

11 October 2011

Brookfields

LAWYERS

Horowhenua District Council
Private Bag 4002
LEVIN

ATTENTION: David McCorkindale

Travel & Tourism House
Level 9, 79 Boulcott Street
Wellington, New Zealand
PO Box 25 306
Panama Street
Wellington 6146
Telephone: +64 4 499 9824
Facsimile: +64 4 499 9822
email: law@brookfields.co.nz
http://www.brookfields.co.nz

Dear David

PLAN CHANGE 22

Subsequent to the notification of Plan Change 22 a peer review of the assessment of ONFL's has been undertaken.

A number of changes to the ONFL's has been recommended through that review process and the issue which consequently arises, is whether or not the Hearing Committee has jurisdiction to implement the recommendations made.

An analysis of the changes proposed together with the submissions which have been filed relevant to those changes has been prepared and is to be included in the Section 42A report being prepared by Mr Paul Thomas.

That analysis establishes that in the majority of cases the extent of the ONFL's has been reduced. Clearly, in relation to those proposed changes, jurisdictional issues do not arise either because there are supporting submissions or the relevant planning framework is of a lesser impact so far as a landowner is concerned.

In four cases additional land is proposed to be included.

In relation to the combined Lake Horowhenua and Moutere ONFL in our view there is no jurisdiction available for this suggested change having regard to what was proposed and the submissions filed. This recommendation needs to be put to one side for the purpose of this process.

However, so far as the remaining three changes where a spatially expanded area is proposed (ie coastal foredunes, Manawatu Estuary and Waiwiri Stream), there are submissions which appear to give scope to consider what is recommended.

Those submissions will need to be considered with some care by the Hearing Committee and if there is any doubt concerning the scope which those submissions provide, consideration of the appropriate planning framework may nonetheless resolve any issues in this respect having regard

31346682:612294

International Affiliations

Globalaw: a worldwide network providing an international resource - www.globalaw.net

Brookfields

LAWYERS

to what was initially proposed and changes in contemplation/recommended or sought in submissions by submitters.

We take the view that in these cases any such outcome is properly a matter for discussion by planners/witnesses/legal advisors within the hearings process and is for the ultimate determination of the Hearing Committee rather than being a threshold jurisdictional issue which can be the subject of legal advice at this point.

Should there be any doubt regarding the availability of jurisdiction following a case by case assessment through the hearings process we recommend that further advice be sought to assist at that time.

In the preparation of this letter we have not provided advice concerning how to determine the availability of jurisdiction as a matter of law. Given the experience of the Hearing Committee and the advisors to this process we think that unnecessary but again are available to assist as required.

Yours sincerely



Andrew Cameron
Consultant

Direct dial: +64 4 499 9824
email: cameron@brookfields.co.nz