BEFORE THE INDEPENDENT COMMISSIONER

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application for resource consent for the construction and establishment of a storage and distribution facility, warehouses, ancillary offices and site remediation at 16A Wickham Street, Hamilton

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MEMORANDUM OF COUNSEL ON BEHALF OF HAMILTON CITY COUNCIL

Dated 29 November 2023

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MAY IT PLEASE THE COMMISSIONER

INTRODUCTION

1. This memorandum is filed on behalf of Hamilton City Council (**HCC**) in accordance with the direction made by Commissioner van Voorthuysen following HCC's presentation at the hearing on 23 November 2023.

2. The Commissioner directed HCC to:

   a) Confirm:

      i. Who holds the resource consents for the Hamilton Organic Centre site;

      ii. What Land Use Consent LU/002/16 authorises;

      iii. The transport controls and triggers that apply in the Industrial Zone under the Hamilton Operative District Plan (**ODP**);

   b) Provide:

      i. A copy of the Strategic Boundary Agreement between Waipa District Council (**WDC**) and HCC;

      ii. Examples of other rural based activities with similar amenity values to the site; and

      iii. Caselaw, if any, that addresses whether granting a land use consent for an activity that fails to connect to a reticulated Three Waters network gives rise to a relevant environmental effect on planned public infrastructure projects.

3. These matters are addressed below.

HAMILTON ORGANIC CENTRE RESOURCE CONSENTS

4. HCC holds a land use consent granted by WDC on 26 February 1992 to “operate an organic recycling dump and associated chipper” on the Hamilton Organic Centre site at 18 Wickham Street, subject to various conditions. HCC also holds a land use consent granted by WDC on 18 May 1994 to “revise the site of the Hamilton Organic Recycling Centre” subject to various conditions. Copies of the consents are included as **Attachment 1.**

5. Enviro Waste Services Limited hold the following discharge permits granted by Waikato Regional Council (**WRC**) on 11 October 2010 which expire on 6 September 2025:

   a) AUTH119186.01.01 authorising the discharge of contaminants to air from a composting facility; and

   b) AUTH119185.01.01 authorising the discharge of treated stormwater from a composting facility.

6. Copies of the discharge permits are included as **Attachment 2.**

LAND USE CONSENT LU/0002/16

7. LU/0002/16 granted by WDC on 5 February 2016 authorises the following on the subject site and the parcel of land to the east of the site:

a) Establish a Rural Based Industry (Rural transportation and storage depot) in the Rural Zone; and

b) National Environmental Standard (NES) for Assessing and Managing Contaminants in Soil to Protect Human Health.

8. Notably, Condition 2 provides:

> 2. The proposed activities shall align with the District Plan's definition of Rural Based Industry. For the avoidance of doubt, the definition of Rural Based Industry is as follows:
>
> *"means an ACTIVITY that has a direct connection to or processes the output of land based activities involving animal, agriculture, forestry or horticultural crops, and includes (but is not limited to) rural transportation and agricultural contractors depots, and the preliminary packaging and processing of agricultural produce including PACKHOUSES and cool stores, stock sale yards, sawmills, grain silos and feed mills, meat and poultry processing, wineries and RURAL RESEARCH FACILITIES."*

9. In the Reasons for Decision it states:

> 3. The activities authorised by way of this consent have demonstrated a functional and compelling reason to be located in the Rural Zone.
>
> 4. The requirements of Condition 2 will ensure the proposed activities align with the proposed Waipa District Plans' definition of "Rural Based Industry".
>
> 5. The activities are considered to be in keeping with the receiving environment and will not contribute to any additional adverse amenity effects over and above what currently exists within the area.

10. A copy of the consent and the decision report are included as **Attachment 3.**

ODP TRANSPORT TRIGGERS

11. Rule 25.14.4.3.a of the ODP specifies that 500-1499 vpd triggers the requirement for a Simple Integrated Transport Assessment (**ITA**) and 1500 or more vpd triggers the requirement for a Broad ITA.

12. For existing vehicle accesses to a strategic network or major arterial transport corridor, or where it takes access across an existing railway level crossing, Rule 25.14.3.b provides that a Simple ITA must be prepared for any activity that increases the use of the vehicle access by more than 100 vehicles per day.

13. Under Rule 25.14.4.3.c a Broad ITA must also be prepared for specific activities, including new transport depots (goods). A transport depot is defined in the plan as:

> Means land, buildings and infrastructure used principally for the receiving, dispatching or holding of goods or passengers in transit by road or rail and any associated provision for vehicles.

14. The requirements for both types of ITAs are set out in Volume 2, Appendix 15-2a of the ODP.

SIMILAR SITES IN THE RURAL ZONE

15. HCC has identified a number of sites of a similar size to the subject site that are located within the Rural Zone in either the Waikato or Waipa District which set out existing rural activities which have a similar level of rural amenity to the subject site under its current suite of resource consents. HCC's evidence is that despite the consented activities, the site currently retains elements of rural character and amenity which will be lost if the application is granted.

16. The sites are included in **Attachment 4.**

STRATEGIC BOUNDARY AGREEMENT

17. A copy of the Strategic Boundary Agreement between WDC and HCC is provided as **Attachment 5.**

THE EFFECT OF NON-RETICULATION

18. *Olliver v Marlborough District Council*[1] is an unsuccessful appeal to the High Court of an Environment Court decision concerning a proposal for a non-complying activity that was declined by both the consent authority and the Environment Court on the basis that, despite there being agreement that there would be no more than minor adverse environmental effects, it was repugnant to the objectives and policies of the relevant district plan and because it would give rise to a precedent effect.

19. The application for consent was for the subdivision of a property into two lots. Water supply to the lots was to be shared from a common well with a water easement created. The appellants had also offered a condition requiring an improvement to the onsite effluent disposal system. The activity was a non-complying activity in the Deferred Township Residential Zone (**DTRZ**). The respondent, Marlborough District Council (**MDC**), had refused consent on the basis that the proposed district plan only supported further residential development in the DTRZ if the water supply was reticulated. MDC's decision was unsuccessfully appealed to the Environment Court.

20. The Environment Court noted that there was no dispute that the adverse effects of the proposal were minor. However, the Environment Court assessed the relevant objectives and policies as providing "an effective bar" to further rural residential developments in the area until potable water

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[1] *Olliver v Marlborough District Council* HC Blenheim CIV-2004-485-1671, 8 July 2005, HC.

supply was installed and connected so that the issue was managed properly. It said:[2]

> [54] We remind [ourselves] that s 105(2A)(b) requires that a consent authority *must not* grant a resource consent for a non-complying activity unless it is satisfied the activity (in this case the subdivision) will not be contrary to the objectives and policies of the Proposed Plan.
>
> …
>
> [78] It is clear based from the provisions we have quoted and other supporting provisions that the Proposed Plan:
>
> - Anticipates residential growth at Rarangi;
> - Recognises the vulnerability of the water supply in terms of contamination from soakage fields;
> - In its objectives and policies it is absolutely clear/explicit about the timing of any future residential development at Rarangi;
> - In its rules make subdivision without reticulation a non-complying activity.
>
> [79] This case is about the sustainable management of Rarangi's natural and physical resources. We acknowledge that deferment of part of the residential zone at Rarangi has been done in order to ensure that the future development of this community is sustainable. Whilst the Council through its witness…, does not dispute the Olliver's treatment system, the Council in this very sensitive area identifies the difficulties it has had with the maintenance and monitoring of on-site waste water management systems.
>
> [80] The ongoing performance of any system relies upon the appropriate operation and maintenance…Mr Kennedy is concerned that approval of the Ollivers' application will send the wrong signal to those others who may wish to develop in the area. He states it threatens the integrated management of the resource.

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[2] Section 105(2A) was the predecessor drafting to what is now s 104D in the RMA.

> [81] We conclude that there is potential for further subdivision applications, and were we to grant this application the clear message would be that 'ad hoc' disposal treatments were acceptable in the DTRZ. Further subdivision and associated residential development in the DTRZ require community infrastructure or, in the alternative, a plan change to allow community input into any other options.
>
> [82] We see the intention of the planning provisions to avoid ad hoc solutions and to advance residential development at Rarangi in an integrated manner, allowing for planned communal infrastructure.

21. On appeal to the High Court, the appellants argued that the Environment Court was in error when it determined that minor or no adverse effects to the environment would flow from the grant of consent, but that nevertheless consent should not be given because of the proposed plan provisions. The appellants also contended that the Court's conclusion concerning precedent effect, and the finding that the proposal would send "the wrong signal", was flawed and unrealistic. The High Court said:

> [38] I accept the submissions of the respondent that it was open to the Court to have regard to the issues of precedent effect in determining whether the application was contrary to the objectives and policies of the Proposed Plan (under s 104(d)). It was required to have regard to the criteria identified in s 104 and weigh the absence of immediate adverse physical environmental effects of the appellant's subdivision against the fact that the proposal was contrary to the long-term objectives and policies of the Plan and wider development of Rarangi Township (s 104(1)(d) and (i)). Not only did the Tribunal take into account the objectives and policies of the Plan but went further to conclude that the appellants' proposal was repugnant to those objectives.
>
> [39] I am satisfied that what the Court was doing when it said in paras [81] and [82], that there is "potential for further subdivision applications…[with] 'ad hoc' disposal treatments", and "…the

intention of the planning provisions to avoid ad hoc solutions and to advance residential development at Rarangi in an integrated manner, allowing for planned communal infrastructure", was clearly addressing a s 104(1)(d) matter, and probably also under s 104(1)(i). It refers to Part II and the exercise of its discretion, as the heading states, before paras [78] and [82].

…

[42] I do not accept the appellants' contention that the Court misinterpreted s 104 and Part II, to the effect that once there had been a finding that either minor or no effect would occur then there would be no adverse effects on the environment, to decline consent placed the Plan objectives and policies and its integrity above, in law, the purpose and principles of the Act itself, as set out in Part II. Part II (in ss 5 and 7(b)) refers to the purpose of the Act being to promote sustainable management and efficient use of natural and physical resources. The Court itself says that the case is about the "sustainable management" of Rarangi's natural and physical resources so that deferment of part of the residential zone of Rarangi has been done to ensure the future development of that part of the community is sustainable.

[43] A similar argument as to consideration of District Plan objectives and policies by the Court in such circumstances was made in *Calapashi Holdings Ltd v Marlborough District Council* (HC Blenheim, CIV-2004-485-1419, 22 March 2005, Ellen France J) but rejected. The Environment Court is given the authority, and is in fact required under s 104, to consider a number of matters when it comes to exercising its discretion to grant consent or not. It must consider relevant objectives, policies, rules and other provisions of a Plan. If it comes to the conclusion that they outweigh other matters to be considered, such as actual effects on the environment (whether in terms of the gateway provision in s 105(2A)(a) or as a matter to be considered under s 104(1) does not matter), it may exercise its discretion and decline the application.

(emphasis added)

22. A copy of the High Court decision in *Olliver v Marlborough District Council* is provided as **Attachment 6.** This judgment is binding authority that a failure to ensure development proceeds strategically, and in a manner integrated with planned public infrastructure, may be declined under s 104 even where adverse effects are deemed minor. While minor, allowing development with these effects can give rise to precedent effects which collectively undermine the sustainable development of the land resources for future communities.

23. Applying this case to the Commissioner's question about whether a single development's failure to participate in the public reticulation scheme is a relevant effect, the answer is yes. The effect alone may be minor, but cumulatively, if a precedent is established, the effects could become more than minor if the public infrastructure and sustainable development of the land resource is undermined as a result. In addition, if the effect is viewed in isolation, while it might be minor in nature, its presence still means the proposal is contrary to the objectives and policies that direct these community outcomes. So, whether viewed as an environmental effect, or as a feature of the proposal which is contrary to the relevant objectives and policies, the issue is highly relevant to the s 104 evaluation.

CONCLUSION

24. Authorising the proposed activity will create an unacceptable precedent effect on ad hoc development adjacent to the Hamilton City boundary. It is contrary to the strategic land use planning for the sub-region.

25. HCC remains strongly opposed to this application.

Dated 29 November 2023

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L F Muldowney / S K Thomas
Counsel for Hamilton City Council

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DX 4893
Location: 101 Bank St, Te Awamutu
Telephone (07) 871-7133
Fax (07) 871-4061

26 February 1992

Please quote: 459/263.03

B A & A M Pryce
19 Aberfoyle Street
HAMILTON

Copies to H.C.C & Waikato Health Board

Dear Sir/Madam

RESOURCE CONSENT APPLICATION - B A & A M PRYCE, RECYCLING OPERATION, WICKHAM STREET

You are advised the following is the decision of the Regulatory Committee at its meeting held on 24 February 1992.

The following is a copy of Council's resolution:

That 'pursuant to Section 104 and 105 of the Resource Management Act 1991 the Waipa District Council grants consent to B A & A M Pryce to operate an organic recycling dump and associated chipper on the property described as Lot 1 DPS 59491 subject to the following conditions:

1. The organic recycling dump shall be limited to the extent of that which is illustrated on the site plan which accompanied the application for planning consent.

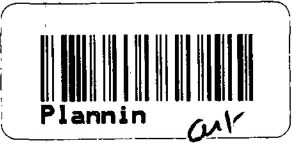
2. The site shall be operated and developed in accordance with the details submitted with the application for planning consent.

3. The applicant shall erect barriers above the head walls of the entrance culvert. These shall be constructed to such a standard so as to prevent vehicles from running off the edge of the crossing.

4. The windrows of organic material shall be managed so as to reduce any fire hazard to a minimum. In that regard the lengths of dry unturned material shall be limited to lengths not exceeding 20 metres with a minimum fire separation of not less than 10 metres to other windrows.

5. Only organic fill shall be deposited on the site. Any inorganic matter found deposited shall be collected and removed immediately by the applicant.

6. The applicant shall upgrade the crossing to comply with Hamilton City Council standards for industrial vehicle usage. A vehicle crossing permit is required to be uplifted from the Hamilton City Council Streets Division.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7. That the use of the land shall be conducted and buildings located, designed and used to ensure that the following corrected noise levels are not exceeded at or as near as practicable to the adjacent industrial boundary within the city - 65dBA (L10) at all times of the day.

   All corrected noise levels to be measured and assessed in accordance with NZS 6801 and 6802:1977.

8. The applicant shall submit a management programme for the control of rodents, insects and odour to be approved by the District Environmental Health Officer.

9. The applicant shall obtain a resource consent approval for a discharge permit from the Waikato Regional Council.

10. The applicant shall ensure that a telephone communication system is available and operational on the subject property at all times in the event of fire hazard.

Reasons for Approval

1. That Council is of the opinion that any adverse effects arising from the proposed operation can be suitably mitigated through the imposition and monitoring of conditions attached to this consent.

2. Council considers the application does not compromise matters contained within the Resource Management Act 1991 or the provisions of the operative district scheme.

3. Council considers the site is suitable for the proposed use and that there is a need for such an operation in close proximity to Hamilton City.

Should you not be content with this decision you are entitled to object to the Planning Tribunal within 15 working days of notification of this decision. Objections should be in writing and set out on Form 7 as indicated in the Resource Management Forms Regulations 1991 and addressed to the Registrar, Planning Tribunal, Tribunal Division, Justice Department, Private Bag, Wellington. A copy must also be served on the Waipa District Council and on the applicant and/or any person who made a submission within five working days of the notice being lodged with the Planning Tribunal.

Yours faithfully

Jim B Mylchreest
DIRECTOR PLANNING & POLICY

MEMBERS OF THE REGULATORY COMMITTEE

14 FEBRUARY 1992
FILE: 459/263.03

RESOURCE CONSENT APPLICATION (LAND USE CONSENT) - RESOURCE MANAGEMENT ACT 1991

APPLICATION	To operate an organic recycling dump and associated chipper
APPLICANT	B A & A M Pryce
LOCATION	Wickham Street, Hamilton
LEGAL DESCRIPTION	Lot 1 DPS 59491
DISTRICT SCHEME	Waipa County Scheme Review No. 2
ZONE	Rural B
OBJECTIONS	No objections were received to this application

1.0 **SITE AND LOCALITY**

1.1 The subject site is located at the end of Wickham Street, Hamilton. The property adjoins the Hamilton City boundary next to a large drain. The area of the property is approximately 4.0020 hectares. There are no dwellings located on the property.

1.2 The surrounding properties within the Waipa District are generally of a rural character although a large land fill operation for inorganic substances operated by D & J MacDonald Ltd has been authorised on property situated at Higgins Road east of the subject site. Properties located within the Hamilton City boundary adjoining the subject site are industrial in nature. The closest dwelling located to the proposed site is approximately 300 metres.

2.0 **PROPOSED DEVELOPMENT**

2.1 The applicants have applied for consent to continue to operate an organic recycling dump. In addition they wish to operate an associated chipper. It is envisaged approximately $1^1/_2$ - 2 hectares would be used for the organic recycling dump. This would be any garden matter.

2.2 The applicants have stated the material coming in will be divided into three categories: firewood; small material (weeds etc) for composting and trees to be chipped into tree mulch. The balance of the property will be used for grazing and growing trees.

2.3 The method of recycling will involve people from the surrounding area bringing in trailer loads or truck loads of garden waste which are dumped off. A tractor will put this into wind rows where the compost can dry out and also be aerated from frequent turnings. The larger material such as tree branches will be put down in front of the chipper and chipped up straight away. The logs are put in a pile and these are sawn up and later split and covered for firewood.

3.0 **OBJECTIONS/SUBMISSION**

3.1 No objections were received to the application although two submissions were received. These were from the Hamilton City Council and the Health Development Unit.

3.2 The Hamilton City Council's submission supports the application for the following reasons:

i) The operation of a organic recycling plant is supportive of Council's waste reduction and recycling policies as outlined in Council's Corporate Environmental Policy. Council at present directly supports the operation through the supply of Council's organic refuse to the plant.

ii) The operation of the plant has the potential to significantly reduce the amount of refuse going to the Hamilton Land Fill. This could have the advantage of extending the life of a refuse site which, in the future, may receive additional wastes from the Waikato Region as a whole.

iii) The composting of organic material is seen to to be conductive to good refuse management practices and is supported in theory by the Waikato Regional Waste Plan.

iv) The operation of the plant is considered to be in line with the requirements of Section 5 of the Resource Management Act 1991 in that it involves the "sustainable management" of a natural resource. The Ministry of Environment Document "Direction For Better Waste Management New Zealand" 1991 supports such a requirement under the Act by suggesting that territorial authorities waste strategies "should reflect natural processes of breakdown and renewal".

3.3 However, notwithstanding the general support for the application the City Council consider it appropriate to impose specific conditions to prevent detrimental environmental outcomes to Hamilton City. These concern matters of noise, leachate, access and public health.

3.4 The Health Development Unit have stated they are satisfied there is a need for such an operation in the Waikato Region and do not oppose the application. Concern however, is expressed regarding possible potential effects on the environment in relation to leachate, smell, insects, vermin and noise.

3.5 The Committee should also be aware the Waikato Regional Council advise the process is specified in Part A of the Second Schedule to the Clean Air Act 1972 and a discharge consent will be required to be issued by that authority.

4.0 DISTRICT SCHEME PROVISIONS

4.1 The subject property is governed by the provisions of the Waipa County District Scheme Review No. 2. The property is zoned Rural B. The proposed organic recycling dump would be classed under Ordinance 7.1.2 as a Substantial Alteration to natural features. This would be deemed under the following clause:

7.1.2(e)
"Any change in the natural land contours extending over an area of more than 500m^2 or involving the excavation and/or depositing of more than 25 cubic metres of spoil, soil or other materials".

4.2 Further the ordinance states that no substantial alteration to such natural features shall be made except with the consent of Council and in accordance with all conditions imposed by Council with that consent.

4.3 In order to ensure the objectives of the Resource Management Act and the District Scheme are achieved and to enable persons and agencies affected to be heard the application has been treated as a notified resource consent being a Discretionary Activity.

5.0 RESOURCE MANAGEMENT ACT 1991

5.1 Section 104 of the Act specifies matters that the Committee must take into account or must not take into account when considering this application. Those matters that must be taken into account in considering the resource application include:

a) The actual and potential effects of allowing the activity to be undertaken;

b) Any relevant provisions of a plan or proposed plan;

c) Any national policy statement or regional policy statement;

d) Any regional plan;

e) Part II of the Act (Purpose and Principles);

f) Additional information requested by Council.

5.2 Matters not to be taken into account include:

a) The effects (positive or adverse) of trade competition on trade competitors;

b) Any adverse effect, if the written consent of all persons adversely affected has been obtained.

6.0 **PLANNING CONSIDERATIONS**

6.1 In assessing this application the Committee must consider those matters outlined in paragraph 5.1 of primary importance is the first matter being the actual and potential effects of allowing the proposed activity to be undertaken from the subject site. In approving this application the Committee must be of the view that any adverse effect from the proposal on the surrounding environment can be either avoided, remedied or mitigated.

6.2 As outlined in paragraphs 3.2 - 3.4 the submissions received have outlined a number of matters being the actual and potential effects of allowing this proposal to continue to proceed. It is the responsibility of this Committee to determine whether these effects are significant, and if so, can these adverse effects be mitigated to an acceptable level.

6.3 Council's Planning Systems Engineer, Mr Hislop, has commented on the question of access and fire risk as follows:

Access

"Access was constructed to this property to Hamilton City Council standards as a condition of subdivision. Hamilton City Council's comments on this proposal indicate that they require the crossing to be sealed from the boundary to the existing sealing to comply with the industrial standard. In addition I believe a barrier should be placed above each head wall."

Fire Risk

"At the time of my inspection there was a definite fire hazard with several lengths of windrowed branches. These would have burnt readily if lit and as vandals have apparently been on the property a number of times fire is a concern. Mr Pryce explained that these rows had not been turned due to machinery problems but would be within the next week. Those rows which had been turned pose little fire danger."

6.4 Other potential adverse effects which require consideration include those matters of odour, dust, noise, insects and vermin and leachate. Council's Environmental Health Officer, Mr Faris, advises conditions should be imposed in respect of odour, noise, and insects and vermin control. As to dust it is considered that the areas used for trafficking purposes is relatively small and given the area surrounding the subject property is generally for rural purposes dust concerns will be relatively minor. The matter concerning leachate will be handled through the discharge permit.

6.5 The second matter outlined in paragraph 5.1 relates to the consideration to any relevant provisions in the District Plan pertaining to this application. In my opinion the proposal is not inconsistent with Council's objectives and policies for the Rural B zone in that the activity could not be classed as an "undesirable" urban use intruding within the rural areas. Indeed a past Council decision has permitted a similar activity within this zone subject to environmental controls.

6.6 Other matters to be considered for this application relate only to Part II of the Act (Purpose and Principles) as there are no national policy statements, regional policy statements or recent regional plan to refer to, given the new legislative requirements. Those matters the Committee should be aware of for this application under Part II of the Act includes the duty to promote the sustainable management of natural and physical resources while:

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable future needs of future generations; and

(b) Safeguarding the life supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Other matters outlined in Section 7 of the Act which the Committee should note in consideration of this application include:

(a) The effluent use and development of natural and physical resources.

(b) Maintenance and enhancement of the quality of the environment.

6.7 It is considered that the proposal will sit comfortably with all the legislative criteria outlined in paragraph 6.6. Generally, the proposal involves the "sustainable management" of a natural resource. Any adverse effects can be mitigated to an acceptable level.

7.0 **CONCLUSION**

7.1 The proposal involves the operation of an organic recycling dump and associated chipper. The applicants have constantly been in contact with Council staff regarding their present operation. It was considered the operation has reached such a stage the necessity of a formal application was required. After considering this application it is my opinion that any adverse effects from the proposal can be suitably mitigated by the imposition of conditions attached to any consent granted. The application does not compromise matters contained within the Resource Management Act or the provisions of the District Plan. Accordingly, this application is recommended for approval.

8.0 RECOMMENDATION

That pursuant to Section 104 and 105 of the Resource Management Act 1991 the Waipa District Council grants consent to B A & A M Pryce to operate an organic recycling dump and associated chipper on the property described as Lot 1 DPS 59491 subject to the following conditions:

1. The organic recycling dump shall be limited to the extent of that which is illustrated on the site plan which accompanied the application for planning consent.

2. The site shall be operated and developed in accordance with the details submitted with the application for planning consent.

3. The applicant shall erect barriers above the head walls of the entrance culvert. These shall be constructed to such a standard so as to prevent vehicles from running off the edge of the crossing.

4. The windrows of organic material shall be managed so as to reduce any fire hazard to a minimum. In that regard the applicant should liaise with Council's Fire Safety Officer.

5. Only organic fill shall be deposited on the site. Any inorganic matter found deposited shall be collected and removed immediately by the applicant.

6. The applicant shall upgrade the crossing to comply with Hamilton City Council standards for industrial vehicle usage. A vehicle crossing permit is required to be uplifted from the Hamilton City Council Streets Division.

7. That the use of the land shall be conducted and buildings located, designed and used to ensure that the following corrected noise levels are not exceeded at or as near as practicable to the adjacent industrial boundary within the city - 65dBA (L10) at all times of the day.

   All corrected noise levels to be measured and assessed in accordance with NZS 6801 and 6802:1977.

8. The applicant shall submit a management programme for the control of rodents, insects and odour to be approved by the District Environmental Health Officer.

9. The applicant shall obtain a resource consent approval for a discharge permit from the Waikato Regional Council.

<u>Reasons for Approval</u>

1. That Council is of the opinion that any adverse effects arising from the proposed operation can be suitably mitigated through the imposition and monitoring of conditions attached to this consent.

2. Council considers the application does not compromise matters contained within the Resource Management Act 1991 or the provisions of the operative district scheme.

3. Council considers the site is suitable for the proposed use and that there is a need for such an operation in close proximity to Hamilton City.

Wayne Allan
PLANNER

Application for a Resource Consent

Applicant : B.A. & A.M. Pryce
Location : Wickham Street, Hamilton

Proposal : Organic Recycling.

Engineering Comments :

Access to the property was constructed at the time of subdivision to Hamilton City Council standard and under their supervision. This access ~~[illegible]~~ is adequate for the commercial enterprise proposed, ~~[illegible]~~ although for public safety barriers should be constructed above ~~[illegible]~~ both headwalls of the crossing.

Fire Risk

At the time of my inspection there was a definite fire hazard with several lengths of windrowed branches. These would have burnt readily if lit and as vandals have apparently been on the property a number of time fire is a concern. Mr Pryce explained that these rows had not been turned due to machinery problems but would be within the next week. Those rows which had been turned pose little fire danger.

Engineering Conditions

1. The applicant shall erect barriers above ~~and~~ the headwalls of the entrance culvert. These shall be constructed to such a standard so as to prevent vehicles from ~~down going over headwall~~ running off edge of crossing.
2. The windrows of ~~[illegible]~~ organic material shall be managed so as to reduce any fire hazard to a minimum.
3. The applicant shall ~~comply with~~ upgrade the crossing ~~to Hamilton City Standards~~. to comply with Hamilton City Council requirements.

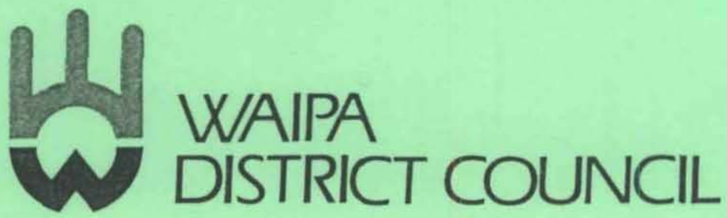
Murray Hislop

Access

Access was ~~#~~ constructed to this property to Hamilton City Council Standards as a condition of subdivision.

Hamilton City Councils comments on this proposal indicate that they require the ~~entrance~~ crossing to be sealed from the boundary to the existing sealing. to comply with the industrial Standard.

In addition I believe a barrier should be place above each headwall



Private Bag 2402
Te Awamutu, New Zealand
DX 4893
Location: 101 Bank St, Te Awamutu
Telephone (07) 871-7133
Fax (07) 871-4061

Please quote: 4570/002.00

18 May 1994

Hamilton City Council
Private Bag 3010
HAMILTON

ATTENTION: Mr H Mitchell

Dear Sir

LAND USE CONSENT APPLICATION - HAMILTON CITY COUNCIL, WICKHAM STREET

I refer to your application received 15 March 1994 seeking Council approval.

The application was considered under delegated authority on 19 May 1994, whereupon it was resolved as follows:

That in consideration of Section 104 and pursuant to Sections 105, and 108 of the Resource Management Act 1991, and Ordinance 2.1.7.5 of the Waipa Sect. Waipa Plan, the Waipa District Council grants consent to revise the site of the Hamilton Organic Recycling Centre to that shown on Drawing MB 23-01 subject to the following conditions:

1. The site shall be developed and limited to the extent shown on drawing MB 23-01 submitted by the applicant.

2. The site shall be operated in accordance with the details submitted by the applicant.

3. Only organic waste shall be processed on site (composted).

4. Inorganic waste shall be transported off the site by applicant or his agent(s) as required to keep the site free of this material.

5. That the use of the land shall be conducted and buildings designed, located and used to ensure that the following corrected noise levels are not exceeded at or as near as practicable to the adjacent industrial boundary within Hamilton City - Ldn 65 (L10) at all times of the day. All corrected noise levels to be measured and assessed in accordance with NZS 6801 and 6802 1977.

6. Bulk food waste e.g. restaurant garbage, orchard waste reject or contaminated food, shall not be accepted for composting or disposal by the applicant or his agent(s). Household food scraps are exempt.

7. Compost wind-rows shall be managed in an aerobic condition to minimise odour at all times. Compost must not be allowed to deteriorate to an anaerobic condition.

8. Bagged compost (finished product) shall be stored under dry cover whilst on site.

9. All consents required by Environment Waikato are obtained.

10. The applicant shall ensure that Fire Service vehicular access meet the requirements of the New Zealand Building Code acceptable Solution C3 paragraph 2.17. The required hard standing areas should include the area adjacent to the wind-rows.

Reasons for Decision:

1. The Council are of the opinion that any adverse effects arising from the operation can be suitably mitigated through the imposition of conditions attached to this consent.

2. Council considers the application does not compromise matters contained within the Resource Management Act or the provisions of the operative District Plan.

3. Council considers the limitations of the site for the proposed activity can be overcome by modification of the wind-rows area.

4. The successful establishment of so called "Green Industry" is a positive step toward sustainable management of resources for the city of Hamilton in particular recycling.

Section 357 of the Resource Management Act 1991 details the right of objection before Council, to all or any part of this decision.

Any objection must be in writing setting out the grounds thereof, and received by Council within 15 working days of receiving this decision.

Yours faithfully

Jim B Mylchreest
DIRECTOR POLICY AND PLANNING

Resource Consent Certificate

Resource Consent: AUTH119185.01.01

File Number: 60 07 31A

Pursuant to the Resource Management Act 1991, the Waikato Regional Council hereby grants consent to:

Enviro Waste Services Limited
Private Bag 92810
Penrose
Auckland 1642

(hereinafter referred to as the Consent Holder)

Consent Type: Discharge permit

Consent Subtype: Discharge to water

Activity authorised: Discharge treated stormwater from a composting facility

Location: (Hamilton Organic Centre) Wickham St - Hamilton

Map Reference: NZMS 260 S14:090-747

Consent duration: Granted for a period expiring on 6 September 2025

Subject to the conditions overleaf:

CONDITIONS

General

1. Except as specifically provided for by other conditions of this consent, all activities to which this consent relates shall be undertaken generally in accordance with the information contained in the application for this consent and the documents submitted in support of the application including *"Hamilton Organic Centre – Resource Consent Renewal Application for consents 102202 and 102203 and Assessment of Environmental Effects"*, dated 24 November 2008 and prepared by Miljenko Pavlinic of HG Leach & Co Ltd; *"Report – Hamilton Organic Centre Odour and Dust Assessment"*, dated 8 April 2009 and prepared by Beca Infrastructure Ltd; *"Hamilton Organic Centre: Variation to Consent Application Methodology"* dated 22 January 2010 and prepared by Eric Souchon of HG Leach & Co Ltd; and the evidence presented at the Hearing.

2. The Consent Holder shall pay to Council any administrative charge fixed in accordance with section 36 of the Resource Management Act 1991 or any charge fixed in accordance with regulations made under the section 360 of the Resource Management Act 1991.

3. The Council may, within three calendar months of 1st September 2013, 1st September 2016, 1st September 2019 and 1st September 2022 serve notice on the consent holder under section 128 (i) of the Resource Management Act 1991, of its intention to review the conditions of this resource consent for the following purposes:

   (i) To generally review the effectiveness of the conditions of this consent in avoiding or mitigating any adverse effects on the environment from the operation and if appropriate to deal with such effects by way of further or amended conditions; and

   (ii) If necessary and appropriate, to require the holder of the consent to adopt the best practicable option to remove or reduce adverse effects on the surrounding environment due to discharges of leachate and stormwater to ground and surface water.

   Note: Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.

4. The Consent Holder shall at all times operate, maintain, supervise, monitor and control all processes on site so that discharges authorised by this consent are maintained at the minimum practicable level.

Performance Standards

5. All stormwater from the vegetation processing area and from the windrow area shall pass through the site settling ponds prior to discharge. The settling ponds shall be maintained to ensure a minimum storage volume of $500m^3$.

6. Any stormwater discharged from the site shall comply with the following parameters:

   (i) the pH shall be within the range of 6 – 9 units;
   (ii) the suspended solids concentration of the discharge shall not exceed 100 g/m^3;
   (iii) the 5 day biochemical oxygen demand (BOD_5) of the discharge shall not exceed 20 g/m^3.
   (iv) The total ammoniacal nitrogen concentration of the discharge shall not exceed 20 g/m^3.

7. The pond discharge shall incorporate a suitable oil interceptor to trap any surface oils between Ponds 1 and 2. Any oils trapped shall be periodically removed from the interceptor and pond surfaces.

8. The discharge shall not cause the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials at any point downstream that is a distance greater than three times the width of the stream at the point of discharge.

9. The consent holder shall sample the discharge from Pond 2 (the final pond) at least once every three months, after heavy rainfall. The samples shall be analysed for the following parameters:

   (i) pH
   (ii) 5 day biochemical oxygen demand (BOD_5)
   (iii) suspended solids
   (iv) ammoniacal nitrogen

   During a discharge, the consent holder shall also collect and analyse samples, for the above parameters, from the downstream culvert under Wickham Street and at an upstream location in the eastern boundary drain when there is a flow. The results of the analysis shall be forwarded to the Waikato Regional Council within 1 month of the consent holder having received the analysis results.

   Any changes to this monitoring plan shall only be made with the written approval of the Waikato Regional Council.

10. All sample analyses shall be undertaken in accordance with the methods detailed in the "Standard Methods for the Examination of Water and Waste Water, 1998" 20th edition by A.P.H.A. and A.W.W.A. and W.E.F. and any subsequent updates; or by some other method approved in advance by the Council.

Management Plan

11. The consent holder shall, within 3 months after commencement of the consent, provide a Management Plan to the Council, prepared by a suitably qualified and experienced person(s), which documents how compliance will be achieved with the conditions of this consent. As a minimum the Management Plan shall address the following specific matters:

    (i) Procedures for sampling of stormwater discharges and receiving water;
    (ii) Procedures for maintaining and checking stormwater pond holding capacity and integrity;
    (iii) Procedures for ensuring that drainage from all composting areas is diverted to the stormwater ponds.

    The consent holder shall provide to the Council a copy of any subsequent revisions of or amendments to the Management Plan.

    The consented activity shall be conducted in accordance with the Management Plan.

    Note: the Council reserves the right to make comment on the Management Plan submitted and any subsequent changes to the Management Plan.

Reporting

12. The consent holder shall produce an annual report that shall contain an analysis of the monitoring undertaken pursuant to conditions 6, 9 and 10 and indicate any changes considered necessary to the monitoring program. The report shall be forwarded to the Waikato Regional Council by 31 May for each year this consent is current.

13. The Consent Holder shall notify the Council as soon as practicable, and as a minimum requirement within 24 hours, of the Consent Holder becoming aware of any accidental discharge, plant breakdown, or other circumstances which are likely to result in the

performance standards of this resource consent being exceeded. The Consent Holder shall, within 7 days of the incident occurring, provide a written report to the Council, identifying the exceedence, possible causes, steps undertaken to remedy the effects of the incident and measures that will be undertaken to ensure future compliance.

In terms of s116 of the Resource Management Act 1991, this consent commences on 01st October

*Dated at Hamilton this **11th** day of **October 2010***

Advice notes

1. In accordance with section 125 RMA, this consent shall lapse five (5) years after the date on which it was granted unless it has been given effect to before the end of that period.
2. This resource consent does not give any right of access over private or public property. Arrangements for access must be made between the consent holder and the property owner.
3. This resource consent is transferable to another owner or occupier of the land concerned, upon application, on the same conditions and for the same use as originally granted (s.134-137 RMA).
4. The consent holder may apply to change the conditions of the resource consent under s.127 RMA.
5. The reasonable costs incurred by Waikato Regional Council arising from supervision and monitoring of this/these consents will be charged to the consent holder. This may include but not be limited to routine inspection of the site by Waikato Regional Council officers or agents, liaison with the consent holder, responding to complaints or enquiries relating to the site, and review and assessment of compliance with the conditions of consents.
6. Note that pursuant to s332 of the RMA 1991, enforcement officers may at all reasonable times go onto the property that is the subject of this consent, for the purpose of carrying out inspections, surveys, investigations, tests, measurements or taking samples.
7. If you intend to replace this consent upon its expiry, please note that an application for a new consent made at least 6 months prior to this consent's expiry gives you the right to continue exercising this consent after it expires in the event that your application is not processed prior to this consent's expiry.

Resource Consent Certificate

Resource Consent:	AUTH119186.01.01
File Number:	60 07 31A

Pursuant to the Resource Management Act 1991, the Waikato Regional Council hereby grants consent to:

Enviro Waste Services Limited
Private Bag 92810
Penrose
Auckland 1642

(hereinafter referred to as the Consent Holder)

Consent Type:	Discharge permit
Consent Subtype:	Discharge to air
Activity authorised:	Discharge contaminants to air from a composting facility
Location:	(Hamilton Organic Centre) Wickham St - Hamilton
Map Reference:	NZMS 260 S14:090-747
Consent duration:	Granted for a period expiring on 6 September 2025

Subject to the conditions overleaf:

CONDITIONS

General

1. Except as specifically provided for by other conditions of this consent, all activities to which this consent relates shall be undertaken generally in accordance with the information contained in the application for this consent and the documents submitted in support of the application including *"Hamilton Organic Centre – Resource Consent Renewal Application for consents 102202 and 102203 and Assessment of Environmental Effects"*, dated 24 November 2008 and prepared by Miljenko Pavlinic of HG Leach & Co Ltd; *"Report – Hamilton Organic Centre Odour and Dust Assessment"*, dated 8 April 2009 and prepared by Beca Infrastructure Ltd; *"Hamilton Organic Centre: Variation to Consent Application Methodology"* dated 22 January 2010 and prepared by Eric Souchon of HG Leach & Co Ltd; and the evidence presented at the Hearing.

2. The Consent Holder shall pay to Council any administrative charge fixed in accordance with section 36 of the Resource Management Act 1991 or any charge fixed in accordance with regulations made under the section 360 of the Resource Management Act 1991.

3. The Council may, within one calendar month of 1st September 2011 and thereafter on an annual basis, serve notice on the consent holder under section 128 (i) of the Resource Management Act 1991, of its intention to review the conditions of this resource consent for the following purposes:

   (i) To generally review the effectiveness of the conditions of this consent in avoiding or mitigating any adverse effects on the environment from the operation and if appropriate to deal with such effects by way of further or amended conditions and in particular, these conditions may prohibit the receipt of odorous material; and
   (ii) If necessary and appropriate, to require the holder of the consent to adopt the best practicable option to remove or reduce adverse effects on the surrounding environment due to odour or particulate matter.

   Note: Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.

4. The Consent Holder shall at all times operate, maintain, supervise, monitor and control all processes on site so that emissions authorised by this consent are maintained at the minimum practicable level.

Performance Standards

5. There shall be no discharge of particulate matter that is objectionable to the extent that it causes an adverse effect at or beyond the boundary of the subject property.

6. The discharge shall not result in odour that is objectionable to the extent that it causes an adverse effect at or beyond the boundary of the subject property.

7. The consent holder shall only compost green waste at this site. Green waste is defined as

   Waste organic material, including:

   (i) vegetative material, but not tree trunks or limbs larger than 100mm diameter;
   (ii) soil attached to plant roots.

   Green waste does not include food waste and animal products (e.g. manure, feathers, carcasses) other than as an occasional or incidental input, hazardous substances or treated

timber. The composting of animal matter, domestic refuse or commercial refuse (other than green waste) is not permitted under this consent.

8. The consent holder shall ensure that receipt of any obviously odorous green waste on site is minimised and in circumstances where it is received, that it is immediately isolated from other fresh green waste and immediately loaded into bins for removal offsite or is treated appropriately i.e. spread with high carbon sources such as sawdust, wood chips and paper pulp etc before immediate incorporation into windrows.

9. The consent holder shall ensure that all grass clippings are either incorporated into windrows within 24 hours of being received or transported offsite within 24 hours of being received.

10. The consent holder shall, ensure that all green waste other than grass clippings is shredded and incorporated into windrows as soon as practically possible after being received. In any event, all green waste other than grass clippings shall be shredded within 7 days or removed offsite. All green waste stockpiles and windrows shall, in accordance with the management plan, be kept to the minimum width and height that is practically possible.

Turning and Monitoring of Windrows and Stockpile

11. The consent holder shall ensure that regular turning of the windrows is undertaken to ensure that aerobic conditions are maintained. A log of windrow turning times and dates shall be kept and shall be made available to the Waikato Regional Council at all reasonable times.

12. The consent holder shall endeavour to incorporate all shredded green waste stockpile material into windrows within 48 hours. Where this cannot be achieved, oxygen monitoring shall be undertaken and if the average oxygen concentration determined from at least 3 evenly spaced sampling points is 6% or less then the stockpile shall be turned to maintain aerobic conditions. In any event, stockpile material shall be incorporated into windrows within 5 days or removed offsite.

13. The following monitoring and record-keeping shall be carried out during the first week after shredded green waste is placed into windrows:

    (i) Unless the green waste has been turned within 24 hours oxygen and temperature monitoring shall be carried out using appropriate and calibrated probes inserted as near as practicably possible to the centre of the cross-section of each compost windrow;
    (ii) For each windrow there shall be at least three sampling points evenly spaced along the length of each windrow;
    (iii) Sampling points shall be not more than 25 metres apart;
    (iv) If the measured oxygen concentration is 6% or less, or if temperature is below 55°C (average of all oxygen measurements and temperature measurements throughout a windrow), the windrow shall be turned as soon as practically possible and in any event within 24 hours after monitoring;
    (v) A record of oxygen and temperature monitoring shall be kept and shall be made available to the Waikato Regional Council at all reasonable times.

14. Not more than 72 hours shall elapse between turning of each windrow in weeks 2, 3 and 4 after shredded green waste is placed into windrows. Frequency of turning shall be at the, discretion of the site manager after week 4.

15. The following monitoring and record-keeping shall be carried out after the first week of composting:

(i) Frequency of turning shall be carried out in accordance with the management plan. Monitoring of oxygen and temperature is to be as close as possible to midway between planned turning times, to give the best chance of "intercepting" any unexpected change in temperature or oxygen, and to allow response by additional turning;
(ii) For each windrow there shall be at least three sampling points evenly spaced along the length of each windrow;
(iii) Sampling points shall be not more than 25 metres apart;
(iv) If the measured oxygen concentration is 6% or less, or if temperature is below 55°C (average of all oxygen measurements and temperature measurements throughout a windrow), the windrow shall be turned as soon as practically possible and in any event within 24 hours after monitoring;
(v) A record of oxygen and temperature monitoring shall be kept and shall be made available to the Waikato Regional Council at all reasonable times;
(vi) Regardless of all other controls, every windrow shall be either turned or monitored for temperature and oxygen concentration within 48 hours of being turned or monitored within weeks 2, 3 and 4;
(vii) Frequency of monitoring and turning shall be at the site manager's discretion after the first 4 weeks, taking account of the condition of each windrow and particularly the potential for odour production.

A record of oxygen monitoring shall be kept and shall be made available to the Waikato Regional Council at all reasonable times

16. If any required turning of a stockpile or windrow is rendered inappropriate by sustained adverse weather, later turning may occur but it shall coincide with winds from the north to northwest direction unless outside the hours of 8 am to 5 pm weekdays and 8 am to 3 pm Saturdays.

Maintenance of Bund and Meteorological Monitoring

17. The consent holder shall maintain the five metre high bund along the eastern boundary of the site and shall ensure that within six months of the first exercise of this consent that windbreak fabric is erected to a height of at least three metres above the top of the bund and that the windbreak fabric is maintained in the north eastern corner until such time as trees have become established along the bund.

18. The consent holder shall maintain a meteorological station on site collecting and recording as a minimum: wind speed and wind direction. A suitable anemometer should be referenced to true north and located at least 6 metres above ground and where practicable, free of influence from trees and other buildings or structures. A wind sock shall also be located on site in a prominent position.

A log of wind speed and wind direction shall be made available to the Council at all reasonable times.

Management Plan

19. The consent holder shall, within 3 months after commencement of this consent, provide a Management Plan to the Council, prepared by a suitably qualified and experienced person(s), which documents how compliance will be achieved with the conditions of this consent. As a minimum the Management Plan shall address the following specific matters:

(i) Procedures for acceptance of incoming green waste including the requirements of conditions 8 and 9 of this consent;
(ii) Procedures for use of hook bins for isolation of green waste;
(iii) Procedures for shredding and incorporating green waste into windrows including the requirements of condition 10 of this consent;
(iv) Procedures for storing excess green waste in stockpiles and removing from site;

(v) Procedures for monitoring and turning of windrows, avoidance of anaerobic conditions and neutralisation of odours, including the controls specified in conditions 11 to 16 of this consent;
(vi) Methods used for calibration of monitoring equipment;
(vii) Procedures for controlling dust emissions; and
(viii) Complaint response procedures and contact telephone numbers for staff of the consent holder who are responsible for responding to complaints.

The consent holder shall provide to the Council a copy of any subsequent revisions of or amendments to the Management Plan.

All consented activities shall be conducted in general accordance with the Management Plan.

Note: the Council reserves the right to make comment on the Management Plan submitted and any subsequent changes to the Management Plan.

20. The consent holder shall maintain a log of all complaints (including those received via third parties including the Council) regarding dust, odour or other contaminants. The consent holder shall notify the Council of each complaint as soon as practicable. The consent holder shall record the following details in a complaint log:

    (i) time and type of complaint including details of the incident, e.g. duration, location and any effects noted;
    (ii) name, address and contact phone number of the complainant (if provided);
    (iii) where practicable, the weather conditions including wind direction at the time of the incident;
    (iv) the likely cause of the complaint and the response made by the consent holder including any corrective action undertaken;
    (v) future actions proposed as a result of the complaint; and
    (vi) the response from the consent holder to the complainant.

    The complaint log shall be made available to the Council at all reasonable times and a copy shall be forwarded to the Council annually.

Reporting

21. The consent holder shall produce an annual report that shall contain an analysis of the monitoring undertaken pursuant to the conditions of this consent and indicate any changes considered necessary to the monitoring program. This report shall also include a summary of any complaints received relating to discharges from the site. The report shall be forwarded to the Waikato Regional Council by 30 May for each year this consent is current.

22. The Consent Holder shall notify the Council as soon as practicable, and as a minimum requirement within 24 hours, of the Consent Holder becoming aware of any accidental discharge, plant breakdown, or other circumstances which are likely to result in the performance standards of this resource consent being exceeded. The Consent Holder shall, within 7 days of the incident occurring, provide a written report to the Council, identifying the exceedence, possible causes, steps undertaken to remedy the effects of the incident and measures that will be undertaken to ensure future compliance.

In terms of s116 of the Resource Management Act 1991, this consent commences on 01st October

*Dated at Hamilton this **11th** day of **October 2010***

Advice notes

1. It is assumed that the consent holder will generally undertake activities associated with the composting operation in accordance with the New Zealand Standard for Composts, Soil Conditioners and Mulches (NZS 4454:2005) and any subsequent updates.
2. In accordance with section 125 RMA, this consent shall lapse five (5) years after the date on which it was granted unless it has been given effect to before the end of that period.
3. This resource consent does not give any right of access over private or public property. Arrangements for access must be made between the consent holder and the property owner.
4. This resource consent is transferable to another owner or occupier of the land concerned, upon application, on the same conditions and for the same use as originally granted (s.134-137 RMA).
5. The consent holder may apply to change the conditions of the resource consent under s.127 RMA.
6. The reasonable costs incurred by Waikato Regional Council arising from supervision and monitoring of this/these consents will be charged to the consent holder. This may include but not be limited to routine inspection of the site by Waikato Regional Council officers or agents, liaison with the consent holder, responding to complaints or enquiries relating to the site, and review and assessment of compliance with the conditions of consents.
7. Note that pursuant to s332 of the RMA 1991, enforcement officers may at all reasonable times go onto the property that is the subject of this consent, for the purpose of carrying out inspections, surveys, investigations, tests, measurements or taking samples.
8. If you intend to replace this consent upon its expiry, please note that an application for a new consent made at least 6 months prior to this consent's expiry gives you the right to continue exercising this consent after it expires in the event that your application is not processed prior to this consent's expiry.

Private Bag 2402
Te Awamutu 3840, NEW ZEALAND
0800 WAIPADC (0800 924 723)
www.waipadc.govt.nz

5 February 2016

Your ref: T080
In reply please quote: LU/0002/16
If calling, please ask for: Gareth Moran

CKL Surveys Ltd
PO Box 171
Waikato Mail Centre
Hamilton 3240

Digitally Delivered

Dear Andrew

LAND USE CONSENT: 160 HIGGINS ROAD HAMILTON 3204

You are advised that your application has now been determined and has been granted. Please find enclosed a copy of the decision which has been decided under delegated authority.

To ensure that you understand all the obligations and requirements of this consent, it is important that you carefully read the following before you undertake any work associated with this consent:

- All sections of this letter; and
- Every condition of this consent, and the timeframes associated with them; and
- All advisory notes.

A When this consent commences

This resource consent commences on the date you are deemed to have received this letter, however it will not commence if you have lodged a formal objection to the consent, or you (or another person) has lodged an appeal to the Environment Court.

B When this consent will lapse

This resource consent lapses on the date specified in the consent or, if no date is specified, five years after the date of the commencement of the resource consent, unless the consent is given effect to, or the Council grants an extension.

C What you must do to comply with the conditions of consent

Each condition of this consent requires that you undertake certain matters within a certain timeframe. If a timeframe is not specified in a particular condition, then each condition must be complied with before the use to which the consent relates is established. If you do not

understand any condition of this consent, please discuss this with your consultant, or the Council staff member noted at the top of this letter.

Please note that conditions of this consent require on-going monitoring by Council's monitoring and enforcement officer.

D What to do if you want to change any conditions (section 127)

You are able to make an application at any time to Council to change or cancel any condition of this consent. However, please note that a proposed change may not be considered appropriate by Council staff for various reasons. Therefore it is recommended that you discuss any proposed changes with the staff member listed above before you make an application.

Any application must be accompanied by the relevant application fee.

E Review of decision on application

If you disagree with this decision, any of the conditions of this consent, or any additional charges imposed in processing this consent, you may lodge an objection ("section 357") in writing to Waipa District Council.

The objection must explain clearly the reasons you are objecting to the decision, conditions or charges; and must be received by Council within 15 working days[1] of you receiving this decision, or the invoice for the additional charge. Please note that should the objection be unsuccessful, an additional fixed charge will be invoiced to you.

F Fees and charges

Any additional fees and charges for processing this consent (if more than the deposit you have paid) will be calculated and invoiced to you as soon as practicable. Please also note that there may be further monitoring charges associated with this consent.

G Disclosure of information to third parties

The information you provided in your application (including personal information) is official information. Your application documents, the details of this consent and any ongoing communications between you and Council will be held at Council's offices and may be accessed upon request by a third party. Access to information held by Council is administered in accordance with the Local Government Official Information and Meetings Act 1987 and the Privacy Act 1993. Your information may be disclosed in accordance with the terms of these Acts.

H Surrender of consent

If this consent is no longer needed or wanted, it may be surrendered in part or in whole, by giving notice to Waipa District Council. Acceptance of the surrender is at the discretion of the

[1] **Note:** A working day means any day except a Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, Waitangi Day, and any day between 20 December and 10 January (inclusive)

Document Set ID: [illegible]
Version: 1, Version Date: 02/03/2016

Council, so may not be allowed in some circumstances. Additionally, you may still be required to complete certain works to give effect to the consent prior to its surrender (for example, landscaping to mitigate visual effects of earthworks activities, etc.). If you do wish to surrender this consent at any time, please contact Council's planning team to discuss.

Any application must be accompanied by the relevant application fee.

I Sale of your property (section 134)

If you sell the property to which this consent relates, you may wish to transfer the consent to a new owner. However, unless expressly stated otherwise, landuse consents "run with the land" and do not need to be transferred to the property's new owner or occupier. Please advise Waipa District Council in writing if you do wish to record a change of ownership/address for correspondence. Any application must be accompanied by the relevant application fee.

Please do not hesitate to contact me on 0800 924 723 if you have any questions regarding any of the above advice.

Yours faithfully

Gareth Moran
PROJECT PLANNER
Email: Gareth.Moran@waipadc.govt.nz

Resource Consent

(Resource Management Act 1991)

DECISION ON APPLICATION LU/0002/16

Pursuant to Sections 34A(1), Section 104, 104B, and 108 of the Resource Management Act 1991, the Waipa District Council, under delegated authority, grants Land Use Consent for a Discretionary Activity to:

Activity:	a) Establish a Rural Based Industry (Rural transportation and storage depot) in the Rural Zone b) National Environmental Standard (NES) for Assessing and Managing Contaminants in Soil to Protect Human Health
Consent Holder:	Waikato Agri Farms Limited
Location Address:	Wickham Street, Hamilton
Legal Description:	Lot 1 DP 486522 Lot 1 DP 396081 and comprised in Certificate of Title 704262

This consent is subject to the conditions attached in Schedule 1.

Advisory notes for this consent are attached in Schedule 2.

The reasons for this decision are detailed in the attached Schedule 3.

Dated at Cambridge this 05 day of February 2016.

For and on behalf of Waipa District Council

Gareth Moran
PROJECT PLANNER

Schedule 1

Conditions of Consent

Resource Consent No: LU/0002/16

General

1 The development shall proceed in accordance with the information submitted with the application on 24 December 2015, except where another condition of this consent must be complied with. This information is entered into council records as LU/0002/16. A copy of the approved plan/s is attached.

2 The proposed activities shall align with District Plan's definition of Rural Based Industry. For the avoidance of doubt, the definition of Rural Based Industry is as follows;

"means an ACTIVITY that has a direct connection to or processes the output of land based activities involving animal, agriculture, forestry or horticultural crops, and includes (but is not limited to) rural transportation and agricultural contractors depots, and the preliminary packaging and processing of agricultural produce including PACKHOUSES and cool stores, stock sale yards, sawmills, grain silos and feed mills, meat and poultry processing, wineries and RURAL RESEARCH FACILITIES."

Any deviation from this provision may require additional resource consent

3 The site shall be landscaped in accordance with the plans prepared by Quinn Landscaping dated 28 August 2015 prior to the site being used for the activities authorised by way of this consent.

Onsite Parking & Manoeuvring

4 Prior to construction of the all-weather metalled surface for the proposed agricultural machinery and equipment storage facility on Lot 1 DP 486522, the consent holder shall provide engineering design plans inclusive of stormwater management, for approval to Council`s Development Engineering Manager.

The engineering design plans shall include but not be limited to the following information:

i) Silt control measures to be installed prior to commencing earthworks and maintained to prevent the offsite movement of sediment.

ii) Dust control measures to be implemented to prevent the offsite movement of dust to neighbouring properties.

iii) Details including volumes of any excavated materials to be imported or removed from the subject property.

Note: *That all earthworks and sediment control measures be carried out in general accordance with the principles outlined in the Waikato Regional Council document titled "Erosion and Sediment Control – Guidelines for Soil Disturbing Activities" (Technical Report No. 2009/02 – dated January 2009.*

5 Prior to storage of agricultural machinery and/or equipment on Lot 1 DP 486522 the consent holder shall construct the all-weather metalled surface in accordance with the approved plans to the satisfaction of Council`s Development Engineering Manager.

6 The consent holder shall maintain the all-weather metalled surface on Lot 1 486522 and Lot 1 DP 396081 to prevent the offsite movement of dust to neighbouring properties the satisfaction of Council`s Development Engineering Manager.

Traffic

7 Daily vehicle movements associated with this consent shall be limited to an average of 100 movements per day.

Contaminants

8 The consent holder shall ensure any contaminant spillage from transportation or storage of agricultural machinery and equipment is firstly contained on site and then disposed of at an approved facility to the satisfaction of Council.

Accidental discovery protocols

9 If taonga (treasured or prized possessions, including Maori artefacts) or archaeological sites are discovered in any area being earth-worked, the consent holder shall cease work within a 100m radius of the discovery immediately and contact local iwi, the New Zealand Historic Places Trust (NZHPT) and Council's Manager Planning and Regulatory. Works shall not recommence in that area until a site inspection is carried out by iwi representatives, relevant Council staff and staff of the NZHPT (if they consider it necessary); the appropriate action has been carried out to remove the Taonga and record the site, or alternative action has been taken; and approval to continue work is given by Council's Manager Planning and Regulatory. The site inspection shall occur

within 3 working days of the discovery being made.

10 If during construction activities, any Koiwi (skeletal remains) or similar material are uncovered, works are to cease within a 100m radius of the discovery immediately, and the consent holder shall notify the New Zealand Police, local iwi, the New Zealand Historic Places Trust (NZHPT) and Council's Manager Planning and Regulatory. Works shall not recommence in that area until a site inspection is carried out by iwi representatives, relevant Council staff and staff from the NZHPT and the New Zealand Police (if they consider it necessary); the appropriate ceremony has been conducted by iwi (if necessary); the materials discovered have been removed by the iwi responsible for the tikanga appropriate to their removal and preservation or re-interment, or alternative action (e.g. works are relocated) has been taken; and approval to continue work is given by Council's Manager Planning and Regulatory.

Monitoring and charges

11 The consent holder shall notify the Waipa District Council enforcement team in writing two weeks prior to the commencement of activities associated with this consent.

Note: this advice should be emailed to:- consentmonitoring@waipadc.govt.nz

12 Pursuant to Section 36 of the Resource Management Act 1991 the consent holder must pay the actual and reasonable costs incurred by the Waipa District Council when monitoring the conditions of this consent.'

Schedule 2

Advisory Notes

Resource Consent No: LU/0002/16

1 The consent holder is advised that any future earthworks undertaken on site shall comply with the Permitted Activities for Disturbing Soil as identified in Section 8 (3) of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.

2 The consent holder shall obtain the necessary building consents prior to establishment of any building.

3 Should approval not be forthcoming from Hamilton City Council to connect to HCC reticulated water, wastewater and stormwater, onsite servicing will be required as proposed in the CKL Ltd, Engineering Report, Les Harrison Transport, 16 Wickham Street, Ref: T1080, dated 18/12/15. Detailed engineering will be required at this stage for foundation design, stormwater management, floor level and wastewater management.

4 This consent is granted by the Council subject to the Council's officers and/or agents being permitted access to the property at all reasonable times for the purposes of carrying out inspections, surveys, investigations, tests, measurements or taking samples.

5 All earthworks associated with any development of land must be undertaken in accordance with the following matters :

   i) All earthworks must be carried out so as to provide sound foundations as required under NZS 4431:1989 and avoid any hazard to persons or property;
   ii) All earthworks must be carried out so as to avoid or mitigate any detrimental effect on the environment particularly with regard to the unnecessary destruction of vegetation, the contamination of natural water or the diversion of surface or ground water flows;
   iii) The existing landform must not be altered in such a manner that adjoining properties will be detrimentally affected particularly through changes in drainage systems or abrupt changes in ground level; and
   iv) All earthworks must be carried out in accordance with the Waipa District Council Code of Practice for Land Development and Subdivision for formation and construction standards.

Schedule 3

Reasons for Decision

Resource Consent No: LU/0002/16

1. The proposal is considered to be a Discretionary Activity under the proposed Waipa District Plan. The proposal will have no more than minor adverse effects on the environment and is not contrary to the relevant objectives and policies of the proposed Waipa District Plan

2. The application was processed on a non-notified basis and was approved under delegated authority without the need for a Council hearing. Written approval has been obtained from every party considered to be affected by the proposal.

3. The activities authorised by way of this consent have demonstrated a functional and compelling reason to be located in the Rural Zone.

4. The requirements of Condition 2 will ensure the proposed activities align with the proposed Waipa District Plans' definition of "Rural Based Industry".

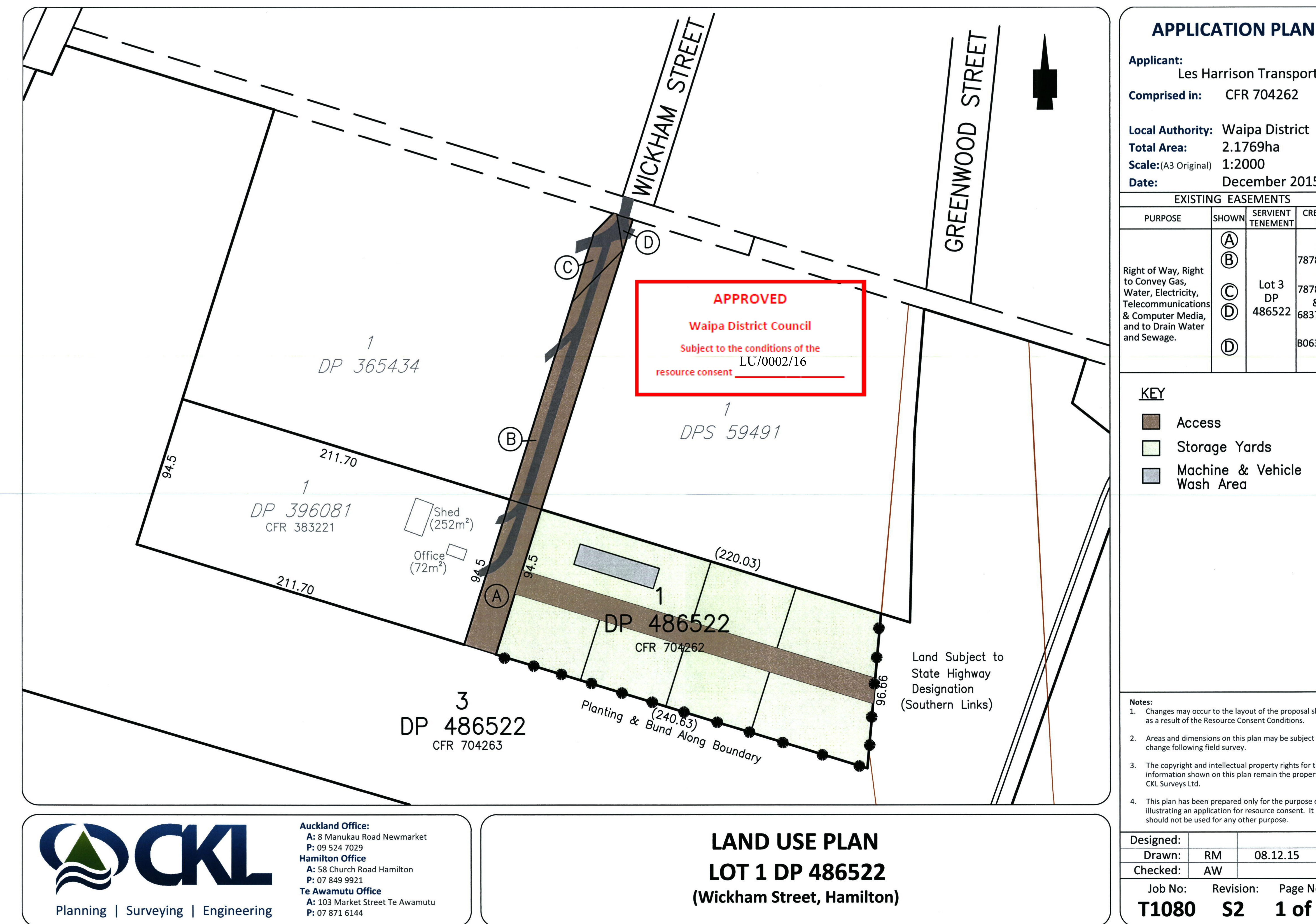
5. The activities are considered to be in keeping with the receiving environment and will not contribute to any additional adverse amenity effects over and over and above what currently exists within the area.

6. The proposed landscaping will further mitigate any potential visual effects.

7. There are no sensitive activities located within the vicinity of the site that could be potentially susceptible to reverse sensitivity effects.

8. Compliance with condition 13 will avoid unnecessary site inspections being made (and inspection fees charged) by Council's Monitoring and Enforcement team.

9. The accidental discovery protocol conditions are required to ensure the consent holder is aware of their obligations in regards to the discovery of taonga (treasured or prized possessions, including Maori artefacts), archaeological sites, or skeletal remains.



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Version: 1, Version Date: 02/03/2016

APPLICATION PLAN

Applicant: Les Harrison Transport Ltd
Comprised in: CFR 704262

Local Authority: Waipa District
Total Area: 2.1769ha
Scale: (A3 Original) 1:2000
Date: December 2015

EXISTING EASEMENTS

PURPOSE	SHOWN	SERVIENT TENEMENT	CREATED BY
Right of Way, Right to Convey Gas, Water, Electricity, Telecommunications & Computer Media, and to Drain Water and Sewage .	Ⓐ	Lot 3 DP 486522	EI 7878083.3

Notes:
1. Changes may occur to the layout of the proposal shown as a result of the Resource Consent Conditions.
2. Areas and dimensions on this plan may be subject to change following field survey.
3. The copyright and intellectual property rights for the information shown on this plan remain the property of CKL Surveys Ltd.
4. This plan has been prepared only for the purpose of illustrating an application for resource consent. It should not be used for any other purpose.

Planning | Surveying | Engineering

Auckland Office:
A: 8 Manukau Road Newmarket
P: 09 524 7029
Hamilton Office
A: 58 Church Road Hamilton
P: 07 849 9921
Te Awamutu Office
A: 103 Market Street Te Awamutu
P: 07 871 6144

LAND USE PLAN
LOT 1 DP 486522
(Wickham Street, Hamilton)

Designed:		
Drawn:	RM	08.12.15
Checked:	AW	

Job No:	Revision:	Page No:
T1080	S2	2 of 2

Planted Screening X-Sections Scale 1:100

X-Section A

Boundary

2000 | 3000

X-Section B

Boundary

2000 | 3000

X-Section C

Boundary

2000 | 3000

Plan View Scale 1:2000

Boundary

Boundary

(253 x) Griselinia littoralis

(13 x) Ulmus parvifolia

A

B

(11 x) Liquidambar styraciflua

(5 x) Alnus rubra

(485 x) Griselinia littoralis

C

B

(11 x) Liquidambar styraciflua

APPROVED

Waipa District Council

Subject to the conditions of the resource consent LU/0002/16

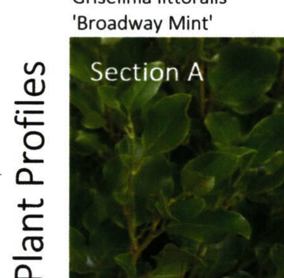
Possible Plant Selections (Subject to availablity)

Qty	botanical name	common name
5	Alnus rubra	Red Alder
741	Griselinia littoralis	Broadleaf
22	Liquidambar styraciflua	Sweet Gum
13	Ulmus parvifolia	Chinese elm

Plant Profiles

Griselinia littoralis 'Broadway Mint'

Ulmus Parvifolia



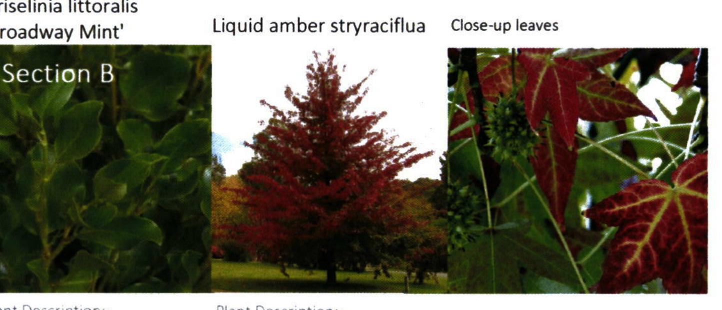
Plant Description:- Rich Green, oval leathery, glossy leaves. Ideal for hedging. Tough, able to cope with extremes except wet feet. Evergreen.

Plant Description:- Medium sized Shade or Street tree. Enjoys full sun, tolerates poor soils. Forms a round headed tree with gracefull pendulous branches and slender trunk. Deciduous.

Griselinia littoralis 'Broadway Mint'

Liquid amber stryraciflua

Close-up leaves



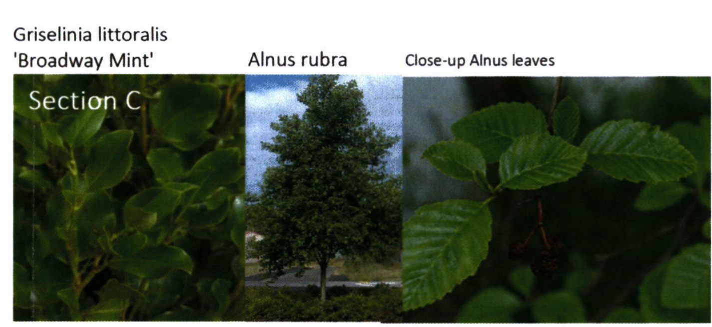
Plant Description:- Rich Green, oval leathery, glossy leaves. Ideal for hedging. Tough, able to cope with extremes except wet feet. Evergreen.

Plant Description:- Forms a stately pyramidal tree with well-spaced branches and rugged corky bark. 5-7 lobed maple shaped leave. A riot of Autumn colour of red, orange,yellow and purple lasting well into autumn. Deciduous.

Griselinia littoralis 'Broadway Mint'

Alnus rubra

Close-up Alnus leaves



Plant Description:- Rich Green, oval leathery, glossy leaves. Ideal for hedging. Tough, able to cope with extremes except wet feet. Evergreen.

Plant Description:- Slender pyramidal form. Red buds reveal green catkins in spring. Green leaves are greyish beneath. Hardy. Tolerates moist soils. Deciduous.

quinnlandscaping
unique design | quality construction

Ben Quinn
m 021 654 232 p 07 846 7649
e quinnlandscaping@xtra.co.nz

client: CKL Planning

site / project: 16 Wickham Street, Hamiton

title: Plant Suggestions

date: 28 August 2015

sheet no: 1 of 1

scale: 1:2000, 1:100 @ A2

drawn by: Tina McHarg

Combined Notification and 104 Decision Report
Land Use Consent

Sections 95 to 95F and sections 104 to 104D of the Resource Management Act 1991

Date:	25 January 2016	**App Number:**	LU/0002/16
Reporting Planner:	Gareth Moran	**Site Visit on:**	22 January 2016

Applicant:	Waikato Agri Farms Limited
Property Address:	Wickham Road, Hamilton
Legal Description:	Lot 1 DP 396081 (pre allocated CFR 704262) and Lot 1 DP 486522 (pre allocated CFR 704262).
Site Area:	2,275m²
District Plan	Waipa Proposed District Plan – Appeals Version
Activity Status:	Discretionary
Zoning:	Rural
Policy Area(s):	n/a
Proposal:	• Establish a Rural Based Industry (Rural transportation and storage depot) in the Rural Zone; • National Environmental Standard (NES) for Assessing and Managing Contaminants in Soil to Protect Human Health

1 INTRODUCTION

1.1 Description of site

The site (Figure 1) is located to the south of Wickham Street (Hamilton City Council) Hamilton and comprises of 4.1774ha. Although it is noted that the site is subject to a recent subdivision (SP/0101/14.01), in which the a new title containing approximately 2.1676ha will be created

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around the perimeters the activities proposed as part of the resource consent application. The site contains flat topography and appears have previously been used as a gravel stock pile area. Remnants of the previous use of the site were noticeable during a recent site visit and can be seen in Figure 2 (below). The site is surrounded by industrial development including an organic landfill to the north and west, and pastured land to the south. The site is vacant of any buildings and structures.

Figure 1: Site and surrounding area

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Figure 2: Photography taken during recent site visit

The site is located in the Rural Zone under the provisions of the proposed Waipa District Plan (PDP) and is not subject to any policy overlays (Figure 3).

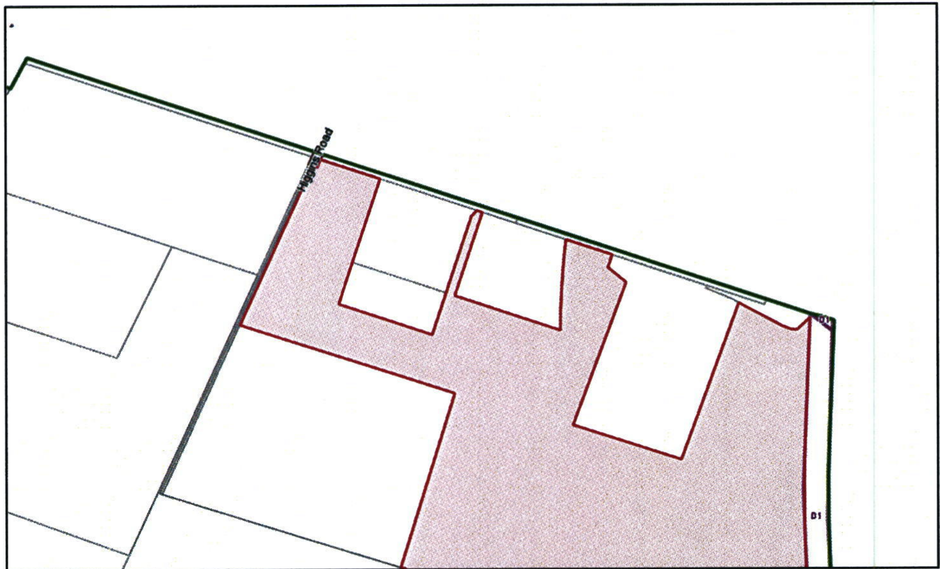

Figure 3: PDP Planning Map – Rural Zone

The site contains peat soils and a HAIL site location is referenced to the north western corner of the site, due the previous storage of tanks or drums for fuel, chemicals or liquid waste, as referenced on Council's Special Features Map (Figure 4).

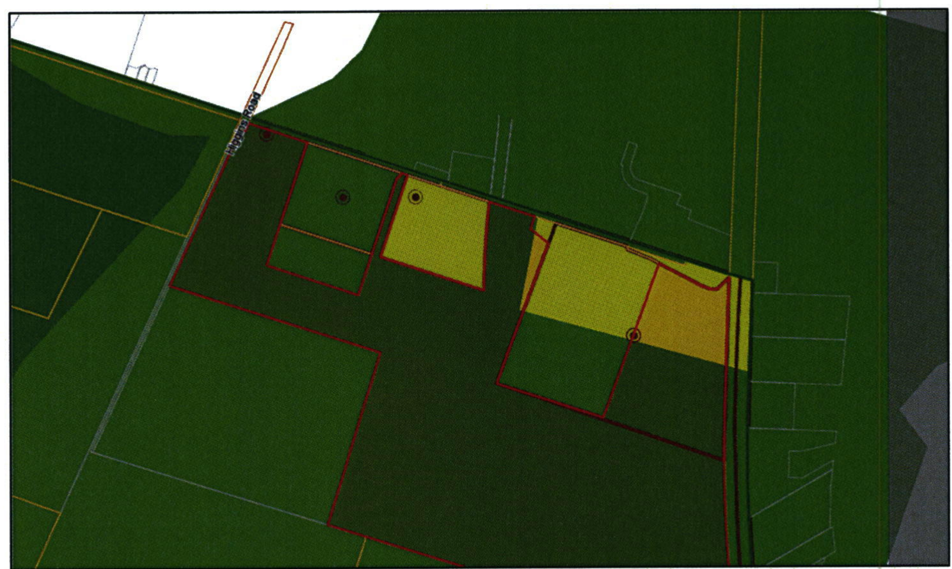

Figure 4: Council's Special Features Map

1.2 Proposal

Pursuant to s88 of the Resource Management Act 1991 (the Act), CKL Planning have applied on behalf of Waikato Agri Farms Limited for resource consent to establish a Rural Based Industry at the site located at Wickham Street, Hamilton (Figure 5).

The proposal will involve the storage of agricultural machinery and equipment pending distribution for use in connection with land based agricultural activities.

This site is proposed to be modified to create suitably formed areas for machinery and equipment storage and access to them. No buildings and/or structures are proposed.

Vehicle access to the site will be via the formed right of way off the end of Wickham Street.

The proposal will have no reliance on reticulated infrastructure.

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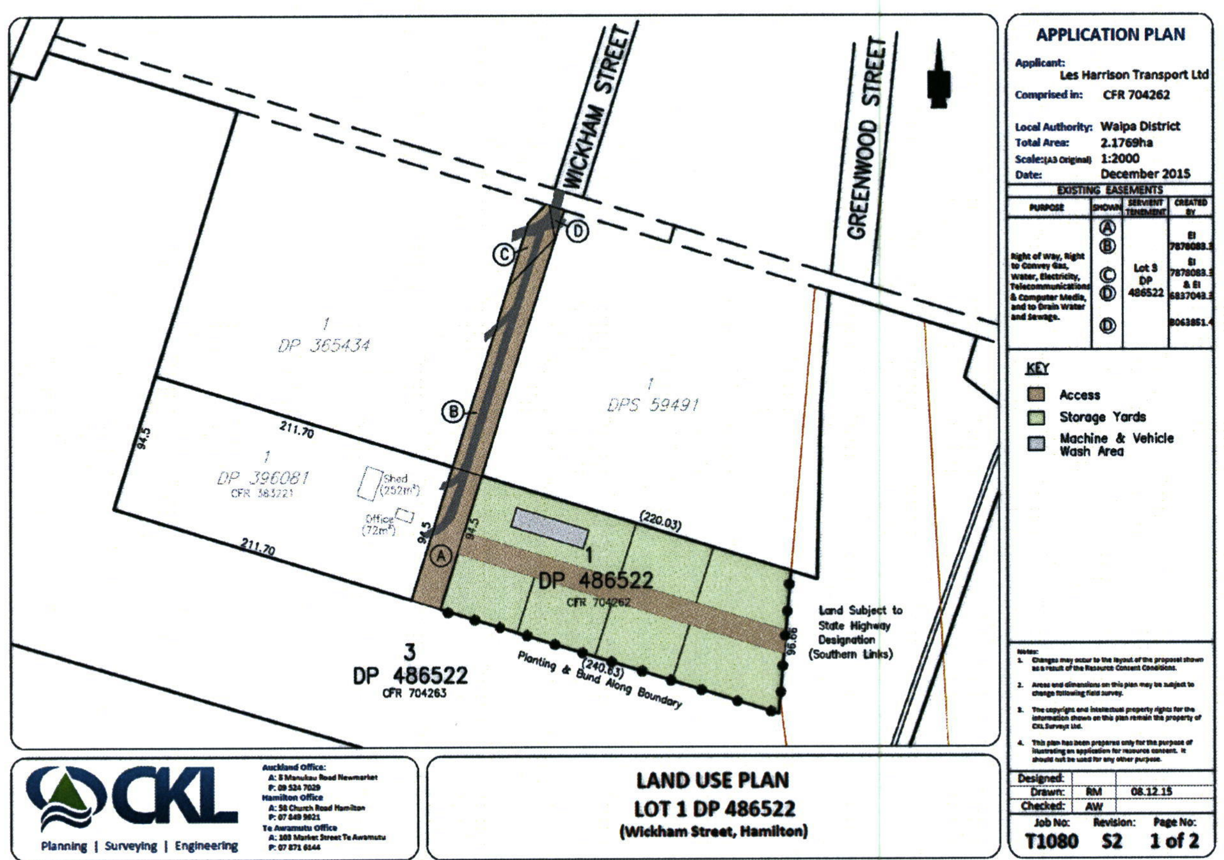

Figure 5: Site Plan.

1.3 History

The site is subject to the following consenting history:

- LU/0046/003.3 – Shaw Asphalters Ltd (29 June 2007) – To establish and operate a site office, store vehicles overnight and store asphalt material.
- LU/0079/09 – Kiwi Transportable Homes (24 June 2009) – To establish and operate a site office and staff room, dry goods shed, detached toilets, wholesale shop timber yard, associated width and for the construction of prefabricated dwellings.
- There is an existing resource consent (RC/4608.01) in place on neighbouring land (Lot 1 DP 365434) initially granted on 6 September 2005. This consent authorised the establishment of an agricultural base with yards, offices, workshops, truck wash and storage facilities.
- On the 21 October 2014 Council approved a subdivision (SP/0101/14) by way of the 25ha minimum lot requirement of the then operative Waipa District Plan to create one additional lot. The 223 and 224 Certificates were signed on the 27 October 2015

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None of the consented history of the site will potentially restrict the proposal from proceeding.

1.4 Legal interests in the property

The following interests are registered on the Certificate of Title:

- Transfer S404790 – This is an existing appurtenant easement providing drainage rights in favour of the subject property.

- Transfer B063851.3 – This is an existing appurtenant easement providing right of way and rights to convey water supply, telephone services, sewage and stormwater drainage, power and gas over in favour of the subject property over the access leg owned by neighbouring land described as Lot 1 DP 486522 (CFR: 704263).

- Transfer B063851.4 – This is an existing appurtenant easement providing right of way and rights to convey water supply, telephone services, sewage and stormwater drainage, power and gas over in favour of the subject property over the access leg owned by neighbouring land described as Lot 1 DP 486522 (CFR: 704263).

- Consent Notice 6837043.1 – This is a condition imposed on a previous subdivision of the land in March 2006 Lot 1 DP 365434 stating that the site cannot be subdivided further pursuant to Rule 10.6.1.1 of the Operative Waipa District Plan.

- Consent Notice 7878083.1 – This is a condition imposed on a previous subdivision which created the subject property in April 2008 which requires that for subsequent development of Lot 1 DP 396081:

  (a) An effluent and stormwater disposal system shall be designed, installed and continually maintained to the satisfaction of Council's Building Control Manager; and

  (b) An suitably qualified and experienced Geotechnical Engineer will be required to inspect the site and submit to Council for approval, at the time of building consent, design details on the foundations of the building.

- Easement Instrument 7878083.3 - This is an existing appurtenant easement providing right of way and rights to convey water supply, telephone services, sewage and

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stormwater drainage, power and gas over in favour of the subject property over the access leg owned by neighbouring land described as Lot 2 DP 396081 (CFR: 383222).

2 REASON FOR THE APPLICATION

A landuse consent (as described under section 87(a) of the Resource Management Act 1991) is required for the reasons set out below:

Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES).

The site contains a HAIL site location located on the north western corner of the site approximately 400m from the activities proposed as part of this consent, due to the previous storage of tanks or drums for fuel, chemicals or liquid waste.

A Preliminary Site Investigation was undertaken by Focus Environmental Services who concluded that filling material contains contaminants at levels above the natural background levels. As a result a **Controlled Activity** resource consent is required by virtue of the National Environmental Standard (NES) for Assessing and Managing Contaminants in Soil to Protect Human Health as the proposed change in use does not meet the requirements of a Permitted Activity under Regulation 9 of the NES, and as the site investigation has shown that the soil contamination does not exceed the applicable standard.

Proposed District Plan

An assessment of the proposal's compliance with the relevant rules of the PDP has been completed.

In summary, the proposal triggers consent with respect to the following rules:

The term "Rural Based Industry", is defined in the PDP as follows:

> *"means an ACTIVITY that has a direct connection to or processes the output of land based activities involving animal, agriculture, forestry or horticultural crops, and includes (but is not limited to) rural transportation and agricultural contractors depots, and the preliminary packaging and processing of agricultural produce including PACKHOUSES*

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and coolstores, stock saleyards, sawmills, grain silos and feedmills, meat and poultry processing, wineries and RURAL RESEARCH FACILITIES."

The proposed activity is to establish a rural based industry involving the storage and distribution of agricultural machinery and equipment for use in connection with land based agricultural activities. As a result the proposal will be assessed as a **Discretionary Activity** by virtue of Rule 4.4.1.4 (g).

3 STAFF COMMENTS

Development Engineering

Councils' Development Engineer, Mr Peter Henderson, has reviewed the application. As a result of this review, Mr Henderson has recommended that a number of conditions be imposed relating to the following aspects:

- Construction of an all-weather dust free surface for the agricultural machinery and equipment,
- Implementation of dust mitigation measures,
- Maximum daily traffic movements,
- Removal of contaminated materials from site.

Environmental Health

Councils' Environmental Services Team Leader, Mr Karl Tutty has reviewed the application and was satisfied the proposed activities would not generate any health issues provided the consent holder was aware of their requirements under the permitted earthworks provisions of the NES.

4 ASSESSMENT FOR THE PURPOSE OF PUBLIC NOTIFICATION

4.1 Adequacy of information

It is my opinion that the information contained within the application is substantially suitable and reliable for the purpose of making a recommendation of and decision on notification. The information within the application is sufficient to understand the characteristics of the proposed activity as it relates to provisions of the Proposed District Plan, for identifying the scope and extent of any adverse effects on the environment, and to identify persons who may be affected by the activity's adverse effects.

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4.2 Notification at Applicant's request or rule in the plan that you must notify - s95A(2)(b) & (c)

The applicant did not request that the application be notified. There are no rules in the Proposed District Plan relevant to this proposal that require that the application must be notified.

4.3 Rule in the Plan that precludes public notification - s95A(3)

There are no rules in the Proposed District Plan relevant to this proposal that preclude public notification.

4.4 Effects that may or must be disregarded - s95D(a), (b), (d) and (e)

Pursuant to section 95D, if a rule or national environmental standard permits an activity with that effect the adverse effect of that activity may be disregarded.

<u>Permitted Baseline</u>
Rural Contracting Depots are assessed as Discretionary Activities in the Rural Zone. There are no activities permitted by way of the provisions of the PDP (permitted baseline) relevant to this proposal.

<u>Written Approvals</u>
The potential effects on owners and occupiers of the subject site and adjacent sites, persons whom have given written approval have been disregarded. In this instance the applicant has provided the written approval from the following potentially affected parties.

- D.J & D.A Wilson of 160 Higgins Rd who own and occupy Lot 3 DP 486522 – pre allocated);
- Wickham Estate Limited of 16 Wickham St (Lot 1 DP 365434); and
- Hamilton City Council owners and occupiers of 18 Wickham St (Lot 1 DPS 59491).

<u>Trade Competition</u>
There are no issues with respect to trade competition.

4.5 Assessment of Adverse Environmental Effects – s95A(2)(a)

<u>Character and Amenity Effects</u>
The site is located on the fringe of the Hamilton City Council Industrial Zone. The PDP

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recognises that Rural Transportation Depots have a functional reason to be situated in the Rural Zone, provided any adverse environmental effects can be avoided or mitigated. In this instance the productive use of the site has been compromised by way of the recent subdivision and its former use as a gravel stock pile area. As a result the site is not a 'traditional' rural site, which is likely to be used for activities that are reliant on the soil resource.

Given the site is surrounded by light industrial activity, in my opinion the proposal will be in keeping with the receiving environment and will not contribute to any additional adverse amenity effects over and over and above what currently exists within the area. Furthermore the applicant has submitted a landscaping plan (identified in Figure 6) that will further mitigate any potential visual effects.

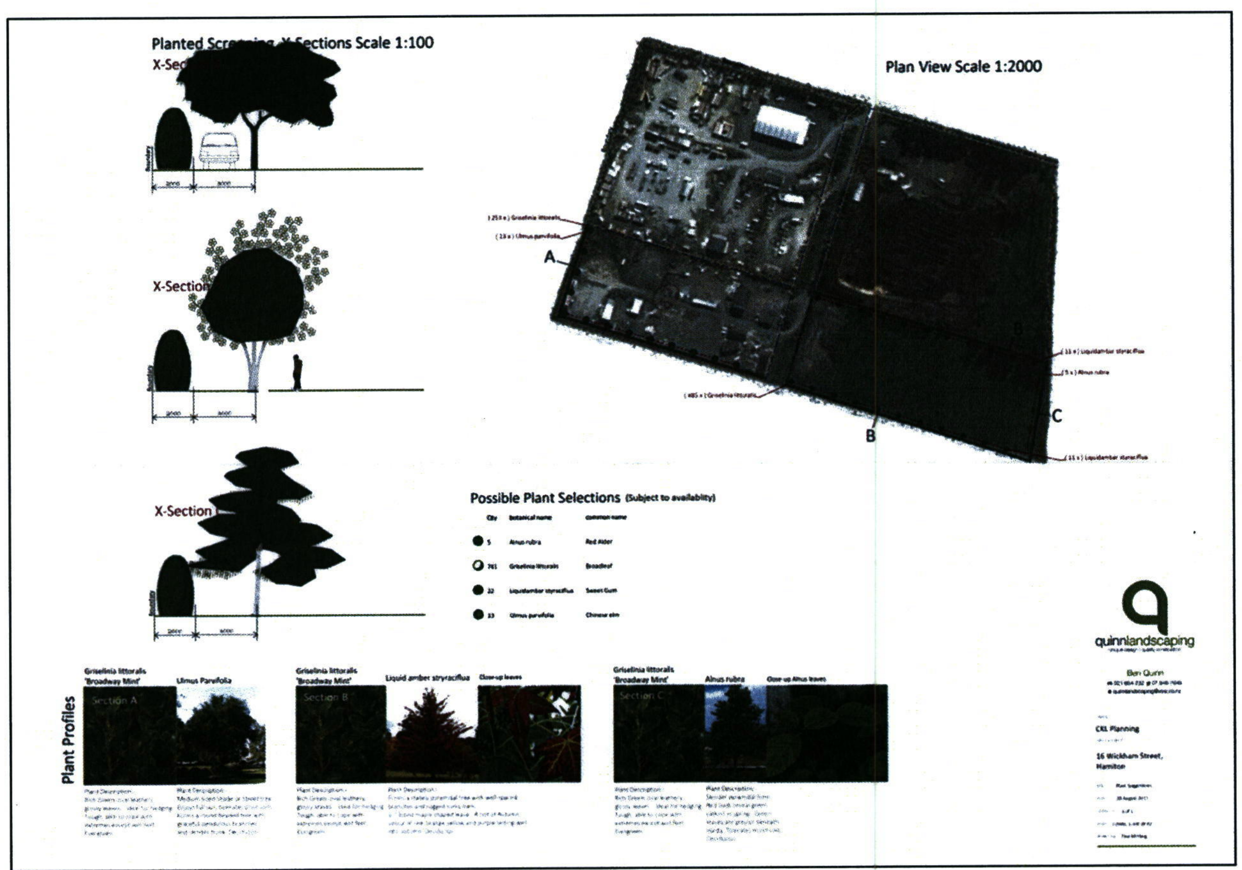

Figure 6: Landscaping Plan.

Subject to the implementation of the proposed Landscaping Plan, I conclude the proposal will have a less than minor effect in terms of rural amenity and character.

<u>Fragmentation of High Quality Soils</u>

According to the PDP, the site does not comprise of High Quality Soils. Given the previous use

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of the site has compromised the soil resource, it is not likely that the site will be rehabilitated for farming purposes. As a result a 'rural based industry' represents a positive outcome for the site. I therefore conclude the proposal will have a less than minor effect in terms of the fragmentation of the rural soil resource.

Traffic Effects

Given the site will be used for storage purposes, the traffic volumes are expected to be minimal. Furthermore the application has been reviewed by Council's Development Engineer who is satisfied that any increase in traffic can be safely absorbed into the roading network with a less than minor effect on the existing infrastructure.

Site Suitability

The site has been assessed by Council's Development Engineer who is satisfied that the site is suitable for the intended development subject to the implementation of consent conditions.

Reverse Sensitivity

There are no sensitive activities located within the vicinity of the site that could be potentially susceptible to reverse sensitivity effects. Furthermore the applicant has provided the written approval from every abutting property owner, as a result the potential adverse effects on these parties must be disregarded. Overall I conclude the proposal will generate less than minor reverse sensitivity effects.

Effects Conclusion

Overall it is considered that any actual or potential adverse effects of the proposal will be less than minor. On this basis the potential effects are below the minor threshold and the proposal can be considered without the need for public notification.

4.6 Special Circumstances s95A(4)

There are no special circumstances that warrant public notification.

5 ASSESSMENT FOR THE PURPOSE OF LIMITED NOTIFICATION

5.1 Rule in the Plan that precludes limited notification - s95B

There are no rules in the PDP that preclude limited notification.

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5.2 Effects that may be disregarded - s95E(2)(a)

Pursuant to section 95E, if a rule or national environmental standard permits an activity with that effect the adverse effect of the activity on the person may be disregarded. The permitted baseline described in section 4.4 is also relevant to effects on people and will therefore not be readdressed here.

5.3 Statutory Acknowledgment Area - s95E(2)(c)

The property subject to this consent is not within, adjacent to, or directly affected by a statutory acknowledgment area (SAA).

5.4 Assessment of adversely affected persons under section 95E

The adjacent parties have been set out in Appendix A.

The applicant has provided the written approval from the property owners referenced in Appendix A, as a result the potential adverse effects on these parties have been disregarded.

Summary

The applicant has provided the written approval from every potentially affected property owner, as a result Limited Notification as not been recommended.

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6 SECTION 95 NOTIFICATION RECOMMENDATION AND DECISION UNDER DELEGATED AUTHORITY

Pursuant to section 95 A & B application LU/0002/16 for a Discretionary Activity shall proceed on a NON NOTIFIED basis for the reasons discussed above:

Reporting Officer:	**Approved By:**
Gareth Moran **Planner**	Wayne Allan **Manager, Planning and Regulatory**
Dated: **04 February 2016**	Dated: 5th February **2016**

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Appendix A – Properties to be excluded under section 95D

(1) Wickham Estate Limited of 16 Wickham St (Lot 1 DP 365434); and
(2) Hamilton City Council owners and occupiers of 18 Wickham St (Lot 1 DPS 59491).
(3) D.J & D.A Wilson of 160 Higgins Rd who own and occupy Lot 3 DP 486522 – pre allocated);

7 SECTION 104

A decision was made under section 95 of the Act to process the application on a non-notified basis. An assessment of and decision on the application under section 104 of the Act is provided below.

8 SECTION 104(1)A - ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

8.1 Effects Disregarded

Refer to Section 4.4.

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8.2 The following actual and potential effects are relevant to this proposal:

The assessment of adverse effects in the approved notification report is also relevant for the purposes of the assessment required under s104(1)(a). In summary it was concluded that the potential adverse effects will be less than minor subject to the implementation of consent conditions.

9 SECTION 104(1)(b) - RELEVANT PROVISIONS

9.1 Waikato Regional Policy Statement/Operative Regional Plan

The proposal is consistent with the relevant provisions of the Operative and Proposed Waikato Regional Policy Statements. The proposed land use will not affect any of the relevant provisions of the Operative Waikato Regional Plan.

9.2 Proposed Waipa District Plan – Appeals Version

Pursuant to section 86F of the Act, there are no corresponding provisions of the Operative Waipa District Plan which remain operative and must be had regard to. The following assessment therefore focuses on the operative provisions of the Proposed District Plan.

9.2.1 Operative Objectives and Policies

The agent on behalf of the applicant has undertaken a detailed assessment in terms of the relevant objectives and policies.

Notably the following pints are of key relevance relating to establishing non-farming activities in the Rural Zone:

"The proposed land use activity is by definition a rural based industry. There is a functional requirement to locate on the subject properties because of their proximity to the applicants existing established industrial activities on neighbouring land. There is a compelling reason to locate on the subject properties because of the nature of existing non-rural activities undertaken on neighbouring land, the size of the land parcels involved and their proximity to the industrial zone within the urban extent of Hamilton City. In this respect:

- *The loss of 2.0 hectares of farmland from productive use has been authorised by the granting of subdivision consent to create Lot 1 DP 486522.*

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- *The nature and configuration of the land, its means of vehicle access and the presence of other non-farming activities in the immediate area provide functional and compelling reasons to establish the proposal land use activity on the subject properties.*
- *The existing character of the area will largely be maintained, and will be enhanced through the proposed landscaping to be undertaken.*
- *Lot 1 DP 396081 has been developed through the granting of previous land use consents and is used for non-farming purposes".*

I have reviewed the applicants assessment and consider it to be robust and correct. Accordingly, I wish to accept in full their assessment and I concur with the conclusion that the proposal is consistent with all relevant objectives and policies of the PDP.

10 SECTION 104(1)(c) – ANY OTHER MATTER CONSIDERED RELEVANT AND REASONABLY NECESSARY

10.1 Treaty Settlement Acts – Areas of Interest (AOI)

The property is within Ngāti Hauā's AOI. The statement of association for this area states

> ***Ngāti Hauā Statements of Association for Waikato River (as shown on deed plan OTS-190-08)***
>
> *Waikato is our awa tapu (sacred river), our awa tupuna (ancestral river). It is our living taonga (a precious treasure) to the people of Ngāti Hauā. Ngāti Hauā is inextricably connected to the river through the ancestral ties of whakapapa which originated from the beginning of time, from the creation of the world when Ranginui (Sky Father) and Papatūānuku (Mother Earth) separated. That is when Tangaroa (Guardian of the Sea) flooded into the realm of daylight and brought nourishment to the world. This depicts the Ngāti Hauā worldview and highlights the importance of our waterways, it's tributes, and all that dwell within, to the people of Ngāti Hauā. This forms the foundation of Kaitakitanga, which states that this taonga must be cherished and respected, and is a matter of great significance and priority, for the Ngāti Hauā people as guardians of the Waikato river.*
>
> *The Waikato river was named by the ancestors of Tainui waka, of whom Ngāti Hauā descend. There is a well-known iwi legend which recounts the river Waikato being given as a gift hailing from Ruapehu maunga, by Tongariro, to his sick relative, Taupiri.*
>
> *The Waikato River, and its region, has been populated for at least the past 700 to 800 years. The river provides physical and spiritual sustenance, and traditional healing powers for the people of Ngāti Hauā living along its catchment. The Waikato river is synonomous with mana, and Ngati Haua regard the awa as a source of mana, and an indicator of their own mauri, identity and wellbeing.*
>
> *According to Ngāti Hauā the Waikato River provided nutrients that enabled lands to remain fertile, thereby allowing areas of cultivation to flourish. These fertile areas yielded water fowl to reproduce aquatic foods such as fish and tuna, with the Ngāti Haua region being known as 'Te rohe o to Tuna' (The land that was rich in tuna) in those times, right up to this present time. The tupuna Te Oro, originator of the hapū Ngāti Te Oro, was a grandson to Hauā, and he resided at Horotiu, on the banks of the Waikato River.*

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> *Ngāti Hauā are infinitely connected to the awa through the renowned chief, Te Waharoa, and his warriors, who fought at the significant battle of Taumatawiwi, at Karāpiro, on the Waikato River. In the lull of battle Te Waharoa burnt his fallen warriors there, which is the derivation of the name Karāpiro, karā meaning rock and piro from the putrid smell of the burning bodies.*

Ngāti Hauā were consulted via the NITOW iwi representatives and no comments were received on this application. Therefore, the proposal is considered to not be contrary to the cultural, spiritual, historical, and traditional association of Ngāti Hauā with this identified area. Additionally, there are no archaeological or historical areas recorded in the PDP.

10.2 Heritage New Zealand Pouhere Taonga Act 2014

The purpose of this Act is to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand. The site does not contain any identified sites of cultural or archaeological significance, furthermore NITOW have advised that they do not oppose the development. The proposal is therefore concluded to be consistent with the principle of this Act.

10.3 Council Bylaws

No approval or authority is required under any Council Bylaw.

11 PART 2 MATTERS

Section 104 of the RMA is subject to Part 2 of the Act:

- Section 5 of the RMA outlines the Act's purpose, the basic principle of which is sustainable management.

- Section 6 of the RMA outlines matters of national importance, and it is considered that none of sub sections (a) to (f) are relevant to this case.

- Section 7 outlines the other matters for consideration. The only matters of relevance are:
  "(c) The maintenance and enhancement of amenity values;
  (f) Maintenance and enhancement of the quality of the environment"

- Section 8 concerns the principles of the Treaty of Waitangi.

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Having had regard to the relevant matters in Section 104 of the RMA, a broad overall judgment needs to be made as to whether the purposes of the RMA is better served by the granting or declining of the application.

I have established throughout my report that the activity will have a less than minor effect on the environment and is consistent with the policy thrust of the relevant objectives and policies of the ODP.

Overall, the application is considered to meet the relevant provisions of Part 2 of the RMA as the proposal achieves the purpose (section 5) of the RMA, being the sustainable management of natural and physical resources.

12 RECOMMENDATION

The above assessment has concluded that any actual and potential effects of the proposal are acceptable and the proposal is consistent with relevant objectives and policies of the Proposed Waipa District Plan –Appeals Version as well as being consistent with the Waikato Regional Policy Statement and all other relevant matters.

The proposed activity meets the purpose and principles of Part 2 of the Act and therefore subject to the conditions listed within the decision to be served under section 113, the proposal can be granted under the PDP.

Reporting Officer:	**Approved By:**
Gareth Moran	**Wayne Allan**
Project Planner	**Manager, Planning and Regulatory**
Dated: 04 February 2016	Dated: 05 February 2016

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Note: The following sites' activities have been sourced from Google Maps and may not reflect the latest land-use. Site sizes are based on Records of Title and online planning map information.

335 Collins Road, Temple View, Hamilton

Waipa District – Rural Zone, 0.78 ha

- Firewood chopping, storage and timber sales yard.

121 Kakaramea Road, Te Awamutu

Waipa District – Rural Zone, 6.478 ha

- Storage of machinery, vehicles, equipment, and aggregates.

3249 Ohaupo Road, Ohaupo

Waipa District – Rural Zone, 2.481 ha

- PickMee Fruit Company Pack House – fruit packing, storage, and distribution.

849 Ngaruawahia Road, Te Kowhai

Waikato District - General Rural Zone, 6.183 ha

- Heavy Metal Haulage depot - truck and material storage for construction, roading and agricultural cartage.

9 ANZAC Street East, Horotiu

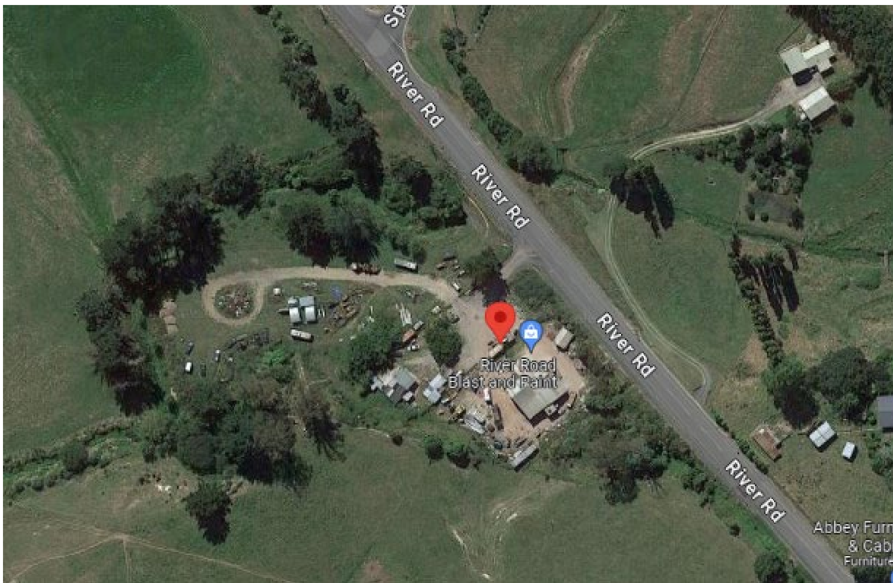
Waikato District - General Rural Zone, 1.69ha

- Hanes Engineering depot - forklift, trucking and engineering services.

2361 River Road, Horsham Downs

Waikato District - General Rural Zone, 1.35 ha

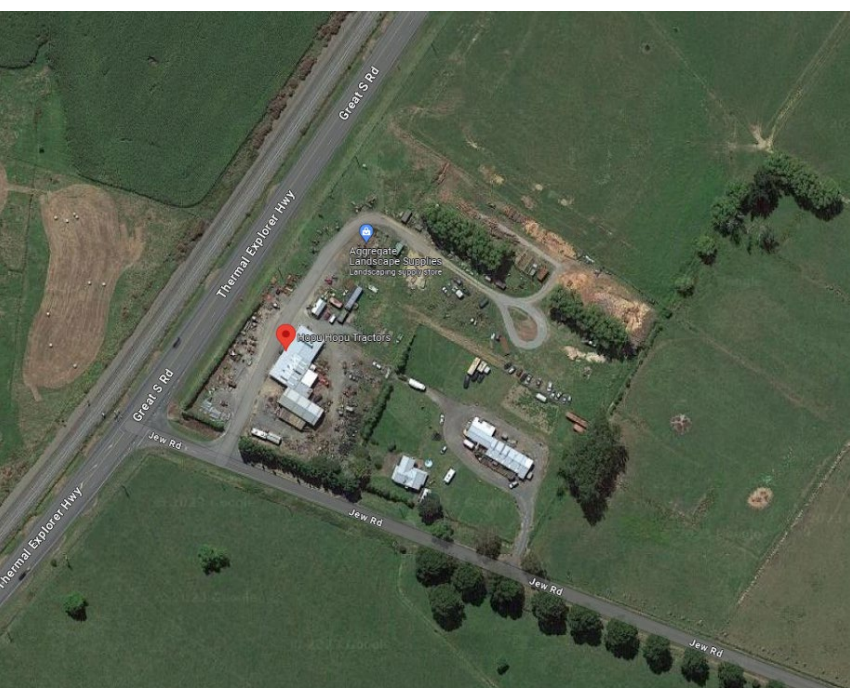
- River Road Blast and Paint – metal and machinery painting.



5275 Jew Road, Hopu Hopu

Waikato District - General Rural Zone, 3.91ha

- Hopu Hopu Trackers, and Aggregate Landscape Supplies – machinery storage, hire and sale, and aggregate landscape supply storage and sales.



STRATEGIC BOUNDARY AGREEMENT

Between

HAMILTON CITY COUNCIL

And

WAIPA DISTRICT COUNCIL

AGREEMENT dated 3rd October 2022

PARTIES

HAMILTON CITY COUNCIL

WAIPA DISTRICT COUNCIL(Councils)

BACKGROUND

A. Hamilton City Council (HCC) and Waipa District Council (WDC) are both parties to the Future Proof Sub-Regional Growth Strategy that sets out a development pattern for the sub-region and is embedded in statutory planning documents including the Waikato Regional Policy Statement, and WDC and HCC District Plans.

B. The Southern Links Designation route provides the strategic transport corridor from the south, around the Airport, through WDC land into HCC land and specifically the Peacocke area.

C. As part of the Future Proof Strategy - Southern Sector Study, it was identified that the Southern Links Designation route should ultimately form an urban boundary forthe southwestern extent of the Hamilton urban area.

D. The Future Proof Strategy has been updated and adopted in June 2022, and included an action to progress negotiations between Hamilton City Council and Waipa District Council in relation to a strategic land agreement regarding the Waipā district land which is on the Hamilton City-side of the Southern Links designation.

E. In 2018 Central Government progressed, as part of the Urban Growth Agenda, the development of the Hamilton to Auckland Corridor Plan, and from this came the development of the Hamilton-Waikato Metro Spatial Plan that took a 'boundaryless' approach to planning for the Metro Hamilton area beyond existing territorial boundaries.

F. Through the development of the Hamilton-Waikato Metro Spatial Plan, the Southern Links Designation area was also flagged for potential future growth consideration.

G. HCC is currently undertaking a review of its Hamilton Urban Growth Strategy (HUGS) to update and identify the future form of the city, including the sequence and timing of growth areas, both within and on the periphery of the city.

H. HCC and WDC wish to establish a clear framework for amending their respective territorial boundaries whereby land within the areas identified as "Priority 1 Area" and "Priority 2 Area" in Attachment 1 (Southern Links Land Area) that is within the territorial boundary of WDC is transferred into the territorial boundary of HCC (Transfer). This is to be implemented in a manner that gives effect to the Future Proof Strategy, the Hamilton-Waikato Metro Spatial Plan and HUGS.

I. HCC and WDC also wish to establish a process for a Transfer for additional areas of land should that further land be identified as suitable for future urban development and supported by the Future Proof Partnership. WDC does not currently consider there to be any such suitable land available for Transfer, but nevertheless supports formalising a process for its consideration through this agreement.

J. Both parties acknowledge that to give effect to any changes to their respective territorial boundaries, the approval of the Local Government Commission and the Minister of Local Government is required, as well as a separate public process, in accordance with the Local Government Act 2002 (LGA).

AGREEMENT

Strategic Planning

1. The Councils will continue to work collaboratively on all matters concerning potential Transfers within the Southern Links Land Area).

2. All such engagement will be informed by other collaborative processes relating to strategic land use including but not limited to Future Proof, the Hamilton to Auckland Corridor Plan, the Hamilton - Waikato Metro Spatial Plan, HUGS, Waipa Growth Strategy 2050, and individual District Plans including changes/amendments.

3. The Councils agree that due to the dynamic nature of strategic land use planning, land within the Southern Links Land Area may be subject to Transfer at a time to be determined by mutual agreement between the Councils, informed by the terms of this agreement and subject to the requirements of the LGA.

4. The Councils will apply the principles of 'boundaryless planning' as identified by the Future Proof Partnership when considering strategic land use planning, infrastructure provision and funding, and any potential Transfer within the Southern Links Land Area .

5. Subject to and without limiting WDC's plan making and regulatory functions under the Resource Management Act 1991 (RMA), the land uses within the Southern Links Land Area will continue to be strategically managed and retained for rural use, in accordance with the existing WDC District Plan, Future Proof and other plans to protect the land resource for its ultimate potential urbanisation.

6. In their strategic planning the Councils will recognise Hamilton Airport as regionally significant economic and social infrastructure. Both Councils will use their best endeavours to ensure any development occurring within the outer control noise boundary as identified in the operative WDC District Plan should be non-residential activities.

7. All strategic land use decision making undertaken by the Councils, including plan changes and district plan reviews, will take into consideration the terms of this agreement.

Transfer within the Southern Links Land Area

8. The Councils agree that the first priority of any Transfer within the Southern Links Land Area will be land located to the west of State Highway No.3 within the Southern Links Land Area , including Waipā District land requiring access from within the City boundaries. This area is identified on Attachment 1 as Priority 1 Area.

9. The process for the Transfer of land within Priority 1 will commence with HCC making a formal written request to WDC. Agreement to the Transfer will only occur if WDC resolves to give effect to the Transfer on terms and conditions acceptable to both Councils. Once so resolved, each Council will take all necessary steps to give effect to the Transfer in the most efficient and timely manner possible in accordance with the LGA, including:
   a) jointly developing a reorganisation plan in accordance with paragraph 22A of Schedule 3 to the LGA; and
   b) subject to the outcome of public consultation on that plan in accordance with Schedule 3, jointly submitting to the Local Government Commission an adopted reorganisation plan in accordance with Schedule 3 to the LGA; and/or
   c) such other agreed necessary steps to give legal effect to the Transfer.

10. The terms and conditions attached to the Transfer within Priority 1 Area, will be determined by mutual agreement of the Councils having regard to the matters set out in Attachment 2.

11. The remaining land within the Southern Links Land Area, located to the east of State Highway No.3 bounded by the City boundary, the Southern Links Boundary and the Waikato River (or any part thereof), identified on Attachment 1 as Priority 2 Area, will be subject to a Transfer under the same process applied to Priority 1 Area. The process for the Transfer of Priority 2 cannot commence ahead of Priority 1 Area commencing. The Transfer of land is not a guarantee that the area will be developed as urban. Any development proposals will need to take into account relevant/agreed growth strategy principles.

12. The process of any Transfer of an area (or part thereof) will be preceded by open and transparent dialogue between the Councils wherein the prospect of a Transfer request will be clearly identified.

13. Any decision by HCC to make a Transfer request will take into account HUGS and Future Proof, the impacts of growth on HCC, strategic infrastructure decisions affecting HCC, the financial considerations set out in Attachment 2, and the outcomes of the strategic land use planning processes set out above.

14. Prior to any Transfer request being given effect to by a reorganisation plan or similar mechanism, the Councils will agree on financial adjustments, to be made between HCC and WDC to account for local government funding issues arising as a result of the Transfer of rateable land from WDC to HCC. The local government funding adjustment shall be addressed taking into account the principles and factors set out at Attachment 2 and any required legal processes or requirements including requirements under the LGA.

Further transfer areas

15. The Councils acknowledge that strategic land development is informed by a collaborative/partnership approach between the Councils. This approach is underpinned by the aspirations and principles of planning land development in a way that is not constrained to local government boundaries, also known as 'boundaryless planning'.

16. In the event either Council identifies the prospect of further Transfers not expressly identified in this agreement, the Councils will commence open and transparent dialogue in good faith regarding the further transfer areas. These discussions will be undertaken in the forum of the HCC/WDC Governance Committee, or its equivalent replacement forum, and progressed through the Future Proof partnership if appropriate.

17. Following the commencement of dialogue either of the Councils may, by written notice to the Chief Executive of the other Council, commence negotiations regarding further Transfers not expressly identified in this agreement (further area notice), provided the further area notice is consistent with the strategic land use planning processes identified above, and that the land affected by any Transfer takes into account Waahi Toitu and Waahi Toiora as identified in the Hamilton-Waikato Metro Spatial Plan/Future Proof Strategy.

18. Upon receipt of a further area notice each Council will commit sufficient resources and personnel to directly engage in discussions regarding the location and area of land subject to a potential Transfer and will work collaboratively and in good faith to resolve whether the land identified in the further area is consistent with the outcomes contemplated by this agreement.

19. If the location and area of land are agreed between the Councils (further area), the further area will be mapped and presented as an additional future attachment to this agreement. Once a further area is recognised under this agreement via this mechanism, it may be subject, either immediately or at any later date, to the Transfer mechanism as prescribed in this agreement.

Regulatory Function

20. Nothing in this agreement shall fetter the regulatory function of either Council to assess and determine applications for resource consent (either land use or subdivision) in accordance with the rules, policies and objectives as contained in the applicable District Plan. The Councils may, at their discretion, consider this agreement under section 104(1)(c) of the RMA as 'any other matter the consent authority considers relevant and reasonably necessary to determine the application'.

Dispute Resolution

21. The Councils will work in a transparent and open basis in respect of boundary related issues and will each apply sufficient resources and personnel to ensure effective engagement between Councils.

22. If agreement cannot be reached on any issues the Councils will attempt to resolve matters by engaging in direct dialogue between the respective Chief Executives and Mayors.

Review

23. This agreement shall be binding on HCC and WDC and may only be varied or revoked by the mutual agreement of both Councils. The parties will review the agreement within five years of the date of signing of the agreement, and thereafter at the same intervals, to ensure it remains fit for purpose and determine whether any amendments are necessary.

24. Subject to clause 23, and unless an extension is agreed, this agreement will terminate on 7 September 2032

Dated this 3rd October 2022

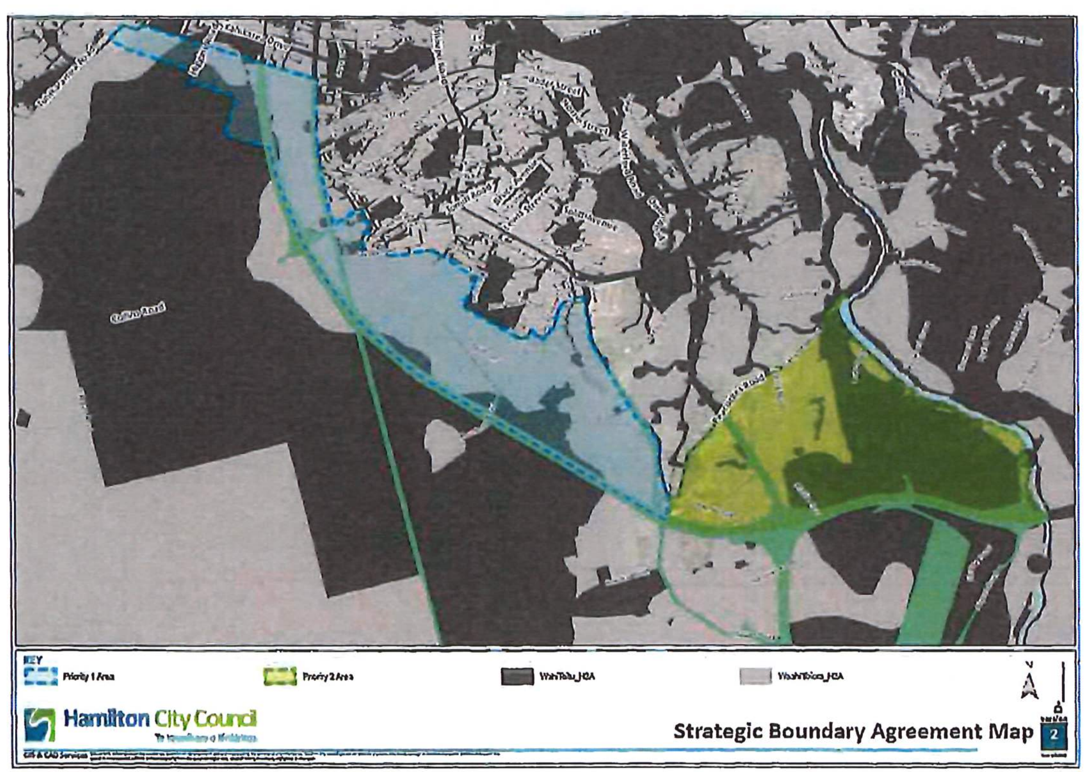
J Mylchreest/Garry Dyet

Mayor/CE of Waipa District

P Southgate/L Vervoort

Mayor/CE of Hamilton City Council

ATTACHMENT 1: MAPS – The Southern Links Land Area is identified as "Priority 1 Area" And "Priority 2 Area".



Kahikatea Drive
Tuhikaramea Road
Ohaupo Road
Bader Street
Norris Street
Waterford Road
Dixon Road
Spitz Avenue
Lewis Street
Bruce Avenue
Tomin Road
Collins Road
Peacockes Road

KEY

Priority 1 Area

Priority 2 Area

N

Hamilton City Council
Te kaunihera o Kirikiriroa

GIS & CAD Services

Strategic Boundary Agreement Map

version 2

ATTACHMENT 2: LOCAL GOVERNMENT FUNDING FACTORS AND PRINCIPLES

Financial Principles

25. The primary financial principle to be observed in any Transfer is the fact thearrangement must be "financially sustainable" for both councils.

26. For WDC, financial sustainability means a transition period where the income contribution to Council's cost structure received from those properties within an area to be transferred (**transfer land**) and which is included in any WDC LTP (ratingrevenue less operating cash flows) must continue for a period of time to enable the WDC business to adjust. It is noted WDC has rating income budgeted in each year of its LTP which includes the areas of land described in Attachment 1.

27. The transition period is particularly important given the high growth environment WDC is operating in and the pressure this growth provides on costs. It is recognisedthat the period for which net income is paid to WDC will be dependent on the quantum of the net income to WDC.

28. The financial principles to implement for the areas of land described in Attachment 1 requires payment from HCC to WDC over a transition period whereby:
    - Consideration, being an amount of the overhead contribution attributed tothe transfer land, for a minimum of ten (10) years (this term determined based on time needed to replace the net income) following the transfer of the land.
    - The 'overhead contribution' is the rating and other receipts attributed to thetransfer land less operating costs and debt repayment. This assumes any debt and development contribution reserves (if any) at the time of land transfer will be transferred to HCC.

29. A number of options exist in terms of paying consideration. These include options ofa lump sum, regular payments over a period of time or a mixture of both. For administrative simplicity a lump sum payment, made at the time of transfer (discounted to reflect a present value of net cash flows as referenced above) may bethe most suitable option.

30. Over time, increases in rates revenue attributable to the transfer land places pressure on the financial contribution from Hamilton City Council to WDC. Early transfer of theareas of land described in Attachment 1 is an effective tool to potentially mitigatethe impact of value uplift and is a legitimate consideration for HCC in any timing decision.

31. Where possible the parties may consider arrangements for shared infrastructureservices and may factor these arrangements into the financial considerations.

IN THE HIGH COURT OF NEW ZEALAND
BLENHEIM REGISTRY

CIV-2004-485-1671

BETWEEN	WALTER JAMES OLLIVER AND PATRICIA OLLIVER Appellant
AND	MARLBOROUGH DISTRICT COUNCIL Respondent

Hearing: 21 June 2005

Appearances: R D Crosby for Appellants
B P Dwyer for Respondent

Judgment: 8 July 2005

In accordance with r540(4) I direct the Registrar to endorse this judgment with the delivery time of 3.45pm on the 8th day of July 2005.

RESERVED JUDGMENT OF GENDALL J

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[1] Walter James Olliver and Patricia Olliver ("the appellants") reside on a property at Rarangi, a coastal community to the North West of Blenheim. They wished to subdivide their property. Resource consent was necessary and this was declined by the Marlborough District Council. The Ollivers appealed to the Environment Court under s120 of the Resource Management Act 1991. In a reserved decision delivered on 2 July 2004 that Court dismissed the appeal, upholding the Council's decision.

[2] The appellants now appeal to the High Court pursuant to s299 of the Act which enables an appeal to be brought on a point of law only. In their notice of appeal the appellants set out what are said to be 19 separate questions or errors of

law. They have become refined in counsel's submissions and I return to them in paras [13] – [16].

Background

[3] Matters of fact, and findings of fact made by the Court, are largely uncontested. The appellants' property comprises 1.41 hectares and the proposed subdivision was in an area zoned Deferred Township Residential Zone ("DTRZ"). The site contains a two-storey home occupied by the appellants and a small one-bedroom "granny flat" situated separately on the property. This was authorised by a Council resource consent provided that a bond was entered into by the appellants allowing it to be used only by family members, and that it be removed if the appellants cease to be registered proprietors of the land. Both the house and the granny flat have separate effluent disposal fields with a common water supply from a well on the property. The appellants' proposal was to subdivide the property into two lots, one of which would contain the granny flat and associated land, and one would contain the homestead. Legal and physical access was to be provided from the roadway by an existing sealed driveway on the ground to the appropriate rights of way. Water was to remain shared from the common well with a water easement to be created. The appellants had proposed a condition requiring an improvement to the effluent disposal system.

[4] The Court referred to the agreement between the parties which it said allowed it to concentrate on aspects fundamental to the appeal. Those points were

> "• there is very little dispute between council and the appellants as to factual matters;
>
> • it is accepted that the Olliver property is in the DTRZ;
>
> • it is accepted that the Proposed Plan is the relevant plan document as its provisions relating to Rarangi in the deferred zone are not subject to reference;
>
> • it is accepted that the appellants may satisfactorily dispose of any effluent generated by any new dwellinghouse (provided the effluent disposal system is established in accordance with the recommendations of the appellants' engineer)."

Environment Court decision

[5] The Court observed that there appeared to be some confusion between the status of the application to subdivide and the status of any residential developments which may occur after subdivision. That was because the subdivision application was "non-complying" in terms of the Proposed Plan, and the appellants' counsel, whilst accepting that the actual subdivision to allow residential activity was non-complying the residential activity had a discretionary activity status. The Court however said that, from its understanding of the Proposed Plan, it could not agree that the subdivision activity in the DTRZ could ever be discretionary, and without reticulated water supply connected to all the existing houses in the DTRZ, any application for subdivision in that zone was non-complying.

[6] The Court set out the appellants' contentions which essentially were that the effects of granting consent to the subdivision would be minor; that there would be no significant precedent created given that the Ollivers' property was the only large property in the DTRZ with one house on it, it already had two dwellings, was larger than any other DTRZ sections (other than a nearby golf course); and that the stance of the Council that subdivision in the DTRZ was prohibited unless a reticulated water supply was provided, was incorrect. The Council's position was that although water and waste water disposal could be achieved in isolation on this site, that needed to be weighed against the consideration of the objectives for the wider DTRZ, namely that the undeveloped area of the Rarangi Township had to grow in a way which properly managed and protected natural resources so as to ensure the social and economic wellbeing of the existing and future community of Rarangi. To that extent the application signalled that development might take place with drinking water protection being affected by proper septic tanks being installed rather than the establishment of a reticulated water system, but such an approach was, it was said, directly opposed to the objectives and policies of the Proposed Plan.

[7] After setting out the relevant statutory framework the Environment Court noted that the adverse effects of the proposal, by agreement, were regarded as being minor and then proceeded to assess the objectives and policies of the Proposed Plan. In having regard to such objectives, policies and rules in terms of s104(1)(d) the

Environment Court outlined certain objectives and policies for urban and rural residential environments, as contained in the Proposed Plan. The Court concluded that those provisions indicated that small sized residential townships development be controlled, and for Rarangi in particular, that water supply and sewage disposal was to be carefully managed. It refers to the careful management of Rarangi as being explained in the Proposed Plan as:

> "An additional Deferred Township Residential Zone has been applied to Rarangi in recognition that limited further residential development will be considered applicable once a permanent potable water supply has been installed." [11.2.3]

[8] The Court said that the Plan recognised that further residential development on a limited scale would take place but only once a permanent drinking water supply is installed. The Court noted a further provision in the Plan (Methods of Implementation Rules) which stated in part that Plan rules required all subdivisions and residential development in the Township Residential and Deferred Township Residential to make satisfactory provision for on-site water supply and effluent and storm water disposal (where a community sewage disposal system is not available).

[9] The Court recorded the reasons for the establishment of the DTRZ which were to be found in the Council decision, the subject of the appeal to that Court. The decision refers to the objectives and policies and the Proposed Plans providing "an effective bar" to further rural residential developments in the area until a potable water supply was installed and connected so that the issue was managed properly. The decision goes on to state:

> "[53] The appellants say this amounts to a prohibition of subdivision and development and is not intended by the Proposed Plan. We do not agree. It provides a defined starting date for development when a developer steps up who is prepared to provide a reticulated water supply connected to the new houses.
>
> [54] We remind [sic, ourselves] that s105(2A)(b) requires that a consent authority *must not* grant a resource consent for a non-complying activity unless it is satisfied that the activity (in this case the subdivision) will not be contrary to the objectives and policies of the Proposed Plan. If we were to approve this proposal, it would be contrary to (in the sense of repugnance) [sic] to the test formulated in *New Zealand Rail v Marlborough District Council* [1992] 2 NZRMA 449 for a clearly stated set of objectives and policies."

The Court later emphasised that it was the subset provision component in its non-complying status that initially controlled any associated later development such development of a site in the DTRZ being discretionary activity.

[10] The Court then analysed the evidence of the strategic planner and consultant engineers on matters such as ground water studies and the desirability or otherwise of piecemeal development prior to the provision of a reticulated potable water supply. It said:

> "[69] We agree with the council that reticulation is a necessary infrastructure to have in place before the deferred status is lifted from the DTRZ, and the Proposed Plan's objectives and policies reflect this. The way forward the appellants suggest is not efficient either for the community or the council."

[11] It then dealt with the appellants' arguments that the proposal would not provide any precedent effect because of the unique physical features of the property which does not exist on any other property in the DTRZ. In the end the Tribunal turned to consider Part II matters (of the Act) and in its decision it said in paras [78] – [81]:

> "[78] It is clear based from the provisions we have quoted and other supporting provisions that the Proposed Plan:
>
> - anticipates residential growth at Rarangi;
> - recognises the vulnerability of the water supply in terms of contamination from soakage fields;
> - in its objectives and policies it is absolutely clear/explicit about the timing of any future residential development at Rarangi;
> - in its rules make subdivision without reticulation a non-complying activity.
>
> [79] This case is about the sustainable management of Rarangi's natural and physical resources. We acknowledge that deferment of part of the residential zone at Rarangi has been done in order to ensure that the future development of this community is sustainable. Whilst the Council through its witness…, does not dispute the Ollivers' treatment system, the Council in this very sensitive area identifies the difficulties it has had with the maintenance and monitoring of on-site waste water management systems.
>
> [80] The ongoing performance of any system relies upon the appropriate operation and maintenance….Mr Kennedy is concerned that approval of the Ollivers' application will send the wrong signal to those others who may

> wish to develop in the area. He states it threatens the integrated management of the resource.
>
> [81] We conclude that there is potential for further subdivision applications, and were we to grant this application the clear message would be that '*ad hoc*' disposal treatments were acceptable in the DTRZ. Further subdivision and associated residential development in the DTRZ require community infrastructure or, in the alternative, a plan change to allow community input into any other options."

[12] The Court concluded at para [82]:

> "[82] We see the intention of the planning provisions to avoid ad hoc solutions and to advance residential development at Rarangi in an integrated manner, allowing for planned communal infrastructure."

Submissions on this appeal

[13] Mr Crosby's written submissions span 23 pages. I mean no disrespect to him if they are not recorded in their entirety but he said the nub of the errors of law were as follows. He argued that the Court erred because, having determined that no adverse effects on the environment would arise from the proposal:

(1) It inaccurately or wrongly, in terms of s104(1), assessed the rules, policies and provisions of the Proposed Plan;

(2) It was flawed in its conclusion as to the precedent effect, and any undermining of the integrity of the Plan, this being a conclusion that was not realistic when measured against the facts of this case and the Proposed Plan provisions;

(3) As an inter-related submission, the Court erred in law in elevating the sanctity of the Plan provisions, so as to overlook the opening requirement of s104(1) namely the words "subject to Part II".

[14] In a broad way counsel submitted that any concern of the Court that future development might send "the wrong signal" was flawed because this proposed subdivision would not, it is said, lead to a potential development that posed any risk in terms of effluent treatment. Counsel submitted that the Environment Court, in making findings of fact and recognising that no adverse effects from the environment

would arise, erred in its consideration of Plan provisions. He submitted that errors flowed from the crucial finding, fundamental to the Court's decision set out in paras [11] and [12], above. The submission was that the Environment Court took the view that the grant of consent would undermine the integrity of the Proposed Plan but given that there was a finding that there would only be minor effects, enabling the application to pass the threshold test, it was not possible as a matter of law to say that the integrity of the Plan could be undermined by such minor effects.

[15] Counsel emphasised that certain circumstances or facts made, in his view, the case unusual as the property was different to others in the DTRZ and that the Environment Court overlooked the fact that any perceived risk of precedent effect Plan objectives came from "development" and not subdivision. He submitted that the Court overlooked or misapplied the proper approach in interpreting s104 and its reference to Part II. To decline consent was placing the District Plan objectives and policies and the "integrity" of the Plan, he said, in "a position that is above the law and the purposes and principles of the Act itself in Part II". The essence of that submission was that it was not correct in law for the integrity of the Plan, on its own, to be considered to be a reason for declining consent when the grant of that consent would cause either minor or no adverse effects to the environment. He further submitted that the decision overlooked the fact that the discretionary activity rules contained in the Proposed Plan were a crucial part of the Plan and the Court did not give to those discretionary activity rules the weight or emphasis that was required. That is, counsel submitted that the Court placed undue weight on certain parts of the Plan and not others, and (thereby counsel submitted) that the Court misdirected itself when referring to s105(2A)(b) in para [54] of its decision, (quoted in para [9] above). Counsel submitted that consideration of this provision was clearly wrong given that the application had already passed through the threshold gateway in terms of s105(2A)(a) as to the "minor adverse effects". It was argued that the Court misinterpreted the relevance of the existence of the second dwelling.

[16] Finally, counsel submitted that the Court failed to apply the relevant objectives and policies, referring to a provision in the Proposed Plan which provides:

> "The Rarangi community has an older settled area that has historically taken water from shallow wells. This water source is very susceptible to the risk

> of contamination and development will be permitted when this aspect is identified and provided for."

It was counsel's submission that such a provision does not require a community supply to be the only solution.

Submissions of counsel for the respondent

[17] Equally thorough as Mr Crosby, Mr Dwyer's submissions encompassed 26 pages or 60 paragraphs and I do not propose to set them out in detail. He emphasised that the Court's decision was that there should be no further development in the DTRZ until either a reticulated sewage scheme or a reticulated water scheme was established, and that at the heart of the decision to decline subdivision application was a rejection of the appellants' proposal to subdivide their property before the establishment of the reticulated water supply system. He said that the decision was based upon the proposal being contrary to the clear objectives and proposals of the Proposed Plan. It was his case that the appellants' arguments did not identify errors of law on the part of the Court, but were attempts to challenge matters of fact and weight given by the Court to the clearly stated objectives and policies of the Proposed Plan as against the immediate physical effects of the appellants' proposal.

[18] Mr Dwyer referred to certain provisions in the objectives and policies of the Proposed Plan, contending that as they relate to Rarangi, they spread across both urban environments and rural environments. But the provisions are absolutely clear and provided a blue print for the development of the DTRZ at Rarangi – that is, development could take place in conjunction with the establishment of a reticulated water supply rather than on an individual or ad hoc basis.

[19] It was said that the Court's obligation under s104 was to have regard to the various identified criteria and it had done so and despite the absence of immediate environmental effects it still had to have regard to the proposal against the objectives or policies in the Plan. He said that was a task that the Court was uniquely able to undertake. He emphasised that the Court heard evidence as to the desirability of having a co-ordinated rather than piecemeal approach to the provision of water. The

reliance placed by the appellants on the argument that the property was different to other properties in the DTRZ was, counsel submitted, a matter acknowledged by the Court in its decision, and did not concern a question of law. Whilst considerable emphasis was placed by the appellants on the distinction between "development" and "subdivision" Mr Dwyer submitted that the true legal position is that in considering the effects of a subdivision it is appropriate to have regard to the development which will follow as a consequence of such subdivision being submitted. Counsel submitted that to refuse planning consent, where there are only minor or adverse effects on environment, would place the Plan objectives, policies and integrity of a District Plan in a position above the law and the principles and purposes of the Act itself in Part II. This argument was put to this Court in ***Calapashi Holdings Ltd v Marlborough District Council*** (HC Blenheim, CIV 2004-485-1419, 22 March 2005, Ellen France J). In that case, the Court clearly considered that Part II and the deferment of the residential zoning arose in order to ensure sustainability of future development of the community. That is, management of the natural resources require that future subdivision and development take place in the context of the availability of reticulated water supply as contemplated by the Proposed Plan.

[20] Counsel submitted that the Proposed Plan simply identified a defined starting date for development, namely when the water reticulated supply water is available as the Environment Court observed.

[21] Where the Court referred to objectives and policies in the rural environment sections of the Proposed Plan taking precedence over the general list of objectives and policies in the urban environment section it did not err in law. That is because although the term "precedence" suggests there was some conflict or clash between the two, in fact that was not the case, they being entirely consistent. Further residential development in Rarangi would be considered appropriate once a permanent potable water supply had been installed. Counsel submits the comment simply reflects the rule or concept that the specific predominates over the general. Counsel concluded that the Environment Court decision, covering 21 pages of careful reasoning, did not disclose any error of law and that in reality the appeal constituted an attack on the findings of fact, and weight given to considerations by

the Court. It is said the heart of the Court's judgment was that the appellants' proposal was contrary (and indeed said to be repugnant) to the objectives and policies of the Proposed Plan relating to subdivision and development in the DTRZ zone at Rarangi.

Appeal principles

[22] Because, pursuant to s299, appeals to this Court are limited to points of law the principles developed from the cases, and summarised by Potter J in ***Nicholls v District Council of Papakura*** [1998] NZRMA 233 are to be kept in mind. These are:

> "(a) The High Court will not concern itself with the merits of the case under the guise of a question of law; *Sean Investments v Mackellar* (1981) 38 ALR 363.
>
> (b) The appellate Court's task is to decide whether the Tribunal has acted within its powers; *Hunt v Auckland City Council* [1996] NZRMA 49.
>
> (c) The question of weight to be given to the assessment of relevant considerations is for the Environment Court [Planning Tribunal] alone, and not for reconsideration by the appellate Court as a point of law; *Hunt* (supra), *Moriarty v North Shore City Council* [1994] NZRMA 433.
>
> (d) Any error of law must materially affect the result of the Environment Court's [Planning Tribunal's] decision before the appellate Court will grant relief; *Countdown Properties* (supra); *BP Oil NZ Limited v Waitakere City Council* [1996] NZRMA 67.
>
> (e) To succeed, an appellant must identify a question of law arising out of the Environment Courts [Planning Tribunal's] determination and then demonstrate that that question of law has been erroneously decided by the Environment Court [Planning Tribunal]; *Smith v Takapuna City Council* (1988) 13 NZTPA 156.
>
> (f) On an appeal under s299 it is not for the High Court to say whether the Environment Court [Planning Tribunal] was right or wrong in its conclusion but whether it used the correct test and all proper matters were taken into account; *West Coast Regional Abattoir Co Ltd v Westland County Council* (1983) 9 NZTPA 289."

Statutory provisions

[23] Although s104 of the Act was amended on 1 August 2003 this application was to be determined under the old s104 which provides:

> "**Matters to be considered**
>
> (1) Subject to Part II, when considering an application for a resource consent and any submissions received, the consent authority shall have regard to –
>
> (a) Any actual and potential effects on the environment of allowing the activity; and
>
> (b) Any relevant regulations; and
>
> (c) Any relevant national policy statement, … regional policy statement, and proposed regional policy statement; and
>
> (d) Any relevant objectives, policies, rules, or other provisions of a plan or proposed plan; and
>
> (e) ….
>
> (f) ….
>
> (g) ….
>
> (h) ….
>
> (i) Any other matters the consent authority considers relevant and reasonably necessary to determine the application."

[24] The section which has come to be known as the "gateway" provision to applications for consent to a non-complying activity is s105(2A), which provides:

> "Notwithstanding any decision made under section 94(2)(a) a consent authority must not grant a resource consent for a non-complying activity unless it is satisfied that –
>
> (a) The adverse effects on the environment (other than any effect to which section 104(6) applies) will be minor; or
>
> (b) The application is for an activity which will not be contrary to the objectives and policies of –
>
> (i) Where there is only a relevant plan, the relevant plan; or
>
> (ii) Where there is only a relevant proposed plan, the relevant proposed plan; or

(iii) Where there is a relevant plan and a relevant proposed plan, either the relevant plan or the relevant proposed plan."

[25] Part II of the Act describes its purpose and principles. Section 5 reads:

"**5 Purpose**

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment."

[26] Section 7(b) provides:

"**OTHER MATTERS** –

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to –

(a) ….

(aa) ….

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

(c) …."

PLAN PROVISIONS

[27] There are many references in the Proposed Plan to the objectives and policies relevant to Rarangi and it is not necessary to set them all out as it is apparent in the judgment of the Environment Court that it gave consideration to a number of those policies, rules and objectives. I record some of those references.

“**URBAN ENVIRONMENT**

….

Chapter 11

….This Plan aims to make all subdivisions consistent

Objective 5	The development of residential areas at a rate which ensures the maintenance and enhancement of community health standards.
Policy 5.1	Ensure that the unconfined aquifer systems are not compromised by the cumulative effects of sewage effluent discharge (particularly from septic tanks) and other waste disposal to ground.

….

Policy 5.4	Ensure that residential development in non reticulated townships and settlements is within the capacity for sustainable on-site disposal.

[Commentary]

The Plan seeks to ensure that residential developments are served with potable water supplies, and waste collection, treatment and disposal systems which do not contaminate the environment or compromise community health.

Blenheim is fully serviced with water supply and a reticulated sewage collection and treatment system. Therefore all new residential development within or as an extension of the Blenheim area will be required to connect to these systems in the interests of maintaining community health ….

Other townships may also be facing difficulties with the disposal of sewage on-site. However, given the small size of the townships, sewage reticulation may never be economically viable. For example, because Grovetown has high water table levels, groundwater contamination is possible if development were to continue uncontrolled.

Water supply and sewage disposal in Rarangi requires careful management to ensure that sewage contamination and saltwater intrusion does not occur.”

11.2.3

“**Methods of Implementation**

Residential areas outside of Blenheim are zoned Township Residential. This zone allows for the special demands of small town or settlement residential areas. For example the requirements created by the need for onsite sewage disposal. The Township Residential Zone has been applied to the residential areas at Renwick, Seddon, Ward, Spring Creek, Grovetown, Tuamarina, Rarangi and Wairau Valley.

….

An additional Deferred Township Residential Zone has been applied to Rarangi in recognition that limited further residential development will be considered applicable once a permanent potable water supply has been installed.”

“Residential development will largely be confined to the identified residential zones in the established settlements. This will ensure a compact urban form, addressing energy efficiency.”

[28] Chapter 12 deals with rural areas:

“**RURAL ENVIRONMENTS**

12.2.14 **Safeguarding water resources**

….

The Rarangi Community has an older settled area that has historically taken water from shallow wells. This water source is very susceptible to the risk of contamination, and development will be permitted where this aspect is identified and provided for.

….

….

Objective 3 To maintain or enhance the life supporting capacity of soils, and the quality of surface and groundwater.

….

Policy 3.2 To avoid, remedy or mitigate the adverse effects of discharges on soil and water quality. The Deferred Township Residential Zone at Rarangi will only develop when a permanent potable water supply has been installed and service connection made to all properties in both the Deferred Township Residential Zone and the Township Residential Zone.”

Part 12.5

> "Policy 1.4 Ensure that rural residential developments make adequate provision for sewage and stormwater disposal. The Deferred Township Residential Zone at Rarangi will only develop when a permanent potable water supply has been installed and service connection made to all properties in both the Deferred Township Residential Zone and the Township Residential Zone."

[29] This will be seen to reinforce Policy 3.2 quoted above.

[30] There are other provisions or Rules in the Proposed Plan that are recorded in the Court's decision as being relevant or taken into account by it, as well as the Council in its decision. They include:

> "**Section 11.2.3 (Methods of Implementation – Rules)**
>
> ….
>
> Plan rules require all subdivisions and residential development in the Township Residential and Deferred Township Residential Zones to make satisfactory provision for on-site water supply and effluent and stormwater disposal (where a community sewage disposal system is not available)."

[31] The reasons for establishment of the DTRZ can be found in the relevant passage in the Council decision, as recorded in the Court's judgment:

> "The reasons for these changes to the plan as a result of submissions are that the Deferred Township Residential Zone has an interlocking relationship with the adjacent Township Residential Zone. Key elements of that relationship are the structure of aquifers and the pattern of groundwater flows. Redevelopment of the Deferred Township Residential Zone is contingent on either both zones being fully served by and all properties connected to a sewerage scheme, or both zones being fully reticulated for and all properties connected to a potable water supply. The reason for such a contingency is that the older settled area is served largely for water supply by shallow wells. The deferred zone is predominantly on the upstream side of those settled properties and has a high potential to contaminate shallow aquifers through effluent discharges.
>
> The effect of the relationship is therefore to preclude individual initiatives for the reason that where it may be possible for an individual to obtain a water supply to service a part of the deferred zone, the effects of the effluent discharge will not be contained. There may well be solutions in particular circumstances and these can be dealt with through the resource consent process in any event."

Discussion

[32] Essentially, the appellants contend that the Council and the Court were in error when they recognised that no adverse effects to the environment would flow from the grant of consent, but that nevertheless consent should not be given because of the Proposed Plan provisions. It was argued that this is illogical; incorrect conclusions were reached as a matter of law in respect of what is said to be the "precedent effects" (of granting the application); the Court misinterpreted s104; the decision was "irrational"; there were incorrect approaches to the relationship between policies and rules in the Plan and their effect and as to potential adverse effects from non-compliance with conditions; together with a misinterpretation of a condition 1.2 in the Proposed Plan as well as misapplication of s105(2A)(b). In addition, as a sub-point counsel said that the Court erred in failing to take into account as a relevant factor the existence of a lawful dwelling (the granny flat) and soakage field, so that there could be no "precedent effect" as there was no other similar property in the DTRZ. Counsel submitted that the appellants' land was distinctly different to all other land in the DTRZ, so there was no potential for any "precedent effect" and having found the application would have minor effects so as to pass the threshold gateway test it was not possible in law for the Court to say the integrity of the Plan could be undermined by such minor effects.

[33] As the application for consent was a non-complying activity it had to pass through one of the gateways referred to in s105(2A)(a) or (b). Once the application passed through one of the gateways then the appellants had to satisfy the consenting authority and the Court that the application should be granted bearing in mind the matters to be considered in terms of s104(1) and in terms of its overall discretion inherent in s105(1)(c).

[34] Counsel acknowledged the common ground that the adverse effects of the appellant's proposal would be minor, and that the gateway provision in s105(2A)(a) was met, so that there was minor potential effect as it related to s104(1)(a). The Council's decision was obviously based on wider considerations than that. It concluded that, in assessing or considering matters under s104(1)(d) and (i), there should be no further development in the DTRZ until either a reticulated sewage or

water schemes were established such being the clear objective rules and policies of the Proposed Plan. The appellants' wish to subdivide prior to the establishment of a reticulated water supply system was contrary to those policies. The activity for which consent was sought was subdivision, and Plan policies and objectives relating to that activity were clear. Rarangi was regarded as a special environment given that Plan provisions spread across both the urban and rural environment sections but the provisions were, the Court said, clear; namely, that subdivisional development to provide rural residential facilities would take place only in conjunction with the reticulated water supply rather than on an individual and ad hoc basis.

[35] The contention by the appellants that there could be no "precedent effect" through the granting of this consent because of the unique nature of its property, being different to any others in the DTRZ, overlooks the fact that the "precedent effect" relates to the possibility that other subdivision for residential purposes might be sought and pursued before a potable water supply or system had been installed. That is, there had to be a coordinated, rather than piecemeal, approach to the provision of water as was apparent from the evidence presented. The Court referred to the evidence of a Mr Kennedy on behalf of the Council that, in order that the undeveloped area of Rarangi Township grew in a way and at a rate that managed to protect properly the natural resources of the locality, subdivision for residential purposes had to be deferred or delayed until there was a unified connection to a reticulated potable water supply. The Court referred to Mr Kenney's evidence in which he said:

> "That leads me to the view that in the light of current knowledge, it is best to allow future development to proceed in Rarangi, including the subject site, once the water a separate issue has been properly addressed, as anticipated by the Plan, so that there is a coordinated rather than piecemeal approach to the provision of water."

[36] The Court went on to say that Mr Kennedy:

> "Pointed out further that piecemeal development will place a significant obligation on counsel to monitor the operational performance of all on-site wastewater management systems and ground water quality in the area on an ongoing basis, or until a reticulated potable water supply is provided.
>
> …."

> We agree with the Council that reticulation is a necessary infrastructure to have in place before the deferred state is lifted from the DTRZ, in the Proposed Plans objectives and policies reflect this. The way forward the appellants suggest is not efficient either for the community or the Council."

[37] In ***Dye v Auckland Regional Council*** [2002] 1 NZLR 337 the Court of Appeal said in construing the word "effects" as used in ss104 and 105, concerns about the precedent effects of applications were to be addressed as a matter relating to the District Plan under s105(2A)(b) and s104(1)(d) or (i) – but not under s105(2A)(a) or s104(1)(a). It said, at para [42]:

> "[42] ….As with gateway (a), we consider para (a) of s 104(1) is concerned with the impact of the particular activity on the environment. It is not concerned with the effect which allowing the activity might have on the fate of subsequent applications for resource consents. If there is a concern at precedent effect, it should be addressed under para (d) of s 104(1) which is similar in concept to gateway (b) in s 105(2A); albeit para (d) does not have the same constraining effect as gateway (b). Alternatively precedent concerns may be addressed under para (i) of s 104(1)."

and further at para [49]:

> "[49] We can summarise our views….The precedent effect of granting a resource consent (in the sense of like cases being treated alike) is a relevant factor for a consent authority to take into account when considering an application for consent to a non-complying activity. The issue falls for consideration under s 105(2A)(b) and s 104(1)(d). Cumulative effects properly understood should also be taken into account pursuant to s 105(2A)(a) and s 104(1)(a). But in taking those matters into account, the consent authority has no mandatory obligation to conduct an area-wide investigation involving a consideration of what others may seek to do in the future in unspecified places and unspecified ways in reliance on the granting of the application before it."

[38] I accept the submissions of the respondent that it was open to the Court to have regard to the issues of precedent effect in determining whether the application was contrary to the objectives and policies of the Proposed Plan (under s104(1)(d)). It was required to "have regard" to the criteria identified in s104 and weigh the absence of immediate adverse physical environment effects of the appellant's subdivision against the fact that the proposal was contrary to the long-term objectives and policies of the Plan and wider development of Rarangi Township (s104(1)(d) and (i)). Not only did the Tribunal take into account the objectives and policies of the Plan but went further to conclude that the appellants' proposal was repugnant to those objectives.

[39] I am satisfied that what the Court was doing when it said in paras [81] and [82], that there is "potential for further subdivision applications…[with] 'ad hoc' disposal treatments", and "…the intention of the planning provisions to avoid ad hoc solutions and to advance residential development at Rarangi in an integrated manner, allowing for planned communal infrastructure", was clearly addressing a s104(1)(d) matter, and probably also under s104(1)(i). It refers to Part II and the exercise of its discretion, as the heading states, before paras [78] and [82].

[40] The Court's decision as contained in paras [81] and [82] does not, despite counsel's submissions, involve a decision that subdivisions would be prohibited or barred entirely. It simply says that a piecemeal approach to the subdivisional development in the DTRZ was to be avoided, and in order to advance a sustainable management of Rarangi's natural and physical resources subdivision and associated residential development had to be postponed when ad hoc disposal treatments accompanied applications, until such time as a reticulated water supply existed. It would be then that a defined starting date for subdivision ("when a developer steps up") could occur.

[41] The intricate argument on behalf of the appellants that there is a distinction between "development and subdivision" so that it would be the "development" of the subdivided land which undermines the Proposed Plan rather than the "subdivision" is not accepted. Residential subdivision, whilst a legal division of parcels of land, is usually undertaken with a view to disposal of the separate parcels for use or residential development, or for building upon, and in considering effects of a subdivision I accept the respondent's argument that it is appropriate to have regard to the development which will follow as a logical consequence of such division being permitted.

[42] I do not accept the appellants' contention that the Court misinterpreted s104 and Part II, to the effect that once there had been a finding that either minor or no effect would occur then there would be no adverse effects on the environment, to decline consent placed the Plan objectives and policies and its integrity above, in law, the purpose and principles of the Act itself, as set out in Part II. Part II (in ss5 and 7(b)) refers to the purpose of the Act being to promote sustainable management

and efficient use of natural physical resources. The Court itself says that the case is about the "sustainable management" of Rarangi's natural and physical resources so that deferment of part of the residential zone of Rarangi has been done to ensure the future development of that part of the community is sustainable.

[43] A similar argument as to consideration of District Plan objectives and policies by the Court in such circumstances was made in ***Calapashi Holdings Ltd v Marlborough District Council*** (HC Blenheim, CIV-2004-485-1419, 22 March 2005, Ellen France J) but rejected. The Environment Court is given the authority, and is in fact required under s104, to consider a number of matters when it comes to exercising its discretion to grant consent or not. It must consider relevant objectives, policies, rules and other provisions of a Plan. If it comes to the conclusion that they outweigh other matters to be considered, such as actual effects on the environment (whether in terms of the gateway provision in s105(2A)(a) or as a matter to be considered under s104(1) does not matter), it may exercise its discretion and decline the application.

[44] Counsel argued that the Court erred when it said in para [54]:

> "[54] We remind that s105(2A)(b) requires that a consent authority *must* then grant a resource consent for a non-complying activity unless it is satisfied that the activity (in this case the subdivision) will not be contrary to the objectives and policies of the Proposed Plan. If we were to approve this proposal, it would be contrary to (in the sense of repugnance) to the test formulated in *New Zealand Rail v Marlborough District Council* (1993) 2 NZRMA 449 for a clearly stated set of objectives and policies."

Counsel says that as there had been a finding that the gateway provision in s105(2A)(a) had been shown to exist, therefore it was wrong for the Council to refer to subs (b) which is an alternative "gateway". I do not accept that submission.

[45] Section 105(2A) contains a prohibition against granting resource consent in a number of situations. The jurisdictional basis for granting consent might arise under s105(2A) but consent may be declined in the exercise of the Court's discretion if the activity is contrary to the objectives and policies of the relevant Plan. Such matters are to be considered as mandatory considerations under s104(1)(d) and/or (i). Lack of significant adverse effect of a particular activity on the immediate environment

may establish jurisdiction, but may not of itself justify consent to a non-complying activity, as such consent in the end is a matter for discretion following consideration of all the statutory provisions to which the Court must adhere; ***Batchelor v Tauranga District Council (No. 2)*** [1993] 2 NZLR 84 (CA) at p90.

[46] The weight to be attached to the general purposes of the Act, and to be given to any effect on the integrity and objectives of the Plan or rules, must be a matter of judgment for the consenting authority or Environment Court. In ***Batchelor*** it was submitted by the appellants that the Planning Tribunal should have regard to whether a proposed activity was an efficient use of land which could be carried on without offending the sustainable objectives contained in Part II of the Act. The Court of Appeal said at p90:

> "There is no warrant for reading those words into the provision [of s7(b)]. The efficient use and development of resources is one factor in the overall equation. The lack of significant adverse effect of a particular activity on sustainable management objectives cannot of itself justify consent to a non-complying activity, consent being in the end a matter of discretion following consideration of all the statutory dictates….The starting point is that such a use is one which is not permitted as of right. Here the Tribunal has weighed up the advantage of using the site for the intended purpose against a competing consideration of adverse effect on the integrity of the district plan."

[47] Those remarks apply in the present case and it cannot be said that the Court erred in law in the way it interpreted and applied s104 as well as Part II of the Act.

[48] I do not accept the appellants' contention that the Court gave the provisions of the Proposed Plan improper status by elevating them above Part II considerations. The Court did not do so. It specifically looked at s5(1) and concluded that the deferment of the residential zoning was done in order to ensure sustainability of future development of the community, and sustainable management of Rarangi's natural and physical resources. This was to be achieved, it determined, by ensuring that future subdivision and development took place in the context of the availability of a reticulated water supply as contemplated by the Proposed Plan. The Environment Court did not make any error of law in reaching that conclusion.

Irrationality

[49] I do not accept the appellants' argument that the Court acted irrationally so as to lead to error of law. The essence of that argument was that because the appellants' proposal did not result in any adverse effect on the environment as it related specifically to that subdivision, then refusal of consent was irrational. This is but another way of stating the previous argument. Jurisdiction to grant consent arises if the adverse effects will be minor. But it does not follow that to refuse consent would be irrational or perverse because the legislation is quite clear that, in the exercise of its discretion to grant or withhold consent, the consenting authority must have regard to s104. If, as a matter of weight it concludes that some factors outweigh others then, provided they give proper consideration to the relevant factors in reaching a decision, it cannot be said it is irrational.

Applicability of Rules

[50] The appellants contended that there could not be a bar to the activity sought by the appellant because it was not a prohibited activity, and it is the rules that specify what can or cannot occur as an activity, not the objectives and policies upon which the rules were based. Thus, it was submitted that the Court adopted an incorrect approach in assessing the relationship between the policies and objectives of the Plan and the rules. I do not accept that submission. In my view there is no activity prohibited by the Plan; rather, it has simply identified a defined starting date for residential subdivisional development, namely when the reticulated water is available. As the respondent points out, the very term "Deferred Township Residential Zone" illustrates that to be the case. The long-term or future objectives of the Plan were required to be considered upon any applications for residential subdivision in the zone.

Distinction between subdivision/development

[51] It was contended that the Court erred in failing to appreciate or identify distinction between "subdivisions" and "development". Counsel submitted that the Plan provides a non-complying status (arguably) for subdivision but a discretionary

activity status for development, and that therefore they are not the same thing. He argued that the Court should have taken the approach of acknowledging that "development" was the subject of a discretionary activity status, and that "subdivision" could occur distinctly from development so that consent could and should have been granted to the application. I do not accept that submission. The application was for a subdivision. Subdivision for residential development includes subdivision for residential purposes and residential activity. I accept the respondent's submissions that it is not possible to completely sever the concept of subdivision from that of development, as it is referred to in the various objectives and policies in the Plan. The subdivision of sections in respect of this zone is always to be a first step in any residential development, and residential "development" is not used in the Plan to describe the construction and occupation of dwelling houses. The Court considered any distinction (paras [62] – [63]) and I do not accept that it erred in law in the approach it took.

[52] Some point was made over a possible confusion by the Environment Court in stating in para [52] that the s12 objectives and policies "take precedence over the objectives and policies in the Urban section", that comment suggesting that there was a conflict or clash between the policies relating to Rarangi and those in the urban section. But I do not see those policies as in fact conflicting; rather, they are consistent. This is clear from the reference in section 11.2.3, namely to the effect that residential development in Rarangi would be considered "applicable" once the permanent potable water supply has been installed. Indeed that is what the Court goes on to say in the concluding parts of para [52]. All that the Court is saying is to make quite clear that subdivision and residential development should be deferred until such time as a reticulated water scheme is available. Viewed in that light there is no conflict between the provisions.

[53] The appellants contended that from a practical point of view they could never be required to connect to a communal water supply so such a condition was incapable of performance. Therefore it was argued the Court's reference to connection "to the new houses" in para [53] did not mean existing houses, and the decision was flawed because there was no mandatory way the law could force existing residential developed properties to have a service connection to a reticulated

potable water supply. These were matters clearly within the contemplation of the Court to which it was able to give such weight as it sought fit. It was dealing with a subdivision application and was entitled to give consideration to wider implications based upon Plan and policy matters in the exercise of its discretion. If it were otherwise, then the Court would have been bound to grant consent – as the appellants contend – simply because the proposed subdivision involved dwellings connected to septic tanks where no direct adverse effect would occur, but where such subdivision could not meet the limiting restrictions of the Plan objectives and policies. I do not accept that must be the case. No error of law arose in this respect.

[54] Counsel said that to illustrate how the Court went so far astray it clearly misapplied s105(2A)(b). That is, that the Court highlighted its error when it said at para [54]:

> "We remind [ourselves] that s105(2A)(b) requires that a consent authority *must not* grant a resource consent for a non-complying activity unless it is satisfied the activity (in this case the subdivision) will not be contrary to the objectives and policies of the Proposed Plan."

Counsel says that this is a gateway or jurisdictional provision and the Court therefore misdirected itself by ignoring the fact that it has already found that jurisdiction existed in terms of s105(2A)(a). In reading the decision as a whole I do not consider that to be the case. The Environment Court was not holding that jurisdiction did not exist under s105(2). It had already determined that question. It was proceeding to consider s104 matters, as it was required to do, and was emphasising the importance that the legislation places upon relevant objectives and policies, in the process of the Court coming to the conclusion that the absence of a reticulated water scheme for Rarangi was contrary to the various objectives and policies in the DTRZ. There was no error of law in this respect.

[55] It was argued that the Court failed to take into account a relevant factor, namely the existing dwellings and soakage field. But it is clear that the Court did turn its mind to those factors (see for example para [71]) and the submission simply amounts to a criticism of the weight the Court gave to such a factor. That is not an error of law.

[56] Finally, it was submitted there was a failure by the Court to apply the relevant objectives and policies of the Plan, because there is a provision that although Rarangi has a water source which is

> "very susceptible to the risk of contamination…development will be permitted where this aspect is identified and provided for." [12.2.1.4]

I do not accept that contention.

[57] Although it was argued that the objectives and policy do not require a community supply to be the "only solution", it is clear that the Court was entitled to look at all the relevant objectives and policies in interpreting them, so as to determine the overall aim and purpose. It had to apply the specific objectives and policies that were relevant to this application for subdivision. The objectives and policies span a much wider ambit than those relied upon by the appellants in respect of the submission.

[58] I do not accept there was any error of law in the Court reaching its conclusion that the appellants' proposal for subdivision was contrary to the objectives and policies of the Proposed Plan relating to subdivision and development in the DTRZ at Rarangi. That was a judgment of fact and discretion which the Environment Court with its particular expertise was entitled to make. I accept the submissions of the respondent that the appeal, although very ably argued, in reality constituted an attack on the Court's findings on matters of fact, and weight to be given to the various considerations under s104(1), to which it was required to pay heed.

[59] This Court has to constantly remind itself when hearing appeals such as this, that it is not for an appellate Judge to determine whether a proposal is contrary to the objectives and policies of a Plan. It is whether it was open to the Environment Court to take such a view, when determining the ambit of the objectives and policies. Care must be taken to avoid the backwards reasoning (by this Court) which tainted the decision in ***Dye v Auckland Regional Council*** (supra) in the High Court, and I am satisfied that the Court was entitled in law to take the view it did.

Conclusion

[60] The appellant has not established that the Environment Court erred in law in any of the respects alleged and the appeal is dismissed.

[61] The respondent Council is entitled to costs which should follow the event and I fix them on a 2B basis together with reasonable disbursements to be fixed by the Registrar if necessary within 21 days.

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J W Gendall J

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