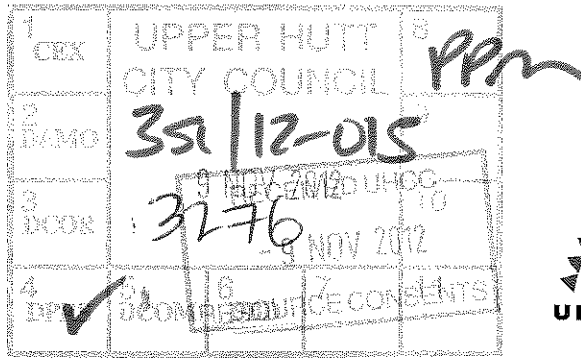


SUBMISSION FORM (FORM 5)



14



**PROPOSED PLAN CHANGE TO THE UPPER HUTT CITY COUNCIL
DISTRICT PLAN: PROPOSED PLAN CHANGE 15 – FLOOD AND EROSION
HAZARD AREAS**

To: Upper Hutt City Council

Submission on Proposed Plan Change No. 15 to the Upper Hutt City Council District Plan

Submissions can be:

File Number: 351/12/015
Submission Number:
(for office use only)

Delivered to: Level 2 Reception, Civic Administration Building, 838-842 Fergusson Drive, Upper Hutt
Posted to: Proposed Plan Change No. 15, Upper Hutt City Council, Private Bag 907, Upper Hutt
Faxed to: (04) 528 2652
Emailed to: askus@uhcc.govt.nz

The closing date for submissions is Friday 9th November 2012 at 5pm

DETAILS OF SUBMITTER

Name of submitter	New Zealand Railway and Locomotive Society Incorporated. Silverstream Railway Incorporated and Thomas Haliburton		
Postal address of submitter	c/o Ian McCulloch, Ian McCulloch/Max Tait Legal Solicitors, 2 Harthman Place, South Porirua 5022.		
Agent acting for submitter (if applicable)	Ian McCulloch		
Address for service (if different from above)			
Contact phone/fax number	Daytime Telephone:2376555	Fax:2377756	
I could gain an advantage in trade competition through this submission (Please tick one)	NO	<input checked="" type="checkbox"/>	Only answer this question if you ticked YES: I am / am not (select one) directly affected by an effect of the subject matter of the submission that: (a) adversely affects the environment; and (b) does not relate to trade competition or the effects of trade competition.
	YES	<input type="checkbox"/>	

DETAILS OF SUBMISSION

Primary Submission

1. The above named Submitters (Submitters) oppose the identification of part of our property at 30 Kiln Street (Lot 2 DP 51042, Section 987 Hutt District, Section I SO35130) on Planning Map 40 as being in a flood Hazard Area and on Urban Hazard Zone Map 40 as being in the River Corridor.
2. The ambiguity of the applicability of Issue 8.2.5, Objective 8.3.3, Policies 8.4.4 and 8.4.6 to the above property needs to be clarified and the Submitters seeks to have them reworded.
3. The Submitters seek that a new line is included in Rule 33.1 identifying Railway Museum and Associated Facilities within the portion of the Special Activity Zone identified as Flood Hazard Area as Restricted Discretionary Activities.
4. The Submitters seek a new Rule (between rule 33.1 and 33.2) identifying Railway Museum and Associated Facilities within the portion of the Special Activity Zone identified as Flood Hazard Area as a restricted discretionary activity with discretion limited to the vulnerability to and downstream effect on flood events.

Submission for Alternative Relief

5. The Submitters seek additional wording to be inserted into the explanation of issue 14.2.2 recognising that the identification of flood hazard areas gives only approximate guidance to areas which may in fact be vulnerable to flooding and that investigation of specific sites may show that they are suitable for development or subdivision.
6. The Submitters oppose the changes to the wording of objective 14.3.1 and the last paragraph of the explanation to the objective. It supports the changes to the wording of the remainder of the explanation to the objective.
7. The Submitter seeks additional wording to be inserted into the explanation of Policy 14.4.1 recognising that the identification of flood hazard areas gives only approximate guidance to areas which may in fact be vulnerable to flooding and that investigation of specific sites may show that they are suitable for development or subdivision.
8. The Submitters seek that additional wording is added to the explanation of Policy 14.4.2 between paragraphs 3 and 4 of the explanation of this policy stating that in areas identified in the plan as being a flood hazard area the onus is on the developer/subdivider to demonstrate that the area is not at risk from natural hazards.
9. The Submitters seek that the last paragraph of the explanation of Policy 14.4.2 is deleted as it does not accurately represent the legal obligation of Section 106 of the Act and is in any event irrelevant.
10. The Submitters oppose the identification of activities as non-complying in Rule 33.1.
11. The Submitters seek a new matter for consideration in Rule 33.2 being "The extent to which the area is vulnerable to flooding hazards as determined by an appropriately qualified and experienced engineer".
12. The Submitters seek a new matter for consideration in Rule 33.2 being "The extent to which the subdivision includes land which is not vulnerable to flooding hazards".

My submission is that:

Primary Submission

With regards to the Submitters' Property

The Submitters purchased their property from Upper Hutt City Council to undertake the Submitters' activities and the sites special zoning reflects those activities. There was no ambiguity regarding the purpose to which the Submitters intended to use the land. These activities would be very difficult to get consent under the proposed plan. The Submitters consider that it is both unfair and improper for the seller of the property to now take regulatory action to deny the purchaser the ability to use their land for the intended purpose.

The Submitters activities are recognised as a major attraction in Upper Hutt and the Submitters has concrete plans to extend its activities within the site.

The identification of a large part of the site as a flood hazard area puts a blight upon the site and seriously compromises the ability of the Submitters to use the majority of its area.

The identification of the Submitters's Property on Kiln Street as a flood Hazard zone is not accurate given the Topography of the site. While the channel of Hulls Creek flows through the property and a small part of the property is vulnerable to ponding in a major flood event; the majority of the area currently identified as a flood hazard area is not vulnerable to flooding and hence the plan does not accurately depict the topography of the property.

The Proposed Plan also misinterprets the Hutt River Floodplain Management Plan with regards to this site.

The HRFMP identified the area as being in a Secondary River Corridor Hazard Area "dominated by ponding and slower flowing waters" (p97). As such the area should have been identified as a ponding area in the Hazard Map. The proposed land use and subdivision controls are more stringent as a result than those proposed in the HRFMP (ps 103-107).

In Rule 22.2 Railway Museum and associated facilities are identified as a permitted activity. Other activities undertaken by the Submitters are identified as permitted, controlled or restricted discretionary. The status in each case is subject however to the general rules of the plan including the Earthworks Chapter (23) and the Flood Protection and Hazard Zone Chapter (33). A consequence of the Proposed Plan Change is that Railway Museum and Associated Facilities activities are now identified as Non Complying Activities.

The area (wrongly) identified as a flood hazard area is the majority of land available for the Submitters to undertake these activities and the only area available for expansion. The effect of the Proposed Plan Change is therefore to make any expansion of the societies railway (at best) extremely difficult.

Even if the area is inundated by flood water Railway Museum activities and associated facilities are not a class of infrastructure that are going to endanger human life. The facilities are unlikely to be significantly damaged, or rendered unusable, by flooding. Even if they were damaged they can be repaired and the Submitters is willing to accept this risk. Railway museum and associated facilities on this site are not going to cause consequential effects on other properties in the event of a flood.

Under the District Plan (unmodified) earthwork works situated within 10 metres of Hull's Creek are identified as restricted discretionary (Rules 23.1 and 23.7). In the part of the area currently identified as being in the 1% flood hazard area such activities are identified as Discretionary (Rule 33.1 33.2). The Submitters considers that such identification allows the Council appropriate discretion to consider the risks to and of development of railway museum activities and associated facilities and make appropriate decisions and set conditions. A non-complying status is unnecessary to achieve such a status and is excessively onerous.

It is therefore submitted that Council Remove the Flood Hazard Area identification off the property owned by the Submitters and leave the plan unchanged in this regard. In the alternative include a new Clause in the Rule 33.1 identifying buildings and structures as Restricted Discretionary within the part of the Submitters' property which has been identified as a flood hazard area. Restrictions on discretion should be limited to consideration of the vulnerability of a building/structure to flooding and the potential for the building/structure to exacerbate downstream flooding.

Submission for Alternative Relief

It is the Submitters' plea that Council Recognises that the activities which it undertakes are sufficiently different (as recognised by their Zoning) that Council should provide site specific rules. If Council is disinclined to make such rules, The Submitters submits that changes should be made to the Plan as follows:

The Submitters are not opposed to the general thrust of the Proposed Plan change and generally support the provisions of the Plan. It notes however that the identification of areas which are vulnerable to flooding in the Hutti River Floodplain Management Plan and the Mangaroa River Flood Hazard Assessment are broad brush, (mostly) desktop exercises and do not necessarily reflect the actual vulnerability of an area to flooding hazards.

For this reason the Submitters submit that the provisions of the plan should allow for detailed site investigation to be undertaken and if such investigation identifies that an area is not at risk then subdivision and development should be allowed. It also notes that in many a title may include land both within and outside the Flood Hazard Area. If sufficient land is available outside the Flood hazard area to support development, then the vulnerability of the remainder of the land to flooding should not be an impediment to subdivision.

The stringent tests associated with a Non Complying Activity status require that any applicant must identify that their proposal is a true exception in order to gain consent. Such a demonstration should be unnecessary if an applicant can demonstrate that their development or subdivision is in an area which is not in fact vulnerable to flooding.

The Submitters submit that for this reason and because of the lack of field verification of actual flooding hazard, the Non Complying Status is not appropriate. With the changes suggested (in this submission) to the matters for consideration a Discretionary Activity Status is more appropriate.

(Please state in summary the nature of your submission. Clearly indicate whether you support or oppose the specific provisions or wish to have amendments made, giving reasons. Please use additional sheets if necessary)

I seek the following decision from the local authority:

Primary Submission

1. Removal of the Flood Hazard Area and river corridor identification from 30 Kiln Street (as detailed above) on Planning map 40 and Urban Hazard Zone Map 40.
2. Reword to the Wording in Issue 8.2.5, Objective 8.3.3, Policies 8.4.4 and 8.4.6 so that they explicitly identify that the Submitters's property is not part of the St Patricks Estate Area.
3. The Submitters seek that a new line is included in Rule 33.1 identifying Railway Museum and Associated Facilities within the portion of the Special Activity Zone identified as Flood Hazard Area as Restricted Discretionary Activities.
4. The Submitters seek a new Rule(between rule 33.1 and 33.2) stating

" Railway Museum and Associated Facilities within the portion of the Special Activity Zone identified as Flood Hazard Area

Council will restrict its discretion and impose conditions upon:

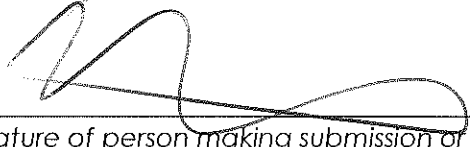
- The vulnerability of a building/structure to flooding.
- and the potential for the building/structure to exacerbate downstream flooding".

Submission for Alternative Relief

5. Additional wording to be inserted into the explanation of issue 14.2.2 recognising that the identification of flood hazard areas gives only approximate guidance to areas which may in fact be vulnerable to flooding and that investigation of specific sites may show that they are suitable for development or subdivision.
6. Insert the words "*remedying or mitigation of adverse effects*" after "avoidance" in objective 14.3.1 and delete the last paragraph of the explanation to the objective.
7. Insert additional wording to the explanation of Policy 14.4.1 recognising that the identification of flood hazard areas gives only approximate guidance to areas which may in fact be vulnerable to flooding and that investigation of specific sites may show that they are suitable for development or subdivision.
8. Insert additional wording to the explanation of Policy 14.4.2 between paragraphs 3 and 4 of the explanation of this policy stating that in areas identified in the plan as being a flood hazard area the onus is on the developer/subdivider to demonstrate that the area is not at risk from natural hazards.
9. Delete the last paragraph of the explanation of Policy 14.4.2.
10. Change the status of the two non-complying activities to Discretionary in Rule 33.1.
11. Insert a new matter for consideration in Rule 33.2 being "The extent to which the area is vulnerable to flooding hazards as determined by an appropriately qualified and experienced engineer".
12. Insert a new matter for consideration in Rule 33.2 being "The extent to which the subdivision includes land which is not vulnerable to flooding hazards".

Please indicate whether you wish to be heard in support of your submission (Tick appropriate box)	I do wish to be heard in support of my submission	✓
	I do not wish to be heard in support of my submission	
Please indicate whether you wish to make a joint case at the hearing if others make a similar submission (Tick appropriate box)	I do wish to make a joint case	
	I do not wish to make a joint case	✓

SIGNATURE AND DATE



Signature of person making submission or person authorised to sign on behalf of person making submission

9/11/2012

Date

(Note: A signature is not required if you are making your submission by electronic means)

PLEASE NOTE THAT THE INFORMATION PROVIDED IN YOUR SUBMISSION, INCLUDING YOUR CONTACT DETAILS, WILL BE AVAILABLE TO THE PUBLIC