

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of the hearing by Thames-Coromandel District Council of submissions relating to the Thames-Coromandel Proposed District Plan in respect of Section 25 – Site Development Plans.

**STATEMENT OF EVIDENCE OF IAN JOHNSON  
on behalf of  
Hahei Holidays Limited**

**1. INTRODUCTION**

- 1.1. My name is Ian Johnson. I am an Environmental Consultant in the Hamilton office of Environmental Management Services Ltd.
- 1.2 I hold a post graduate Diploma in Urban and Regional Planning and have been a corporate Member of the Royal Town Planning Institute since 1989 and a Member of the Resource Management Law Association since 2007. I have substantial experience in policy and plan development within the Waikato Region. My experience includes representing the interests of both public and private sector clients in respect of strategies and plans prepared under both the RMA and LGA.
- 1.3 In relation to this hearing I am representing the interests of Hahei Holidays Ltd (HHL). I have previously advised HHL in respect of Plan Change 12 to the Operative District Plan which resulted in the inclusion of a Structure Plan and related provisions for the Hahei Holiday Resort at Harsant Avenue, Hahei. Subsequently I have advised HHL on a range of matters, including the preparation of submissions and further submissions on the Proposed District Plan.

- 1.4 While this hearing is not bound by the “*Code of Conduct for Expert Witnesses*” contained in the Environment Court Consolidated Practice Note 2014, I have nevertheless prepared my evidence in compliance with that Code and I agree to comply with it throughout the hearing process. Unless I state otherwise, my evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

## **2. SCOPE OF EVIDENCE**

- 2.1. I have read the Planning Officer’s report and recommendations. The specific focus of my evidence relates to Section 25.7, being the Site Development Plan for Hahei Holiday Resort. I will explain the reasons for HHL’s submission and I will explain my concerns with the recommendations relating to those provisions. In the context of those concerns I will suggest how the recommended changes should be amended.

## **3. REASONS FOR THE HHL SUBMISSION**

- 3.1. In opening I have indicated that HHL has invested heavily in the establishment of an appropriate planning framework for the Hahei Holiday Resort through Plan Change 12 to the Operative Thames-Coromandel District Plan. The Plan Change was the subject of a hearing, following which it was approved by the Council and notification of its decision was issued on 20<sup>th</sup> January 2012. The decision to approve the Plan Change coincided with preparatory work being undertaken on the Proposed District Plan.
- 3.2. HHL participated in the consultation process and provided feedback to the Council, the purpose of which was to ensure that the outcomes of the Plan Change decision were accurately translated into the new format of the Proposed District Plan. This hadn’t been fully achieved by the time the Plan was notified so HHL lodged formal submissions to ensure that appropriate amendments are made. The principal focus of the Company’s submissions is on ensuring that the framework determined through Plan Change 12 is properly captured within the Proposed Plan. The submissions do not seek any departure from those provisions or any change in the level of control that was established through that process.

- 3.3. Before examining the individual aspects raised in the submissions it is important to note a little of the history behind the provisions relating to the Resort. Variation 3 to what has since become the operative Thames-Coromandel District Plan was the subject of an appeal by HHL and a number of parties joined that appeal under section 274 of the Act. The appeal was eventually settled through an Environment Court consent order issued in July 2009.
- 3.4. The negotiations that enabled settlement of the appeal involved the preparation of specific provisions relating to Block "C" within the Resort, and a Concept Plan for the entirety of the remainder of the Resort to provide a basis for longer term development. A detailed diagram was prepared in relation to Block "C" which identified the location of proposed buildings in accordance with bulk and location requirements that were agreed between HHL, the section 274 parties and TCDC. The settlement was contingent on the Council's agreement to accept a proposal for a Private Plan Change to incorporate the relevant provisions for Block "C" and the remainder of the Resort within the District Plan. The agreement was based on a requirement for the Plan Change to be consistent with a suite of standards, terms and conditions that were subsequently stipulated within the consent order.
- 3.5. The consent order laid the foundation for Plan Change 12 to the operative Plan. The Plan Change incorporated the specific diagram for Block "C" and it included all of the bulk and location and amenity standards that had been identified within the consent order. The submissions process identified additional matters of concern to the local community and those concerns were subsequently addressed through amendments to the Plan Change provisions to include additional performance standards. None of the matters identified through the settlement of the Variation 3 appeal were affected by these additional requirements.
- 3.6. As I have indicated, Plan Change 12 was approved by the Council in early 2012 and no appeals were made against its provisions.
- 3.7. The sole focus of the Company's submissions on Section 25 of the Proposed Plan was on the translation of the operative plan provisions into the new format of the Proposed Plan. The submission identified a number of aspects where the intent and the purpose of the

operative plan provisions had become lost or clouded. The specific amendments that were sought were intended to restore the clarity of the operative provisions.

#### **4. DIAGRAMS**

- 4.1. The Staff Report recommends the rejection of submission 411.19 which sought the inclusion of Diagrams C and D from the Operative Plan. These diagrams identify “important trees and groups of trees”, the extent and dimensions of an overspill car parking area that is required to be kept available for use for that purpose and also the extent of the defined setback line from Wigmore Stream. In relation to Diagram C, Plan Change 12 intended that it would be supported by a schedule which identified the species of the specific trees to assist their identification although I note the on-line version of the Plan does not include this schedule.
- 4.2. The reason for the Staff recommendation explains that the information shown on these diagrams is already shown on Diagram A within Section 25.7. I agree that Diagram illustrates trees and groups of trees but it does so at a scale that makes it difficult, if not impossible to identify a specific tree with any degree of precision. Even in its current form the Diagram would be improved by the schedule of trees that was originally proposed as part of Plan Change 12 but I note that this schedule is not proposed for inclusion. Without the schedule, the annotations on Diagram A are meaningless.
- 4.3. The proposed Diagram A also purports to define the overspill car parking area and the setback from Wigmore Stream. No dimensions are provided in relation to either matter, despite the fact that both were the subject of intense scrutiny at the Plan Change 12 hearing. In relation to the car park area, the Operative Plan identifies the precise dimensions and setback requirements to ensure that it would provide for its intended purpose without affecting the amenity of adjoining land. The Wigmore Stream setback was the subject of a specific site survey to define a building line that would avoid any significant adverse effects on the root system of the pohutakawa trees adjoining the stream. Diagram D of the Operative Plan provided the survey points and dimensions of the setback.
- 4.4. These are important matters which cannot be determined with any precision based on Diagram A of the Proposed Plan. In my view, the clarity of Diagrams C and D of the Operative Plan is preferable, albeit that I recognise that they could be combined to include

the schedule of survey points on Diagram C. With this amendment, and subject to the inclusion of the schedule of important trees and groups of trees, I consider that the clarity of the Plan provisions would be substantially improved. Improved clarity will be of benefit to all plan users and will potentially reduce compliance costs in establishing whether a proposal complies with the plan provisions.

- 4.5. I have included copies of the additional diagrams in Appendix 1 to my evidence. These also include an updated version of the Schedule of Important Trees and Groups of Trees which reflects works that have been undertaken in accordance with the Plan provisions since the Plan Change became operative.

## **5. RESTRICTED DISCRETIONARY ASSESSMENT CRITERIA**

- 5.1. Submission point 411.9 relates to the criteria that will be applied when, under Rule 1, a proposal fails to meet a standard set out in Table 1. Table 1 sets out specific requirements relating to thirteen individual matters ranging from the usual bulk and location standards, amenity standards, and quantified standards relating to occupancy, wastewater discharges and traffic matters. A failure to meet any of these standards would, in my view, necessitate closer scrutiny of that particular aspect of the proposal, hence the discretion is restricted to a particular matter.
- 5.2. While adopting the principle that discretion should be restricted, the Proposed Plan restricts the discretion to matters that are completely unrelated to the activities that are identified under Rule 1. It reserves discretion according to matters set out in Table 3 which relates to subdivision and hospitality activities. The Activity Table shows that these are the subject of Rules R4, R5, R6, R7 and R8 depending on the Block in which they are located. The analysis provided in the Staff Report is clearly incorrect; Table 3 has no relevance to the activities provided for through Rule 1. In my view, clause (3) of Rule 1 should be amended to read:

*“The Council restricts its discretion to the management of the effects of not meeting the specific standard.”*

This amendment is consistent with the approach set out within the Operative Plan in relation to the Resort.

- 5.3. Submission 411.18 also relates to the Table 3 and the application of assessment criteria relating to hospitality activities where a proposal fails standards set out in Table 1. Table 3 includes four assessment criteria which include Item 2c) requiring assessment of the traffic safety and efficiency of the road network. This particular assessment criteria was developed through Plan Change 12 to address proposals which would not comply with specific standards relating to maximum occupancy of the Resort or requirements for on-site parking. It was not intended that a traffic assessment would be required simply because a proposed building breached a set back requirement or was painted in a colour that did not comply with the standards relating to prescribed colour ranges.
- 5.4. I note that the Staff Report explains that a processing planner and the applicant would make their own determinations as to whether the criteria would apply. In my view it would be more efficient for the Plan to state where it would apply and thereby remove any potential uncertainty. This is achieved by making the following simple amendment to Item 2c) to clarify the circumstances in which it would apply:

*“Where a proposal fails to comply with standards 9 or 11 of Table 1,...”*

## **6. TREES**

- 6.1. Plan Change 12 included specific provisions relating to the protection and management of important trees and groups of trees. These trees included identified pohutakawa trees adjacent to Wigmore Stream and specific trees or groups of trees that were considered significant in long distance views of the Resort from public vantage points because, collectively, they provided a canopy which helped to assimilate activities on the site. The specific provisions were set out as standards that needed to be complied with.
- 6.2. The Proposed Plan has adopted much of the terminology of the Operative provisions but has recast them into specific rules, the effect of which is that they apply to every tree on the Resort rather than the specific trees and groups of trees, and they trigger a requirement for consent as a discretionary activity if a proposal fails any standard. Submissions 411.10 and 411.11 sought amendments to these provisions to provide clarity that it related only to the identified trees and also to provide for proposals which fail to meet a standard as a restricted discretionary activity, supported by assessment criteria and also by a rule requiring non-notification.

- 6.3. The Staff recommendation pulls in entirely in the opposite direction, proposing an outcome that no submitter has sought.
- 6.4. Rule 2 relates to emergency works and it is constructed to apply to trees that are identified on Diagram A of the Proposed Plan. Standards 1a) to 1e) are not disputed. However, a proposal which fails a standard defaults to being a discretionary activity. In my view this is unnecessary and could have unintentional consequences in terms of the activity status of other activities that are specifically anticipated by the Plan. For example, an identified dead or dying tree may be proposed to be removed in association with proposals for new accommodation and hospitality activities within Block E1. (These activities would, on their own, be classed as permitted and controlled respectively). Clause c) requires the replacement of the tree in a specific location and within a defined time period which may not be compatible with the proposed siting or use of the new accommodation, or may not be appropriate in terms of the viability and health of the proposed replacement. Following the usual bundling approach to the determination of activity status the entirety of the proposal would require a discretionary consent. Such an outcome would have substantial compliance cost implications and could not be regarded as being the most efficient.
- 6.5. In my view it is appropriate for proposals which fail a standard to default to being restricted discretionary activities with the discretion reserved to specific matters, being:
- “1. The degree to which the work is necessary to enable reasonable use and enjoyment of the site and the tree;*
  - 2. The extent to which the work will affect the longevity, health, vigour and stability of the tree.”*
- 6.6. This approach would still support the inclusion of the non-notification rule proposed in the Staff recommendation.
- 6.7. I note that the Staff Report recommends the inclusion of an additional clause relating to works affecting trees that are not specifically identified on Diagram A. This clause affects any tree on the Resort, regardless of its age, species, location, condition or amenity value. There are literally hundreds of trees on the Resort; tree planting and landscaping works are

part of the annual maintenance and renewal programme to ensure that on-site amenity meets the expectations of visitors. As I indicated earlier, tree matters were the subject of particular scrutiny at the Plan Change 12 hearing and specific provisions were prepared to address the matters raised by submitters. Those provisions, which were developed using expert planning, landscape architecture and arboriculture inputs focussed on those trees that had been identified through careful analysis as being “important” in terms of the wider amenity values of Hahei, recognising the scale and type of development that is likely to occur at the Resort. The Plan Change adopted an integrated and holistic approach.

6.8. The provisions were settled to the satisfaction of all parties. No appeals were made. No submitter has sought the protection of additional trees through submissions to the Proposed District Plan. In my view there is no evidential basis for amendments to be made to Rule 2 to protect any additional trees than those identified on Diagram A. Clause 2 should therefore be deleted.

6.9. Similar issues arise in relation to Rule 3. The Staff recommendation to amend clause 1 has not been requested by any submitter. The effect of the amendment is to extend the terms of the Rule to any tree within the Resort. As I have explained, the trees that are important in terms of achieving the purpose of the Site Development Plan and the objectives for Hahei set out within Objective 15.10 and Policy 15.10.10d, are those that have been specifically identified through the Plan Change 12 process and which are shown on Diagram A. The recommended amendment should be deleted.

6.10. For the same reasons that I have set out in relation to Rule 2, clause 2 also requires amendment to provide for proposals which fail to comply with the standards set out in 1a) to 1d) as a restricted discretionary activity. In addition to the assessment criteria that I have suggested in relation to Emergency Works, I consider that an additional criterion should be included to read:

*“3. Whether the work is likely, in the opinion of the Council, to damage the tree or endanger its health.”*

6.11. This approach would still support the inclusion of the non-notification rule proposed in the Staff recommendation.



## 7. SETBACKS

- 7.1. Submission 411.16 sought the inclusion of an advisory note within Item 6 of Table 1. Table 1 sets out the performance standards applying within the Resort. Item 6 identifies specific setback requirements in relation to the Resort boundaries. Item 6b) states a requirement for cottages within Block C to be setback 6m from the western boundary. Item 6e) requires a 3m setback for any other "building" within Block C. (It is also important to note that Item 1 in Table 1 provides strict limits on the type and character of buildings that can occur within this Block).
- 7.2. These provisions were derived from the consent order relating to Variation 3 and were subsequently incorporated into Plan Change 12. The proposed arrangement and positioning of the cottages was determined through negotiations which resulted in the consent order and was illustrated on a scaled diagram that was subsequently included as Diagram B to the Plan Change. That diagram now forms part of the Operative Plan and the cottages have been constructed in accordance with the setback requirements. I have included a copy in Appendix 2 to my evidence.
- 7.3. It has been translated into the Proposed Plan although, significantly, it has been the subject of amendments to remove the detailed dimensions that illustrate the effect of the agreed setback requirements. In my view, the removal of that detail is unhelpful. The diagram reflects a settlement that was agreed with TCDC and other parties and there was no dispute regarding the provisions or the detail of the diagram through the Plan Change 12 process. I am not aware of any evidential basis for amending the diagram or the setback requirements in respect of Block C.
- 7.4. HHL's submission simply sought clarity that these provisions would take precedence over the requirements of Rule 41.9 Table 5, Item 2 which would otherwise suggest a requirement for a 7.5m setback. I note from the Staff Report comments in relation to submission point 411.7 (which sought clarity regarding the relationship between the Site Development Plan Provisions and other provisions within the Plan) that reference is made to the Rules hierarchy which is explained in Section 1 of the Plan and in Section 25.1.3. The effect of this is that the setback requirements set out in Table 1 take precedence over those set out elsewhere within the Plan. While I am grateful for this relationship to be explained

through these provisions I am still left confused by the analysis provided in paragraph 56 of the Staff Report which suggests that this is not the case. It states that:

*"The (setback) standard should be consistent with any other boundary that is contiguous with a beachfront reserve. A resource consent to waive or reduce the yard standard may be applied for."*

- 7.5. While it seems clear to me that this recommendation is contrary to statements made elsewhere within the Plan, there is obviously potential for similar confusion to arise in the administration of the Plan provisions. In my view it would be helpful to reinforce the intended approach by expanding the last sentence of Section 25.7.1 to include the words:

*"..and the provisions of the Site Development Plan take precedence over those contained within zone, district-wide or overlay rules"*

## **8. SECTION 32 AND 32AA REQUIREMENTS**

- 8.1 I am aware that the Panel has requested that submitters consider and explain any implications of their proposed amendments in respect of Sections 32 and 32AA of the Act. In this respect the focus of HHL's submission and of my evidence has been to amend the Proposed Plan to ensure that the provisions that were the subject of detailed scrutiny and approval through Plan Change 12 are accurately translated into the format of the Proposed Plan. They do seek any additional amendment to broaden the scope or effect of the Site Development Plan or to relax any of the controls that were established through the Plan Change 12 process.

- 8.2 I note from the Council's Section 32 evaluation that it records these same points being received in feedback to the draft Plan and at Page 28 provides the Staff Comments that:

*"Several comments have been made on matters that are related to the detail of this SDP. The effect of these proposed amendments to the SDP in the Draft Plan leaves the campground facility unaffected but may assist in the implementation of the SDP."*

- 8.3 It seems to me that it was Council's intention to retain the provisions settled through Plan Change 12 but ensure that they were translated into a format that was consistent with other Site Development Plans within the Proposed Plan. My evidence has identified where that process has fallen short and it has explained the effect that it will have in terms of compliance costs and the efficient administration of the Plan.
- 8.4 In my view, where the Plan introduces additional consent requirements and where the level of assessment and scrutiny introduces matters of cost and uncertainty, such factors will weigh heavily in decisions regarding ongoing investment; it may simply become too uncertain, too costly or too hard. In these circumstances the Plan will not achieve its stated Purpose set out in Section 25.7.2. Where it does not enable and encourage development of the Resort, it will frustrate opportunities for achieving economic growth and employment.
- 8.5 I am not aware of any evidential basis for the additional requirements that have been introduced through the Proposed Plan or through the Staff recommendations for further amendments. Moreover, I have identified those recommendations which pull in an opposite direction to the body of evidence which supported Plan Change 12 and appear to go further than has been sought by any submitter.
- 8.6 In terms of the requirements Section 32 and 32AA therefore, I am of the view that the amendments sought through the HHL submissions and which have been explained in my evidence are the most efficient and effective in terms of achieving the objectives of the Plan.

Ian Johnson

Environmental Management Services Ltd

19<sup>th</sup> February 2015

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**APPENDIX 1**  
**SITE DEVELOPMENT PLAN DIAGRAMS**

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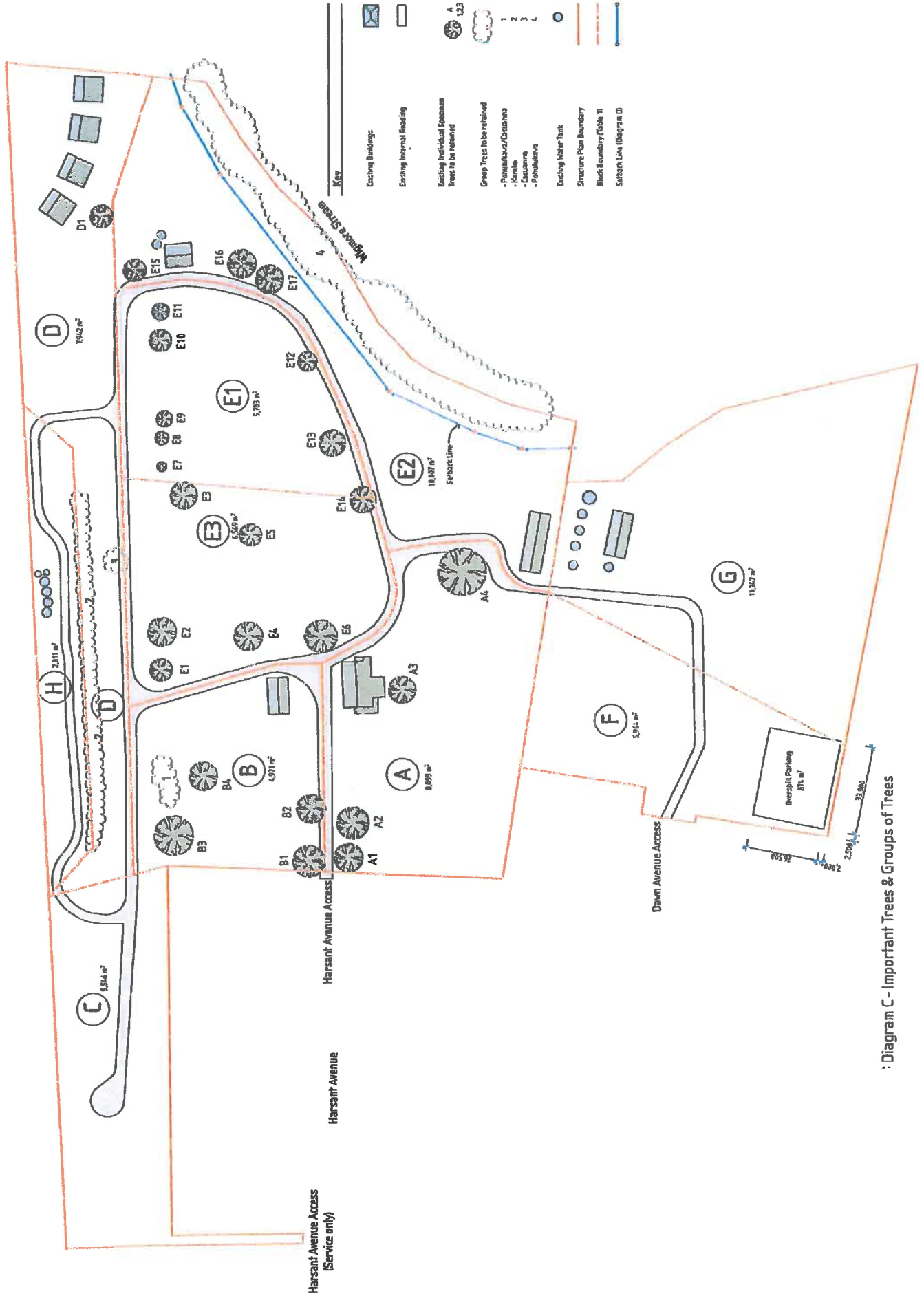


Diagram C - Important Trees & Groups of Trees

Structure of coordinates in terms of Geoids

Diagram 2008-09 (Last Date)

Geoid	45 141.4
46 142.3	45 143.2
47 144.2	46 145.1
48 146.1	47 147.0
49 148.0	48 148.9
50 150.0	49 150.8
51 152.0	50 152.7
52 154.0	51 154.6
53 156.0	52 156.5

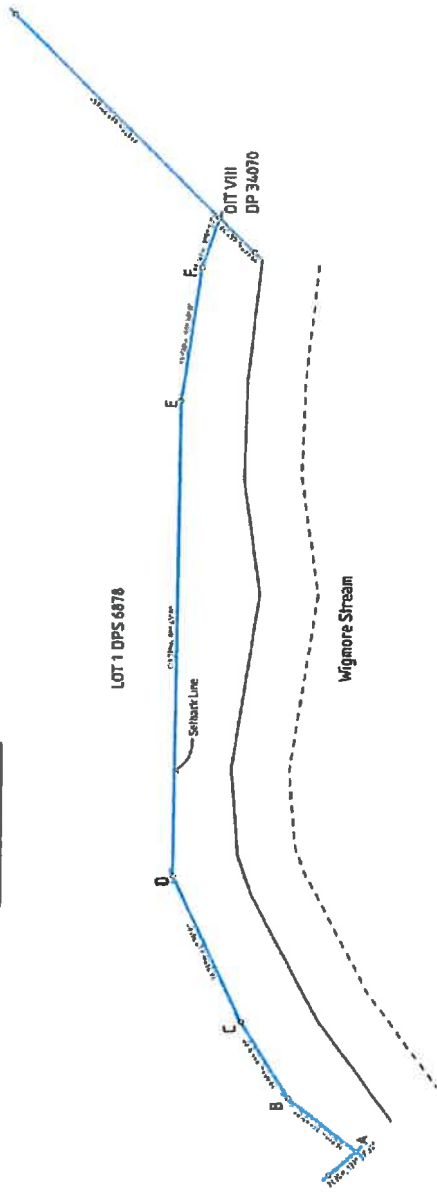


Diagram D - Setback within Block E2

## Schedule of Important Trees and Groups of Trees

<b>Block/Tree</b>	<b>Common Name</b>
A1	Pohutakawa
A2	Pohutakawa
A3	Pohutakawa
A4	Pohutakawa
B1	Pohutakawa
B2	Pohutakawa
B3	Pohutakawa
B4	Pohutakawa
Group 1	Pohutakawa/Casuarina
D1	Pohutakawa
Group 2	Karaka
Group 3	Pohutakawa
E1	Norfolk Pine
E2	Pohutakawa
E3	Norfolk Pine
E4	Pohutakawa
E5	Pohutakawa
E6	Pohutakawa
E7	Pohutakawa
E8	Pohutakawa
E9	Casuarina
E10	Banksier
E11	Pohutakawa
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E15	Pohutakawa
E16	Pohutakawa
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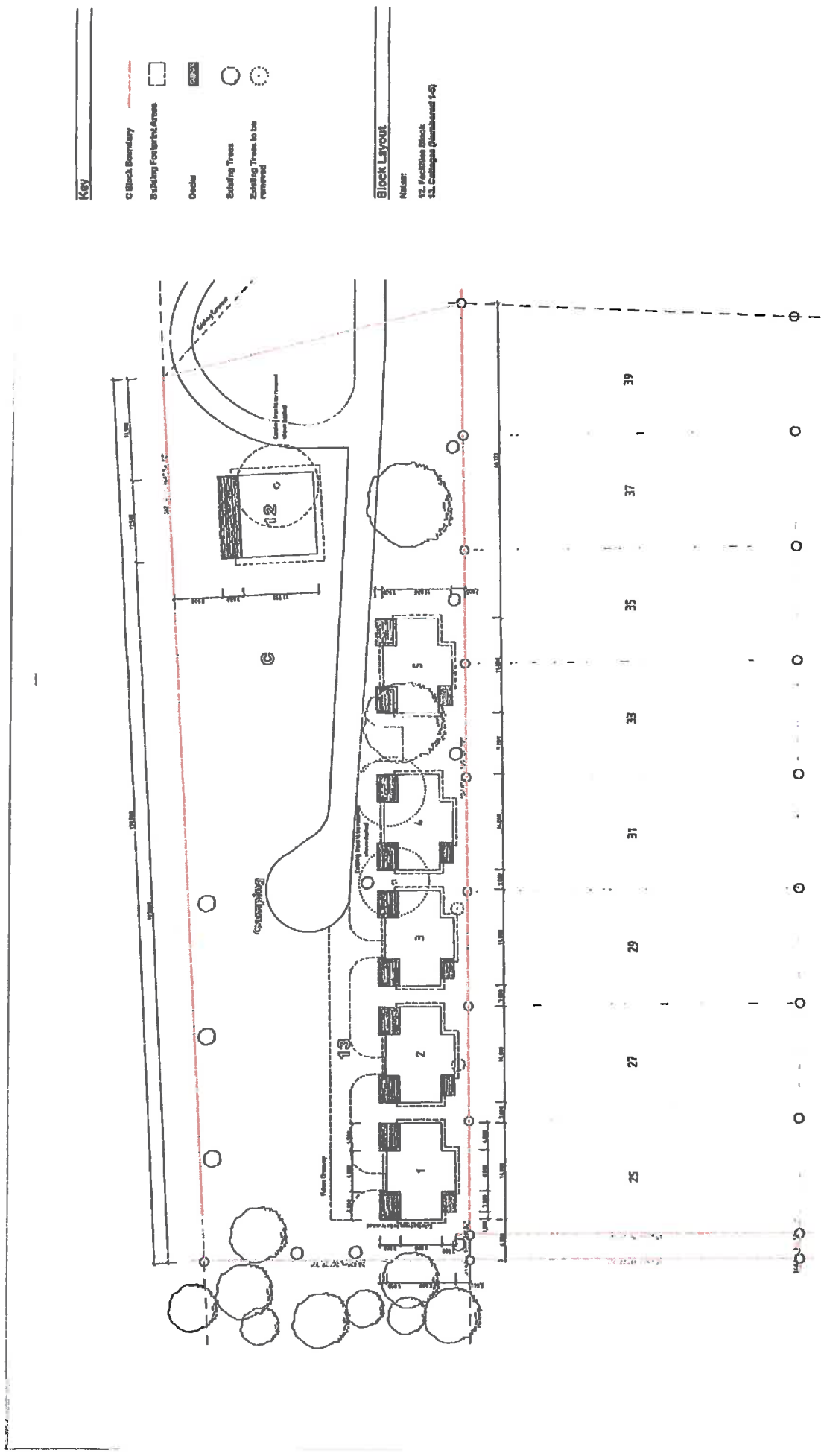
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**APPENDIX 2**

**DIAGRAM INDICATING SETBACK REQUIREMENTS IN BLOCK C**

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圖例與圖例說明

: Diagram B - Layout Plan for Block C