

31 January 2007

Our Reference: Silverstream Spur

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Brett Lambert  
Parks and Reserves Manager  
Upper Hutt City Council  
Private Bag 907  
**UPPER HUTT**

**PRELIMINARY SECTION 40 PUBLIC WORKS ACT 1981  
REPORT: SILVERSTREAM SPUR KILN STREET,  
SILVERSTREAM: PART SECTION 1 SO 34755**

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The Property Group Limited (“TPG”) has been instructed to undertake a preliminary Section 40 Public Works Act 1981 investigation for Upper Hutt City Council (“UHCC”) considering the property known as the Silverstream Spur located at the western end of Kiln Street, Silverstream.

TPG has included in this report an assessment of the likelihood of an offer back of the property to the former owner under Section 40 of the Public Works Act 1981 should the land be declared surplus.

UHCC requires this information to assist their future management of this property. Neither the request for this report nor the report itself is intended to imply that the property has been declared surplus. This report is TPG’s assessment of the Council’s obligations under Section 40 with respect to the property, should it be declared surplus, based on our knowledge and expertise in the field.

Supporting Information

**The Property Group  
Limited Job Number**

706902

**Client**

Upper Hutt City Council, Attn Brett Latimer

**Area and Legal  
Description**

35.1407Ha being Part Section 1 SO 34755, comprised in Computer Freehold Register WN47A/214.

**Encumbrances**

1. Subject to Section 8 Mining Act 1971 and Section 5 Coal Mines Act 1979.

These sections reserved certain mineral rights to the Crown on a previous disposition of the land by the Crown.

2. Appurtenant Right of Way over Lot 2 DP 50142 and Section 1 SO 35130 by B.504204.11. This right of way no longer extends to the subject land, therefore provides no present benefit.

**Status**

Held in Fee Simple by Upper Hutt City Council

**Mineral Status**

We have not been requested to investigate mineral status as part of this instruction, but note that non-statute minerals have been previously reserved to the Crown as noted under encumbrances above. Statute minerals (gold, silver, uranium and petroleum in their existing natural condition) are reserved to the Crown in any event pursuant to Section 10 of the Crown Minerals Act 1991.

**Contingent Liability/  
Contamination Issues**

We are not aware of any contamination issues, which may affect this land.

**Location and Physical  
Description**

The subject land is generally rectangular in shape. The land comprises predominantly steep hillside, with other areas more moderately steep or undulating. The land is covered in gorse and regenerating pines with some native bush in the gullies.

Kiln Street is an unformed legal road. The right of way detailed above under "Encumbrances" does not extend to the subject land. This may need further investigation with a view to having the physical and legal access rectified, if this will add value should disposal ultimately be pursued.

We understand that in recent times access has been gained via an informal agreement with the adjoining owners (The Silver Stream Railway Incorporated) to Reynolds Bracken Drive.

**Zoning/Designation**

Two zonings cover the subject land, the western part is zoned Rural Hill and the eastern part is zoned Residential Conservation under the Upper Hutt City operative District Plan.

**Valuation**

No Current market value has been undertaken at this time. The Rateable Value as at 1 September 2004

|                   |             |
|-------------------|-------------|
| Land Value        | \$75,000.00 |
| Improvement Value | \$ 0.00     |
| Capital Value     | \$75,000.00 |

|                                 |  |
|---------------------------------|--|
| <b>Valuation Comment</b>        | N/A  |
| <b>Survey Plan Requirements</b> | No further survey work is required.  |
| <b>Title Requirements</b>       | No further titling work is required. The subject land comprises all CFR WN47A/214. |

**Acquisition History**                      **Background**

The subject land was previously held by the Crown along with other land for better utilisation, taken under the Public Works Act 1928 by Proclamation 434885. In 1988 part, including the subject land, was declared Crown Land subject to the Land Act 1948 by Gazette Notice 899381.1.

A new appellation issued being Section 1 SO 34755 was issued in 1990.

The Upper Hutt City Council then purchased the land for the sum of \$59,000 by way of Certificate pursuant to section 116 Land Act 1948. Computer Freehold Register 36A/978 then issued in the name of Upper Hutt City Council.

Part was then sold to The Silver Stream Railway Incorporated by the Council in 1996. The balance was given a new title, being CFR 47A/214, where the land still remains.

**Chronology**

|               |   |
|---------------|---|
| May 1959      | Taken by the Crown for better utilisation           |
| November 1987 | Land declared Crown Land                            |
| January 1990  | New Appellation Section 1 SO 34755 issued.          |
| March 1990    | Sold to Upper Hutt City Council                     |
| February 1996 | Part sold to The Silver Stream Railway Incorporated |
| February 1996 | Issue of new CFR WN47A/214 for remaining balance    |

**Section 40(2)(a)**

**Impractical, Unreasonable and Unfair**

The land was not purchased for a public work, therefore it is

unreasonable to offer it back. We are not sure whether the current purpose is regarded by Council as being a public work, but if not, and so the land since acquisition has not been held for a public work, section 40 will in fact have no application and no decision will be required in respect of section 40 PWA. We can perhaps investigate this aspect further with Council if the property is to be declared surplus and the Council wishes to make a final as opposed to the current preliminary decision.

The matter is not of any great consequence, as in any event in our view no offer to the former owner is required. This may impact on disposal though, as the land will need to be sold in accordance with section 42 PWA if it is subject to section 40 PWA. If not subject, the Council may have more flexibility as to the disposal process.

The Council officers report detailing the acquisition shows the subject property was on the market for sale by Landcorp. We have attempted to locate relevant Crown files, through Information New Zealand but these could not be located. We do not consider viewing the files as necessary given that the land was previously held as Crown Land under the Land Act 1948, for reasons set out below. We presume the land was allocated to Landcorp, then considered surplus and so sold.

Landcorp properties were required to be considered in respect of any section 40 obligations to the former owner prior to sale. That section 40 PWA was considered previously is evident by the Gazette notice pursuant to section 42 PWA we have located, which declared the land Crown Land. Section 42 PWA could only have application if the land had previously been subject to section 40 PWA, and so the obligation to any former owners must have previously been considered by the Crown.

Although we have not attempted to research this point further, if there is any risk associated with an incorrect decision, this will rest with the Crown.

The Council purchased the land by section 116 Land Act certificate, which is the usual means by which any private ownership can be acquired for Crown Land. This certificate brings the land within the jurisdiction of the Land Transfer Act, so it is thereafter capable of being titled.

There is no evidence of the land being acquired for a public work, and we note if this were the case the land could have been declared taken for this purpose by the Council, which would

provide a more convenient means of acquisition.

There is no obligation to the former owner being the Crown, and any previous liability to a former private owner will remain with the Crown.

It is unreasonable to offer the land to the former owner the Crown.

**Section 40(2)(b)**

**Significant Change**

Not Applicable.

**Section 40(2)(c)**

**Offer Back**

We do not consider section 40 of the Public Works Act is applicable in this instance for the reason detailed above.

**Section 40(3)**

**Land Acquired 31 January 1982 to 31 March 1987**

Not applicable. The subject land was purchased in 1989.

**Section 40(4)**

**Size, Shape and Location**

We do not consider that exemptions on these grounds are applicable.

**Successor in Title**

There is no successor in title, the Council purchased the whole title.

**Gifted Land**

Not applicable, the land was purchased by the Council for the sum of \$59,000.00.

**Comment**

We note the zoning of the land at the time of acquisition was Rural Town belt, which allowed predominant use such as forestry and plantation. Other options raised by the Council officer at the time was residential development (which would require a zone change) or passive reserve use to compliment the adjoining reserves.

The Council appeared to have no particular purpose when the land was purchased.

In November 1994 the Council decided to develop the land for forestry purposes in a joint venture with a forestry partner.

Because of the small size of the proposed plantation a forestry partner for the venture could not be found. The Council proceeded to develop the forestry block.

Later due to falling returns and cost of management the Council decided to discontinue the forestry operations and are currently in the process of up rooting the trees.

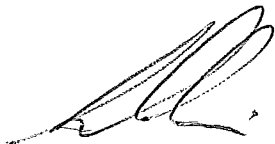
This points to the land not being regarded held by the Council for a public work, which we would confirm with Council prior to making any final recommendation under Section 40 PWA, as we consider it likely section 40 PWA does not have any application, and the land may be disposed of without reference to the PWA.

We note removal of pine trees on the land is presently underway. Should any residual trees remain at such time as the land may be declared surplus, these may require to be separately addressed when valuing the property.

We recommend physical and legal access also be considered prior to any disposal.

#### **Conclusion**

Should the Council pursue disposal of the subject land it appears likely from our preliminary investigation that an offer back to the former owner or his successor would not prima facie be required. We further consider it likely Section 40 of the Public Works Act has no application.



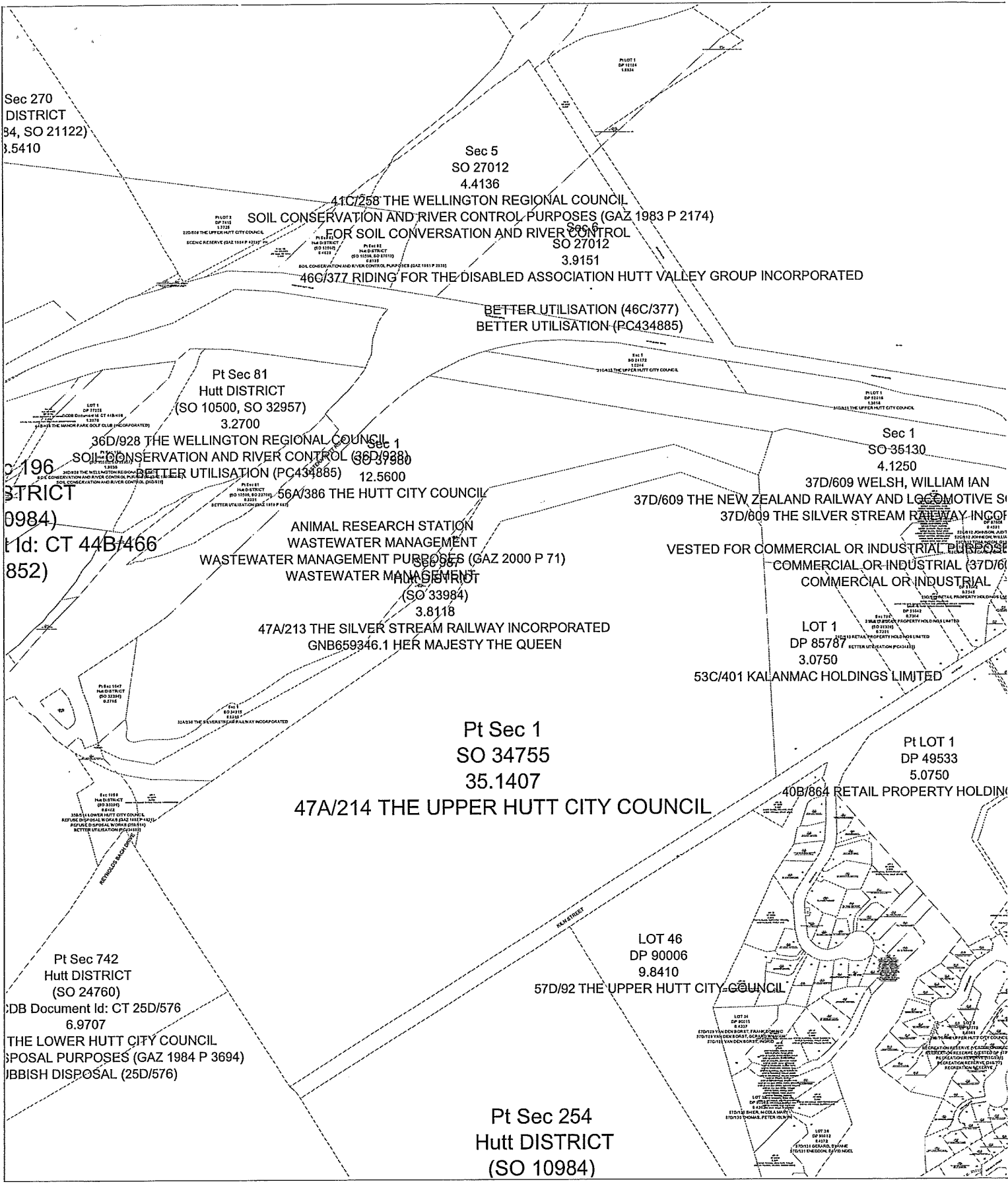
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**LEO CHIN**  
Senior Property Consultant  
Accredited Agent

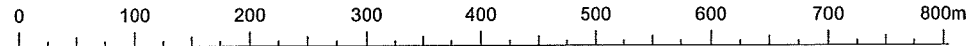


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**JAMES CLAREBURT**  
Senior Solicitor



Scale 1:6500



SO 35130

Survey and Title Data as at 9-OCTOBER-2006, Valuation and Sales Data as at 4-OCTOBER-2006 and Geodetic Mark data as at 9-OCTOBER-2006. For additional mark data visit [www.linz.govt.nz](http://www.linz.govt.nz). Cadastral Information from LINZ Core Record System (CRS). CROWN COPYRIGHT



Corporate Property Advisors and Negotiators

1 February 2007

Our Reference: Silverstream Spur

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|-----------|----------------------------|----------|---|----|---------|
| 1<br>CZM  | UPPER HUTT<br>CITY COUNCIL |          |   |    | 8<br>RM |
| 2<br>DIS  | 401                        |          |   |    | 9       |
| 3<br>DCOM | 2 FEB 2007                 |          |   |    | 10      |
| 4<br>DCOR | 5<br>DS&P                  | 6<br>DBS | 7 | 11 |         |

Dear Brett

### SILVERSTREAM SPUR - HISTORICAL INVESTIGATION

Thank you for your instruction to proceed with the Preliminary Section 40 investigation of the above property. We note that this property has not been declared surplus at this time.

Our investigations at this time leads us to believe that the land was not purchased for a Public Work and is not being used for Public Work purposes therefore section 40 is not applicable. However should the Council consider the property's current use is a public work then we would need to review our report.

We also note that the right of way registered against the property's title does not provide access to the property boundary. The access issues physical and legal will need to be resolved and will also add value to the property.

I trust the enclosed report meets your requirements, if you have any questions regarding the report please do hesitate to call me to discuss.

Yours sincerely

**LEO CHIN**  
 Senior Property Consultant  
 Accredited supplier

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