
Report of 28 October 2009

Offham Downs **567027 158277** **19 August 2009** **TM/09/00269/FL**

Proposal: Private gypsy and traveller caravan site with one mobile home, one touring caravan and utility building (resubmission of TM/04/00281/FL)

Location: The Horseshoes Sandy Lane West Malling Kent ME19 6TG

Applicant: Mr And Mrs T Harber

1. Description:

- 1.1 The proposal is to retain the use the site as a private gypsy caravan site.
- 1.2 The application is retrospective and the development as applied for in the application includes the siting of two residential caravans (one tourer and one twin unit mobile home), the installation of foul drainage and also the residential use of a stable block (as a storage and utility room). The northern sector of the site is laid to grass.
- 1.3 The case of 'very special circumstances' submitted is (summarised):
- Applicants are traditional ethnic Romany Gypsies meeting definition of c.01/2006.
 - There is a need for further sites for gypsies regionally, locally and personally.
 - Personal circumstances - health and educational needs of children.
 - Deficient policy provision for Gypsy and traveller needs.
 - Limited harm from this site.

2. Reason for reporting to Committee:

- 2.1 The controversial nature of the application and that it is a departure from the development plan for this area and a resubmission of a previous refusal of planning permission and contrary to an extant enforcement notice.

3. The Site:

- 3.1 The site lies outside the settlement confines of West Malling, within the MGB.
- 3.2 The site measures approx. 0.2ha (0.5ac) with average dimensions of 35m (115 feet) by 55m (180 feet) and is sited on the outside of a sharp corner in Sandy Lane. The access to the site has been widened.

- 3.3 The boundary to Sandy Lane is a bank with mature hedgerow. To the north is a residential property beyond a mature hedgerow. New hedgerows have been planted on the southern and western boundaries and now reach approx 1.5m high.
- 3.4 A PROW runs approx. 25m (82 feet) to the south of the site.
- 3.5 There is not currently a tourer van but it is intended to purchase a new one. The mobile home is a twin unit, measuring 6m by 11m according to the submitted block plan. It is sited along the western boundary, on gently sloping land that is sloping down from south to north.
- 3.6 The twin-unit has cream coloured exterior and a shallow pitched roof with a feature gable to the front door and is surrounded by a brick and mortared plinth with a maximum height of 75cm. Two sides of the plinth abut a tarmacked area and one side abuts a raised brick slabbed raised patio area. Parking is provided in the southern part of the site. The northern part of the site is laid to grass and used as garden but also appears to be used as a small holding.
- 3.7 The stable building in the SW corner of the site is of timber construction with timber cladding and is primarily used for domestic storage although has been used for foaling horses in the past according to the applicant.
- 3.8 Foul drainage is to an established cess pit (although the application documents erroneously refer to it as a septic tank). The site lies on a Water Gathering Area.

4. Planning History:

TM/76/11013/FUL Grant with Conditions 27 February 1976

Erection of 5 Portable Dog Kennels.

TM/90/10278/OUT Refuse 23 May 1990

Outline application for one single storey four bedroom dwelling and garage.

TM/02/01505/FL Grant With Conditions 30 October 2002

Construction of double stable.

TM/04/00281/FL Refuse 14 September 2007

Continued use of land for siting of 1 mobile home and 1 touring caravan for permanent residential occupation including installation of septic tank.

4.1 There is an enforcement notice on the site dating from 1992.

5. Consultees:

5.1 Offham PC: Offham Parish Council has considered the latest application for a mobile home, touring caravan and utility building on this “private gypsy and traveller caravan site” and we remain opposed to the continued occupation of the site and this latest application. There appears to be no change in circumstances since the last application in 2004 in that the applicants’ sole justification for the “very special circumstances” to justify otherwise inappropriate development in the Green Belt is their “gypsy and traveller status”. Whilst we are aware that the legal complexities on the rights of gypsies and travellers are extensive, it would seem a very unjust planning system that permitted the occupation of land and buildings that would not otherwise be permitted without the special status of the occupants. Whilst the applicants refer to a need for further site provision, no evidence is included with the application to prove that any of the possible sites within the local area are either at maximum capacity or cannot be considered acceptable by the applicants for any particular reasons. We very much hope that TMBC are able to refuse planning permission on this site and that this will not be yet another application that receives consent to the increasing irritation of non gypsy and traveller parishioners.

5.2 West Malling PC: Object strongly, surprise that no action has been taken before to regularise the situation.

5.3 EA: No comments.

5.4 KCC (Highways): No objections.

5.5 DHH: Environmental Protection - object due to inadequate information of drainage.

Waste Management - standard policy applies.

Housing - a caravan site licence is required.

Contamination - If a permanent structure is intended, a desktop and walkover study is necessary.

5.6 Private Reps: Departure and Public Interest site and press notices + (2/1R/0S/0X). One objection has been received stating that the development is contrary to the Kent Structure Plan and to the approved Local Plan.

6. Determining Issues:

6.1 The main issues relate to the principle of the development and its impact upon the rural character of the locality and the issues surrounding gypsies and the provision of sites.

Planning Policies:

- 6.2 National Policy is PPG2 (Green Belts) and Circular 01/06 (Planning for Gypsy and Traveller Caravan Sites).
- 6.3 Main strategic policy for gypsy cases is H4 of the adopted SEP and draft policy H7. Policy C4 requires Planning Authorities to aim to protect and enhance the diversity and local distinctiveness of the region's landscape.
- 6.4 The relevant policies in the TMBCS are CP3, CP10, CP14 and CP20. Policies CP3 and CP14 relate to the restrictions in the Green Belt and in the countryside and identify the types of development that may be appropriate. The need to provide a case of very special circumstances is also outlined and states that all new development without this justification or listed as appropriate will be refused.
- 6.5 Policy CP20 which relates to gypsies and site provision states that permission will be granted if all of the requirements listed under this policy are met. One of these requirements is that there is an identified need that cannot reasonably be met on an existing or planned site. The other requirements relate to site specific issues such as impact upon rural and residential amenity, accessibility to the site, and the sites being accessible to local shops, schools and other community facilities. This policy also states that there will be a presumption against the development of gypsy accommodation in the Green Belt unless there are very special circumstances.

Green Belt and Impact on the Countryside:

- 6.6 The site is within the Green Belt where Government guidance contained within PPG 2 applies. Paragraph 1.5 of PPG 2 defines the purposes of including land within the Green Belt, one such being to assist in safeguarding the countryside from encroachment. The development does harm the openness of the Green Belt, with the introduction of caravans and associated structures, the hard standing and use of land as residential garden. The mobile home is higher than the hedgerows on the southern and eastern boundaries and cream colour of the mobile home increases the visual prominence in the landscape.
- 6.7 The development is clearly inappropriate development within the Green Belt. The development also represents an encroachment into the countryside which is contrary to one of the aims of the Green Belt.
- 6.8 PPG 2 also states at paragraph 3.1 that there is a general presumption against allowing inappropriate development which should not be permitted, except in very special circumstances. Policy CP3 TMBCS states that proposals within the Green Belt will be considered against National Green Belt policy.

- 6.9 As inappropriate development, there is an onus on the applicant to demonstrate that 'very special circumstances' exist such as to outweigh the strong policy objection to this proposal. Consideration of potential "very special circumstances" can include the personal circumstances of the applicant and the family background.
- 6.10 Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites confirms the importance of Green Belt policies and the protection of the environment from inappropriate development. It states "there is a general presumption against inappropriate development within Green Belts. New gypsy and traveller sites in the Green Belt are normally inappropriate development, as defined in PPG2. National planning policy on Green Belts applies equally to applications for planning permission from gypsies and travellers, and the settled population. Alternatives should be explored before Green Belt locations are considered."

Considerations in respect of Gypsy site provision

- 6.11 Government advice concerning Planning for Gypsy and Traveller Caravan Sites is set out in Circular 01/2006. The Circular states at paragraph 12 that its main intentions are:

"a) Create and support sustainable respectful and inclusive communities where gypsies and travellers have fair access to suitable accommodation, education, health and welfare provision, where there is mutual respect and consideration between all communities for the rights and responsibilities of each community and individual and where there is respect between individuals and communities towards the environments in which they live and work;

b) to reduce the number of unauthorised encampments and developments....

c) to increase significantly the number of gypsy and traveller sites in appropriate locations with planning permission in order to address under provision over the next 3-5 years;

d) to recognise, protect and facilitate the traditional travelling way of life of gypsies and travellers whilst respecting the interests of the settled community;

e) to underline the importance of assessing needs at regional and sub-regional level and for local authorities to develop strategies to ensure that needs are dealt with fairly and effectively;

f) to identify and make provision for the resultant land and accommodation requirements;

g) to ensure DPDs include fair, realistic and inclusive policies and to ensure identified need is dealt with fairly and effectively;

h) to promote more private gypsy and traveller site provision in appropriate locations through the planning system, while recognising that there will always be those who cannot provide their own sites; and

i) to help avoid gypsies and travellers becoming homeless through eviction from unauthorised sites without an alternative to move to.”

- 6.12 Policy CP20 states that provision will be made (either through the LDF process or through specific planning permissions) for the number of plots specified in the South East Plan on sites that meet certain criteria, as set out in the policy.
- 6.13 The strategic policy for these types of cases is policy H4 of the SEP that requires Local Authorities to identify the full range of existing and future housing needs required in their areas, working with adjoining local authorities where appropriate including groups with particular housing needs such as gypsies, travellers and travelling showpeople. Local development documents should require an appropriate range and mix of housing opportunities by identifying the likely profile of household types requiring market housing, the size and type of affordable housing required. Local authorities should seek to identify a mix of site allocations in each five year period, preparing development briefs as necessary, to encourage a range of housing types to be provided.
- 6.14 In accordance with the Housing Act 2004, the Borough Council undertook a Gypsy and Traveller Accommodation Assessment (GTAA) survey in 2005/6 jointly with Ashford, Maidstone and Tunbridge Wells Borough Councils. The accommodation assessments are intended to provide, for the first time, comprehensive, robust and credible data relating to the needs and requirements of the Gypsy and traveller community.
- 6.15 The GTAA has served to inform the regional position on such accommodation. On the basis of the GTAA finding, the identified need was in the order of 10 units in the period until 2011 within Tonbridge and Malling Borough.
- 6.16 The SEP included an Interim Statement based on DCLG Circular 01/2006 (on the basis of local authority Gypsy and Traveller Accommodation Assessments).
- 6.17 The preferred option of the regional planning body is that 18 pitches would be the provisional figure for the Borough as outlined in draft regional spatial strategy policy H7 published in June 2009. The consultation period for this document expired on 1 September 2009. This Council has raised objections to draft policy H7.
- 6.18 The Council has taken a position of objecting to the figure of 18 additional pitches, instead promoting an option which would mean 12 pitches; much closer to the GTAA which is based upon more localised analysis. The GTAA figure recognised those unauthorised facilities in the Borough at the time of completion plus the growth expected from existing facilities and incomers to the Borough.

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- 6.19 The draft SEP policy H7 is due to be considered at an examination in public in February 2010 and the approved policy will be published some time after that. Draft policy H7 requires the provision of 18 additional permanent pitches for Gypsies and Travellers within Tonbridge and Malling by 2016. This is a little under the average requirement of 20 new pitches for authorities in the region. The policy is based on a modest redistribution of pitch provision among districts having regard to development constraints and district populations. The draft policy is a further step towards the determination of pitch requirements for districts in the region. To that extent it provides a somewhat clearer picture of the level of provision the Council will be expected to meet by 2016. The GTAA carried out on behalf of the Council and four other authorities in 2005/6 had already suggested a need for a further 10-13 pitches in the Council's areas by 2011, so the fact that there is an unmet need for new pitches is not a recent discovery. The publication of draft policy H7 provides some clarification of the need the Council is likely to have to meet by 2016 but will not become clearly refined until some time after February 2010.
- 6.20 Hence at the Regional level, the pitch provision requirement for gypsy/travellers has not yet been finalised and will not be until the partial review of the Regional Spatial Strategy has been completed (expected to be mid 2010).
- 6.21 Circular 01/2006 states that where there is a clear and immediate need, local planning authorities should bring forward development plan documents containing site allocations in advance of regional consideration of pitch numbers. That is effectively what the SEP partial review will create a context for.
- 6.22 To comply with that national advice and in advance of the formal adoption of the SEP figure, the Borough Council and KCC are currently pursuing opportunities for the positive provision of gypsy and traveller sites to make up the deficit identified in the GTAA and a planning application has been submitted by KCC for the redevelopment and extension of the existing Gypsy site at Coldharbour, Aylesford. This is to provide a total of 18 pitches (a net gain of 10 additional pitches). It is envisaged that a decision on that planning application will be made by KCC within the next few weeks.
- 6.23 This project has also been submitted to the Housing and Communities Agency for the current funding bidding round for gypsy site provision. On the assumption that this project is successful and is implemented, it could provide accommodation for the occupiers of the site the subject of this report. That alternative provision would not be within the Green Belt and would follow policy criteria set out in Core Strategy policy CP 20. It is expected that the Secretary of State will shortly publish a decision on the funding of such specific projects.
- 6.24 The situation is that there is clearly a present need for additional gypsy accommodation within the Borough but it is intended that this is likely to be met within the next 3 years when the Coldharbour project comes to fruition. Whilst at

the time of writing this report, neither planning permission nor the grant application to the HCA have been approved for this development, it is anticipated that should such approvals be given by the end of this year, works could start on site in spring next year and potentially, the new pitches could become available by spring/summer 2011. Any update on these key issue of context will be reported in a Supplementary Report.

Human Rights

- 6.25 A key issue in this type of case is the European Convention on Human Rights as applied by the Human Rights Act 1998. The applicants and their family occupy the site as a home. Article 8 of the European Convention on Human Rights requires that “everyone has the right to respect for his private and family life, his home”. In terms of a refusal of planning permission and any subsequent enforcement action, the Courts have set a test to be applied: whether planning measures taken by a Local Planning Authority are necessary and proportionate, having regard to both the potential harm to the environment and the personal circumstances of the applicants. The UK planning system has been held to be an appropriate mechanism to balance these matters alongside all other planning considerations.
- 6.26 Inspectors in such cases have commented that the fact that a home is established *unlawfully* can, to a degree, diminish the reliance that can be placed on the respect of that right. As mentioned above the Convention also provides that interference by a public authority with that right may be justified in some circumstances. As the potential loss of a home would technically be an interference with the human rights of the applicant and his family, consideration must be give whether the refusal of planning permission and associated enforcement action would be necessary and proportionate.
- 6.27 In terms of the potential harm to the environment, the site is relatively well screened although the mobile home is higher than the hedgerows on the southern and eastern boundaries and cream is a relatively vivid colour in the landscape. The development is acceptable in terms of highway safety and other planning issues.
- 6.28 In terms of personal circumstances, the applicants now have 3 children living within this site (ages 18, 15 and 11). The younger children attend the Malling School, East Malling. The eldest child attends Mid Kent College at Barming. There were said to be no special social service needs but all the children and Mrs Harber suffer from asthma.
- 6.29 Before moving to a house in East Malling, the family originally resided on an unauthorised site in Maidstone and have family ties in the Gravesend area.

- 6.30 In a recent appeal case concerning another gypsy site in the Borough, the Inspector gave given substantial weight to the educational needs of children and considered that the consequence of moving that family off site to live on the road would make attending school very difficult at best. (The Inspector in that case granted temporary planning permission for that development, which expires in July 2011). It is apparent that the applicant and his partner wish to raise their children as gypsies. It seems unlikely that the applicants and their children would return to bricks and mortar accommodation but are likely to resort to live on the road with a detrimental impact on the children's continued education. It would also be likely that on "on the road" lifestyle would also give a poor environment for the family to reside within, cause other harm to the countryside/Green Belt and in all probability cause objections and concerns to other residents affected by that mode of living. That is, the concerns that arise from this case would not necessarily be eradicated by refusal/ enforcement action when there is still an identified deficit of adequate site provision within the Borough.
- 6.31 It is clear that in the current circumstances, while the Human Rights background is very important consideration in all cases such as this, it is not in itself the sole or decisive factor nor is it the fact that such matters automatically override all other material planning considerations.

Temporary planning permission

- 6.32 The primary objection to the development is that it lies within the countryside and Green Belt and in the latter respect is inappropriate development. Much of the Borough is covered by this designation and the existing public gypsy sites stand at full capacity and have a low turnover. Whilst the applicant has not submitted any evidence of searching for sites including those outside the Green Belt, suitable sites within rural or urban settlements are unlikely to be readily available yet be acceptable in terms of their planning merits.
- 6.33 Given that the development does cause harm to the countryside and Green Belt by reason of its inappropriateness and impact on the amenities of the Green Belt, I do not consider that a permanent planning permission is justifiable in the current context especially bearing in mind the factors mentioned by the Inspector quoted above. However, Circular 01/2006 requires that consideration be given to granting a temporary planning permission. It states at paragraphs 45 and 46:

"45. Advice on the use of temporary permissions is contained in paragraphs 108 – 113 of Circular 11/95, The Use of Conditions in Planning Permission. Paragraph 110 advises that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission. Where there is unmet need but no available alternative gypsy and traveller site provision in an area but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need, local planning authorities should give consideration to granting a temporary permission.

46. Such circumstances may arise, for example, in a case where a local planning authority is preparing its site allocations DPD. In such circumstances, local planning authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified. The fact that temporary permission has been granted on this basis should not be regarded as setting a precedent for the determination of any future applications for full permission for use of the land as a caravan site. In some cases, it may not be reasonable to impose certain conditions on a temporary permission such as those that require significant capital outlay.”

- 6.34 The outcomes of two recent appeal hearings within the Borough relating to gypsy development also provide relevant context for this case. These two appeals have been allowed for gypsy caravan sites. In both cases, the Inspectors’ considered that there was harm to the Green Belt/countryside/amenities such that permanent planning permission should not be granted. However, temporary permissions were granted as the Inspectors were not, at the time, satisfied that alternative sites would be available in the short term for acceptable relocation. At that time the SEP process was in its infancy and has now become an even more important factor in determining the necessary supply of gypsy and traveller sites in the Borough. It therefore appears, on the basis of these fairly recent decisions by Inspectors (one of which granted a 3 year temporary permission and the other for 5 years), that unless a site suffers from clear and overwhelming site specific problems, then it is likely that temporary permission for this site would be allowed on appeal even though the site is in the Green Belt. This is in light of the results of the GTAA, the fact that the SEP debate may yet define the need differently and potentially higher than GTAA, together with the practical timetable for the provision of the upgraded Coldharbour site being expanded.
- 6.35 Hence these recent appeal decisions made with regard to two sites elsewhere in the Borough indicate a crucial element in the judgement exercised in appeal decisions. The provisions of Circular 01/2006 make it clear that Local Planning Authorities should consider positively granting temporary planning permissions while the adequate provision of a supply of gypsy sites is ensured. Given the above and the Inspectorial decisions to grant temporary permissions, and also given the position with regard to the Coldharbour project, consideration must be given to the appropriateness of the grant of temporary permission.
- 6.36 In the circumstances of this case, I am of the opinion that a temporary permission would be justified albeit resulting in temporary harm to the Green Belt pending the availability of new pitches at Coldharbour. I also consider that it would be disproportionate in human rights terms to force the applicants to leave the site before pitches at Coldharbour become available, and the results of the SEP partial review are known, particularly as there is no evidence of any readily available lawful site to which the applicant could readily move without detrimentally disrupting the family’s education.

6.37 In the circumstances of this particular case, I believe there is a reasoned justification to grant a temporary planning permission for this development pending the development of the additional pitches at the existing Coldharbour site and the outcome of the SEP partial review.

Conclusion

6.38 In light of the above, I recommend that temporary and personal planning permission be granted subject to other conditions to limit, as far as practical for a temporary permission, harm to the rural area such as securing a more subtle external colour, allowing the screen hedge to grow taller and controlling the design of any fences and walls which could give an overly suburban appearance.

7. Recommendation:

7.1 **Grant Temporary Planning Permission as detailed by:** Letter dated 19.08.2009, Design and Access Statement dated 29.05.2009, Photographs dated 29.05.2009, Block Plan HT 902-01 dated 19.08.2009, Letter dated 10.02.2009, Location Plan dated 10.02.2009, subject to the following:

Conditions / Reasons

1 The occupation of the site hereby permitted shall be carried on only by Mr Tom Harber and Mrs Kathleen Harber who are gypsies as defined by paragraph 15 of ODPM Circular 01/2006 and by their resident dependants and shall be for a limited period being the period of 3 years from the date of this decision.

Reason: The site is located in an area where this development would not normally be allowed and it is the particular circumstances of this case that justify granting a temporary and personal planning permission.

2 When the site ceases to be occupied by those named in Condition 1 or at the end of 3 years from the date of this decision, whichever shall first occur, the use hereby permitted shall cease. Within 3 months of that date the land shall be restored to its condition before the use commenced and all caravans, structures, materials and equipment brought onto the land in connection with the use shall be removed.

Reason: In the interest of amenity.

3 The residential use hereby permitted shall be restricted to the stationing of 1 mobile home and 1 touring caravan.

Reason: In the interest of amenity.

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- 4 Within 2 months of the date of this decision a scheme for the disposal of foul and surface water shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented within 2 months of the date of the approval.

Reason: In order to prevent pollution of controlled waters.

- 5 No additional external lighting shall be erected within the site without the written approval of the Local Planning Authority.

Reason: In the interests of rural and visual amenity.

- 6 Within 1 month of this decision or prior to any replacement caravan being brought on site, details of an alternative external colour finish to the mobile home shall be submitted for the approval of the Local Planning Authority, and the approved details shall be carried out within 1 month of approval.

Reason: To ensure that the development does not harm the visual amenity of the locality.

- 7 The existing screen hedging shown on the approved plan shall be retained at a minimum height of 2m.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect the appearance and character of the site and locality.

- 8 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no fences or walls shall be erected unless planning permission has been granted on an application relating thereto.

Reason: In order to protect the appearance and character of the site and the wider rural locality.

Informatives:

- 1 The applicant is advised that the consent of the Environment Agency is required to operate a septic tank within this site. For advice concerning this matter please contact the Environment Agency at Orchard House, Endeavour Park, London Road, Addington, West Malling, Kent ME19 5SH.
- 2 Regarding the requirements for a site licence under the Caravan Sites and Control of Development Act 1960, the applicant is advised to contact the Director of Health & Housing, Tonbridge & Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ. Tel: (01732) 844522. (Q016)

Contact: Marion Geary

SUPPLEMENTARY REPORTS**AREA 2 PLANNING COMMITTEE****DATED 28 October 2009**

**Offham
Downs****TM/09/00269/FL****Private gypsy and traveller caravan site with one mobile home, one touring caravan and utility building (resubmission of TM/04/00281/FL) at The Horseshoes Sandy Lane West Malling Kent ME19 6TG for Mr And Mrs T Harber**

Agent: If planning permission is granted, we would suggest a condition that alarms be fitted to the cesspool.

DPTL: Members are reminded that in considering applications for gypsy and traveller sites local authorities need to have regard to the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000. The Act provides that local authorities have a general duty to seek to eliminate discrimination and to promote equality of opportunity and good race relations in all they do. The guidance states that a reference to the Act does not confer a right on gypsies and travellers to establish sites in contravention of planning control, but rather that the applicant's status under the Act should be considered, and that the duty of local authorities to promote good race relations is a factor that needs to be considered in any decision making.

The current position with regard to the Coldharbour project is that the planning application is likely to be decided by the end of this month so there is, currently, no planning approval for the scheme. There appears to have been no Ministerial announcement yet on the matter of grant support for the project.

Mr and Mrs Harber are not on the waiting list for any KCC operated sites.

AMEND RECOMMENDATION**Amend condition 4**

4. Within 1 month of this decision, levels alarms shall be fitted to the cesspit and retained thereafter to ensure that the facility is emptied in time to avoid overflowing.

Reason: In order to prevent pollution of controlled waters.
