

## **Ashburton District Council**

### **Notice of Hearing**

to be held on

**Wednesday 15 November 2023**  
commencing at **10:30 am**

**Council Chamber**  
**137 Havelock Street**  
**Ashburton**

**Coach Access – Lake Clearwater Hut Settlement**

## Order of Business

1. **Submitters:** Each submitter shall have 10 minutes to present their views on the signs. Councillors may have questions for submitters.
  - (i) Mark Gilbert, Managing Director of Hassle-Free Tours Limited.
  - (ii) Lake Clearwater Hutholders Association.
2. **Council officers:** Council officers will present a report, which shall include a recommendation on the future of the signage. This report shall be pre-circulated.
3. **Council:** Councillors shall then deliberate. Council has the option to either make a decision on the date of the hearing, or reserve its decision for a later date. Council has the right to reserve its decision for any reason, including if there is insufficient information available to make a decision on the day of the hearing.

## Background report

On 7 February 2023 the following email was received from the Secretary of the Lake Clearwater Hutholders Association;

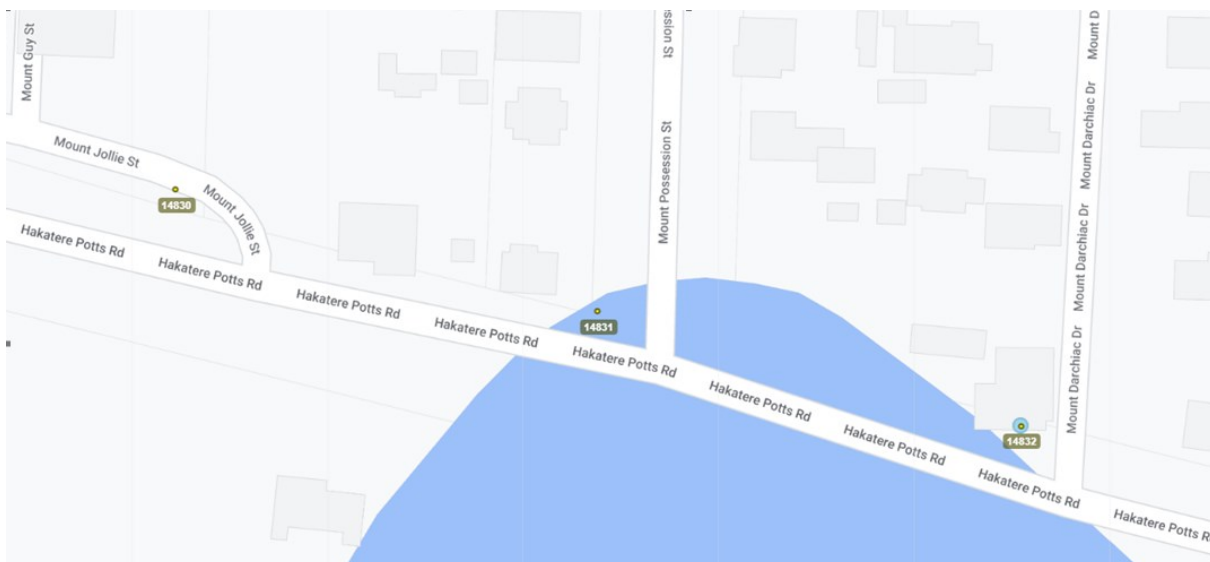
*At our AGM on Sunday, concern was aired over the number of tour buses that are driving along Mt D'Archiac Drive to offload passengers for photo opportunities. They then drive down the steep hill and back along Mt Possession Street and are causing damage to these roads, with a lot of ruts being formed on the hill. They are also a danger to the number of young children and other people who are enjoying a walk or a run on the roads. The dust thrown up in these dry hot conditions is also very frustrating.*

*We would like to see a ban on heavy vehicles using these roads, with the exception of emergency and service vehicles.*

*Would it be possible for signage to be placed up there to curtail these vehicles?*

*The tour companies might have to park at the end of Lake Camp and let their passengers walk to get the photo.*

In response to the request, on 27 June “No Tour Coaches” signs were erected on Mount D’Archiac St, Mount Possession St and Mount Jollie Street. The location of the signs is shown on the map below.



Mark Gilbert of Hassle Free Tours complained about the signs. He has written to the Mayor as follows;

*I am writing to formally lodge a complaint concerning the recent installation of 'No Coach Signs' in the Lake Clearwater Settlement, specifically on Mt D'Archiac Street and Mt Possession Street. Our company, Hassle-free Tours, has been proudly conducting tours in the Canterbury high country, taking visitors to destinations like Erewhon Station and the Lord of the Rings location at Mt Sunday for two decades.*

*One of the highlights of our tours has always been the stop at the end of Mt D'Archiac Street. This vantage point offers our guests a breathtaking view down Lake Clearwater, which I personally consider one of the most stunning spots in all of New Zealand. Our commitment to inclusivity means we cater to guests of all ages and physical abilities. Regrettably, the recent restrictions on access to Mt D'Archiac Street pose a significant challenge to this experience.*

*It has come to our attention that the Hutt Owners Association has requested the council to prohibit tour coaches from using these roads. Their rationale seems to revolve around concerns about dust and road damage. We respectfully disagree with this perspective, as our vehicles travel at a mere 10 kilometers per hour down the road, thereby generating minimal dust.*

*Furthermore, the road's condition from the top of Mt D'Archiac Street down to Possession Street is more influenced by vehicles skidding their wheels while driving uphill, rather than our vehicles' careful descent. For us, using this route is the only practical way to access Lake Camp on Mt D'Archiac Street and depart via Mt Possession Street.*

*In an effort to find an amicable resolution, I've engaged in a discussion with Steve Hadler, President of the Hutt Owners Association. We offered to contribute to additional road maintenance. However, it appears that the request to restrict tour coaches from these roads may not be grounded in concerns over dust or road damage. Steve himself commented that some hutt owners simply do not want tour coaches passing by their properties.*

*We are willing to collaborate with the council and the Hutt Owners Association to address their concerns and minimize any potential disruptions. Nonetheless, we believe that the impact we have is relatively minimal, given that we are not a daily presence, and our time on the road is brief - a few minutes for the drive down and approximately 10 minutes at the lookout point. The loss of the ability to access Mt D'Archiac Street would disproportionately affect the enjoyment of our guests. We kindly request the removal of the 'No Coach Signs' and the restoration of our long-standing ability to operate our tours without hindrance, as we have done for over two decades.*

*Furthermore, we express our disappointment that this decision was made without any prior consultation with a business that would be profoundly impacted by it. Additionally, we are seeking clarification on the legality of erecting these signs.*

*With the upcoming start of our summer season, which is less than a month away, we earnestly hope to resolve this matter promptly to ensure the smooth continuation of our operations. Please feel free to reach out to me if you require any further information or would like to discuss this matter in more detail.*

*Thank you for your prompt attention to this important issue.*

## Lake Clearwater Village

Hakaterere Potts Road (leading into Lake Camp and Lake Clearwater) and Mt Possession Street are the only legal roads within the Lake Clearwater village settlement. All other roads within the settlement are located on private ADC land and are not legal roads.

The roads within the settlement are generally about 4 metres wide, which only safely enables one standard size vehicle to pass down the road. If a vehicle meets an oncoming car, one of the vehicles will generally need to move onto the adjacent grass verge (which is generally within a bach owner's leased area) in order for the other vehicle to pass.

The Lake Clearwater settlement is shown in the aerial photograph in **Appendix 1**.

Hakaterere Potts Road is maintained by ADC's road maintenance contractor on instruction from the Roding Team.

All other roads within the settlement, including Mount Possession Street, are considered to fall within the Property Team's budget to maintain. These roads have not been graded or maintained for several years. The Roding Team has estimated there will be an upfront cost of approximately \$10,000-12,000 to bring the roads up to standard. After that, it is recommended that these roads receive a maintenance grade at least 1-2 times per year, at an estimated cost of \$1,500 - \$2,500 per grade. As they are not legal roads, ADC is not eligible for any Waka Kotahi subsidy for maintenance works.

## Legal Considerations

The purpose of this hearing is for Council to hear from both parties, as well as Council officers, before making a decision on the future of the signs.

As noted above, the signs located at Mount D'Archiac Drive and Mount Jollie Street are on private Council freehold land. By comparison, Mount Possession Street is a legal road.

As landowner, Council therefore has discretion to impose any restrictions on the use of that land, subject to complying with any necessary regulatory requirements, such as bylaws.

Council's [Transportation and Parking Bylaw](#) applies to Mount D'Archiac Drive, Mount Jollie Street and Mount Possession Street. This is due to the definition of 'road' within the Bylaw. 'Road' is defined as:

*“Road has the same meaning as in section 2(1) of the Land Transport Act 1998 and will where the context requires include a street but does not include State Highways controlled by the New Zealand Transport Agency.”*

Section 2(1) of the Land Transport Act 1998 defines 'road' as:

*“road includes—*

- (a) a street; and*
- (b) a motorway; and*
- (c) a beach; and*
- (d) a place to which the public have access, whether as of right or not; and*
- (e) all bridges, culverts, ferries, and fords forming part of a road or street or motorway, or a place referred to in paragraph (d); and*
- (f) all sites at which vehicles may be weighed for the purposes of this Act or any other enactment.”*

As is evident from the above definition, in particular, paragraph (d) (*“a place to which the public have access, whether as of right or not”*), roads within the settlement such as Mount D'Archiac Drive and Mount Jollie Street would fall within the definition of 'road'. There is no requirement for a road

to be a legally vested road to fall within the definition of 'road' under the Land Transport Act and Council's Transportation and Parking Bylaw.

As well as the Bylaw, Council's Roading Team works within the land transport legislation and specifications, such as the Traffic Control Devices Manual, to manage and install traffic control signage and road markings. The three signs erected at Lake Clearwater are not inconsistent with any land transport legislation or specifications.

Further, clause 6.1 of the Transportation and Parking Bylaw provides:

*"6.1 No person will stop, stand, or park a vehicle or vehicle combination on any road, public car park, reserve or any other public place in contravention of a restriction imposed by the Council as evidenced by appropriate signs and/or road markings."*

The purpose of the 'No Tour Couches' signage is to stop tour buses passing through the village and parking beside Lake Clearwater. The signs were considered necessary by staff in order to address concerns with the adverse effects that tour buses were having on the settlement, including dust, safety and damage to roads. As the three signs are considered by officers to be "appropriate signs" for the purposes of the Bylaw, officers believe it would be a breach of clause 6.1 of the Bylaw for a tour bus to go down either of Mount D'Archiac Drive, Mount Jollie Street or Mount Possession Street and park up at Lake Clearwater.

Breaches of the Bylaw are dealt with through clause 22 of the Bylaw.

Council's [Public Places Bylaw](#) is also relevant. A 'public place' is defined in the Bylaw as:

*"means any place or space that is owned or controlled by Council and which is open to the public, and any road whether or not it is controlled by the Council, but excludes reserves which are regulated by the Ashburton District Council Open Spaces Bylaw."*

The Lake Clearwater Village is not a 'reserve' or an 'open space' for the purposes of the Council's Open Spaces Bylaw, so therefore falls to be considered under the Public Places Bylaw.

The following provisions of the Public Places Bylaw are relevant to activities in a public place:

*7.3 No person may, without prior consent from Council, or as expressly allowed by this bylaw:*  
...  
*7.3.4 Carry out any activity where a sign indicates that the activity is prohibited or is otherwise regulated;*

Clause 16.1 of the Bylaw further states that every person who breaches this bylaw commits an offence and is liable on summary conviction to a fine not exceeding \$20,000.

Under clause 7.3.4, a tour bus operator cannot undertake an activity in a public place, such as driving through the roads in the settlement, which is prohibited by signage.

Council can then enforce compliance through clause 7.3.4 and clause 16.1 of the Bylaw, should it choose to do so.

Finally, as landowner, Council has a general duty to both the public and residents to take reasonable care to avoid injury to others – that is, to not act negligently. Council has been alerted to safety concerns by residents and has therefore chosen to act in a reasonable manner to mitigate any potential risk to residents and the general public having regard to the particular circumstances of the settlement, such as the narrow, busy streets over the summer periods.

## Options analysis

### **Option one – Retain the ‘No Tour Coaches’ signs** (*recommended option*)

<p><b>Advantages:</b></p> <ul style="list-style-type: none"><li>- This is consistent with the wishes of the Lake Clearwater residents, who are concerned about the adverse effects of the buses through the settlement.</li><li>- This option will likely limit the wear and tear on the road, as less heavy vehicles are using these small, narrow roads.</li><li>- This option is not preventing bus passengers from visiting Lake Clearwater, as they can still park near Lake Camp, and walk through the settlement to visit Lake Clearwater.</li></ul>	<p><b>Disadvantages:</b></p> <ul style="list-style-type: none"><li>- This option will not be popular with the tour operator, who want to be able to drive their passengers right up to Lake Clearwater.</li></ul>
<p><b>Risks:</b></p> <p>This option may not be seen to promoting or supporting local tourism, given it is not supported by the tour operator.</p>	

### **Option two – Remove the ‘No Tour Coaches’ signs to enable buses to travel through the settlement**

<p><b>Advantages:</b></p> <ul style="list-style-type: none"><li>- This option will be supported by the tour operator.</li></ul>	<p><b>Disadvantages:</b></p> <ul style="list-style-type: none"><li>- Council will continue to receive complaints from residents over the summer months due to their ongoing concerns.</li><li>- The settlement gets very busy over the summer months, with bach owners choosing to spend their summer holidays at their baches. Therefore, with an expected increase in buses over the summer due to visits from cruise ship passengers (who are now coming into Lyttleton Port again in large number post-COVID and following the rebuild of the Port), there may be safety concerns with large buses travelling through an already busy settlement.</li></ul>
<p><b>Risks:</b></p> <p>As noted above, officers do have safety concerns with large buses passing through narrow, busy streets over the summer months.</p>	

**Officer's Recommendation**

It is the officers' recommendation the 'No Tour Coaches' signs remain at their current locations at Mount D'Archiac Drive, Mount Jollie Street or Mount Possession Street. Officers consider it is safer for tour buses to park near Lake Camp and allow their passengers to take the short, approximately 300 metre walk to Lake Clearwater.

Jane Donaldson  
**Group Manager Compliance & Development**

Tania Paddock  
**Legal Counsel**

**Appendix 1: Lake Clearwater settlement**





**Appendix 2: Signs**



**Photo 1: Mount Jollie Street**



**Photo 2: Mount Possession Street**



**Photo 3: Mount D'Archiac Drive**