 104 (1) sets out those matters that Council must have regard to. Such matters include:

- (a) *Any actual and potential effects on the environment of allowing the activity; and*
- (b) *Any relevant provisions of:*
 - (iv) *a plan or proposed plan; and*
- (c) *Any other matters the consent authority considers relevant and reasonably necessary to determine the application.*

7.2 Section 104D further requires that despite any decision made for the purpose of section 93 (notification), a consent authority may only grant a resource consent for a non-complying activity if it is satisfied that either:-

(1) (a) *the adverse effects of the activity on the environment (other than any effects which Section 104(3)(b) applies) will be minor;*

Or

(b) *the application is for an activity that will be contrary to the objectives and policies of –*
(i) the relevant plan.

7.3 Section 104B of the Act states that –

After considering an application for resource consent for a non-complying activity, a consent authority-

(a) *may grant or refuse the application; and*

(b) *if it grants the application, may impose conditions under section 108.*

8.0 ASSESSMENT CONSIDERATIONS

8.1 'Relevant' District Plan Provisions

The situation regarding a lack of zoning was referred to Council's Senior Planning Policy Officer, Mr Philip McKay. We are advised that the identification of sites as river regardless of topography or the extent of riverbed is unique to a number of properties along the Tukituki River. While there is no specific basis for the river notation extending onto land beyond the river bed, Mr McKay falls short of describing the river notation as an error on the Planning Maps.

In this regard the writer notes that the abutting sites to the north and the west (PID:100586, PID:59998 and PID:59220) are mapped as river in part, and that the river mapping on those sites follows the bed of the river rather than the legal boundaries. The property abutting the southern boundary, and the next property south beyond that also present physically well defined river bed areas within those sites, as per the subject site these sites are mapped entirely as river.

In contrast the property at 800 Kahuranaki Road (PID:95154) is zoned rural with no river notation despite the site appearing to comprise approximately 75% riverbed (as estimated from Hastings District Council GIS Aerial Photography).

The above circumstances and the rural nature of the receiving environment reinforce the view that it is appropriate that the assessment of effects of the proposed subdivision and subsequent landuse activities should be guided by the rural zone provisions of the District Plan. This approach is also appropriate when considering landuse activities that could reasonably establish on the site at present as part of a permitted baseline assessment notwithstanding that it has been ascertained that landuse activities are unrestricted.

An assessment of the activity status of the proposal under the 'relevant' provisions of the Operative District Plan and Plan Change 49 Rural Subdivision' is provided below.

8.2 Operative District Plan

The Hastings District Plan was declared Operative on the 10th of June 2003. In the Rural Zone lifestyle subdivision is a controlled activity providing that lifestyle sites are between 1.5ha and 2.5ha; no more than one additional lifestyle site is created at a time

and only one site is created every three years; and the subdivision leaves a minimum balance site of 20ha.

The proposal fails these criteria in that:

- Three additional lifestyle sites are proposed at one time;
- The area of the proposed lifestyle sites is less than 1.5ha;

Assuming a rural zoning the proposal is a **non-complying** activity under Rule 15.1.7.4 of the Operative Plan.

Pursuant to 13.4.7 of the Plan the District Wide Activity Rules for earthworks are not applicable to the earthworks required to give effect to the subdivision and consent is not required.

Pursuant to Section 13.9 resource consent is not required for Riparian Vegetation Modification as (in terms of Rule 13.9.8.1) the only vegetation to be cleared within 15 metres of the bed of the Tukituki River will comprise pasture and/or blackberry, which is not defined as Riparian Vegetation Modification in Section 18.0 'Definitions' of the Plan.

8.3 Plan Change 49 'Rural Zone Subdivision'

This Council initiated plan change was publicly notified on 27th June 2009. Submissions closed on 8 August 2009 and further submissions closed on 29th January 2010. Hearings are scheduled for May 2010.

Plan Change 49 specifies a 5 year stand down period between the creation of individual lifestyle sites. Assuming the site had a rural zoning, this application would be **non-complying** under Plan Change 49 as the application seeks to create three additional lifestyle sites at one time.

Submissions received to date are generally receptive to the reduced minimum lifestyle area of 4000m² proposed by Plan Change 49, and support the closing of 'loopholes'. There is a split between support and opposition to increasing the lifestyle site subdivision stand down period from three years to five years, with the majority of submissions favouring retaining the existing 3 year embargo period between lifestyle sites.

8.4 Relative Weighting:

In terms of the relative weighting to be applied to the Rules, Objectives and Policies of Plan Change 49 under s86A(1) of the Act a rule has no legal effect until the plan change is declared operative. Section 86A(2) however clarifies by stating that the weight afforded to the proposed objectives and policies of Plan Change 49 is not limited.

Plan Change 49 partially proceeded through the statutory plan change therefore weight can be given to the objectives and policies of Plan Change 49 in assessing this application. While at this point a greater weight can be placed on the operative Plan it is appropriate to have regard to Plan Change 49. Of particular relevance are those proposed changes which have received high levels of support in submissions (such as the reduced minimum site area for lifestyle sites, and retaining the 3 year embargo period) and which stem directly from RUP14. These matters are discussed in 10.4 of this report.

9.0 ASSESSMENT OF ENVIRONMENTAL EFFECTS

9.1 PERMITTED BASELINE

Section 104(2) of the RMA states that:

'When forming an opinion for the purposes of subsection (1)(a), (any actual or potential effects on the environment) a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.'

Council has discretion as to whether it is appropriate to accept a permitted baseline or not.

- 9.1.1 Subdivision is not a permitted activity under the Hastings District Plan therefore, there is no 'permitted baseline' for subdivision. The permitted baseline for effects of development upon the site is limited to the effects of those non-fanciful permitted landuse activities that could reasonably establish on the site as it exists.

As discussed above if it is accepted that the site is unzoned any landuse is permitted without restriction.

Notwithstanding the zoning issue, when determining what landuses are reasonable or non-fanciful the rural zone provisions of the Plan provide a useful guide. The following activities would be permitted if the site were zoned rural:

- land based primary production;
- Up to two primary dwellings with no limit on floor area;
- One secondary dwelling of up to 80m²;
- Commercial Activities:
 - Retailing (to a threshold of 75m² GFA);
 - Professional and personal services (Threshold - 1 resident employee and up to 3 additional employees);
 - Visitor accommodation (Threshold - 6 rentable bedrooms);
 - Entertainment facilities (Threshold - 100m² for a maximum of 40 persons);
 - Other Commercial activities up to 50m².
- Industrial Activities:
 - A building or buildings of up to 2500m² for the processing, storage and packaging of crops and agricultural materials;
 - Other processing, storage and packaging (Threshold 50m²);
 - All other Industrial Activities (Threshold - 100m² GFA, 1 resident employee and up to 3 additional employees);
- Accessory buildings: (with no limit on floor area)

It would be fanciful to expect all of the permitted activities to be established concurrently on the site.

It may not be fanciful for individual activities such as visitor accommodation and additional dwellings to establish however not necessarily to the extent that would be facilitated by the proposed subdivision i.e. the granting of a subdivision increase land value thus providing additional equity that can in turn facilitate land development that previously may not have been able to be funded.

Overall while some development of the site could reasonably occur, it is considered that the granting of a subdivision consent would facilitate a greater level of development than might otherwise occur - regardless of zoning.

9.2 NATURAL HAZARDS

9.2.1 Section 106(1)(a) - (b) of the Resource Management Act 1991 advises circumstances when the Council can decline subdivision consent in relation to natural hazards if it considers that:

- a) The land, or any structure on the land, is or is likely to be subject to material damage by erosion, falling debris, subsidence slippage, or inundation from any source; or
- b) Any subsequent use that is likely to accelerate, worsen, or result in material damage to the land, other land, or structure by erosion, falling debris, subsidence slippage, or inundation from any source; or;
- c) Sufficient provision has not been made for access to each allotment to be created by the subdivision.

9.2.2 In relation to matter c) each of the proposed sites will be afforded adequate legal and physical access.

9.2.3 In relation to matters a) and b) the preliminary geotechnical report submitted with the application (Opus Ref:2-T2053/09/01 August 2009), provides information regarding slope stability, foundation conditions, cut slope stability, stormwater and wastewater drainage, and access.

Flooding/ Inundation:

The preliminary geotechnical report stated that the visitor accommodation units would have a floor level of 0.5 metres above the 100 year flood level of the Tukituki River (RL47.0). Upon clarification the applicant has now confirmed a minimum floor level of 1.5m above RL46.69.

Discussion with Council Senior Building Officer (Processing) has confirmed that under section 71 and 74 of the Building Act 2004 a floor level of 1.5m above the 100 year flood level (flowing water) would not restrict issue of a building permit. A consent notice would be required to secure this outcome.

The building platforms for Lots 3 & 4 will be constructed at the toe of the slope as part of the subdivision and would be elevated (refer cross sections – further information provided). The Lot 7 platform is on a ridge and the Caretakers Shed is on the river terrace. All of these building platforms and access thereto are elevated above the 100 year flood level.

Erosion, Falling Debris, Subsidence Slippage:

The geotechnical report confirms that suitable foundations can be provided on each site and in particular that Lots 3 & 4 will not be at risk from landslide or surficial creep from the adjacent slopes. It is not considered that any of the sites would be at risk from falling debris.

Any earthworks on the site for building platforms and access will be undertaken to achieve recommended ensure stability, and fill slopes should be engineer designed.

9.2.4 Overall it is considered that section 106(1)(a) - (b) of the Act does not apply and that actual or potential adverse effects of natural hazards can be remedied or mitigated.

9.3 WASTEWATER, WATER SUPPLY AND STORMWATER

9.3.1 Wastewater

Wastewater from the dwellings will receive primary treatment onsite and will then be pumped to a communal land based wastewater disposal field that will be located on an elevated ridge adjacent to the proposed access and generally eastward of Lot 7. Wastewater from the caretakers shed and the visitor accommodation will be combined for primary treatment prior to pumping to the communal disposal field. The location of the shared treatment systems and the routes of pipes have yet to be determined and appropriate easements would be required to be confirmed at time of s.223 approval. Any such shared system would also require a building permit.

During 2009 the applicant applied to the Hawke's Bay Regional Council for consent to discharge wastewater to land (DP090573L). The applicant has advised that a draft discharge consent was released by the HBRC late in 2009 and the applicant is working toward finalising consent conditions. The draft consent has not been provided to this Council in support of the application, however on the basis that the HBRC appears to be prepared to issue a wastewater discharge consent it is considered the sites can be adequately serviced.

9.3.2 Water Supply

Water supply for potable and fire fighting purposes will be by way of water take from The Tukituki River via an existing water infiltration gallery. The applicant advises that the water take volumes required to satisfy household requirements will fall within permitted activity water volumes under the HBRC Regional Resource Management Plan.

Water will be reticulated internally to each site within the subdivision. Appropriate easements will be required to be confirmed at time of s223 approval in accord with an approved reticulation system as none are shown on the application scheme plans.

Potable Supply:

Testing has shown that the water does not meet drinking water standards New Zealand with regard to iron and manganese levels. As mitigation the applicant proposes to install water quality treatment facilities at point of water entry to each house, visitor accommodation unit and at the caretakers shed.

Subject to installation of individual water treatment systems each site can be provided with an adequate potable water supply. A consent notice should be registered to ensure suitable water treatment facilities are installed at time of building permit.

Fire Fighting Supply:

The water service report provides a summary design for a comprehensive reticulated fire fighting water supply in accordance with relevant NZS New Zealand Fire Service Fire Fighting Water standards and also the Hastings District Council Engineering Code of Practice. It is considered that adequate fire fighting services can be provided, and it is appropriate that the easements for fire fighting services be confirmed at s223 approval and for services to be installed for issue of s.224. Prior to construction a detailed design would need to be submitted to Council for engineering approval.

9.3.3 Stormwater

The proposal seeks to drain stormwater from Lots 2, 3 & 4 via piping into a roadside drain to be constructed along the new access. This runoff along with road runoff will discharge into a gully in the northern part of the site and subsequently via the watercourse to the Tukituki River. The stormwater capacity of the gully will be

increased through removal of soils for use as fill for building platforms and access construction elsewhere within the development (no clear indication of earthworks volumes has been submitted by the applicant), the gully will then be developed as a wetland stormwater detention and treatment area.

A specific engineering design for stormwater drainage will be required as part of the access construction engineering approval process.

Stormwater runoff from the caretakers shed will be directed toward the wetland area by an open swale.

It is proposed to discharge stormwater from the fishing huts into vegetation plantings to be established adjacent to the riverbank, then stormwater will drain down the bank to the river bed. Runoff from the fishing hut vehicle access will drain in a similar manner.

It is recommended that runoff from the fishing huts and adjacent access be piped to controlled outlets to the riverbed at the base of the terrace slope to avoid potential for terrace edge erosion through increased stormwater loading. An energy dissipating device would need to be installed to avoid erosion at the point of discharge.

It is considered that stormwater runoff volumes will not be significantly increased from development of the sites and that adequate provision can be made to treat and discharge runoff on a manner that does not affect downstream water quality.

It is concluded that subject to specific design of stormwater disposal and drainage systems the proposed stormwater disposal methods will not give rise to any adverse effects that would be more than minor.

9.4 ACCESS

9.4.1 The application was referred to Council's Consultant Roading Engineers MWH for comment and they have confirmed that the proposed vehicle access is appropriate, in particular:

- The existing sealed vehicle crossing will require upgrading, including the provision of sealed tapers (to standard CP2.6.6.4)
- Visibility sightlines at the Kahuranaki Road crossing place satisfy minimum sight line requirements of RTS6 the north and south.
- Roadside vegetation in the road reserve to the south of the crossing place needs to be removed to enhance visibility;
- Right of way A, B & C will require construction to Hastings District Council Engineering Code of Practice standards and design drawings for road construction and stormwater drainage shall be submitted for approval prior to commencement of works.
- A geotechnical assessment of the access will be required to accompany the engineering design.

9.4.2 Subject to imposing the above conditions the sites can be provided with adequate vehicle access.

9.4.3 The roading engineers have expressed concern over the safety of the proposed Access Strip (walkway fishing access track). The point of entry is located on the apex of a corner in Kahuranaki Road it has limited visibility and a narrow berm and if created the entry point would result in a high risk pedestrian environment. The engineers recommend that for this reason the access strip should not be formally established.

9.4.4 Members of the public currently enjoy informal access along the same route as the proposed Access Strip they do so however at their own risk in terms of traffic safety. The adverse safety effects at the Kahuranaki Road access point outweigh the public access benefits derived from legalising the access and notwithstanding that Council encouraged the applicant to address potential options for river access the proposed access has proven unsuitable.

9.5 NOISE

9.5.1 Future landuse activities on the sites created will be primarily residential and the visitor accommodation. These are typically low noise generating activities. The likelihood of noise emanating from the sites at levels breaching the rural zone noise standards or at nuisance levels to adjacent landowners is considered to be low. Comments in relation to noise effects of increased activity on the river and riparian habitats are discussed below.

9.6 EARTHWORKS

9.6.1 The extent and range of effects arising from earthworks are varied. Effects associated with changes to landform and topography are addressed in terms of rural character and amenity, below. The remaining effects relate to drainage patterns, land stability, and erosion, and shorter term effects associated with the period of works including effects of sediment runoff, dust control and visual impacts.

9.6.2 The latter effects can be effectively mitigated by requiring the applicant to provide a detailed Erosion and Sediment Control Plan (ESCP) for earthworks. This should accompany engineering design plans and should be approved prior to any development occurring on the site. The ESCP should also include details confirming the period of works and the timeframe and means for re-vegetation of exposed soil. Implementation of an approved ESCP will prevent discharge of sediment to the Tukituki River and will limit potential for nuisance dust effects. Early re-vegetation as part of the ESCP will minimise the duration of visual effects and dust effects that could otherwise arise from exposed earthworks over longer time periods.

9.6.3 The proposal does not seek to re-direct any significant watercourses or overland flow paths and stormwater runoff will generally follow the existing routes. Although material is to be excavated for fill from the lower gully for access construction the alignment of the watercourse will not be altered. The area will be re-established as a widened planted wetland, although topography will not be modified to create the wetland these changes will over time become less apparent as the wetland vegetation matures.

9.6.4 Subject to earthworks being undertaken under supervision of a suitably qualified engineer and in accordance with the geotechnical assessment submitted with the application it is not anticipated that site erosion will be exacerbated.

9.6.5 The waterfowl hunting season is during the winter months of May. Earthworks and operation of machinery within the Wildlife Refuge, and in particular in proximity to the riverbed, should be avoided in order that the suitability of the area as a waterfowl refuge is not compromised through disturbance.

9.7 RURAL CHARACTER AND AMENITY

- 9.7.1 The site is not one of 'Special Landscape' or 'Significant Character' as are identified by the District Plan. Notwithstanding this the site does have high level rural landscape and amenity values in context of TukiTuki valley scenic values, and riparian values which are specifically identified.
- 9.7.2 Effects on rural character and amenity can be derived from a number of elements. Often intangible they relate to changes to landform, vegetation, the presence or absence of development, landuse activities, naturalness, habitat, openness or enclosure, vegetation and uniqueness.
- 9.7.3 The site is located in the base of the Tukituki Valley which is a broad valley defined by significant hills on either side. The river feature winds through the valley floor and is defined by a wide shingle river bed and adjacent terraces and mature riparian vegetation along the river banks and up tributary gullies. The Valley is valued for its river and hill views and its context in relation to Te Mata Peak.
- 9.7.4 Due to its location in proximity to Havelock North the valley has become a popular area for lifestyle development and notwithstanding the broad open rural character of the valley there is a proportionally higher level of lifestyle development in the valley than exists in the wider rural zone.
- 9.7.5 Public viewing points of the site are available from positions along Kahuranaki Road, Waimarama Road, Matangi Road and also from Te Mata Peak. The closest public views are obtained from Matangi Road on the opposite side of the Tukituki River, these views are limited and are obstructed by roadside and riparian vegetation. The remaining public views are more distant.
- 9.7.6 Due to the physical characteristics of the hill and the river bend the entire site is not clearly visible from any single public vantage point however the hill and the existing dwelling are prominent features. Although the visual impact of the existing dwelling is somewhat mitigated by surrounding trees it remains prominent.
- 9.7.7 The visitor accommodation buildings will recess into the terrace edge by 1.5 metres.
- 9.7.8 All of the building platforms will require earthworks to establish at time of subdivision. The Lot 3 and 4 platforms will be raised above the terrace as will the access roads to them and the visitor accommodation. The concept plans generally illustrate the modified contour as a man made terrace that will generally follow around the base of the slope and the building platforms.
- 9.7.9 The edge of the riverbed terrace will be modified through earthworks to accommodate the recessed visitor accommodation building platforms and vehicle access.
- 9.7.10 The applicant proposes to undertake additional planting across the site. Some of this should be established at time of subdivision as part of the application. Remaining planting could be deferred until individual site development occurs, although this would have to be secured by a consent notice requiring landscape plan approval at time of building consent.
- 9.7.11 The applicant has provided a set of Design Guidelines for building development and curtilage on Lots 3, 4 & 7 including specific design plans for the caretakers shed and the visitor accommodation. The design guidelines are proposed to be implemented through private covenants and/or if considered necessary by way of conditions of consent and consent notice.

- 9.7.12 With regard to the vehicle access and building platform earthworks these will initially be visually prominent due to the exposed soil. Subject to early re-establishment of ground cover re-vegetation these visual effects will be short term. Matters relating to the effects of the earthworks on the existing landform and contours are discussed below.
- 9.7.13 The proposal will effectively introduce three principle residential dwellings, a substantial caretakers shed and two visitor accommodation units into the immediate receiving landscape. Notwithstanding the mitigation provide by the proposed design guidelines and the development control limitations also proposed, this intensity of development adjacent to the Tukituki River, and low on the river terraces will impact upon the existing natural character and riparian values of the site. The proposed earthworks will result in modification of landforms, particularly along the edge of the river terrace.
- 9.7.14 This intensity of development and the ensuing ongoing residential landuse activities is considered to adversely impact upon the existing values attributed to the site, particularly with regard to naturalness of the riparian margins and riverbed and associated habitat values, the intensity of these landuse activities and the modification of the existing landform including building platforms, roading and river terrace.

Other aspects of amenity relate to perceptions of remoteness and solitude and the naturalness of the river environment (a closer aspect of scenic values), particularly for users of the Tukituki River at Horseshoe Bend, acknowledged to be popular for fishing and swimming. These values could be compromised by the proximity of new dwellings and visitors accommodation which will introduce more people and structures into the locality.

The effects of the development on broader valley scenic values would be no more than minor the site itself. However the site as a smaller unit with specific rural and riparian character and amenity values and features somewhat unique to this part of the valley would be adversely affected.

9.8 PUBLIC RECREATION

The Tukituki River is utilised by the general public for fishing and passive recreation purposes and Horseshoe bend is a popular swimming area during summer months. As noted in the application the general public are afforded use of the river at this point by way of access over private land from either Matangi Road or Kahuranaki Road. This access is at the full discretion of the relevant private landowners who have the right to exclude public from their private property. The landowners provide a reasonable level of public access in this regard.

Public using the river will be aware of the presence of residential dwellings and particularly the two visitors accommodation units despite their separation from the river bed.

In a strict sense recreational utility and public access to the TukiTuki River would not be diminished by the application, however after development the recreational experience attributed to being in a 'remote' and 'natural' and 'unmodified' river bed would be significantly diminished for all river users.

9.9 REVERSE SENSITIVITY EFFECTS

- 9.9.1 It is well settled in law that reverse sensitivity can be an adverse effect, and should therefore to be avoided, remedied or mitigated. Reverse sensitivity arises when sensitive activities (usually, but not always, residential activities) seek to establish within or near a range of a lawfully established but effects emitting activities. If the new use is allowed, the established use may be required to restrict its operations or mitigate its effects so as to not adversely affect the new activity.
- 9.9.2 The proposal seeks to establish residential and commercial (visitor accommodation) activities in a rural environment giving rise to potential for reverse sensitivity conflicts between existing or lawfully undertaken rural activities on adjacent sites. These matters have been raised in submission, primarily with regard to the proximity of the submitters' woolshed, stockyards and associated farming activities along the opposite side of the Tukituki River. These effects primarily relate to noise, and odour.

The District Plan specifically provides for Rural Zone lifestyle subdivision as a controlled activity. Subsequent residential development on rural lifestyle sites is permitted subject to the standards and terms for the Rural zone. These include a minimum yard setback of 15 metres from abutting rural sites for residential buildings and commercial activities. Accessory buildings are permitted to a 5m minimum setback.

The relevant outcomes are;

Buildings will be separated from adjoining sites to ensure that potential conflicts between adjoining land uses are avoided.

The open character of the rural zone will be maintained.

This application seeks a complete waiver of the minimum yard setbacks on all sites on the rationale that all owners will have a 'right to roam' interest in the balance site Lot 1.

With regard to the outcomes, I consider that granting of the waiver will not give rise to significant adverse effects, in particular:

- The separation distance between the proposed buildings platforms and the submitters (and other abutting) property boundaries will exceed 100 metres, much of which is riverbed, and;
- The separation distance between building platforms will exceed 30 metres (i.e. 15m x 2).
- The location of building development is to be generally fixed to the locations stated in the application.

There is some risk that if farming activities occurred on Lot 1 some reverse sensitivity effects could arise, however due to the resort like nature of the proposed development and the effects of the development on the productive potential of the site (refer discussion below) the risk of conflict between productive rural activities and residential activities is low. In this regard I consider that the above outcomes will be achieved:

In certain circumstances it has been Council practice to impose Reverse Sensitivity Covenants on rural lifestyle sites. In its decision *Ngatarawa Development Trust and others v Hastings District Council* (ENV-2007-WLG-000044-45-47 & 48) Judge C.J. Thompson considered 'No complaints' covenants stating at [27]:

Such covenants do not avoid, remedy or mitigate the primary effects – nothing becomes quieter, less smelly or otherwise less unpleasant simply because a covenant exists. On their face, they might avoid or mitigate the secondary effect of the ensuing complaints upon the emitting activity. But all

they really mean is: If you complain, we don't have to listen, and there are issue about such covenants which have not, to our knowledge, been tested under battle conditions. We are not to be understood as agreeing that they are a panacea for reverse sensitivity issues.

It is my view that imposing a reverse sensitivity covenant against the proposed sites would be of little environmental benefit.

9.10 CULTURAL EFFECTS

- 9.10.1 The archaeological assessment provided with the application identifies the presence of identified features on the submitter's property on the opposite side of the Tukituki River to the subject site. Following a site inspection and consultation with Iwi (including a walkover) no features of archaeological significance have been identified within the site.

The District Wide provisions of the Plan, Section 12.4 Waahi Tapu Resource Management Unit, provide for any activity as permitted, providing the activity does not involve the excavation, modification or disturbance of the ground containing a Waahi Tapu site identified on the Plan.

Given that the Plan does not identify any Waahi Tapu sites within the property and site specific investigations, including Iwi consultation have not revealed any areas of significance, in this regard the Iwi consulted have not expressed concern regarding development along the riparian margins of the watercourse, particularly in relation to earthworks and the establishment of the visitor accommodation units. Overall it is considered that the proposal will not have adverse effects on Maori cultural values.

9.11 RIPARIAN VALUES

- 9.11.1 As referred above the site forms the Tukituki Wildlife Refuge and Department of Conservation Recommended area for Protection 42 (RAP42). It is also identified as a high value riparian area in the District Plan.
- 9.11.2 The applicant has provided the written consent of Fish and Game New Zealand Hawke's Bay as an affected party. Consultation has also been undertaken with the Department of Conservation (DoC) who have not raised specific concerns.
- 9.11.3 The proposal does not involve clearance or modification of 'riparian vegetation' as defined by the District Plan as the vegetation proposed to be removed from within 15 metres of the riverbed (to accommodate the visitor accommodation and access), comprises pasture and some blackberry. The vegetation clearance is not significant in terms of the quality of the habitat being disturbed.
- 9.11.4 The proposed earthworks however will significantly modify the natural topography of the riparian margins of the terrace edge and the existing gully / wetland area draining the river terrace. While re-establishment of appropriate vegetation in the wetland and disturbed areas can provide mitigation in terms of habitat, effects on the integrity of the river terrace landform and the naturalness of the terrace edge topography will not be mitigated.
- 9.11.5 The increased intensity of human activities associated with the residential development and occupation of the riparian margins will result in higher human related noise levels in close proximity to the riverbed and the water course. The associated increase in activity from site and building development and ongoing residential and visitor

accommodation may result in increased levels of disturbance to wildlife within the Tukituki Wildlife Refuge.

- 9.11.6 For the same reasons the naturalness and recreational riparian values of the site will be reduced.

9.12 WILDLIFE REFUGE

- 9.12.1 The Tukituki Wildlife Refuge proclamation was declared, in terms of the section 14 of the Wildlife Act 1953. Section 14 of the Act allows scope for a proclamation to impose conditions to address a range of matters including:

- To prohibit or restrict of pollution of the refuge by means of rubbish, sewage, industrial waste, mining debris, sawmill refuse or any other means.
- To prohibit or restrict the use of any boats (launch, canoe kayak or similar craft);

Where a wildlife refuge has been declared, the Minister may authorise in writing the occupier of any land included in the wildlife reserve or any other person having authority of the occupier-

- To keep or bring domestic animals on or onto the land;
- To keep or bring firearms or explosives on or onto the land;
- To discharge firearms or explosives on the land;
- To destroy any animals specified in Schedules 2, 5 or 6, or any rabbits or hares on the land;
- To do any other acts necessary for the carrying on of the normal use of the land, subject to such conditions as may be prescribed in the Proclamation.

- 9.12.2 In reviewing the proclamation document it is apparent that no special conditions were imposed with regard to the Tukituki Wildlife Refuge and the principle purpose of the refuge is to provide a safe haven for waterfowl during the shooting season.

- 9.12.3 There is nothing in either the Wildlife Act 1953 or the proclamation that would appear to limit the subdivision and subsequent use of the land in the manner proposed. Once subdivided, the owners/occupiers would remain bound by the generic requirements of section 14 of the Wildlife Act 1953, particularly with regard to keeping of animals and the keeping of, and/or discharge of firearms, unless specifically authorised by the Minister.

9.13 EFFECTS ON THE SOIL RESOURCE

The existing title encompasses an area of some 24.9 ha of which a substantial component is riverbank (bush occupied by native bush that is proposed to be protected by covenant), or river bed. The remainder of the site is pasture comprising a poorly drained river terrace and the steep slopes of the knoll. A summary of the areas occupied by each feature is provided below:

- 4.7ha Riverbank and Bush
- 8.5ha Riverbed & River Channel
- 3.2ha River Terrace
- 7.1ha Knoll
- 0.2ha Existing dwelling & curtilage area.

Note: The above areas were measured using Hastings District Council GIS aerial photography and HDC GIS area measurement tools.

9.13.1 The available pastoral area is approximately 40% of the site (9.3 ha). In its current form the site has only limited productive potential in terms of land area, configuration and topography. The site is physically contained by the road and the river resulting in no realistic opportunity for increasing productive potential through amalgamation or use in conjunction with any adjoining or adjacent land.

9.13.2 In context of the existing productive potential of the site, the proposed subdivision will not result in a significant loss of productive rural soils that would be more than minor in context of the actual or potential productive capacity of the wider rural soils resource.

9.14 EFFECTS ON THE ENVIRONMENT – CONCLUSION

9.14.1 Overall it is considered that that effects of the proposal on the receiving environment will be more than minor, particularly with regard to rural character and amenity, naturalness and riparian values, recreation values. These effects stem from the intensity of the development on the site, proximity to the river riparian environment and the extent of modification to the riparian environment landforms and topography.

9.15 SUBMISSION

9.15.1 I consider that the matters raised in the Kaiwaka trust submission to have been substantially addressed by the above assessment in that;

- The purpose of the Wildlife Refuge will not be compromised;
- The proposal will impact upon landscape and rural character and amenity values;
- The extent and form of development could be limited to the levels proposed by conditions of consent and maintained by way of Consent Notice;
- Reverse sensitivity effects could be avoided;
- The development can be adequately serviced with water supply, wastewater and a fire fighting supply;
- The productive potential of the land resource would not be significantly reduced;
- There are no identified cultural values within the site;
- The recreational and natural values associated with the riparian margins of the Tukituki River would be affected;

10.0 HASTINGS DISTRICT PLAN

10.1.1 The Hastings District Plan contains a number of overarching strategic principles and more specific objectives and policies relevant when considering this application. Section 2 of the Plan contains the Plan's 'sustainable management strategy' including a series of issues and associated objectives and policies. The relevant objectives and policies are set out in the following sections of this report.

10.2 Section 2.6 – Low Density Residential Strategy

LDO1 To enable a range of low density residential development options in response to market demand, in a comprehensive, flexible and integrated manner, while avoiding, remedying or mitigating any adverse effects on the environment.

LDP1 Provide for ongoing development throughout the Hastings District for a range of low density residential activities.

LDP8 Ensure that the effects of low density residential development in areas and sites which have recognised habitat and/or recreational values, including those specified in Appendix 13.5-1 and Appendix 13.10-1 and 13.10-2 are avoided, remedied or mitigated so that their character and values are retained.

10.2.1 The focus of the Low Density Residential Strategy primarily relates to expansion of the Rural Residential zones, it is however also relevant to the rural zone. Issues identified include the effects of lifestyle subdivision and development on the finite characteristics of soil resources through tracking, building coverage, water extraction and effluent disposal, and whether closer scales of subdivision ensure that the potential of soils is retained for future generations. The Plan identifies the potential for conflict between low density residential activities and rural activities.

10.2.2 The Plan also acknowledges demand for lifestyle activities in high value natural or landscape areas, including rivers and their margins, and the need to manage such development to ensure that the character and value of these environments are retained.

10.2.3 Section 2.6 is relevant to this application insofar that the Plan acknowledges that lifestyle development in the rural zone complying with the relevant standards and terms, (including rate of subdivision) contributes toward achieving the Districts Low Density Residential Strategy.

10.2.4 Whilst the proposal is consistent with Section 2.6 insofar that low density housing would be provided, it would provide this at a greater rate than anticipated by the Plan and in a manner that does not avoid, remedy or mitigate adverse effects on Tukituki River riparian character and amenity values to the extent that these existing values are retained. The proposal is considered to be contrary to LDO1 and LDP8.

10.3 Section 2.8 – Rural Resource Strategy

RO1 To promote the maintenance of the life-supporting capacity of the Hastings District's rural resources at sustainable levels.

RO2 To enable the efficient, and innovative use and development of rural resources while ensuring that adverse effects associated with activities are avoided, remedied or mitigated.

RO3 To enable the effective operation of land based production activities within established amenity levels in the rural areas of the Hastings District.

RO4 To ensure that the natural, physical, and cultural resources of the rural area that are of significance to the Hastings District are protected and maintained.

RP2 To enable rural activities which might generate adverse effects such as noise or smell, to operate in rural areas in accordance with accepted practices, without being significantly compromised by other activities demanding higher levels of amenity.

RP3 Provide for a wide range of activities to establish which complement the resources of the rural area, provided that the

sustainability of the natural and physical resources of the area is safeguarded.

RP4 Establish mechanisms within the District Plan that will address the protection of outstanding landscape and natural areas, and items or areas of heritage or cultural significance but which also maximise the opportunity to sustainably utilise the resources of the rural area.

RP5 Rural land close to urban areas or on arterial or national traffic corridors will be managed to avoid sporadic and uncontrolled conversion to activities that will individually or cumulatively adversely affect the sustainability of the rural resource base and the efficiency of the road network.

10.3.1 In terms of RP2 the separation distances between the proposed commercial and residential activities and the adjacent rural activities will provide adequate mitigation of reverse sensitivity effects, in accord with the outcomes of the Plan. The proposal will not limit the continuation of productive rural activities on adjacent rural sites, and cannot be considered contrary to RP2.

10.3.2 While the establishment of visitor accommodation is provided for by the Plan the scale and intensity of the visitor accommodation proposed is below that permitted by the Plan in the rural zone. In terms of RP4, the Tukituki River valley is identified as a high value natural area and the Plan seeks to manage and control effects rather than stymie development in these areas, notwithstanding this the scale and intensity of the development will adversely affect the natural values attributed to the site and to the wider Tukituki Valley.

10.3.3 Development of the site will not impact upon known cultural features and investigation has not identified any features within the site. It is considered that the proposal seeks to undertake development in a manner and at an intensity that is contrary to RP3 and RP4.

10.3.4 RP5 – it has been determined that subject to entranceway upgrading works the subdivision will not adversely affect Kahuranaki Road. The site has limited productive potential in its current form and has limited potential to be used productively in conjunction with adjacent land. Some land will be removed from production (or potential production), and the overall life supporting capacity of the soils within the site will therefore be affected – these effects are however limited as to extent, area and degree of productivity, particularly in context of the wider rural soils resource.

The establishment of residential and commercial activities will not limit continuation of legitimate rural activities on adjacent sites. I do not consider the application to be contrary to policy RP5.

Based on the discussions above the proposal is considered to be contrary to RO2 and RO4.

10.4 Section 5.0 – Rural Zone

10.4.1 The principle issues identified by Section 5 include safeguarding the life-supporting capacity of the rural land resource for future generations while providing for and managing a diversity of land based and non-land based activities.

RUO1 To safeguard the life-supporting capacity of the rural land resource for present and future generations.

- RUO2 To enable the rural land resource to be used for a wide range of activities while avoiding, remedying or mitigating adverse effects of land use activities on the rural community, adjoining activities, marae, and the environment.*
- RUP1 To enable the establishment and efficient operation of Land Based Primary Production by safeguarding the life-supporting capacity of the rural land resource and ensuring the management of adverse effects on the environment.*
- RUP3 Control the scale and intensity of residential activity in the Rural Zone in order to safeguard the life supporting capacity of the soil resource and avoid reverse sensitivity effects.*
- RUP5 Limit the scale and intensity of the effects of Commercial Activity in the Rural Zone in order to ensure the sustainable management of the rural land resource.*
- RUP7 Control the adverse effects of buildings and activities on the community, adjoining activities and the environment.*
- RUP9 Ensure that noise levels associated with activities are consistent with the character and amenity of the Rural Zone.*
- RUP11 Control access and egress to ensure the safe and efficient movement of traffic to and from the Hastings District Roding Network.*
- RUP14 Provide for the subdivision of Lifestyle Sites in the Rural Zone on a limited basis.*

RUP14 Amended as proposed by Plan Change 46:

Provide for the subdivision of Lifestyle Sites in the Rural Zone on a limited basis in a manner that does not undermine the life supporting capacity of the Rural land resource or reduce the ability of the rural land resource to be used for land based primary production.

RUP15 Activities locating in the Rural Zone will need to accept existing amenity levels associated with land use management practices involved with the sustainable use of the soil resource.

10.4.2 The Plan promotes an approach that seeks to manage and limit threats to the availability and efficient utilisation of the rural land resource including, impervious ground coverage, increasing amenity expectations and cross boundary effects between activities. The ability to undertake land based primary production is intended to be secured through securing the continued existence and availability of the rural land resource.

10.4.3 Notwithstanding that the productive potential of the site is limited due to the sites small land area the proposal will result in fragmentation of the land resource within the site resulting from the configuration of proposed lot boundaries and also the fragmentation created by the legal access. In this regard the proposal is inconsistent with RUO1. The reduced versatility of the land, arising from the fragmentation limits the range of

activities the site can accommodate therefore the proposal is contrary to RUO2 and RUP1. Although reverse sensitivity effects can be avoided the proposal is also contrary to the low scale and rate of residential development anticipated by RUP3.

- 10.4.4 The commercial activity is consistent with RUP5 in terms of scale and intensity, however the commercial activity may give rise to adverse environmental effects in a manner that is contrary to RUP7.
- 10.4.5 As noise levels will generally satisfy rural zone standards the proposal cannot be said to be contrary to RUP9 and provision for access is not contrary to RUP11.
- 10.4.6 RUP14 specifically provides lifestyle subdivision on a '*limited basis*' in the rural zone for two reasons i) to provide capital support for farm management, and ii) as a potential source of sites for other activities including the provision of low density residential activities.

Plan Change 49 seeks to change RUP14 adding a further qualifier to ensure that allowing for lifestyle subdivision on a '*limited basis*' does not undermine the life supporting capacity of the rural land resource or its ability to be used for land based primary production.

Plan Change 49 was initiated by Council in response to public and Council concerns regarding substantially increased rates of rural lifestyle subdivision over recent years with subsequent impacts on rural character and amenity values and the accelerated rate at which these effects were accruing. Council's investigations confirmed that the increased rate of lifestyle development was directly attributable to successful utilisation of the existing rural zone subdivision rules (by applicants) in a manner that avoided the 3 year lifestyle stand down period, this outcome was not intended or anticipated by Council.

The overriding purpose of Plan Change 49 is to close the rural zone lifestyle subdivision loop holes in order to manage the rate of rural lifestyle subdivision (and associated effects on soil productivity and rural character and amenity), at levels consistent with policy RUP14.

In order to determine what *limited basis* means in terms of RUP14 one must turn to the subdivision standards in section 15 which give effect to this policy. These provide for controlled activity subdivision to create a single lifestyle site of between 1.5ha and 2.5ha once every three years providing the balance site exceeds 20ha. The limits are therefore *land area* and *timeframe* based and are interrelated. To exceed these limits (as proposed) would in terms of the Operative Plan and Plan Change 49 reduce the ability of the rural land resource to be used for land based primary production in the manner (or at the rate and area) anticipated by the Plan, and would give rise to increased effects on rural character and amenity. It must be concluded that the proposal is contrary to RUP14.

- 10.4.7 For the reasons commented on above the proposal is not contrary to RUP15 and reverse sensitivity issues can be avoided.
- 10.5 Section 12.2 - Landscape Area Resource Management Unit.
- 10.5.1 While the site is not located in a Landscape Area Resource Management Unit (Section 12.2 of the Plan) the following objective and policy are of relevance due to the riparian values afforded to the site:

LSO3 *To ensure that the effects of subdivision, use and development throughout the Hastings District are avoided,*

remedied or mitigated so as not to have an adverse visual or landscape effect.

LSP6 All subdivision land development activities will be encouraged to have regard to the landscape features and character of the site and locality.

10.5.2 For the reasons outlined above the application is considered to be at best inconsistent with LDO3. The application has had regard to the existing landform and environment and cannot be contrary to LSP6, notwithstanding that due to the overall intensity of the development the sensitive natural receiving environment is considered to be compromised.

10.6 Section 13.9- Riparian Land Management and Public Access District Wide Activity

10.6.1 The relevant objectives and policies are:

RMO1 To protect areas of the coastline and the margins of rivers, lakes and streams that are identified as being of significant, natural, cultural, or recreational value.

RMO3 To recognise the importance of the natural character of the riparian margins of the coastal environment, wetlands, lakes and rivers, protect them from inappropriate subdivision, use and development and promote their preservation and enhancement.

RMP3 Encourage the voluntary establishment of esplanade reserves or esplanade strips alongside waterbodies when land is subdivided in the Rural and Plains Zones particularly with respect to riparian areas identified in the Hastings District Plan as having natural, cultural or recreational significance.

Explanation

The Council will not require the setting aside of esplanade reserves on subdivisions in the Rural and Plains Zones. Instead, the Council has identified (in consultation with the Department of Conservation, Tangata Whenua, the Hawke's Bay Regional Council, and key interest groups) areas of land alongside waterbodies in the Rural and Plains Zones which are considered to be of natural, cultural or recreational significance. These riparian areas are identified in Appendix 13.9-1. The Council will instead seek to provide for the protection of these areas and land adjoining the sea, by encouraging, through the provision of information, the relevant landowners to voluntarily set aside land under Section 22 of the Queen Elizabeth the Second National Trust Act 1977 (via open space covenants), Section 76 of the Reserves Act 1977 (via declaration of private protected land), or Section 77 of the Reserves Act 1977 (via conservation covenants) or by direct negotiation with the relevant landowners to establish esplanade strips.

RMP8 Consider the necessity of requiring esplanade strips when land is subdivided in the Rural, Plains or Rural Residential Zones.

10.6.2 The riparian margins of the Tukituki River are identified (Appendix 13.9-1) and are rated highly for Fishing, Swimming, Passive Recreation, Canoeing, Soil & Water Conservation, Waterbird Habitat, and Fisheries (native and sports. For the reasons

described in this report it is overall considered that the proposed subdivision and the subsequent use and development of the site will result be of an intensity and scale that is inappropriate in the receiving riparian environment of the Tukituki River, and to grant consent would not promote the preservation or enhancement of these values. The proposal is therefore contrary to RMO1 and RMO3.

- 10.6.3 Following a request from Council to have regard to RMP3 the applicant has volunteered to create a river access strip off Kahuranaki Road. Due to traffic and pedestrian safety issues however Council engineers consider that the strip would be inappropriate as proposed.

In terms of RMP3 the provision of an access strip falls short of the benefits that could be accrued from a full esplanade reserve or an esplanade strip which would be desirable and which would create potential for increased future public access along the river in accordance with the purposes of s229 of the Resource Management Act, and in a manner consistent with RMP8. Similarly the applicants' proposal to covenant the riparian land in area 'Z' also falls short of the objective of RMP3.

10.7 Section 15.1 – Subdivision and Land Development

- 10.7.1 Also of relevance to this application are the Subdivision and Land Development Objectives and Policies including:

- SD01 To provide for the subdivision of land which supports the overall objectives and policies for the various zones, resource management units, or district wide activities in the District Plan, and promotes the sustainable management of natural and physical resources, while avoiding, remedying or mitigating any significant adverse effects on the environment.*
- SD02 To ensure that sites created by subdivision are physically suitable for a range of land use activities allowed by the rules of the District Plan.*
- SD04 To ensure that land which is subdivided is, or can be, appropriately serviced to provide for the likely or anticipated use of the land, the health and safety of people and communities, and the maintenance or enhancement of amenity values, while avoiding, remedying or mitigating adverse effects on the environment.*
- SDP1 That standards for minimum site sizes be established for each zone in the district.*
- SDP9 Ensure that land being subdivided, including any potential structure on that land, is not subject to material damage by erosion, falling debris, subsidence, slippage or inundation from any source.*
- SDP11 Recognise the role of the Hastings District Council's Code of Practice for subdivision and land development (November 1997) in providing Performance Standards which may be used as a means of compliance with the rules of the District Plan for Subdivision and Land Development, and may be applied as conditions of subdivision consents for the servicing of sites.*
- SDP12 Ensure provision of on-site services for water supply, sewage disposal or stormwater disposal for sites in the Rural and*

Plains areas unless the provision of reticulated services is identified as an appropriate work to mitigate adverse effects on the environment.

- SDP13 Ensure that where sites are not connected to a public water supply, wastewater disposal or stormwater disposal system, suitable provision can be made on each site for an alternative water supply or method of wastewater disposal or stormwater disposal, which can protect the health and safety of residents and can avoid any significant adverse effects on the environment.*
- SDP14 Ensure the provision of safe and practicable vehicular access from a public road to each site.*
- SDP18 Ensure that earthworks associated with providing vehicle access or services on land being subdivided will neither detract from the visual amenities of the area, nor have adverse environmental impacts, such as dust, or result in the destruction of heritage sites, cause natural hazards, or increase the risk of natural hazards occurring.*
- SDP24 Ensure that subdivision or developments do not result in adverse effects on the environment by requiring upon subdivision or development a means of connection to a water supply and services for the disposal of wastewater and stormwater.*

10.7.2 Generally the objective and policies for subdivision and land development draw on the any relevant zone objectives and policies. The proposed development is consistent with the Section 15 objectives and policies insofar as they relate to the provision of adequate access and servicing.

10.7.3 The application is contrary with regard to SDO1, SDO2, SDO4, SDP1 (Operative Plan) and SDP18, for the reasons discussed above.

10.8 Section 2.5 – Transportation and Section 14.1 Traffic Sightlines, Parking Access and Loading.

10.8.1 Relevant Section 2.5 and Section 14.1 objectives and policies include:

- TO1 To establish and maintain a safe, efficient, and environmentally appropriate roading network.*
- TP6 Ensure that when land use activities require to join or leave the roading network the efficiency or operation of the roading network is not adversely affected.*
- TSO2 To maximise safety and convenience for pedestrians and vehicular traffic on all sites.*
- TSP1 Require landowners and occupiers to provide off-street parking, access and loading facilities which are appropriate to the demands of the activities carried out on the sites.*
- TSP9 Control the width and position of access points to each property to minimise the adverse effects of manoeuvring and queuing vehicles.*

10.8.2 The proposal is not contrary to the section 2.5 and 14.1 objectives and policies.

10.9 Assessment of Objectives and Policies – Conclusion

10.9.1 The weighing up of a proposal's consistency with the objectives and policies requires that an overall assessment is made of how the proposal 'sits' within the policy framework of the Plan, rather than whether each objective and policy is individually satisfied. As such, it is the overall intent of the above objectives and policies that has been assessed in this case.

The Act guides this assessment by requiring that a proposal is not *contrary* (i.e. not *opposed to or repugnant to* the overall objectives and policies).

In this case, it is considered that this proposal is overall contrary to some of the key objectives and policies of the Plan in relation to intensity and rate of subdivision within the rural zone and the protection and enhancement of rural character and amenity values, particularly within and adjacent to a high value riparian environment.

11.0 OTHER MATTERS

11.1 Precedent Effects

11.1.1 Case law has established that adverse 'precedent effects' can be considered (*Blyth v Tasman DC EnvC C175/50*).

11.1.2 Precedent effects can arise where granting consent is so contrary to the relevant objectives, policies and other provisions of the District Plan that it would harm its integrity and effectiveness as an instrument enabling the Council to avoid, rather than to remedy or mitigate, the adverse effects the Plan formation process has identified.

11.1.3 In terms of Plan integrity guidance can be obtained from recent Court decisions.

- *Lightning Ridge Partnership Ltd v Hastings DC (W049/2007)* involved land zoned *Rural Residential* which was, as described in the decision as, an *...island .. surrounded on three sides by Rural land and on the other by Coastal Residential*. Its future as potential productive land had already been compromised, in a planning sense, by the zoning given it in the Plan formation process.
- In *Pencarrow Hills Ltd v Hastings DC (W010/2005)*, the site comprised 5000m² piece of *Plains* zoned land, of such a shape and configuration that its practical productive use was, to say the least, problematic. It was described in the decision as an *... orphan....*

11.1.4 The *Pencarrow* and *Lightning Ridge* cases both involved land that although zoned Plains and Rural (respectively) was ultimately segregated from the remainder of the resource to the extent that its utility was more akin to that of the abutting or adjacent land (i.e General Residential, or Coastal Residential). Those sites were considered to be sufficiently unique to differentiate them from other non-segregated sites of the same zoning that the granting of consent would avoid setting precedent. If it is accepted that the subject site is zoned rural, then this application does not bear resemblance to the above cases and principles supporting granting of those consents does not apply.

11.1.5 If the site is treated as unzoned then this application cannot be treated as unique as there are other sites in the district along the Tukituki River for which subdivision could be sought that are also unzoned and which display rural characteristics. In fact Council has received an application for subdivision on a similar site in the Tukituki Valley that is also unzoned and is also within the Tukituki Wildlife Reserve.

Accordingly in terms of uniqueness the application aligns more closely with the following case:

- In *McKenna v Hastings DC* (W016/2008) the applicant sought to subdivide a 3.0ha *Plains* site to create a 4018m² lifestyle site containing an existing dwelling on the edge of Havelock North. The site in question lay abutting and contiguous with other substantial *Plains* zoned sites and no amalgamation was proposed. The Court identified that the site had no particular uniqueness that set it apart from any other urban fringe *Plains* site, and despite the Planner's agreeing that there would be no adverse effects on the environment – including on the Plains soil resource, the Court declined the appeal on the basis of effects on the integrity of the Plan and objectives. The Court held that there was little to differentiate the McKenna site from any other property of comparable size and character hard against the border of the Havelock North residential area and to grant consent would encourage other similar applications. If there were to be an insidious movement toward the non-complying subdivision of such lots, that is where it would logically start, and that would be directly contrary to the intent of policy RP5.

11.1.6 McKenna was effectively seen as a nibbling at the edge of the zone, whereas Lightning Ridge and Pencarrow Hills to a slightly lesser extent were clearly and distinctly definable as appropriate for development despite the zoning.

11.1.7 The subject application bears a strong resemblance to the key elements that set *Lightning McKenna* apart. The subject site is not unique in terms of its characteristics or zoning. If treated as rural the granting of consent to allow there additional sites to be created at one time is likely to establish a precedent on other land either rural zoned or on unzoned land bearing the same or similar characteristics. The fact that other similar sites exist with similar rural and riparian characteristics also unzoned and within the Wildlife Reserve could lead to similar applications being made.

11.1.8 It is considered likely that if this consent was granted that others could follow in a manner that could cumulatively erode the public confidence in the consistent administration of the Plan, or result in rural lifestyle at a higher rate than is provided for by the Plan. If consent were to be granted there is also potential that an increased rate of subdivision could occur within the sensitive riparian environment of the Tukituki River – the high amenity values attributed to any such sites created may be and increased driver in this regard.

11.1.9 Summarily, to grant consent may lead to adverse precedent effects being established with regard to rural subdivision in general and also for increased subdivision in sensitive riparian environments.

12.0 SECTION 104

12.0.1 The 'threshold' or 'gateway' tests of s 104D have been applied to this application. It has been determined that the effects on the environment will be more than minor and that the application is contrary to the policies and objectives of the District Plan and Plan Change 49.

Accordingly on the basis that the site is zoned rural the proposal does not qualify for consideration under s104, pursuant to s104(1), and subject to Part 2 of the Act.

12.0.2 Given the legal uncertainties surrounding the lack of zoning for part of the site the remainder of this report and assessment is based on the application having a discretionary activity status, in which case the threshold tests of s104D would not apply, and assessment is required under s104 and Part 2 of the Act.

- 12.0.3 As a discretionary activity the findings of the above objectives and policies assessment and the assessment of effects on the environment are relevant to consideration under s104.
- 12.0.4 In terms of s104(1)a) Council may also consider positive effects. Given that it is inappropriate to provide public river access there are no positive effects arising from this application.
- 12.0.5 In terms of s104(1)b) there are no relevant national policy statements relevant to this application and the proposal is not inconsistent with the Regional Resource Management Plan. District Plan matters have been discussed in detail above.
- 12.0.6 In terms of s104(1)c) the relevance of other matters has been discussed above.

13.0 PART 2 OF THE RESOURCE MANAGEMENT ACT

13.0.1 The purpose of the Act is set out in Section 5 that is, to promote the sustainable management of natural and physical resources. In essence this means managing the use, development and protection of natural and physical resources in such a way or at such a rate that enables people and communities to provide for their social, economic and cultural well-being, this is to be achieved while –

- sustaining the potential for resources to meet the reasonably foreseeable needs of future generations;
- safeguarding the life-supporting capacity of air, water, soil and ecosystems, and;
- avoiding, remedying or mitigating adverse effects on the environment.

13.0.2 Section 6, of Part II of the Act sets out matters of national importance. Of relevance to this application are:

(a) the preservation of the natural character of the coastal environment, wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision use and development:

and

(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers:

13.0.3 Section 7 of the Act sets out matters that Council shall have particular regard to in administering the Act. Of particular relevance to this application are:

- (aa) the ethic of stewardship*
- (b) the efficient use and development of natural and physical resources:*
- (c) the maintenance and enhancement of amenity values:*
- (d) intrinsic value of ecosystems:*
- (f) maintenance and enhancement of the quality of the environment:*
- (g) any finite characteristics of natural and physical resources:*

13.0.4 As discussed in this report the proposal seeks to develop land along the riparian margins of the Tukituki River, a watercourse of high significance for its natural, habitat, and recreational values. The proposal involves modification of and extensive earthworks within the riparian margins and the subsequent development and use of the sites created (for residential and commercial purposes) will result in further ongoing adverse effects on these values. It is considered that the proposal does not achieve the stated purpose of 6(a) in that the proposal will not protect the sensitive riparian margins of the Tukituki River.

13.0.5 The applicant has volunteered to provide a river access strip and also to protect by covenant the riverbank within area 'Z'. Notwithstanding the applicant's efforts the

proposed strip has proven unsuitable due to pedestrian and traffic safety considerations.

- 13.0.6 Although the District Plan states that an esplanade strip or esplanade reserve would be desirable at this location the Plan falls short of making the creation of a strip or reserve a requirement. In this regard the application does not enhance public access to or along the Tukituki River or its margins to the extent promoted by the Plan. Area 'Z' although being protected by covenant, would remain in private ownership and control and access to or along the river would not be enhanced by the covenant.
- 13.0.7 Upon subdivision the land would remain in private ownership and in this regard the existing public access rights to the river would be maintained at current levels – at discretion of the landowners, currently reasonable access is not refused. Given the high value of the end development and the level of private investment in this land there is a potential that future landowners may wish to secure their exclusivity and privacy and access could become more restricted. In this regard the application is not consistent with the purpose of 6(d).
- 13.0.8 In terms of 7(aa) the proposal seeks to mitigate effects of the subdivision and development through design guidelines and limiting the scale and extent of development while there is some merit in this approach it is not considered that the measure proposed embrace the ethic of stewardship as the particular values and the features and characteristics afforded the site will remain affected.
- 13.0.9 Although the land available for productive use is limited, this potential for productive use will be compromised through fragmentation arising from the proposed development. Productive use of the land within Lot 1 may be constrained through the reverse sensitivity effects of the development within the additional sites created due to reduced yard setbacks sought. Given the overall design intent of the proposal it is considered that the entire site will be removed from productive potential. As such the proposal does not represent an efficient use of the productive 'rural' physical land resource within the site in terms of s7(b) or (g).
- 13.0.10 As a consequence of the scale, intensity of the subdivision and the close proximity of the ensuing residential and commercial landuse activities the proposal will not maintain or protect amenity values associated with the riparian and river margin environment. While the site itself does not contain any identifiable ecosystems the margins of the Tukituki River form a component of the wider Tukituki River ecosystem, the naturalness and amenity values of which would be compromised by development and subsequent landuse activities in such close proximity. The proposal is considered inconsistent with s7(c), (d) and (f).
- 13.0.11 The RMA Act accords priority to the matters of Part 2, and Part 2 provides the overall framework guiding all functions powers and duties under the Act. Any exercise of discretionary judgement must promote the statutory purpose. Applying Section 5 requires an overall broad judgement of whether a proposal would promote the sustainable management of natural and physical resources allowing for the balancing of conflicting considerations in proportion to the significance of the final outcome. The language used with Part 2 is deliberately open and it is intended to allow the application of policy in a general and broad way.
- 13.0.12 Of particular issue to this subdivision proposal is the balance between allowing limited level of lifestyle development to occur in what is essentially a rural environment, that has additional characteristics and sensitivities (associated with the Tukituki River) that are not apparent within the wider rural environment.
- 13.0.13 Although the District Plan anticipates and provides for rural lifestyle development it does so at a specific rate, intended to manage the effects of such development over time and which also protects the productive land resources and also to manage effects

on rural character and amenity. It is considered that this application fails to afford that level of protection to the land resource or rural character and amenity values.

13.0.14 Additional weight can be afforded to issues of character and amenity and the appropriateness of subdivision and ensuing landuse activities due to the proximity of the Tukituki River. These associated values are recognised at District Plan level as specifically referred in Part 2 of the Act.

13.0.15 Considering the points raised above, and those in the Assessment of Environmental Effects and Objectives and Policies (Hastings District Plan), the analysis and assessment within this report, this proposed subdivision and the associated landuse consent is considered to be inconsistent with Part II of the Resource Management Act 1991, and that the development and use of the land in the manner proposed does not represent the sustainable management of physical and natural resources in terms of the Act.

RMA20090349

RECOMMENDATIONS:

A. That pursuant to Rule 15.1.7.4 of the Hastings District Plan (Operative June 2003) and Section 104 and 104B of the Resource Management Act 1991, consent be DECLINED to GLW GROUP LTD for subdivision of a 24.9704 hectare site at 374 Kahuranaki Road, being Lot 4 DP 7801 and Lot 8 DP 20489 CT 77321 to create three lifestyle sites and a balance site.

B. That the submission of The Trustees of the Kaiwaka Trust (Brian John Mason Chambers, Alistair Mark Holder, Timothy Edward Mason Gilbertson), be allowed insofar as consent is declined.

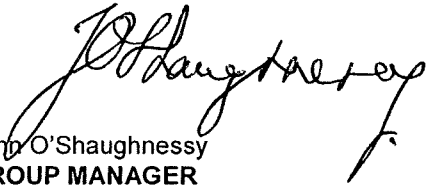
WITH THE REASONS FOR THIS DECISION BEING:

1. The proposal does not promote the sustainable management of natural and physical resources and is therefore contrary to the purpose and principles set out in Part II of the Act.
2. The application is for an activity that will be contrary to the objectives and policies of the District Plan.
3. The proposal is inconsistent with the objectives, policies and other provisions of the District Plan, in that:
 - (a) It would result in rural lifestyle development at a rate and in a manner, which is contrary to the relevant strategic objectives and policies for the District.
 - (b) The proposal does not promote the maintenance of the life-supporting capacity of the Hastings District's rural soils resource at sustainable levels;
 - (c) The proposal fails to ensure that the natural and physical resource of the rural area that are significance to the Hastings District are protected and maintained;

- (d) The proposal does not provide for lifestyle subdivision on a limited basis or in a manner that does not undermine the life supporting capacity of the land resource or the ability of the resource to be used for land based primary production;
- (e) The proposal would result in development at an intensity and scale that does not maintain or enhance rural character and amenity values.
- (f) The proposal will result in inappropriate subdivision use and development of the riparian margins of the Tukituki River in a manner, and at an intensity and scale that does not promote the preservation or enhancement of natural character or recreational values.



Roger Wiffin
SENIOR ENVIRONMENTAL PLANNER (CONSENTS)



John O'Shaughnessy
GROUP MANAGER
PLANNING AND REGULATORY SERVICES

Dated 28 January 2010

Submission:

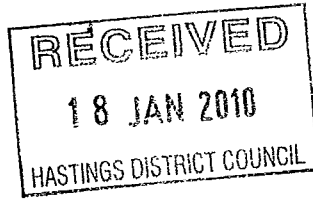


**Holland
Beckett
LAWYERS**

525 Cameron Road ▪ DX HP40014
Private Bag 12011 ▪ Tauranga 3143 ▪ New Zealand
Telephone 07 578 2199 ▪ Facsimile 07 578 8055
Email lawyers@hobec.co.nz ▪ Website www.hobec.co.nz

Our Reference V J Hamm
Direct Dial 07 927 2754
Email vanessa.hamm@hobec.co.nz

15 January 2010



Hastings District Council
Private Bag 9002
HASTINGS 4156

Attention Roger Wiffin

Dear Roger

G L W Group Ltd - RMA 2009-0349

We refer to our email correspondence of 15 January 2010.

Please now find **enclosed** the hard copy of the submission lodged on Friday.

Yours faithfully
HOLLAND BECKETT

VANESSA HAMM
Partner

encl.

SUBMISSION ON LIMITED NOTIFIED RESOURCE CONSENT APPLICATION

Resource Management Act 1991

To: The Chief Executive Officer
Hastings District Council
Private Bag 9002
HASTINGS 4156

Names of submitters: The trustees of the Kaiwaka Trust (Brian John Mason Chambers, Alistair Mark Holder, Timothy Edward Mason Gilbertson)

1. **This is a submission on an application by GLW Group Limited for resource consent for a non-complying rural subdivision at 'Raratu', 374 Kahuranaki Road, Tuki Tuki Valley (RMA20090349).**
2. **The specific parts of the application that the submission relates to are:**

The entire application.
3. **The submitters oppose the resource consent application for the following reasons:**
 - (a) The submitters are landowners and residents with a long standing and significant interest in the Tuki Tuki Valley area. In particular, the Chambers family has farmed land in the vicinity for over 150 years, and the submitters own properties surrounding Raratu to the north and west of the Tuki Tuki River. The submitters place great value on the characteristics of the area, and wish to ensure that the Tuki Tuki Valley area continues to provide the same or substantially the same rural character and amenity that it currently possesses.
 - (b) For example:
 - (i) The Tuki Tuki Valley area is largely an unmodified pastoral landscape with significant historical heritage. Raratu is largely surrounded on approximately 270 degrees by a rural landscape, which the submitters consider is the most picturesque area of the entire Tuki Tuki River. There is a well preserved predominant pa site above the Bluff on Horseshoe Bend directly overlooking the proposed Raratu development.
 - (ii) The Horseshoe Bend is widely used and enjoyed by the public for swimming, kayaking and fishing and its scenic qualities.
 - (iii) All of Raratu is included within the Tuki Tuki Wildlife Refuge.
 - (c) The proposed activity will have adverse effects on the environment which are more than minor, including:

- (i) Adverse effects on the rural character and coherence of the Rural zone.
 - (ii) Adverse landscape and natural character, and amenity and visual effects.
 - (iii) Adverse effects on the existing values of the wildlife refuge established pursuant to the Wildlife Act 1953.
- (d) For example:
- (i) The proposal will lead to further fragmentation of the rural landscape and have a cumulative adverse effect given the existing accretion of development up the Tuki Tuki Valley.
 - (ii) The visual impacts of the proposal, both on the submitters, and on users of the Tuki Tuki River, will be significant. The proposal also compromises the submitters' enjoyment of the River which lies within their properties. This a superb location and swimming spot frequented constantly by the Chambers family.
 - (iii) The cultural heritage of the area will be significantly affected.
 - (iv) The proposal is entirely at odds with the wildlife refuge established pursuant to the Wildlife Act 1953.
 - (v) Reverse sensitivity effects are likely to become evident given the proposal's proximity to the submitters' sheepyards and woolshed.
 - (vi) The proposal fails to offer the mitigation alleged by the application. For example, the "public walkway" does not offer public access to the Tuki Tuki River which is located within the submitters' properties.
 - (vii) The proposal fails to guarantee that elements of the proposal will remain in perpetuity (e.g. that the proposed shed will not in time be converted to another use). The use of consent notices provides little assurance as application can be made to change or cancel these.
- (e) The proposed activity is contrary to the objectives and policies of the relevant planning framework. For example, it is contrary to the Rural objectives and policies of the Hastings District Plan (if treated as Rural), and objective RMO3 which seeks to recognise the importance of the natural character of the riparian margins of rivers and protect them from inappropriate subdivision, use and development. It is also contrary to the policy goals of the Hastings District Council to slow the rate of subdivision in the rural environment (e.g. Plan Change 49).
- (f) To grant consent to the proposed activity would result in ad hoc and inappropriate development. In the absence of special reasons for granting consent (of which there are none), to grant consent would

result in an unacceptable precedent effect and compromise the integrity and consistent administration of the District Plan.

- (g) The proposal is contrary to Part 2 of the Resource Management Act 1991, including in that it:
 - (i) Does not amount to the efficient use and development of natural and physical resources;
 - (ii) Fails to maintain and enhance amenity values;
 - (iii) Fails to have regard to the intrinsic values of ecosystems;
 - (iv) Fails to maintain and enhance the quality of the environment;
 - (v) Fails to have regard to the finite characteristics of the rural land resource;
 - (vi) Fails to sustain the potential of the rural land resource to meet the reasonably foreseeable needs of future generations;
 - (vii) Fails to safeguard the life supporting capacity of productive rural soils; and
 - (viii) Fails to avoid remedy or mitigate the adverse effects of the activity.
- (h) The proposal is contrary to good resource management practice.
- (i) Overall, Raratu is a property with special characteristics (such as its location on the Horseshoe Bend, and its status as a wildlife refuge). To grant consent to the proposal on such a special property would be contrary to the purpose and principles of the Resource Management Act 1991.

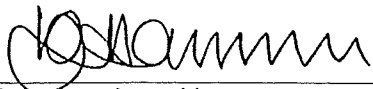
4. Finally, the submitters note that:

- (a) The application should have been publicly, rather than limited, notified, given the extent to which the Tuki Tuki Valley in this location is enjoyed by members of the public. Section 104(3)(d) of the Resource Management Act 1991 therefore arguably precludes the grant of consent to the application.
- (b) Contrary to the assertions in the application, Brian Chambers on behalf of the submitters endeavoured to communicate with representatives of the applicant, both before and after the application was lodged, to ascertain and discuss the proposal. Prior to the application being lodged, no information was provided. Subsequent to the application being lodged, no response was received.

5. **The submitters seek that the Council decline the resource consent application.**

6. **The submitters wish to be heard in support of their submissions and note that they will call evidence at the hearing.**

Signed for and on behalf of the submitters
by their solicitors and duly authorised agents
Holland Beckett:



Vanessa Jane Hamm

Dated: 15 January 2010

Address for service of submitters:

Holland Beckett
Private Bag 12011
DX HP 40014
TAURANGA 3143

Tel: 07 578 2199
Fax: 07 578 8055

Email: vanessa.hamm@hobec.co.nz

DDI: 07 927 2754

commencement of any work. Contact Council's engineering consultants, MWH New Zealand Limited (attn. Brian Steed), telephone 06 873 8909 for further information.

2. MWH recommend that the Applicant considers providing access to the proposed Public Walkway at a suitable point along Right of Way 'A' in consultation with Hastings District Council.

Background:

The application seeks consent for 3 additional titles.

A site visit was carried out by MWH Engineer Brian Steed on the 22nd October 2009.

- The existing vehicle crossing is sealed from the edge of seal to the cattle stop on the property boundary. It will however require upgrading to Hastings District Council requirements (CP 2.6.6.4) (ie extend tapers on either side of crossing to comply).
- The assessed speed on the approach from the south is 80km/hr. The sight visibility in this direction is approximately 105m. This meets RTS6 requirements for 105m @ 80km/hr.
- The sight visibility to the north is 160m+ and meets RTS6 requirements of 160m.
- Vegetation on road reserve to the south of the entrance will require removal to improve visibility.
- Rights of Way 'A', 'B' and 'C' will require construction to comply with Hastings District Council requirements as will access to each lot. Design drawings will need to be submitted for approval prior to works commencing to show road construction and stormwater requirements can be met.
- The proposed public walkway/fishermans access track entry/exit point onto Kahuranaki Road is at a crash blackspot where road reconstruction is planned for the future. The applicant must not formalise this access which may encourage parking and pedestrian in a high risk environment.
- The applicant shall provide a final geotechnical report with a signed producer statement.

Recommended Recovery Charges:

Labour units (MWH)	General Roding / Traffic Kilometres	4.5 hours 45
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Fish & Game Affected Persons Consent:

RESOURCE MANAGEMENT ACT 1991

AFFECTED PERSONS CONSENT

I/We Fish and Game New Zealand
(Hawke's Bay Region)

Being the owner and occupier

Being the owner

Being the occupier

of the property at _____

***Please note:**

1. Council requires the approval of all legal owners and occupiers of an affected property. If the owner and occupier are different, please use a separate form.
2. An 'owner' includes any person who is party to a current written sale and purchase agreement for the land (either conditional or unconditional), or a similar agreement to take a lease of the land.
3. Where there are joint owners, it is important that each give written approval (or one owner give specific approval on the other's behalf)
4. Where the owner is a Trust, approval must be given by a person authorised to sign on behalf of the Trust.

Have seen the application to be made by:

Applicant:	G Paterson & A Coltart
Site Address:	374 Kahuranaki Road ('Raratu'), Tuki Tuki Valley
Proposal:	To subdivide the existing property into 4 rural residential lots, including the existing homestead and a further proposed 3 additional house sites, 2 fishing huts, implement shed, and associated services.

THE DOCUMENTS LISTED BELOW DETAIL THE PROPOSED ACTIVITY AND ITS LIKELY EFFECTS ON THE ENVIRONMENT. READ EACH DOCUMENT AND INITIAL BESIDE EACH ITEM TO VERIFY THAT YOU HAVE DONE SO.

Subdivision Plan

Initials

IM

Subdivision Consent Application Document, titled "G PATERSON & A COLTART: RURAL LIFESTYLE SUBDIVISION (NON COMPLYING)", Consultation Draft' dated 18 September 2009, including:

- A description of the proposal
- An assessment of the potential effects on the environment
- Accompanying technical appendices (Appendices I to XI)

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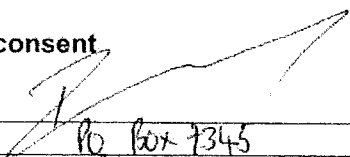
and hereby give my/our consent

Signature: _____

Date: _____

Postal Address: _____

Contact Phone No: _____


 PO Box 7345
 TARADALE MARLBOROUGH
 021 274 0177

13/10/09

Note:

You should only give your consent if you are fully familiar with the proposal and its possible effects on you. If you do give your consent Council, in making its decision, cannot take into account any adverse effects on you. You are entitled to refuse your consent. If you request any conditions on your approval, please ask the applicant to amend their application to reflect these changes. For further information see the back of this form. If you are in any doubt do not hesitate to ring a member of the Council's planning staff to discuss the proposal.

Wildlife Act 1953

Section 14:

In subsections (1), (4) and (5) the word "Director-General" was substituted, as from 1 April 1987, for the word "Secretary" pursuant to section 65(1) Conservation Act 1987 (1987 No 65).

12 Mining privileges, coal mining rights, and public works
[Repealed]

Section 12 was repealed, as from 26 October 1979, by section 268(2) of the Coal Mines Act 1979 (1979 No 21).

13 Seizure of wildlife, etc, illegally taken

Any officer of the Department, or any officer of any other Department in which for the time being is vested the control of any wildlife sanctuary, or any other person acting with the written authority of the Director-General, may in any wildlife sanctuary exercise the powers conferred on rangers by subsection (1) of section 39 of this Act.

The word "Director-General" was substituted, as from 1 April 1987, for the word "Secretary" pursuant to section 65(1) Conservation Act 1987 (1987 No 65).

Wildlife refuges

14 Wildlife refuges

(1) Notwithstanding anything to the contrary in the Conservation Act 1987, the Government Railways Act 1949,, or any other Act affecting lands of the Crown, the Governor-General may from time to time, by Proclamation, declare any area described in the Proclamation and available for the purpose, subject in the case of any land other than unoccupied land of the Crown to the consent of the occupier, to be a wildlife refuge for the purposes of this Act, and may in like manner revoke or amend any such Proclamation:

Provided that—

- (a) No Proclamation issued under this subsection shall affect any land of the Crown unless it is issued on the joint recommendation of the Minister of Conservation and the Minister charged with the administration of the Department of State having the control of the land:

- (aa) No Proclamation issued under this subsection shall affect any waters of the sea or of any harbour within the meaning of the Harbours Act 1950 unless it is issued on the joint recommendation of the Minister of Conservation and the Minister of Transport:
 - (b) Land held for a public work other than a wildlife refuge that is required for a wildlife refuge may be declared to be a wildlife refuge only by a notice under section 191 of the Public Works Act 1981:
 - (c)
 - (d) Any Proclamation issued under this subsection may be revoked without the consent of the occupier:
 - (e) A conservation area within the meaning of the Conservation Act 1987 and any foreshore adjacent to any such area, required for a wildlife refuge shall be reserved as such pursuant to section 18 of that Act, and thereupon shall be subject to any or all of the provisions of this Act relating to wildlife refuges, but otherwise shall be subject to the Conservation Act 1987:
 - (f) Any Proclamation issued under this subsection may prohibit or restrict the pollution of any wildlife refuge by means of rubbish, sewage, industrial waste, mining debris, sawmill refuse, or any other means.
- (1A) Where a wildlife refuge has been declared under subsection (1) of this section, the Governor-General may, by the Proclamation or notice declaring the wildlife refuge, or by a subsequent Proclamation or notice, prohibit or restrict the use of boats (including any launch, boat, canoe, or other similar craft, whether propelled by mechanical power or not) in the wildlife refuge or in any portion thereof, and by any person or classes of persons, as may be specified in the Proclamation or notice: Provided that nothing in any such prohibition or restriction shall derogate from any provision of the Harbours Act 1950 or the Shipping and Seamen Act 1952.

- (1B) Any prohibition or restriction under subsection (1A) of this section may be absolute or conditional, and the Proclamation or notice may authorise the Minister or the Director-General to grant exemptions from the prohibition or restriction.
- (1C) Every person commits an offence against this Act and is liable on conviction to the penalty set out in section 67F(3) who does any act that is for the time being prohibited by a Proclamation or notice under subsection (1A) of this section or fails to comply in any respect with any condition imposed in any such Proclamation or notice.
- (2) Where a wildlife refuge has been declared under subsection (1) of this section, the Minister may authorise in writing the occupier of any land included in the wildlife refuge or any other person having the authority of the occupier—
- (a) To keep or bring domestic animals on or onto the land:
 - (b) To keep or bring firearms or explosives on or onto the land:
 - (c) To discharge firearms or explosives on the land:
 - (d) To destroy any animals specified in Schedule 2 or Schedule 5 or Schedule 6 hereto or any rabbits or hares on the land:
 - (e) To do any other acts necessary for the carrying on of the normal use of the land, subject to such conditions as may be prescribed in the Proclamation.
- (2A) Any officer of the Department of Conservation appointed as a ranger under subsection (1) of section 38 of this Act or any ranger appointed under paragraph (c) of subsection (2) of that section or any other person authorised in writing in that behalf by the Director-General, either generally or in any particular case, may bring firearms or explosives on to any wildlife refuge for the purpose of destroying any animal specified in Schedule 2 or Schedule 5 or Schedule 6 hereto or any rabbit or hare, where that animal or rabbit or hare is a nuisance or is causing damage to that wildlife refuge or to any wildlife in that wildlife refuge:
- (3) While any Proclamation or notice under subsection (1) of this section remains in force, it shall not be lawful for any person, except as provided in subsection (2) or subsection (2A) of this section or in subsection (2) of section 5 of this Act or pursuant

to an authority granted under section 53 or section 54 of this Act, to hunt or kill for any purpose, or molest, capture, disturb, harry, or worry any wildlife in the wildlife refuge, or to take, destroy, or disturb the nests, eggs, or spawn of any such wildlife, or for any person to bring onto the wildlife refuge or have in his possession or discharge in the wildlife refuge any firearm or explosive, or have in his possession or control in the wildlife refuge any dog or cat, or to do anything likely to cause any wildlife to leave the wildlife refuge.

- (3A) Every person who contravenes subsection (3) commits an offence against this Act and is liable on conviction to the penalty set out in section 67F(1).
- (4) Notwithstanding anything in this Act or in any regulations under this Act, the performance in any wildlife refuge by any person of any act authorised by the Minister under subsection (2) of this section shall not be deemed a breach of this Act.
- (5) Every sanctuary constituted at the commencement of this Act by a Warrant under section 6 of the Animals Protection and Game Act 1921-22 shall be deemed to be a wildlife refuge for the purposes of this Act.

Compare: 1921-22 No 57 s 6

Subsection (1) (that part before the proviso) was amended, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65) by substituting the words "Conservation Act 1987" for the words "Land Act 1948", and by omitting the words "the Forests Act 1949".

Subsection (1) proviso paragraph (aa) was inserted by section 4(1) Wildlife Amendment Act 1959, and in that paragraph the reference to the Minister of Transport was substituted for a reference to the Minister of Marine by section 6(2)(a) Ministry of Transport Amendment Act 1972.

Subsection (1) proviso paragraph (b) was amended, as from 6 December 1983, by section 3(1) Wildlife Amendment Act 1983 (1983 No 48).

Subsection (1) proviso paragraph (c) was repealed, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65).

Subsection (1) proviso paras (d) and (e) was inserted, as from 19 September 1980, by section 5 Wildlife Amendment Act 1980 (1980 No 17).

Subsection (1) proviso paragraph (e) was substituted, as from 1 April 1987, by section 65(1) Conservation Act 1987 (1987 No 65).

Subsection (1) proviso paragraph (e) was amended, as from 22 October 2003, by section 3 Wildlife Amendment Act 2003 (2003 No 103) by substituting the words "Conservation Act 1987" for the words "Reserves Act 1977".

Subsection (1) proviso paragraph (f) was inserted, as from 19 September 1980, by section 5 Wildlife Amendment Act 1980 (1980 No 17).