

Michael Gibbons

From: OIA Requests
Subject: RE: Buddle Findlay advice on Silverstream Spur [BUD-LIVE.FID1142427]

From: David Randal <david.randal@buddlefindlay.com>
Sent: Tuesday, 17 May 2022 2:27 pm
To: Guy Smith <guy.smith@uhcc.govt.nz>
Subject: RE: Buddle Findlay advice on Silverstream Spur [BUD-LIVE.FID1142427]

Scope of a submission – plan changes and variations

See [Palmerston North CC v Motor Machinists Ltd \[2013\] NZHC 1290](#), for an authoritative statement of the law on whether a submission is “on” a plan change. The Court explicitly endorsed the bipartite approach in [Clearwater Resort Ltd v Christchurch CC HC Christchurch AP34/02, 14 March 2003](#) by which analysis is required as to whether, first, the submission addresses the change to the status quo advanced by the proposed plan change and, secondly, there is a real risk that persons potentially affected by such a change have been denied an effective opportunity to participate in the plan change process. The Court in [Palmerston North CC v Motor Machinists Ltd](#) said that:

(a) The first limb requires that submissions must reasonably be said to fall within the ambit of the plan change. One way of analysing that is to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. Another is to ask whether the management regime in a district plan for a particular resource is altered by the plan change. If it is not, then a submission seeking a new management regime for that resource is unlikely to be “on” the plan change, unless the change is merely incidental or consequential.

(b) The second limb asks whether there is a real risk that persons directly or potentially directly affected by the additional changes proposed in the submission have been denied an effective opportunity to respond to those additional changes in the plan change process. A precautionary approach is required to receiving submissions proposing more than incidental or consequential further changes to a notified proposed plan change. Robust, sustainable management of natural and physical resources requires notification of a s 32 analysis of the comparative merits of a proposed plan change to persons directly affected by those proposals (which would not occur). Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further s 32 analysis is required to inform affected persons of the comparative merits of that change. The change to the scope and focus of s 32 under the RMA13 does not appear to alter the validity of this approach.

The Court further said that the approach taken by the Environment Court in [Naturally Best NZ Ltd v Queenstown Lakes DC EnvC C049/04](#) of endorsing “fair and reasonable extensions” is not correct. Where a submission does not meet each limb of the Clearwater test, the submitter has other options: to submit an application for a resource consent, to seek a further public plan change, or to seek a private plan change.

A summary of the relevant case law is set out in [Environmental Defence Soc Inc v Otorohanga District Council \[2014\] NZEnvC 70](#). See also [Vernon v Thames-Coromandel District Council \[2017\] NZEnvC 2](#).

In [Healthlink South Ltd v Christchurch International Airport Ltd \[2000\] NZRMA 375](#), the High Court noted that the barrier for participation should not be unreasonably high and that the test for participation should be that of a reasonably informed reader or citizen, not someone with knowledge of planning matters well above the informed citizen and apparently approaching expertise. See also [Progressive Enterprises Ltd v Hastings District Council \[2015\] NZEnvC 187](#), and [Hills Laboratories Ltd v Hamilton City Council \[2016\] NZEnvC 23](#).

In *Campbell v Christchurch CC* [2002] NZRMA 352(EnvC), the Court considered whether the plaintiff's submission and reference gave the Environment Court jurisdiction to entertain the relief sought. The test is whether the submission, as a whole, fairly and reasonably raises some relief, expressly or by implication, about an identified issue. In considering whether the submission reasonably raises any particular relief the Environment Court considered the following factors relevant: (1) the submission must identify what issue is involved and some change sought in the proposed plan; (2) the local authority must be able to summarise it accurately and fairly; and (3) the submission should inform others what it is seeking, but it will not be automatically invalid if unclear.

In *Clearwater Resort Ltd v Christchurch CC* [HC Christchurch AP34/02, 14 March 2003](#), Clearwater sought to argue, on a variation, that noise contour lines already in the proposed plan were ultra vires. A submission is "on" a variation if it addresses the extent to which the variation changes the pre-existing status quo; but only if the effect of the submission allows a real opportunity to potentially affected persons to participate in the plan review process. If this opportunity is denied, this indicates the submission went beyond the variation and was not on it. The cross-submission process may be inadequate to allow true public participation where a submission seeks to make major alterations to the variation. A submission would not be "on" the relevant matter if the effect of accepting that submission would be to amend the planning instrument without giving effective opportunity for participation by those potentially affected. To be valid, a submission must stay within the ambit of the change or variation: IHG [Queenstown Ltd v Queenstown Lakes DC EnvC C078/08](#).

Examples of whether a submission was "on" a plan change, or went beyond it, are: [Halswater Holdings Ltd v Selwyn DC \(1999\) 5 ELRNZ 192\(EnvC\)](#); [Striker Holdings \(No 3\) Ltd v Paparua CC \(1989\) 13 NZTPA 420](#); [Taylor v Manukau CC \(1979\) 8 NZTPA 71](#); *Ryman Abbotts Way Ltd v Auckland CC* [EnvC A088/04](#). The three tests set out in Clearwater were applied in [Avon Hotel Ltd v Christchurch CC \[2007\] NZRMA 373\(EnvC\)](#), to establish whether there was jurisdiction to lodge an appeal. See also *Solid Energy Ltd v Central Otago DC* [\[2012\] NZEnvC 173](#) for an example of relief being struck out as not properly arising from a submission "on" a plan change.

The tests of *Palmerston North CC* (above) and Clearwater (above) were applied in [Turners and Growers Horticulture Ltd v Far North District Council \[2017\] NZHC 764, \(2017\) 20 ELRNZ 203](#), where the Court held that the changes to the district plan sought by Turners would affect a much wider class of persons than the change as notified. That would effectively cut that wider class out of the submission process. The submission was therefore held not to be "on" the plan change.

The Environment Court held in *Bezar v Marlborough DC* [EnvC C031/09](#) that, having regard to the actual provisions of the proposed plan change, a submission seeking to rezone land was insufficiently connected to the purpose of the proposed variation, making it impossible for members of the public to anticipate the changes and participate in the process. The council had gone beyond its jurisdiction and in doing so had adversely affected the interests of other landowners. This decision was upheld on appeal to the High Court in [Option 5 Inc v Marlborough DC \(2009\) 16 ELRNZ 1\(HC\)](#). The High Court agreed with the Environment Court that whether a submission is "on" a plan change or variation will be a question of scale and degree.

The Court in [High Country Rosehip Orchards Ltd v Mackenzie DC \[2011\] NZEnvC 387](#) addressed the second limb of the test in Clearwater, which relates to a submission not being "on" a plan change if the planning instrument could be amended without giving effective opportunity for participation by those potentially affected. It expressed concern that the High Court in Clearwater may have overlooked the powers available under s 293 to remedy the lack of participation, and considered that the test may therefore be too rigid.

Extrapolating from the Clearwater authority (above), the High Court in [Protect Pauanui Inc v Thames-Coromandel DC \[2013\] NZHC 1944, \[2013\] NZAR 1269](#) considered that a submission could not be said to be

“on” a variation if the effect of taking the submission into account would be to permit a planning instrument to be “appreciably amended” without those potentially affected having a real opportunity to participate.

A submission seeking new zoning and rules did not address the extent of alteration to the status quo proposed by a plan change that uplifted a future urban growth notation from the land but did not alter its zoning or rules: *Re Palmerston North Industrial and Residential Developments Ltd* [2014] NZEnvC 17, (2014) 17 ELRNZ 501.

The RMAM13 has not substantially changed the law (as set out in *Clearwater and Motor Machinists*) in relation to whether submissions are “on” a plan change. Rather, the amendments have merely reinforced and expressly stated the need for a comparative analysis, which the High Court held in *Motor Machinists* to be inherent in s 32: see *Well Smart Investment Holding (NZQN) Ltd v Queenstown Lakes DC* [2015] NZEnvC 214.

See *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191 for the application of the *Clearwater and Motor Machinists* approach in the context of appeals under cl 14. *Bluehaven Management Ltd v Western Bay of Plenty District Council* was followed in *Calcutta Farms Ltd v Matamata-Piako District Council* [2018] NZEnvC 187.

See also *Federated Farmers of New Zealand (Inc) Mackenzie Branch v Mackenzie District Council* [2017] NZEnvC 53, for a discussion of scope issues in the context of the Court’s powers to consider and confirm (or otherwise) changes to provisions which it has directed a council to prepare under s 293 of the Act.

The Court in *Director-General of Conservation v Whangarei District Council* [2021] NZEnvC 17 stated that the value of the matter that is being sought to be protected is a relevant issue when considering whether a submission is “on” the plan change.

From: Guy Smith <guy.smith@uhcc.govt.nz>
Sent: 17 May 2022 13:53
To: David Randal <david.randal@buddlefindlay.com>
Subject: FW: Buddle Findlay advice on Silverstream Spur

Can you have a look and give me a further call?

I really want the answer to be: it’s fine.

From: Emily Thomson <Emily.Thomson@uhcc.govt.nz>
Sent: Tuesday, 17 May 2022 10:57 am
To: Guy Smith <guy.smith@uhcc.govt.nz>
Subject: RE: Buddle Findlay advice on Silverstream Spur

Yes after 1.30

From: Guy Smith <guy.smith@uhcc.govt.nz>
Sent: Tuesday, 17 May 2022 10:45 am
To: Emily Thomson <Emily.Thomson@uhcc.govt.nz>
Subject: RE: Buddle Findlay advice on Silverstream Spur

Hey sorry just on a call until 11, and then another one at 11:30 😊

You around this arvo?

From: Emily Thomson <Emily.Thomson@uhcc.govt.nz>

Sent: Tuesday, 17 May 2022 10:34 am

To: Guy Smith <guy.smith@uhcc.govt.nz>

Subject: RE: Buddle Findlay advice on Silverstream Spur

Hi,

Currently free until 11am (working from home today)

The situation is summed up quite nicely in the Draft Section 42A report on this topic (extract below)

“Topic 1: Silverstream Spur Requested Zoning

Matters raised by submitters

A strong theme among the submissions received on the proposed plan change was the decision sought that the Silverstream Spur should be zoned as Natural Open Space. Out of the 27 submissions received during the notification period for Plan Change 49, 12 of those submissions were requesting the spur be rezoned to Natural Open Space or a similar zoning.

During the further submission stage 47 further submissions were received that supported the submission points raised requesting that the spur site be zoned as Natural Open Space.

The reasons provided for zoning the spur as Natural Open Space include:

- The Spur is of ecological importance being utilised for wildlife migration and as a bird corridor, providing an important linkage between other green spaces in the area. Council should focus on enhancing native flora and fauna on the spur.
- The Spur should not be developed for any residential purposes and should be used for conservation and recreation purposes exclusively.
- The Spur defines the entry to Upper Hutt and is an iconic landscape that should be protected and maintained.
- The Spur was originally purchased for the purpose of reserve land and Council should give effect to that original intent.

One further submission was received from Guildford Timber Company (GTC) who supported in part the request to zone the spur as Natural Open Space, but sought that provision is made for a roading corridor through the spur site to allow for access to the area of land referred to as the Southern Growth Area.

Analysis

The Silverstream Spur is a 35-hectare site in the south-west of Upper Hutt which is owned by Upper Hutt City Council, being purchased in 1989. Under the Operative District Plan, the spur site is split zoned between General Rural and Residential Conservation. The notified plan change did not make any changes to the current zoning of the site.

The spur site itself was subject to a Memorandum of Understanding (MoU) between Upper Hutt City Council and Guildford Timber Company, with the intention that the spur site would be swapped with land under the Guildford ownership, which would be used for recreation purposes.

The reason for the proposed swap was based on the strategic importance that the Spur site holds in unlocking the growth potential of the Southern Growth Area (land owned by Guildford Timber Company). The Southern Growth Area is identified within the Upper Hutt Land Use Strategy (2016) as the main location for new growth within the next 10-30 years. The Land Use Strategy also highlights the Spur as key to providing access to the Southern Growth Area. The Southern Growth Area is also included in the Wellington Regional Growth Framework (2021) as an identified Future Urban Area.

The notified plan change did not propose inclusion of the Spur due to the significant amount of uncertainty over the future use of the land. Firstly, the MOU with GTC was in effect, so the land was intended to eventually be utilised for a range of different land uses once swapped or sold to Guildford Timber Company. Considering the approach of avoiding private land as open space, with the uncertainty over the future of the site's ownership, a zoning change was not considered appropriate. Furthermore, with other work being undertaken by Council, including on the residential and rural plan change (Plan Change 50), there were other relevant plan changes which could review the

zoning of the spur over the following years. Therefore, the approach of leaving the spur out of scope of the notified plan change was well reasoned.

However, since the notification of Plan Change 49 the situation regarding the Spur has changed. Of most significance is the conclusion of the MoU. During an Extraordinary Council Meeting on the 22nd September 2021 Councillors agreed to conclude the MoU with GTC. Therefore, there is now greater certainty that Council will not sell or swap the spur land with GTC, and that it will remain in public ownership.

Furthermore, Council supported an Expression of Interest application to the Governments Infrastructure Acceleration Fund. The application is for a road/infrastructure corridor on the Spur site which will enable access to the Southern Growth Area. The Expression of Interest was not successful but the proposal to retain the majority of the spur land in public ownership while enabling a road through it has Council support in principle.

Now that there is now a better understanding on the future ownership and likely development on the Spur, the scope decision can now be revisited especially as there have been many submissions and further submissions seeking the spur be rezoned in this plan change.

The options that there is scope to consider, based on the notified proposal and the submissions received on the site, are restricted to those below:

- Retain the Silverstream Spur site as out of scope of Plan Change 49
- Rezone the Silverstream Spur as Natural Open Space
- Rezone the Silverstream Spur as Natural Open Space and introduce provisions to allow for a road corridor with associated infrastructure through the spur.

It is clear from the number of submissions and further submissions received that the community feel strongly about the protection of the spur from future development. There has been no evidence provided by any of the submitters in support of the claims that the site has significant ecological or landscape value, but I do note that parts of the site have been identified in the proposed Significant Natural Area (SNA) plan change as meeting the threshold for SNA. The importance of the Southern Growth Area in terms of delivering greenfield development for Upper Hutt, something which is recognised within local and regional strategies and plans, cannot be ignored. The delivery of development on the Southern Growth Area is still intrinsically linked with the access through the Silverstream Spur site.

Understanding the likely future use of the site will be focused on a roading corridor and associated infrastructure to access the Guildford owned land, any zoning of Natural Open Space would make a consenting pathway for such development difficult to achieve. The proposed provisions for the Natural Open Space zone are focused on maintaining and protecting the natural character of the zone whilst allowing for activities and development of a suitable scale and aligned with the purpose of the zone. Therefore, if the simple rezoning approach was taken this would not be recognising that the spur has been identified as an area where a roading corridor will be provided. Therefore, I do not believe the rezoning approach without looking at suitable provisions is suitable.

Overall, I recommend accepting the request to zone the site as Natural Open Space is appropriate, based on the certainty that the site is intended to remain in public ownership, will not be sold or swapped, and is not proposed to residential development. Therefore, a change of the underlying zoning to reflect the natural character and public ownership of the site is also considered acceptable.

However, I also recommend accepting the further submission from Guildford Timbre Company. The importance of the spur as an access providing link with the southern growth area cannot be ignored, and whilst the rezoning of the spur is appropriate, the introduction of provisions to allow for the necessary infrastructure to provide access is also considered necessary.

These provisions will focus on ensuring that there is a viable pathway for the construction of a road corridor on the spur site whilst also ensuring the underlying zoning and the natural character of the site are recognised and provided for.

Due to the site-specific nature of these provisions, I propose that introducing a precinct on the spur site with an associated provisions framework is the best approach in this instance. The proposed precinct does not need to encompass the entire spur site as there is an initial indication of where the proposed roading corridor will be located. Therefore, the proposed precinct will encompass the area with a broader boundary to allow for any future alterations to the corridor which may deviate from the current proposed indicated corridor.

Recommended decision

That the submission from Jonathan Board [S3.1] for the reasons provided above is **accepted in part**

That the submission from Doug Fauchelle [S4.1] for the reasons provided above is **accepted in part**

That the submission from Graham Bellamy [S1.1] for the reasons provided above is **accepted in part**

That the submission from Sean Kusel [S6.1] for the reasons provided above is **accepted in part**

That the submission from Cameron Seay [S7.1] for the reasons provided above is **accepted in part**

That the submission from Tony Chad [S13.1] for the reasons provided above is **accepted in part**

That the submission from Save Our Hills [S14.1] for the reasons provided above is **accepted in part**

That the submission from Silver Stream Railway [S27.1] for the reasons provided above is **accepted in part**

That the submission from Forest and Bird [S23.6] for the reasons provided above is **accepted in part**

That the submission from Mary Beth Taylor [S10.4] for the reasons provided above is **accepted in part**

That the submission from Abbie Spears [S17.3] for the reasons provided above is **accepted in part**

That the further submission from Duncan Stuart [FS1] is **accepted in part**

That the further submission from Graham Bellamy [FS2] is **accepted in part**

That the further submission from Peter Ross [FS3] is **accepted in part**

That the further submission from Pat van Berkel [FS5] is **accepted in part**

That the further submission from John D O'Malley [FS6] is **accepted in part**

That the further submission from Mary Beth Taylor [FS8] is **accepted in part.**

That the further submission from Kylee Evana Taramai [FS9] is **accepted in part**

That the further submission from Beatrice Serrao [FS10] is **accepted in part**

That the further submission from Tony Chad [FS12] is **accepted in part**

That the further submission from Silver Stream Railway [FS13] is **accepted in part**

That the further submission from Save Our Hills [FS14] is **accepted in part**

That the further submission from Shelley Dixon [FS15] is **accepted in part**

That the further submission from Patricia Duncan [FS16] is **accepted in part**

That the further submission from Craig Thorn [FS17] is **accepted in part**

That the further submission from Michelle Browning [FS18] is **accepted in part**

That the further submission from Dominic Baron [FS19] is **accepted in part**

That the further submission from Darryl Longstaffe [FS20] is **accepted in part**

That the further submission from Natasha Colbourne [FS21] is **accepted in part**

That the further submission from Pinehaven Progressive Association [FS22] is **accepted in part**

That the further submission from Stephen Pattinson [FS23] is **accepted in part**

That the further submission from Guildford Timbre Company [FS24] is **accepted.**

That the further submission from Doug Drinkwater [FS25] is **accepted in part**

That the further submission from Janice Carey [FS26] is **accepted in part**

That the further submission from Anthony Carey [FS27] is **accepted in part**

That the further submission from Leonie Belmont [FS28] is **accepted in part**

That the further submission from Marion Rough [FS29] is **accepted in part**

That the further submission from Sandra E Kenny [FS30] is **accepted in part**

That the further submission from Douglas William Dunn [FS31] is **accepted in part**

That the further submission from Colin Buckettt [FS32] is **accepted in part**

That the further submission from Jason Durry [FS33] is **accepted in part**

That the further submission from Benjamin Michael Jones [FS34] is **rejected**

That the further submission from Gerry Bealing [FS35] is **accepted in part**

That the further submission from Caleb Scott [FS36] is **rejected**

That the further submission from Rhys Lloyd [FS37] is **rejected**

That the further submission from Nadine Ebbett [FS38] is **rejected**

That the further submission from Katelin Hardgrave [FS39] is **rejected**

That the further submission from Tommy Mortimer [FS40] is **rejected**

That the further submission from Jennifer Durry [FS41] is **rejected**

That the further submission from John Durry [FS42] is **accepted in part**

That the further submission from Trevor Richardson [FS43] is **accepted in part**

That the further submission from David Grant-Taylor [FS44] is **accepted in part**

That the further submission from Nick Moylan [FS45] is **accepted in part**

That the further submission from Fraser Robertson [FS46] is **rejected**

That the further submission from Ian price [FS47] is **accepted in part**

That the further submission from Sue Pattinson [FS48] is **accepted in part**

That the further submissions from James Hill [FS49] is **accepted in part**

Recommended amendments

New	NOSZ Precinct 1 – Silverstream Spur
New objective	<p>NOSZ-PREC1-O1:</p> <p>The natural character and amenity of the Silverstream Spur is maintained and protected whilst recognising the strategic importance of the site for the accessibility of the Southern Growth Area.</p>
New Policy	<p>NOSZ-PREC1-P1</p> <p>Provide for a road corridor and associated infrastructure on the Silverstream Spur that provides access to the land identified as the Southern Growth Area within the Land Use Strategy whilst maintaining the natural character and amenity values of the site.</p>
New Rule	<p>NOSZ-PREC1-R1</p> <p>Establishment of a road corridor and associated infrastructure on the Silverstream Spur</p>

Section 32AA evaluation

Effectiveness and efficiency

The recommended rezoning and precinct introduction are an effective way of recognising the indicated future purpose and public owned nature of the Silverstream Spur site, whilst acknowledging that the spur site is linked with the Southern Growth Area and is important to providing access to the growth area.

The underlying zoning will protect any natural character of the spur site and provides greater certainty to the community over the ownership and any likely development to occur on the spur. The use of a precinct is an effective and efficient way of ensuring that the very specific future use of the site can be considered, and effects managed. As discussed in the above assessment, the approach of rezoning the spur as Natural Open Space in general does not align with the known intended use of the spur as a roading corridor, based on the purpose and provisions for that zone. A precinct and the proposed provisions for the precinct are effective and efficient at managing the effects of known development with the proposed underlying zoning.

Other reasonably practicable options

The assessment above does provide some consideration of the different options available with regards to the site. Retaining the out-of-scope decision of the notified plan change no longer seems appropriate, as the uncertainty over the future ownership and utilisation of the site has been removed. Furthermore, it is clear from the number of submissions and further submissions received on the zoning of the site that there is a strong feeling amongst the community that they would like the site to be zoned as Natural Open Space. Therefore, I no longer believe leaving the spur as out of scope is the most practical option, as this plan change offers the opportunity to consider the zoning of the site.

However, I do not believe that the most practical option is to simply rezone the spur as Natural Open Space as requested by the submitters. This approach would be ignoring the well-established recognition that the spur is important in providing access to the Southern Growth Area, and that there is an application for a roading corridor on the site currently being submitted to the Infrastructure Acceleration Fund.

Another valid option would be the introduction of provisions relating to roading infrastructure into the Natural Open Space Zone rather than using a precinct approach. However, as the provisions will only be applicable to the spur site, it seems more effective to use the spatial approach through a precinct for the site.

Cost and benefits

The benefits of the change of the spur zoning included environmental benefits for the site due to the underlying zoning containing provisions which are focused on the protecting and maintain natural character. The zoning also prevents large scale development, such that the landscape character and visual amenity of the spur will be protected.

Social benefits of the proposed zoning change include providing certainty to the community that an area of land which is clearly valued by Upper Hutt residents will be zoned in line with community aspirations. There will also be wider social and economic benefits by introducing provisions which will ensure access through the spur to the southern growth area can still be achieved, which will allow for housing development and the associated positive social and economic effects of this.

I do not consider that the proposed amendment will result in substantive additional costs. Whilst a change of zoning for the spur to Natural Open Space will mean that the development potential of the spur is limited, based on the direction that Council has indicated for the spur, the overall effect is limited.

Risks of acting or not acting

I do not consider that there is a large risk of not acting, as the spur site is owned by Council and there are other plan changes which could consider the zoning of the site if this plan change does not rezone the spur.

The small risk of acting could include restricting the ability to provide for a road on the spur, a proposal that Council has supported through the Infrastructure Acceleration Fund, by a change of the underlying zone. However, the proposed precinct provisions consider and address this risk."

From: Guy Smith <guy.smith@uhcc.govt.nz>

Sent: Tuesday, 17 May 2022 10:11 am

To: Emily Thomson <Emily.Thomson@uhcc.govt.nz>
Subject: FW: Buddle Findlay advice on Silverstream Spur

Further to our earlier chat I need to go back to 7(2)(a) on the below.

Drop me a line when free?

G

From: 7(2)(a)
Sent: Thursday, 28 April 2022 7:45 am
To: Guy Smith <guy.smith@uhcc.govt.nz>; Forest & Bird, Upper Hutt Branch <UpperHutt.Branch@forestandbird.org.nz>; Pinehaven Hills <helpsaveourhills@gmail.com>
Subject: Re: Buddle Findlay advice on Silverstream Spur

Hello Guy

Thank you for sending that through.

Interestingly it states repeatedly in the contents that PC49 is the correct vehicle for deciding the zoning of the Spur, we assume from this that BF were not provided the brief which deemed the Spur was “out of scope” of PC49? Obviously with the number of submissions and petition signatures submitted on the issue it seems likely that there will be some scope in the plan change to make some decisions? Another action that came from our meeting in December was for the question of why the Spur was deemed out of scope of PC49 which to be investigated and reported back more thoroughly to the group. We were wondering how this was progressing?

As it looks like I provided most of the background information for this legal opinion, it would be appreciated if you could forward on any information that UHCC directly contributed towards it, in particular the documents referred to in Paragraph 16 and the 48 and 59 (a) in particular the “number of other historical documents which indicate the council saw potential for other uses, including residential development”.

Many thanks

7(2)(a)

From: [Guy Smith](#)
Sent: Friday, April 22, 2022 4:28 PM
To: 7(2)(a) ; [Forest & Bird, Upper Hutt Branch](#) ; [Pinehaven Hills](#)
Subject: Buddle Findlay advice on Silverstream Spur

Good afternoon all,

Hope you all got a good break in over Easter. Apologies that this has been delayed in delivery a couple of additional days due to me taking some time off this week for the school hols.

Please find attached, strictly on a **without prejudice, confidential and without waiver of privilege** basis, the opinion of Buddle Findlay on the questions we posed them about the Silverstream Spur.

I hope you find it interesting and thorough, as I did. I'm happy to discuss it further of course and look forward to any comments your peer reviewer might have.

Regards,

Guy.

Guy Smith
General Counsel



Te Kaunihera o Te Awa Kairangi ki Uta | Upper Hutt City Council

[838 - 842](tel:838-842) Fergusson Drive, Private Bag 907, Upper Hutt 5140, New Zealand

DDI: [+64 4 527 2147](tel:+6445272147) | Mobile: [+64 21 392 142](tel:+6421392142)

Īmēra: guy.smith@uhcc.govt.nz | Pae Tukutuku: www.upperhuttcity.com

The contents of this email is confidential to Upper Hutt City Council and may be legally privileged. If you are not the intended recipient please notify the sender immediately and do not send this email on to anyone else without the consent of the author.

The information contained in this email and any attachments is confidential and intended for the named recipients only. If you are not the intended recipient, please notify the sender immediately and delete this email. Upper Hutt City Council accepts no responsibility for changes made to this email or to any attachments after it has been sent.

This email (including any attachments) is confidential and contains information which may be subject to legal privilege. If you have received this email in error, you may not read, use, copy, or distribute any part of it or disclose its content or existence. Please notify the sender immediately and delete all copies of this email, including any attachments, from your system.
