

Report / Decision on a Resource Consent Application

(Sections 95A, 95B and 104 / 104B)

Application number: RMA/2023/133
Applicant: A and D Kosir
Site address: 44 Kahurangi Road, Halswell
Legal description: Lot 14 DP 571567
Zone:
District Plan: Residential Suburban
Proposed Plan Change 14: Medium Density Residential
Overlays and map notations:
District Plan: Water body setback (Upstream)
Outline Development Plan
Liquefaction Management Area (LMA)
Proposed Plan Change 14: Sunlight Access
Water body Setback
Activity status: Restricted Discretionary
Application: Construction of a residential dwelling with attached garage

Proposed activity

The key aspects of the proposal are:

- 4 bedroom, 2 bathroom single level dwelling with attached garage
- The driveway requires 2.9m³ of earthworks beyond the building platform.
- The applicant has removed the raised garden planter boxes from the waterway setback and the easement area and has reduced the patio. The final set of plans were received 25th July 2023.

Description of site and existing environment

The application site and surrounding environment are detailed below:

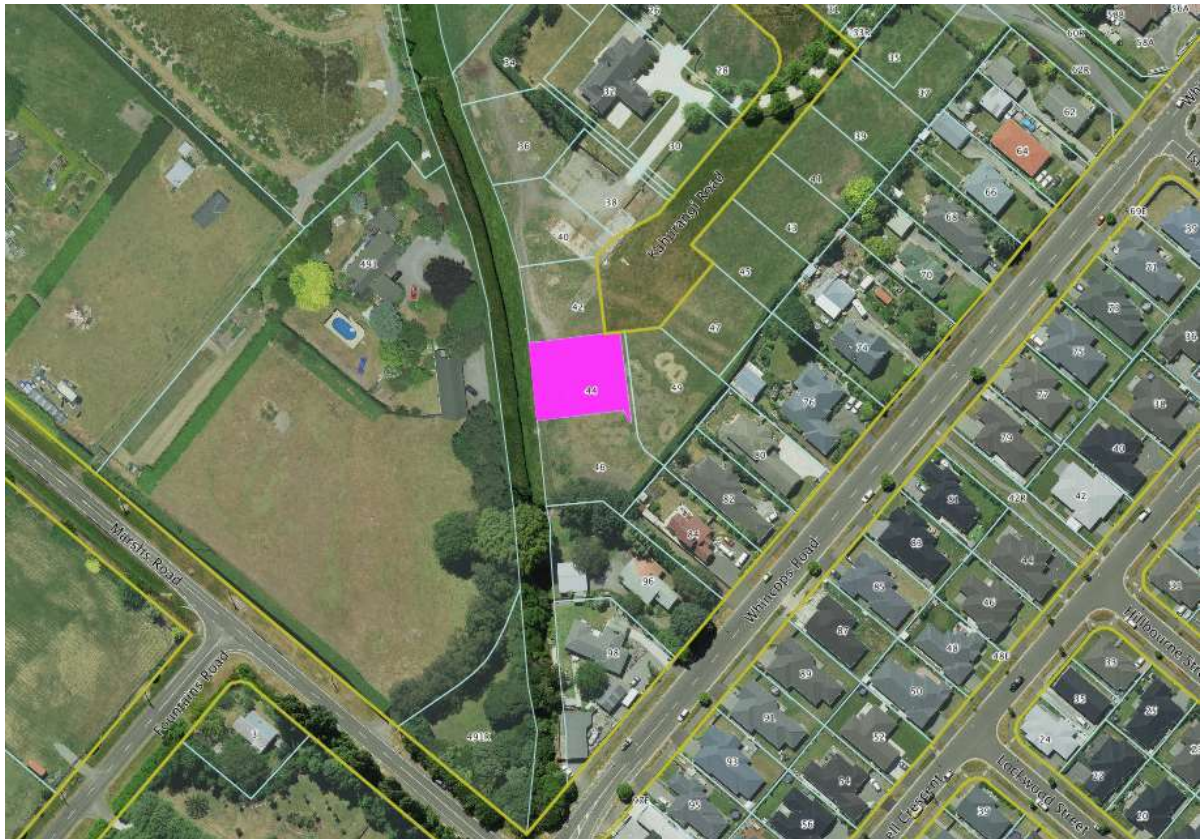


Figure 1: Subject site in pink and surrounding environment

Activity status

Christchurch District Plan

The site is zoned residential suburban in the Christchurch District Plan.

The proposal requires resource consent for a restricted discretionary activity under the following rules:

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
6.6.4.3 RD1	-	The proposal involves approximately 6.7m ³ of earthworks (fill) within 10m of the bank of an upstream waterway	6.6.7.1 Natural hazards 6.6.7.2 Natural values 6.6.7.5 Maintenance access 6.6.7.4 Cultural values 6.6.7.3 Amenity and character	No clause

For completeness I note that:

- The applicant has confirmed no earthworks will start until a building consent has been obtained in order to use exemption 8.9.3.iv of the District Plan.
- The applicant has provided earthwork volumes within the waterway setback and easement area combined. I note that in terms of the District Plan waterway setback total volume earthworks will be less than what is annotated above as the consent notice easement earthworks do not require resource consent. However as the applicant has not separated the volumes, I have done my assessment on the estimated maximum volume.
- No fencing within the waterway setback has been approved by this resource consent. If the applicant wishes to erect a fence within the waterway setback, the fence must be constructed to comply with 6.6.5.1 P6 of the District Plan or further resource consent is required. An advice note has been added to reflect this.

Proposed Plan Change 14 Housing and Business Choice

Proposed Plan Change 14 (PC14) is relevant to this proposal. It was notified on 17 March 2023 and proposes amendments to the objectives, policies and rules associated with residential development across relevant residential zones in accordance with the Medium Density Residential Standards (MDRS) in Schedule 3A of the RMA (as modified by the sunlight access qualifying matter). PC14 also includes other residential intensification provisions directed by the National Policy Statement on Urban Development 2020 and seeks to amend the objectives, policies and rules associated with commercial development within and around the central city, suburban commercial centres and planned high frequency and capacity public transport.

With regard to the MDRS, the site is identified as being within a qualifying matter area – Sunlight Access, Water Body Setback. As a result, the rules do not have immediate legal effect given section 86BA(1)(c)(ii) and the operative district plan rules continue to apply. While the objectives and policies have legal effect from the date of notification, Policy 2 of the MDRS requires that the MDRS (including the objectives and policies) does not apply where a qualifying matter is relevant.

The submission period closed on 12 May 2023. The only rules currently in legal effect are those relating to heritage protection, which are not relevant to this application.

Written approvals [Sections 95D, 95E(3)(a) and 104(3)(a)(ii)]

No written approvals have been provided with the application.

NOTIFICATION ASSESSMENT

Adverse effects on the environment and affected persons [Sections 95A, 95B, 95E(3) and 95D]

When assessing whether adverse effects on the **environment** will be, or are likely to be, more than minor, any effects on the owners and occupiers of the application site and adjacent properties must be disregarded (section 95D(a)). The assessment of **affected persons** under section 95E includes persons on adjacent properties as well as those within the wider environment.

As a restricted discretionary activity, assessment of this proposal is restricted to the matters of discretion mentioned above. In the context of this planning framework, I consider that the potential effects of the proposal relate to natural hazards and natural values, amenity and character, cultural values.

The objectives and policies in the District Plan set the context for assessing the effects of the application. I note that the MDRS objectives and policies introduced in PC14 do not apply in qualifying matter areas, and the other new/amended policies are open to challenge via the plan change process.

Natural Hazards

Excavation for the development will intrude on the 10m Water body setback with a proposed total of 6.7m³ of soil excavated with maximum depth of 0.67m within the setback. The application was referred to Mr Nik Kumar regarding an assessment of natural hazards and he concludes that proposal the flood level for the 1 in 50 years of the event is 26.06m RL. The existing ground levels for the consent notice area and the proposed fill area is higher than the flood level, which means the fill wouldn't have any unacceptable impact on the current flooding or flood displacement.

For the reasons above, subject to recommended conditions of consent, adverse effects of the earthworks within the waterbody setback on the environment and persons will be less than minor.

Natural Values and Character and Amenity of the Knights Stream

Specialist input has been obtained from Council Surface Water and Land Drainage Planner, Ms Bitty Babu, with respect to natural character and waterway specific character and amenity values. Ms Babu initially had concerns regarding the raised planter boxes within the water way and easement setback due to conflict with the Stormwater Bylaw and potential adverse effects on the values of the waterway. The applicant has worked with council and has removed both planter boxes and small portion of patio, the final set of plans received 25/07/2023. Miss Babu advice received throughout the application is below:

- An ESCP shall be provided to prevent erosion and sedimentation into the waterway which shall be in line with ECan's Erosion and Sedimentation Toolbox- this can also addressed via a condition.
- Re: the planting- provided 1.2m to 2m wide planted buffer is bare minimum and not ideal. I would like to see minimum 6-7m wide planted buffer with native plants on the setback area. Area between the boundary and bottom of bank also shall be in accordance with CCC's stream side planting guide.

- The *Pseudopanax crassifolius* and *Phormium tenax* shall be planted on the upper bank away from the waterway. Also the *Carex secta/ virgata* shall be away from the canopy of taller species and closer to waterway as it can overhang to water and provide microclimate, food source etc.
- I am okay with the plans (with the above changes made).

Ms Babu has also requested specialist input from Mr Burrell (Ecologist) in regards to the ecology of the waterway who comments:

It's good to see native species being added along the waterway margins. I'd typically prefer a wider band of planting, but I understand that Knights Stream has intermittent flow in this location (based on the 2021 CREAS survey), so I am not so concerned about waterway buffering and shading from trees.

Overall, I'm satisfied with the additional information and do not have any ecology concerns with the application in terms of setback intrusions.

I accept the advice provided to me by the above specialists, however in response to Ms Babu's recommended planting of 6-7m wide buffer within the setback, this would be most of the waterway setback within the site as the 10m setback starts outside of the site and ends approximately 7m into the site. I also take into account the comments provided by Ecologist Mr Burrell who acknowledges the positive effects of native planting within the setback and the planting proposed does not create concern to waterway buffering and shading from trees. I also note that the existing environment had little planting and no planting is being removed. Lastly considering the extent of earthworks being a maximum of 6.7m³ I consider the proposed planting mitigation is appropriate for this site. I accept and have recommended conditions for erosion and sediment control which the applicant has accepted. In terms of the change of planting, this has been added as an advice note to the applicant.

I accept and adopt the advice provided to me with the exception of the planting width required to mitigate the earthworks, which, for the reasons outlined above I take conclude differently to the specialist. In this context I consider adverse effects on the environment and persons with respect to natural values and the character and amenity of the Knights Stream will be less than minor.

Cultural Values

The application has been referred to Mahaanui Kurataiao Ltd who engaged the local runanga, who has mana whenua over the projects location. It is important to note that natural resources – water (waterways, waipuna (springs), groundwater, wetlands); mahinga kai; indigenous flora and fauna; cultural landscapes and land – are taonga to mana whenua and they have concerns for activities potentially adversely affecting these taonga. These taonga are integral to the cultural identity of ngā rūnanga mana whenua and they have a kaitiaki responsibility to protect them.

Waterway setback intrusions such as earthworks can have negative impacts on the mauri of the wai. The frequent disregard for waterway setbacks undermines this important mechanism for protecting waterways from the adverse effects of development activities as per policy WM12.5 in the Mahaanui Iwi Management Plan. Therefore, it is essential that an Erosion and Sediment Control Plan (ESCP) is prepared in accordance with Environment Canterbury's Erosion and Sediment Control Toolbox and implemented on-site during all earthwork activity. All contractors working on-site must be aware of this plan and strictly adhere to it. This Plan must ensure the protection of Knights Stream.

Earthworks can also uncover or damage previously undiscovered Māori artefacts or wāhi taonga. Therefore, an Accidental Discovery Protocol (ADP) must be in place during all earthwork activity and all contractors made familiar with this. Indigenous biodiversity, and landscapes and ecosystems that support it, is a fundamental part of the culture, identity and heritage of Ngāi Tahu. Indigenous vegetation provides a range of benefits such as the sequestration of carbon and the binding of soil – all of which support a healthy environment. Therefore, the Applicant must incorporate indigenous vegetation as a mitigation measure for earthworks and the waterway setback intrusion. Should a condition requiring the planting of indigenous vegetation be out of scope for this application, it should, at the very least be provided as an advice note to ensure the stance of the rūnanga, who hold tino rangatiratanga, is made clear to the Applicant.

The applicant has accepted a condition of consent regarding erosion and sediment control which will ensure adequate protection of water quality. In addition, the application has accepted an accidental discovery protocol condition to ensure any potential adverse effects on archaeological sites of cultural value are appropriately addressed. In regards to indigenous vegetation, this is considered to be out of the scope of the application and therefore will be added as an advice to the applicant. For the reasons outlined above, any adverse effects on the environment or persons with respect to cultural values will be less than minor.

Maintenance and Public/Recreational Access

The proposal does not restrict any public/recreational access.

Conclusion

Overall, I consider that any adverse effects on the wider environment will be less than minor and that there will be no affected persons.

Notification tests [Sections 95A and 95B]

Sections 95A and 95B set out the steps that must be followed to determine whether public notification or limited notification of an application is required.

PUBLIC NOTIFICATION TESTS – Section 95A	
Step 1: Mandatory notification – section 95A(3)	
➤ Has the applicant requested that the application be publicly notified?	No
➤ Is public notification required under s95C (following a request for further information or commissioning of report)?	No
➤ Is the application made jointly with an application to exchange reserve land?	No
Step 2: If not required by Step 1, notification is precluded if any of these apply – section 95A(5)	
➤ Does a rule or NES preclude public notification for all aspects of the application?	No
➤ Is the application a controlled activity?	No
➤ Is the application a boundary activity?	No
Step 3: Notification required in certain circumstances if not precluded by Step 2 – section 95A(8)	
➤ Does a rule or NES require public notification?	No
➤ Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor (discussed above)?	No
Step 4: Relevant to all applications that don't already require notification – section 95A(9)	
➤ Do special circumstances exist that warrant the application being publicly notified?	No

In accordance with the provisions of section 95A, the application **must not be publicly notified**.

LIMITED NOTIFICATION TESTS – Section 95B	
Step 1: Certain affected groups/persons must be notified – sections 95B(2) and (3)	
➤ Are there any affected protected customary rights groups or customary marine title groups?	No
➤ If the activity will be on, adjacent to, or might affect land subject to a statutory acknowledgement - is Te Rūnanga o Ngāi Tahu an affected person in this regard?	No
Step 2: If not required by Step 1, notification is precluded if any of the following apply – section 95B(6)	
➤ Does a rule or NES preclude limited notification for all aspects of the application?	No
➤ Is this a land use consent application for a controlled activity?	No
Step 3: Notification of other persons if not precluded by Step 2 – sections 95B(7) and (8)	
➤ Are there any affected persons under s95E, i.e. persons on whom the effects are minor or more than minor, and who have not given written approval (discussed above)?	No
Step 4: Relevant to all applications – section 95B(10)	
➤ Do special circumstances exist that warrant notification to any other persons not identified above?	No

In accordance with the provisions of section 95B, the application **must not be limited notified**.

Notification recommendation

That, for the reasons outlined above, the application be processed on a **non-notified** basis pursuant to sections 95A and 95B of the Resource Management Act 1991.

Notification decision

That the above recommendation be accepted for the reasons outlined in the report.

Delegated officer:



Jonathan Gregg
Team Leader Planning
27/07/2023 10:13 am

SECTION 104 ASSESSMENT

Actual and potential effects on the environment [Section 104(1)(a)]

The adverse effects on the environment are assessed in the preceding section 95 discussion, and that assessment is equally applicable here.

Overall, I consider that the effects on the environment are able to be mitigated through compliance with recommended conditions such that they will be **less than minor** and acceptable.

Relevant objectives, policies, rules and other provisions of the Plan [Section 104(1)(b)(vi)]

Regard must be had to the relevant objectives and policies in the District Plan.

In terms of the District Plan, regard has been given to chapter 6 (water body setbacks) which contains the relevant objectives and policies:

Objective 6.6.2.1 provides protection of water bodies and their margins from inappropriate use and development.

Policies 6.6.2.1.2 and 6.6.2.1.3 ensure that activities on the water bodies and their margins are consistent with the classification of the water body and where the works are undertaken the amenity/natural character values are retained and maintenance access is maintained. The proposed works mitigate any adverse effects on the character values and maintenance access is maintained. The proposed works are mitigated by the proposed vegetation within the waterbody setback. The open space of the waterway is maintained, as structures and buildings have been removed. Upon the advice I have received from Ecologist Mr Burrell and advice from Surface Water Planning Engineer Mr Kumar, I consider that there will be less than minor adverse effects upon the biodiversity and flood events will not be exacerbated.

Regard must be had to the relevant objectives and policies in the District Plan and proposed Plan Change 14. Objective 3.3.7.a (part) and 14.2.3 and Policies 14.2.3.1-5 and 14.2.6.1 within PC14 are considered to have full legal effect as these originate from Clause 6 of Schedule 3A of the Resource Management Act. As noted above, under MDRS Policy 2 (14.2.3.2) the MDRS does not apply where a qualifying matter is relevant, as in this case, so at this stage in the process I apply Policy 2 and set aside the other MDRS objectives and policies.

For completeness, I note that the District Plan gives effect to Part 2 of the Act and the higher order planning documents referred to in s104(1)(b). The Plan was competently prepared and appropriately reflects the higher order provisions, so they do not need to be specifically addressed in this report.

Relevant provisions of a National Environmental Standard, National Policy Statement, Regional Plan, Regional Policy Statement or Coastal Policy Statement [Section 104(1)(b)]

The District Plan gives effect to the higher order documents referred to in s104(1)(b) for all matters except the National Policy Statement on Urban Development (NPS-UD) which came into effect on 20 August 2020. The Council has commenced the Plan change process to give effect to the NPS-UD, with Plan Change 14 including provisions enabling urban intensification around centres and other amenities, services, and transport corridors, however its rules do not yet have legal effect.

Overall I consider this proposal is not inconsistent with the NPS-UD as proposed to be given effect to by PC14, noting the proposed qualifying matter/s applicable to this site which indicates that the level of intensification to the degree signalled in the NPS may be inappropriate.

Part 2 of the Resource Management Act [Section 104(1)]

Taking guidance from the most recent case law¹, the District Plan is considered to be the mechanism by which the purpose and principles of the Act are given effect to in the Christchurch District. It was competently prepared through an independent hearing and decision-making process in a manner that appropriately reflects the provisions of sections 5-8 of the Act.

Accordingly no further assessment against Part 2 is considered necessary.

Section 104(3)(d) notification consideration

Section 104(3)(d) states that consent must not be granted if an application should have been notified and was not. No matters have arisen in the assessment of this application which would indicate that the application ought to have been notified.

Section 104 Recommendation

That, for the above reasons, the application **be granted** pursuant to Sections 104, 104C, 108 and 108AA of the Resource Management Act 1991, subject to the following conditions:

1. The development shall proceed in accordance with the information and plans submitted with the application, including the stamped approved plans entered into Councils records as RMA/2023/133.

Landscaping

2. The proposed landscaping shall be established in accordance with the Landscape Plan labelled RMA/2023/133 Page 8 of the Approved Consent Document.
3. The proposed landscaping shall be established on site within the first planting season (extending from 1 April to 30 September) following the final, passed building inspection.
4. The proposed trees/shrubs stipulated on the plant schedule, on the Landscape Plan labelled RMA/2023/133 Page 10 of the Approved Consent Document, must be at least 1.5m in height at the time of planting and once established must be maintained at the mature height.
5. All landscaping required for this consent shall be maintained. Any dead, diseased, or damaged landscaping shall be replaced by the consent holder within the following planting season (extending from 1 April to 30 September) with trees/shrubs of similar species to the existing landscaping.

Earthworks

6. Intrusions into the waterway setback of Knights Stream due to building, filling or excavating, shall not exceed that detailed in the application, as shown on the Site Works Plan labelled RMA/2023/133, Page 7 of the Approved Consent Document.

¹ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

7. The best practicable methods of sediment control shall be employed by the consent holder and any appointed contractors to ensure that the discharge of sediment to Knights Stream does not result from works undertaken in accordance with this consent. The means of erosion and sediment control shall be selected, installed, and maintained in accordance with performance criteria detailed in Environment Canterbury's Erosion and Sediment Control Toolbox (ESCT) for Canterbury (<http://esc Canterbury.co.nz/>) and shall remain in place until the work area is stabilised (i.e. grassed).
8. All earthworks shall be carried out in accordance with a site specific Erosion and Sediment Control Plan (ESCP), prepared by a suitably qualified and experienced professional, which follows the best practice principles, techniques, inspections and monitoring for erosion and sediment control contained in Environment Canterbury's Erosion and Sediment Control Toolbox for Canterbury <http://esc Canterbury.co.nz/>. The ESCP must be held on site at all times and made available to the Council on request.
9. The consent holder must notify Christchurch City Council no less than three working days prior to works commencing, (via email to rcmon@ccc.govt.nz) of the earthworks start date and the name and contact details of the site supervisor. The consent holder shall at this time also provide confirmation of the installation of ESCP measures as per the plan referred to in Condition 8 above.
10. Run-off must be controlled to prevent muddy water flowing, or earth slipping, onto neighbouring properties, legal road (including kerb and channel), or into a river, stream, drain or wetland. Sediment, earth or debris must not fall or collect on land beyond the site or enter the Council's stormwater system. All muddy water must be treated, using at a minimum the erosion and sediment control measures detailed in the site specific Erosion and Sediment Control Plan, prior to discharge to the Council's stormwater system.

Note: For the purpose of this condition muddy water is defined as water with a total suspended solid (TSS) content greater than 50mg/L.

11. No earthworks shall commence until the ESCP has been implemented on site. The ESCP measures shall be maintained over the period of the construction phase, until the site is stabilised (i.e. no longer producing dust or water-borne sediment). The ESCP shall be improved if initial and/or standard measures are found to be inadequate. All disturbed surfaces shall be adequately topsoiled **and** vegetated or otherwise stabilised as soon as possible to limit sediment mobilisation.
12. In the event of the discovery/disturbance of any archaeological material or sites, including taonga (treasured artefacts) and kōiwi tangata (human remains), the consent holder shall immediately:
 - a) Cease earthmoving operations in the affected area of the site; and
 - b) Advise the Council of the disturbance via email to rcmon@ccc.govt.nz
 - c) Advise appropriate agencies, including Heritage New Zealand Pouhere Taonga and the local Mana Whenua (Ngāi Tūāhuriri Rūnanga or swap in relevant rūnanga) of the disturbance.

Advice Notes:

- The Council will require payment of its administrative charges in relation to **monitoring of conditions**, as authorised by the provisions of section 36 of the Resource Management Act 1991. The current monitoring charges are:
 - (i) A monitoring programme administration fee of \$102.00 to cover the cost of setting up the monitoring programme; and
 - (ii) A monitoring fee of \$116.80 for the first monitoring inspection to ensure compliance with the conditions of this consent; and
 - (iii) Time charged at an hourly rate if more than one inspection, or additional monitoring activities (including those relating to non-compliance with conditions), are required.

The monitoring programme administration fee and initial inspection fee / documentation fee / inspection fees will be charged to the applicant with the consent processing costs. Any additional monitoring time will be invoiced to the consent holder when the monitoring is carried out, at the hourly rate specified in the applicable Annual Plan Schedule of Fees and Charges.

- This resource consent has been processed under the Resource Management Act 1991 and relates to **planning matters only**. You will also need to comply with the requirements of the Building Act 2004 and any other legislative requirements (including but not limited to Environment Canterbury Regional Plans, health licence, liquor licence, archaeological authority, certificate of title restrictions such as covenants, consent notices, encumbrances, right of way or easement restrictions, landowner approval where required).
- Under the Council's Stormwater and Land Drainage Bylaw 2022 no person may obstruct any overland flow path or floodplains with any material or structures such as fences and retaining walls. As the application site forms part of the flood plain for Knights Stream, any proposed fencing will require authorisation from the Asset Planning Stormwater and Waterways Team who can be contacted via email Stormwater.Approvals@ccc.govt.nz.
- To improve biodiversity values and the extent of native habitat in the area, Ngāi Tahu encourages the applicant to utilise locally sourced indigenous plant species for landscaping. Guidance on native tree species can be found on the DOC website 'Canterbury native plants by area' <https://www.doc.govt.nz/our-work/motukarara-conservation-nursery/canterbury-native-plants-by-area/> and Christchurch City Council Streamside Planting Guide <https://www.ccc.govt.nz/assets/Documents/Environment/Water/StreamsidePlantingGuide-streamsideplanting.pdf>

Development Contributions

No development contributions are payable on this consent.

Reported and recommended by: Kelsey Lough, Planner

Date: 27th July 2023

Section 104 Decision

That the above recommendation be accepted for the reasons outlined in the report.

- ☒ I have viewed the application and plans.
- ☒ I have read the report and accept the conclusions and recommendation.

Delegated officer:



Jonathan Gregg
Team Leader Planning
27/07/2023 10:13 am