

28 August 2013

Memo To: His Worship the Mayor and Councillors

Memo From: Administration Advisers

**Subject: COUNCIL – POLICY AND PLANNING – 29 AUGUST 2013
LATE ITEM**

1. Plan Change 17 – Enner Glynn and Upper Brook Valley Rezoning and Structure Plan

Document 1567138

A report titled Plan Change 17 – Enner Glynn and Upper Brook Valley Rezoning and Structure Plan is attached to be considered as a major late item at this meeting.

In accordance with section 46A(7) of the Local Government Official Information and Meetings Act 1987 and Standing Order 3.7.5, a procedural resolution is required before a major item that is not on the agenda for the meeting may be dealt with.

In accordance with section 46A(7)(b)(i) the reason why the item was not on the agenda is because it came to hand after the agenda had been distributed.

In accordance with section 46A(7)(b)(ii) the reason why discussion of this item cannot be delayed until a subsequent meeting is because a resolution on the matter is required before the next scheduled meeting of the Council to enable Plan Change 17 to be publicly notified in an efficient and timely manner.

Recommendation

THAT the item regarding Plan Change 17 – Enner Glynn and Upper Brook Valley Rezoning and Structure Plan be considered at this meeting as a major item not on the agenda, pursuant to Section 46A(7)(a) of the Local Government Official Information and Meetings Act 1987, to enable Plan Change 17 to be publicly notified in an efficient and timely manner.

2. Public Excluded - Code of Conduct Complaint – Report Back from Investigating Committee

A public excluded report titled Code of Conduct Complaint – Report Back from Investigating Committee is to be considered as a major late item at this

meeting. This report was listed as item 7 on the public excluded agenda for the Council – Policy and Planning meeting on 29 August 2013 to ensure elected members were aware that it would be presented to this meeting.

Section 46A(1)-(6) of the Local Government Official Information and Meetings Act 1987 and Standing Order 2.15.8 require that agendas are distributed with the associated reports. As this report was not distributed with the agenda for this meeting, it must be treated as a major late item to be considered at this meeting.

In accordance with section 46A(7) of the Local Government Official Information and Meetings Act 1987 and Standing Order 3.7.5, a procedural resolution is required before a major item that is not on the agenda for the meeting may be dealt with.

In accordance with section 46A(7)(b)(i) the reason why the item was not on the agenda is because it came to hand after the agenda had been distributed.

In accordance with section 46A(7)(b)(ii) the reason why discussion of this item cannot be delayed until a subsequent meeting is because a resolution on the matter is required before the next scheduled meeting of the Council to enable the complaint to be resolved in a timely manner.

Recommendation

THAT the public excluded item regarding Code of Conduct Complaint – Report Back from Investigating Committee be considered at this meeting as a major item not on the agenda, pursuant to Section 46A(7)(a) of the Local Government Official Information and Meetings Act 1987, to enable the complaint to be resolved in a timely manner.

PUBLIC EXCLUDED BUSINESS

3. Exclusion of the Public

Recommendation

THAT the public be excluded from the following parts of the proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of the	Reason for	Particular interests protected
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matter to be considered	passing this resolution in relation to the matter	(where applicable)
Code of Conduct Complaint – Report Back from Investigating Committee	<p>Section 48(1)(a)</p> <p>The public conduct of this matter would be likely to result in disclosure of information for which good reason exists under section 7</p>	<p>The withholding of the information is necessary:</p> <ul style="list-style-type: none"> • Section 7(2)(c) To protect information that is subject to an obligation of confidence

Plan Change 17 – Enner Glynn and Upper Brook Valley Rezoning and Structure Plan

1. Purpose of Report

- 1.1 To approve and set a date to declare (via public notice) the provisions within Plan Change 17 – Enner Glynn and Upper Brook Valley Rezoning and Structure Plan operative.

2. Recommendation

THAT the report Plan Change 17 – Enner Glynn and Upper Brook Valley Rezoning and Structure Plan (1567138) and its attachments (1582122 and 1582109) be received;

AND THAT the provisions within Plan Change 17 – Enner Glynn and Upper Brook Valley Rezoning and Structure Plan be publicly notified as being operative on 9 September 2013, pursuant to Clause 20(1) of the First Schedule of the Resource Management Act 1991.

3. Discussion

- 3.1 Proposed Plan Change 17 was notified on 25 September 2010. A hearing was held with the resulting Commissioner decisions being notified on 30 June 2012. An appeal was lodged with the Environment Court by Gibbons Holdings Limited and Fulton Hogan Limited (York Valley Quarry). The appellant sought to address potential reverse sensitivity concerns associated with the proposed walkway and rural development adjacent to the York Valley Quarry.
- 3.2 A consent order has been negotiated between the parties avoiding the need for formal Environment Court mediation or hearing processes to be undertaken. The Resource Management Act Procedures Committee resolved on 27 June 2013 that Council's legal adviser be authorised to agree to the consent order in relation to the appeal to aspects of Plan Change 17.
- 3.3 The Environment Court has signed the consent order (Attachment 2) directing Council to amend the Plan Change provisions as agreed with the parties. The appeal has therefore been resolved.

- 3.4 The consent order alters a planning map by replacing a specific walkway route adjacent to the quarry with a more general reference to two points that need to be connected between the Brook/Enner Glynn Saddle and Brook Street. Additional text has also been added to address reverse sensitivity concerns associated with the quarry.
- 3.5 With resolution of this appeal all provisions of Plan Change 17 'must be treated operative' under Section 86F of the Resource Management Act 1991 and are now beyond challenge. Council can now approve those provisions and set an operative date, thereby completing the regulatory process for Plan Change 17.

4. Conclusion

- 4.1 The appeal on Plan Change 17 has been resolved. All provisions of Plan Change 17 now 'must be treated operative' under Section 86F of the Resource Management Act 1991. This report seeks that Council approves the setting of an operative date of 9 September 2013 via public notice at least 5 working days prior to that date.

Reuben Peterson
Planning Adviser

Attachments

- Attachment 1: Memorandum seeking order by consent ([1582122](#))
- Attachment 2: Consent Order Gibbons Holdings Ltd & Fulton Hogan Ltd / NCC ([1582109](#))

Supporting information follows.

Supporting Information	
1. Fit with Purpose of Local Government	The recommendation to make the provisions of Plan Change 17 operative represents the end of the RMA democratic decision making process for this plan change. The appeal was resolved prior to entering formal mediation or court hearing processes ensuring an efficient and cost effective process.
2. Fit with Community Outcomes and Council Priorities	The Plan Change is consistent with the community outcomes of: <ul style="list-style-type: none"> • Healthy land, sea, air and water. • People-friendly places. • Strong economy. • Good leadership. It is also particularly aligned with the following Council Priorities: <ul style="list-style-type: none"> • Active lifestyle. • The natural environment.
3. Fit with Strategic Documents	The Plan Change is consistent with strategic documents including the Long Term Plan, and Nelson 2060.
4. Sustainability	The Plan Change is consistent with Council's commitment to sustainability, particularly given it has been developed under the sustainable management mandate of the Resource Management Act 1991.
5. Consistency with other Council policies	The Plan Change is consistent with other Council policies, in particular the Nelson Regional Policy Statement, the Nelson Resource Management Plan, the Nelson City Council Land Development Manual 2010 and the Long Term Plan 2012-2022.
6. Long Term Plan/Annual Plan reference and financial impact	The Plan Change was developed with existing budgets under the Nelson Resource Management Plan.
7. Decision-making significance	This is not a significant decision in terms of the Council's Significance Policy.
8. Consultation	Consultation has been undertaken in accordance with the First Schedule of the Resource Management Act 1991 and included: <ul style="list-style-type: none"> • Meetings with affected landowners individually as requested, a public meeting with direct invitation to landowners and a series of newsletters sent to landowners.

- Other parties were consulted as required under Clause 3 of Schedule 1 of the Resource Management Act 1991, including the Minister of the Environment, and tangata whenua of the area.
- The proposed Plan Change and Section 32 Report were publicly notified on 25 September 2010. Submissions closed on 3 December 2010. Council heard submissions at a public hearing on 14 and 15 September 2011 and Council publicly notified decisions on those submissions on 30 June 2012.

9. Inclusion of Māori in the decision making process

Consultation with Tiakina te Taiao on the draft Plan Change was undertaken at their six weekly meeting with Council staff. Ngāti Toa Rangatira and Ngāti Kuia were also consulted on the draft Plan Change. Tiakina te Taiao were a submitter to the Plan Change and therefore involved in the statutory hearing process.

10. Delegation register reference

Decision of Council.



FLETCHER VAUTIER MOORE
LAWYERS

The Registrar
Environment Court
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Matter No	244008\331

2 August 2013

Attention: Jennifer Gerritsen

Dear Jennifer

**ENV 2012 WLG 000086 – GIBBONS HOLDINGS LIMITED & FULTON HOGAN LIMITED v
NELSON CITY COUNCIL**

1. We enclose for filing:
 - (i) Consent memorandum and schedule of plan amendments
 - (ii) Draft consent order.
2. We apologise for the slight delay in filing the memorandum. The parties have now finalised all outstanding matters, allowing the appeal to be resolved by consent.

Yours faithfully
Fletcher Vautier Moore

Julian Ironside
Partner

Nelson

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1582122

Before the Environment Court

ENV-2012-WLG-000086

In the matter of an appeal under clause 14 of Schedule 1 to the
Resource Management Act 1991

Between **Gibbons Holdings Limited & Fulton Hogan Limited**

Appellants

And **Nelson City Council**

Respondent

Memorandum seeking order by consent
Dated 14 June 2013

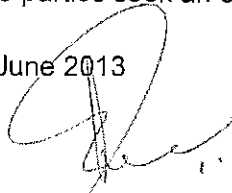
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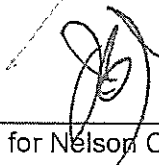
May it please the Court:

1. Nelson City Council publicly notified Plan Change 17 to the Nelson Resource Management Plan (NRMP) on 25 September 2010. Plan Change 17 introduced a new zoning pattern for Enner Glynn Valley, the upper portion of Brook Valley and for a small number of properties within Marsden Valley to provide for levels of rural and residential development. It also included Biodiversity Corridors, Indicative Roads and Indicative Walkways as part of a Structure Plan for the area.
2. Submissions on Plan Change 17 were heard on 13 and 14 December 2011 and the Council's decision (by an independent Commissioner) was notified on 30 June 2012.
3. An appeal was lodged by Gibbons Holdings Ltd and Fulton Hogan Ltd who have interests in the York Valley Quarry situated in the upper reaches of Marsden Valley. The appeal opposed the rezoning of rural land to Higher Density Small Holdings and the proximity of Indicative Walkways to the Quarry. It also sought specific recognition of the presence of the Quarry and a 'buffer zone' precluding any buildings within 500m of the Quarry.
4. As a result of meetings between the Council and appellants, the parties are agreed on relief that will resolve the appeal. By consent, the parties are agreed that the provisions of the NRMP may be amended in accordance with the attached document.
5. On the making of such an order, the appeal will be resolved. No party seeks costs.
6. The parties seek an order accordingly.

Dated 14 June 2013



Counsel for Gibbons Holdings Ltd
and Fulton Hogan Ltd



Counsel for Nelson City Council

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14 of the First
Schedule to the Act

BETWEEN GIBBONS HOLDINGS LIMITED AND
FULTON HOGAN LIMITED
(ENV-2012-WLG-000086)

Appellants

AND NELSON CITY COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge B P Dwyer sitting alone pursuant to section 279 of the Act.

IN CHAMBERS

CONSENT ORDER

Introduction

[1] The Court has read and considered the appeal and the parties' memorandum received 6 August 2013.

[2] No person gave notice of an intention to become a party under section 274.

[3] The Court is making this order under section 279(1)(b) of the Act, such an order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for the present purposes that:

- (a) All parties to the proceedings have executed the memorandum requesting this order; and
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Act, including in particular Part 2.



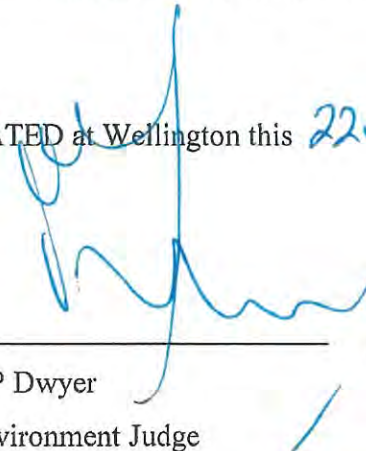
Order

[4] The Court orders, by consent, that the Nelson Resource Management Plan be amended in accordance with the attached document setting out the amendments agreed by the parties.

[5] The appeal is otherwise dismissed.

[6] There is no order as to costs.

DATED at Wellington this 22nd day of August 2013



B P Dwyer
Environment Judge



Attachment to Consent Order for ENV-2012 WLG 086

Chapter 2, Meanings of Words, Nelson Resource Management Plan

'Generally Accord'. For the purpose of interpretation of any rules relating to Structure Plans, the term "generally accord" shall mean that items shown on these plans must be provided for in the general locations shown within the development area and with linkages to each other or adjoining areas as shown in the Structure Plan except for the indicative education facility in Marsden Valley Schedule I (Clause 1.6). It is not intended that the positions are exact or can be identified by scaling from the Structure Plan; it is intended that any connections between points are achieved or provided for with no restrictions. The final location will depend upon detailed analysis of the physical suitability of an alignment (including the presence of existing natural features and ecological sensitive habitats such as streams where providing for Biodiversity Corridors), other servicing implications, appropriate location in respect of final residential development layout and amenity, costing considerations, and impact on other land uses. The key proviso is that the items on the Structure Plan must be provided for, and that any connections must occur or be able to occur in the future.

Chapter 3, Administration, AD11.4A Structure Plans

AD11.4A.vi: Subdivision applications are to show how they provide for items on a Structure Plan including those listed in AD11.4A.v a) - d). In relation to location these items are generally shown "indicatively" on the Structure Plan as they show an intent rather than precise location for those features. This may be shown by way of an indicative line or through the use of text. These then form a matter of control which the Council will exercise as part of any subdivision consent process. It is intended that this provides an element of design flexibility to meet both the objectives of the Council and the developer, but while still achieving the overall objective of integrated and sustainable urban resource management and development.

AD11.4A.vii: The Council acknowledges that the indicative connections may not directly serve or enhance a particular subdivision, for example where shown, or described, within a balance area. This, along with the formation and management of public use of certain connections, may also be at odds with farming, rural industry (including quarrying) or other legitimate rural land use practice activities on adjoining land. The Council will in those cases work with the land owners and any other landowners that may be affected in determining the appropriate time and method to provide the items described in AD11.4A.v or to set aside land upon subdivision for those purposes. In the interim, the objective will be to avoid activities and structures on the land which would compromise the future attainment of those connections or corridors. Any walkways/cycleways through the Rural Zone shown, or described, on a Structure Plan will only be opened by the Council for public use when network connection has been secured to other walkways, cycleways or roads, or when otherwise agreed by the adjacent landowners. The Council must at that time, where requested and in consultation with adjacent land owners, set in place a management regime to minimise any adverse effects on adjoining land.

AD11.4A.viii: For the purpose of interpretation of any rules relating to Structure Plans, the term "generally accord" shall mean that items on these plans must be provided for in the general locations shown, or described,, within the development area and linking to adjoining areas as shown in the Structure Plan except for the indicative education facility in Marsden Valley Schedule I (Clause 1.6). It is not intended that the positions are exact or can be identified by scaling from the Structure Plan. It is intended that connections between points are achieved or provided for with no restrictions. The final location will depend upon detailed analysis of the physical suitability of an alignment (including the presence of existing natural features and ecological sensitive habitats such as streams where providing for Biodiversity Corridors), other servicing implications, appropriate location in respect of final residential



development layout and amenity, costing considerations, and impact on other land uses. The key proviso is that the items on the Structure Plan must be provided for, and that any connections must occur or be able to occur in the future.

Chapter 5, Policy DO10.1.7 Pedestrian and Bicycle Traffic, Methods

DO10.1.7.viii: Within the Rural Zone in particular, recognise and promote management practices, placement, and construction of public walkways and cycleways that minimise the potential for cross-boundary effects, in liaison with adjoining land owners.

Chapter 5, Policy DO14.3.1 Roads and Traffic

- f) providing for, or avoiding impediment, to future road, walkway and cycleway linkages where these are shown, or described, indicatively on Structure Plans or within the Planning Maps.

Chapter 7, REr.107.2 Subdivision

xvii) For areas subject to a Structure Plan, the matters contained on those including:

- the provision of adequate road, walkway and cycleway linkages, 'greenspace' and Biodiversity Corridors with appropriate connections within the subdivision and to adjacent land, as defined by the indicative routes shown, or described, in the Structure Plan or within the Planning Maps;
- any specific rules, schedules or other notations shown, or described, on the Structure Plan as applying to that land.

Chapter 12 Rural Zone, RUd.6

... Higher Density Small Holdings areas have been provided to the rear of the Residential Zone at Ngawhatu, Marsden and Enner Glynn Valleys, adjoining the Rural farmland on the southern boundary of the land at Ngawhatu and near the entry to Marsden Valley. This zoning recognises the limited productive potential of these areas due to their topography and small size, and in the case of the Higher Density Small Holdings area in upper Marsden Valley, the maintenance of the open character of this visible slope. The zoning also allows for clustering of housing to mitigate visual amenity effects, and/or enables a transition from Residential to Rural Zoning. The Small Holdings Area in Enner Glynn Valley will enable a level of development that is compatible with the rural amenity values of the valley, and does not impact on the important regional resources (the landfill site and quarry) in York Valley.

Chapter 12 Policy RU1.3 Management of Effects of Connections on Structure Plans

Policy RU1.3: Management of Effects of Connections on Structure Plans

The provision for, and development of, road, walkway and cycleway linkages within Rural Zones where these have been identified on Structure Plans, at a time and in a manner that does not result in unreasonable reverse sensitivity effects with other land use activities.

Chapter 12, RUr.28.1 Buildings (All)

- i) the building does not compromise the achievement of an indicative road or walkway/cycleway shown, or described on a Structure Plan

Chapter 12, RUr.28.4 Assessment Criteria

- q) the effects on road and walkway/cycleway connectivity where the building is sited on, or close, to an indicative road, or walkway/cycleway shown, or described on a Structure Plan

Chapter 12, RUr.78.2

For areas subject to a Structure Plan, the matters contained in those including:

- the provision of adequate road, walkway and cycleway linkages, 'greenspace' and Biodiversity Corridors with appropriate connections



within the subdivision and to adjacent land, as defined by the indicative routes shown, or described in the Structure Plan or within the Planning Maps;

- any specific rules, schedules or other notations shown on the Structure Plan as applying to that land;
- the timing for land to be set aside and/or timing of construction of indicative roads, walkways and cycleways as it relates to the needs of the subdivision, connectivity objectives for the wider environment, and mitigating cross boundary effects for other land uses.

Chapter 12, RUr.78.4 ee)

The effects of reverse sensitivity, or cross boundary effects, from subdivision, or introduction of public access, in proximity to the regionally significant resource of the York Valley Quarry.

Chapter 12, RUr.78.4 bb)

bb) In Marsden Hills (Schedule V, Chapter 7), Marsden Valley (Schedule I, Chapter 7) and Ngawhatu Higher Density Small Holdings Areas, and between the Enner Glynn Valley and Bishopdale and the Upper Brook Valley (Schedule W), the extent of the provision of pedestrian and cycle linkages between Open Space areas, Residential and Rural Zone - High Density Small Holdings Area neighbourhoods, and neighbouring land, to ensure over time pedestrian and/or cycleway links connect up to the Barnicoat Walkway and extending between and within the Ngawhatu, Marsden, Enner Glynn, Upper Brook and York Valleys or as otherwise indicatively shown, or described on Structure Plans.

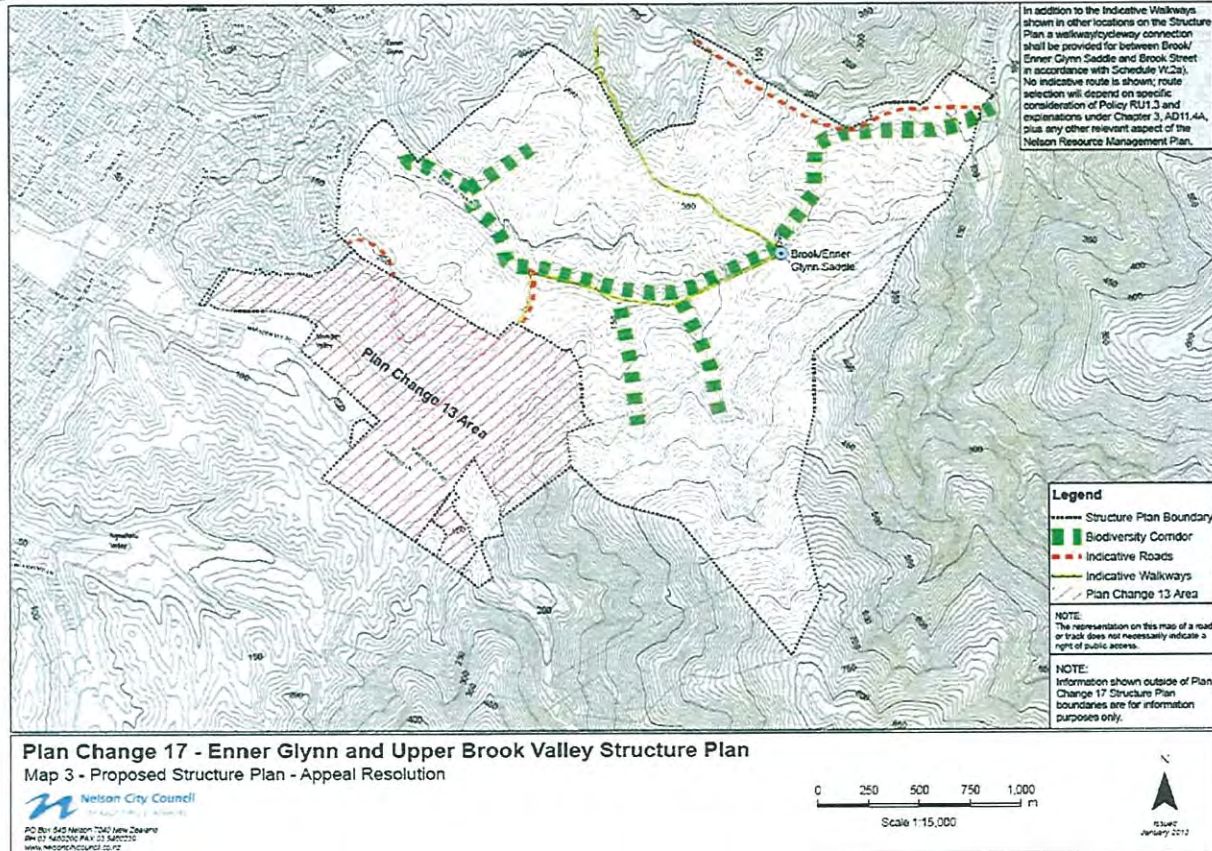
Chapter 12, Schedule W, Enner Glynn and Upper Brook Valley, W.5 Explanation

The **regionally significant resources** of the landfill and quarry are located in close proximity to the Upper Brook Valley and the York Valley / Enner Glynn Ridge and the potential for reverse sensitivity and cross boundary effects to occur have been recognised. To reduce the potential for these effects to occur, rural zoning has been retained in the Upper Brook Valley and along the York Valley / Enner Glynn Ridge so there is no increase in the development potential of this land adjacent to, and overlooking, the quarry and landfill. In addition the walkway / cycleway required by the structure plan (through rule W.2a) to connect the Brook / Enner Glynn Saddle to Brook Street does not have an indicative route shown. The reason for this is to ensure increased flexibility in the final choice of a suitable route. Route selection will take into account reverse sensitivity with, and effects on, the York Valley Quarry in particular as per Policy RU1.3, Rural subdivision assessment criteria RUr.78.4 p) and the relevant explanations under Chapter 3, AD11.4A.





Chapter 12, Enner Glynn and Upper Brook Valley Structure Plan map



1582109