
IN THE MATTER OF WESTERN LEA LIMITED and hearing
pursuant to Section 100 of the Resource
Management Act 1991

AND JOHNSON FAMILY TRUST (Submitter
45).

1.0 INTRODUCTION:

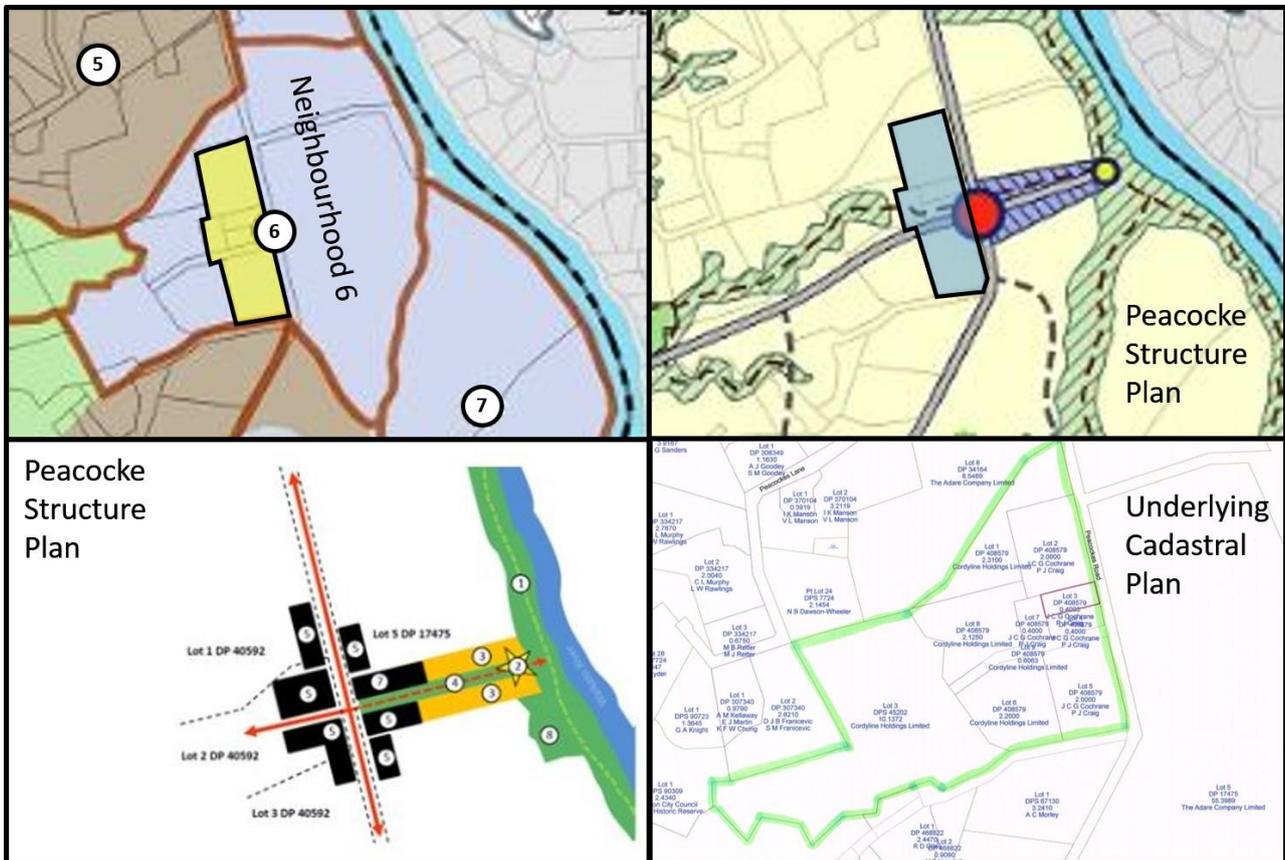
- 1.0.1 My name is Peter Rex Skilton. I hold a bachelor of Resource and Environmental Planning (Hons) from Massey University. I have approximately 24 years post graduate experience in resource management related employment.
- 1.0.2 My experience is based in both public and private spheres, involving:
- (a) Preparation and processing of resource consent applications
 - (b) District plan review and development
 - (c) Presentation of specialist evidence in Environment Court proceedings
- 1.0.3 I have been involved in the preparation of numerous resource consent applications under the current Hamilton District Plan. I also have extensive experience in the interpretation and application of many other District and Regional Plans throughout New Zealand.
- 1.0.4 I have represented the Johnson Family Trust in relation to their Peacockes Road land for a number of years, including the preparation of subdivision consent applications to Hamilton City Council and representation in Environment Court proceedings in relation to subdivision applications, Variation 14 to the previous Hamilton City Proposed District Plan and submissions to the current Operative Hamilton City District Plan.
- 1.0.5 My evidence has been prepared in compliance with the provisions of the Environment Court practice note for the code of conduct for expert witnesses, in recognition that I am an expert witness for the submission of the Johnson Family Trust.
- 1.0.6 In preparing my evidence I have not omitted to consider any material facts known to me which might alter or detract from the opinions that I express.

2.0 SUBMITTER LAND:

2.0.1 Johnson Family Trust (“The Trust”) have an interest in 5.2 hectares of land at Peacockes Road.

2.0.2 The land is:

- comprised in one existing record of title containing 5 allotments.
- located within Neighbourhood 6 of the Peacocke Structure Plan.
- identified as forming part of the future Peacocke Suburban Centre.



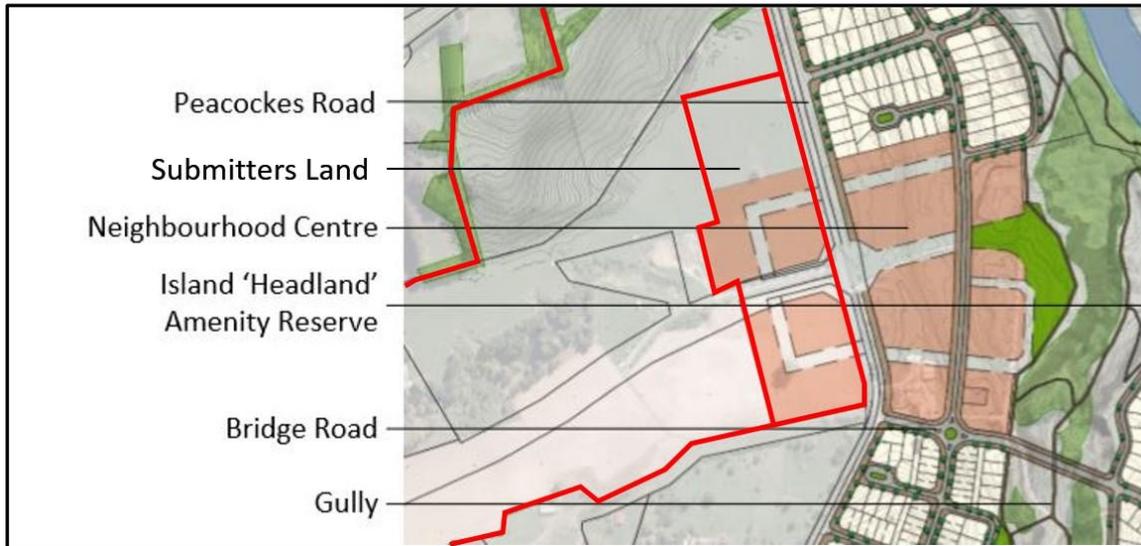
3.0 SUBMISSION POINTS:

3.0.1 The Trust’s submission opposes those parts of the resource consent application which specifically relate to the suburban centre identified on the Peacockes Structure Plan and in particular the master plan which has been submitted for approval.

3.0.2 The key reasons for this are:

- The master plan acts to pre-empt decisions on future land use activities and zoning;
- The configuration of the subdivision layout will dictate the extent and pattern of land use associated with the Suburban Centre without reference to the most appropriate outcomes for neighbourhood 6 or the Peacockes area as a whole;
- Part of the Trust’s land has been identified on the master plan without any prior consultation or agreement;
- The application fails to provide any analysis to support the size, configuration or location of the suburban centre identified on the master plan;
- The outcomes and development opportunity that will result from approval of the master plan are considered by the Trust to be contrary to the achievement of some of the District Plan objectives and policies.

Master Plan Submitted with Resource Consent Application (Suburban Centre Extent = Peach Colour)



3.0.3 The key concern of the Trust is the identification of the extent of the suburban centre on both their land and the Western Lea land and also the definition of a roading network on the Trust's land which goes beyond that identified by the Peacocke Structure Plan.

4.0 SECTION 42A REPORT

4.0.1 The Section 42A report identifies that the applicant is seeking land use and subdivision consents from HCC. This includes approval sought for a master plan resource consent.

4.0.2 Attachment 4 of the Section 42A report only includes a resolution for approval of the subdivision and recommended subdivision consent conditions.

4.0.3 The Section 42A report is silent on a recommended decision for the land use (master plan) component of the application.

4.0.4 This creates significant confusion as to the status of the master plan land use application and the extent to which the master plan could be relied on for future development proposals, particularly those relating to the development of the Suburban Centre.

- 4.0.5 This creates a number of issues for the Trust, particularly:
- (a) Approval of the subdivision as recommended, could also be taken by default to represent approval of the master plan.
 - (b) If the master plan is approved in this manner then resource consent application for commercial activities (including office and retail activities) could be lodged at any time for the approved super lots as a discretionary activity under Rule 5.3.3.3 of the District Plan (this is regardless of whether or not the activities proposed form part of or are inconsistent with the Master Plan).
 - (c) The ability to lodge resource consent in this manner would negate any ability for the Trust to be intimately involved in the determination of the nature, site, configuration and make up of the suburban centre.
 - (d) The Trust could be removed from any involvement in the resource consent applications as an affected party on the basis of it being taken to be a trade competitor.

4.0.6 It is important to the interests of the Trust that any decision made in relation to the application makes a specific determination on whether or not the Master Plan submitted is approved or not by Council.

4.0.7 It is the preferred approach of the Trust that any decision made declines to approve the Master Plan (as it relates to neighbourhood 6). This would ensure that Column A of Rule 5.3.3.3 would apply to any future development proposals for commercial activities as a non-complying activity.

4.1 Objectives and Policies

4.1.1 The conclusion of the reporting planner is that the resource consent applications (land use and subdivision) passes the threshold test of Section 104D of the Resource Management Act 1991.

4.1.2 In relation to the objectives and policies relevant to the suburban centre this conclusion is reached solely on adoption of the applicant’s assessment as set out in their AEE.

4.1.3 I disagree with this conclusion. It is my opinion that the extent and location of the suburban centre identified on the master plan is contrary to the achievement of the following policies:

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| Policy 5.2.8b | Ensure the appropriate nature, scale and intensity of urban development is undertaken in an efficient and coordinated manner in order that integrated and efficient development occurs within and between the neighbourhoods and the City as a whole. |
| | <u>Applicant AEE Policy Assessment</u> <i>Master planning and the subdivision proposal is for a range of compatible residential activities, plus neighbourhood scale commercial activities in the centre. Staging will also provide for an efficient roll-out of the development so as to limit construction effects at any one time, gradually melding the new development in with existing.</i> |
| Policy 5.2.8c | Ensure that development is consistent with the Peacocke Structure Plan and any master plan prepared for the area. |
| | <u>Applicant AEE Policy Assessment</u> <i>The master plan prepared for this application will guide development.</i> |
| Policy 5.2.8d | Ensure that development of non-residential activities are located in areas identified in the Peacocke Structure Plan or any approved master plan that provides for such activities. |
| | <u>Applicant AEE Policy Assessment</u> <i>The neighbourhood centre is located as anticipated by the structure plan</i> |

4.1.4 The reasons for my disagreement are:

- (a) The master plan and its associated urban design assessment fails to take into account the whole of neighbourhood 6, including the Trust’s land. As such approval of the master plan cannot ensure the efficient or coordinated development of the suburban centre, except where it solely relates to the applicant’s land.
- (b) References throughout the application documents is made to a “neighbourhood centre” and “neighbourhood scale commercial activities”. The structure plan however clearly identifies a suburban centre in this location to serve the whole of the Peacockes structure plan area and not a neighbourhood centre which is designed to serve the Weston Lea subdivision only. On this basis the master plan is not consistent with the Peacocke Structure Plan.
- (c) The master plan and its associated urban design assessment, while acknowledging that the suburban centre is intended to straddle Peacockes Road, does not apply, in any legal sense, to the Trust’s land and as such it is not consistent with the Peacocke Structure Plan.
- (d) The master plan, through excluding consideration of the balance of Neighbourhood 6 and the Trust’s land cannot be said to ensure that the development of the Suburban Centre will occur in areas identified on the Peacocke Structure Plan. Instead approval of the Master Plan will achieve

the opposite by enshrining the extent of the suburban centre to the Weston Lea land only. This is contrary to ensuring that:

- (i) Urban development occurs in an efficient and coordinated manner; and
- (ii) Integrated and efficient development occurs within neighbourhoods; and
- (iii) Development of non-residential uses are located in areas identified by the Peacocke Structure Plan.

4.1.5 On this basis it is my opinion that the Master Plan, as it relates to the suburban centre is contrary to achievement of the relevant policies and as such the threshold test of Section 104D is not met. The resource consents for the subdivision / development of Neighbourhood 6 should not be granted on this basis.

4.1 District Plan Rules

District Plan Changes

4.2.1 The reporting planner advises on Pg 11 of the Section 42A report that Council resolved 6 months ago to remove master plan provisions from the District Plan and to provide a more detailed structure plan to achieve the desired planning outcomes for the Peacockes area.

4.2.2 Because of this it would seem to be pre-emptive to approve the Weston Lea master plan, particularly in relation to Neighbourhood 6, when Council clearly sees the need to be more detailed in its structure planning approach for this area.

Default Activity Status

4.2.3 I disagree with the reporting planner that Section 87B(1)(b) of the Resource Management Act 1991 should be applied to assign a discretionary activity status to the master plan application because there is no “*prescribed default activity status in the District Plan*” for an application which does not provide a master plan for a whole neighbourhood.

4.2.4 Rule 1.1.8.1 of the District Plan is clear that where an activity status is not identified in the applicable zone chapter or other listed chapters of the District Plan then a non-complying activity status applies.

4.2.5 Rule 5.3.3.1 prescribes a master plan must be prepared for the whole neighbourhood. Where this occurs rule 5.3.3.2(d) requires resource consent for a discretionary activity.

4.2.6 Because the application fails to apply to all of neighbourhood 6 the discretionary activity status cannot be relied on for the master plan and non-complying activity becomes the default status under Rule 1.1.8.1.

4.2.7 In addition to this Rule 3.4.6.1(d) also assigns a non-complying activity status to the applications because the development proposed on Weston Lea land is located outside of the Stage 1 area of the Peacockes Structure Plan. In this sense the District Plan defines development to include “*any activity undertaken to change the scale, character or intensity of any use of land...*”

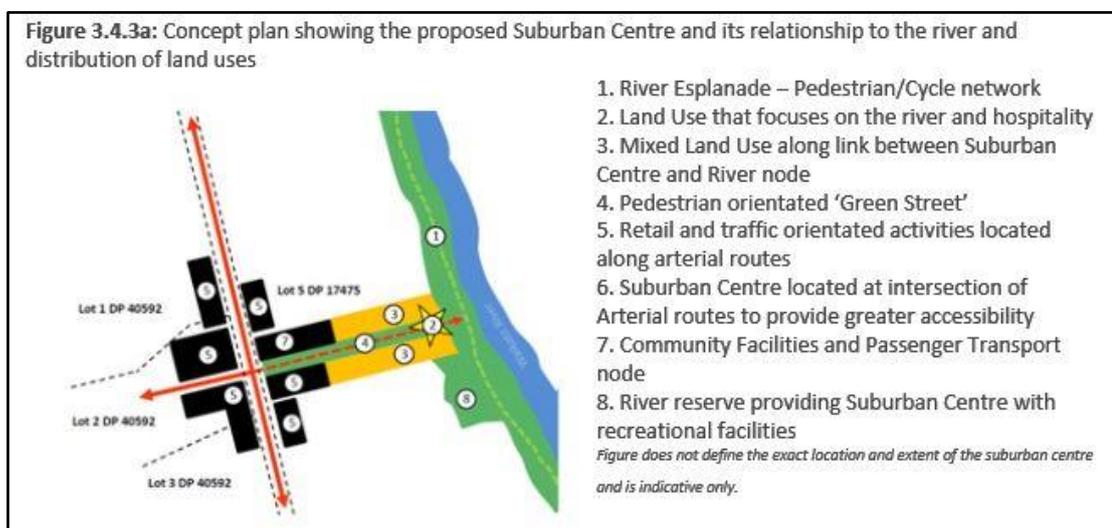
4.2.8 This is an important distinction, because it means that the threshold test of Section 104D more clearly applies to assessment of the objectives and policies relevant to the suburban centre, which in my opinion the applications lodged are contrary to.

Neighbourhood Approach

4.2.9 The reporting planner identifies her opinion that the District Plan “does not expressly state why a master plan must cover the whole neighbourhood”(Pg 58). Her expressed opinion is that “the scale of the development area is consistent with achieving an integrated planning approach”

4.2.10 I disagree with these statements, particularly in relation to Neighbourhood 6 and the suburban centre where Section 3.4.3.3(a)(i) and (ii) of the Peacocke Structure Plan states:

“the suburban centre will be the location for a public library, schools, public transport centre and the focus for the majority of commercial activities within Peacocke. It should be the location for a secondary school, should one be required to serve the Peacocke area. The suburban Centre is a street-based, mixed use centre, based around attractive and well functioning public open space and containing a mix of land uses and facilities that would be expected within a conventional suburban centre (Refer 3.4.3a)”



“the Suburban Centre’s indicative location on a transport route junction will ensure it is easily accessible to the entire growth cell. The size and configuration of the Suburban Centre will be determined in more detail once a retail needs analysis for Peacocke has been developed”

4.2.11 In addition to this the following objectives and policies provide the basis for the neighbourhood concept

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| <i>Objective 3.4.1.12</i> | <i>Develop the neighbourhood as the building block of the area.</i> |
| <i>Policy 3.4.1.12a</i> | <i>Establish an integrated network of neighbourhoods, each distinctive and each with its core and sense of place.</i> |
| <i>Policy 3.4.1.12b</i> | <i>Focus neighbourhoods around parks, schools, centres and main streets</i> |
| <i>Policy 5.2.8b</i> | <i>Ensure the appropriate nature, scale and intensity of urban development is undertaken in an efficient and coordinated manner in order that integrated and efficient development occurs within and between neighbourhoods and the city as a whole.</i> |

4.2.12 The neighbourhood concept was derived through plan change processes that were subject to intensive submission and environment court proceedings. Both applicants and the Trust were active participants over a number of years in these processes. The time for expressing discontent or irrelevance of the neighbourhood approach was through this process.

- 4.2.13 In my opinion it is inappropriate to use the resource consent process as a means to override settled and previously acceptable planning provisions and approaches in order to support the development of land in the interests of one landowner to the detriment of others.
- 4.2.14 The neighbourhood approach to development of Peacockes provides a means by which smaller landowners with little clout could provide for the urbanisation of their land in a coordinated and integrated manner to the betterment of Peacockes as a whole. The approach of the applicant overrides this with respect to Neighbourhood 6.
- 4.2.15 Because of this, it is my opinion that the District Plan is clear on why a master plan should cover the whole of a defined neighbourhood. The interests of individual landowners is provided for by the ability of a master plan to be developed in stages.

Suburban Centre

- 4.2.16 The reporting planner identifies she:

Is "... satisfied that the size of the "super lots" (approx. 6.6 hectares) can more than adequately accommodate the range of activities anticipated in the future suburban centre within the Amberfield site." (Pg 59); and

Does not consider "the illustrative concepts provided by the applicant for the suburban centre within the Amberfield site ... predetermines the outcomes of any future land use consents that will be required for the development of this area" (Pg 59).

- 4.2.17 No factual basis is provided to support these comments.
- 4.2.18 The District Plan is clear that the size and configuration of the suburban centre can only be determined once a retail needs assessment has been undertaken. No such assessment has been provided with the resource consent application. Instead the application relies on an urban design assessment and illustrative concepts, all of which exclude consideration of the Trusts land and remaining land within Neighbourhood 6.
- 4.2.19 No analysis has been provided as to why the Weston Lea land is to include the majority of the suburban centre as distinct from other land within Neighbourhood 6. I consider that if all of the neighbourhood 6 land was considered, as anticipated by the District Plan, that the configuration of the suburban centre could be substantially different. Particularly taking into account the intent of the structure plan for the centre to be accessible from the other neighbourhoods
- 4.2.20 My concern is that the Master Plan as submitted, if approved will act to predetermine where the bulk of the suburban centre is to be located. The master plan will be relied on to guide any subsequent discretionary activity resource consent application. The Trust's land by comparison will have no master plan to rely on and any resource consent application they may wish to make would be a non-complying activity.
- 4.2.21 The fact that no retail needs assessment has been completed, and that the master plan excludes other areas of Neighbourhood 6 means that there is no basis for identifying the extent and configuration of the suburban centre now. This supports removal of Neighbourhood 6 from the master plan.
- 4.2.22 It is my opinion that it would be prejudicial to the other landowners in Neighbourhood 6 to grant consent to a master plan which includes only part of the land within this neighbourhood.

5.0 APPLICANTS EVIDENCE

- 5.0.1 I have read the evidence of Mr Inger and Mr Serjeant which contain text relevant to the Trust's submission.
- 5.0.2 I note that both of these experts consider that a co-ordinated and co-operative approach to planning the suburban centre between landowners on opposite sides of Peacockes Road would be a good approach.
- 5.0.3 I agree with these sentiments, however the time for being co-ordinated and co-operative is at the master plan stage for Neighbourhood 6 and not as part of future resource consents.
- 5.0.4 The applicant has deliberately excluded the Trust from the master planning process of their own neighbourhood and to my knowledge have not sought to consult with the Trust regarding their resource consent applications. This approach has served to undermine the interests of the Trust in the suburban centre and to create a feeling of mistrust toward the applicant.
- 5.0.5 In my opinion this can only be rectified through removal of Neighbourhood 6 from the resource consent applications and the associated master plan or through physical incorporation of all of the Trust's land into the Master Plan.

6.0 RELIEF SOUGHT

- 6.0.1 The Trust seeks that any decision made by the hearings committee includes a decision on the Master Plan application.
- 6.0.2 The relief sought by the Trust is that either:
- (a) The resource consents (land use and subdivision) be declined insofar as they relate to Neighbourhood 6; or
 - (b) That the Master Plan be amended to physically include the include all of the Trust's land into the Master Plan resource consent as suburban centre and that this be formally recognised by any decision made by the Hearings Committee.

Peter Skilton
Planning Consultant